

**MEMORANDUM TO CHARTER REVIEW COMMITTEE**

**DATE:** January 7, 2020  
**FROM:** Jennifer Merino, City Attorney  
**RE:** Filling of Vacancies

**RELEVANT CHARTER PROVISIONS:**

Sec. 3.09: - Vacancies; forfeiture of office; filling of vacancies.

(3) *Filling of vacancies.* A vacancy or vacancies in the city commission shall be filled as provided in the following.

- (a) *Appointment.* Whenever there is a vacancy in the commission and there are less than twelve (12) months remaining before the next regular city or general election, the commission, by a majority vote of the remaining members, shall choose a successor to serve until that election. In the event of a vacancy in the office of mayor, the vice mayor shall serve as the acting mayor until the mayor's seat is filled. If a majority vote cannot be reached within thirty (30) days of the creation of the vacancy, then the vacancy shall be decided by lot.
- (b) *Special elections.* If no regular city or general election is scheduled within twelve (12) months, the commission shall schedule a special election to fill the unexpired term held not sooner than sixty (60) days, nor more than ninety (90) days following the occurrence of the vacancy or vacancies. In any special election held for the purposes of this section, the provisions for nominations and elections contained in article IV of this Charter shall apply.
- (c) *Term.* The term of office for vacancies filled by this section shall be for the remainder of the unexpired term of the office in which the vacancy exists.
- (d) *Regular city election.* When, at a regular city election in addition to regular commission offices, it becomes necessary to fill a commission vacancy or vacancies which have occurred under the provisions of section 3.09(1), candidates shall be elected according to the provisions of article IV of this Charter.
- (e) *Quorum requirement.* Notwithstanding any quorum requirement established herein, if at any time the membership of the commission is reduced to less than a quorum, the remaining members may, by majority vote, appoint additional members under [subsection] (a) above.

(4) *Extraordinary vacancies.* In the event that all members of the commission are removed by death, disability, or forfeiture of office, the governor shall appoint an interim commission that

shall call a special election as provided in [subsection] (3)(b) above and such election shall be conducted to fill the specific vacancies in the manner provided for under the regular election procedures of this city.

**ISSUE OR QUESTION:**

Revising the filling of vacancies. As proposed by Mr. Garson:

Sec 3.09 (3) I believe that all Commission vacancies should be by appointment of the remaining Commissioners, except, if the term of the vacant seat extends past the next general election, the remaining two years of that seat would be filled at the next election. If we go back to the old system with no numbered seats, the candidate that finishes third would get the two-year term. This provides a couple of benefits in my opinion. The present system requires a special election if the vacancy occurs more than one year from the next general election. A general election costs the city money and requires the cooperation of the Supervisor of Elections. That cooperation did not happen in the last vacancy and so our Charter was not followed. Even though the vacancy occurred more than one year from the next general election, the SOE said she was not capable of putting on a special election and so the vacancy was filled by an appointment of the sitting Commissioners. In addition, special elections have notorious poor turnout so someone voting on matters affecting the entire city would be elected by an extremely small number of voters. Probably less than 10% of the eligible voters and perhaps only 1 or 2 percent of the residents of the city.

Also, I would like to add something on selecting someone to fill a vacancy on the Commission. The last time this happened, it was done in as much secrecy as possible. There is still no evidence that the meeting to pick someone to fill the vacancy was publicly noticed, but assuming it was, the public notice was as minimal as the law allows. This is not acceptable. My suggestion is that we put into the charter that in filling a vacancy on the Commission, at the meeting before the vacancy is to be filled, but earlier if the Commission would prefer, it is announced when the vacancy will be filled and the procedure that the Commission will use to select the new Commissioner. This will make the process as open as possible.