

MEMORANDUM

DATE: December 4, 2023
TO: City Council, City of Greenbelt
FROM: Board of Elections
RE: Council Vacancy: Charter Section 32

In anticipation of the Council's work session later this week, the Board of Elections submits to Council these options for filling the current vacancy in membership, in accordance with the City Charter.

Board members will attend the work session on Wednesday, December 6th, and be prepared to answer questions from the Council.

INTERESTS OF FRANKLIN PARK

The Board would respectfully suggest to Council that in choosing and carrying out one of the options described below, it take into account the special interests of Franklin Park voters. They, it is clear, have lost their spokesperson. While not required by the Charter, it might be advisable, for instance, to hold a public meeting or hearing at the Springhill Lake Recreation Center or another nearby location, to allow Franklin Park residents and voters to voice their interests and concerns.

SUMMARY AND CONCLUSION

The Board of Elections would respectfully advise Council that the City Charter and Code impose just one requirement, before a vacancy in membership is filled. That is in the Charter, Section 32. The meaning and applicability of the section are subject to Council's sound judgment. Moreover, in choosing a person to fill a vacancy, Council we believe has few legal or practical constraints. With or without public hearing, and with or without a referral to Greenbelt voters, Council we believe may fill a vacancy by electing any City resident who is a registered voter over age eighteen.

CHARTER REQUIREMENTS

Section 32 of the City Charter states as follows:

Vacancies on council. If a seat in the council becomes vacant, the remaining members of council by a majority vote shall, as soon as possible, elect a person to fill the unexpired term. If three (3) or more council seats are vacant at the same time, the board of elections shall call at the earliest date a special election to fill said vacancies for the unexpired terms.

(Italics added.) The italicized sentence applies in the present case, as there is just one vacant seat. By Section 32's plain language, Council must exercise the authority, "by a majority vote," to fill the unexpired term of the absent member "as soon as possible." The Board believes that Section 32 requires Council to determine how and precisely when it must take action, what is "possible," within reason, for valid and appropriate action, and the process to be followed to meet Charter requirements.

There are no Charter or Code provisions to help interpret Section 32. It is therefore obvious, we think, that whatever process Council chooses will be constrained only by its sound judgment. Council's process should not be subject to challenge unless it is plainly unreasonable or outside the requirements of Section 32.

In September, Council chose, without public hearing other than debate at the time of appointment, to fill an unanticipated vacancy by temporary appointment of a former member. At that time it was known that the vacancy would last only a few weeks. In present circumstances, Council's chosen candidate will serve for nearly two years. That is almost a full term. These circumstances, we believe, limit the applicability in this case of Council's September action.

OPTIONS

A. COUNCIL ACTION WITHOUT VOTER REFERRAL

Even though Council's September action does not, as we see it, constrain its present choices, Council members may still legally act as it did last fall, without a formal public hearing, and without participation by Greenbelt voters. For example, Council could choose one of the four candidates who were on the November ballot but not among those who were elected. The eighth through eleventh candidates on the ballot all fulfilled legal requirements, being City voters of sufficient age who had filed petitions signed by fifty eligible voters, and each candidate received nontrivial voter support. If Council decides to elect one of those candidates, "by a majority vote" of current Council members, its action would we believe be legal and valid.

Beyond the persons on the November ballot, Council could in the same way name and elect another City voter whom a majority of Council deems the best candidate to hold the vacant seat until November 2025. We believe Charter does not require a public hearing or other process, for that action to be valid.

This option is the least democratic, in the sense that it allows no voter or public participation, but it allows the most prompt and least costly action by Council.

B. ACTION AFTER HEARING, WITHOUT VOTER REFERRAL

While Council has authority under Charter to act without a public hearing, the Charter does not prohibit holding one, or perhaps more than one. Public hearings would of course involve notice to the public, after a resolution setting the hearing's time and location. Since many residents do not receive the News Review, including residents in the Franklin Park area, the Board believes notice should be given, by mail or otherwise, so that all Greenbelt residents receive it. The Council

resolution setting time and date for a hearing might also provide for nomination applications to fill the vacancy. In that way Council would have designated “subjects” for the hearing, as opposed to a general public inquiry about the vacancy.

This option again offers Council the opportunity to act promptly, without significant costs. It is also possible to hold a public hearing or hearings while allowing residents who cannot attend the chance to make comments by text or email. Again, however, this course excludes full participation by Greenbelt voters.

C. ACTION AFTER REFERRAL TO VOTERS

As part of their chosen process under Section 32, Council members may wish to include a referral to Greenbelt voters. The Board does not recommend that. We believe, however, that such a process would be valid and appropriate, as long as it is understood that the section requires Council to take the final action. If Council decides to have voter participation, then the resolution establishing the process would have to include times and dates for several deadlines, as well as provisions for notice to the public about a pending election.

This election would not, in so many words, be technically a “special election” within the meaning of Section 32, but Council in its resolution could state that the candidate who receives the most votes in the election would be selected, unless intervening circumstances require otherwise.

The second sentence of Charter Section 32 specifically provides for a “special election,” to be run by the Board of Elections, in the case of three simultaneous Council vacancies. An election to fill a single vacancy, however, would not be a “special” one, within the meaning of the section. It would instead be a designated referral to the voters, by Council direction to the Board of Elections.

This option, involving a referral election for all voters, is clearly the most democratic. It does, however, involve considerable added cost and delay, and it does not remove from Council the obligation to make the final determination, under Section 32.

To begin the discussion of this option, we assume that Council's resolution setting up the voter referral process would be passed no later than Wednesday, December 20th. If that is so, if it is possible for Council to vote by that date, then we would respectfully suggest the following deadline dates, or perhaps others close to them:

- December 29, 2023: Final day to mail out notice to all registered voters (listed as "active" by the County Board of Election Supervisors) of the pendency of an election and the need for interested persons to submit petitions to be on the ballot.
- January 19, 2024: Final day for persons who wish to be candidates to file their petitions for election with the Clerk. These petitions, the Board believes, should be supported by the signatures of a designated number of eligible voters, perhaps thirty or forty.
- February 5, 2024: Date to begin mailing ballots to active, registered Greenbelt voters. We believe that mailing ballots – including an inner envelope for the ballot and an outer envelope for each voter to sign an affidavit attesting that the voter will use only one ballot in the election – to all voters, as opposed to (a) having an in-person election on a designated day in February, or (b) mailing applications and then mailing ballots only to those who request one, and finally holding an in-person election for those who choose not to vote by mail, will save a significant amount of time and expense. Also, holding an in-person vote would delay the tallying process and require retaining election judges and clerks in the five voter precincts. The vendor we used for the November election could have all ballots in the mail by February 5th, and voters would then receive them no later than February 12th. Sending each voter a

ballot – with notice that ballots must be either (1) mailed in, to be received by a designated date; (2) placed in a drop box, at the Municipal Building or in Greenbelt East or West, by that date; or (3) hand-delivered by that date to the Clerk’s office – will involve a smaller budget and allow easier counting of the ballots. The only in-person voting would be by those voters with disabilities who require an accessible voting machine, which could be located in the Clerk's office.

- March 1, 2024: Final day for receiving ballots in the Clerk’s office, by mail or drop box or delivery to the Clerk.
- March 15, 2024: Date by which the Board of Elections advises Council of the results of the election. We should add that a referral to Greenbelt voters will involve some costs, but less – by 30 percent or more, we estimate – than were incurred in the November election.

Again, with or without a public hearing or a referral to Greenbelt voters, Council under the Charter will retain the right, authority, and obligation to make the final selection to fill the vacancy.

D. POTENTIAL INTERIM APPOINTMENT.

If it chooses to approve a referral to the voters, Council may wish to make an interim appointment to fill the vacant seat before the election. As with the September appointment, it may be best, in the interest of fairness, for the Council to choose someone who does not intend to campaign for a permanent seat. The person chosen for the interim appointment would assume office with the understanding that the final choice at a later date would end the effectiveness of the interim appointment.

Making an interim appointment, if Council members choose a referral to the voters, will allow the Council to proceed with a full membership complement until it receives the results of the referral election.

ADDITIONAL CODE CONSIDERATIONS

As part of the voter referral or election process, if Council chooses that option, the Board believes it would be advisable to follow City and Election Code guidance as to financial disclosure and reporting.

Section 2-111 of the City Code requires all candidates for elective office to file with the Board of Ethics a statement of “financial disclosure.” We believe that requirement will apply to all persons who place their names on a referral ballot, and those who are chosen by Council to fill a vacancy on an interim or permanent basis.

In addition, the Election Code, Chapter 8 of the City Code, requires that Council candidates file campaign financial reports with the Clerk’s office. We think that each candidate, if a referral to voters is made, should file a financial report after the election and before being sworn in as a Council member.

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