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LEGAL SERVICES DEPARTMENT

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TO: Members of the Common Council

FROM: James P. Walsh, City Attorney 

DATE: December 2, 2015

RE: Vacancy in Office

I have been asked to advise the Common Council on the procedure to be followed for filling the position of alderperson should a member resign or cease to be a resident of the district in which they reside. The question arises in the context of Alderperson Dalton's resignation from the Council effective November 30, 2015.

The response to this request is dictated by the provisions of the Wisconsin Statutes. If an alderperson resigns or ceases to be a resident of the district from which they are elected, the position of alderperson for that district is considered vacant. Wisconsin Statutes §17.03. This point is indicated to clarify that the statutory provisions for filling a vacancy comes into play rather than addressing a situation where an alderperson is "absent".

Vacancies in the office of alderperson are addressed in §17.23 of the Wisconsin Statutes. In cities of the second class, such as the City of Appleton, a vacancy in the office of alderperson is filled by appointment by the Common Council. The person appointed by the Council shall hold that office until a successor is elected and qualified. §17.23(1)(a). There is no time limit as to when such an appointment must occur.

In the alternative, the Common Council could order a special election be held prior to next April. In that case, the person so elected would serve out the remainder of Alderperson Dalton's term but would again be up for reelection in 2016. If the Council orders a special election prior to next April, the election would be held in one district only, and it is estimated by the City Clerk's Office that the cost of such an election would be between \$5,800 and \$6,400.

The Council should be aware that there is also a provision in Wisconsin Statutes §8.50, that the date for special elections shall not be less than 62 nor more than 77 days from the date of the Council ordering that such an election be held.

In summary, the Council could leave the position vacant until an election is held. The Council could choose to appoint a successor until such an election is held. The Council can also dictate if the position shall be filled by a special election sooner than April 2016.

This is a brief outline of the process to fill the seat vacated by Alderperson Dalton. If you have any questions in this regard or would like more detail of the process, please feel free to contact me.

JPW:jlg