



Commission Memorandum

REPORT TO: Honorable Mayor and City Commission

FROM: Greg Sullivan, City Attorney
Jeff Mihelich, City Manager

SUBJECT: Process for Filling Vacancy on City Commission

MEETING DATE: September 15, 2020

AGENDA ITEM TYPE: Action

RECOMMENDATION: Adopt City Manager and City Attorney recommendations for the process for filling the current vacancy on the City Commission.

RECOMMENDED MOTION: I move to authorize the process for filling the current vacancy on the City Commission recommended by the City Manager and City Attorney.

BACKGROUND: On September 9, 2020 Mayor Chris Mehl resigned from office. Based on the [City's Charter](#), Deputy Mayor Cyndy Andrus succeeded to the office of Mayor. As a result, the office of commissioner must be filled. We will provide information to the Commission at a future date on addressing the role of Deputy Mayor. This item will authorize the City Manager to begin the process of assisting the Commission to fill the current vacancy.

The City's Charter and Montana law provide the process for filling a vacancy on the commission. The Charter states the office of mayor becomes vacant upon resignation and the deputy mayor succeeds as mayor for the balance of the mayor's term. [Sec. 2.06\(a\)](#). As the deputy mayor is a member of the commission ([Charter, Sec. 2.02\(c\)](#)), the succession of the deputy mayor to the position of mayor creates a vacancy in a commission position. As noted above, filling the role of the deputy mayor will be addressed at a subsequent meeting of the Commission.

The Charter requires a vacancy "to be filled for the remainder of the unexpired term, pursuant to state law." Charter, Sec. 2.06(c). [Sect. 7-4-4112, MCA](#) provides for the filling of a vacancy in a municipal office. Pursuant to this statute, when a vacancy occurs in an elective office, the position is considered open and subject to nomination and election at the next general municipal election except the term of office is limited to the unexpired term of the person who originally created the vacancy. The next general municipal election is November, 2021. In addition, the statute states that pending an election and qualification, the commission shall by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until a successor is elected and qualified.

Because the vacant position of commissioner was created by the succession of the deputy mayor to the office of mayor, the position being filled is that of a commissioner. As noted, the position being filled will be subject to election and qualification at the City's next general election in November, 2021.

REQUIRED QUALIFICATIONS FOR CITY COMMISSIONER:

A person is qualified for the position of commissioner if: (i) the person's principal residence is within the city; (ii) the person is a registered elector of the city; and (iii) meets all other qualifications of Montana law including United States citizenship. See Charter, Sec. [2.02\(a\)](#); [Sect. 7-4-4104, MCA](#).

RECOMMENDED PROCESS/SCHEDULE:

Public participation is a critical aspect of the appointment process. As such, and considering the short time frame for appointment, you will see we recommend a number of steps to ensure a clear and transparent process and that the public has a meaningful opportunity to participate prior to the Commission's appointment.

The decision on the procedures used to select and appoint a new commissioner are subject to the decision of the Commission. We recommend the Commission adopt the following steps:

1. The City Manager will post a notice of vacancy on Wednesday, September 16th. See attached draft notice. The notice will be posted on the City's website, posted to the City's eNotifications, distributed to various social media outlets, and published in a local newspaper. A project page on the City's website will be created that will include this memorandum and, once the deadline for candidate submittals passes, all submittals.
2. The draft advertisement requires interested citizens to submit a statement of interest indicating their qualifications for and interest in the office of commissioner. See above for a discussion on legal qualifications. The statement of interest and qualifications must be limited to no more than 1000 words.
3. As Montana law requires the vacancy to be filled within 30 days, the last day for the Commission to make the appointment is October 12, 2020. If the Commission determines to conduct the appointment at a regular meeting, the last available regular meeting prior to the statutory deadline is October 6, 2020. The Commission may schedule a special meeting to make the appointment.
4. If the Commission determines to fill the vacancy at its regular meeting on October 6th, because the agenda and supporting materials for the October 6th meeting must be published on Thursday, October 1st, a candidate's statement of qualifications and interest must be submitted to the City Clerk by the close of business on Tuesday, September 29th. The candidates' submittals will be included in the Commission packet materials for the October 6th meeting and available for the public review on October 1st. All materials submitted will be considered public information. If the Commission determines to hold a special meeting the deadline for submission of the statements can be adjusted by the City Manager.
5. At the meeting where the Commission will appoint a new member, we suggest candidates be provided an opportunity to make a short presentation not longer than three minutes. After the presentations the Commission should take public comment and then make the appointment by motion and vote.
6. After appointment, the person appointed must be sworn into office. We suggest the taking of the oath occur immediately after the appointment is made. The person will, upon the swearing in, commence their role as a commissioner. The City Clerk will file the oath of

office with the Gallatin County Elections Administration as soon as possible following the taking of the oath.

FISCAL EFFECTS: Minimal.

ALTERNATIVES: As suggested by the Commission. The Commission may want to consider establishing or supporting a virtual open house for candidates. The virtual open house should occur after the deadline for submission of the statements and prior to the meeting on appointment. In addition, if a significant number of citizens file for the vacancy, the Commission may want to consider an additional meeting to narrow the list. Given the above, the City Manager should be granted discretion to adjust the process as it unfolds including scheduling meetings to narrow the list of candidates.

Attachments:

- Draft notice of vacancy

**Public Notice of Vacancy on the Bozeman City Commission
And Invitation to Submit Statement of Qualifications and Interest**

The Bozeman City Commission notifies the citizens of the city of Bozeman of a vacancy in the office of a Bozeman City Commissioner. The Commission requests any registered voter of the City of Bozeman whose primary residence is within city limits and who meets the requirements of holding public office in Montana and who is interested in being appointed to the office of City Commissioner to submit a statement indicating their qualifications for and interest in the office of City Commissioner.

The statement must be no more than 1000 words and received in the Bozeman City Clerk's office no later than 5:00 p.m. on Tuesday, September 29, 2020. Candidates and information received by the Clerk after this deadline will not be considered by the Commission. Candidates must provide five printed copies and also email the statement to agenda@bozeman.net. The required information must be delivered to the Clerk's office located at Bozeman City Hall, 121 N. Rouse Ave or by mailing it to: Mike Maas, Bozeman City Clerk, P.O. Box 1230 Bozeman, MT 59771-1230. Mailed submittals must be received by the above deadline. All information submitted will be considered public information and will be available to the public via the City Clerk and may be posted on the city's website at www.bozeman.net for public viewing on or about October 1, 2020.

The City Commission may make a decision on appointment as early as the regularly scheduled meeting on Tuesday, October 6, 2020.

The public is encouraged to submit comments on the process of appointment or on individual candidates to the City Clerk's Office. You may also email comments to agenda@bozeman.net.

Publish.