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To City of Stoughton Common Council

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Re Filling a Vacancy in the Office of Alderperson

This memorandum first outlines the options and procedure for filling a vacancy in the office of alderperson, as modified by 2019 Wisconsin Act 164. It then discusses the potential options for the City of Stoughton Common Council to address the vacancy that was created by the departure of Alderperson Frank Raff on May 23, 2023.

Options for filling a vacancy.

Under the statutes, an alderperson's term of office is two years, although a different tenure for such officers may be provided by charter ordinance.[1] A common council may fill a vacancy in the office of alderperson as follows:

- By appointment for the remainder of the unexpired term.

- By appointment until a special election is held, as ordered by the common council. Special elections must be ordered and held in compliance with Chapter 8 of the Wisconsin Statutes, as discussed below.[2]

Alternatively, a common council may choose to leave a seat vacant until an election is held. Although not explicitly defined, it is our opinion that "election" for this purpose means either a special election called by the common council or the regularly scheduled election which coincides with the expiration of the term. Thus, the seat may remain vacant until filled by special election or for the remainder of the unexpired term. [3]

[1] Wis. Stat. § 62.09(5)(b). In Stoughton, the term of office is three years. *See* Stoughton Municipal Code § 2-146.
[2] Wis. Stat. § 17.23(1)(am).
[3] Wis. Stat. § 17.23(1)(am).

Procedure for filling a vacancy by appointment.

State law requires that appointments to fill a vacancy be made by "majority vote" but is otherwise silent regarding procedure. Therefore, the common council may fill a vacancy by a simple majority vote and may determine its own procedure for nominating candidates and selecting a person to fill a vacancy. However, a vacancy cannot be filled by secret ballot.[4] The appointment is complete when the result of a sufficient vote is ascertained and announced. No resolution is necessary.[5]

Procedure for filling a vacancy by special election.

Special elections are elections that are held to fill elected offices that become vacant during the term of office or to conduct a referendum.[6] They may be held on the same date as the regularly scheduled elections (spring election or general election) or may be held on other dates, subject to the following requirements.

A special election to fill a vacant city office may be held only by order of the common council.[7] The order must be filed with the city clerk, who must then publish notice of the special election as required by statute.[8] However, a special election may not be held between February 2 and the spring election or between August 2 and the general election, unless the special election is scheduled for the same date as the spring or general election, respectively.[9]

In general, the date for a special election must be between 62 and 77 days from the date of the order.[10] If a special election is to be held on the same date as the spring election, then the common council must issue its order between 92 and 49 days before the spring primary. The spring primary is scheduled for the third Tuesday in February.[11] If a special election is to be held on the same date as the general election, then the common council must issue its order between 122 and 92 days before the partisan or special primary.[12] The partisan primary is scheduled for the second Tuesday in August.[13]

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[4] Wis. Stat. § 19.88(1).
[5] *State ex rel. Burdick v. Tyrell*, 158 Wis. 425, 433, 149 N.W. 280 (1914).
[6] Wis. Stat. § 5.05(19).
[7] Wis. Stat. § 8.50(1)(a).
[8] State law requires that a city clerk provide specific notices on several occasions preceding a special election. *See* Wis. Stat. §§ 8.50(1)(b) to (c) and 10.06 (3)(f).
[9] Wis. Stat. § 8.50.
[10] Wis. Stat. § 8.50(2)(a).
[11] Wis. Stat. § 5.01(22).
[12] Wis. Stat. § 8.50(2)(a).
[13] Wis. Stat. § 5.02(12s).

Options for filling the City of Stoughton Common Council vacancy.

It is our understanding that a vacancy was created on the Common Council on May 23, 2023, by the departure of Alderperson Raff, whose term of office was set to expire in April 2025. The Common Council may address the vacancy in the following ways:

1. Appoint someone to fill the vacancy for the remainder of the unexpired term. Under this option, the appointee would serve until a successor is elected and qualified after the regularly scheduled spring election in April 2025.

2. Appoint someone to fill the vacancy and order a special election. Under this option, the appointee would serve until a successor is elected and qualified after a special election. The successor would serve for the remainder of the unexpired term.

3. Leave the seat vacant and order a special election. Under this option, the person elected would serve for the remainder of the unexpired term.

4. Leave the seat vacant. Under this option, the seat would be filled at the regularly scheduled spring election in April 2025.

If the Common Council wishes to fill the seat by special election, then it must order the special election in compliance with the timelines discussed above. Based on the statutory timelines, the Common Council could order a special election to be held on the same date as the spring election scheduled for April 2, 2024, or the general election scheduled for November 5, 2024. To do so, the Common Council would need to issue its order in accordance with those requirements set forth above.

Alternatively, the Common Council could call for a special election that is not held concurrently with either election. As discussed above, such an election would need to be held between 62 and 77 days after the order was issued. Such an election could not be scheduled between February 2, 2024, and the spring election on April 2, 2024, nor could it be scheduled between August 2, 2024, and the general election on November 5, 2024.

CITY OF STOUGHTON ALDERMANIC APPOINTMENT QUESTIONNAIRE

District 1 - Vacant Seat

Name: _____ Occupation: _____

Street Address: _____ E-mail Address: _____

Home Phone #: _____ Cell Phone #: _____

1) Tell us about your occupation, training and education. Describe the characteristics, qualifications and experiences you have that will enable you to do a good job as an Alderperson.

2) In your opinion, what issues are facing Stoughton today? Please pick one of the issues and tell us how you would lead a committee to probable solutions.

3) If there was an issue on the table that you agreed with but a majority of your constituents disagreed with, how would you vote and why?

4) Council meetings are the 2nd and 4th Tuesdays of each month. In addition, there are at least two standing committees you will be assigned to, as well as other meetings, correspondence and information needing your attention. Do you anticipate a problem in attending evening meetings or fulfilling other time commitments typical to the Alderperson's role.

INTERVIEW QUESTIONS FOR ALDERMANIC DISTRICT #1 APPOINTMENT

Name:_____

Address:_____

Phone #:_____ **Email Address:**_____

(Please attach an additional sheet if more space is needed for your responses)

1. Discuss your occupation, training, and education. What characteristics, qualifications, and experiences do you have that support your candidacy and potential for contribution as an Alderperson?

2. In your opinion, what are the most important current issues for the City of Stoughton? Please discuss one of these issues in detail and describe how you would lead a committee to a solution.

3. If there was an issue on the table that you agreed with, but your constituents disagreed with, how would you vote and why?

4. Council meetings are the 2nd and 4th Tuesdays of the month and there are two standing committees you will be assigned to in addition to other meetings, correspondence, and information that will require your attention. Do you anticipate a problem in attending evening meetings or fulfilling other time commitments of an alderperson?