

★ **Roll Call Number**

Agenda Item Number

37

.....
November 4, 2013

Date

Request from Mayor Cownie, to discuss the Ward 4 City Council vacancy.

Moved by _____ to

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk

372.13 The council.

- 1. A majority of all council members is a quorum.
- 2. A vacancy in an elective city office during a term of office shall be filled, at the council's option, by one of the two following procedures:

a. By appointment by the remaining members of the council, except that if the remaining members do not constitute a quorum of the full membership, paragraph "b" shall be followed. The appointment shall be for the period until the next pending election as defined in section 69.12, and shall be made within forty days after the vacancy occurs. If the council chooses to proceed under this paragraph, it shall publish notice in the manner prescribed by section 362.3, stating that the council intends to fill the vacancy by appointment but that the electors of the city or ward, as the case may be, have the right to file a petition requiring that the vacancy be filled by a special election. The council may publish notice in advance if an elected official submits a resignation to take effect at a future date. The council may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, there is filed with the city clerk a petition which requests a special election to fill the vacancy, an appointment to fill the vacancy is temporary and the council shall call a special election to fill the vacancy permanently, under paragraph "b". The number of signatures of eligible electors of a city for a valid petition shall be determined as follows:

- (1) For a city with a population of ten thousand or less, at least two hundred signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.
- (2) For a city with a population of more than ten thousand but not more than fifty thousand, at least one thousand signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.
- (3) For a city with a population of more than fifty thousand, at least two thousand signatures or at least the number of signatures equal to ten percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.
- (4) The minimum number of signatures for a valid petition pursuant to subparagraphs (1) through (3) shall not be fewer than ten. In determining the minimum number of signatures required, if at the last preceding election more than one position was to be filled for the office in which the vacancy exists, the number of voters who voted for candidates for the office shall be determined by dividing the total number of votes cast for the office by the number of seats to be filled.

b. (1) By a special election held to fill the office for the remaining balance of the unexpired term. If the council opts for a special election or a valid petition is filed under paragraph "a", the special election may be held concurrently with any pending election as provided by section 69.12 if by so doing the vacancy will be filled not more than ninety days after it occurs. Otherwise, a special election to fill the office shall be called by the council at the earliest practicable date. The council shall give the county commissioner at least thirty-two days' written notice of the date chosen for the special election. The council of a city where a primary election may be required shall give the county commissioner at least sixty days' written notice of the date chosen for the special election. A special election held under this subsection is subject to sections 376.4 through 376.11, but the dates for actions in relation to the special election shall be calculated with regard to the date for which the special election is called. However, a nomination petition must be filed not less than twenty-five days before the date of the special election and, where a primary election may be required, a nomination petition must be filed not less than fifty-three days before the date of the special election.

(2) If there are concurrent vacancies on the council and the remaining council members do not constitute a quorum of the full membership, a special election shall be called by the county commissioner at the earliest practicable date. The remaining council members shall give notice to the county commissioner of the absence of a quorum. If there are no remaining

council members, the city clerk shall give notice to the county commissioner of the absence of a council. If the office of city clerk is vacant, the city attorney shall give notice to the county commissioner of the absence of a clerk and a council. Notice of the need for a special election shall be given under this paragraph by the end of the following business day.

3. The council shall appoint a city clerk to maintain city records and perform other duties prescribed by state or city law.

4. Except as otherwise provided by state or city law, the council may appoint city officers and employees, and prescribe their powers, duties, compensation, and terms. The appointment of a city manager must be made on the basis of that individual's qualifications and not on the basis of political affiliation.

5. The council shall determine its own rules and maintain records of its proceedings. City records and documents, or accurate reproductions, shall be kept for at least five years except that:

a. Ordinances, resolutions, council proceedings, records and documents, or accurate reproductions, relating to the issuance of public bonds or obligations shall be kept for at least eleven years following the final maturity of the bonds or obligations. Thereafter, such records, documents, and reproductions may be destroyed, preserving confidentiality as necessary. Records and documents pertaining to the transfer of ownership of bonds shall be kept as provided in section 76.10.

b. Ordinances, resolutions, council proceedings, records and documents, or accurate reproductions, relating to real property transactions shall be maintained permanently.

6. Within fifteen days following a regular or special meeting of the council, the clerk shall cause the minutes of the proceedings of the council, including the total expenditure from each city fund, to be published in a newspaper of general circulation in the city. The publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claims. The list of claims allowed shall show the name of the person or firm making the claim, the reason for the claim, and the amount of the claim. If the reason for the claims is the same, two or more claims made by the same vendor, supplier, or claimant may be consolidated if the number of claims consolidated and the total consolidated claim amount are listed in the statement. However, the city shall provide at its office upon request an unconsolidated list of all claims allowed. Matters discussed in closed session pursuant to section 21.3 shall not be published until entered on the public minutes. However, in cities having more than one hundred fifty thousand population, the council shall each month print in pamphlet form a detailed itemized statement of all receipts and disbursements of the city, and a summary of its proceedings during the preceding month, and furnish copies to the city library, the daily newspapers of the city, and to persons who apply at the office of the city clerk, and the pamphlet shall constitute publication as required. Failure by the clerk to make publication is a simple misdemeanor. The provisions of this subsection are applicable in cities in which a newspaper is published, or in cities of two hundred population or over, but in all other cities, posting the statement in three public places in the city which have been permanently designated by ordinance is sufficient compliance with this subsection.

7. By ordinance, the council may divide the city into wards which shall be drawn according to the following standards:

a. All ward boundaries shall follow precinct boundaries.

b. Wards shall be as nearly equal as practicable to the ideal population determined by dividing the number of wards to be established into the population of the city.

c. Wards shall be composed of contiguous territory as compact as practicable.

d. Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

8. By ordinance, the council shall prescribe the compensation of the mayor, council members, and other elected city officers, but a change in the compensation of the mayor does not become effective during the term in which the change is adopted, and the council shall not adopt an ordinance changing the compensation of the mayor, council members, or other elected officers during the months of November and December in the year of a

regular city election. A change in the compensation of council members becomes effective for all council members at the beginning of the term of the council members elected at the election next following the change in compensation. Except as provided in section 362.5, an elected city officer is not entitled to receive any other compensation for any other city office or city employment during that officer's tenure in office, but may be reimbursed for actual expenses incurred. However, if the mayor pro tem performs the duties of the mayor during the mayor's absence or disability for a continuous period of fifteen days or more, the mayor pro tem may be paid for that period the compensation determined by the council, based upon the mayor pro tem's performance of the mayor's duties and upon the compensation of the mayor.

9. A council member, during the term for which that member is elected, is not eligible for appointment to any city office if the office has been created or the compensation of the office has been increased during the term for which that member is elected. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which that person was elected if during that time, the compensation of the office has been increased.

10. A council member, during the term for which that member is elected, is not precluded from holding the office of chief of the volunteer fire department if the fire department serves an area with a population of not more than two thousand. A person holding the office of chief of such a volunteer fire department at the time of the person's election to the city council may continue to hold the office of chief of the fire department during the city council term for which that person was elected.

11. a. Council members shall be elected according to the council representation plans under sections 372.4 and 372.5. However, the council representation plan may be changed, by petition and election, to one of those described in this subsection. Upon receipt of a valid petition, as defined in section 362.4, requesting a change to a council representation plan, the council shall submit the question at a special election. If a majority of the persons voting at the special election approves the changed plan, it becomes effective at the beginning of the term following the next regular city election. If a majority does not approve the changed plan, the council shall not submit another proposal to change a plan to the voters within the next two years.

b. Eligible electors of a city may petition for one of the following council representation plans:

(1) Election at large without ward residence requirements for the members.
 (2) Election at large but with equal-population ward residence requirements for the members.

(3) Election from single-member, equal-population wards, in which the electors of each ward shall elect one member who must reside in that ward.

(4) Election of a specified number of members at large and a specified number of members from single-member, equal-population wards.

1. [R60, §1081, 1093; C73, §511, 522; C97, §668; S13, §668; C24, 27, 31, 35, 39, §5663; C46, 50, §363.36; C54, 58, 62, 66, 71, 73, §368A.1(2); C75, 77, 79, 81, §372.13(1)]

2. [R60, §1101; C73, §514, 524; C97, §668; S13, §668; C24, 27, 31, 35, 39, §5663; C46, 50, §363.36; C54, 58, 62, 66, 71, 73, §368A.1(8); C75, 77, 79, 81, §372.13(2); 81 Acts, ch 34, §46]

3. [R60, §1082, 1093; C73, §512, 522; C97, §651, 659, 940; S13, §651; SS15, §1056-a26, 1056-b18; C24, 27, 31, 35, 39, §5633, 5640, 5663, 6528, 6651, 6703; C46, 50, §363.11, 363.19, 363.36, 416.52, 419.37, 420.13; C54, 58, 62, 66, 71, 73, §368A.1(1), 368A.3; C75, 77, 79, 81, §372.13(3)]

4. [R60, §1086, 1093, 1095, 1098, 1103, 1105, 1134; C73, §493, 515, 522, 524, 528, 532, 534; C97, §651, 657, 668, 676; S13, §651, 657, 668, 1056-a27, 1056-a28; SS15, §1056-a26, 1056-b14, 1056-b17, 1056-b18; C24, 27, 31, 35, 39, §5638, 5663, 5671, 6519, 6528, 6529, 6533, 6651, 6666, 6674; C46, 50, §363.11, 363.17, 363.36, 363.45, 416.43, 416.52, 416.53, 416.57, 419.37, 419.52, 419.60; C54, 58, 62, 66, 71, 73, §363.40, 363A.4, 363B.11, 363C.4, 363C.9, 368A.1(7, 9, 10); C75, 77, 79, 81, §372.13(4)]

§372.13, ORGANIZATION OF CITY GOVERNMENT

5, 6. [R60, §1082, 1093; C73, §512, 522; C97, §659, 668; S13, §668, 687-a; C24, 27, 31, 35, 39, §5640, 5663, 5722; C46, 50, §363.19, 363.33, 366.10; C54, 58, 62, 66, 71, 73, §368A.1(4), 368A.3; C75, 77, 79, 81, §372.13(5,6); 82 Acts, ch 1047, §1]

7. [R60, §1092; C73, §520; C97, §641; S13, §641; C24, 27, 31, 35, 39, §5626; C46, 50, §363.4; C54, 58, 62, 66, 71, 73, §363.7; C75, 77, 79, 81, §372.13(7)]

8. [R60, §1091, 1095, 1098; C73, §505, 519, 524, 528; C97, §669, 676, 943, 945; S13, §669, 1056-a28; SS15, §1056-b9; C24, 27, 31, 35, 39, §5664, 5671, 6517, 6633, 6704, 6705; C46, 50, §363.38, 363.45, 416.41, 419.19, 420.14, 420.15; C54, 58, 62, 66, §363.39, 363A.4, 363B.9, 363C.2, 420.14, 420.15; C71, 73, §363.39, 363A.4, 363B.9, 363C.2, 363E.1, 420.14, 420.15; C75, 77, 79, 81, §372.13(8)]

9. [R60, §1091, 1122; C73, §490, 491, 519; C97, §668, 677; S13, §668; C24, 27, 31, 35, 39, §5672; C46, 50, §363.46, 420.17 - 420.19; C54, 58, 62, 66, 71, 73, §368A.21; C75, 77, 79, 81, §372.13(9)]

85 Acts, ch 107, §1; 87 Acts, ch 203, §3; 88 Acts, ch 1052, §1; 88 Acts, ch 1246, §4; 89 Acts, ch 39, §9; 89 Acts, ch 136, §71; 90 Acts, ch 1106, §1; 91 Acts, ch 256, §39; 93 Acts, ch 89, §2; 94 Acts, ch 1179, §24; 94 Acts, ch 1180, §54; 97 Acts, ch 170, §90; 2002 Acts, ch 1134, §104, 115; 2004 Acts, ch 1175, §249; 2006 Acts, ch 1018, §5; 2006 Acts, ch 1138, §2; 2007 Acts, ch 112, §4; 2008 Acts, ch 1115, §66, 71; 2009 Acts, ch 57, §91

Referred to in §69.12, 372.4, 372.5, 372.10, 376.11, 420.41

[P] Removal of appointees, see §372.15

[P] Removal of officers, chapter 66

CITY ATTORNEY

Jeffrey D. Lester

DEPUTY CITY ATTORNEYS

Mark Godwin
Lawrence R. McDowell
Kathleen Vanderpool

ASSISTANT CITY ATTORNEYS

Roger K. Brown
Ann M. DiDonato
David A. Ferree
Glenna K. Frank
Gary D. Goudelock, Jr.

Michael F. Kelley
Vicky L. Long Hill
Katharine J. Massier
Carol J. Moser
Douglas P. Philip



November 4, 2013

The Honorable Mayor and Members
of the City Council of the City of Des Moines, Iowa

RE: Timeline/Procedure for Filling Council Vacancy

Background

Council Member Meyers resigned from his City Council Ward IV office effective on October 31, 2013, in order to take office as a State Representative.

The City Council is required to follow one of two procedures set forth in Iowa Code §372.13(2) for filling a vacancy in an elected city office such as the Ward IV Council vacancy. The City Council has the option to fill the vacancy by appointment. Iowa Code §372.13(2)(a). The City Council also has the option to fill the vacancy by a special election. Iowa Code §372.13(2)(b). The legal timelines are different for the two procedures. The resulting timelines available to the City Council are described in further detail below, but the identified timelines are subject to the caveats that the statutes are at best inconsistent and at worst, conflicting, and the further caveat that the Legal Department has been unable to confirm its conclusions with the Polk County Auditor, Jamie Fitzgerald, who is the appropriate election official.

Executive Summary

The City Council has the option to fill the vacancy by appointment.
An appointment to fill the vacancy must be made within 40 days after the vacancy, or no later than December 10, 2013.
The City must publish notice before making an appointment (not less than four nor more than 20 days before taking the action).
An appointment extends to the next “pending election”.
A citizen petition—filed within 14 days—following either notice of intent to appoint or the making of an appointment could require a special election to be called.

The City Council can also fill the position by calling for a special election at the earliest practicable date.

Written notice must be given to the Polk County Election Commissioner at least 32 days in advance of the proposed special election date.

State law requires that candidates be given between 25 and 71 days to file nomination petitions.

Appointment by City Council

Under Iowa Code §372.13(2)(a), the remaining members of the City Council may fill the City Council vacancy by an appointment which must be made within forty days after the vacancy occurs. The appointment shall be for a period until the next "pending election" at which a city public office is filled or a public question is decided. Iowa Code §69.12. Currently, unless there is an intervening election on a

public issue (such as a franchise fee referendum), the term of such appointment will extend to the November 3, 2015 regular city election.

Mr. Meyer's resignation has taken effect October 31, 2013. Accordingly the City Council could fill the vacancy by appointment at any Council meeting after timely publication of notice of intent to fill the vacancy by appointment. Since filling the vacancy by appointment only remains an option for forty days after the vacancy occurs, the December 9, 2013 meeting would be the last regularly scheduled meeting to appoint, and the November 18, 2013 meeting would be the last regularly scheduled meeting for deciding to publish notice which would permit the appointment to be made within the statutory deadline.

If Council Desires to Call a Special Election

Pursuant to Iowa Code §372.13(2)(b), the City Council may fill the City Council vacancy by special election for the balance of the term which extends to December 31, 2015. If the City Council chooses a special election—or a valid petition is filed pursuant to Iowa Code §372.13(2)(a)—the special election must be called at the "earliest practicable date". It should be noted that §372.13(2)(b) provides that a special election may be held concurrently with the next "pending election" only if the vacancy will be filled within ninety days. As noted above, absent an intervening election on a public issue, no such concurrent election can be held since the next "pending election" will be November 3, 2015. In determining the "earliest practicable date" for a special election, it should be noted that the City Council must give the Polk County Election Commissioner at least thirty-two days written notice of the date chosen for special election. Iowa Code §372.13(2)(b). Also, the special election is subject to the provisions of Iowa Codes §§376.4 through 376.11 relating to City elections. These somewhat inconsistent Code provisions appear to include the requirement that candidates for city office be given between twenty-five and seventy-one days before the date of the election to file nomination petitions. Iowa Code §372.13(2)(b)(1) & §376.4.

Considering those statutory requirements, including the implied requirement that the "earliest practicable" election date be as close to ninety days of the occurrence of the vacancy, it would appear that if the City Council wishes to fill the vacancy by special election, Council action should be taken which would need to take place not later than November 18, 2013.

If the Council votes to call for a special election, it would appear that the possible election dates would be February 4, 2014 if the decision is made on November 18, 2013.

Petition for Special Election in the event of Appointment

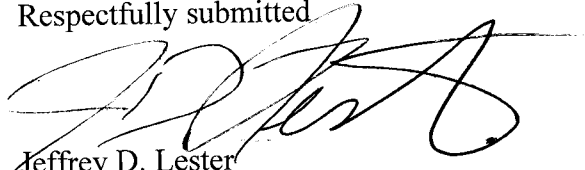
Citizens have up to fourteen days after notice of intent to appoint is published or the vacancy is filled by appointment, whichever occurs later, to file a proper petition with the City Clerk with sufficient signatures calling for a special election. If a special election is held due to the filing of such a petition, an election must be held at the "earliest practicable" date, again to be held within ninety days if practicable. Because the Council could make an appointment at a regular meeting as late as December 9, 2013, a petition calling for a special election could be filed with the City Clerk as late as December 23, 2013 Council Meeting. Assuming a petition is received before the December 23, 2013 Council meeting, Council action should take place on the December 23, 2013 agenda. If Council calls a special election on the December 23, 2013 regularly scheduled meeting, then the election would be held March 11, 2014 at the earliest. Assuming a petition is received on December 23, 2013, Council action should take place on the next scheduled Council meeting thereafter—January 13, 2014—which would place a probable date for special election on April 1, 2014.

Franchise Fee Referendum Impact

If Council desires to appoint and ***no petition is filed***, the appointment is effective to the "next pending election." Although it can be read differently, we think the most reasonable reading would be to the next regular *city* election (November 3, 2015), or if the franchise fee referendum were to be approved by Council and placed before the voters prior to that date, then on the date set for the franchise fee referendum.

If Council appoints and a ***petition is filed*** within 14 days of notice of intent to appoint or appointment (whichever is later) then the special election must be held. Assuming the Council appoints on December 9, 2013, the outer date for submitting a petition to the City Clerk would be December 23, 2013. If a petition is timely received, then the dates would proceed as outlined above, with the caveat that the franchise fee referendum may be able to be placed at the same time as the special election, rather than the March 4, 2014 date previously identified. The Legal Department will follow up after the Tuesday election with the Auditor to verify whether our interpretation is correct.

This is a very difficult and fluid process, especially given that recent legislative amendments have created some apparent ambiguity in interpreting the process. Please feel free to contact me with questions or concerns.

Respectfully submitted

Jeffrey D. Lester
City Attorney