

FOR COUNCIL MEETING OF MAY 19, 2008  
AGENDA ITEM NO. 4 (a)

TO: MAYOR AND CITY COUNCIL  
THROUGH: *Linda Norris* LINDA NORRIS, CITY MANAGER PRO TEM  
FROM: C. RANDALL TOSH, CITY ATTORNEY *[Signature]*  
SUBJECT: FILLING COUNCIL VACANCY

**Issue:** What are the City Council's options with regards to Councilor Brent DeHart's resignation of office?

**Options:**

- (a) Declare Councilor DeHart's seat vacant before the May 20, 2008 primary election, and fill his seat by appointment by the City Council.
- (b) Declare Councilor DeHart's seat vacant after the May 20, 2008 primary election, and fill his seat by special election.
- (c) Decline to declare Councilor DeHart's seat vacant.

**Analysis:** On May 15, 2008, Councilor Brent DeHart submitted a resignation from office, to be effective May 16, 2008.

Under Section 19(2)(b) of the Salem City Charter, when a councilor resigns, the office is not vacant until the City Council so declares.<sup>1</sup> Section 20 of the Salem Charter ties the method of filling any vacancy – including one resulting from a resignation -- to the date of the "next primary election" after the vacancy is declared. Primary elections are held on the third Tuesday in May of each even-numbered year.

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<sup>1</sup> The Charter establishes two types of vacancies: those which are automatic and those which require council action. Those which are automatic are: the death or adjudicated incapacity of the councilor, or the councilor's recall from office. Those which require City Council action to be effective are: failure, following election or appointment to the office, to qualify for the office within ten days after the time for his or her term of office to begin; absence from the city for 30 days without the council's consent or from all meetings of the council within a 60 day period; ceasing to reside in the city in the case of the mayor; ceasing to reside in the ward represented by the incumbent, in the case of a councilor, except that ceasing to reside in a ward due to a change in ward boundaries during a term of office shall not be grounds for declaring a vacancy during that term; ceasing to be a qualified elector under state law; conviction of a public offense punishable by loss of liberty, or resignation from the office. See Salem City Charter, Section 19.

If there is less than one year until the next primary, the vacancy is filled by appointment of the City Council. If there is more than one year until the next primary, then the vacancy must be filled by special election "at the next available date." Because of the nearness of the primary, the date of the City Council's action -- if it chooses to accept Councilor DeHart's resignation -- will have consequences for the method of filling the vacancy.

Councilor DeHart submitted his resignation before the May 20, 2008 primary. If the City Council accepts Councilor DeHart's resignation and declares the seat vacant before May 20, then the City Council must appoint a person to fill out his unexpired term. Although the Council will not make the appointment until after the primary election, the Charter requires the Council to appoint a successor because the Council declared the *vacancy* with "less than one year to the next primary election." There is only one candidate in the primary election for Councilor DeHart's seat, Bob Cannon. Under City Council Rule 18(e) it would be the City Council's policy to appoint Mr. Cannon to fill Councilor DeHart's seat after the May 20, 2008 primary election is over. This could be done at the first regular meeting, on May 27, 2008.

If, however, the City Council accepts Councilor DeHart's resignation, but declares his seat vacant after the primary election on May 20, then the City Council must hold a special election "at the next available date," which would be in September. This is so because there will be more than one year until the next primary election.

Finally, because Section 20(b) requires Council action to declare a vacancy, the City Council could decline to declare Councilor DeHart's seat vacant. Under Section 10 of the Salem City Charter, a city councilor's term of office "continues until the successor to the office assumes office."