
MEMORANDUM

TO: Members of the Town Council

FROM: Leonard G. Rubin, Town Attorney

RE: Filling of Town Council Vacancy

DATE: March 16, 2016

CC: Joseph Lo Bello, CPA, Town Manager
Vanessa Mutchnik, MMC, Town Clerk

The untimely passing of Mayor Levine has created a vacancy on the Town Council as defined in Article III, Section 5(a) of the Town Council. Article III, Section 5(b) of the Town Charter provides for the filling of vacancies as follows:

If there is a vacancy on the council, the council by a majority vote of the remaining members **shall** choose a successor to serve until the next regular town election at which time an election shall be held regardless of whether an election of the seats in which the vacancy occurred is scheduled. If the election for the seats in which the vacancy occurred is not scheduled, the election for those seats shall be for a term of one (1) year.

Based on the foregoing, the Town Charter requires the remaining four members of the Town Council to appoint a fifth member of the Council to serve until the next Town general election to be held in March 2017. At that time, the Town will hold an election to fill the remaining one year left in Mayor Levine's term.

The Town Charter does not prescribe any specific method for filling a vacancy on the Town Council. Other municipalities that have been faced with this task have generally proceeded in one of two ways:

- Appoint an experienced person (generally a former member of the Town Council) who does not wish to be a permanent member of the Council to serve until the next Town election. Under this scenario, the learning curve is much shorter and the seat becomes truly "open" in March 2017.
- Appoint the person that the Council believes is most qualified to serve until the next Town election, irrespective of whether that person wishes to become an elected member of the Town Council in the future. If the Council chooses this scenario, it may (but is not required to) advertise the vacancy, solicit letters of interest, compile a list of finalists and conduct interviews.

While there is no specific timeline for filling the vacancy, the Town Charter language is mandatory and not permissive. Furthermore, failing to fill the vacancy can hamper the effective operation of the Town Council, introducing the possibility of tie votes on important matters of Town business and requiring unanimous votes for variances and administrative appeals when acting as the Board of Adjustment (and unanimous votes for ordinances in the event one member of the Town Council is absent or recused).

Should you have any additional questions or concerns, please do not hesitate to contact me.