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Memorandum

To: Mayor Niemeyer, Council Members, Paul Briseno, City Manager, and Bonnie Foster,
City Clerk

From: Steven J. Britzman, City Attorney

Date: July 16, 2021

Re: Procedure to fill Vacancy of the office of Council Member

Discussion:

This brief Memo is intended to discuss timing and procedures applicable where a Council Member resigns their Council seat leaving a vacancy. The first several sentences of Section 2.06 of our City Charter provide the procedure to address the vacancy. It provides as follows:

Brookings City Charter Section 2.06(d):

Filling of Vacancies. Except as provided below, a vacancy in the office of Mayor or of a City Council Member shall be filled for the remainder of the unexpired term at the next regular City election. The Council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office.

Upon the effective date of the resignation of a Council member, a Council seat would thus be vacated and the City Council may then proceed to appoint by a majority vote of all its remaining members a qualified person to fill the vacancy until the person elected in April 2022 to serve the remainder of the unexpired term takes office.

While there are State statutes which guide the procedure of filling of vacancies in municipalities which have not adopted a City Charter, those statutes are not applicable where we have both a City Charter and a specific Council procedure to fill Council vacancies. It is possible there may be questions as to how to select candidates to fill the Council vacancy, but the law is silent as to how to identify and select potential candidates to fill a Council vacancy. The Council will need to determine that procedure, but ultimately it will require a majority vote to select any candidate to fill the vacancy.

Applicable Law:

Brookings City Charter Section 2.06(d):

Filling of Vacancies. Except as provided below, a vacancy in the office of Mayor or of a City Council Member shall be filled for the remainder of the unexpired term at the next regular City election. The Council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. However, if the vacancy occurs less than sixty days prior to the next regular City election, then the person appointed to fill the vacancy shall continue to serve and the vacancy shall be filled at the regular City election immediately following the next regular City election. Notwithstanding the requirement in Section 2.11, if at any time the membership of the Council is reduced to less than 6, the remaining members shall, within sixty (60) days, fill the vacancies by appointment or call for a special election to fill the vacancies.