

JORDAN RAMIS PC
ATTORNEYS AT LAW

Two Centerpointe Dr 6th Fl
Lake Oswego OR 97035
www.jordanramis.com

Phone: (503) 598-7070
Toll Free: (888) 598-7070
Fax: (503) 598-7373

LEGAL MEMORANDUM

TO: Tigard City Council, City Manager

FROM: Tim Ramis

DATE: March 19, 2012

CC: Cathy Wheatley and Liz Newton

RE: **Charter Procedure for Filling Council Vacancies**
File No. 50014-36799

At the request of the City Manager, I have prepared a brief summary of the options available to the City Council for filling Council vacancies. This topic is raised by the possible departure of Mayor Dirksen for a position on Metro for which he is a candidate in the November election.

I. Filling Mayoral Vacancy

The Language of Tigard's charter is notable for its flexibility. Unlike charters which mandate elections or set specific timelines for City Council action to fill vacancies, the Tigard charter gives the Tigard City Council wide latitude to appoint, call for an election or leave the position vacant.

Mayor Dirksen's term runs through the end of 2014. If the Mayor were to resign in order to take another elective post beginning January 1, 2013, there would be at least two years remaining in the term. (The exact amount of time left in the term would depend on the effective date of the resignation). If such a resignation occurs, a vacancy will be created and the Council options are as follows:

1. Appoint to fill the unexpired term

By majority vote the Council could appoint a person to fill the unexpired term and serve as Mayor until January 1, 2014. The appointment could be of a person who is free to run for election at the end of the unexpired term or the Council could ask a prospective appointee for assurance that the person would not run for the position at the next election. Compliance with the assurance cannot be made binding.

Tigard City Council
March 19, 2012
Page 2

2. Take no action

The charter does not mandate the filling of a vacancy. It is possible for the Council President to serve as Mayor Pro Tem until the end of the unexpired term. Choosing not to fill the position would be very unusual in these circumstances. Leaving the position vacant might be appropriate in certain situations when the unexpired term is very short, but with two years remaining the decision not to appoint would be difficult to justify.

3. Schedule an election

The Council could leave the position vacant until an election could be scheduled to fill the unexpired term. It is possible for the Mayor to submit a letter of resignation, naming a future effective date, thus allowing the Council to call for an early election on a date that would minimize the period of an unfilled vacancy. The Council could also choose to take more time to resolve the matter and set an election at any later date within the unexpired term.

4. Appoint/Schedule an election

Under this option, the Council could appoint a person to serve as Mayor until an election could be held to fill the unexpired term. The appointed could be a person who intends to enter the election race or someone who has announced that they will not be a candidate.

II. Resignation Issues

While the charter does not address the details of a resignation, in the past, the City Council has developed key principals which the present City Council could choose to apply. The context for this discussion is the possibility that a current Council member may wish to become a candidate for Mayor, if an election to fill the vacancy is held.

In order for current Council members to be candidates for the Mayoral position if a term filling election is called, they must resign from their current office at the time of filing for the Mayoral position. Such a resignation may not be withdrawn. The letter may provide for a future effective date. The resignation must provide for termination of the signer's service in the office not later than the day before service would begin for the office of Mayor.

Damien Hall from the City Attorney's office will be available at the March 20, 2012 Council meeting to address questions related to these matters.