THE CITY OF ASHEVILLE

MEMORANDUM

TO: City Council Members

FROM: Brad Branham, City Attorney

DATE: November 4, 2026

SUBJECT: Process for Filing a Council Vacancy

SUMMARY STATEMENT: This memo is intended to provide you with information regarding the legal process to fill the upcoming vacancy on City Council.

Following yesterday's election, the City Council will soon have a vacant seat (the position currently held by Council Member Roney). Once the vacancy occurs, at the time of the new member swearing in, the City Council will be legally charged with filling the vacancy. As described in this memo, that process requires you to appoint a new member who will serve the remainder of Council Member Roney's term. You have flexibility to determine what process you wish to use to select the appointee, and there are no legal deadlines to complete the process.

There are, however, certain limitations of which you should be aware. First, you cannot take final action on the appointment until the vacancy actually occurs (Dec. 8th). Second, you do not have the authority to conduct a general election. As you will see below, all relevant legal authority requires that the governing body appoint the replacement. Third, an individual must be a qualified voter of the City, be at least 21 years of age, and not be disqualified based upon past criminal history. I'm happy to elaborate further on this point as you may request. Finally, the appointment must be made in open session. In addition, any discussion of the Council (having a quorum present) must also be conducted in open session. In other words, you are not permitted to go into closed session, even to discuss the appointment process or potential candidates.

Below, for your awareness, is a summation of the relevant legal direction which dictates the duty to appoint. As I mentioned previously, no specific process is prescribed. You are, therefore, free to decide as a body how to complete the appointment.

The Law:

STATE - North Carolina General Statute 160A-63 requires that such a vacancy must be filled by the City Council by appointment. The appointed member will then serve until the next regular City election.

LOCAL - Asheville City Charter Section 7, Article II, similarly requires the Council to fill the vacancy for the remainder of the unexpired term of the vacating member. The newly appointed member must be selected from the qualified electors of the City of Asheville (a City resident who is registered to vote in the City).

COUNCIL RULES - Council Rules of procedure, Rule 30, requires that an appointment to the Council must be considered and finalized in open session. No discussion on this appointment is permitted in closed sessions. All members are entitled to make nominations for the appointment, no second is required. Voting is completed when one candidate receives a majority of the votes cast.

Considerations

During the period of the vacancy, Council will be left with an even number of members. This can create voting issues, as the opportunity for tie votes increases significantly. In addition, one or more Council committees will also be left with an even number of members. For these reasons, Council may wish to move expeditiously to complete the appointment.

Should the Council choose to request applications for the position, you may coordinate with the City Clerk's office to organize that process. If you would like to consider alternative procedures, I am available to review those with you to ensure legal compliance and identify any potential issues for your awareness. Please let me know if you have any additional questions. I will be happy to expand upon the information provided herein, or to explore other considerations which I have not yet addressed.