



Date of Council Meeting: January 26, 2016

**TOWN OF LEESBURG  
TOWN COUNCIL WORK SESSION**

**Subject:** Mayoral Appointment Process

**Staff Contact:** Barbara Notar, Town Attorney

**Council Action Requested:** Work session briefing and discussion.

**Staff Recommendation:** Not applicable.

**Commission Recommendation:** Not applicable.

**Fiscal Impact:** None.

**Work Plan Impact:** Not applicable.

**Executive Summary:** A vacancy in the office of the Mayor has occurred as a result of former Mayor Umstadd's election to the Loudoun County Board of Supervisors. Under a combined reading of the Town's Charter and the Virginia State Code, the remaining members of the Town Council have 90 days in which to appoint an "Interim Mayor"<sup>1</sup> who will serve until a Mayor is elected in the November 2016 local election. This appointment must occur by a majority vote of the remaining members of the Council, or in other words, four (4) Councilmembers must agree to appoint either the Vice Mayor or a sitting Councilmember or a qualified voter of the election district. If the Council cannot agree on whom to appoint, they will lose jurisdiction and must petition the Circuit Court to make the appointment. No special election will occur to choose the Interim Mayor, but a special election will occur if the Council appoints a Councilmember whose term ends in 2018 to be the Interim Mayor.<sup>2</sup>

**Background:** Former Mayor Kristen Umstadd has resigned causing a vacancy in the office of Mayor. Under § 2-6 of the Town Charter, a majority of the remaining members of the Council have 90 days from the time of the vacancy to appoint an Interim Mayor. Therefore, Council will have until March 31, 2016, to make the appointment. This Charter section also states that if the Council fails to make an appointment, the Circuit Court *shall* appoint. The Circuit Court is not bound by the Town Charter, but this

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<sup>1</sup> Although the term "interim appointment" is used in the state code, the term "Interim Mayor" is not. It is used in this memo to distinguish between the Mayor that is appointed by the Council or the Court, from the Mayor that is elected in the November 2016 election.

<sup>2</sup> Two (2) things must happen before a special election can occur: the Council must petition the Circuit Court within 15 days of the vacancy and the Court must order the special election to occur.

language implies that if the Council fails to make the appointment before March 31, 2016, it must petition the Loudoun County Circuit Court to make the appointment.

The Loudoun County Circuit Court has not appointed a person to fill a vacancy in a local governing body in the past 30+ years, but it is anticipated that the (new as of 1/1/16) Chief Judge, Jeffrey W. Parker, will make the appointment. It is further anticipated that, similar to when the Circuit Court appoints members to the Leesburg Board of Zoning Appeals, the Court will ask the Council for a list of qualified applicants and make the appointment from this list. No time period is mandated for this appointment.

Under Virginia Code § 24.2-226(B) and (C), a special election cannot occur to fill the mayoral vacancy because former Mayor Umstadt's term ends within 60 days of the 2016 general election. However, if the remaining members of Council appoint Vice Mayor Burk, Councilmember Fox or Councilmember Martinez to be the Interim Mayor, a special election will occur as their terms end in 2018.<sup>3</sup> If the remaining members of Council appoint Councilmember Butler, Councilmember Dunn, or Councilmember Hammler, a special election cannot occur because, like the former term of the former Mayor's, their terms end within 60 days of the November 2016 local election. In this event (Butler, Dunn or Hammler appointed Mayor), once the vacancy occurs, a majority of the remaining members of the Council (4 members) will have 90 days to appoint a qualified voter of the election district to fill the vacancy until the November 2016 local election occurs.

Only the Circuit Court can order a special election to occur **and the special election will occur on the date of the next general election (November 8, 2016) unless the Council petitions the Court for an earlier date.** Special elections may only occur:

1. On a Tuesday;
2. Cannot occur on the same day as a primary election (March 1, 2016);
3. Can be held on the day of the general election; and
4. Cannot be held within the 55 days prior to a general or primary election and therefore **can be held anytime from 3/2/16 through 8/12/16** if the Council requests.

Finally, in the event someone other than the Vice Mayor is appointed Interim Mayor, the Vice Mayor will retain her position as Vice Mayor until a new Vice Mayor is elected at the first regular meeting in January of 2017.

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<sup>3</sup> See footnote No. 2.