

## MEMO

Date: June 13, 2022

Re: City of Bloomfield – Filling Vacancy Created by Death of Council Member

To: Chris Miller, Mayor; Council Members Earl Howard, Jake Bohi, Don Walton and Josh Husted; City Administrator Tomi Jo Day; and City Clerk Sandy Jones

From: Gayla R. Harrison, Harrison, Moreland, Webber & Simplot, P.C., City Attorney

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On June 13, 2022, I was notified that Jeff Anderson passed away, thereby creating a vacancy in the position of Councilperson for the Second Ward.

The election and appointment of the council is governed by Iowa Code section 372.13. Subsection 2 of that statute provides that a vacancy in an elective city office during a term of office shall be filled, at the council's option, by one of two procedures.

### APPOINTMENT

The first procedure is appointment. The appointment is made by the remaining members of the council. The appointment shall be made within 60 days after the vacancy occurs. The appointment shall be for the period until the next regular city election unless there is an intervening special election for the city. Under Iowa Code section 376.1, the next regular election is scheduled for November 2, 2023.

If the council fails to make an appointment within 60 days as required by the subsection, the city clerk is required by law to give notice of the vacancy to the county commissioner and the county commissioner is required to call a special election to fill the vacancy at the earliest practicable date, but no fewer than 32 days after the notice is received by the county commissioner.

It appears that the council would have to take action to appoint no later than August 12, 2022, or the city clerk will be required to notify the county commissioner and the county commissioner would be required to schedule a special election. In connection with the appointment, the council is required to publish a notice at least once, not less than four nor more than 20 days before the date of its action, stating that the council intends to fill the vacancy by appointment but that the electors of the city have the right to file a petition requiring that the vacancy should be filled by special election. The appointment to fill the vacancy is after the notice is published. As a result, if you want to take advantage of this process, you would you would be required to make the decision and publish the notice.

For purposes of the city electors demanding a special election, you must be provided a petition with signatures equal to 15% of the voters who voted for candidates at the preceding regular election at which the office of council was on the ballot or 200 signatures, whichever is fewer.

## **SPECIAL ELECTION**

Alternatively, the council can decide to fill the vacancy by special election for the remaining balance of the unexpired term. A special election to fill the office shall be called by the council at the earliest practicable date. The council should give the county commissioner at least thirty-two (32) days' written notice of the date chosen for the special election. Nomination petitions must be filed not less than 25 days before the date of the special election.

## **ACTION**

I would encourage you to have on the council agenda for June 16 or July 7, 2022, "discuss and take action on procedure for filling council vacancy created by death of Jeff Anderson." At that time, the council can decide whether it will fill the vacancy by appointment or by special election. If the council decides that it wants the position filled by special election, then it should identify the date of the special election. Timing wise, the latest the special election could happen is September 13, 2022.

I will be prepared to help guide you through the discussion on options on whichever date you select to discuss the issue.