

**AGENDA REQUEST FORM**

**FOR: Council Meeting of November 2, 2021**

**FROM: Mayor Lioneld Jordan**


**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

A RESOLUTION TO DECLARE A VACANCY IN WARD TWO, POSITION TWO AND TO DETERMINE HOW THE VACANCY SHALL BE FILLED

**APPROVED FOR AGENDA:**

  
\_\_\_\_\_  
Mayor Lioneld Jordan

10/20/21  
Date

  
\_\_\_\_\_  
Asst. City Attorney Blake Pennington

10/20/21  
Date



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Jodi Batker  
Paralegal

TO: **Mayor Jordan**  
**City Council**

CC: **Kara Paxton**, City Clerk Treasurer  
**Susan Norton**, Chief of Staff  
**Paul Becker**, Chief Financial Officer

FROM: **Blake Pennington**, Assistant City Attorney

DATE: **October 18, 2021**

RE: **City Council Member Matthew Petty's Resignation**

This morning I received a copy of City Council Member Matthew Petty's letter of resignation. The letter indicates that the effective date of this resignation is October 25, 2021.

With respect to a vacancy in the office of City Council Member, Ark. Code Ann. § 14-43-411(b)(1) requires:

"at the first regular meeting after the occurrence of the vacancy, the city council shall proceed to either elect by a majority vote of the remaining members elected to the council a council member to serve for the unexpired term or call for a special election..."

The "first regular meeting after the occurrence of the vacancy" will be **November 2, 2021**. The City Council must then either elect a replacement Council Member or call for a special election pursuant to A.C.A. § 7-11-101, *et seq.*

The first motion on this issue should be one either moving to elect a new Council Member by Council Member vote or a motion to call for a special election. Once either the election by City Council versus special election option is selected, the appropriate procedure for either option can begin.

### City Council Election Option

The state statute is silent about what Council Members should do prior to electing "by majority vote" the new Council Member so this procedure is almost totally discretionary

with the City Council. In the past, persons interested in filling the vacancy applied and were interviewed by the City Council during the meeting. Then a public vote was taken to elect the replacement.

When filling a vacancy in 2017, the City Council received letters of interest and resumes without any formal application because there was only one day between the occurrence of the vacancy and the meeting at which the vacancy was required to be filled. Given the amount of time you have until the decision must be made, an application form could be made available and applications could be received until November 2.

#### Special Election Option

As a second option, the statute refers to A.C.A. § 7-11-101 to fill a vacancy by special election. My review of that subchapter reveals a special election could be held on January 11, 2022 or February 8, 2022. Our office will prepare a call for a special election resolution in case this is what the majority of the City Council votes to do.



OFFICE OF THE  
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Jodi Batker  
Paralegal

TO: Mayor Jordan  
City Council

CC: Susan Norton, Chief of Staff

FROM: Kit Williams, City Attorney

DATE: October 26, 2021

RE: Motion and Resolutions for Council Member Vacancy

To facilitate the parliamentary procedure for the City Council to address the vacancy of Council Member Petty in Ward 2, I have attached two possible Resolutions. One Resolution would call for a Special Election to elect a new Council Member on February 8, 2022. The other Resolution would elect a replacement Council Member by City Council vote during your upcoming City Council Meeting on November 2, 2021.

The first issue that should be addressed is the City Council’s choice between electing a replacement Council Member or referring the decision to a Special Election. This should be done by a City Council Member moving either:

- (1) To elect a Council Member by the City Council to serve the unexpired term of former Council Member Matthew Petty; or
- (2) To call for a special election to elect a new council member to replace former Council Member Matthew Petty.

This initial motion is an internal motion (like a motion to table). This means that the number of votes needed to pass this internal motion is dependent upon the number of members of the council present and voting. Thus, because of the vacancy in Matthew Petty’s position, any absence of another Council Member would mean that the motion would require only four votes to pass. The Mayor may, as usual, vote if “the Mayor’s vote is needed to pass any ordinance, by-law, resolution, order or motion.” A.C.A. § 14-43-501(b)

Either Resolution, however, shall still continue to require five affirmative votes to pass pursuant to A.C.A. § 14-55-203 **Voting requirements for passage.** “To pass any by-law, ordinance or resolution. . . , a concurrence of majority of the whole number of members elected to the council shall be required.”

This is slightly altered by A.C.A. § 14-43-411(b)(1) which requires a “majority vote of the remaining members elected to the council. . . .” As “this language would include the Mayor since he is an *ex officio* member of the council,” *Gibson v. City of Trumann*, 311 Ark 561, 562, 845 S.W.2d 515, 516 (1993); the Mayor must also be counted when determining the number of “remaining members elected to the council” which would be eight. Thus, five affirmative votes (which could include a vote by Mayor Jordan) would be needed to pass either Resolution.

Please keep in mind that the state statute says: “at the first regular meeting after the occurrence of the vacancy, the **city council shall** proceed to either elect. . . a council member . . . or call for a special election to be held . . . .” A.C.A. § 14-43-411(b)(1) (emphasis added). Therefore, the City Council has a **mandatory duty to either elect a new council member or call for a special election at the November 2, 2021 City Council meeting.**

**RESOLUTION NO.** \_\_\_\_\_

**A RESOLUTION TO CALL A SPECIAL ELECTION TO FILL A VACANCY OF THE CITY COUNCIL MEMBER FOR WARD 2, POSITION 2 OF THE CITY OF FAYETTEVILLE**

**WHEREAS**, a vacancy in the office of the Council Member of Ward Two, Position 2 occurred on October 25, 2021, in the City of Fayetteville; and

**WHEREAS**, pursuant to A.C.A. § 14-43-411(b) the Fayetteville City Council has voted to call a special election to fill this vacancy.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby calls a special election to fill the vacancy for a Council Member in Ward 2, Position 2 of the City of Fayetteville for February 8, 2022.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby determines that the circulation period for petitions of candidacy shall begin on November 12<sup>th</sup>, 2021 and end at noon on November 29<sup>th</sup>, 2021, and the ballot position drawing shall be conducted on November 30<sup>th</sup>, 2021 at the place and time selected by the Washington County Election Commission.

**PASSED and APPROVED** this 2nd day of November 2021.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**KARA PAXTON**, City Clerk/Treasurer

## Williams, Kit

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**From:** Williams, Kit  
**Sent:** Tuesday, October 26, 2021 2:16 PM  
**To:** 'Jennifer Price'  
**Cc:** Pennington, Blake; Jordan, Lioneld; Norton, Susan  
**Subject:** RE: Special election dates for council member

Thank you , Jennifer,

In light of your comments, I will go with a filing deadline of November 29<sup>th</sup> and the ballot position draw on November 30<sup>th</sup>. I will suggest the circulation period for the petitions for candidacy to be from November 12<sup>th</sup> until November 29<sup>th</sup>.

Kit

**From:** Jennifer Price <JPrice@washingtoncountyar.gov>  
**Sent:** Tuesday, October 26, 2021 2:06 PM  
**To:** Williams, Kit <kwilliams@fayetteville-ar.gov>  
**Cc:** Pennington, Blake <bpennington@fayetteville-ar.gov>; Jordan, Lioneld <ljordan@fayetteville-ar.gov>; Norton, Susan <snorton@fayetteville-ar.gov>  
**Subject:** RE: Special election dates for council member

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

I looked over both West Fork's Ordinance for a Mayor's vacancy and Springdale's ordinance for a Council Member's vacancy and did not find a lot of consistency between the two.

It does appear that both special elections had the filing period end before the 60 deadline to call the Election. If we go with the new law that would be 70 days before. That deadline is November 30<sup>th</sup>.

Filing periods for the two elections were 20 days for West Fork and 35 days for Springdale. The language does appear to set the filing and circulation of petitions as the same time frame. I don't have any petitions in my office and the County Clerk doesn't have any to verify that signatures were not collected prior to the first day of filing. West Fork passed their resolution on December 9, 2008 and filing began January 14, 2009 and ended February 3, 2009. Springdale passed theirs on April 16, 2013 and filing began on May 1, 2013 and ended on June 4, 2013.

Springdale had their deadline for the ballot draw 3 days following the end of filing on June 7, 2013. I am not sure but I think the 3 days after the end of filing had more to do with the publication of the Notice for the Ballot Draw which must be published 72 hours before the ballot draw. I talked with the County Clerk, and she will quickly be able to verify the confirm the proper petitions as they are presented, and if you end the filing period at noon, then she would be able to certify the list to the Election Commission that afternoon. Both West Fork and Springdale ending their filing at noon.

The Courthouse will be closed on November 25<sup>th</sup> and November 26<sup>th</sup>. So this would impact the number of days for the filing period. To answer your question about the mandatory days, I do not know. And both ordinances I have both contain different time frames.

The language of both ordinances state that the City Council will establish the deadline for the filing period.

We can do the ballot draw the day after the filing period ends. So that won't be a problem.

Thanks  
Jennifer

**From:** Williams, Kit [<mailto:kwilliams@fayetteville-ar.gov>]

**Sent:** Tuesday, October 26, 2021 10:35 AM

**To:** Jennifer Price <[JPrice@washingtoncountyar.gov](mailto:JPrice@washingtoncountyar.gov)>

**Cc:** Pennington, Blake <[bpennington@fayetteville-ar.gov](mailto:bpennington@fayetteville-ar.gov)>; Jordan, Lioneld <[ljordan@fayetteville-ar.gov](mailto:ljordan@fayetteville-ar.gov)>; Norton, Susan <[snorton@fayetteville-ar.gov](mailto:snorton@fayetteville-ar.gov)>

**Subject:** Special election dates for council member

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Jennifer,

Thanks for the first chart you provided us concerning some dates that we must include in the Resolution calling for a special election to fill the vacancy on the Council. I hope that you can help us determine all dates that we are required to include in the Resolution pursuant to A. C. A. § 7-11-102 **Content of calling document.**

In order to be in compliance with both the old and new law's required length of time before the election can be held after the date for drawing ballot position, we believe that February 8, 2022 should be the special election date. However, now I need to know the rest of the required dates that I must include in the Resolution pursuant to § 7-11-102:

- (1) Deadline for filing as an independent candidate;
- (2) Period in which petitions for independent candidacy may be circulated; and
- (3) Deadline for drawing for ballot position.

My calculations for drawing for ballot positions coincides with your "filing date" of November 30, 2021. I doubt that you would want the drawing for ballot position to occur on the actual last filing date since the clerk will need some time to process the petitions to ensure the proper number of eligible voters have signed the petition before anyone draws for position. Thus, I would suggest you speak with the County Clerk to determine how much time they may need to confirm proper petitions have been presented. I believe that we need to back up the filing deadline at least to November 29<sup>th</sup>. We will have problems pushing it back any further as then we run into the weekend. The city is closed both Thursday and Friday (November 25<sup>th</sup> and 26<sup>th</sup>) for Thanksgiving. I do not know the County's holiday schedule, but if you are also closed, we might have to go all the way back to Wednesday, the 24<sup>th</sup>. That would really shorten the filing period, but I could not find a mandatory length for a filing period.

I would suggest a ending date for filing of the petitions of November 29<sup>th</sup> and a drawing for ballot position of November 30, 2021. Would a two week period for obtaining signatures of November 15<sup>th</sup> through November 29<sup>th</sup> conform with state law? If so, these would be the dates that I will place within the Resolution to comply with § 7-11-102.

Again, thanks for all your help on these election issues.

Kit



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error, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto." Acts 2011, No. 1185, § 21: Oct. 2, 2011.

**7-11-101. Calling elections to fill vacancies.**

All special elections and other elections to fill a vacancy in an office shall be called by proclamation, ordinance, resolution, order, or other authorized document of the appropriate constituted authority.

**History.** Acts 2009, No. 1480, § 47.

**7-11-102. Content of calling document.**

The proclamation, ordinance, resolution, order, or other authorized document of the appropriate constituted authority calling a special election or other election to fill a vacancy in an office shall set forth:

- (1) The date of the election;
- (2) The date of the special primary election, if any;
- (3) The date of the special primary runoff election, if any is required;
- (4) The deadline for filing as a party candidate with the county clerk or Secretary of State, as the case may be;
- (5) The deadline for party conventions to select nominees if applicable;
- (6) The deadline for parties to issue certificates of nomination or certified lists of nominees, as the case may be, if applicable;
- (7) The deadline for candidates to file certificates of nomination, if applicable, with the county clerk or Secretary of State, as the case may be;
- (8) The deadline for filing as an independent candidate and the period in which petitions for independent candidacy may be circulated;
- (9) The deadline for filing as a write-in candidate if applicable;
- (10) The deadline for drawing for ballot position by the county board of election commissioners; and
- (11) The date the election shall be certified by the county board of election commissioners in each county in which the election takes place and, if applicable, by the Secretary of State.

**History.** Acts 2009, No. 1480, § 47.

**7-11-103. Filling vacancies in state, federal, or district offices.**

(a) The proclamation, ordinance, resolution, order, or other authorized document of the appropriate constituted authority calling a special election to fill a state, federal, or district office shall be filed with the Secretary of State, who shall immediately transmit the document to the county board of election commissioners of each county where the special election shall be held.

**RESOLUTION NO.** \_\_\_\_\_

A RESOLUTION TO ELECT \_\_\_\_\_ AS CITY COUNCIL MEMBER FOR WARD TWO, POSITION TWO OF THE CITY OF FAYETTEVILLE

**WHEREAS**, a vacancy in the office of the Council Member of Ward Two, Position Two occurred on October 25, 2021 in the City of Fayetteville; and

**WHEREAS**, the City Council pursuant to A.C.A. § 14-43-411(b) has voted to elect \_\_\_\_\_ as the replacement City Council Member for Ward Two, Position Two.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby elects \_\_\_\_\_ to the office of City Council Member of Ward Two, Position Two in the City of Fayetteville pursuant to A.C.A. § 14-43-411(b) to serve the remainder of the previous Council Member's term.

**PASSED and APPROVED** this 2nd day of November 2021.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**KARA PAXTON**, City Clerk/Treasurer



CITY COUNCIL

October 18, 2021

Mayor Jordan and Councilmembers  
Via Kara Paxton, City Clerk

**Re: Resignation effective 10/25.**

Dear Mayor Jordan and colleagues, friends, and neighbors,

I have greatly enjoyed knowing you and working with you as a Ward 2 Councilmember over the past 13 years. This letter serves as my formal notice of resignation from our City Council, effective October 25, 2021. As my workload and associated travel has increased, it has become more difficult for me to continue to provide the level of service that I expect of myself and so I am stepping aside to make room for another to implement Ward 2's progressive agenda.

Fayetteville is my home and I feel lucky to keep sharing it with my family and the community at large. I am proud of what we have been able to accomplish together and grateful for the role voters have chosen for me four times. Being elected in my twenties and serving for almost thirteen years has been an incredible learning experience. Take it from me: public service is worth it. (More people should consider it.)

Though this is a big change, I will always seek out ways I can contribute because I was raised to always stand up for our values and my convictions. I believe many people in Fayetteville share this ethos. It's become cliché to say the world is changing and we will only get to the other side together, but it's true.

In love and respect,

A handwritten signature in black ink, appearing to read "Matthew".

Matthew