

TO: MAYOR AND CITY COUNCIL

FROM: Neil Jensen, City Administrator

SUBJECT: Resolution 2668, Declaring a Vacancy on City Council

MEETING DATE: January 3, 2023

BACKGROUND

Matt Montgomery resigned his City Council position effective January 3rd, 2023. According to City Charter 2.04 the City Council must declare the vacancy to exist. See attached Resolution.

After adoption of the Resolution, nominations from the Mayor and Council can proceed with discussion and a motion can be accepted to appoint from the nominees. An affirmative vote is required from the existing Council Members.

Please see attached the process for filling a city council seat vacancy provided by City Attorney Ryan.

STAFF RECOMMENDATION

Please make a motion to approve Resolution 2668, Declaring a Vacancy on City Council.

REQUESTED COUNCIL ACTION

Please make a motion to approve Resolution 2668, Declaring a Vacancy on City Council.

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER 2668

A RESOLUTION TO DECLARE A VACANCY ON THE CITY COUNCIL

WHEREAS, on December 20th, 2022, Council Member Matt Montgomery resigned from the City Council effective January 3rd; and

WHEREAS, the Cannon Falls City Charter Section 2.04 requires the Council to declare a vacancy;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CANNON FALLS, MINNESOTA that pursuant to the Charter of the City of Cannon Falls, a vacancy on the Council is hereby determined to exist, due to the resignation of Matt Montgomery.

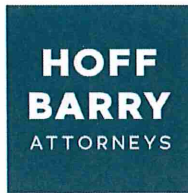
APPROVED AND ADOPTED this 3rd day of January, 2023 by the City Council of the City of Cannon Falls, Minnesota.

CITY OF CANNON FALLS

BY: _____
Matt Montgomery, Mayor

ATTEST:

Neil L. Jensen, City Administrator



Shelley M. Ryan | Partner | 952.746.2705 | sryan@hoffbarry.com

To: Neil Jensen
Re: Process for Filling Council Seat Vacancy
Date: November 23, 2022

Pursuant to your request, this memorandum summarizes the procedural process for filling the vacancy resulting from Councilmember Matt Montgomery's election to Mayor.

The Cannon Falls City Charter provides the following, in relevant part:

- The Mayor and Council members must qualify for and be sworn into office at the first regular Council meeting in January following their election. Id.
- The Mayor and Council members will hold office until their successors are elected, qualified, and sworn into office. Id.
- The Mayor and Council members may hold another compatible public office. Charter § 2.03.
- A vacancy in the office of Mayor or Council member exists for the following reasons . . . (c) the resignation of the Mayor or a Council member. Charter § 2.04, subd. 1.
- When a vacancy occurs, the Council must by resolution declare the vacancy to exist. Charter § 2.04, subd. 2.
- If a regular City election is not to be held within 90 days of the declaration of vacancy, the Council must forthwith appoint an eligible person to fill the vacancy until the first regular City election following the vacancy when the vacancy will be filled by election of the voters for the balance of the unexpired term, if any. Id.
- Upon the Council's declaration of vacancy on the City Council, the affirmative vote required to approve an appointment to the council is reduced by the number of positions declared by the Council to be vacant. Charter § 2.04, subd. 3.
- At the first regular meeting in January following the regular City election, the newly elected members of the Council will be sworn into office and assume their duties. Charter § 3.01.

- Except as otherwise provided in this Charter or law, an affirmative vote of a majority of the Council members present is required for the adoption of ordinances, resolutions and motions. Charter § 3.04.
- All matters of administration not requiring approval by resolution under this Charter or law may be approved by motion. Id.

Based on the above Charter provisions, the City Council's composition should not change due to the November 2022 election until the first regular meeting in January 2023. Mayor Althoff holds office until Councilmember Montgomery is sworn in as Mayor at the January 3, 2023 City Council meeting. Councilmember Montgomery must resign from his current office prior to being sworn in as Mayor because the offices are incompatible. His resignation may be made effective on January 3, 2023 so that he remains on the Council through December 2022.

Councilmember Montgomery's resignation will create a vacancy on the City Council. The remaining Council members must adopt a resolution declaring that a vacancy exists. The next regular City election will not be held within 90 days of the declaration of vacancy. Thus, the Council must forthwith appoint an eligible person to fill the vacancy until the next regular City election in November 2024, at which time the term will expire, and voters will elect a successor. The Charter does not require a resolution to make the appointment and it may be done administratively by motion approved by affirmative vote of a majority of the remaining Council members (3 out of 5).

The Charter imposes a mandatory obligation on the Council to appoint an eligible person to fill the vacancy but does not prescribe an appointment process. As a result, the Council is afforded broad discretion in determining who to nominate and may focus its consideration on individuals nominated by the Mayor or Councilmembers. The decision to appoint a particular person is within the Council's sound discretion and would not be overturned absent a showing that the Council acted arbitrarily or capriciously.

In summary, Councilmember Matt Montgomery may tender his written resignation at any time, but he should state that his resignation is effective on January 3, 2023. I recommend that the Council take the following steps at its January 3, 2023 meeting:

1. Accept Councilmember Montgomery's resignation effective January 3, 2023.
2. Matt Montgomery is sworn in as Mayor and Ryan Jeppesen is sworn in as a Councilmember.
3. Adopt a resolution declaring that a vacancy exists due to Councilmember Montgomery's resignation.
4. Accept nominations from the Mayor and Councilmember, discussion, and motion to appoint from the nominees.
5. The Council must determine the appointee is eligible (eg. residence) and should consider all relevant factors including prior experience on the Council.