



## MAYOR & COUNCIL COMMUNICATION

DATE: 7/16/2013

**REGULAR**

ITEM #: 12

**AGENDA ITEM:** Appointment to Fill Council Vacancy

**SUBMITTED BY:** Adam Bell, City Clerk

**THROUGH:** Dean Zuleger, City Administrator

**REVIEWED BY:** Dean Zuleger, City Administrator

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### **SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item ..... City Staff
- Report/Presentation..... City Staff
- Questions from Council to Staff.....Mayor Facilitates
- Public Input, if Appropriate.....Mayor Facilitates
- Call for Motion.....Mayor & City Council
- Discussion.....Mayor & City Council
- Action on Motion.....Mayor Facilitates

### **SUMMARY AND ACTION REQUESTED:**

Due to the vacancy created on the Council as a result of Council Member Nicole Park's resignation, a vacancy exists on the Council, and Minnesota State Law requires the position be filled in a timely manner. The Council is respectfully asked to appoint an individual who is eligible for election to this position for the remainder of the unexpired term. The recommended motion for this action is as follows:

***“Move to appoint \_\_\_\_\_ to the Council for  
the remainder of the term previously held by Council Member Nicole Park, and  
her/his appointment shall expire on January 5, 2015.”***

### **BACKGROUND & STAFF REPORT:**

Nicole Park was elected to the office of Council Member for the period of January 3, 2011 to January 5, 2015. On June 18, 2013, Council Member Nicole Park announced her resignation from her elected office, effective July 16, 2013, which results in a vacancy on the Council.

Pursuant to Minn. State Statute § 412.02, Subd. 2a, vacancies shall be filled by council appointment. Because the vacancy occurred with less than two years of the unexpired term, a Special Election is not required. Applications for the vacancy were collected by the City Clerk. Four applicants applied to fill the vacancy. Interviews of those applicants were held on July 16<sup>th</sup> 2013, immediately preceding this meeting.

As mentioned, state law provides that statutory city councils make the appointment to fill a vacancy, except in the case of a tie vote when the mayor makes the appointment. That means all members of the council, including the mayor, can vote on the appointment. And as long as at least a quorum of the council is present, a majority vote of those present is sufficient to make the appointment.

State law does not place any limitation on a mayor's ability to make an appointment in the case of a tie vote. As a result, the mayor can appoint any qualified person willing to fill the vacancy even if that person was not the subject of the original appointment vote.

State law generally provides that the terms of elected city officials begin on the first Monday in January following the election. However, the attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate.

### **RECOMMENDATION:**

It is recommended that the City Council appoint an individual who is eligible for election to this position for the remainder of the unexpired term, pursuant to state statute, by making the following recommended motion:

*“Move to appoint \_\_\_\_\_ to the Council for the remainder of the term previously held by Council Member Nicole Park, and her/his appointment shall expire on January 5, 2015.”*

### **ATTACHMENTS:**

- 1) Resolution No. 2013-56: A Resolution Appointing Council Member to Fill Vacancy

### **AUTHORITY:**

**2012 Minnesota Statutes: § 412.02 CITY ELECTIONS; OFFICERS, TERMS, VACANCIES, CITY EMPLOYEES.**

#### **Subd. 2a.Vacancy.**

Except as otherwise provided in subdivision 2b, a vacancy in an office shall be filled by council appointment until an election is held as provided in this subdivision. In case of a tie vote in the council, the mayor shall make the appointment. If the vacancy occurs before the first day to file affidavits of candidacy for the next regular city election and more than two years remain in the unexpired term, a special election shall be held at or before the next regular city election and the appointed person shall serve until the qualification of a successor elected at a special election to fill the unexpired portion of the term. If the vacancy occurs on or after the first day to file affidavits of candidacy for the regular city election or when less than two years remain in the unexpired term, there need not be a special election to fill the vacancy and the appointed person shall serve until the qualification of a successor. The council must specify by ordinance under what circumstances it will hold a special election to fill a vacancy other than a special election held at the same time as the regular city election.