MEMORANDUM

To: **City Commissioners**

From: **City Attorney**

Re: **Filling Vacancies on City Commission**

Date: **August 4, 2014**

At the July 22 meeting, I was directed to research options for filling vacancies in the City Commission. K.S.A. 12-1006 provides that vacancies on the governing body under the commission-manager plan "shall be filled in the manner already provided for by law." K.S.A. 25-2117 states, "Whenever any vacancy occurs in any elective city office, and no other provision is made by law for filling such vacancy, the vacancy shall be filled by appointment by the governing body of the city, or the remaining member or members of such governing body. A majority of the members of the governing body then in office shall be sufficient for approval of any such appointment."

In 1999, the Commission enacted Ordinance No. 99-06, which included the following section regarding vacancies: "In the case of any vacancy from any cause in the office of any commissioner, the board of commissioners, by a majority vote of all the remaining members thereof, shall elect some eligible person to serve in such for the balance of the unexpired term of such office. In case the remaining members of the board of commissioners cannot agree upon some such eligible person, they shall call in the city attorney who shall cast the decisive vote for such appointment. The resignation of any commissioner elected to the board of commissioners shall be made in writing. If any commissioner shall remove from the territorial limits of the city, such removal shall *ipso facto*[1] be deemed to create a vacancy in such person's office."[2]

K.S.A. 25-2117 does not apply uniformly and, therefore, it is possible to charter out of the statute. Following are examples of vacancy ordinances in Arkansas City and Topeka for your review as you consider changes to your current procedure. You'll see that Arkansas City

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[1] By the mere effect of an act or a fact

[2] Similar to KSA 14-1305 relating to commission-manager cities of the 2nd class

fills vacancies “for the shorter of” the balance of the unexpired term or until the next regular City election.

I included Topeka’s ordinance just to show you some options for the actual procedure of accepting applications/interviewing applicants/voting/etc.

Arkansas City's[3] Charter Ordinance[4] regarding the filling of vacancies:

In case of any vacancy from any cause in the office of mayor or any commissioner, the remaining members of the board of commissioners within 20 days after the occurrence of the vacancy shall appoint some suitable person to fill the vacancy for the shorter of (a) the balance of the unexpired term of such office; or (b) until the next regular City election. In the case of appointment to the next regular City election, the candidates in that election receiving the largest and second largest number of votes, respectively, in that election shall be elected for a four-year term; and the candidates receiving the third and fourth largest number of votes, respectively, in that election shall be elected for a two-year term. If the remaining members cannot agree by majority vote upon some such suitable person, then they shall call in City Attorney who shall cast the decisive vote for such appointment. The resignation of the mayor or any commissioner elected shall be made in writing for their action thereon. If the mayor or any commissioner shall remove from the territorial limits of the city, such removal shall ipso facto be deemed to create a vacancy in such person's office.

[3] Arkansas City is a city of the 2nd class
[4] Charter Ordinance No. 27

Topeka's[5] Ordinance[6] regarding the filling of vacancies:

Subject to city of Topeka Charter Ordinance No. 94, as amended, the following process shall be followed when filling vacancies in the offices of mayor or councilmember:

(a) Within one week of a vacancy in the office of mayor or councilmember, the city clerk shall cause to be published in the official city newspaper a notice that applications are being sought for the filling of the open position.

(b) The deadline for applications shall be at 5:00 p.m. on the day two weeks from the date of publication of the notice for the office of councilmember and four weeks from the date of publication of the notice for the office of mayor. Applications shall be submitted to the city clerk.

(c) The application shall include the following information:

(1) A statement of qualifications and personal background.

(2) A statement addressing why the applicant wishes to serve in the office of mayor or councilmember (as applicable).

(3) A statement addressing what the applicant sees as the number one problem facing Topeka city government and how the applicant would seek to address the problem if chosen to serve.

(d) Application for the office of mayor shall include the $100.00 filing fee or a petition signed by 100 qualified electors of the city or one percent of the cast vote in the last city general election.

Application for the office of district councilmember shall include the $50.00 fee or a petition signed by 50 qualified electors of the council district.

(e) Unless an alternative date and/or time is established by the city council, the council shall interview each applicant at the next council meeting following the application deadline.

(f) At least one day prior to the interview date, the mayor and councilmembers may each submit one question to be asked of all applicants during the interviews.

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[5] Council-Manager form of government
[6] Ordnance No. 2-15-080

(g) Interviews shall be conducted in the order that applications are received.

(h) Interviews shall consist of an opening statement by the applicant and the asking and answering of all submitted questions.

(i) At the conclusion of the interviews the city council may conduct an election to fill the vacant position, subject to the following rules:

(1) The election shall be conducted only during a council meeting. The election may be deferred to a subsequent meeting upon approval by the city council of an appropriate motion. In no event shall an election be deferred later than the next council meeting.

(2) Each councilmember and the mayor shall vote for one person on each ballot by indicating in writing his or her choice and signing the ballot before submitting it to the city clerk.

(3) The city clerk shall read the result of each ballot.

(4) Balloting shall end any time one applicant receives five votes.

(5) If no applicant receives five votes in the final ballot, additional ballots shall be cast until one of the applicants receives five votes or the matter is deferred until a date certain, which shall not be later than the next council meeting.

(6) The council and mayor may confer after any ballot in any manner consistent with the Kansas Open Meetings Act.