

REQUEST FOR COUNCIL ACTION

SUBJECT: Resolution appointing an individual to fill the unexpired term (“midterm vacancy”) of the Council District 4 position until January 1, 2018.

SUMMARY: Approval of the Resolution will allow for the vacancy of the District 4 City Council seat to be filled, by appointing a qualified applicant at this meeting.

FISCAL AND/OR

ASSET IMPACT: Minimal fiscal impact. There is a small expense, using the City’s own IT Department, to administer “electronic voting.”

STAFF RECOMMENDATION:

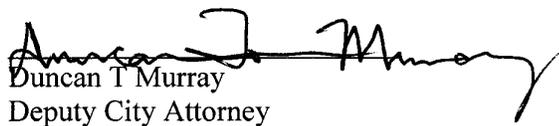
Staff recommends approval of the Resolution, in order to fill the vacancy.

MOTION RECOMMENDED:

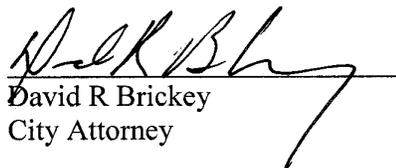
“I move to approve Resolution 16- 178 , appointing an individual to fill the unexpired term (“midterm vacancy”) of the Council District 4 position until January 1, 2018.”

[Roll Call vote required]

Prepared and Initial Legal Review by:


Duncan T Murray
Deputy City Attorney

Recommended and Final Legal Review by:


David R Brickey
City Attorney

Approved by:


Mark R Palesh
City Manager

BACKGROUND DISCUSSION:

Councilmember Sophie Rice verbally indicated, in the October 26, 2016 City Council meeting, that she would resign from her City Council District 4 seat. She then signed an “Irrevocable Resignation” (effective date November 15, 2016) in the same City Council meeting, which was attested by a Deputy City Clerk. Based on this Irrevocable Resignation, the City Clerk complied with state law (Section 20A-1-510(1)(b)(i), Utah Code Ann.) by immediately advertising, in the October 30, 2016 editions of the local newspapers, and in other media, a Notice requesting applications for the vacant City Council District 4 seat.

The applications received, together with any attached documentation, are included in the “Council packet” of materials for this agenda item.

A Resolution officially accepting Councilmember Sophie Rice’s resignation (along with rules for conducting interviews and voting regarding applicants) was approved at the November 2, 2016 City Council meeting:

The purpose of this Resolution is to:

1. Appoint one of the qualified applicants as the Council District 4 member of the City Council of the City of West Jordan, effective November 16, 2016, through and including January 1, 2018, or until such time as his/her successor takes the oath of office; and
2. Confirm that the City Clerk shall ensure that candidates may file for a two-year term for this Council District 4 position during the 2017 election cycle.

Also included in the “Council packet” of materials for this agenda item is a copy of the “rules” (also called “Steps for Appointing a New City Council Member”), as well as a “Summary Chart” and copies of applicable state statutes.

Qualified applicants who are physically present shall be able to participate in the interview and voting processes. Pursuant to City Council Rules of Procedure, applicants may *not* participate remotely. All regular rounds of voting shall be by “secret ballot” (using electronic voting, set up by the City’s IT Department, under the direction of the City’s Legal Department). However, the final formal motion to approve of the Resolution, and to appoint one of the applicants to fill the Council District 4 position, shall be approved by a “roll call” voice vote. The applicant who is appointed should be “sworn in” (take the Oath of Office) during the November 16th City Council meeting.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 16-178

**A RESOLUTION APPOINTING AN INDIVIDUAL TO FILL THE UNEXPIRED
TERM (“MIDTERM VACANCY”) OF THE COUNCIL DISTRICT 4 POSITION
UNTIL JANUARY 1, 2018**

Whereas, Sophie Rice has irrevocably resigned as the Council District 4 member of the City Council of the City of West Jordan, effective November 15, 2016; and the City Council has accepted this resignation; and

Whereas, the City Council has received and reviewed applications of qualified applicants for the Council District 4 position; and

Whereas, the City Council has held interviews of qualified applicants for the Council District 4 position in an open City Council meeting on Wednesday, November 16, 2016; and

Whereas, the City Council has selected one qualified applicant to be appointed to and to fill the unexpired term (“midterm vacancy”) of the Council District 4 position until January 1, 2018, at which time a duly elected candidate shall fill the Council District 4 position; and

Whereas, the City Council has complied with all of the provisions of state law and City ordinances with regards to this midterm vacancy process; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. _____ is hereby appointed as the Council District 4 member of the City Council of the City of West Jordan, effective November 16, 2016, through and including January 1, 2018, or until such time as his/her successor takes the oath of office.

Section 2. The City Clerk (or Deputy Clerk) shall immediately administer, on November 16, 2016, the Oath of Office to the individual identified in Section 1.

Section 3. The City Clerk shall ensure that candidates may file for a two-year term for this Council District 4 position during the 2017 election cycle, and that all other state laws and City ordinances are complied with in this regard.

Section 4. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 16th day of November, 2016.

ATTEST:

KIM V ROLFE
Mayor

MELANIE S BRIGGS, MMC
City Clerk

Voting by the City Council:

Council Member Dirk Burton
Council Member Jeff Haaga
Council Member Zach Jacob
Council Member Chris McConnehey
Council Member Chad Nichols
[Vacant Position]
Mayor Kim V. Rolfe

"AYE"

"NAY"

Summary Chart Regarding “Rounds of Voting” – Appointing a Council Member to Fill a Midterm Vacancy

City of West Jordan (October to November, 2016)

“Round of Voting”	Action Taken by Council Members	Results of Action Taken
Initial Vote*	<u>Vote for 3</u> of the total number of Applicants (who are present)	<u>3 Applicants move on to the <i>next round</i></u> (unless there is a tie; if so, then more than 3)
Second Vote*	<u>Vote for 2</u> out of the 3 Remaining Applicants	<u>2 Applicants move on to the <i>next round</i></u> (use “tie breaker,” if necessary, to reduce to 2)
Final Vote*	<u>Vote for 1</u> out of the 2 Final Applicants	<u>2 Applicants move on to a “<i>tie breaker</i>” OR</u> <u>1 Applicant moves on to <i>official appointment</i></u>
Final “Tie Breaker” (if needed)	<u>Randomly Select 1</u> out of 2 Final Applicants	<u>1 Applicant moves on to <i>official appointment</i></u>
Formal Motion** and Oath of Office	Approve a Resolution to <u>Appoint 1 Applicant</u>	<u>1 Applicant is <i>officially appointed and “sworn in”</i></u> as a new Council Member

*secret ballot (using electronic voting)

**roll call vote (one at a time, voice vote)

Steps for Appointing a New City Council Member to Fill a Midterm Vacancy (for District 4):**[Steps Before Wed., Nov. 16th Council Meeting.]**

- A. **Resignation.** The City Council received the signed resignation (*at the Wed., Oct. 26th Council Meeting*).
- B. **Public Notice.** The Clerk's Office, Public Information Officer, and others posted public notices (of the vacancy) on the City's website, on public message boards, in two newspapers, etc. (*starting on Thurs., Oct. 27th*).
- C. **Resolution to Set a Date for Interviews and Appointment.** The Council shall (*at the Wed., Nov. 2nd Council Meeting*) formally set the date to interview applicants and to appoint an applicant as a Council member.
- D. **Receive Applications.** Qualified applicants may submit "vacancy applications," in person, at the City Clerk's Office *between Mon., Oct. 31st and Thurs., Nov. 10th at 4:00 p.m., during office hours*. Applications (each with up to four pages of attached documents) shall be placed in the "Council packet" for the *Wed., Nov. 16th Council Mtg.* Applications, and the names of the applicants, shall *not* become public records *until Thurs., Nov. 10th at 4:00 p.m.*

[Steps During Wed., Nov. 16th Council Meeting.]

- Regardless of the number of applicants, always start with Step 1, and only use Step 8 ("tie breaker") if needed.
 - If there is only one applicant, then skip Steps 2-6 (go from Step 1 to Step 7).
 - If there are only two applicants, then skip Steps 2, 3, and 4 (go from Step 1 to Step 5).
 - If there are only three applicants, then skip Step 2 (go from Step 1 to Step 3).
 - If there are four or more applicants, then use all Steps (1-7 and 9).
 - Any time an applicant receives at least four "first choice" votes, then go to Step 7 for a formal motion to appoint.
 - All interviews, discussions, and deliberations for filling a midterm vacancy must be in the open meeting, but NOT in a closed meeting, pursuant to Subsections 20A-1-510(1)(b)(iii) and 52-4-205(3), Utah Code Ann.
 - "Council questions" means up to one question per applicant by each Council Member for each set of interviews, with the Mayor to establish reasonable fairness in opportunities for questions to be asked and responded to.
 - The City Attorney (or one of his deputies) shall act as the parliamentarian regarding these "Steps."
1. **Initial Interviews (for All Applicants).** The Council shall conduct "initial interviews" for all qualified applicants (who are physically present) *during the Wed., Nov. 16th Council Meeting*. The City Clerk shall make a list of the applicants, in reverse alphabetical order, by last name. Each applicant, in order, shall present to the Council from the podium for up to three minutes, and then respond to "Council questions," as follows:
 - a. Approx. 60 seconds to introduce himself/herself; and
 - b. Approx. 60 seconds to state any relevant skills, talents, and prior experience; and
 - c. Approx. 60 seconds to explain anything else about why he/she is a qualified applicant; and
 - d. Responding to "Council questions" (up to 60 seconds to answer each question, but quicker is usually better).
 2. **Initial Vote (for Four or More Applicants).** By "secret ballot" (using electronic voting), each member of the Council may cast "ranked votes" for up to three of the applicants, with the City Clerk counting: (1) the number of "first choice" votes; and (2) the total number of weighted votes; for each applicant, as follows:
 - a. Cast a vote (1.0 weighted vote) for a "first choice" applicant; and
 - b. Cast a vote (0.6 weighted vote) for a different "second choice" applicant; and
 - c. Cast a vote (0.4 weighted vote) for a different "third choice" applicant; and
 - d. Each vote ("first choice," "second choice," and "third choice") must be for a different applicant.
 3. **Second Interviews (for Three Applicants).** If one of the applicants received at least four "first choice" votes, then proceed to Step 7 for a formal motion to appoint that applicant; otherwise, the three remaining applicants (or more, if there is a tie; do NOT use a "tie breaker") receiving the highest number of weighted votes shall be the applicants for whom the Council shall conduct "second interviews." The City Clerk shall make a list of these applicants, in

regular alphabetical order, by last name. Each applicant, in order, shall present to the Council from the podium for up to two minutes, and then respond to “Council questions,” as follows:

- a. 120 seconds to explain “the greatest needs of the City at this time” and how he/she could assist and lead the community in best providing for these needs; and
- b. Responding to “Council questions” (up to 60 seconds to answer each question, but quicker is usually better).

4. **Second Vote (for Three Applicants).** By *secret ballot*, each member of the Council may cast “ranked votes” for up to two of the remaining applicants, with the City Clerk counting: (1) the number of “first choice” votes; and (2) the total number of weighted votes; for each remaining applicant, as follows:

- a. Cast a vote (1.0 weighted vote) for a “first choice” applicant; and
- b. Cast a vote (0.6 weighted vote) for a different “second choice” applicant; and
- c. Each vote (“first choice” and “second choice”) must be for a different applicant.

5. **Final Interviews (for Two Applicants).** If one of the remaining applicants received at least four “first choice” votes, then proceed to Step 7 for a formal motion to appoint that applicant; otherwise, the Council shall conduct “final interviews” for the two “final applicants” (who received the highest number of weighted votes). If there is a tie for second place, then use the Step 8 “tie breaker” process. Each of the two final applicants, in regular alphabetical order, by first name, shall present to the Council from the podium for up to two minutes, and then respond to “Council questions,” as follows:

- a. 120 seconds to say anything else that he/she would like to say; and
- b. Responding to “Council questions” (up to 60 seconds to answer each question, but quicker is usually better).

6. **Final Vote (for Two Applicants).** By *secret ballot*, each member of the Council may:

- a. Cast one “first choice” vote for one of the final applicants, with the City Clerk counting these votes.

7. **Formal Motion, “By Roll Call Vote” (to Appoint One Applicant).** Once one applicant receives at least four “first choice” votes, a formal motion could be made to appoint that applicant. This formal motion, and any other motion, shall NOT be by secret ballot; but rather, shall be by roll call vote, with each Council member voting aloud (“yes” or “no”) one at a time. If the formal motion is approved, by at least four votes, then the applicant is appointed and shall be administered the Oath of Office (Step 9). If neither applicant receives at least four “first choice” votes, or if neither applicant is appointed by a formal motion to appoint, then, *during the same meeting*: (1) a/another formal motion could be made to appoint by name either one of the two final applicants; and/or (2) a motion could be made to randomly appoint one of the two final applicants “by lot” (Step 8 “tie breaker”); *otherwise* (3) *the two final applicants shall be considered again at the next meeting (Wed., Dec. 7th)*. If an applicant received at least four “first choice” votes during the initial vote or second vote, but was NOT appointed by a formal motion, then that applicant and the applicant with the next highest number of weighted votes (using the Step 8 “tie breaker,” if needed) shall be considered to be “final applicants,” and they shall receive final interviews and a final vote (Steps 5 and 6).

8. **Tie Breaker, “By Lot” (only use this Step if needed).** If a motion is approved, by at least four votes, to appoint one of the two final applicants “by lot,” or if a “preliminary tie breaker” is otherwise needed, then the Mayor shall select a hat and two equally-sized pieces of paper, each with an applicant’s name on it. The Police Chief (or senior officer) shall, without first looking at the pieces of paper, select one piece from the hat (the Mayor is holding), read the name aloud, and say “heads”; he shall then select the other piece, read the name aloud, and say “tails.” The Public Works Director (or deputy) shall flip a coin into the air such that it lands on the floor. Without touching the coin, the City Clerk (or deputy) shall, along with the two final applicants, look at the coin, with the City Clerk saying aloud “heads” or “tails,” depending on what is facing upwards. The Mayor shall then declare the “matching applicant” as appointed, or as having won the “tie breaker” (i.e., if “tails,” then the applicant identified as “tails”); and that matching applicant shall be administered the Oath of Office (Step 9), or shall continue in the process. If there is a 3-way tie or 4-way tie, then a similar process would be used by rolling a die, instead of flipping a coin.

9. **Administer Oath of Office.** Once one applicant is appointed, by formal motion, to fill the Council seat, the Oath of Office shall be administered to that applicant *during the same Council Meeting* (Section 10-3-828, Utah Code Ann.).

20A-1-510 Midterm vacancies in municipal offices.

(1)

- (a) Except as otherwise provided in Subsection (2), if any vacancy occurs in the office of municipal executive or member of a municipal legislative body, the municipal legislative body shall appoint a registered voter in the municipality who meets the qualifications for office established in Section 10-3-301 to fill the unexpired term of the office vacated until the January following the next municipal election.
- (b) Before acting to fill the vacancy, the municipal legislative body shall:
 - (i) give public notice of the vacancy at least two weeks before the municipal legislative body meets to fill the vacancy;
 - (ii) identify, in the notice:
 - (A) the date, time, and place of the meeting where the vacancy will be filled;
 - (B) the person to whom a person interested in being appointed to fill the vacancy may submit the interested person's name for consideration; and
 - (C) the deadline for submitting an interested person's name; and
 - (iii) in an open meeting, interview each person whose name was submitted for consideration and meets the qualifications for office regarding the person's qualifications.
- (c)
 - (i) If, for any reason, the municipal legislative body does not fill the vacancy within 30 days after the vacancy occurs, the municipal legislative body shall fill the vacancy from among the names that have been submitted.
 - (ii) The two persons having the highest number of votes of the municipal legislative body after a first vote is taken shall appear before the municipal legislative body and the municipal legislative body shall vote again.
 - (iii) If neither candidate receives a majority vote of the municipal legislative body at that time, the vacancy shall be filled by lot in the presence of the municipal legislative body.

(2)

- (a) A vacancy in the office of municipal executive or member of a municipal legislative body shall be filled by an interim appointment, followed by an election to fill a two-year term, if:
 - (i) the vacancy occurs, or a letter of resignation is received, by the municipal executive at least 14 days before the deadline for filing for election in an odd-numbered year; and
 - (ii) two years of the vacated term will remain after the first Monday of January following the next municipal election.
- (b) In appointing an interim replacement, the municipal legislative body shall:
 - (i) comply with the notice requirements of this section; and
 - (ii) in an open meeting, interview each person whose name was submitted for consideration and meets the qualifications for office regarding the person's qualifications.

Utah Code

10-3-828 Oath -- Filing.

The oath of office required under this part shall be administered by any judge, notary public, or by the recorder of the municipality. Elected officials shall take their oath of office at 12:00 noon on the first Monday in January following their election or as soon thereafter as is practical. Appointed officers shall take their oath at any time before entering on their duties. All oaths of office shall be filed with the recorder of the respective municipality.

Utah Code

Effective 3/29/2014

52-4-205 Purposes of closed meetings -- Certain issues prohibited in closed meetings.

- (1) A closed meeting described under Section 52-4-204 may only be held for:
- (a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;
- (3) In a closed meeting, a public body may not:
- (a) interview a person applying to fill an elected position;
 - (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or
 - (c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Effective 5/13/2014

10-3-301 Notice -- Eligibility and residency requirements for elected municipal office -- Mayor and recorder limitations.

- (2)
 - (a) A person filing a declaration of candidacy for a municipal office shall meet the requirements of Section 20A-9-203.
- (3) Any person elected to municipal office shall be a registered voter in the municipality in which the person was elected.
- (4)
 - (a) Each elected officer of a municipality shall maintain residency within the boundaries of the municipality during the officer's term of office.
 - (b) If an elected officer of a municipality establishes a principal place of residence as provided in Section 20A-2-105 outside the municipality during the officer's term of office, the office is automatically vacant.
- (5) If an elected municipal officer is absent from the municipality any time during the officer's term of office for a continuous period of more than 60 days without the consent of the municipal legislative body, the municipal office is automatically vacant.

Effective 5/13/2014

20A-9-203 Declarations of candidacy -- Municipal general elections.

- (1)
 - (a)
 - (i) A person may become a candidate for any municipal office if:
 - (A) the person is a registered voter; and
 - (B)
 - (I) the person has resided within the municipality in which that person seeks to hold elective office for the 12 consecutive months immediately before the date of the election; or
 - (II) if the territory in which the person resides was annexed into the municipality, the person has resided within the annexed territory or the municipality the 12 consecutive months immediately before the date of the election.
 - (ii) For purposes of determining whether a person meets the residency requirement of Subsection (1)(a)(i)(B)(I) in a municipality that was incorporated less than 12 months before the election, the municipality shall be considered to have been incorporated 12 months before the date of the election.
 - (b) In addition to the requirements of Subsection (1)(a), each candidate for a municipal council position shall, if elected from a district, be a resident of the council district from which elected.
 - (c) In accordance with Utah Constitution Article IV, Section 6, any mentally incompetent person, any person convicted of a felony, or any person convicted of treason or a crime against the elective franchise may not hold office in this state until the right to hold elective office is restored under Section 20A-2-101.3 or 20A-2-101.5.