INTEROFFICE MEMO

DATE   January 21, 2015   PHONE   (435) 770-0147

FROM   Shaun Dustin, Mayor

TO   Nibley City Council and City Manager

SUBJECT   **Mayor's Policy Statement, City Council Appointment**

Carrie Cook resigned from the City Council in December 2014. As a Council, it is our duty to select a replacement. I have reviewed Utah Code (http://le.utah.gov/xcode/Title20A/Chapter1/20A-1-S510.html?v=C20A-1-S510_1800010118000101) the Powers and Duties manual from the Utah League of Cities (pp 55-56). I have also discussed this with Mayor Knight to understand how this was handled when Councilman Platt resigned, and David Church to understand the League of Cities' interpretation.

Based on that review, I have reached the following conclusions:
1) We have followed the requirements laid out in State code for noticing the vacancy and vetting the candidates for eligibility
2) We are responsible for appointing a replacement as soon as possible
3) The procedure outlined in the State Code is not clear
4) We owe it to candidates to provide them with clarity so that there is an "even playing field" for all candidates when they come in to present their qualifications
5) The meeting is an open meeting—all ballots must be open, and all interviews and presentations must be public

There is no procedure given for the selection in parts a. or b. of the Code, but part c.ii, which addresses specific procedures if the vacancy is open for more than 30 days, reads as follows:

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.

I interpret this to mean that, regardless of the number of candidates (beyond 2), two tiers of voting are used. The first round will be to establish two candidates for final consideration. Council then votes on those two members. The Council appears to have some discretion if the process is completed before 30 days, but in talking to Dave Church, we are beyond question if we follow the little guidance given in the Section c.

In the event of a tie between regularly voting members of the City Council, the Mayor, by statute and precedent, votes to break the tie.

Section c.iii could be interpreted as requiring the selection to be made by lot in the event of a tie:

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.

I spoke to David Church on this specific point. His input was that we did it right the last time when Amber was appointed and the Mayor voted to break the tie; in our form of government, the Mayor is a voting member of the Council whose vote is only used in the event of a tie or under special circumstances. A tie

in this instance falls under the first qualification. The provision of this section refers to forms of governance where the Mayor does not have a Council vote. I'm fuzzy on what happens if there are 3 council members voting, but that's not our situation so we'll cross that bridge if we ever come to it.

The specific proposal I would like the Council to consider regarding the public review of candidates and the vote is outlined below. The intent of this proposal is to provide a fair and transparent process for candidates that meets the intent of the Code and the needs of the Citizens.

1) Candidate campaigning: Candidates are free to campaign, lobby, or otherwise contact voting members of the council to present their qualifications outside of Council meeting; there is no legal restriction on a Candidate contacting or communicating directly or indirectly with the Council. Spending money is a whole nother issue that I have not looked into. I would assume that normal campaign finance rules and public ethics requirements apply. Similar to current election rules, no campaigning within 300 feet of City Hall on the day of the meeting. Proceedings shall be open to the public, but closed to public comment.

2) First Round Candidate Presentations to the Council: I suggest that Candidates be permitted to present a brief statement of interest to the Council prior to the first round of voting under the following conditions:
   a. 3 minute Time limit
   b. Random order—Order of presentation will be selected by lot (numbers out of a bag) at the opening of the agenda item

3) First Round Voting: Each council member (excluding the Mayor) shall
   a. Be supplied with a sheet of paper with all 10 candidates pre-printed on the paper along with the Council Member's name.
   b. After presentations are complete
      i. Mark their top three candidates[1] (each council member must cast three votes)
      ii. The Mayor will call for all votes to be presented simultaneously
      iii. All votes will be shown to the Public and read by the City Manager
      iv. Votes will be tallied by the City Manager on a publically visible whiteboard
      v. Vote results will be read into the record by the Mayor
      vi. The top four candidates as determined by # of votes shall advance
   c. Exceptions:
      i. If the first round voting produces a three way tie
         1. hold a second vote for those three candidates with one vote per council member to narrow it to two candidates
      ii. If the first round voting produces a first place candidate and a tie for second place
         1. First place candidate advances
         2. Council holds a second vote with one vote per council member
            a. A majority of three votes is required to advance a candidate; a plurality without a majority (2-1-1 vote in the case of three candidates) does not advance a candidate.
            b. The Mayor shall vote to break a tie
            c. In the event of a plurality, the vote shall be repeated until a majority is obtained.

4) Second Round Voting
   a. Each council member may ask each candidate one question
      i. Order of Council questions shall be determined by lot in advance of Question portion
      ii. Same question shall be posed to all candidates

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[1] If four council members distribute their votes evenly between all the candidates, eight will have one vote each and two will have two votes each. Three votes is the minimum to produce the required result of two final candidates. The Council may elect to allocate more than three votes to each member, but three is the minimum.

      iii. Each candidate response shall be limited to 2 minutes as timed by the City Manager

      iv. Order of answering shall alternate (Q1:1-2, Q2:2-1, Q3:1-2, Q4:2-1)

      v. Council will vote for two candidates using ballots as outlined above

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          2. The Mayor shall vote to break a tie

          3. In the event of a plurality, the vote shall be repeated until a majority is obtained.

      vi. The top two candidates will advance to the third round

5) Third Round Voting

      i. Council will vote for one candidate by roll call

      ii. Mayor will break tie (if necessary)

6) Swearing In of new Council Member (City Recorder)