



MEMORANDUM

TO: Timothy J. Baroody, City Manager
FROM: Kathleen Dooley, City Attorney
Chantel Jathan, Legal Intern
SUBJECT: Petition to Forgo a Special Election
DATE: July 6, 2021 (for the July 13, 2021, Council Meeting)

ISSUE

Shall the City Council file a petition in Circuit Court to forgo a special election for the Commonwealth Attorney's vacancy?

RECOMMENDATION

Yes. The City Council should petition the Circuit Court to forgo a special election.

DISCUSSION

The City should forgo a special election because LaBravia Jenkins is retiring less than 12 months preceding the end of her term and the next commonwealth attorney will be determined by the general election.

Va. Code Ann. § 24.2-228.1(A) states that a vacancy in any elected constitutional office (such as attorney for the Commonwealth) shall be filled by special election, except as provided in subsection B. Subsection B states that if a vacancy in any elected constitutional office occurs within 12 months immediately preceding the end of the term of office, the governing body may petition the circuit court to request that no special election be ordered. The highest ranking full-time assistant attorney for the Commonwealth, who is qualified to vote for and hold that office, shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers, for the remainder of the unexpired term.

Here, the Court can forgo a special election because LaBravia Jenkins is retiring on August 1, 2021, which is within 12 months immediately preceding the end of her term of office on December 31, 2021. The highest ranking full time assistant attorney is Elizabeth K. Humphries. Ms. Humphries will fill the vacancy until the position is filled by the general election held on November 2, 2021.

For the aforementioned reasons, the City should petition the Circuit court to forgo a special election pursuant to § 24.2-228.1(B).

FISCAL IMPACT

None.

Attachments:



Date: July 13, 2021
Regular Meeting
Resolution 21-

MOTION:

SECOND:

RE: Petition to Forgo Special Election

ACTION: APPROVED: Ayes: 0; Nays: 0

The current Commonwealth's Attorney, LaBravia Jenkins is retiring on August 1, 2021. As a result, the Commonwealth's Attorney position will be vacant. Ms. Jenkins' term ends on December 31, 2021. Va. Code Ann. § 24.2-228.1(A) states that a vacancy in any elected constitutional office (such as attorney for the Commonwealth) shall be filled by special election, except as provided in subsection B. Subsection B states that if a vacancy in any elected constitutional office occurs within 12 months immediately preceding the end of the term of office, the governing body may petition the circuit court to request that no special election be ordered. The City council will petition to forgo a special election pursuant to § 24.2-228.1(B) because Ms. Jenkins' retirement date is within 12 months immediately preceding the end of her term.

The current Deputy Commonwealth's Attorney, Ms. Elizabeth K. Humphries, is the highest ranking assistant attorney and is qualified to vote in the City of Fredericksburg. Ms. Humphries will complete the remainder of the unexpired term pursuant to § 24.2-228.1(B). The general election held on November 2, 2021 will determine the next Commonwealth's attorney.

Therefore, the City Council hereby resolves that:

- The City will file a petition in circuit court to forgo a special election for the Commonwealth's attorney vacancy.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Clerk's Certificate

I certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 21-__, adopted at a meeting of the City Council held Date, 2021, at which a quorum was present and voted.

Tonya B. Lacey, MMC
Clerk of Council

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF FREDERICKSBURG

IN RE: PETITION TO FORGO A SPECIAL ELECTION FOR COMMONWEALTH

ATTORNEY VACANCY

PETITION TO FORGO A SPECIAL ELECTION

COMES NOW, this 14th day of July, 2021, the City of Fredericksburg (Petitioner), by counsel, and respectfully requests that this Court not issue an order for special election pursuant to Va. Code Ann. § 24.2-228.1 subsection B. The Petitioner states as follows:

1. Va. Code Ann. § 24.2-228.1(A) states that a vacancy in any elected constitutional office (such as attorney for the Commonwealth) shall be filled by special election, except as provided in subsection B.
2. Va. Code Ann. § 24.2-228.1(B) states that if a vacancy in any elected constitutional office occurs within 12 months immediately preceding the end of the term of office, the governing body may petition the circuit court to request that no special election be ordered. The highest ranking full-time assistant attorney for the Commonwealth, who is qualified to vote for and hold that office, shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers, for the remainder of the unexpired term.
3. LaBravia J. Jenkins was re-elected to a four-year term as the Fredericksburg Commonwealth's Attorney at a general election

held in November 2017.

4. LaBravia J. Jenkins will be retiring on August 1, 2021, leaving the office of Fredericksburg Commonwealth's Attorney vacant before her term's end date of December 31, 2021.
5. The highest ranking full-time assistant attorney, Elizabeth K. Humphries, will fill the vacancy for the remainder of the unexpired term. The position will then be filled by the general election held on November 2, 2021.
6. Fredericksburg City Council adopted a resolution at its meeting on July 13, 2021, at which it directed the City Attorney to petition the Circuit Court that no special election be ordered.

WHEREFORE, the City of Fredericksburg petitions this Court to not order a special election to fill the vacancy in the office of the Fredericksburg Commonwealth's Attorney.

Respectfully submitted,

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VSB #

§ 24.2-228.1. Election to fill vacancy in constitutional office

A. Notwithstanding any provision of a charter to the contrary, a vacancy in any elected constitutional office, whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term, shall be filled by special election, except as provided in subsection B. Within 15 days of the occurrence of the vacancy, the governing body of the county or city in which the vacancy occurs shall petition the circuit court to issue a writ of election to fill the vacancy as set forth in Article 5 (§ 24.2-681 et seq.) of Chapter 6. Either upon receipt of the petition or on its own motion, the court shall promptly issue the writ ordering the election for a date determined pursuant to § 24.2-682. However, the governing body may request in its petition that the special election be held on the date of the next general election in November, and the court may order the special election to be held on that date.

B. If a vacancy in any elected constitutional office occurs within the 12 months immediately preceding the end of the term of that office, the governing body may petition the circuit court to request that no special election be ordered. Upon receipt of such petition, the court shall grant such request. The highest ranking deputy officer, or in the case of the office of attorney for the Commonwealth, the highest ranking full-time assistant attorney for the Commonwealth, who is qualified to vote for and hold that office, shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers, for the remainder of the unexpired term.

C. Upon receipt of written notification by an officer or officer-elect of his resignation as of a stated date, the governing body may immediately petition the circuit court to issue a writ of election, and the court may immediately issue the writ to call the election. The officer's or officer-elect's resignation shall not be revocable after the date stated by him for his resignation or after the thirtieth day before the date set for the special election.

D. Notwithstanding the provisions of subsection A, a vacancy in any elected constitutional office in any county or city with a population of 15,000 or less, or shared by two or more units of government with a combined population of 15,000 or less, shall be filled by a special election ordered by the court to be held at the next ensuing general election to be held in November. If the vacancy occurs within 90 days prior to that election, however, the writ shall order the election to be held at the second ensuing such general election.

E. Notwithstanding any provision of law to the contrary, no election to fill a vacancy shall be ordered or held if the general election at which it is to be called is scheduled within 60 days of the end of the term of the office to be filled.

F. Notwithstanding any provision of a charter to the contrary, the highest ranking deputy officer, or in the case of the office of attorney for the Commonwealth, the highest ranking full-time assistant attorney for the Commonwealth, if there is such a deputy or assistant in the office, who is qualified to vote for and hold that office, shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers, until the qualified voters fill the vacancy by

election and the person so elected has qualified and taken the oath of office. In the event that (i) there is no deputy officer or full-time assistant attorney for the Commonwealth in the office or (ii) the highest-ranking deputy officer or assistant attorney for the Commonwealth declines to serve, the court shall make an interim appointment to fill the vacancy pursuant to § 24.2-227 until the qualified voters fill the vacancy by election and the person so elected has qualified and taken the oath of office.

G. The absence from the county or city of a constitutional officer by reason of his service in the Armed Forces of the United States shall not be deemed to create a vacancy in the office without a written notification by the officer of his resignation from the office. Notwithstanding any other provision of law, including § 19.2-156, the power to relieve a constitutional officer of the duties or powers of his office or position during the period of such absence shall remain the sole prerogative of the constitutional officer unless expressly waived by him in writing.

2000, cc. 787, 1070;2003, c. 1015;2006, cc. 120, 253;2009, c. 157;2011, c. 599;2015, c. 648;2016, cc. 453, 511.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.