

The City Council of the City of Charlotte, North Carolina convened for a Special Meeting on Monday, March 31, 2014 at 6:00 p.m. in the Meeting Chamber of the Charlotte Mecklenburg Government Center with Mayor Pro Tem Michael Barnes presiding. Councilmembers present were Al Austin, John Autry, Edmund Driggs, Claire Fallon, David Howard, Patsy Kinsey, Vi Lyles, LaWana Mayfield Greg Phipps, and Kenny Smith.

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INVOCATION AND PLEDGE

Councilmember Al Austin gave the Invocation and Mayor Pro Tem Barnes led the Council in the Pledge of Allegiance.

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Mayor Pro Tem Barnes said last week was an unprecedented week for our City. We are here tonight to begin moving our City forward to continue the policy work that our City does for the people of Charlotte. Meanwhile, the administrative work continues without interruption providing services in which we all depend. Our form of government is designed to be resilient and undaunted by the acts of a single person. We have all gotten your emails and messages about your prayers for us and the City and we appreciate them. We want people to know that the people around this dais and our staff will continue to serve with integrity and work hard to restore the public's trust in us. To that end, I would like to move to the matter at hand; the appointment process for a new Mayor. I've asked the City Attorney, Bob Hagemann, to provide the Council with a memo addressing the state law on this issue and Mr. Hagemann I believe you're ready to present your information.

Bob Hagemann, City Attorney said what I'm going to do for the benefit of the Mayor Pro Tem, the Council and the community is walk through the North Carolina legal provisions that govern the filling of this vacancy. Both in terms of who makes the decision to fill the vacancy and what are the limitations for qualifications. And then I'll briefly address some of the suggestions that we all have heard in the community about a suggested process that is not legally available to you today. So we start with North Carolina General Statute §160A-63, which very plainly states that a vacancy that occurs in an elective office of the city shall be filled by appointment of the City Council, this body, by majority vote. The Statute further provides in cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person who he replaces, if that person was elected as a nominee of a political party. As you know, in Charlotte our elections are partisan and the former Mayor was elected as a Democrat. So the person you appoint will have to be a Democrat. General Statute §168-59 provides in part, that all city officers elected by the people should possess the qualifications set out in Article 6 of the Constitution of the State of North Carolina. Article 6 has a couple of provisions, one, in order to be eligible to elective office it states that every qualified voter in North Carolina who is 21 years of age except as in this Constitution disqualified shall be eligible for election by the people to office. Section 8 of that Article does state a couple of disqualifications. The two of which that are relevant first, is with respect to any office that is filled by election any person that is not qualified to vote in an election for that office is not eligible. So the person you appoint has to be eligible to vote for the office, registered to do so and a resident of the City of Charlotte. Finally, any person who has been judged guilty of treason or any other felony and I'm not going to read the whole provision. Other provisions that are disqualifying and who is not been restored to the rights of citizenship in a manner prescribed by law are not eligible.

In short, and to summarize, Council must fill the vacancy by appointing a registered Democrat who is at least 21 years of age and resides within the Charlotte city limits. Now, I am aware as I think most of you that several citizens in the community have pointed to another Statute to suggest that you have the authority to call a special election. That Statute is GS §163-287 and in part it reads, any municipality shall have authority to call special elections as permitted by law. The key are those last four words, as permitted by law. This is not an authorizing Statute, this is a procedural Statute. It lays out the process for calling a special election if one is authorized. There is no legal authority that authorizes you to call a special election to fill the vacancy. Instead, as I said at the outset in my summary, the law clearly places the authority and responsibility to fill

this vacancy on you as a body. One last comment that I will make I have heard folks in the media and others refer to this appointment as an appointment of an interim Mayor, the law in North Carolina does not recognize interim Mayor. Whoever you appoint will be the Mayor and by state law will all have all the powers and duties of a Mayor who is elected and will fill out the remainder of the unexpired term, that is, until the new Mayor and Council are sworn in following the November 2015 regular municipal election.

Councilmember Driggs said there is a lot of interest in the special election and I want to be sure that we illuminate all the contingencies there. It is within the purview of the General Assembly to either require or permit one. Is that correct?

Mr. Hagemann said that is correct Mr. Driggs. Other than the Constitutional provisions that I referenced in my presentation, everything else is a matter of state law. And those laws were passed at various times in the past by the General Assembly and the General Assembly has in its wisdom the power to change those laws.

Mr. Driggs said so the only action this Council could take would be to request that the General Assembly permit a general election or pass legislation to allow a general election?

Mr. Hagemann said that certainly is a possibility as you know the Council regularly adopts a legislative agenda where we request changes to state law but that also is in your discretion.

Mr. Barnes said thank you sir. And just to be clear, I don't think we need to ask the legislature to help us fill this vacancy...Because I don't think we do.

Councilmember Phipps said going back to section §160A-63 that reads that a vacancy that occurs in an elective office of a city shall be filled by the appointment of the City Council. Is this particular Statute uniformly applied across the State of North Carolina?

Mr. Hagemann said this is a General Statute; and the way our laws are structured in North Carolina, there are General Statutes that generally apply, that is why they are called General Statutes, throughout the entire state. All 530 plus cities in the state have what's called a charter. And the city of Charlotte has a charter. I can't tell you that there are any deviations from this in any city charters across the state. It is certainly possible. What I will tell you is that the Charlotte Charter does not have any provision that conflicts with this Statute, so this General Law is what governs your conduct.

Mr. Barnes said as you all know a number of Councilmembers have expressed an interest in providing some time between tonight's legal discussion and any votes. This is one of the more important decisions that we will make and each of us needs to have an opportunity to reflect, to talk with potential candidates and also to talk with our constituents. We want to act quickly, but thoughtfully and we want to be respectful of each other as we consider this appointment.

<p>Motion was made by Councilmember Barnes, seconded by Councilmember Driggs to select the next Mayor by motion and vote at the Council's next regularly scheduled meeting on April 7, 2014.</p>

Councilmember Lyles said I'd like to take a minute Mayor Pro Tem and just say that since this happened in our community last Thursday it is a little bit like losing the reputation that you've earned after years of hard work and many of us around this dais know what that's feeling like now. It is something that we are going to have to earn back and it's something that we are really committed to and this is our first decision to do that. And so in support of the motion, I think it's one of those times that we have to really be thoughtful in our consideration. And it takes a little bit of time and I know this because I've been through a process where you've had to recognize something that's happened and you have to deal with it before you can move forward. And I think that's what we are doing a little bit now. The Mayor's role is really so important; it is not only understanding the community, its understanding the electorate. It's a Mayor, a person that we really need to know that understands good government and the issues of trust by the community. Not only the people being served but the people that are providing the service and

others that are going to be watching us. So I think that as we work to do this rebuilding we need to consider our optimism, our hard work, openness and accountability.

So we've got some big things coming up before us. We've got the budget, the capital projects that we hope to build the infrastructure of this community for our future, and we've got the important issues of collaboration and cooperation with all of Charlotte; not just one part of it. So in support of this motion I would truly hope that we would take this time as we and the community will give us this time to thoughtfully deliberate so that we can make this consideration, this choice, one of the most important decisions that we have to make, that we can do it as a Council with as much unity as possible.

The motion carried unanimously.

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Mr. Barnes said additionally, as the Council knows we had a half day retreat planned for April 2nd and we need to reschedule that by making an amendment to the Council calendar.

Motion was made by Councilmember Barnes, seconded by Councilmember Austin to (a) move the April 2, 2014 half day retreat to a date to be determined; and, (b) to move the April 7, 2014 meeting to the Council Chambers at 6:00 p.m.

The motion carried unanimously.

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Councilmember Smith said I would like to take this opportunity for a committee referral. I would like to refer our Code of Ethics to Governance and Accountability. I think it might be an opportune time to review, possibly update, maybe put a little more teeth into that policy. So I would like to make that motion.

Mr. Barnes said any objection to that? No objection to that?

Councilmember Howard said just a question on it. Actually, I didn't know we were going to come prepared to deal with any of that tonight.

Mr. Barnes said I didn't either.

Mr. Howard said what I want to do though is maybe, as opposed to saying review the Code of Ethics, maybe what we should do is come back to Council with some recommendations period about how to proceed. Because I think there is more we can do other than just review the Code of Ethics; so how about that?

Mr. Barnes said so review it and make recommendations to amend if necessary. That's fair.

Mr. Smith said I can live with that. I think it's an opportune time to take a comprehensive look at it.

Mr. Howard said I could not agree more.

Ms. Lyles said yes.

Mr. Barnes said any objections to that? Any further business?

Mr. Howard said let me be clear about process over the next week. In times past we were filling Council seats we had a process. So the process this time is that we are taking another week to just continue to hear from people, not do anything, we've done in the past which is applications and all that.

Mr. Barnes said right. Is there anything further from the Manager, anything further from the Council?

bcp

Motion made by Councilmember Fallon, seconded by Councilmember Austin and carried unanimously to adjourn the meeting.

The meeting adjourned at 6:18 p.m.



Stephanie C. Kelly, City Clerk

Length of Meeting: 18 Minutes
Minutes Completed: April 10, 2013