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**A RESOLUTION DECLARING CITY COUNCIL POSITION FOR DISTRICT NO. 3 TO BE VACANT; DECLARING THAT COUNCILOR DENISE BACON CONTINUES TO SERVE IN THE POSITION; AND DIRECTING THE MAYOR TO BEGIN THE PROCESS OF FINDING A QUALIFIED PERSON TO BE APPOINTED TO THE VACANT COUNCIL POSITION**

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**RECITALS:**

1. The City Council members are nominated from district and elected to four- (4-) year terms pursuant to Section 25 of the Newberg City Charter. Three (3) city councilors are elected at each biennial general election. The last biennial general election was held on November 6, 2012.
2. Spencer Haley was nominated and qualified from city council position District No. 3. He was the only candidate on the ballot. He became aware of circumstances that would not allow him, if elected to assume the duties as a city council member. He made that known.
3. At the time that Mr. Haley became aware of his employment circumstances, it was too late to change the ballot. His name was the only one listed on the ballot for Council District No. 3, and he received the majority of the votes cast for that position.
4. Mr. Haley did not take the Oath of Office on January 7, 2013, and has communicated that he will not be assuming the duties of city councilor.
5. The City Council, pursuant to Section 32 of the Newberg City Charter entitled "Vacancies," may declare a position vacant if the incumbent fails to qualify for the office within ten (10) days of the time of the term the office is to begin.
6. The term for an elected city council member begins the first council meeting of the year immediately after the election. It is for a four- (4-) year term. However, Section 30 of the Newberg City Charter entitled "Terms" provides that the council member "continues until successor qualifies and assumes the office."
7. Denise Bacon presently serves in the council position for Council District No. 3. However, she did not run for re-election in the biennial general election held on November 6, 2012.
8. Council member Denise Bacon has graciously agreed to continue to serve as a Council Member for Council District No. 3 until a qualified successor assumes this office.
9. The City Council is the governing body that fills vacancies by whatever process the City Council deems most applicable. The vacancy is filled by appointment of a majority of the remaining council members and runs until the expiration of the term of office of the last person elected to that office, as provided for in Section 33 of the City Charter.

10. Section 28 of the City Charter provides that the City Council is the final judge of the elections and qualifications of its members.

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. City Charter Interpretations. The City Council interprets its City Charter and is the final judge concerning the election and qualifications of its members. As such, the City Council makes the following interpretations, judgments, and Findings of Fact:
- a. **Excerpts from Charter.** Attached to this resolution is Chapter VII of the City Charter dealing with Elections, which is marked as Exhibit “A” and by this reference incorporated.
  - b. **Oath of Office.** Spencer Haley was duly elected to the position of council person of the City of Newberg from District No. 3. However, Mr. Haley has indicated publicly that due to his professional business responsibilities, he will not be able to fulfill his duties as city council member and did not take the Oath of Office on January 7, 2013.
  - c. **Incumbent.** Under Section 32 of the City Charter entitled “Vacancy,” Spencer Haley should be considered the incumbent for District No. 3.
  - d. **Qualifying within Ten (10) Days.** Mr. Haley’s failed to qualify for office within ten (10) days from the time the term of office began by not taking the Oath of Office on January 7, 2013. Therefore, the City Council declares the position vacant and its intention to appoint a person to fill the remainder of Mr. Hailey’s four- (4-) year term.
  - e. **Term of Office.** The term of the office that is being declared vacant will begin upon the qualification and assumption of office by the successor appointed by the City Council and shall continue for the four (4) successive years (January 2013-December 2016) and further until the successor is elected, qualifies, and assumes the office.
  - f. **Appointment to Fill Vacancy.** The filling of vacancies will be filled by the appointment by a majority of the remaining city council members and that appointment will be to the expiration of the term of office, which Spencer Haley was elected to serve. That term will normally expire December 31, 2016, but will continue until the successor appointed to office qualifies and assumes the office.
  - g. **Councilor Bacon Continues.** Councilor Bacon is the duly elected city council member from District No. 3. And will continue in that position until the qualified successor is appointed and assumes the office.
  - h. **Councilor Bacon Qualifies.** Councilor Denise Bacon is qualified for consideration to be appointed to the position for the term that normally begins in January of 2013 and runs for four (4) years. (The term that Mr. Haley was elected to serve.)
  - i. **Councilor Bacon Qualifies to Vote.** Councilor Bacon is considered a member of the City Council, and she will still occupy the position even though for purposes of

reappointment for the upcoming term, the position has been declared vacant. She will be entitled to vote on every matter coming before the Council, except for the appointment to fill this vacancy.

j. **Judgment of the City Council.** Except for one circumstance concerning employment, the City Council is the final authority in judging the election and qualifications of its members. This is the judgment of the City Council.

2. Vacancy. The City Council declares the position for City Councilor for District No. 3 for the term, which would normally begin in January of 2013 through December 31, 2016, vacant in accordance with City Charter, Section 32(b)(1).
3. Continues to Serve. The City Council declares that in accordance with Section 30, entitled "Defining Terms," Councilor Denise Bacon will continue to serve until a qualified successor is appointed and assumes office.
4. Re-appointment. City Council declares that Councilor Denise Bacon is eligible for consideration for re-appointment to the position.
5. Authority of Council. City Council authorizes the Mayor, working with administration, to begin the process of soliciting persons who might be qualified to fill the vacancy and selecting a person to fill the vacancy in accordance with the City Charter.
6. Selection Process. The Mayor may use any selection process he deems appropriate.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 5, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 4<sup>th</sup> day of February, 2013.

  
Daniel Danicic, City Recorder

**ATTEST** by the Mayor this 7<sup>th</sup> day of February, 2013.

  
Bob Andrews, Mayor

## **Chapter VII of the Newberg City Charter:**

### **Chapter VII ELECTIONS**

#### **Section 25 City Councilors.**

The term of a city councilor in office when this Charter is adopted is the term for which the city councilor was elected. At each general election after the adoption, three city councilors will be elected for four-year terms.

#### **Section 26 Mayor.**

The term of the mayor in office when this Charter is adopted continues to the beginning of the first odd numbered year after adoption. At every other general election after the adoption, a mayor shall be elected for a four-year term.

#### **Section 27 State Law.**

City elections must conform to state law except as this Charter or ordinances provide otherwise. All elections for city offices must be nonpartisan.

**Cross-reference:** See Title 23 ORS pertaining to elections.

#### **Section 28 Qualifications.**

(a) The mayor and each city councilor must be a qualified elector under state law, and reside within the city for at least one year immediately before election or appointment to office. For the purpose of this section, "**city**" shall mean any area included in the corporate limits as of the date of the election.

(b) The city shall be divided into six geographical areas representing as near as practical, the same number of electors. When this Charter section is adopted, the current six city district boundaries shall be the six district boundaries. The districts shall be reapportioned thereafter whenever the United States Census is taken and within a reasonable time after the data is available, or when the city so orders. Whenever the districts are reapportioned, the city councilor in office shall not lose their qualification for office by reason of the boundary change for the remainder of their term, unless otherwise disqualified. In addition to the other qualifications, the city councilor must have and maintain their residence in the district from which they were nominated during the term of their office, except as provided for in reapportionment.

(c) Neither the mayor nor a city councilor may be employed by the city, unless the employment is substantially volunteer in nature. The municipal judge shall make the determination of whether employment is substantially volunteer.

(d) No person may be a candidate at a single election for more than one city office.

(e) Except as provided in subsection (c) of this section, the city council is the final judge of the election and qualifications of its members.

**Cross-reference:** For qualified electors under state law, see ORS 247.020.

### Section 29 Nominations.

The city council must adopt an ordinance prescribing the manner for a person to be nominated to run for mayor or a city councilor position.

### Section 30 Terms.

The term of an officer elected at a general election begins at the first city council meeting of the year immediately after the election, and continues until the successor qualifies and assumes the office.

### Section 31 Oath.

The mayor and each city councilor must swear or affirm to faithfully perform the duties of the office, support the constitutions and laws of the United States and Oregon, and the ordinances and Charter of the city.

**Cross-reference:** This general provision is an actual oath which will be recited upon taking office by elected officials of the state.

### Section 32 Vacancies.

The mayor or other city council office becomes vacant:

(a) Upon the incumbent's:

- (1) Death,
- (2) Adjudicated incompetence, or
- (3) Recall from the office.

(b) Upon declaration by the city council after the incumbent's:

- (1) Failure to qualify for the office within 10 days of the time the term of office is to begin,
- (2) Absence from the city for 30 days or from all city council meetings within a 60-day period, without city council consent,
- (3) Ceasing to reside in the city,

- (4) Ceasing to reside within the district from which the city councilor was nominated, except as provided for in reapportionment; however, the city councilor shall remain in office until such time as the vacancy is filled, but in no event shall the time exceed 120 days,
- (5) Ceasing to be a qualified elector under state law,
- (6) Conviction, while in office, of a public offense punishable by loss of liberty,
- (7) Resignation from the office, or
- (8) Removal under Section 34(i).

**Cross-reference:** For qualified electors under state law, see ORS 247.020.

### Section 33 Filling Vacancies.

A mayor or city councilor vacancy will be filled by appointment by a majority of the remaining city council members. The appointee's term of office runs from appointment until expiration of the term of office of the last person elected to that office.

**The Newberg Municipal Code is current through Ordinance 2757, passed December 17, 2012.**

Disclaimer: The City Recorder's Office has the official version of the Newberg Municipal Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.