



**Law Department
City & Borough of Juneau**

MEMORANDUM

TO: Mayor and Assembly
Kim Kiefer, Manager
Rob Steedle, Deputy Manager

FROM: Amy Gurton Mead, Municipal Attorney *AGMead*

DATE: December 3, 2015

SUBJECT: Succession of Office and the Filling of Vacancies

Succession and the Filling of the Vacancies

Charter Section 3.2 states that “The assembly shall be composed of nine assemblymembers, one of whom shall be the mayor.” Charter Section 3.6, which requires the assembly to provide, by ordinance, for the filling of vacancies on the assembly, makes no distinction between the mayor and other assemblymembers.¹ Thus, CBJ 11.40.040 controls the filling of all vacancies on the assembly, including a vacancy in the mayor’s office:

A vacancy on the assembly shall be filled by the assembly which shall elect by majority vote of the remaining members a qualified resident of the election district from which the vacancy arose to be the acting assemblymember until the next regular election or until a successor is elected and qualified to fill the remainder of the unexpired term. The person elected by the assembly receives the same salary as the assemblymember succeeded he or she succeeds.

On October 20, 2015, through the organization process following the regular election, the assembly elected Assemblymember Mary Becker as deputy mayor. (Charter Section 3.5).

On November 30, 2015, Deputy Mayor Becker succeeded to the office of mayor. (Charter Section 3.9). This act satisfied the first step in the filling of a vacancy as required by CBJ 11.40.040. The assembly must now do the same with respect to the vacant District 1 seat by appointing a qualified resident from District 1 to serve as an interim assemblymember.

The duration Mayor Becker (and the person appointed to hold the District 1 seat) holds that office is dictated by CBJ 11.40.040: Mayor Becker is the acting mayor “until the next regular election or until a successor is elected and qualified to fill the remainder of the unexpired term.”

¹ State law does distinguish between the two. *See* AS 29.20.170 and 29.20.280. These provisions do not apply to the City and Borough. (AS 29.10.200).

With Mayor Becker as interim mayor, and once the assembly appoints an acting assemblymember to the District 1 seat, the assembly has discretion whether to complete the CBJ 11.40.040 process by waiting until the next regular election in October or by calling for a special election.

If the assembly chooses to wait until October, Mayor Becker will remain in the mayor's office until that time, as will the person chosen to fill the now-vacant District 1 seat. At the regular election, both the mayoral and the District 1 seats will be on the ballot, the former for a two-year term and the latter for a three-year term.²

If the assembly chooses to call a special election, Mayor Becker will have the option of either relinquishing her District 1 seat and running for mayor (Charter Section 3.4(d)) or returning to her District 1 seat for the remainder of her term once a mayor is elected.³

Determining the New Deputy Mayor

Charter Section 3.5, Organization, states that immediately following certification of an election, the assembly "shall elect from its membership a deputy mayor...." Section 3.5 also requires the assembly to "provide by ordinance for the interim order of succession of its members to the office of deputy mayor."

"Interim succession" is partially addressed at CBJ 11.15.015, which specifies that the member with most seniority succeeds to the office of deputy mayor when there is an "absence" (as opposed to vacancy) "from the municipality or an assembly meeting of the mayor and the deputy mayor." According to the legislative history, that code section was not intended to be anything more than a temporary measure when both the mayor and elected deputy mayor were both unavailable to preside. The Manager's Report for Ordinance 77-39, An Ordinance Amending CBJ 11.15 to Provide for the Interim Order of Succession to the Office of Deputy Mayor" states:

² This process is consistent with the process followed in 1995, when then Deputy Mayor Egan succeeded to the office of mayor with Mayor Mallot's resignation. Deputy Mayor Egan succeeded to the mayor's office in February of 1995, holding it until the regular election in October 1995, when he was elected to fill the remaining two years of the unexpired mayoral term. Cathy Muñoz, who was appointed in March to the seat vacated by Mayor Egan, successfully ran for the assembly seat that same October.

³ Though not explicitly stated, the Charter, Code, and public policy suggest that it would be appropriate, and the most defensible course of action, to provide a process for Mayor Becker to return to her District 1 seat should she choose not to run for mayor in a special election. (*See e.g.*, CBJ 03.35.040; City Code of Juneau 1-11-4; Charter Section 15.5; AS 29.20.280(b).) In order to do so, the assembly would need to provide, by (non-code) ordinance per Charter Section 3.6(b), for the temporary filling of the District 1 seat – not until a successor is elected, as stated in CBJ 11.10.040, but until the mayor's seat is filled in accordance with that section. This could be done in the same legislative act as the calling of the special election.

This ordinance, as drafted, provides a succession to the office of Deputy Mayor. It was prepared as a result of your instruction at a previous Committee of the Whole meeting caused by a problem when both the Mayor and the Deputy Mayor were out of the city at the same time.⁴

Understanding CBJ 11.15.015 as providing only a temporary solution for those times when an acting mayor is needed and both the mayor and deputy mayor are unavailable is consistent with the plain language of that section in light of the Charter. CBJ 11.15.015 is only triggered by the temporary “absence” of the mayor and deputy mayor, not vacancies in those offices. (*Compare* Charter Section 3.6, providing that an assemblymember’s office becomes “vacant upon the assemblymember’s death, resignation, removal from office for any manner authorized by law or by this Charter, by forfeiture of office, or upon a determination in a manner as provided by ordinance that the assemblymember is medically incapacitated,” with CBJ 11.15.015, which is triggered “During the absence from the municipality or an assembly meeting of the mayor and deputy mayor...”).

Recommendations

1. Amend CBJ 11.15.015 to allow for broader applicability. Though the Charter clearly suggests it was the intention that the assembly adopt an “interim succession” process for deputy mayor in the broad sense, the actual ordinance that was adopted is limited. I recommend that the ordinance be amended to provide for an interim succession process not only for those occasions when the seated mayor and deputy mayor are both unable to preside at some given meeting, but in situations where the deputy mayor must succeed to the office of mayor in accordance with Charter Section 3.9.
2. Amend CBJ 11.10.040 to provide a process for filling a mayoral vacancy by specifically articulating what happens to the deputy mayor’s seat once the deputy mayor succeeds.

⁴ The ordinance was revised in 1981 (Ordinance 81-73) by amending what was a complicated succession methodology with the simpler “seniority” rule. According to the legislative history, however, the purpose of the ordinance remained the same.