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June 16, 2005

Ms. Kay Kuhlmann
Council Administrator
City of Red Wing
315 West Fourth Street
Red Wing, MN 55066

RE: *Council Vacancy*
Our File No. 4001(1)-0001

Dear Ms. Kuhlmann:

This letter is in regard to filling the Council vacancy that was created upon the death of Councilmember McKinley. The process for filling a vacancy is set by section 2.06 of the City Charter

The Council must first adopt a resolution declaring a vacancy to exist. Attached is a resolution for the Council to consider. The Charter requires the Council to appoint a person to fill the vacancy within 60 days of the resolution. Generally, such an appointment is to serve until the next City General Election. In this case, that is until the winner of the November 2006 election is certified.

The Charter does provide that the Council may, by a 2/3 vote of the remaining Councilmembers, call for a special election to fill the vacancy. The special election would be

¹ City General Elections are "held on the first Tuesday after the first Monday in November of each year..." Charter Section 4.02. We interpret the phrase "each year" to refer to the regularly scheduled November even-year elections. This is consistent with Minnesota Statutes § 205.07 which allows cities to hold elections in "the even-numbered year or the odd-numbered year, but not both."

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for the remainder of the term, until the first Tuesday after the first Monday in January 2007. The time frame for holding a special election must follow State Election law.

State law requires written notice to the county auditor at least 49 days before the election. This notice must include the date of the election, the offices to be voted on at the election, and the title and language for each ballot question to be voted on at the election. Minn.Stat. §205.16, subd.4. The names of the candidates must be known before the language of a ballot can be drafted. This requires a period for interested candidates to file affidavits of candidacy for the special election.

State law requires that notice of the dates for filing affidavits of candidacy be published at least two weeks before the first day to file. Minn. Stat. §205.13. Therefore, the filing period for affidavits of candidacy cannot start less than 14 days after the vacancy is declared. It is likely to start more than 14 days later because the newspaper is not likely to publish the notice the same day the vacancy is declared.² There must then be a period for filing the affidavits of candidacy. The filing period for City General Elections is 14 days. Taken together, it will take 50 +/- days to pursue the special election process.

If the Council chooses to appoint an individual to the fill the vacancy, the Charter procedure for filling a vacancy requires that the position be advertised through local media at least 14 days before the appointment. An interested candidate must make a written application on a form provided by the Council, make an oral presentation to the Council, and answer questions of the Council. The Charter requires that the vote on the appointment be by paper ballot. These would not be secret ballots, because under the Minnesota Open Meeting law, these votes must still be open to the public and recorded in a journal.

Please contact us if you have any additional questions of concerns regarding this matter.

Very truly yours,

Jay T. Squires
Eric L. Hedrke

JR14: 78310

² The first date for filing an affidavit of candidacy cannot be more than 70 days nor less than 35 days before the election.