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MEMORANDUM

VIA EMAIL

DATE: October 26, 2021
TO: Yarrow Point Mayor Cahill; Yarrow Point Town Council
FROM: Scott M. Missall, Town Attorney
RE: Election and Vacancy Issues Related to Mayor's Withdrawal

Background

After filing to run for reelection as Yarrow Point Mayor in the 2021 election cycle, Dicker Cahill realized his heart and passion were not at the level the residents of Yarrow Point deserved. However, that realization occurred after the deadline to formally withdraw his candidacy, and thus his name still appears on the official election ballot with the only other candidate for Yarrow Point Mayor, Katy Harris. To clarify his intentions, on October 8, 2021, Dicker Cahill sent the following email statement to all Yarrow Point residents for which the Town has email addresses:

Dear Residents of Yarrow Point,

It has been a pleasure and honor to serve as Mayor of Yarrow Point for the last 8 years. The 4th of July on Yarrow Point is one of my highlights each year and a beautiful example of the spirit and culture of all of you, the residents who call Yarrow Point their home. Last May, I signed up to run for a 3rd term of office, however in the past month, I realized my heart and passion are not at the level you deserve. It is with a heavy heart that I withdraw my name from the upcoming election.

Thank you,
Mayor Dicker Cahill

On October 20, 2021, Dicker Cahill sent a second email statement to all Yarrow Point residents for which the Town has email addresses:

Dear Residents of Yarrow Point,

We have a very important upcoming election with several qualified candidates. I wanted to remind you that although my name is on the ballot, I am not seeking re-election. I will be completing my term as mayor and I encourage everyone to vote for candidates that are seeking election.

Thank you, Dicker

Because Dicker Cahill's name is still listed on the ballot, people have asked what happens in the unlikely event Dicker Cahill were to receive a majority of the votes? This memorandum addresses that question and explains how the election laws apply.

Applicable Statutes

The nine key State election statutes (the "Revised Code of Washington", or RCW) pertinent to the answer are listed in the Appendix at the end of this memorandum, with specific passages underlined for easy reference. The five beginning with the designation RCW 35A.12 describe the "Mayor-Council Plan of Government" used by Yarrow Point. The three statutes beginning with the designation RCW 42.12 describe how "Vacancies" in the Town's nonpartisan elected offices are handled.¹ The last statute beginning with the designation RCW 29A.60 describes when the term of office starts for local elected officials. Those statutes form the basis for the analysis and conclusions below and should be read in conjunction with the following.

Likely Election Scenarios

The following two scenarios and procedures are based on Mayor Cahill's announced withdrawal of his name from consideration as Mayor ("I withdraw my name from the upcoming election" and "I am not seeking re-election"), and his intention to complete his expiring 4-year term of office ending on December 31, 2021, thus ending his service as Mayor for the Town. The two election scenarios below are the most likely scenarios to occur given these facts.²

- (1) Katy Harris Receives the Majority of Votes for Mayor. The only remaining candidate for Yarrow Point Mayor, Katy Harris, receives the majority (i.e., 50% + 1) of the votes cast for the position of Mayor and wins the election. She would assume the position of Mayor on January 1, 2022 after taking the oath of office and completing the other qualifications listed in RCW 35A.12.030 and RCW 29A.60.280.
- (2) Dicker Cahill Receives the Majority of Votes for Mayor. In the unlikely event that Dicker Cahill were to receive the majority of votes cast despite his notices to the Town that he is "not seeking re-election", he would win the election. However, given his statements and intent that he will not serve again as Mayor, he would not take the oath of office for the new term beginning January 1, 2022, and thus the position of Mayor would become vacant under RCW 42.12.010(6) and RCW 35A.12.050.

Procedure to Fill the Vacant Office of Mayor

The Town Council will select the new mayor in the event of the vacancy described in Scenario 2.³ That person can be a member of the Town Council or another resident of Yarrow Point, and would serve as the mayor until the next general election occurs in November 2023. No special election would be needed. The details of this process are described below.

¹ Those nonpartisan elected offices are the Yarrow Point mayor and councilmembers.

² Other scenarios are possible but very unlikely.

³ The vacancy would occur on January 1, 2022, the same day the new Town Council takes office. The newly-elected Town Council will be composed of the three election winners and the two Councilmembers not up for election.

RCW 35A.12.050 provides that “A vacancy in the office of mayor or in the council shall be filled as provided in chapter 42.12 RCW.”⁴ Because the office of mayor is nonpartisan, RCW 42.12.070 (Filling Nonpartisan Vacancies) applies.⁵ The full statute is set forth in the Appendix; pertinent portions are quoted below followed by comments on its application to Scenario 2:

“Where one position [Mayor] is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position.”⁶ The Town Council as composed on January 1, 2022 is the Town’s governing body, and may exercise reasonable discretion to select someone from the Council or another Town resident.⁷ Qualification will include one year of residence in the Town and registered voter status. RCW 35A.12.030.

“As provided in chapter 29A.24 RCW, each person who is appointed shall serve until a qualified person is elected at the next election at which a member of the governing body normally would be elected. The person elected shall take office immediately and serve the remainder of the unexpired term.” The next election at which a Town Council member would be elected is the 2023 general election (for a term commencing in 2024). Thus, the newly-appointed mayor would serve for just short of two years (i.e., Jan. 2022 to approx.. Nov. 2023), and the successful mayoral candidate in the Nov. 2023 election would then immediately step in to serve from that point to the completion the original 4-year mayoral term. No special elections are needed.

If the Town Council were to fail to fill the Office of Mayor within 90 days of its occurrence (apprx. April 1, 2022), that duty would then vest with the County. Note that, under the foregoing procedures, no special election is necessary should Scenario 2 come to pass.

In that situation, the Council would then need to go through the procedure for filling the newly vacated Council position.

Other Questions

Other questions have come to our attention which we answer as follows based on our work here and involvement in previous election events.

- * Will the County count all the votes cast for mayor? Yes. Because both Dicker Cahill and Katy Harris are listed on the ballot, we understand that King County Election officials will

⁴ RCW 35A.12.065 allows a council to make a “pro tempore appointment” at the beginning of each biennial, where a member of the council may be selected “to serve as mayor pro tempore in the absence or temporary disability of the mayor.” Carl Scandella has been elected as mayor pro tem for the last 8 years under that statute. A *pro tempore* appointment does not apply to filling a *vacant* office.

Note however, that the Yarrow Point Council must fulfill both duties: one to select the person to fill the vacancy in the office of mayor, and the second to select its own mayor pro tempore. If the Council were to fill the mayoral position with one of its own members, then the Council would have a third obligation to re-fill that now vacated seat.

⁵ “A vacancy on an elected nonpartisan governing body of ... a town ... shall be filled as follows unless the provisions of law relating to the town provide otherwise.” There are no Town statutes that provide for the filling of mayoral vacancies.

⁶ The mayor and town council comprise the “governing body” of Yarrow Point under RCW 35A.12.010.

⁷ RCW 35A.12.050 (“An incumbent councilmember is eligible to be appointed to fill a vacancy in the office of mayor”).

count and certify a winner based on the comparative number of votes received.⁸ If Katy Harris gets more votes, she will become Mayor. If Dicker Cahill gets more votes, he will not take the oath of office for mayor it will become vacant.

- * Could Katy Harris be declared winner of the mayoral election if she has less than a majority of votes? No.

Please let me know if you have other questions about these matters. We are happy to provide additional information or analysis as needed.

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APPENDIX

Applicable Election / Vacancy Statutes

RCW 35A.12.010 Elective city officers—Size of council.

The government of any noncharter code city or charter code city electing to adopt the mayor-council plan of government authorized by this chapter shall be vested in an elected mayor and an elected council. [Remainder of statute omitted]

RCW 35A.12.030 Eligibility to hold elective office.

No person shall be eligible to hold elective office under the mayor-council plan unless the person is a registered voter of the city at the time of filing his or her declaration of candidacy and has been a resident of the city for a period of at least one year next preceding his or her election. Residence and voting within the limits of any territory which has been included in, annexed to, or consolidated with such city is construed to have been residence within the city. A mayor or councilmember shall hold within the city government no other public office or employment except as permitted under the provisions of chapter 42.23 RCW.

RCW 35A.12.040 Elections—Terms of elective officers—Numbering of council positions.

Officers shall be elected at biennial municipal elections to be conducted as provided in chapter 35A.29 RCW. The mayor and the councilmembers shall be elected for four-year terms of office and until their successors are elected and qualified and assume office in accordance with RCW 29A.60.280. At any first election upon reorganization, councilmembers shall be elected as provided in RCW 35A.02.050. Thereafter the requisite number of councilmembers shall be elected biennially as the terms of their predecessors expire and shall serve for terms of four years. The positions to be filled on the city council shall be designated by consecutive numbers and shall be dealt with as separate offices for all election purposes. Election to positions on the council shall be by majority vote from the city at large, unless provision is made by charter or ordinance for election by wards. The mayor and councilmembers shall qualify by taking an oath or affirmation of office and as may be provided by law, charter, or ordinance.

RCW 35A.12.050 Vacancies.

The office of a mayor or councilmember shall become vacant if the person who is elected or appointed to that position fails to qualify as provided by law, fails to enter upon the duties of that office at the time fixed by law without a justifiable reason, or as provided in RCW 35A.12.060 or

⁸ However, challenges to such certification could be made that could alter that process or outcome.

42.12.010. A vacancy in the office of mayor or in the council shall be filled as provided in chapter 42.12 RCW. An incumbent councilmember is eligible to be appointed to fill a vacancy in the office of mayor.

RCW 35A.12.065 Pro tempore appointments.

Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilmember, the remaining members by majority vote may appoint a councilmember pro tempore to serve during the absence or disability.

RCW 42.12.010 Causes of vacancy.

Every elective office shall become vacant on the happening of any of the following events:

- (1) The death of the incumbent;
- (2) His or her resignation. A vacancy caused by resignation shall be deemed to occur upon the effective date of the resignation;
- (3) His or her removal;
- (4) Except as provided in RCW * 3.46.067 and 3.50.057, his or her ceasing to be a legally registered voter of the district, county, city, town, or other municipal or quasi municipal corporation from which he or she shall have been elected or appointed, including where applicable the council district, commissioner district, or ward from which he or she shall have been elected or appointed;
- (5) His or her conviction of a felony, or of any offense involving a violation of his or her official oath;
- (6) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit such oath or bond within the time prescribed by law;
- (7) The decision of a competent tribunal declaring void his or her election or appointment; or
- (8) Whenever a judgment shall be obtained against that incumbent for breach of the condition of his or her official bond.

RCW 42.12.030 Term of person elected to fill vacancy.

Whenever any officer resigns his or her office before the expiration of his or her term, or the office becomes vacant from any other cause, and at a subsequent special election such vacancy is filled, the person so elected to fill such vacancy shall hold office for the remainder of the unexpired term.

RCW 42.12.070 Filling nonpartisan vacancies.

A vacancy on an elected nonpartisan governing body of a special purpose district where property ownership is not a qualification to vote, a town, or a city other than a first-class city or a charter code city, shall be filled as follows unless the provisions of law relating to the special district, town, or city provide otherwise:

- (1) Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position.

(2) Where two or more positions are vacant and two or more members of the governing body remain in office, the remaining members of the governing body shall appoint a qualified person to fill one of the vacant positions, the remaining members of the governing body and the newly appointed person shall appoint another qualified person to fill another vacant position, and so on until each of the vacant positions is filled with each of the new appointees participating in each appointment that is made after his or her appointment.

(3) If less than two members of a governing body remain in office, the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person or persons to the governing body until the governing body has two members.

(4) If a governing body fails to appoint a qualified person to fill a vacancy within ninety days of the occurrence of the vacancy, the authority of the governing body to fill the vacancy shall cease and the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person to fill the vacancy.

(5) If the county legislative authority of the county fails to appoint a qualified person within one hundred eighty days of the occurrence of the vacancy, the county legislative authority or the remaining members of the governing body of the city, town, or special district may petition the governor to appoint a qualified person to fill the vacancy. The governor may appoint a qualified person to fill the vacancy after being petitioned if at the time the governor fills the vacancy the county legislative authority has not appointed a qualified person to fill the vacancy.

(6) As provided in chapter 29A.24 RCW, each person who is appointed shall serve until a qualified person is elected at the next election at which a member of the governing body normally would be elected. The person elected shall take office immediately and serve the remainder of the unexpired term.

RCW 29A.60.280 Local elected officials, commencement of term of office—Purpose.

(1) The legislature finds that certain laws are in conflict governing the assumption of office of various local officials. The purpose of this section is to provide a common date for the assumption of office for all the elected officials of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting. A person elected to the office of school director begins his or her term of office at the first official meeting of the board of directors after certification of the election results. It is also the purpose of this section to remove these conflicts and delete old statutory language concerning such elections which is no longer necessary.

(2) For elective offices of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting, the term of incumbents ends and the term of successors begins after the successor is elected and qualified, and the term commences immediately after December 31st following the election, except as follows:

(a) Where the term of office varies from this standard according to statute; and
(b) If the election results have not been certified prior to January 1st after the election, in which event the time of commencement for the new term occurs when the successor becomes qualified in accordance with RCW 29A.04.133.

(3) For elective offices governed by this section, the oath of office must be taken as the last step of qualification as defined in RCW 29A.04.133 but may be taken either:

(a) Up to ten days prior to the scheduled date of assuming office; or

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(b) At the last regular meeting of the governing body of the applicable county, city, town, or special district held before the winner is to assume office.

[End Memo]