

#XXXX

Sponsor:

**Council
Member
Darby**

WHEREAS, public participation in the electoral process is a vital and guiding principle of democratic governance which City Council desires to promote; and

WHEREAS, City Charter Section 2-101 establishes the election for all thirteen members of City Council every 4 years aligned with the general presidential election cycle; and

WHEREAS, City Charter Section 2-101 also establishes the process for filling a vacant City Council position between general elections; if a vacancy occurs in the period less than thirty (30) days before the date of a primary election or pending the election of a councilmember to fill a vacancy, City Council, by a majority vote of all its remaining members, shall appoint a qualified person to fill the vacancy for the balance of the unexpired term; and

WHEREAS, conducting a special election to fill a Council vacancy, as opposed to filling the vacancy by Council appointment, promotes public participation in the electoral process as it empowers citizens to choose the candidate they deem best to represent their district or the city at large; and

WHEREAS, the legal processes and procedures for City Council to conduct a special election to fill a vacancy on City Council are governed by a combination of the City Charter, Delaware statutes, and relevant case law; and

WHEREAS, under applicable Delaware election law (15 *Del. C.* § 7103), candidates for a special election are selected through different processes depending on their political affiliation or lack thereof; and

WHEREAS, pursuant to 15 *Del. C.* § 7103, political parties that were eligible to place candidates on the general election ballot in the most recent general election may nominate candidates of their choosing by submitting their nominations to the State Department of Elections no later than 25 days before the special election; and

WHEREAS, City Council believes that candidates should be nominated through a direct primary election, which empowers the members of a political party to directly participate in the selection of their party's candidates for public office, as opposed to nominations by a committee or leadership of a political party; and

WHEREAS, the City of Wilmington government has a compelling interest in conducting fair and transparent elections for members of City Council, including special elections to fill vacancies on City Council; and

WHEREAS, pursuant to 22 *Del. C.* §§ 801 and 802, the City of Wilmington has broad home rule authority to enact legislation to govern itself, including the election of key members of its government; provided that the legislation is constitutional and is not specifically denied by statute; and

WHEREAS, City Council believes that to ensure public participation in the electoral process, including special elections, any candidate nominated by a political party must be elected through a direct primary election; and

WHEREAS, pursuant to 22 *Del. C.* § 811, a municipal corporation's home rule charter may be amended by act of the Delaware General Assembly passed with the concurrence of two-thirds of all members elected to each House thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON, that the Wilmington City Council urges the Delaware General Assembly to amend the City Charter to empower Wilmington citizens to fill vacant Council seats through a special election.

BE IT FURTHER RESOLVED, that this Council specifically requests the members of the Delaware General Assembly to amend Section 2-101 of the Wilmington City Charter by adding the underlined language and deleting the stricken language to read as follows:

Sec. 2-101. – The election of councilmembers; vacancies.

At the general election to be held on the Tuesday next after the first Monday in November, 1968, and on the same day in every fourth year thereafter on which general elections are held, one councilmember shall be elected from each councilmanic district and four (4) from the city at large, together with the president of the council who shall be elected at large. Each elector shall have the right to vote for one district councilmember, the president of the council, and (3) councilmembers-at-large. To this end not more than three (3) candidates for councilmember-at-large shall be nominated pursuant to law by any party or other political body. When a vacancy occurs in the office of a councilmember, the city council shall certify that a vacancy exists. ~~A vacancy occurring more than thirty (30) days prior to the date of a primary election in which city officers are nominated shall be filled in the next succeeding general election held in the city. Councilmen elected in this manner to fill a vacancy shall take office on the first Tuesday following their election. If a vacancy occurs in the~~

~~period less than thirty (30) days before the date of a primary election or pending the election of a councilman to fill a vacancy as herein provided, the city council, by a majority vote of all its remaining members, shall appoint a qualified person to fill the vacancy until a person is elected by the voters for the unexpired term.~~

Thereafter, the president of the council shall issue a writ of election to the State of Delaware Department of Elections to fill the vacancy by special election for the remainder of the unexpired vacated Council seat term, which election shall be held on a date specified in the writ, but not less than 90 days after its issuance to provide time for a political party to conduct a direct primary election to nominate candidates for the special election. The president of council may fix as the date of the special election, the date of the next primary or general election. If a vacancy arises less than 180 days from the date the term of said office naturally expires, then the seat shall remain vacant for the balance of the unexpired term and shall instead be filled through the next applicable election cycle for a four-year term. Notwithstanding any provision of the election laws of the State of Delaware, a political party shall nominate candidates for a special election through a direct primary election, which shall be held not less than 30 days before the date of the special election. If the vacancy occurs in the office of a district councilman member, the new member shall come from the same councilmanic district; but if the vacancy occurs in the office of a councilman member-at-large, the new member may come from any place in the city but shall be a member of the same political party as the councilmember who vacated office. The special election shall otherwise be conducted in accordance with the election laws of the

State of Delaware governing regular municipal elections. Council in filling a vacancy must appoint a member of the same political party as that of the councilman whose office has become vacant. In the event of a vacancy in the office of president of council, the council shall appoint by majority vote from among its members a president of the council to fill the unexpired term. The council office of the councilman ~~member~~ so appointed president of the council shall in turn become vacant and shall be filled by a special election as herein provided in this Charter for council vacancies. In the case of a special election to fill an unexpired term, the person elected may qualify and assume office as soon as practicable after the canvass of the election.

All citizens qualified by the Constitution and the laws of the State of Delaware to vote in the city and who satisfy the requirements for registration prescribed by law shall be qualified to vote for the members of the city council, president of the council, the mayor, and other elected city officials. Except as otherwise provided by this Charter, the provisions of the election laws of the State of Delaware shall apply to elections held under this Charter. Except as stated in this section, All elections provided for by this Charter shall be conducted by the election laws of the State of Delaware. The nomination of persons to be candidates in the general election for mayor, city council ~~men~~ members, president of the council, and other elected city officials shall be governed by the election laws of the State of Delaware.

BE IT FURTHER RESOLVED, consistent with Part III, Chapter 2, Section 3(B) of the *Delaware Legislative Drafting Manual* (2019 ed.), the Wilmington City Council has attached a draft proposed General Assembly bill as *Attachment A*.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution requests the Delaware General Assembly to amend Section 2-101 of the City Charter to empower the citizens of Wilmington to fill a vacancy arising on City Council through a special election. The proposed amendment also provides that nominations of candidates to fill the vacancy must come through a direct primary election.

ATTACHMENT A

(Proposed General Assembly Bill)

DRAFT

SPONSOR:

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. _____

AN ACT TO AMEND THE CHARTER OF THE CITY OF WILMINGTON REGARDING THE ELECTION OF MEMBERS OF WILMINGTON CITY COUNCIL

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 2-101 of the Charter of the City of Wilmington by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 2-101. – The election of council~~men~~members; vacancies.

At the general election to be held on the Tuesday next after the first Monday in November, 1968, and on the same day in every fourth year thereafter on which general elections are held, one council~~man~~member shall be elected from each councilmanic district and four (4) from the city at large, together with the president of the council who shall be elected at large. Each elector shall have the right to vote for one district council~~man~~member, the president of the council, and (3) council~~men~~members-at-large. To this end not more than three (3) candidates for council~~man~~member-at-large shall be nominated pursuant to law by any party or other political body. When a vacancy occurs in the office of a council~~man~~member, the city council shall certify that a vacancy exists. ~~A vacancy occurring more than thirty (30) days prior to the date of a primary election in which city officers are nominated shall be filled in the next succeeding general election held in the city. Councilmen elected in this manner to fill a vacancy shall take office on the first Tuesday following their election. If a vacancy occurs in the period less than thirty (30) days before the date of a primary election or pending the election of a councilman to fill a vacancy as herein provided, the city council, by a majority vote of all its remaining members, shall appoint a qualified person to fill the vacancy until a person is elected by the voters for the unexpired term. Thereafter, the president of the council shall issue a writ of election to the State of Delaware Department of Elections to fill the vacancy by special election for the remainder of the unexpired vacated Council seat term, which election shall be held on a date specified in the writ, but not less than 90 days after its issuance to provide time for a political party to conduct a direct primary election to nominate candidates for the special election. The president of council may fix as the date of the special election, the date of the next primary or general election. If a vacancy arises less than 180 days from the date the term of said office naturally expires, then the seat shall remain vacant for the balance of the unexpired term and shall~~

instead be filled through the next applicable election cycle for a four-year term. Notwithstanding any provision of the election laws of the State of Delaware, a political party shall nominate candidates for a special election through a direct primary election, which shall be held not less than 30 days before the date of the special election. If the vacancy occurs in the office of a district councilmanmember, the new member shall come from the same councilmanic district; but if the vacancy occurs in the office of a councilmanmember-at-large, the new member may come from any place in the city but shall be a member of the same political party as the councilmember who vacated office. The special election shall otherwise be conducted in accordance with the election laws of the State of Delaware governing regular municipal elections. Council in filling a vacancy must appoint a member of the same political party as that of the councilman whose office has become vacant. In the event of a vacancy in the office of president of council, the council shall appoint by majority vote from among its members a president of the council to fill the unexpired term. The council office of the councilmanmember so appointed president of the council shall in turn become vacant and shall be filled by a special election as herein provided in this Charter for council vacancies. In the case of a special election to fill an unexpired term, the person elected may qualify and assume office as soon as practicable after the canvass of the election.

All citizens qualified by the Constitution and the laws of the State of Delaware to vote in the city and who satisfy the requirements for registration prescribed by law shall be qualified to vote for the members of the city council, president of the council, the mayor, and other elected city officials. Except as otherwise provided by this Charter, the provisions of the election laws of the State of Delaware shall apply to elections held under this Charter. Except as stated in this section, All elections provided by this Charter shall be conducted by the election laws of the State of Delaware. The nomination of persons to be candidates in the general election for mayor, city councilmenmembers, president of the council, and other elected city officials shall be governed by the election laws of the State of Delaware.

SYNOPSIS

This Act amends Section 2-101 of the City of Wilmington Charter to allow the citizens of Wilmington to fill a vacancy arising on the City Council through a special election. The proposed amendment also provides that nominations of candidates to fill the vacancy must come through a direct primary election.