

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT  
CIVIL ACTION NO.

13 104

_____		)
CITY OF WESTFIELD and DANIEL M.	)	)
KNAPIK, as MAYOR OF CITY OF	)	)
WESTFIELD,	)	)
Plaintiffs	)	)
	)	)
v.	)	)
	)	)
BRIAN WINTERS,	)	)
Defendant	)	)
_____		)

CLERKS OFFICE  
 SUPERIOR COURT  
 HAMPSHIRE COUNTY  
 2013 FEB -7 P 3:52

**COMPLAINT FOR DECLARATORY JUDGMENT**  
**PURSUANT TO M.G.L. Ch. 231A**

**PARTIES**

1. The Plaintiff, City of Westfield, is a municipal cooperation with a principle place of doing business located at 59 Court Street, Westfield, Massachusetts 01085.
2. The Plaintiff, Daniel M. Knapik, is the duly elected Mayor of the City of Westfield with a principle place of doing business in that capacity at 59 Court Street, Westfield, Massachusetts 01085.
3. The Defendant, Brian Winters, is a natural person with a residential address at 34 Cross Street, 1<sup>st</sup> Floor, Westfield, Massachusetts 01085.

**FACTUAL BACKGROUND**

4. On or about November 8, 2011, an election was held in the City of Westfield with one of the open positions being the Ward Two seat on the Westfield City Council.
5. The City of Westfield has a City Charter which includes Ward representation on its City Council.
6. Part of the November 8, 2011 City election was to fill a seat on Ward Two for the City Council of the City of Westfield.
7. The election resulted in three individuals being written in as candidates for the Ward Two seats, with each of those individuals receiving one write-in vote.

8. The three individuals receiving write-in votes were Brian Winters, Erin Winters, and Michael Heaton (one write-in vote each).
9. The winner of the election was an individual by the name James E. Brown Jr., who was elected by a majority vote to the Ward seat on the City Council.
10. In August 2012, Mr. Brown, the duly elected Ward Two representative resigned from his position as a member of the City Council.
11. Mr. Brown's resignation resulted in a vacancy in the City Council.
12. The City Charter for the City of Westfield states that:

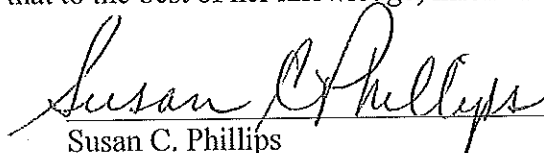
“if at any time a vacancy occurs in the city council from any cause, the city clerk shall forthwith notify the city council thereof; and within fifteen days after such notification, the remaining city councillors shall choose, as city councillor for the unexpired term, whichever of the defeated candidates for the office of city councillor at the regular municipal election at which city councillors were elected for the term and office in which the vacancy occurs, who is eligible and willing to serve, received the highest number of votes at such election, or, if there is no such defeated candidate eligible and willing to serve, in the case of a vacancy in the office of councillor-at-large, any registered voter of the city duly qualified to vote for the office of city councillor-at-large, and in the case of a vacancy in the office of a ward councilor, any registered voter of the city duly qualified to vote for the office of city councillor from the ward in which the vacancy occurs.” See Westfield City Charter, Charter 1 §25, annexed hereto as Exhibit A.

13. The City Charter further provides that “if in any of the a force set of events a choice is not made as herein provided within 15 days after notification of the City Council by the City Clerk, the choice shall be made by the Mayor. . .”
14. More than fifteen days have elapsed since the City Council was notified pursuant to that Charter provision that a vacancy occurred with regard to that Ward Two representative.
15. As a result of the City Council failing to appoint an individual to fill the vacancy created by the resignation of Ward Two representative Mr. Brown, the Westfield Charter provides that “the choice shall be made by the Mayor.”
16. One of the write-in candidates, the Defendant Brian Winters has demanded that he be appointed.
17. Although the Charter provision designates the second runner-up as an individual who should be appointed within 15 days by the City Council, the Charter further provides that in the absence of such appointment, the Mayor may make a “choice” as to who shall fill that position.

18. It is unclear from the Charter as to whether or not the Mayor is required to pick a particular individual to fill the position, as is directed to the City Council or whether or not the Mayor is free to make a "choice" of who that individual will be per that Charter provision.
19. It is also unclear as to whether or not there is any time restriction within which the Mayor may make that "choice".
20. It is also unclear from that Charter provision as to who qualifies as a "defeated candidate" for purposes of filling a vacancy under Section 25 of the City Charter.
21. M.G.L. Ch. 231A, §1 provides that the Superior Court may on appropriate proceedings make binding declarations of right, duty, status and other relations sought thereby, either before or after a breach or violation thereof has occurred.
22. That procedure may be used to secure determinations of right, duty, status or other legal relations under a Charter, Statute, Municipal Ordinance or By-law, including the determination of any question of construction and validity thereof which may be involved in such determination.
23. There presently exists a controversy as to the proper interpretation of the Charter of the City of Westfield.
24. It is unclear from that Charter as to whether or not the Mayor is required to appoint any of the three individuals who received a single write-in vote as the Ward Two representative or whether, in the absence by the City Council within fifteen days of notification by the City Clerk that was a vacancy, whether the Mayor may make a "choice" of any individual, whether that individual was a vote getter or not.
25. There is a further controversy as to whether or not the Mayor is required to work within any specific time frame to make such as appointment if any.

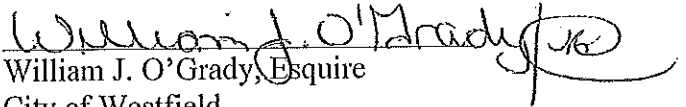
WHEREFORE, the Plaintiffs respectfully request that this Court issue a declaratory judgment defining the proper interpretation of Chapter 1 §25 of City Charter for the City of Westfield, specifically whether or not the Mayor is required to appoint any specific individual to fill the Ward Two vacancy, whether the Mayor may make a "choice" of any individual to that vacancy, and whether or not the Mayor is under any obligation to appoint any individual to that vacancy within any specific time period.

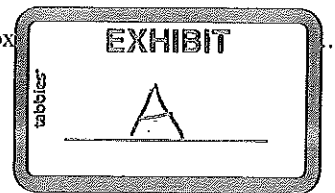
NOW COMES Susan C. Phillips, City Solicitor for the City of Westfield and states that she is an individual who has read the above Complaint, that she has personal knowledge of the factual allegations set forth therein, and that to the best of her knowledge, information and belief, said allegations are true.

  
Susan C. Phillips

Respectfully submitted,  
CITY OF WESTFIELD and MAYOR  
DANIEL M. KNAPIK

By its attorney,

  
William J. O'Grady, Esquire  
City of Westfield  
59 Court Street  
Westfield, MA 01085  
BBO# 377875  
(413) 572-6260  
(413) 568-6745



**Sec. 25. - Vacancy in mayor's office; council; temporarily disabled appointive officer.**

If a vacancy in the office of mayor occurs within six months next prior to a biennial election, and more than fifteen days prior to the preliminary election held for the purpose of nominating candidates to be voted for at such annual election, the same shall be filled at such election, but if the vacancy occurs at any other time, or in case of the death of the mayor-elect, the city council shall order an election to fill the vacancy for the unexpired term, or for the entire term, as the case may be, provided that a vacancy occurring in the period between the expiration of a term of office and fifteen days prior to the regular preliminary election next preceding shall not be filled by election. If the mayor is absent or unable from any cause temporarily to perform his duties, or if his office is vacant, they shall be performed by the president of the city council. The person upon whom such duties shall devolve shall be called "acting mayor," and he shall possess the powers of mayor only in matters not admitting of delay; but shall have no power to make permanent appointments.

If at any time a vacancy occurs in the city council from any cause, the city clerk shall forthwith notify the city council thereof; and within fifteen days after such notification, the remaining city councillors shall choose, as city councillor for the unexpired term, whichever of the defeated candidates for the office of city councillor at the regular municipal election at which city councillors were elected for the term and office in which the vacancy occurs, who is eligible and willing to serve, received the highest number of votes at such election, or, if there is no such defeated candidate eligible and willing to serve, in the case of a vacancy in the office of councillor-at-large, any registered voter of the city duly qualified to vote for the office of city councillor-at-large, and in the case of a vacancy in the office of a ward councillor, any registered voter of the city duly qualified to vote for the office of city councillor from the ward in which the vacancy occurs. If at a regular municipal election there is a failure to elect a city councillor, or if a person elected city councillor at such election dies or resigns before taking office, the city clerk shall, as soon as conveniently may be after the remaining city councillors-elect take office, notify the city council of such failure to elect, death or resignation; and within fifteen days after such notification, the members thereof shall choose, as city councillor for the unexpired term, whichever of the defeated candidates for the office of city councillor at such election, who are eligible and willing to serve, received the highest number of votes at such election for the office in which the vacancy occurs, or, if there is no such defeated candidate eligible and willing to serve, in the case of a vacancy in the office of councillor-at-large, any registered voter of the city duly qualified to vote for the office of city councillor-at-large, and in the case of a vacancy in the office of ward councillor, any registered voter of the city qualified to vote for the office of city councillor from the ward in which the vacancy occurs. If in any of the aforesaid events a choice is not made as hereinbefore provided within fifteen days after notification of the city council by the city clerk, the choice shall be made by the mayor, or, if there is no mayor, by the city councillor senior in length of service, or, if two or more councillors have the same length of service, by the city councillor senior both in age and length of service.

Should an appointive officer of the city be temporarily unable for any cause to perform his duties, the mayor may make a temporary appointment of some person to act until the official shall resume his duties.

*(Acts 1924, Ch. 74, § 1; Acts 1930, Ch. 103, § 1; Acts 1963, Ch. 342, § 1)*