

Filling Vacancies on Council
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Vacancies on city councils occur frequently due to resignations and removals. These vacancies can usually be filled by the governing body itself, but certain procedures must be followed depending on the type of city, how many vacancies currently exist on the governing body, and whether the city has extended the length of the terms of its councilmembers.

Home Rule

In a home rule city, the charter governs how vacancies are created and how they are filled. However, one instance where a charter would not determine the filling of a council vacancy would be if the councilmembers' terms had been extended beyond two years (e.g., three-year or four-year terms). A charter may extend the terms of office for councilmembers up to a maximum of four years. TEX. CONST. Art. XI, sec. 11. Once a city charter has extended councilmembers' terms beyond two years, "any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur." *Id.* Because a special election is required by the constitution, and not by statute, it is one of the few elections that may be held on a non-uniform election date, if a uniform election date does not fall within the 120-day rule imposed by the constitution. *See* TEX. CONST. Art. XI, sec. 11; TEX. ELEC. CODE §§ 41.001 (uniform election dates); 41.004 (exception to uniform election dates for constitutionally required elections "If the constitution requires a special election to be held within a particular period after the occurrence of a certain event, Section 41.001(a) does not apply."); Tex. Att'y Gen. Op. JC-0318 (2000).

Once a vacancy is created by charter, removal, or resignation, the recently vacated councilmember usually remains on the council as a holdover until the new councilmember is appointed or elected. *See* TEX. CONST. Art. 16; sec. 17; Tex. Att'y Gen. Op. DM-377 (1997)(Councilmember removed pursuant to dual office holding or incompatibility does not hold over.).

General Law

As a general rule, a vacancy in a general law city may be filled by appointment.

In a type A city, so long as there is only one vacancy, a new member may be appointed or a special election may be held. TEX. LOC. GOV'T CODE § 22.010. In the appointment process for a single vacancy in a type A city, only the remaining members vote on who to appoint, even though the recently removed or resigned councilmember technically may be a holdover under the constitution. *See id.* § 22.010 ("the remaining members, excluding the mayor, may fill the vacancy by appointment"). An appointee serves until the next regular election.

In a type B city, the statutory provisions state that the governing body fills any vacancy in the body for the unexpired term. *Id.* § 23.002. Even if there is more than one vacancy on the governing body, the remaining members are not authorized to call a special election to fill the vacancy if no term of office is more than two years. TEX. LOC. GOV'T. CODE § 23.002.

In a type C city, if one councilmember position is vacant, the city commission can appoint a new member, but if two of the three positions are vacant, then the county judge must call a special election. *Id.* § 24.026.

Note that if the term of office in any type of general law city has been extended beyond two years under the constitution, there must be a special election to fill any vacancy. *See* TEX. CONST. Art. XI, sec. 11. The rules for this type of election are the same as for a home rule city with three-year or four-year terms (see above).

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