

Mayor and Council Member Vacancies

There are many reasons why there may be a vacant position in an elected office in a city or town. Someone could die (this is usually from boredom), they may move (or be removed), or they may just quit in disgust. Sometimes nobody runs for office. Whatever the reason, the vacancy is filled in the same manner.

A vacancy in a mayor or council office is filled by appointment of the city or town council. The appointment is until January following the next municipal election. No one is appointed to more than a two-year term. If the office is vacated within the first two years of the term, an election is held for a two-year term to keep the proper cycle.¹ The cut off for this is that the vacancy must occur at least 14 days before the deadline for filing for election in an odd-numbered year.

Before making the appointment, the council must give at least two weeks notice to the public that the vacancy exists and invite those interested to apply for the position.² The notice must identify the date, time and place of the meeting when the appointment will be made and let people know who they can submit their name for consideration to and the deadline for this submission. One common question is whether or not the council is limited to only those who submit names for consideration. The statute does not state this directly but it is implied to be so. I suggest that if you want someone to be chosen you should cajole them to put in an application. If they won't put their name forward they are probably too shy to effectively serve if chosen.

If, for any reason, the council does not fill the vacancy within 30 days after the vacancy occurs, the council must vote upon the names that have been submitted and the two persons having the highest number of votes of the council must appear before the council and the council votes again. If neither candidate receives a majority vote of the council at that time, the vacancy is filled by lot in the presence of the council. "By lot" can mean cutting the deck, throwing dice, drawing straws or any other game of chance.³

In a municipality operating under the council-mayor form of government (not the five or six member council forms), the council may appoint a person to fill a vacancy in the office of mayor before the effective date of the mayor's resignation, by making the effective date of the appointment the same as the effective date of the mayor's resignation; and if a vacancy in the office of mayor occurs before the effective date of an appointment, the council chair serves as acting mayor during the time between the creation of the vacancy and the effective date of the appointment to fill the vacancy. While serving as acting mayor the council chair continues to act as a council member and votes at council meetings. This makes sense because in that form of government the mayor is a necessary and essential position, while in the other forms of government, the

¹ Utah Code 20A-1-510.

² Utah Code 20A-1-510(1)(b).

³ Utah Code 20A-1-510(1)(c).

mayor is like the hood ornament on a '65 Chevy—you will notice if it is missing but the car will still operate the same.

In considering who to appoint to fill the vacancy the council cannot interview the candidates in private. The Utah Open and Public Meetings Act specifically forbids that practice.⁴ One issue that comes up often is how the vote is to be taken. Some council members want to vote by secret ballot. Their rationale is that this is like an election and they do not want some potential future colleague to know they thought he or she was unqualified to serve. It is my opinion that a secret ballot is not allowed. The Utah Open Meetings Act specifically states that the minutes of any meeting of the council must state a “record, by individual member, of each vote taken, by the public body.”⁵ In addition, the Utah Municipal Code requires a recorded roll call vote by the yes or no on ordinances and resolutions and when any member demands it.⁶

Any vacancy is filled by the majority vote of the remaining council regardless of the normal quorum or minimum vote requirements.⁷ This provision will normally only come into play when there are multiple vacancies on the same council but there is at least one special circumstance discussed below when this may be important.

A member of the council may not participate in any part of the process to fill a vacancy if that member is being considered for appointment to fill the vacancy.⁸ If there is a vacancy in the position of mayor and a council member applies for that position, then that council member applicant cannot discuss, interview other candidates or vote on the issue. This is one of the dumbest sections of state law ever enacted by our legislature. I understand it was in response to one complaint from a small city when a person applied to be appointed as a mayor and a council member also applied and then participated in the discussion, voted for himself and won the day. Why do I think this is a dumb law? The following example will illustrate the inherent problems.

In the little Town of Vineyard the long time mayor resigned leaving four sitting council members to fill the vacancy. Of the four, three applied for the position in a proper and timely fashion, leaving only one who legally could participate and vote to fill the vacancy. His one vote was sufficient to appoint Mayor Randy Farnworth to the office he is proudly serving in as of this writing. I question why this procedure was better than allowing all council-members to argue, participate and vote regardless of their lust for power.

One common question that comes up is if a council member resigns and makes it effective on some future date can he or she vote on his or her replacement? My opinion is no. There is no vacancy until the resignation is effective and once effective they have no vote. Another common issue arises when a sitting member of the council is appointed

⁴ Utah Code 52-4-205(2).

⁵ Utah Code 52-4-203(2)(d).

⁶ Utah Code 10-3-506.

⁷ Utah Code 10-3-507(3).

⁸ Utah Code 20A-1-510(3).

to the vacant mayor's position. Can the council immediately fill the position made vacant by the sitting council member's appointment to be mayor from those who applied for and did not get the position? I do not believe so. A new two week notice for the now vacant council position must be given. This is to ensure that those who may have not been interested in being a mayor but would like to be appointed to the council can apply.