

Fellow Commissioners- Please see this updated language regarding the unique situation in which a city council position is left vacant. This proposal defines the process to fill the vacated position, which continues to include temporary appointment as well as the potential for special election. The included language addresses a shorter timeline for the appointment process. It also gives the City Council a provision to hold a special election at the same time as a general election within a fair timeframe. You will find the proposed additions to the charter underlined.

Respectfully,

Commissioner Zeimet

Commissioner Simula

Commissioner Laine

Commissioner Hugo

Commissioner Ahlers

Commissioner Schluender

Enclosed

Historical Review

Summary of Challenges

Summary of Proposed Changes

Proposed Language Change

APPENDIX: Copies of Cities with Similar Charter Language (Hutchinson, Moundsvew, Minnetonka, Bloomington, Richfield)

Historical Record

- The lengthy appointment process following election results of 2016 was originally discussed at a Charter Commission meeting on January 19, 2017. Both President Smith and City Attorney Hoeft noted that the process is prolonged.
- The lengthy appointment process was discussed again at a Charter Commission meeting on April 20, 2017. Councilmember Buesgens and Commissioner Laine suggested shortening the process to make an appointment by the end of February. Commissioner Penniston drew attention to the lack of direction in the Charter addressing consistent tie votes in the appointment process. Commissioner Anderson suggested that the Mayor has the power to break a tie. Commissioner Laine asked the commission to consider ranked-choice voting as well. President Smith directed commissioners to submit amendment proposals to the city clerk prior to the next meeting for review.
- An amendment was originally proposed at a Charter Commission meeting in July 2017. President Smith suggested that the issue be tabled and postponed until the October 2017 Charter Commission meeting.
- At a Charter Commission meeting on October 26, 2017, this issue was postponed again until the January 2018 Charter Commission meeting.
- At a Charter Commission meeting on January 19, 2018, this issue was postponed again until the April 2018 Charter Commission meeting.
- At a Charter Commission meeting on April 19, 2018, this issue did not appear on the agenda. Commissioner Simula asked that it be added to the July 2018 agenda.
- At a Charter Commission meeting on July 19, 2018, Commissioner Laine noted that the city of Richfield holds special elections to fill vacancies. Councilmember Buesgens reiterated that the process following the 2016 election was drawn out. President Smith suggested a study of how the special election operates in the city of Richfield, how it has been utilized in the past, and what sections of our Charter would be affected by a similar change. President Smith suggested that commissioners prepare these facts for a discussion at the October 2018 meeting.
 - Cities of Richfield and Bloomington are considering amendments modeled after [City of Minnetonka Home Rule Charter Section 2.06 - Vacancies in the Council](#)
- At a Charter Commission meeting on October 18, 2018, President Smith tabled this issue indefinitely. It was not discussed at any of the Charter Commission meetings in 2019.
- Due to COVID, there were no Charter Commission meetings held after Jan 2020 until April 2021.
- At a Charter Commission meeting on April 15, 2021, discussion resumed with the goal of reducing the time to fill the vacancy and including structure for resolving a deadlocked Council. Two options were proposed:
 - 1. Filling a vacancy by appointment
 - 2. Filling a vacancy by special electionCommission voted to continue exploring Option 2: Special Election
- At a Charter Commission meeting on July 15, 2021, discussion contested the exploration of special elections, despite the vote at the previous meeting. President Smith stopped discussion when the meeting length approached 1 hour.
- At a Charter Commission meeting on October 21, 2021, President Smith used the

meeting to open a new discussion about whether or not special elections should be considered as part of the Charter. He cited costs of similar elections in other cities. The Commission voted to continue discussion about a special election. However, special elections are already included in the Charter, so the point is moot.

- At the same Charter Commission meeting on October 21, 2021, a revised version of the proposal to fill vacancies by special election (Option 2) was introduced. President Smith asked for 30 days to review the new language, and stopped discussion when the meeting length approached 1 hour.

Summary of Challenges

- Appointment process is too long.
- If the Council can't agree on an appointment, there is no way to break a tie.
- Council appointees are in office for too long, up to 2 years. Voters should be able to choose who fills such a long vacancy.

Summary of Changes

- **Faster Appointment** - As to not interfere with city business, no seat on the Council shall remain vacant for more than 45 days. The Council may hold appointee interviews if desired, and may begin without any waiting period.
- **Tie Breaker** - The Council will vote on the appointee a maximum of 3 times. If the Council can't come to an agreement after 3 votes or 45 days, the Mayor must appoint an eligible person within 15 days.
- **Appointee Limit** - If the vacancy is declared within the same year as a regular election year, the appointed person may serve through that regular election. If the vacancy is more than 180 days and not within the same year as a regular election, the appointed person will be replaced by the winner of a special election.
- **Simplifications and Clarifications** - As newspapers continue to decline, the term "newspaper" is changed to "publication". State elections are clarified as opportunities for municipal elections.

Proposed Language Change to Charter

CHAPTER 2

FORM OF GOVERNMENT

Section 9, VACANCIES IN THE COUNCIL

A vacancy in the council shall be deemed to exist in case of the failure of any person elected thereto to qualify on or before the date of the second regular meeting of the new council, or by reason of the death, resignation, removal from office, cessation as a resident of the city, continuous absence from the city for more than three months, conviction of a felony of any such person whether before or after qualification, the failure of any council member without good cause to perform any of the duties of membership in the council for a period of three months or for any other cause as may be provided for in Minnesota Statutes, as amended. In each such case, at the next regular meeting following receipt of notice by the council of one of the foregoing conditions, the council shall by resolution declare such vacancy to exist unless further investigation is required. Notice of said vacancy shall be posted at city hall for a period of two (2) weeks from the date of the adoption of the resolution declaring said vacancy. Notice shall also be posted in a designated city publication for a period of two (2) weeks as soon as possible after the date of the adoption of said resolution. Applications shall be sought and accepted from individuals interested in filling the vacancy, which applications shall be submitted to city hall, to the attention of the City Clerk. At its option, the council may interview each of the applicants and shall conduct said interviews in an agreed upon uniform manner as a council. The council shall make its appointment from the pool of applicants within forty-five (45) days of the vacancy resolution, whether done so at a regular council meeting or a special meeting. If the council fails to make the appointment within forty-five (45) days, or, if before the end of the forty-five (45) days, votes three times on the appointment and is unable to fill the vacancy, the mayor must, within fifteen (15) days, appoint a person from the remaining applicants under consideration to fill the vacancy. The individuals so appointed shall fill said vacancy until the next regular state or municipal election, when the office shall be filled for the unexpired term by an eligible person elected at large in the manner hereinafter set forth; provided, however, that if a vacancy is declared by resolution and if 180 days or more remain in the unexpired term, then the Council shall call a special election at which time the vacancy shall be filled for the unexpired term by an eligible person elected at large in the manner hereinafter provided. Notwithstanding anything to the contrary herein, any vacancy resulting from a recall election or from a resignation following the filing of a recall petition shall be filled in the manner provided in such case.

CHAPTER 4

NOMINATIONS AND ELECTIONS

Section 29. SPECIAL ELECTIONS.

The council may by resolution order a special election, fix the time of holding the same, and provide all means for holding such special election. The procedure at such election shall conform as nearly as possible to that herein provided for other municipal elections. Special elections must be held at the earliest date possible under state law. Candidates must file for office no later than four weeks before the election. If a special election occurs in the same year as a regular municipal election, the council may at its option schedule the special election to occur in conjunction with the regular municipal election rather than at the earliest possible date under state law.

APPENDIX

Copies of Cities with Similar Language

City of Hutchinson

<https://www.ci.hutchinson.mn.us/wp-content/uploads/2017/08/citycharter12-2016.pdf>

Section 2.09. VACANCIES IN THE COUNCIL. A vacancy in the council shall be deemed to exist in case of expiration of the term of any elective officer without an elected successor, the failure of any elective officer to qualify on or before the date of the second regular meeting of the new council, or by reason of the death, resignation, removal from office, removal from the city, continuous absence from the city of more than three months, conviction of a felony of any such elective officer whether before or after such qualification, or by reason of the failure of any elective officer without good cause to perform any of the duties of membership in the council for a period of three months. In each such case the council shall by resolution declare such vacancy to exist and shall forthwith appoint an eligible person to fill the same. In the case of a tie vote in the council, the mayor shall make the appointment. In the event the unexpired term of 3 the vacant seat is one year or less, such appointee shall complete the unexpired term. In the event the unexpired term of the vacant seat exceeds one year, a special election shall be held at or before the next regular municipal election to fill the remainder of the vacancy. The city administrator shall give published notice of such special election in the official newspaper of general circulation, at least 30 days prior to said special election.

City of Moundsview

[https://cms6.revize.com/revize/moundsview/document_center/City%20Charter/CITY_CHARTER - May 2013\(1\).pdf](https://cms6.revize.com/revize/moundsview/document_center/City%20Charter/CITY_CHARTER_-_May_2013(1).pdf)

Section 4.05. Vacancy of Municipal Elected Office. Subdivision 1. When a vacancy in an elected office of the City occurs with 365 days or more remaining in the term of the vacated office, there shall be a special election held within ninety days after the vacancy occurs to elect a successor to serve for the remainder of the unexpired term of the office vacated. Subdivision 2. The City Administrator shall give at least sixty days published prior notice of such special election, except as set forth under Subdivision 5 of this section. Subdivision 3. The procedure at such election and assumption of duties of elected officers following such election shall conform as nearly as practicable to that prescribed for other municipal elections under this Charter. Subdivision 4. In the case of a vacancy where there remains less than 365 days in the unexpired term, the Council shall by a majority vote appoint a successor to serve for the remainder of said term. In the case of a tie vote of the Council, the Mayor shall make said appointment. Subdivision 5. When a vacancy in an elected municipal office occurs within 120 days prior to a regular municipal election date, the special election to fill the vacancy shall coincide with the regular election. If the vacancy occurs within sixty days prior to the regular election date, the notice of such vacancy shall be published as soon as is practicable. If within the 120 day period before a regular municipal election, the vacancy occurs in the office of the Mayor or in the office of either or both of the Councilmembers whose seats are to be decided in the election, said vacancy

shall be considered not to exist for purposes of the election. However, if such vacancy occurs in the office of either of the other two Councilmembers, the seat shall be filled by the candidate for Councilmember with the third highest vote total, or, in the case of two vacancies, the third and fourth highest vote totals. Where two vacancies exist, the candidate with the third highest total shall fill the vacancy in the office having the longest unexpired term. Candidates filing a vacancy shall take office at or before the next regularly scheduled Council meeting following election certification. (Amended by Ordinance 748; Adopted September 27, 2004; Filed October 13, 2004). Subdivision 6. If there are insufficient numbers of candidates in a regular or special election to fill expiring or vacated municipal offices, the City Council shall fill said offices by appointment until the next regular municipal election. In the case of a tie vote of the Council, the Mayor shall make said appointment.

City of Minnetonka

https://codelibrary.amlegal.com/codes/minnetonka/latest/minnetonka_mn/0-0-0-34

Subd. 4. Procedure to fill the vacancy.

a. A special election is required to fill a vacancy when:

(1) The vacancy has been declared, or has automatically occurred, before the first day to file affidavits of candidacy for the next regular municipal election; and

(2) more than two years remain in the unexpired term.

When this subdivision 4.a. applies, the city council must adopt a resolution to set the date for the special election at the first regular or special meeting of the city council occurring after the vacancy automatically occurs or at the same meeting at which the vacancy is declared. The special election must be held in accordance with subdivision 5 of section. The person elected will serve the unexpired term for that office. The city council, at its option and at the same or a subsequent meeting, may make an interim appointment of a person to fill the vacancy until a successor is elected at the special election and qualifies for the office.

b. If a special election is not required by subdivision 4.b. above, the council may either appoint an eligible person to serve until expiration of the position's term or fill the vacancy by special election. Upon notice of an impending resignation, the council may begin the process of determining how to fill the vacancy. No later than 60 days after a vacancy automatically occurs or is declared to exist, the council must appoint an eligible person to fill the vacancy or schedule a special election to be held in accordance with subdivision 5 of this section.

If the council does neither, the mayor, or acting mayor if the vacancy is in the mayor's position, has seven days to appoint an eligible person to fill the vacancy.

If after 67 days no appointment is made nor an election scheduled, the clerk must schedule a special election to be held in accordance with subdivision 5 of this section

Subd. 5. Special Election Requirements

a. Except as provided in subdivison 5.b. below, special elections must be held at the earliest date possible under state law.

Candidates must file for office no later than four weeks before the election

b. If a special election occurs in the same year as a regular municipal election, the council may at its option schedule the special election to occur in conjunction with the regular municipal election rather than at the earliest possible date under state law.

City of Bloomington

https://codelibrary.amlegal.com/codes/bloomington/latest/bloomington_mn/0-0-0-43588#JD_Cht_r.2.05

§ 2.05 VACANCIES IN THE COUNCIL.

A vacancy in the council exists for any of the following reasons:

- (a) The failure of a person elected to qualify for office by the date of the second regular meeting of the council in the term for which the person was elected;
- (b) Death;
- (c) Resignation;
- (d) Removal from office;
- (e) Loss of residency;
- (f) Continuous absence from the city for more than three months;
- (g) Conviction of a felony of a councilmember, whether before or after qualification for office;
- (h) Failure of a councilmember without good cause to perform the duties of the office for a period of three months.

In any of these cases, the council must declare by resolution that a vacancy exists. The council must adopt the resolution declaring the vacancy at the next regularly scheduled council meeting. Within forty-five days after the adoption of the resolution, the council must appoint an eligible person to fill the vacant office until the next regular state or municipal election when the office will be filled for the unexpired term. If the council fails to make the appointment within forty-five days, or, if before the end of the forty-five days, votes three times on the appointment and is unable to fill the vacancy, the mayor must, within fifteen days, appoint an eligible person to fill the vacancy until the next scheduled state or municipal general election when the office will be filled for the unexpired term. When the council or mayor makes the appointment after the opening date of filing for the next regularly scheduled state or municipal general election, or in November or December, the voters must elect an eligible person for the unexpired term of office at a special election to be held at the state or municipal general election scheduled for the following year. No special election will be held for an unexpired term of two months or less.

City of Richfield

https://library.municode.com/mn/richfield/codes/code_of_ordinances?nodeId=APXACICHRI_CH_2FOGO_S2.05VA

Section 2.05. - Vacancies.

Subdivision 1. Existence.

(1)A vacancy shall exist as of the date of death or resignation of a Council Member.(2)As soon as it is determined that a Council Member is ineligible because of any of the following reasons:(i)the failure of any person elected to the Council to qualify on or before the date of the second regular meeting of the Council in the year following the year of election;(ii)the Council Member ceasing to be a resident of the City;(iii)a district Council Member ceasing to be a resident of the district which the member represents;(iv)continuous absence of the Council Member from the City for more than 90 days;(v)conviction of a Council member of a felony

whether before or after qualification;(vi)any other reason specified by law except those reasons specified in paragraph (1) of this subdivision; or(vii)by reason of the failure of the Council Member without good cause to perform any of the duties of a Council Member for a period of 90 days, the Council shall, by resolution at a regular or special Council meeting, declare a vacancy on the Council to exist.

Subd. 2. Procedure Following Vacancy.

(1)If 90 days or less remain in the Council Member's term after the vacancy, the person elected to that office for the term commencing on January 1 of the next year shall be appointed by the Council to fill the remaining portion of the unexpired term at the next regular Council meeting following the declaration of the results of the election with the City Clerk. The appointment shall be the first order of business of such meeting.(2)If less than 180 days and more than 90 days remain in the Council Member's term of office after the vacancy, the Council shall appoint an eligible person to fill the vacancy for the unexpired term. If the Council fails to agree upon an appointee to fill the vacancy within 30 days after the vacancy, the Mayor shall appoint a person to fill the vacancy.(3)If 180 days or more remain in the Council Member's term of office after the vacancy, the Council shall call a special election to fill the vacancy for the balance of the Council member's term. The special election shall be called at the same Council meeting at which the vacancy is declared to exist or at the next regular Council meeting following the death or resignation of a Council Member, as the case may be. The special election shall be held not less than 30 nor more than 60 days after the Council meeting at which the election is called. The election to fill the unexpired term shall be in accordance with the provisions of Section 4.03, except that there shall be no primary election and the candidate receiving the highest number of votes shall be elected to fill the unexpired term.

The term of the person so elected shall start as soon as the declaration of the results has been filed with the City Clerk and the person has qualified for office. (Amended, Bill No. 1992-10)