

Subject: Filling a Vacant Council Seat

DMC, Section 2.03.070, Vacancies, the code reads that an elected municipal office, except for that of mayor or school board member, is vacated under one of the following conditions, and upon declaration of vacancy by the Council. The council shall within forty-five days appoint a qualified person. The council shall declare an elective office vacant when the person elected (one of several options listed in code, see below):

- Resigns and the resignation is accepted.

If City Council accepts a resignation for Seat B and declared the seat vacant at their regular council meeting on December 9, 2021, they would need to fill the seat within 45 days, or by January 23. There is one regular meeting during that period: January 6. An appointment would need to be designated at that meeting unless a special meeting is held.

City Attorney's advice regarding qualifications and appointment.

Qualifications

There are two qualifications listed in DMC 2.06.020.

- Registered Voter in Dillingham
- Have lived in Dillingham for one year

In my opinion, the person appointed to fill a vacancy must be qualified as of the date the vacancy is filled. Therefore, any person registered to vote AND who has lived in Dillingham for a year by February 24 (or any earlier date of appointment) may be appointed.

Filling the vacancy

Filling the vacancy is mandatory. The council MUST appoint someone. That is why the word "shall" is used in DMC 2.06.060. There is no procedure to fill a vacancy by special election.

DMC 2.03.070 Vacancies.

An elected municipal office, except for that of mayor or school board member, is vacated under the following conditions and upon the declaration of vacancy by the council. The council shall within forty-five days appoint a qualified person. If less than thirty days remain in a term, a vacancy may not be filled unless the vacancy reduces the body to less than a quorum, in which case the remaining member shall appoint a number of qualified persons to constitute a quorum within seven days. The council shall declare an elective office vacant when the person elected:

- Fails to qualify or take office within thirty days after his or her election or appointment;
- Is physically absent from the municipality for a consecutive ninety-day period, unless excused by the council;
- Resigns and the resignation is accepted;
- Is physically or mentally unable to perform the duties of his or her office as determined by two-thirds vote of the council;
- Is removed from office in accordance with Section [2.06.030](#) herein;
- Misses three consecutive regular meetings unless excused; or
- No longer physically resides in the municipality and two-thirds of the council members vote the seat vacant.

DMC 2.06.060 Vacancies

If a vacancy occurs in the council, the council, by vote of a majority of its remaining members, shall within forty-five days designate a person to fill the vacancy until the next regular election and until a successor is elected and has qualified. The term of office at the next regular election shall be for the unexpired term only.