

Memorandum



To: Mayor and Town Council
From: Ryan Spitzer
Date: 12/5/2025
Re: Vacant Town Council Seat after Mayor Elect is Sworn in.

North Carolina General Statutes provide a general description of how a vacancy is filled. Specifically, the language is spelled out in G.S. §160A-63 if the Municipal Charter does not specify. Pineville's Charter does not specify the mechanisms for filling a vacancy. The process to fill the vacancy is up to the three (3) Town Council Members that will be sworn in on December 9, 2025.

§ 160A-63. Vacancies. A vacancy that occurs in an elective office of a city shall be filled by appointment of the city council. If the term of the office expires immediately following the next regular city election, or if the next regular city election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall serve the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled city election that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more. In cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person whom he replaces if that person was elected as the nominee of a political party.

Since the Town Charter does not specify a method, there are two methods that can be used to fill the vacancy.

1. The Council can make nominations themselves and pick from those nominations.
2. The Council can set up an application process for interested individuals to apply for the vacancy, have a vetting process, and then pick someone who has applied. If Town Council does pick this option, any interviews or vetting process would have to be held in Open Session at a scheduled Town Council Meeting. A suggested process would be as follows:
 - a. Make a request for applications at the December 9th Meeting and post on the website and social media
 - b. Council/Manager report on applications received and reviewed
 - c. If desired, Town Council could ask questions of present nominees at an open meeting.
 - d. The Mayor would then open the floor for nominations. There are two ways to do nominations. They are described in the second link below and must be picked prior to the discussion of applicants.
 - i. Motion-and-vote method
 - ii. Nomination-and-ballot method

The person who is chosen to fill the vacancy will serve the remainder of the unexpired term until the next town election in November 2027.

The process that the Town attorney and I are suggesting is for Town Council to choose what process they are going to use at the December 9th Town Council Meeting. Once the process is voted on, then Town Council can choose to either vote on the person at a regularly scheduled Town Council Meeting or, if needed due to the length of the process, can hold a Special Called Meeting with at least three days' notice.

The School of Government has a blog on this that can be found here for further reference:

<https://canons.sog.unc.edu/2011/02/filling-a-vacancy-on-the-town-council/>
<https://canons.sog.unc.edu/2013/03/how-to-fill-a-vacancy-on-an-elected-board/>