

# How to Fill a Vacancy

## A Guide for City Offices



**PREPARED BY:**

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This guide was developed in an effort to provide answers to questions frequently asked the City of Santa Cruz elections official concerning filling vacancies in a local office. It is for general information only and does not have the force and effect of law, regulation or rule. In case of conflict, the law, regulation or rule will apply. Persons using this guide must bear full responsibility to make their own determinations as to all legal standards and duties. For information on County vacancies, please contact the County Elections Department.

## Vacancies - Definition

An office becomes vacant on the occurrence of any of the following events before the expiration of the term:

- 1) The death of the incumbent;
- 2) An adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators;
- 3) His or her resignation;
- 4) His or her removal from office;
- 5) His or her ceasing to be an inhabitant of the state, or if the office is local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged;
- 6) His or her absence from the state without the permission required by law beyond the period allowed by law;
- 7) His or her ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law;
- 8) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purpose of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding;
- 9) His or her refusal or neglect to file his or her required oath or bond within the time prescribed;
- 10) The decision of a competent tribunal declaring void his or her election or appointment;
- 11) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond;
- 12) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that case even the office shall not be deemed vacant until the order of commitment has become final.

Government Code §1770

## **City of Santa Cruz Charter States the Following:**

### **SECTION 605. COUNCIL VACANCIES.**

A vacancy in the City Council from whatever cause arising, shall be filled by appointment by the City Council, or by special election called by the Council.

If a vacancy is filled by appointment, the appointee shall hold office until the second regularly scheduled evening meeting following the next municipal election and until a successor is elected and takes the oath of office. At the next general municipal election following any vacancy, a Councilmember shall be elected to serve for the remainder of any unexpired term. If a vacancy is filled by special election, the person receiving the highest number of votes shall, upon taking the oath of office, serve for the remainder of the unexpired term of the former incumbent and until a successor has been elected and takes the oath of office.

In the event a vacancy has not been filled by appointment or an election called within sixty (60) days after such office shall have been declared vacant, the Council shall forthwith call an election to fill such vacancy.

A City Council office shall become vacant and shall be so declared by the Council if a person elected or appointed to the Council fails to take the oath of office within sixty (60) days after the election or appointment, is absent from all regular meetings of the Council for sixty (60) days unless expressly permitted by the City Council in its official minutes, ceases to be an elector of the City, or is convicted of a crime involving moral turpitude.

### **Appointments To Fill Vacancies:**

If a vacancy occurs in an elective City office, the Council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

Government Code §§36512(b), 34902

## **Cities May Require an Election**

A city may enact an ordinance that does any of the following:

1. Requires that a special election be called immediately to fill every city council vacancy and the office of mayor designated pursuant to Section 34902. The ordinance shall provide that the special election shall be held on the next regularly established election date no less than 114 days from the call of the special election.
2. Requires that a special election be held to fill a city council vacancy and the office of the mayor designated pursuant to Section 34902 when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing body that has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition.
3. Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

Government Code §36512(c)

## **Restriction to Appointing**

An appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision.

The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

If the city council does not call an election, the vacancy shall be filled at the next regularly established election date.

Government Code §36512(d)