

ORDINANCE NO. 803

**AN ORDINANCE DEALING WITH FILLING A
VACANCY ON THE WHEATON CITY COUNCIL**

Purpose.

The purpose and intent of this section is to establish a procedure for filling a vacancy on the Wheaton City Council.

THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS:

1. That Ordinance No. 803 of the Code of Ordinance for the City of Wheaton is hereby enacted to read as follows:

Section 1. Statutory Authority.

- A. Under Minn. Stat. § 205.10, Subd. 2, statutory cities may hold special elections in conjunction with the municipal general election to fill vacancies in elective City offices. Minn. Stat. § 412.02, Subd. 2a, provides for the procedure in filling these vacancies.
- B. If the vacancy occurs before the first day to file affidavits of candidacy for the next regular City election and more than two years remain in the unexpired term, a special election shall be held at or before the next regular City election and the appointed person shall serve until the qualification of a successor elected at a special election to fill the unexpired portion of the term. (Minn. Stat. § 412.02, Subd. 2a)
- C. If the vacancy occurs on or after the first day to file affidavits of candidacy for the regular City election or when less than two years remain in the unexpired term, there need not be a special election to fill the vacancy and the appointed person shall serve until the qualification of a successor. (Minn. Stat. § 412.02. Subd. 2a)
- D. The Council must specify by ordinance under what circumstances it will hold a special election to fill a vacancy other than a special election held at the same time as the regular City election. (Minn. Stat. § 412.02. Subd. 2a)

Section 2. Vacancies in Council.

- A. When, for any reason, a vacancy should occur in the City Council or office of the Mayor, the City Council must publicly declare such vacancy and specify the date of occurrence of the vacancy within 15 days of its occurrence. Notice of the vacancy shall be posted at City Hall and sent to the official City newspaper on the next business day. The Mayor or Council member shall forfeit the office for:

- (1) Lack at any time during the term of office of any qualification for the office prescribed by law.
 - (2) Conviction of a crime involving moral turpitude.
 - (3) Failure to attend regular meetings of the Council for a ninety-day period without being excused by the Council.
 - (4) Departure of residence from the City.
- B. If the unexpired term of the Council vacancy is less than two years from the date of the occurrence of the vacancy, the Council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy and the appointed person shall serve until the qualification of a successor at the next general election. If the unexpired term of the Council vacancy is two years or longer, a special election shall be called by the Council. Notice of the vacancy, with a description setting forth the minimum set of legal qualifications to hold public office, shall be posted at City Hall and sent to the official City newspaper on the next business day.

Section 3. Procedures to fill Council vacancies by special election.

- A. If the unexpired term of the Council vacancy is two years or longer, a special election shall be called by the Council.
- B. When such a vacancy occurs the Council must appoint someone to fill the office temporarily until a special election can be held. The process for such appointment shall follow the same procedures as set forth in § 18-9 below. The appointed person will remain in the office until the successor, elected at the special election, takes the oath of office. (Minn. Stat. § 412.02, Subd. 2a)
- C. The City of Wheaton hereby provides the following procedure in filling the vacancy:
- (1) The Council must appoint someone to fill the office. The appointee shall serve for the duration of the term or until such time as the seat is filled through the process of a special election.
 - (2) A special election shall be called by the City Council if the unexpired term of the Council vacancy is two years or longer.
 - (3) If a special election is required to fill a City Council vacancy, the City of Wheaton hereby provides the following procedure:
 - (a) The City Council must by resolution order a special election and

provide all means for holding it.

- (b) The special election will be held at the earliest date deemed reasonably practicable by the City Council . The date designated by the City Council for special election shall comply with all applicable time frames under state law.
- (c) If more than two candidates file for the unexpired term, a primary election shall be held.
- (d) At least two weeks of weekly published notice of a special election shall be given in the official newspaper.
- (e) The procedure at such election shall conform as nearly as possible to that prescribed for regular municipal elections.
- (f) Candidates must file with payment of the required filing fee to the Administrator; the Administrator shall place the name of the candidate upon the special primary election ballot without partisan designation.

Section 4. Procedures to fill Council vacancies by Council appointment. If the unexpired term of the Council vacancy is less than two years, the Council by majority vote of all its remaining members may appoint a qualified person to fill the vacancy. Notice of the vacancy, with a description setting forth the minimum set of legal qualifications to hold the subject public office shall be posted at City Hall and sent to the official City newspaper on the next business day and shall include the following description of the application and appointment process, which shall be followed by the City Council:

- A. Uniform applications in a form approved by the City Council must be received by the City Administrator, not later than 21 days from the date of the declared vacancy. Application forms submitted by the applicants are public documents. Applications shall request, at a minimum, all information required by Minnesota Statutes of candidates filing for the office. Additional information forms may be adopted by the City Council and shall be required of each applicant uniformly. The applicant may submit a resume, in addition to the uniform application forms.
- B. Tentative interview scheduling shall be completed and posted at City Hall not later than 25 days from the declared vacancy. Applicants shall be responsible for requesting schedule changes.
- C. The interview process shall not start earlier than 28 days from the declared vacancy.

- (1) Applicants shall be interviewed by the Council, in accordance with the State of Minnesota open meeting laws.
 - (2) A uniform list of initial questions to be asked of all applicants shall be made available to the public and the applicants in advance of interviews. To the extent reasonably practicable, questions asked of all applicants at the interviews shall be uniform.
- D. Upon completion of the interview process, the Council may call for a vote to appoint an applicant. Each Council member may cast only one vote for a preferred applicant on each called-for vote to appoint. No vote, which does not result in a majority vote for one candidate, shall result in elimination from consideration of any candidate. Written ballots listing the applicant(s) shall be used. Each Council member's vote shall be recorded. A simple majority of the Council votes shall appoint that applicant to the City Council. In the event of a tie vote of the Council, the Mayor (or Mayor pro tem if the vacancy is in the office of Mayor) shall make the appointment.
- E. If the Council pursues the appointment process but then fails to fill a vacancy within 45 days from the occurrence of the vacancy, the City Administrator shall call a special election to fill the vacancy. The special election will be held as soon as reasonably practicable following such occurrence, and the procedure shall be otherwise governed by the provisions of Section 3 above. If more than two candidates file for the unexpired term, a primary election shall be held.

PASSED AND ADOPTED this 28th day of December, 2023.

WHEATON CITY COUNCIL

Jacob Veldhouse, Mayor

ATTEST:

Amy Olson, City Administrator