

**ROLL CALL ORDER FOR MEETING OF
July 8, 2020**

Cavanagh, Roussell, Resnick, Buol, Sprank, Jones

This meeting will be conducted as a virtual meeting.

Due to social distancing guidelines related to the COVID-19 pandemic, City Council members and City staff will participate by webinar and will not meet in person. The virtual meeting will be aired live on CityChannel Dubuque (Mediacom cable channels 8 and 117.2), streamed live and archived on the city's website at www.cityofdubuque.org/media, and streamed live on the City's Facebook page at www.facebook.com/cityofdubuque.

Ways to communicate with the City Council:

- Contact the City Council www.cityofdubuque.org/councilcontacts
- City Clerk's Office cityclerk@cityofdubuque.org
- City of Dubuque Facebook page www.facebook.com/cityofdubuque



**CITY OF DUBUQUE, IOWA
CITY COUNCIL MEETING**

**This meeting will be conducted virtually.
Please reference the information above for viewing
and listening options.
July 8, 2020**

Council meetings are video streamed live and archived at www.cityofdubuque.org/media and on Dubuque's CityChannel on the Mediacom cable system at cable channel 8 and digital 117.2

SPECIAL SESSION

5:00 PM

ACTION ITEMS

These are items where discussion is held by the City Council - public comments are not allowed except as authorized by the Mayor.

1. Filling a Vacancy in the Office of First Ward City Council Member

City Council to discuss and determine the process for filling a vacancy in the Office of First Ward City Council Member as a result of Council Member Brett Shaw's resignation.

1. RESOLUTION Intent to Fill a Vacancy in the Office of First Ward City Council Member by Appointment

2. RESOLUTION Intent to Fill a Vacancy in the Office of First Ward City Council Member by Special Election

Suggested Disposition:

Receive and File; Adopt Resolution #1 OR #2.

ADJOURNMENT

The agenda with supporting documents may be accessed at www.cityofdubuque.org or at the City Clerk's Office, 50 W. 13th Street, during regular business hours.

This notice is given pursuant to Chapter 21, Code of Iowa, and applicable local regulations of the City of Dubuque, Iowa and/or governmental body holding the meeting.

Written comments regarding the above items may be submitted to the City Clerk's Office, 50 W. 13th St., Dubuque, IA 52001, before or at said time of meeting.

Individuals with limited English proficiency, vision, hearing or speech impairments or requiring special assistance should contact the City Clerk's Office at (563) 589-4100, TDD/TTY (563) 690-6678, ctyclerk@cityofdubuque.org as soon as feasible. Deaf or hard-of-hearing individuals can use Relay Iowa by dialing 711 or (800) 735-2942.

City of Dubuque Special Meeting

Action Items # 1.

ITEM TITLE: Filling a Vacancy in the Office of First Ward City Council Member
SUMMARY: City Council to discuss and determine the process for filling a vacancy in the Office of First Ward City Council Member as a result of Council Member Brett Shaw's resignation.

1. RESOLUTION Intent to Fill a Vacancy in the Office of First Ward City Council Member by Appointment

2. RESOLUTION Intent to Fill a Vacancy in the Office of First Ward City Council Member by Special Election

SUGGESTED DISPOSITION: Receive and File; Adopt Resolution #1 OR #2.Suggested Disposition:

ATTACHMENTS:

Description	Type
Staff Memo - City Attorney UDATED 7/8/20	Supporting Documentation
Staff Memo - City Attorney	Staff Memo
Resolution - Filling Mid-Term Vacancy by Appointment with Public Notice of Meeting	Resolutions
Resolution - Filling Mid-Term Vacancy by Special Election	Resolutions



CRENNA M. BRUMWELL, ESQ.
CITY ATTORNEY

TO: MAYOR ROY D. BUOL AND MEMBERS OF THE CITY COUNCIL

DATE: JULY 7, 2020

RE: MIDTERM VACANCY ON CITY COUNCIL

Background

With the resignation of Council Member Brett Shaw, I am providing a summary of the state law requirements and options for filling the vacancy.

A vacancy occurs upon any of the following:

- Officeholder's death
- On the date the officeholder no longer lives in the city or ward in which the officeholder was elected
- Officeholder submits a resignation, if the resignation is effective immediately
- On a specific date, if the resignation of the officeholder is effective at a future date
- Removal of an officeholder from office

A vacancy cannot be filled until it occurs. Councilmember Shaw's resignation was effective at midnight on July 7, 2020. The vacancy created by the resignation of Councilmember Brett Shaw is considered a mid-term vacancy. Mid-term vacancies can be filled by:

- 1) Appointment by the City Council, or
- 2) Special election

These options are outlined in Iowa Code 372.13(2) (emphasis added):

372.13 The council.

.....

2. A vacancy in an elective city office during a term of office shall be filled, at the council's option, by one of the two following procedures:

a. (1) By appointment by the remaining members of the council, except that if the remaining members do not constitute a quorum of the full membership, paragraph “b” shall be followed. The appointment shall be made within sixty days after the vacancy occurs and shall be for the period until the next regular city election described in section 376.1, unless there is an intervening special election for that city, in which event the election for the office shall be placed on the ballot at such special election. If the council fails to make an appointment within sixty days as required by this subsection, the city clerk shall give notice of the vacancy to the county commissioner and the county commissioner shall call a special election to fill the vacancy at the earliest practicable date but no fewer than thirty-two days after the notice is received by the county commissioner.

(2) If the council chooses to proceed under this paragraph, it shall publish notice in the manner prescribed by section 362.3, stating that the council intends to fill the vacancy by appointment but that the electors of the city or ward, as the case may be, have the right to file a petition requiring that the vacancy be filled by a special election. The council may publish notice in advance if an elected official submits a resignation to take effect at a future date. The council may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, there is filed with the city clerk a petition which requests a special election to fill the vacancy, an appointment to fill the vacancy is temporary and the council shall call a special election to fill the vacancy permanently, under paragraph “b”. The number of signatures of eligible electors of a city for a valid petition shall be determined as follows:

(a) For a city with a population of ten thousand or less, at least two hundred signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(b) For a city with a population of more than ten thousand but not more than fifty thousand, at least one thousand signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(c) For a city with a population of more than fifty thousand, at least two thousand signatures or at least the number of signatures equal to ten percent of the voters who voted for candidates for the office at

the preceding regular election at which the office was on the ballot, whichever number is fewer.

(d) The minimum number of signatures for a valid petition pursuant to subparagraph divisions (a) through (c) shall not be fewer than ten. In determining the minimum number of signatures required, if at the last preceding election more than one position was to be filled for the office in which the vacancy exists, the number of voters who voted for candidates for the office shall be determined by dividing the total number of votes cast for the office by the number of seats to be filled.

b. (1) By a special election held to fill the office for the remaining balance of the unexpired term. If the council opts for a special election or a valid petition is filed under paragraph “a”, the special election may be held concurrently with any pending election as provided by section 69.12 if by so doing the vacancy will be filled not more than ninety days after it occurs. Otherwise, a special election to fill the office shall be called by the council at the earliest practicable date. The council shall give the county commissioner at least thirty-two days’ written notice of the date chosen for the special election. The council of a city where a primary election may be required shall give the county commissioner at least sixty days’ written notice of the date chosen for the special election. A special election held under this subsection is subject to sections 376.4 through 376.11, but the dates for actions in relation to the special election shall be calculated with regard to the date for which the special election is called. However, a nomination petition must be filed not less than twenty-five days before the date of the special election and, where a primary election may be required, a nomination petition must be filed not less than fifty-three days before the date of the special election.

(2) If there are concurrent vacancies on the council and the remaining council members do not constitute a quorum of the full membership, a special election shall be called by the county commissioner at the earliest practicable date. The remaining council members shall give notice to the county commissioner of the absence of a quorum. If there are no remaining council members, the city clerk shall give notice to the county commissioner of the absence of a council. If the office of city clerk is vacant, the city attorney shall give notice to the county commissioner of the absence of a clerk and a council. Notice of the need for a special election shall be given under this paragraph by the end of the following business day.

An appointment or special election cannot occur until after the vacancy occurs.

Appointment

Appointment requires certain publication requirements be met. The City Council is required to publish notice the body intends to appoint an individual to complete the council

term at least four (4) but no more than twenty (20) days before the appointment will occur. The published notice must also include certain language notifying citizens of their right to request a special election by filing a petition. The notice published must be in a newspaper of general circulation.

If the City Council opts to appoint someone to fill the mid-term vacancy the appointment must be made within sixty (60) days after the vacancy occurs. If the City Council doesn't appoint someone to the vacant seat on the City Council within sixty (60) days, the City Clerk must notify the County Auditor. The County Auditor is required to call for a special election as soon as possible, but not sooner than sixty (60) days after the notice from the City Clerk as the City of Dubuque has a primary election provision in the Code of Ordinances.

Any person the City Council will consider for appointment is required to meet the same qualifications as a candidate seeking to run for the office. This means in the case of the vacancy created by Brett Shaw's resignation, the individual appointed must be a resident of Ward 1. Iowa Code §39.27

Note: Submission of a petition with 157 signatures from residents in Ward 1 per the Iowa Code requirements would trigger holding a special election to fill the vacancy.

For example, in order to fill the vacancy by appointment prior to City Council Goal Setting in August, a time line could look like this:

July 7-13, 2020	Special meeting of City Council to opt for appointment
July 14, 2020	Publication of Intent to Appoint (4 & 20 days)
August 3, 2020	Appointment made at a regular City Council meeting, swear-in appointed member
August 10, 2020	City Council Goal Setting

Special Election

I was asked whether this mid-term vacancy could be placed on the regular election ballot to be held November 3, 2020.

No, the vacancy cannot appear on the November 2020 regular election ballot as there is a prohibition on having a special election to fill a vacancy four (4) weeks before and four (4) weeks after a general election: October 6 – December 1, 2020. Iowa Code §39.2 (1)(a).

A special election can occur on any Tuesday outside of the October 6 – December 1, 2020 time frame. However, there is a complication I want to mention. The City of Dubuque is a primary city. Depending on the number of individuals who file to fill the

vacancy a primary may be necessary before the special election. This has implications for the time frame to fill the vacancy. I have reached out to the County Elections office to determine if the primary could be held prior to the blackout with the special election after the blackout or whether both the primary and special election would have to be held after the blackout. I'm still waiting on a response.

County Elections Discussion

It should be noted in discussing this matter with the County Elections representatives, they indicate a preference to avoid special elections during the ongoing pandemic as a matter of public health and safety.

Conclusion

I am available for questions and discussion. Depending on the questions, I may need to consult further with the City Clerk and County Elections staff. Two resolutions are provided for your consideration. One for appointment and one for special election.

cc: Michael C. Van Milligen, City Manager
Barry Lindahl, Senior Counsel
Kevin Firnstahl, City Clerk
Jenny Hillary, Dubuque County Deputy Commission of Elections

CRENNA M. BRUMWELL, ESQ.
CITY ATTORNEY

TO: MAYOR ROY D. BUOL AND MEMBERS OF THE CITY COUNCIL

DATE: JULY 7, 2020

RE: MIDTERM VACANCY ON CITY COUNCIL

Background

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- 1) Appointment by the City Council, or
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These options are outlined in Iowa Code 371.13(2) (emphasis added):

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(2) If the council chooses to proceed under this paragraph, it shall publish notice in the manner prescribed by section 362.3, stating that the council intends to fill the vacancy by appointment but that the electors of the city or ward, as the case may be, have the right to file a petition requiring that the vacancy be filled by a special election. The council may publish notice in advance if an elected official submits a resignation to take effect at a future date. The council may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, there is filed with the city clerk a petition which requests a special election to fill the vacancy, an appointment to fill the vacancy is temporary and the council shall call a special election to fill the vacancy permanently, under paragraph “b”. The number of signatures of eligible electors of a city for a valid petition shall be determined as follows:

(a) For a city with a population of ten thousand or less, at least two hundred signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(b) For a city with a population of more than ten thousand but not more than fifty thousand, at least one thousand signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(c) For a city with a population of more than fifty thousand, at least two thousand signatures or at least the number of signatures equal to ten percent of the voters who voted for candidates for the office at

the preceding regular election at which the office was on the ballot, whichever number is fewer.

(d) The minimum number of signatures for a valid petition pursuant to subparagraph divisions (a) through (c) shall not be fewer than ten. In determining the minimum number of signatures required, if at the last preceding election more than one position was to be filled for the office in which the vacancy exists, the number of voters who voted for candidates for the office shall be determined by dividing the total number of votes cast for the office by the number of seats to be filled.

b. (1) By a special election held to fill the office for the remaining balance of the unexpired term. If the council opts for a special election or a valid petition is filed under paragraph “a”, the special election may be held concurrently with any pending election as provided by section 69.12 if by so doing the vacancy will be filled not more than ninety days after it occurs. Otherwise, a special election to fill the office shall be called by the council at the earliest practicable date. The council shall give the county commissioner at least thirty-two days’ written notice of the date chosen for the special election. The council of a city where a primary election may be required shall give the county commissioner at least sixty days’ written notice of the date chosen for the special election. A special election held under this subsection is subject to sections 376.4 through 376.11, but the dates for actions in relation to the special election shall be calculated with regard to the date for which the special election is called. However, a nomination petition must be filed not less than twenty-five days before the date of the special election and, where a primary election may be required, a nomination petition must be filed not less than fifty-three days before the date of the special election.

(2) If there are concurrent vacancies on the council and the remaining council members do not constitute a quorum of the full membership, a special election shall be called by the county commissioner at the earliest practicable date. The remaining council members shall give notice to the county commissioner of the absence of a quorum. If there are no remaining council members, the city clerk shall give notice to the county commissioner of the absence of a council. If the office of city clerk is vacant, the city attorney shall give notice to the county commissioner of the absence of a clerk and a council. Notice of the need for a special election shall be given under this paragraph by the end of the following business day.

The City Council can publish notice of its intention to appoint or call for a special election before the vacancy occurs, but an appointment or special election cannot occur until after the vacancy occurs.

Appointment

Appointment requires certain publication requirements be met. The City Council is required to publish notice the body intends to appoint an individual to complete the council term at least four (4) but no more than twenty (20) days before the appointment will occur. The published notice must also include certain language notifying citizens of their right to request a special election by filing a petition. The notice published must be in a newspaper of general circulation.

If the City Council opts to appoint someone to fill the mid-term vacancy the appointment must be made within sixty (60) days after the vacancy occurs. If the City Council doesn't appoint someone to the vacant seat on the City Council within sixty (60) days, the City Clerk must notify the County Auditor. The County Auditor is required to call for a special election as soon as possible, but not sooner than sixty (60) days after the notice from the City Clerk as the City of Dubuque has a primary election provision in the Code of Ordinances.

Any person the City Council will consider for appointment is required to meet the same qualifications as a candidate seeking to run for the office. This means in the case of the vacancy created by Brett Shaw's resignation, the individual appointed must be a resident of Ward 1. Iowa Code §39.27

Note: Submission of a petition with 157 signatures from residents in Ward 1 per the Iowa Code requirements would trigger holding a special election to fill the vacancy.

For example, in order to fill the vacancy by appointment prior to City Council Goal Setting in August, a time line could look like this:

July 7-13, 2020	Special meeting of City Council to opt for appointment
July 14, 2020	Publication of Intent to Appoint (4 & 20 days)
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August 10, 2020	City Council Goal Setting

Special Election

I was asked whether this mid-term vacancy could be placed on the regular election ballot to be held November 3, 2020.

No, the vacancy cannot appear on the November 2020 regular election ballot as there is a prohibition on having a special election to fill a vacancy four (4) weeks before and four (4) weeks after a general election: October 6 – December 1, 2020. Iowa Code §39.2 (1)(a).

A special election can occur on any Tuesday outside of the October 6 – December 1, 2020 time frame. However, there are a couple complications I want to mention. The first

is that the City of Dubuque is a primary city. Depending on the number of individuals who file to fill the vacancy a primary may be necessary before the special election. This has implications for the time frame to fill the vacancy. Another layer of complication presents itself with the pending Five Flags Referendum which I will discuss.

Five Flags Ballot Issue Complication

The City Council has already verbally indicated the Five Flags referendum scheduled for September 8, 2020 will be postponed. A new date for the ballot issue has not been set. This is important to note as setting a date for the Five Flags ballot issue would trigger placement of the Ward 1 City Council vacancy on the same ballot, even if the City Council opts to appoint to fill the vacancy. Iowa Code §372.13. The specific language contained in the Iowa Code reads:

The appointment shall be made within sixty days after the vacancy occurs and shall be for the period until the next regular city election described in section 376.1, unless there is an intervening special election for that city, in which event the election for the office shall be placed on the ballot at such special election.

Councilperson Brett Shaw's seat is set to appear on the ballot in November 2021. The possible 2021 dates for the Five Flags special City election are:

First Tuesday in March
Second Tuesday in September
First Tuesday after the first Monday in November

If the City Council opts to appoint someone to the mid-term vacancy created by Councilperson Shaw's resignation but schedules the Five Flags ballot issue before November 2021, then the Ward 1 City Council vacancy must appear on the ballot with the Five Flags referendum. The implication looks a little like this, assuming the City Council opts to appoint to fill the mid-term vacancy:

Councilperson Shaw's term ends:	July 6, 2020
Vacancy Created:	July 7, 2020
July/August 2020:	Council takes applications/appoints
March 2021 Five Flags Special Election:	Ward 1 vacancy on ballot

The possibility exists the City Council Ward 1 seat could have four (4) different individuals representing the ward between July 2020 and January 2022:

Representative 1:	Councilperson Shaw through July 6, 2020
Representative 2:	Appointed Person, August 2020 -- March 2021.
Representative 3:	Special Election winner, March 2021 – December 31, 2021
Representative 4:	November 2021 winner begins service in January 2022

A similar situation is created by a September 2021 Five Flags Ballot issue, but the time frames are slightly different:

Representative 1:	Councilperson Shaw through July 6, 2020
Representative 2:	Appointed Person, August 2020 – September 2021
Representative 3:	Special Election winner, September 2021 – December 31, 2021
Representative 4:	November 2021 winner begins service in January 2022

The examples outlined for March and September Five Flags referendum dates assumes a City Council appointment without the filing of a petition for a special election. In the event a petition for a special election is received after an appointment the City Council must have a special election. A primary may also be necessary depending on the number of individual who file for the vacant position.

County Elections Discussion

It should be noted in discussing this matter with the County Elections representatives, they indicate a preference to avoid special elections during the ongoing pandemic as a matter of public health and safety.

Conclusion

I am available for questions and discussion. Depending on the questions, I may need to consult further with the City Clerk and County Elections staff.

cc: Michael C. Van Milligen, City Manager
Barry Lindahl, Senior Counsel
Kevin Firnstahl, City Clerk
Jenny Hillary, Dubuque County Deputy Commission of Elections

RESOLUTION NO. ____-20

**INTENT TO FILL A VACANCY IN THE OFFICE OF FIRST WARD CITY COUNCIL
MEMBER BY APPOINTMENT**

Whereas, there is a vacancy in the Office of City Council Member for the First Ward; and

Whereas, Iowa Code § 372.13(2)(a) allows the vacancy to be filled by appointment by the remaining members of the council for the period until the next pending election; and

Whereas, the council must publish notice in the manner prescribed by Iowa Code § 362.3, stating that the council intends to fill the vacancy by appointment but that the electors of the ward have the right to file a petition requiring that the vacancy be filled by a special election; and

Whereas, the council has elected to fill the vacancy in the Office of City Council Member for the First Ward by appointment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DUBUQUE, IOWA AS FOLLOWS:

1. The City council hereby elects to fill the vacancy in the Office of City Council Member for the First Ward by appointment following the publication of the required notice.
2. The City Clerk is directed to publish the attached notice in the manner prescribed by Iowa Code § 362.3.

Passed, approved and adopted this ____ day of _____, 2020.

Roy D. Buol, Mayor

Attest:

Kevin S. Firnstahl, City Clerk

**CITYOF DUBUQUE, IOWA
OFFICIAL NOTICE
NOTICE OF INTENT TO FILL A VACANCY IN THE OFFICE OF FIRST WARD CITY
COUNCIL MEMBER BY APPOINTMENT**

Pursuant to Resolution No. _____, notice is hereby given that the City Council intends to fill the vacancy in the Office of City Council Member for the First Ward by appointment as provided by law. The appointment is for the remaining balance of the unexpired term, until the next regular city election. The appointment will be made following the publication of this notice.

The electors of the First Ward have the right to file a petition requiring that the vacancy be filled by a special election. If within fourteen days after publication of this notice or within fourteen days after the appointment is made, there is filed with the City Clerk a petition with the required number of signatures which requests a special election to fill the vacancy, the appointment to fill the vacancy is temporary and the City Council will call a special election to fill the vacancy for the remaining balance of the unexpired term.

Dated _____

Kevin S. Firnstahl, City Clerk

RESOLUTION NO. _____-20

**INTENT TO FILL A VACANCY IN THE OFFICE OF FIRST WARD CITY COUNCIL
MEMBER BY SPECIAL ELECTION**

Whereas, there is a vacancy in the Office of City Council Member for the First Ward; and

Whereas, Iowa Code § 372.13(2)(b) allows the vacancy to be filled by a special election held to fill the office for the remaining balance of the unexpired term, which special election must be called by the City Council at the earliest practicable date; and

Whereas, the City Council has elected to fill the vacancy in the Office of City Council Member for the First Ward by a special election; and

Whereas, the City Council must give the County Commissioner at least sixty days' written notice of the date chosen for the special election.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DUBUQUE, IOWA AS FOLLOWS:

1. The City council hereby elects to fill the vacancy in the Office of City Council Member for the First Ward by a special election.
2. The County Commissioner is requested to hold a special election in accordance with state law at the earliest possible date to fill the vacancy in the Office of City Council Member for the First Ward for the remaining balance of the unexpired term.
3. The City Clerk is directed to provide a copy of this resolution to the County Commissioner .

Passed, approved and adopted this ____ day of _____, 2020.

Roy D. Buol, Mayor

Attest:

Kevin S. Firnstahl, City Clerk