

# VACANCIES

## HOW ARE VACANCIES CREATED ON CITY COUNCILS?

### SDCL 3-4-1

#### RESIGNATION

Change of residence

Death

Removal from office

Failure to qualify

Criminal conviction involving violation of oath

Judgment against incumbent for breach of bond

**Military call up (SDCL 3-4-8)**

**Incapacitation- *by illness or accident* (SDCL 3-4-9)**

**No one files a nominating petition (SDCL 9-13-14.3)**

# VACANCIES

## HOW ARE MUNICIPAL VACANCIES FILLED?

- By appointment **SDCL 9-13-14.1:**
  - At the end of December 2015 the Attorney General issued an opinion (15-03) clarifying that an appointee serves until the next annual election not the next regularly scheduled election. This means that an appointee only serves until the next year regardless of whether you have an annual election scheduled. Also, if the seat remains unfilled it would be up for election the next year.
    - Examples:
      - CM Smith resigns October 2016. Council appoints CM Jones. Jones serves until April 2017.
      - CM Smith resigns January 2017. Council appoints CM Jones. Jones serves until April 2017.
- By special election **SDCL 9-13-14.2**
- By temporary replacement **SDCL 3-4-8**



# VACANCIES

## FILLING MUNICIPAL VACANCY BY APPOINTMENT

### ○ SDCL 9-13-14.1

- Remember in Aldermanic form of government the appointment must be from the same ward.
- Appointing can be an easier, faster, and less costly process.
- Remaining members shall appoint a replacement to serve until the next annual municipal election.
  - Keep track of the terms when there has been an appointment.
  - Official that is vacating his position does not vote on his replacement.
  - The Mayor may make a recommendation but the remaining members vote on the appointment.
  - There are no publication rules or notices for filling a vacancy.



# VACANCIES

## FILLING MUNICIPAL VACANCY BY SPECIAL ELECTION

- Governing body creates an ordinance requiring that any vacancy on the governing board or in the office of the Mayor is to be filled by special election.
- The ordinance must be enacted prior to the vacancy.
- Election not to be held less than 90 days before the annual municipal election.
- Finance Officer will publish a notice that a vacancy exists and will be filled by special election, the date of election, time and place where nominating petitions may be filed for the office. Nominating petitions prepared and filed as usual according to **SDCL 9-13-7**, and filed at least 30 days before the date of the elections.
- Notice of special election published as usual according to **SDCL 9-13-13** and **9-13-14**.



# VACANCIES

## FILLING MUNICIPAL VACANCY BY TEMPORARY REPLACEMENT

- In the cases of Military call-up (**SDCL 3-4-8**) or Incapacitation (**SDCL 3-4-9**):
  - The member temporarily resigns
  - A temporary replacement is made by appointment
    - The replacement serves until the original member returns or the member's term expires, which ever comes first.
    - If the replacement serves until the original members term expires and no one files for the position, then a vacancy is created. The temporary replacement would then need to be re-appointed if they wanted to continue to serve.



# VACANCIES

## WHAT IF NO ONE FILES A MUNICIPAL NOMINATING PETITION?

- Law since July 2014
  - If for any reason a municipality fails to elect any person to succeed an elected official whose term has expired or an elected official fails to file a nominating petition or qualify, the office is deemed vacant ([SDCL 9-13-14.3](#)).
  - The elected official whose term has expired shall continue to act in an official capacity until the vacancy is filled by election or appointment pursuant to [9-13-14.1](#) or [9-13-14.2](#).



# VACANCIES

## HOW ARE VACANCIES CREATED ON SCHOOL BOARDS? *SDCL 13-8-23*

- Death
- Removal from the board
- Failure to qualify as provided by law
- Ceases to be a **resident\*** of the school district or representation area where elected
- Conviction of any infamous crime or of any offense involving a violation of the member's official oath
- Has a judgment obtained against the member for breach of the member's official bond
- Is incapacitated and is unable to attend to the duties of the position
- Assumes the duties of an office incompatible with the duties of a school board member
- Resignation

**\*Note:** this says “resident” not “resident voter” which is the language for a candidate to qualify for office.



# VACANCIES

## HOW ARE SCHOOL VACANCIES FILLED?

- Any vacancy occurring on a school board shall be **filled by appointment** by the remaining school board members.
  - In the case of a resignation the member resigning could be involved in selection of his successor (SDCL 13-8-25(3))
  - A resignation shall not be effective until the successor is appointed and qualified as prescribed by law (SDCL 13-8-24).
- In the cases of Military call-up (SDCL 3-4-8) or Incapacitation (SDCL 3-4-9):
  - The member temporarily resigns
  - A temporary replacement is made by appointment
    - The replacement serves until the original member returns or the member's term expires, which ever comes first.
    - If the replacement serves until the original members term expires and no one files for the position, then a vacancy is created. The temporary replacement would then need to be re-appointed if they wanted to continue to serve.
- The appointee will serve until the next succeeding election at which time a successor shall be elected to serve the unexpired term (SDCL 13-8-25).

# Questions?

