



# Vacancies, Resignations, Removals, and Holdovers

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# Topic overview

- ▶ Focus on Type A General law cities, but at times reference Type B and C cities
- ▶ These laws apply to cities with council terms of 2 years or less (filing vacancy context)
- ▶ Home Rule cities- see your Charter

# Video clip



# Is that a valid resignation?

- ▶ Type A General law city – Tex. Loc. Gov't. Code (LGC) 22.012
- ▶ RESIGNATION OF ELECTED OR APPOINTED MUNICIPAL OFFICER. A municipal officer elected or appointed under this chapter may resign by submitting the resignation in writing to the governing body of the municipality. The resignation is subject to the approval and acceptance of the governing body. However, a person who is appointed by the mayor may submit the written resignation to the mayor for the mayor's action.

# Answer: No.

- ▶ Councilmember Daffy Duck's tantrum **does not** a resignation make.
- ▶ Per LGC 22.012, for a resignation to be effective, it must be:
  - written;
  - submitted to the City's governing body; and
  - approved and accepted by the governing body.

**OH, BUT WAIT...**

# There is more...

## ▶ Tex. Elect. Code (EC) Section 201.023

- ▶ RESIGNATION. If an officer submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the appropriate authority or on the eighth day after the date of its receipt by the authority, whichever is earlier.

## ▶ EC 201.023

- ▶ RESIGNING OR DECLINING OFFICE. (a) To be effective, a public officer's resignation or an officer-elect's declination must be in writing and signed by the officer or officer-elect and delivered to the appropriate authority for acting on the resignation or declination. The authority may not refuse to accept a resignation.
- ▶ (b) If the authority to act on a resignation or declination is a body, the resignation or declination may be delivered to the presiding officer of the body or to its clerk or secretary.

# So, the real law is this:

- ▶ For a resignation to be effective, it must be written;  
signed;  
submitted to the City's governing body; and  
either approved and accepted by the governing body or if not approved or accepted by the governing body, then the resignation will be effective 8 days after the date the City received the resignation.

See also Texas Attorney General Opinion GA-0046 and *State v. Hardberger*, 932 S.W.2d 489 (Tex. 1996).



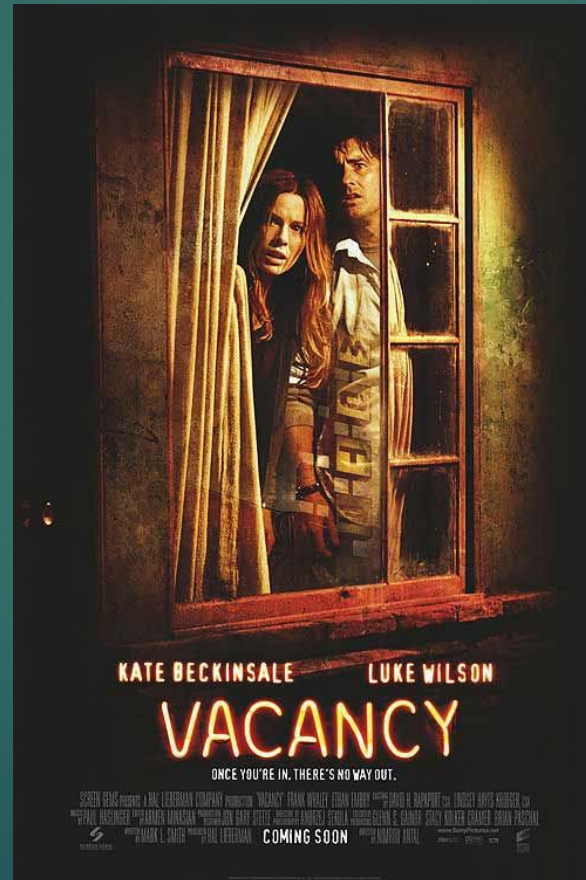
# Practice tips

- ▶ You will likely have a Councilmember state that their resignation is effective immediately. The councilmember can state such but that does not make it effective immediately. The resignation will be effective on the earlier of acceptance by the Council or 8 days after submitted.
- ▶ Based on Agenda posting requirements, it is likely that the resignation will be effective automatically 8 days after the date it is submitted, unless City Council holds a special meeting to accept the resignation. City Attorney needs to be cognizant of quorum requirements for special meetings.
- ▶ Can a councilmember withdraw their resignation? A councilmember may withdraw their resignation before it becomes effective.

Once a resignation is effective, it then  
creates a

VACANCY

A vacancy can be as terrifying as the horror movie by the same name.



# Besides a resignation, what else triggers a vacancy?

- ▶ A vacancy may be created by:
  - Death (EC 201.022)
  - Removal (EC 201.024)
  - Dual office holding (EC 201.025)- First office is automatically resigned when person qualifies for second office.
  - Court or other tribunal's order of ineligibility (EC 201.026)
  - Fails to qualify within 30 days after the date of election (LGC 22.007)
  - Moving from ward (LGC 22.041)
  - Missing 3 regular, consecutive meetings without City Council approval or sick
  - (Resign to run under certain circumstances)

# How to fill a vacancy.

- ▶ If there is only one vacancy, the vacancy can be filled either by city council appointment or by the city council ordering a special election. (LGC 22.010). If filled by appointment, then new member holds office until the next regular election. In a Type B city (with 2-year terms), the city council shall appoint a replacement if there is a single vacancy and does not have the ability to order a special election.
- ▶ If the mayor's position is vacant, the city council may appoint one of their own members to serve as mayor.
- ▶ If there are 2 vacancies, the city council **SHALL** order a special election. (LGC 22.010)

# If you remember nothing else...

- ▶ Remember that regardless of how the vacancy triggered, the City likely does not want to have 2 vacancies at the same time. 2 vacancies means the City must hold a special election.
- ▶ A special election can only occur on a uniform election date (i.e. November or May); however, in an emergency, the Governor may order a special election for a city on a non-uniform election date. (EC 41.0011)

# Practice tips

- ▶ The city is allowed to time the acceptance of a resignation so that 2 vacancies do not trigger.
  - ▶ EXAMPLE: DAFFY DUCK RESIGNS ON JUNE 1<sup>ST</sup>. PORKY PIG RESIGNS ON JUNE 2<sup>ND</sup>. The resignations would be effective on June 9<sup>th</sup> and 10<sup>th</sup>, respectively (unless accepted by city council before that date). Therefore, city council can hold a special meeting after posting 72 hours notice and before June 9<sup>th</sup>. The Council can then accept Daffy's resignation and then appoint a successor. The Council could then accept Porky's resignation and then appoint a successor or wait until the resignation is automatic on June 10<sup>th</sup> and deal with the vacancy at later date.

What happens if the council  
cannot or does not fill a vacancy?

HOLD OVER



Or as I call, being Schwarzeneggered



# Texas Constitution Article 16, Sec. 17

OFFICERS TO SERVE UNTIL SUCCESSORS QUALIFIED.  
All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

No vacuum of power.

- ▶ Exception to the Holdover doctrine: See Texas Attorney General Opinion GA-0175 – If removed from office, holdover does not apply. Consequence may be the city loses its quorum.

# Practice tips

- ▶ Council will not believe you when you tell them about this concept.
- ▶ The city cannot force the councilmember to come to any meetings or do anything.
- ▶ The councilmember is still a councilmember for all purposes until successor replaced.
- ▶ Depending on the number of councilmembers that resign, the city may have quorum issues.

If no quorum to order a special election to fill the vacancies, state law allows the county to call the election for the city under certain circumstances. (LGC 22.011)

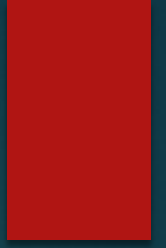
# Removal

- ▶ Limited in a general law city:
  - District Court order (LGC 21.021)
    - Incompetency;
    - Official misconduct; or
    - Intoxication
    - If occurred before office, then not grounds
  - Recall election for certain cities. (LGC 21.101)
  - For additional source material, Scott Houston wrote a paper on this topic in 2010. If you need help sleeping at night, this also serves as a legal narcotic.

# Practice tips

- ▶ Old ordinances have old laws. The following is an example that is still on the books.
- ▶ **Sec. 2-121. - Procedure for removal.**
- ▶ (a) *Charges against councilmembers ruled by mayor and remaining councilmembers.* Any person wishing to charge any councilmember with any act or omission which may be cause for his removal shall present such charges in the form of a written sworn complaint to the mayor. The mayor shall file such complaint with the city secretary and cause the councilmember so charged to be served with a copy of such complaint, either by hand delivery or by U.S. mail, certified, return receipt requested. The mayor shall set a date for the trial of the cause and notify the councilmember so charged and the other councilmembers of the village to appear on such date. Notice of such trial shall be given as required by the Texas Open Meetings Act, V.T.C.A., Government Code ch. 551. The mayor and councilmembers of the village, except the councilmember against whom the complaint is made, shall constitute the court to try and determine the case.

And this just happened in one of  
my cities just a few months ago.



## RECALL PETITION

This petition seeks to initiate a recall election to remove [REDACTED], City of [REDACTED] Council member Position #5. This action is initiated due to a lack of confidence in her ability to represent the best interest of the city.

52.	[REDACTED]	[REDACTED]
53.	[REDACTED]	[REDACTED]
54.	[REDACTED]	[REDACTED]
55.	[REDACTED]	[REDACTED]
56.	[REDACTED]	[REDACTED]
57.	[REDACTED]	[REDACTED]
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