

To Village of Cottage Grove Board of Trustees

From Rick Manthe and Larry Konopacki

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Re Filling a Vacancy in the Office of Trustee

This memorandum first outlines the options and procedure for filling a Village trustee vacancy. It then discusses the potential options for the Village Board to address trustee vacancies.

Options for filling a vacancy.

Under the Wisconsin Statutes, a trustee's term of office is two years.¹ A Village Board may fill a vacancy in the office of trustee as follows:

- By appointment for the remainder of the unexpired term.
- By appointment until a special election is held, as ordered by the Village Board. Special elections must be ordered and held in compliance with Chapter 8 of the Wisconsin Statutes, as discussed below.²

Alternatively, a Village Board may choose to leave a seat vacant until an election is held. Although not explicitly defined, it is our opinion that "election" for this purpose means either a special election called by the Village Board or the regularly scheduled election which coincides with the expiration of the term. Thus, the seat may remain vacant until filled by special election or for the remainder of the unexpired term.³

Procedure for filling a vacancy by appointment.

State law requires that appointments to fill a vacancy be made by "majority vote" but is otherwise silent regarding procedure. Therefore, the Village Board may fill a vacancy by a simple majority vote and may determine its own procedure for nominating candidates

¹ Wis. Stat. § 61.20(1).

² Wis. Stat. § 17.24.

³ Wis. Stat. § 17.24.

and selecting a person to fill a vacancy. However, a vacancy cannot be filled by secret ballot.⁴ The appointment is complete when the result of a sufficient vote is ascertained and announced. No resolution is necessary.⁵

Procedure for filling a vacancy by special election.

Special elections are elections that are held to fill elected offices that become vacant during the term of office.⁶ They may be held on the same date as the regularly scheduled elections (spring election or general election) or may be held on other dates, subject to the following requirements.

A special election to fill a vacant village office may be held only by order of the Village Board.⁷ The order must be filed with the village clerk, who must then publish notice of the special election as required by statute.⁸ The date for a special election must be between 62 and 77 days from the date of the order.⁹

Options for filling the Village Board vacancy.

The Village Board may address a vacancy in the following ways:

1. Appoint someone to fill the vacancy for the remainder of the unexpired term.
2. Appoint someone to fill the vacancy and order a special election. Under this option, the appointee would serve until a successor is elected and qualified after a special election. The successor would serve for the remainder of the unexpired term.
3. Leave the seat vacant and order a special election. Under this option, the person elected would serve for the remainder of the unexpired term.
4. Leave the seat vacant. Under this option, the seat would be filled at the regularly scheduled spring election in which the position is on the ballot.

If the Village Board wishes to fill the seat by special election, then it must order the special election in compliance with the timelines discussed above. Such an election would need to be held between 62 and 77 days after the order was issued. Since there are no

⁴ Wis. Stat. § 19.88(1).

⁵ *State ex rel. Burdick v. Tyrell*, 158 Wis. 425, 433, 149 N.W. 280 (1914).

⁶ Wis. Stat. § 5.05(19).

⁷ Wis. Stat. § 8.50(1)(a).

⁸ State law requires that a village clerk provide specific notices on several occasions preceding a special election. *See* Wis. Stat. §§ 8.50(1)(b) to (c) and 10.06 (3)(f).

⁹ Wis. Stat. § 8.50(2)(a).

general elections this upcoming November, the 2026 Spring election would be the next available general election date.