

Background and Application Instructions for the Vacant Town Council Seat

February 11, 2017

This is to provide a summary on the Town of Amherst's plan and procedure to fill the vacant seat on the Town Council and to issue a standard set of application instructions to all interested individuals.

The vacancy was created when an individual that was elected on November 8, 2016 did not take the required oath of office. Laws pertaining to this situation are contained in Article II, Sections 2 and 4 of the Town Charter, §24.2-225 through § 24.2-229.1 of the Code of Virginia, and Sec. 2-57 of the Town Code.

§24.2-228 of the Code of Virginia requires the appointee to be a qualified voter in the Town of Amherst.

Duties of the Town Council are as described in the Town Charter, the Town Code and the Code of Virginia. Regular Town Council meetings are held on the second Wednesday of each month at 7:00 PM in the Council Chambers of the Town Hall. The individual appointed would serve until after a successor is certified during the November 2017 general election process.

Applicants should complete a Town of Amherst Application for Appointment to Town Council form available on the Town's web site at www.amherstva.gov and return it to the Town Hall at townhall@amherstva.gov or 174 S. Main Street; P.O. Box 280; Amherst, VA 24521. Submission of a resume and other relevant material is encouraged but optional.

General inquiries via telephone or in person are discouraged. Applications will be reviewed on the basis of apparent qualifications and interviews. Applications will be received up until the position is filled but the following timetable is envisioned:

- March 1 – Application review begins
- March 6, 7:00 PM – Scheduled interviews and vote to appoint during a special Town Council meeting
- Selected individual takes the required oath of office
- March 8, 7:00 PM – New Town Councilor participates in the monthly Town Council meeting

Appointment to Town Council

The Town Council of the Town of Amherst is accepting applications from individuals who desire to be appointed to a vacant seat on the Town Council. Interested individuals who are registered to vote in the Town of Amherst are invited to apply before March 1, 2017. Information on the process, including the application form, can be found at www.amherstva.gov.

**TOWN OF AMHERST
APPLICATION FOR APPOINTMENT TO TOWN COUNCIL**

The following contact and biographical information is requested for each applicant for appointment to the Town Council. When completed, please return to: Town of Amherst, Attn: Town Clerk, 174 S. Main Street, P.O. Box 280, Amherst, VA 24521 or by email to townhall@amherstva.gov. Applicants are advised that all information provided will be made available to the public and will not be considered subject to confidentiality as an exception to the Freedom of Information Act.

Full Legal Name: _____

Mailing Address: _____

Home Address: _____

E-mail Address: _____

Phone No: Office _____ Work _____ Mobile _____

Length of time at present address: _____

Are you registered to vote in the Town of Amherst elections? _____

Employer Name: _____ Address: _____

Current employment position: _____

List specific information which might qualify you for this appointment: _____

Why are you interested in serving on the Town Council?

Please feel free to attach other information or documentation.

Signature of Applicant

Date

Town of Amherst Charter: Art. II Administration and Government

(2) *Biennial elections; composition of town council; acts and terms of office of mayor and councilmen.* On the day specified by general law for the holding of municipal elections in every even-numbered year, there shall be elected for two year terms by the qualified voters of the town, one elector of the town, who shall be denominated mayor, and five other electors, who shall be denominated councilmen, and the mayor and councilmen shall constitute the town council. They shall enter upon the duties of their offices on the first day of January next succeeding their election, and shall continue in office until their successors are duly elected and qualified. Every person so elected shall take an oath faithfully to execute and discharge the duties of his office to the best of his judgment, and the mayor shall take the oath prescribed by law for State officers. **The failure of any person elected or appointed under the provisions of this charter to qualify or to take the oath required, within the time prescribed for entering upon the discharge of the duties of the office to which he is elected or appointed, shall vacate the said office, and the council shall proceed and is hereby vested with power to fill such vacancy in the manner herein prescribed.**

(4) *Council as judge of qualifications and returns of members; power to fine and expel council members, and to fill vacancies in council.* The council shall judge of the election, qualification, and returns of its members; may fine them for disorderly conduct, and, with the concurrence of two-thirds, expel a member. If any person returned be adjudged disqualified, or be expelled, a new election to fill the vacancy shall be held on such day as the council may prescribe. **Any vacancy occurring otherwise during the term for which such person was elected shall be filled by the council by the appointment of any one eligible to such office.** A vacancy in the office of mayor shall be filled by the council from the electors of the town, and any member of the council may be eligible to fill such vacancy.

Code of Virginia: Title 24.2. Elections

Article 6. Vacancies in Elected Constitutional and Local Offices.

§ 24.2-225. Applicability.

This article applies to vacancies in any elected constitutional or local office if there is no other statutory or charter provision for filling a vacancy in the office. Further provisions within this article which specifically override other statutory or charter provisions shall prevail.

Code 1950, § 24-145; 1958, c. 621; 1970, c. 462, § 24.1-76; 1975, c. 515; 1976, c. 616; 1977, c. 490; 1984, c. 480; 1993, c. 641 .

§ 24.2-226. Election to fill vacancy.

A. A vacancy in any elected local office, whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term, shall be filled as provided by § [24.2-228](#) or for constitutional officers as provided in § [24.2-228.1](#), or unless provided otherwise by statute or charter requiring special elections within the time limits provided in this title. The governing body or, in the case of an elected school board, the school board of the county, city, or town in which the vacancy occurs shall, within 15 days of the occurrence of the vacancy, petition the circuit court to issue a writ of election to fill the vacancy as set forth in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6. Either upon receipt of the petition or on its own motion, the court shall issue the writ ordering the election promptly and shall order the special election to be held on the date of the next general election in November or in May if the vacant office is regularly scheduled by law to be filled in May. However, if the governing body or the school board requests in its petition a different date for the election, the court shall order the special election be held on that date, so long as the date requested precedes the date of such next general election and complies with the provisions of § [24.2-682](#). If the vacancy occurs within 90 days of the next such general election and the governing body or the school board has not requested in its petition a different date for the election, the special election shall be held on the date of the second such general election. Upon receipt of written notification by an officer or officer-elect of his resignation as of a stated date, the governing body or school board, as the case may be, may immediately petition the circuit court to issue a writ of election, and the court may immediately issue the writ to call the election. The officer's or officer-elect's resignation shall not be revocable after the date stated by him for his resignation or after the forty-fifth day before the date set for the special election. The person so elected shall hold the office for the remaining portion of the regular term of the office for which the vacancy is being filled.

B. Notwithstanding any provision of law or charter to the contrary, no election to fill a vacancy shall be ordered or held if the general election at which it is to be called is scheduled within 60 days of the end of the term of the office to be filled.

C. Notwithstanding any provision of law or charter to the contrary, when an interim appointment to a vacancy in any governing body or elected school board has been made by the remaining members thereof, no election to fill the vacancy shall be ordered or held if the general election at which it is to be called is scheduled in the year in which the term expires.

Code 1950, §§ 24-145, 24-147.1; 1958, c. 621; 1970, c. 462, §§ 24.1-76, 24.1-79; 1975, c. 515; 1976, c. 616; 1977, c. 490; 1984, c. 480; 1993, c. 641; 1996, c. [873](#); 2000, cc. [787](#), [1045](#), [1070](#); 2003, c. [1015](#); 2010, cc. [431](#), [449](#), [645](#); 2011, c. [206](#); 2014, c. [476](#).

§ 24.2-227. Interim appointment by court until vacancy filled by election for certain offices.

When a vacancy occurs in any local elected office other than a constitutional office, local governing body, or an elected school board, a majority of the judges of the judicial circuit for the county or city in which it occurs shall make an interim appointment to the office until the vacancy can be filled by special election. The senior judge shall make the appointment if a majority of the judges cannot agree. The chief or senior deputy, if there is one in the office, shall perform all the duties of the office until the person appointed to fill the vacancy has qualified. The person so appointed shall hold office until the qualified voters fill the vacancy by election and the person so elected has qualified.

Code 1950, § 24-145; 1958, c. 621; 1970, c. 462, § 24.1-76; 1975, c. 515; 1976, c. 616; 1977, c. 490; 1984, c. 480; 1993, c. 641; 1996, c. [873](#); 2000, cc. [787](#), [1070](#).

§ 24.2-228. Interim appointment to local governing body or elected school board; elected mayor.

A. When a vacancy occurs in a local governing body or an elected school board, the remaining members of the body or board, respectively, within 45 days of the office becoming vacant, may appoint a qualified voter of the election district in which the vacancy occurred to fill the vacancy. If a majority of the remaining members of the body or board cannot agree, or do not act, the judges of the circuit court of the county or city may make the appointment. Notwithstanding any charter provisions to the contrary, the person so appointed shall hold office only until the qualified voters fill the vacancy by special election pursuant to § [24.2-682](#) and the person so elected has qualified. Any person so appointed shall hold office the same as an elected person and shall exercise all powers of the elected office.

If a majority of the seats on any governing body or elected school board are vacant, the remaining members shall not make interim appointments and the vacancies shall be filled as provided in § [24.2-227](#).

B. When a vacancy occurs in the office of a mayor who is elected by the voters, the council shall make an interim appointment to fill the vacancy as provided in subsection A.

C. For the purposes of this article and subsection D of § [22.1-57.3](#), local school boards comprised of elected and appointed members shall be deemed elected school

boards.

D. The failure of a member of a local governing body or elected school board or mayor to take the oath of office required by § [49-1](#) before attending the first meeting of the governing body or school board held after his election shall not be deemed to create a vacancy in his office provided that he takes the oath within 30 days after that first meeting.

1975, c. 515, § 24.1-76.1; 1993, c. 641; 1996, c. [873](#); 1999, c. [128](#); 2010, cc. [431](#), [624](#); 2011, c. [78](#).

§ 24.2-228.1. Election to fill vacancy in constitutional office.

A. Notwithstanding any provision of a charter to the contrary, a vacancy in any elected constitutional office, whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term, shall be filled by special election, except as provided in subsection B. Within 15 days of the occurrence of the vacancy, the governing body of the county or city in which the vacancy occurs shall petition the circuit court to issue a writ of election to fill the vacancy as set forth in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6. Either upon receipt of the petition or on its own motion, the court shall promptly issue the writ ordering the election for a date determined pursuant to § [24.2-682](#). However, the governing body may request in its petition that the special election be held on the date of the next general election in November, and the court may order the special election to be held on that date.

B. If a vacancy in any elected constitutional office occurs within the 12 months immediately preceding the end of the term of that office, the governing body may petition the circuit court to request that no special election be ordered. Upon receipt of such petition, the court shall grant such request. The highest ranking deputy officer, or in the case of the office of attorney for the Commonwealth, the highest ranking full-time assistant attorney for the Commonwealth, who is qualified to vote for and hold that office, shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers, for the remainder of the unexpired term.

C. Upon receipt of written notification by an officer or officer-elect of his resignation as of a stated date, the governing body may immediately petition the circuit court to issue a writ of election, and the court may immediately issue the writ to call the election. The officer's or officer-elect's resignation shall not be revocable after the date stated by him for his resignation or after the thirtieth day before the date set for the special election.

D. Notwithstanding the provisions of subsection A, a vacancy in any elected constitutional office in any county or city with a population of 15,000 or less, or shared by two or more units of government with a combined population of 15,000 or less, shall be filled by a special election ordered by the court to be held at the next ensuing general election to be held in November. If the vacancy occurs within 90 days prior to that election, however, the writ shall order the election to be held at the

second ensuing such general election.

E. Notwithstanding any provision of law to the contrary, no election to fill a vacancy shall be ordered or held if the general election at which it is to be called is scheduled within 60 days of the end of the term of the office to be filled.

F. Notwithstanding any provision of a charter to the contrary, the highest ranking deputy officer, or in the case of the office of attorney for the Commonwealth, the highest ranking full-time assistant attorney for the Commonwealth, if there is such a deputy or assistant in the office, who is qualified to vote for and hold that office, shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers, until the qualified voters fill the vacancy by election and the person so elected has qualified and taken the oath of office. In the event that (i) there is no deputy officer or full-time assistant attorney for the Commonwealth in the office or (ii) the highest-ranking deputy officer or assistant attorney for the Commonwealth declines to serve, the court shall make an interim appointment to fill the vacancy pursuant to § [24.2-227](#) until the qualified voters fill the vacancy by election and the person so elected has qualified and taken the oath of office.

G. The absence from the county or city of a constitutional officer by reason of his service in the Armed Forces of the United States shall not be deemed to create a vacancy in the office without a written notification by the officer of his resignation from the office. Notwithstanding any other provision of law, including § [19.2-156](#), the power to relieve a constitutional officer of the duties or powers of his office or position during the period of such absence shall remain the sole prerogative of the constitutional officer unless expressly waived by him in writing.

2000, cc. [787](#), [1070](#); 2003, c. [1015](#); 2006, cc. [120](#), [253](#); 2009, c. [157](#); 2011, c. [599](#); 2015, c. [648](#); 2016, cc. [453](#), [511](#).

§ 24.2-229. Appointees to qualify and give bond in thirty days.

All officers appointed to fill vacancies shall qualify and give bond, if bond is required, within thirty days after their appointment in like manner as provided in §§ [15.2-1522](#) and [15.2-1523](#) for the qualification of such officers when elected by the people.

Code 1950, § 24-146; 1970, c. 462, § 24.1-77; 1975, c. 515; 1993, c. 641 .

§ 24.2-229.1. Legitimacy of votes by appointees.

All votes cast prior to July 1, 2010, by persons duly appointed to fill a vacancy pursuant to this article, including votes appropriating money in excess of \$500, imposing taxes, or authorizing the borrowing of moneys, are hereby validated and confirmed as the lawful vote of an elected member of the governing body.

2010, c. [624](#).

Town Code

Sec. 2-57 Policy on process for appointments to vacant town council seats.

I. Purpose:

The purpose of this policy is:

- a. To provide an expedited and consistent procedure for the appointments to the vacated seats of the Amherst Town Council.
- b. To encourage participation in a free and democratic local government; and
- c. To seek qualified individuals for appointments.

II. Procedure:

- a. The Town Clerk will make public notice of all unexpected vacancies to the seats of Town Councilor immediately upon notification of said vacancy. The Clerk will also immediately notify the mayor and other members of the Council of said vacancy.
- b. The Town Clerk shall be authorized to automatically make the public notice without direct order of the Mayor or Council.
- c. "Public Notice" is defined as posting of vacancies in a conspicuous location at the Town Hall; advertisement in the Amherst New-Era Progress; and posting on any official Town of Amherst web site.
- d. Any eligible individual desiring to be considered for appointment to a vacated seat on Town Council shall complete a Town of Amherst Application for Appointment to Town Council and return it to the Town Clerk within thirty (30) days of the effective date of the vacancy.
- e. The Town Clerk shall forward all applications to the Mayor with copies to Town Council Members and arrange for a closed session of the Council at the next regular Council meeting following the application deadline or at a special called meeting of the Council for the purpose of making appointments to vacated seats on Town Council.
- f. The Town Council may schedule interviews with prospective appointees at its discretion.
- g. The Town Council has the authority to appoint qualified individuals to vacant seats on the Town Council under per of Sec. 3.01(4) of the Town Charter. The Town Council shall endeavor to appoint a qualified individual to a vacant seat on the Town Council within the time limits prescribed by Section 24.2-228 of the Code of Virginia.

(Adopted September 8, 2004.)