

SOLGM

NZ SOCIETY OF LOCAL GOVERNMENT MANAGERS



CODE OF GOOD PRACTICE

For the Management of Local Authority
Elections and Polls

Part 19 Term of Elected Members/ Extraordinary Vacancies

Produced by the
SOLGM Electoral Working Party

Contents

| | |
|------------------------------------|---|
| Introduction | 3 |
| Objective | 3 |
| Legislative requirements | 3 |
| Recommended practices | 4 |

Introduction

- 19.1 This Part of the Code deals with the term of membership of elected members and the filling of extraordinary vacancies. Electoral officers need to be aware of the differences that exist between the different types of local authorities, both for terms (particularly around coming into office) and extraordinary vacancies.
- 19.2 An extraordinary vacancy can arise in a number of ways.
- There may be insufficient nominations for an election to fill all of the vacancies.
 - A candidate at a triennial election may have been elected Mayor and as a member of the same territorial authority and there is no other candidate to fill the consequential vacancy for a member.
 - A candidate at a triennial election may have been elected as a member of both a territorial authority and one of its community boards and there is no other candidate to fill the consequential vacancy for a community board member.
 - A community board member in a by-election may be elected as a member of the territorial authority.
 - A member may:
 - be disqualified from office;
 - become incapable of holding office;
 - resign from office;
 - die;
 - become a mentally disordered person;
 - be ousted from office;
 - be absent without leave.
- 19.3 It is important to note that by-elections are not permitted for extraordinary vacancies on district health boards (DHBs).

Objective

To assist electoral officers to understand the legislative provisions relating to the term of office of elected members and extraordinary vacancies and to be prepared should an extraordinary vacancy occur.

Legislative requirements

- 19.4 The legislative provisions relating to term of office and extraordinary vacancies are:

Local Government Act 2002

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| Section 48 | Further provisions of Schedule 7 |
| <u>Schedule 7</u> | |
| Clause 1 | Disqualification of members |
| Clause 2 | Ouster of office of member |
| Clause 4 | Member's right to resign |
| Clause 5 | Extraordinary vacancies |

Local Electoral Act 2001

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|--------------|---|
| Section 64 | Vacancies remaining unfilled to be extraordinary vacancies |
| Section 87 | Death or incapacity of elected candidate before declaration of result of election |
| Section 88 | What happens if same person elected as Mayor and another member |
| Section 88A | What happens if same person elected to both territorial authority and community board |
| Section 88E | What happens if no amended declaration can be made |
| Section 88F | What happens if member of community board becomes member of territorial authority |
| Section 115 | When members come into office |
| Section 116 | When members leave office |
| Section 117 | Extraordinary vacancy in local authority or community board |
| Section 117A | Power to fill by appointment extraordinary vacancy in community board |
| Section 118 | Notice of intention to fill vacancy by appointment |
| Section 119 | Notice of intention to leave vacancy unfilled |
| Section 120 | Election to fill extraordinary vacancy |

New Zealand Public Health and Disability Act 2000

Schedule 2

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|-----------|---------------------------------------|
| Clause 10 | No by-elections |
| Clause 14 | When elected members come into office |

Sale of Liquor Act 1989

| | |
|-------------|--|
| Section 195 | In default of election, Governor-General may appoint members |
| Section 200 | Disqualification of members of trust |
| Section 201 | Vacation of office by members |
| Section 202 | Filling of extraordinary vacancies |
| Section 203 | Ouster of office |

Recommended practices

When members come into office

- 19.5 For local authority elections (excluding DHB elections), members come into office:
- in relation to a triennial election, if declared elected before polling day, on polling day; or
 - if declared elected on or after polling day, the day after the day on which public notice is given that the candidate is declared elected; or
 - if appointed to fill an extraordinary vacancy, at the time of appointment.

19.6 For DHB elections, members come into office on the 58th day after polling day (clause 14 of Schedule 2 of the New Zealand Public Health and Disability Act).

When members leave office

19.7 In the ordinary course of events the term of office ends and members leave office:

- (a) in the case of an election, when the members elected at the next election come into office (including DHBs); and
- (b) in the case of an appointment, when the member's successor comes into office.

19.8 Section 116(2) was added to the Act in December 2002 and provides that:
“... if a member's office is the subject of an election, and neither the member nor any other person is elected at the election to that office, the member vacates office at the same time as any other member of the local authority who is not re-elected at the election.”

1 Recommended good practice is that electoral officers ensure that both members and candidates are made aware of the term of membership of elected members and that this subject be included in the candidate information pack (refer Part 7).

Filling extraordinary vacancies on local authorities (excluding DHBs)

19.9 The Local Government Act 2002, the Local Electoral Act 2001 and the Sale of Liquor Act 1989 set out the different ways in which extraordinary vacancies can occur. These are referred to in 19.2 above.

19.10 Table 13 following summarises how the different types of extraordinary vacancy are filled, for local authorities (excluding DHBs). Legislation prohibits most local authorities (excluding DHBs) from holding a by-election within 12 months of the next triennial election. An exception to this is a licensing trust which has the added option of filling the vacancy by way of an election.

TABLE 13: SUMMARY SHOWING HOW EXTRAORDINARY VACANCIES FILLED

| Type of Vacancy | Parameters | How Filled | Ref |
|---|--|---|---|
| Elected member of local authority, community board or licensing trust | More than 12 months prior to next triennial election | Election | s117(1) s202(4) (Sale of Liquor Act 1989) |
| Elected member of local authority or community board | 12 months or less before next triennial election | Appointment or left vacant (except Mayor) | s117(2) s117(3) |
| Mayor | 12 months or less before next triennial election | Appointment of 1 of the existing members of the territorial authority as Mayor. The resulting vacancy is an extraordinary vacancy and can be filled by appointment or left vacant | s117(5) s117(6) |
| Elected Member of licensing trust | 12 months or less before next triennial election | Appointment, left vacant or election | s202(1)(a) (Sale of Liquor Act 1989) |
| Member of community board | If unable to fill by election in compliance with sections 117(1) and 120 | Appointment | s117A |

Note: “Member” of a local authority includes the Mayor (section 5(1))

19.11 If a by-election is to be held then:

- (i) the Chief Executive (of the relevant local authority) must give notice of the vacancy to the electoral officer;
- (ii) the election must be held not later than 82 days after the electoral officer receives the notice;
- (iii) the election must be conducted in accordance with the Local Electoral Act and Regulations;
- (iv) an election must be held at the same time to fill every extraordinary vacancy that is
 - (a) unfilled at the time the extraordinary vacancy occurred, or
 - (b) created after the extraordinary vacancy occurred but before the election commences.

19.12 If an electoral officer receives notice of a subsequent extraordinary vacancy before the commencement of voting at the election for the first extraordinary vacancy then the electoral officer may re-start the election process. Any nominations already received remain valid and any qualified person not nominated for the first election may be nominated for the substitute election.

Extraordinary vacancies on DHBs - no by-elections are held

19.13 In the case of DHBs, clause 10 of Schedule 2 of the New Zealand Public Health and Disability Act prohibits any by-election or poll for the purpose of electing a member to a board. If vacancies arise in a board's elected membership, the Minister of Health may fill these by appointing members to the board.

2 Recommended good practice is that electoral officers ensure that they understand the different ways of filling extraordinary vacancies and maintain close liaison with the Chief Executive whenever an extraordinary vacancy occurs.