



FULSHEAR AT-LARGE COUNCIL POSITION MAY 2018 GENERAL ELECTION Q & A

Fulshear City Council recently appointed a member of the community to serve the remaining term for the Council Member At-Large #1 position with a term expiring May 2019. That same appointee is also a candidate on the ballot for the upcoming May 5th general election for the Council Member At-Large #2 position.

The City has received several questions regarding this appointment and possible scenarios that might occur regarding the various potential outcomes of the May 5th general election. Below is a collection of the most frequent questions received along with answers provided by the City.

1. Does “resign to run” apply to the new Council Member’s appointment?

- a. No. The “resign to run” provision in the Texas Constitution does not apply to municipal officers unless their term of office exceeds two (2) years and their unexpired term exceeds one year and 30 days. The term of office of Fulshear City Council Members is two (2) years; and, therefore, “resign to run” does not apply. Accordingly, the new Council Member may maintain his appointed position on City Council while a candidate for another position on City Council.

2. Is the new Council Member ineligible to run for the at-large position due to his appointment?

- a. No. The applicable requirements for office are prescribed by Section 141.001 of the Texas Election Code and Section 3.01 of the City of Fulshear Home-Rule Charter, neither of which disqualify a person holding one office, whether elected or appointed, from being eligible for another office.

3. May the new Council Member withdraw from the election?

- a. No. The deadline for the new Council Member to withdraw passed prior to his appointment. Nevertheless, if a runoff election is required, any runoff candidate, including the new Council Member, may withdraw from the runoff election on or before 5 p.m. of the third day after the date of the final canvass for the main election.

4. What vote is necessary to be elected to the at-large position?

- a. A majority vote is necessary to be elected to the at-large position. While Section 2.001 of the Texas Election Code states that “[e]xcept as otherwise provided by law, to be elected to a public office, a candidate must receive more votes than any other candidate for the office,” the City of Fulshear Home-Rule Charter is considered “law” for purposes of this section, and Section 3.03 of the Fulshear Charter states that “[t]he membership of the City Council shall be composed of seven (7) Council Members, two (2) of which shall be elected at large by majority vote” Therefore, although a plurality vote is generally required to be elected to public office in accordance with Section 2.001 of the Election Code, Section 3.03 of the Fulshear Charter provides that a majority vote is required.

5. What if the new Council Member receives a majority of the votes at the election?

- a. If the New Council Member receives the majority of votes at the election, he becomes the officer-elect for the council member at large position; and, as such, he has the option to either accept or decline that office.



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- 6. What if no candidate receives a majority of the votes at the election?**
 - a. If no candidate receives a majority of votes at the election, then a runoff election will be required. The runoff candidates will be the candidates who receive the highest and second highest number of votes in the main election or who tie for the highest number of votes, which may include the new Council Member.

- 7. What if the new Council Member receives a majority of the votes at the runoff election?**
 - a. If the new Council Member receives the majority of votes at the runoff election, he becomes the officer-elect for the council member at large position; and, as such, he has the option to either accept or decline that office.

- 8. What if the new Council Member becomes the officer-elect and accepts the office?**
 - a. A vacancy would occur in the Council Member at-large position elected in 2017 (at-large #1) upon Mr. Pool's qualifying (i.e. taking the oath of office) for the Council Member at-large position elected in 2018.

- 9. What if the new Council Member becomes the officer-elect and declines the office?**
 - a. A vacancy would occur in the Council Member at large position elected in 2018 ("at-large #2") on the date Mr. Pool's written declination is delivered to either the Mayor or the City Secretary.

- 10. Will the vacancy created by the new Council Member's accepting or declining office, as applicable, be filled by appointment or by special election?**
 - a. It depends—if the vacancy is the only vacancy in existence, then it may be filled by appointment; however, if any two or more vacancies exist at the same time, then the vacancies must be filled by special election.

- 11. If appointment is permitted, will the "old council" or the "new council" fill the vacancy?**
 - a. The "old council" essentially has the "right of first refusal" to fill the vacancy by the order in which they take up items on the agenda.

- 12. If appointment is permitted, may the new Council Member vote on the appointment?**
 - a. Yes. The common law doctrine of incompatibility, particularly its prohibition of "self-appointment," would not prohibit the new Council Member from voting on an appointment to fill a vacancy created by his accepting or declining office, as applicable. The doctrine only makes those with the appointing power ineligible for appointment.

- 13. Must the City Council appoint a runner-up candidate to fill a vacancy?**
 - a. No. The City Council may appoint any person who is eligible for the vacant office, regardless of whether the vacant office is the at-large #1 or the at-large #2 position, and regardless of whether the person was a candidate for that office at any previous election.