



AGENDA
CITY OF BIRCHWOOD VILLAGE
SPECIAL MEETING OF THE CITY COUNCIL
CITY OF BIRCHWOOD VILLAGE
207 BIRCHWOOD AVENUE
WASHINGTON COUNTY, MINNESOTA
DECEMBER 27, 2012
7:00 P.M

CALL TO ORDER – PLEDGE OF ALLEGIANCE

APPROVE AGENDA

CITY BUSINESS

1. 7:15 Appointment to Fill a Vacancy on the City Council (Mitchell – see exhibits)
Time Budget: 15 minutes

2. 7:30 RESOLUTION 2012-39/ORDINANCE 2012-13 Adopting A New Chapter 703
(COUNCIL VACANCY-SPECIAL ELECTION) Providing For a Special Election to Fill a
Vacancy on the City Council at Times Other Than at the Regular City General Election
(Mitchell - see exhibits)
 - a. Review of Ordinance
 - b. Public Hearing
 - c. Council Deliberation and Consideration of ApprovalTime Budget: 15 minutes

3. 7:45 ADJOURN



CITY OF BIRCHWOOD VILLAGE
207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 tel
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EXECUTIVE SUMMARY – DECEMBER 27, 2012 SPECIAL CITY COUNCIL MEETING

NOTE: This executive summary is provided to give a broader detail on the various agenda items. This summary is to be used as an adjunct to the agenda packet, and should not be considered a substitute for reading the packet.

CITY BUSINESS:

1. APPOINTMENT TO FILL A VACANCY ON THE CITY COUNCIL: Tony Sampair resigned from the City Council effective December 12, 2012. Due to the timing of the vacancy, the City Council is required by statute to fill the vacancy by appointment until such time that a successor is qualified.

As of the time of this writing, the City has received one statement of interest – from Greg Donovan of 2 Hall Court. His statement is including in the agenda packet as an exhibit. *The deadline for submissions of statements of interest is 4:00pm Wednesday, December 26. As those submissions are sent to the City, if they are in electronic form they will be forwarded on to the Council.*

QUESTIONS: Should the City Council make an appointment at this meeting to fill the vacancy created by the resignation of Tony Sampair? If the Council decides to make the appointment at this meeting, whom should the City Council appoint?

Should the Council appoint an individual at tonight's meeting, Mayor Mitchell will swear him/her in, as follows:

"I, _____, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Minnesota, and that I will faithfully and impartially discharge the duties of the office of Council Member for the City of Birchwood Village, to which I have been appointed, to the best of my knowledge and ability, so help me God."

A copy of the oath of office is included in the agenda packet as an exhibit.

2. RESOLUTION 2012-39/ORDINANCE 2012-13 ADOPTING CHAPTER 703 (COUNCIL VACANCY-SPECIAL ELECTION) PROVIDING FOR A SPECIAL ELECTION TO FILL A VACANCY ON THE CITY COUNCIL AT TIMES OTHER THAN AT THE REGULAR CITY GENERAL ELECTION: Mayor Mitchell brought this matter to the Council's attention at the December 11th regular meeting. Mitchell believes that Council appointment of a council member for a period of time of less than one year is appropriate; however, he believes that a special election should be held to fill Council vacancies of longer than one year. Mitchell presented the draft ordinance – included in the agenda packet as an exhibit – at the December 11th meeting. The Council voted to hold a public hearing (per the Rules of Procedure) on the draft ordinance at this meeting. Mitchell also provided a memo explaining the rationale of the ordinance, which is also included in the agenda packet as an exhibit.

QUESTION: Should the City Council approve Resolution 2012-39 adopting Ordinance 2012-13?

XFINITY Connect

birchwoodvillage@comcast.net

± Font Size ±

City Council Temporary Appointment

From : gregdonovan@comcast.net

Tue, Dec 18, 2012 06:24 PM

Subject : City Council Temporary Appointment**To :** birchwoodvillage@comcast.net**Cc :** Alan Mitchel <alanshari@comcast.net>

Mayor Mitchell and City Council members.

I would request my name be given consideration for the open seat vacated by councilmen Sampair. I have lived in the Village since 1978 and have served on several committees as well as serving nine years on the White Bear Lake Conservation District and the past four years on the Ramsey Washington Suburban Cable Commission. I am familiar with with most of the issues and feel that I could work with the incoming council until a election is held to fill the seat.

Greg Donovan
gregdonovan@comcast.net
Phone 651-426-5285
Cell 651-442-5285

**STATE OF MINNESOTA
COUNTY OF WASHINGTON**

OATH OF OFFICE

I, _____, do solemnly swear that I will support the
Constitution of the United States, the Constitution of the State of Minnesota,
and that I will faithfully and impartially discharge the duties of the office of
Council Member for the City of Birchwood Village, to which I have been
appointed, to the best of my knowledge and ability, so help me God.

Signature

Subscribed and sworn to before me this 27th day of December, 2012.

Alan Mitchell
Mayor

EXPLANATION OF SPECIAL ELECTION ORDINANCE

CHAPTER 703

I. INTRODUCTION

On December 11, 2012, Tony Sampair, a member of the Birchwood City Council who was elected to a four-year term in November 2010, submitted his resignation, effective December 12. At the time of the resignation, more than two years remained on Councilman Sampair's term and a regular election was not scheduled to be held until November of 2014.

Minnesota Statutes section 412.021, subd. 2a provides for the filing of vacancies on city councils. That statute provides:

Subd. 2a. **Vacancy.** Except as otherwise provided in subdivision 2b, a vacancy in an office shall be filled by council appointment until an election is held as provided in this subdivision. In case of a tie vote in the council, the mayor shall make the appointment. If the vacancy occurs before the first day to file affidavits of candidacy for the next regular city election and more than two years remain in the unexpired term, a special election shall be held at or before the next regular city election and the appointed person shall serve until the qualification of a successor elected at a special election to fill the unexpired portion of the term. If the vacancy occurs on or after the first day to file affidavits of candidacy for the regular city election or when less than two years remain in the unexpired term, there need not be a special election to fill the vacancy and the appointed person shall serve until the qualification of a successor. The council must specify by ordinance under what circumstances it will hold a special election to fill a vacancy other than a special election held at the same time as the regular city election.

Because more than two years remain in Councilman Sampair's term and the next regular city election is not until November 2014, and because the City of Birchwood does not have an ordinance describing the circumstances under which a special election will be held, a new chapter 703 has been drafted to provide for the holding of a special election to fill a council vacancy in certain circumstances.

The League of Minnesota Cities has prepared a draft Special Election Ordinance. A copy of that draft is included at the end of this document. Along with the draft ordinance, the League has also prepared an Information Memo entitled City Special Elections in September 2012, and a pertinent part of that memo is attached as well. The entire document is available on the League's webpage. In addition, the City of Isanti, Minnesota, has adopted an ordinance covering the election or appointment of a person to fill a vacancy on the city council. A copy of the Isanti ordinance is also included at the end of this document. These resources were considered in developing an ordinance that seemed appropriate for Birchwood and they provide a reference for the proposed language in chapter 703.

With that background, the following describes the rationale for each section in the proposed chapter 703.

II. Section 703.010 – VACANCY ON CITY COUNCIL

The intent of this section is simply to identify when a vacancy shall occur on the city council. The main reason a vacancy will occur is because the mayor or a councilmember has resigned. However, a vacancy may occur for other reasons so it is appropriate to at least recognize that a vacancy may occur for a reason other than a resignation. Minnesota Statutes section 351.02. Section 351.02 provides that a vacancy might also occur through the death of the person elected or because the person refused to take the oath of office. The model ordinance prepared by the League of Minnesota Cities refers to the statute in the definition and it seems appropriate to reference it here to make clear that the ordinance will apply regardless of the reason for the vacancy.

III. Section 703.020 – APOINTMENT TO FILL VACANCY

This section is intended to provide a process for appointing a person to fill a vacancy until an election, whether special or regular, can be held and the residents of Birchwood can elect a replacement. The proposed language provides some basic notice requirements to ensure that the public is afforded an opportunity to become aware of the vacancy and that at least a minimum amount of time (ten days) is provided for interested persons to apply for the position. The language also provides that the city council should fill the vacancy within sixty days of the vacancy. It is important to have a full complement of councilmembers and sixty days should be sufficient time to find a replacement.

IV. Section 703.030 – SPECIAL ELECTION

This is the requirement to hold a special election in certain circumstances. The proposed language says that a special election is required if the vacancy occurs more than twelve months before the next regular election. While the statute (section 412.02, subd. 2a) may allow an appointment to continue for as long as two years, it seems reasonable to allow the residents of Birchwood to have a say in who fills a vacancy on the council if the appointment would be for longer than a year. Admittedly, there are some expenses involved in holding a special election, but the need for a special election under the ordinance should not occur very often, and election costs are a normal result of our democratic process.

V. Section 703.040 – SPECIAL ELECTION PROCEDURES

Section 703.030 describes when a special election is required; section 703.040 is the provision that describes how the special election will be conducted. Some of the procedures were taken from the Isanti city code.

A. **Section 703.41.** This section says that the city council shall pass a resolution ordering a special election when one is required. The resolution will memorialize the action by the city council to hold the special election. At the time the council decides to hold the special election, it must also ensure that the City is prepared to conduct the election. Since it will be an important city election, the ordinance provides that the election should be conducted in an official manner that conforms to regular election requirements as much as possible. That does not mean that the City can't elect to use paper ballots, for example, but such issues as registration and absentee ballots must be provided for.

B. **Section 703.42.** This is the provision that requires the City to give the public advance notice that a special election to fill a council vacancy will be held. The city council will determine at the time it passes the resolution to hold the special election what notice is appropriate. That will likely involve publishing notice in the official newspaper, posting notice on the City's webpage, posting notice on the bulletin board outside city hall, and announcing it at city council meetings. The city attorney can assist in determining what notice is satisfactory.

This section also requires the City to provide a period of time for interested persons to file to run to fill the vacancy. The proposed language requires the City to allow a minimum of ten days for interested persons to file and a maximum of twenty days. An outside date is necessary to provide closure on when a person may file, just like what occurs for the regular general election, and twenty days is long enough so the special election can be held promptly. The section also requires each person filing for the office to pay the same filing fee as is required for the general election and that the person shall run without party designation, just like the candidates do in the general election. Importantly, there is nothing in the ordinance that would preclude the person who was appointed to fill the position on a temporary basis under section 703.20 from filing to run in the special election or from filing for the office when the next regular election comes around.

C. **Section 703.43.** This section says that the special election shall be held no more than 120 days after the vacancy occurs. One hundred twenty days seems like a long enough period of time to pass a resolution designating the date for the special election, allow up to twenty days for persons to file for the office, give notice of the election, and hold it. Ideally, the City will hold the election in less than 120 days so the public can decide promptly whom to elect to the vacant council seat.

The City of Isanti ordinance requires a primary election if more than two candidates file for the vacant office. No such provision is provided for in the draft Birchwood ordinance. It seems like an unnecessary delay and expense to narrow the candidates down to two, since no primary election is held if more than two candidates per seat file in the general election. Also, because the candidates run without party designation, the need for a primary is unnecessary. Further, this

is a special election, and the winner will serve less than two years before the public can vote again in the general election.

D. **Section 703.44.** This section provides one specific requirement regarding notice of the special election. As the election approaches, the City must publish notice in the official newspaper at least ten days before the election notifying the public of the time and place of the election and of the purpose, which is to elect a person to fill a vacant council seat for a limited period of time, until the next general election. It could be possible for the City to combine this notice with the notice given under section 703.42, but if there is a period of several weeks between seeking candidates to the holding of the election, the City may decide to give a second notice as the election approaches.

The draft Resolution included with this ordinance provides that the ordinance shall be effective immediately upon publication. The reason for that is because the city council should proceed quickly to take action to set up a special election to fill the remaining time on the Sampair council seat. Under the terms of the proposed ordinance, the special election should be held no more than 120 days after the effective date of the Sampair resignation – December 12 2012 – which means the election should occur by no later than April 12, 2013. That will still mean that the newly elected councilmember will serve twenty months before the person elected in the regular general election takes office.

LEAGUE OF MINNESOTA CITIES SAMPLE ORDINANCE CALLING FOR A SPECIAL ELECTION TO BE HELD AT THE GENERAL ELECTION.

AN *OPTIONAL* SAMPLE ORDINANCE THAT CALLS FOR SPECIAL ELECTIONS TO BE HELD AT A TIME OTHER THAN A GENERAL ELECTION¹

City of _____
ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR SPECIAL ELECTIONS TO FILL CERTAIN VACANCIES IN ELECTED OFFICES AT TIMES OTHER THAN THE REGULAR CITY GENERAL ELECTION

THE CITY COUNCIL OF _____ ORDAINS:

SECTION 1. DEFINITIONS

For the purposes of this ordinance, the following terms shall have the following meanings:

City. The City of _____, County of _____, State of Minnesota.

General Election. A “general election” is an election held at regular intervals on a day determined by law or charter at which the voters of the state or any of its subdivisions choose by ballot public officials or presidential electors.

Special Election. A “special election” is an election held at any time to fill vacancies in public offices.

Vacancy. A vacancy occurs for the reasons stated in Minnesota Statute Section 351.02 or other state law.

SECTION 2. APPOINTMENT TO VACANCY

Pursuant to Minnesota Statute § 412.02, subd. 2a, a person shall be appointed to fill the vacancy until the special election is held and the winner of the special election is qualified to take office.

SECTION 3. SPECIAL ELECTION TIMING

¹ If a city must hold a special election to fill a long-term vacancy there are two options. First, the city can hold the special election to fill a vacancy on council at the same time as the next regular city election. This seems to be the most common scenario. Second, the city may hold a special election before the next general election. To do so, the city council must adopt an ordinance that specifies under what circumstances this will be done. There are two options for this type of ordinance. One way is to pass an ordinance that will apply to all future special elections. This sample ordinance is intended to address this situation. The other way is to pass an ordinance that applies only to one particular special election. This sample ordinance may be modified to fit this purpose.

If a vacancy occurs and a special election to fill the unexpired term is required pursuant to Minnesota Statute Section 412.02, subd. 2a, and there are more than ____ days until the next general election, then the special election to fill the vacancy shall be held prior to the general election, but no later than ____ days after the date of the vacancy.

SECTION 4. REPEAL

Ordinance Number (number of ordinance), (title of ordinance), adopted on _____, _____ is repealed.²

SECTION 5. SEVERABILITY

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION 6. EFFECTIVE DATE

This ordinance becomes effective upon passage and publication.

Passed by the City Council of _____ on _____, 20_____.

Approved:

Mayor

Attested:

City Clerk

² This section is only necessary if a prior ordinance needs to be repealed. If there is no prior ordinance, please delete this section.

INFORMATION MEMO (9/1/2012)

City Special Elections

Understand which election questions are authorized or required by state law and which are not.

Procedures to call and hold special elections. How general election law applies. Form and effect of recall and other resident petitions. Elections to fill a council vacancy. Ballot form requirements.

Contains sample ordinance calling for a special election at the same time as the general election.

III. Filling Vacancies in Elective Offices

When a vacancy occurs in a statutory city council, the statutes provide that a vacancy “shall” be filled by appointment, generally indicating that the action is mandatory. The attorney general has held that it is mandatory to fill vacancies in office. In certain situations, the city must hold a special election in addition to making an appointment. When a special election is necessary, the council must appoint a person to hold the vacant position until voters elect a candidate to serve in that position at the special election.

Procedurally, the council should adopt a resolution that declares the vacancy. After considering interested and qualified residents, the council must appoint an eligible person to fill the vacancy. Where appropriate, the city council then calls for a special election.

A. Determining need

In deciding whether a special election is necessary in a statutory city, look at when the vacancy occurred and the amount of time left on the unexpired term. To determine if a special election is necessary, the city must answer the following two questions:

- Did the vacancy occur before the first day to file affidavits of candidacy for the next regular city election?

- Do more than two years remain in the unexpired term?

When the answer to both questions is “yes,” a special election to fill the vacancy is necessary. If the answer to either or both of these questions is “no,” a special election is not necessary. Where no special election is necessary, the appointed person serves for the duration of the term.

In a charter city, look to the charter to determine how a vacancy should be filled. City charter provisions may govern how to fill the vacancy over general state law. For example, if a charter provides that a vacancy is filled by appointing a replacement for the remainder of the term (regardless of when the vacancy occurs or how much time is left on the term), the charter provision overrides the requirement in state law that calls for a special election. Certain election law provisions do not apply to charter cities so charter cities should work with their city attorney on election issues.

If the charter is silent on how to fill vacancies, the city may follow the same process as statutory cities. Consult the city attorney for specific advice on how to fill a vacancy.

B. Timing

A special election to fill a council vacancy may be held at or before the next regular city election. Many cities hold this type of special election at the same time as the next regular city election. In order to hold a special election before the next regular city election, the council must adopt an ordinance that specifies under what circumstances it will hold a special election to fill a vacancy before the next regular city election. The city may choose to adopt an ordinance that addresses all future special elections on vacancies. An example of this would be an ordinance that requires a special election every time a vacancy occurs within a specified period of time before the filing period for the next regular election. A different option would be to adopt an ordinance that addresses only one particular election; this type of ordinance would not apply to all future special elections.

Generally, if an ordinance allows the city to hold a special election before the next regular city election, an election to fill a vacancy may be held on any day except a legal holiday.

If it is certain that a vacancy will occur in the future and there must be a special election for the position, the city council may begin the process leading up to the special election so that a successor may be elected at the earliest possible time. For prospective vacancies that will occur as a result of a resignation, preparations for the special election may begin immediately after the written resignation is received by the council. Cities should not appoint a person to a vacancy before the vacancy exists.

C. Election administration

A special election to fill a vacancy is administered in the same manner as a general election. This means that the same notice requirements must be followed. Similarly, filing for the office takes place in the same way for both general and special elections.

D. Taking office

Generally, the terms of elected city offices begin on the first Monday in January following the election. However, in a special election to fill a vacancy, the new council member is eligible to qualify and take office upon receipt of an election certificate.

City of Isanti, Minnesota City Code

Article III. Vacancies In Elected Offices

[Adopted 8-31-2010 by Ord. No. 492]

§ 18-6. Statutory authority.

A. Under Minn. Stat. § 205.10, Subd. 2, statutory cities may hold special elections in conjunction with the municipal general election to fill vacancies in elective City offices. Minn. Stat. § 412.02, Subd. 2a, provides for the procedure in filling these vacancies.

B. If the vacancy occurs before the first day to file affidavits of candidacy for the next regular City election and more than two years remain in the unexpired term, a special election shall be held at or before the next regular City election and the appointed person shall serve until the qualification of a successor elected at a special election to fill the unexpired portion of the term. (Minn. Stat. § 412.02, Subd. 2a)

C. If the vacancy occurs on or after the first day to file affidavits of candidacy for the regular City election or when less than two years remain in the unexpired term, there need not be a special election to fill the vacancy and the appointed person shall serve until the qualification of a successor. (Minn. Stat. § 412.02, Subd. 2a)

D. The Council must specify by ordinance under what circumstances it will hold a special election to fill a vacancy other than a special election held at the same time as the regular City election. (Minn. Stat. § 412.02, Subd. 2a)

§ 18-7. Vacancies in Council.

A. When, for any reason, a vacancy should occur in the City Council or office of the Mayor, the City Council must publicly declare such vacancy and specify the date of occurrence of the vacancy within 15 days of its occurrence. Notice of the vacancy shall be posted at City Hall and sent to the official City newspaper on the next business day. The Mayor or Council member shall forfeit the office for:

- (1) Lack at any time during the term of office of any qualification for the office prescribed by law.
- (2) Conviction of a crime involving moral turpitude.
- (3) Failure to attend three consecutive regular meetings of the Council without being excused by the Council.
- (4) Departure of residence from the City.

B. If the unexpired term of the Council vacancy is less than two years from the date of the occurrence of the vacancy, the Council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy and the appointed person shall serve until the qualification of a successor at the next general election. If the unexpired term of the Council vacancy is two years or longer, a special election

shall be called by the Council. Notice of the vacancy, with a description setting forth the minimum set of legal qualifications to hold public office, shall be posted at City Hall and sent to the official City newspaper on the next business day.

§ 18-8. Procedures to fill Council vacancies by special election.

A. If the unexpired term of the Council vacancy is two years or longer, a special election shall be called by the Council.

B. When such a vacancy occurs the Council must appoint someone to fill the office temporarily until a special election can be held. The process for such appointment shall follow the same procedures as set forth in § 18-9 below. The appointed person will remain in the office until the successor, elected at the special election, takes the oath of office. (Minn. Stat. § 412.02, Subd. 2a)

C. The City of Isanti hereby provides the following procedure in filling the vacancy:

(1) The Council must appoint someone to fill the office. The appointee shall serve for the duration of the term or until such time as the seat is filled through the process of a special election.

(2) A special election shall be called by the City Council if the unexpired term of the council vacancy is two years or longer.

(3) If a special election is required to fill a City Council vacancy, the City of Isanti hereby provides the following procedure:

(a) The City Council must by resolution order a special election and provide all means for holding it.

(b) The special election will be held at the earliest date deemed reasonably practicable by the City Council. The date designated by the City Council for special election shall comply with all applicable time frames under state law.

(c) If more than two candidates file for the unexpired term, a primary election shall be held.

(d) At least two weeks of weekly published notice of a special election shall be given in the official newspaper.

(e) The procedure at such election shall conform as nearly as possible to that prescribed for regular municipal elections.

(f) Candidates must file with payment of the required filing fee of \$2 to the Clerk; the Clerk shall place the name of the candidate upon the special primary election ballot without partisan designation.

§ 18-9. Procedures to fill Council vacancies by Council appointment.

If the unexpired term of the Council vacancy is less than two years, the Council by majority vote of all its remaining members may appoint a qualified person to fill the vacancy. Notice of the vacancy, with a description setting forth the minimum set of legal qualifications to hold the subject public office shall be posted at City Hall and sent to the official City newspaper on the next business day and shall include the

following description of the application and appointment process, which shall be followed by the City Council:

A. Uniform applications in a form approved by the City Council must be received by the City Clerk, not later than 21 days from the date of the declared vacancy. Application forms submitted by the applicants are public documents. Applications shall request, at a minimum, all information required by Minnesota Statutes of candidates filing for the office. Additional information forms may be adopted by the City Council and shall be required of each applicant uniformly. The applicant may submit a resume, in addition to the uniform application forms.

B. Tentative interview scheduling shall be completed and posted at City Hall not later than 25 days from the declared vacancy. Applicants shall be responsible for requesting schedule changes.

C. The interview process shall not start earlier than 28 days from the declared vacancy.

(1) Applicants shall be interviewed by the Council, in accordance with the State of Minnesota open meeting laws.

(2) A uniform list of initial questions to be asked of all applicants shall be made available to the public and the applicants in advance of interviews. To the extent reasonably practicable, questions asked of all applicants at the interviews shall be uniform.

D. Selection process. Upon completion of the interview process, the Council may call for a vote to appoint an applicant. Each Council member may cast only one vote for a preferred applicant on each called-for vote to appoint. No vote, which does not result in a majority vote for one candidate, shall result in elimination from consideration of any candidate. Written ballots listing the applicant(s) shall be used. Each Council member's vote shall be recorded. A simple majority of the Council votes shall appoint that applicant to the City Council. In the event of a tie vote of the Council, the Mayor (or Mayor pro tem if the vacancy is in the office of Mayor) shall make the appointment.

E. If the Council pursues the appointment process but then fails to fill a vacancy within 45 days from the occurrence of the vacancy, the City Clerk shall call a special election to fill the vacancy. The special election will be held as soon as reasonably practicable following such occurrence, and the procedure shall be otherwise governed by the provisions of § 18-8 above. If more than two candidates file for the unexpired term, a primary election shall be held.

§ 18-10. Severability.

If any provision of this article is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

§ 18-11. When effective.

This article shall be in full force and effect from and after its passage and publication in the official newspaper.



**STATE OF MINNESOTA
COUNTY OF WASHINGTON
CITY OF BIRCHWOOD VILLAGE**

RESOLUTION 2012-39

**A RESOLUTION APPROVING ORDINANCE 2012-13 ESTABLISHING CITY CODE
CHAPTER 703 (COUNCIL VACANCY - SPECIAL ELECTION)**

WHEREAS, a vacancy may occur on the Birchwood City Council from time to time; and

WHEREAS, Minnesota Statutes section 412.02, subdivision 2a, provides for the filling of a vacancy on the city council by appointment by the Council; and

WHEREAS, section 412.02, subdivision 2a, provides that a city must specify by ordinance under what circumstances it will hold a special election to fill a vacancy other than a special election held at the same time as a regular city election; and

WHEREAS, the City of Birchwood Village does not have an ordinance at the present time specifying the circumstances under which a special election will be held to fill a vacancy on the City Council; and

WHEREAS, the Birchwood City Council is desirous of adopting an ordinance to require the holding of a special election if significant time exists between the occurrence of a vacancy and the holding of the next regular election.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIRCHWOOD VILLAGE, MINNESOTA, AS FOLLOWS:

1. That a new chapter 703 of the Municipal Code of the City of Birchwood Village, entitled COUNCIL VACANCY - SPECIAL ELECTION, is hereby adopted as shown in the attached exhibit.
2. That the effective date of this Ordinance shall be upon publication as required by law.

Adopted by the City Council on this 27th day of December, 2012.

Approved:

Alan Mitchell, Mayor

Attest:

Cindie J. Reiter, Deputy City Clerk

**STATE OF MINNESOTA
COUNTY OF WASHINGTON
CITY OF BIRCHWOOD VILLAGE**

ORDINANCE 2012-13

AN ORDINANCE ADOPTING A NEW CHAPTER 703 (COUNCIL VACANCY - SPECIAL ELECTION) PROVIDING FOR A SPECIAL ELECTION TO FILL A VACANCY ON THE CITY COUNCIL AT TIMES OTHER THAN AT THE REGULAR CITY GENERAL ELECTION

The City Council of the City of Birchwood Village hereby ordains that Chapter 703 (COUNCIL VACANCY - SPECIAL ELECTION) of the Municipal Code of the City of Birchwood Village is hereby adopted to read as follows:

703 COUNCIL VACANCY - SPECIAL ELECTION

703.010. VACANCY ON CITY COUNCIL. A vacancy shall occur on the Birchwood City Council whenever the mayor or another city councilperson resigns from the office to which the person was appointed or elected. A vacancy may also occur for any of the other reasons specified in Minnesota Statutes section 351.02.

703.020. APPOINTMENT TO FILL VACANCY. Whenever a vacancy shall occur on the Birchwood City Council, the existing councilmembers shall appoint a person to fill the vacancy on a temporary basis until a replacement can be elected in a special or regular election. The existing City Council shall not appoint a replacement without first giving public notice of the vacancy in the same manner as notice of regular council meetings and allowing interested persons at least ten (10) days to submit an application for appointment. A replacement shall be appointed within sixty (60) days of the date of the vacancy unless no person has expressed a willingness to serve on a temporary basis. The appointed person shall serve until the person elected to fill the unexpired portion of the term or elected to a new term, whichever is applicable, is sworn into office.

703.030. SPECIAL ELECTION. Whenever a vacancy on the City Council occurs more than twelve months before a regular election is scheduled, the Council shall hold a special election to elect a person to fill the remainder of the term.

703.040. SPECIAL ELECTION PROCEDURES. If a special election is required under section 703.030 to fill a vacancy on the City Council, the Council shall follow the procedures below for holding the special election.

703.041. The City Council shall pass a resolution ordering a special election and providing all means for holding it. The procedure at such special election shall conform as nearly as possible to that prescribed for regular municipal elections.

703.042. The City shall give notice in whatever manner deemed appropriate by the Council that a special election will be held and shall allow interested persons at least ten (10) days and not more than twenty (20) days to file for the vacant office. Any person who files for the office shall have his or her name placed on the ballot at the special election without party designation. Each person filing for election to the vacant office shall pay the requisite filing fee as though the special election were a regular election.

703.043. The special election shall be held no more than 120 days after the vacancy occurs.

703.044. The City shall publish notice in the official newspaper at least ten days before the date of the special election of the time and place and purpose of the special election.

704.050. EFFECTIVE DATE. The effective date of this Ordinance shall be upon publication as required by law.

Adopted by the City Council on this 27th day of December, 2012.

Approved:

Alan Mitchell, Mayor

Attest:

Cindie J. Reiter, Deputy Clerk