

Staff Report to Council

Title: Options to fill Vacant Office of Ward 1 Councillor

Report Number: Legislative Services-2024-24

Director: Corporate Services

Manager: Legislative Services

Meeting Date:
Wednesday, September 11, 2024

Date to be considered by Council:
Wednesday, September 11, 2024

Recommendation:

That Council receive Report Legislative Services 2024-24, Options to fill Vacant Office of Ward 1 Councillor; and further

That Council approve the Council Vacancy Policy; and further

That Council direct Staff to proceed with Option _____ to fill the Vacant Office of Ward 1 Councillor.

Executive Summary:

In accordance with the Municipal Act, S.O. 2001, c.25, when the office of a Member of Council becomes vacant, Council is required to declare the office vacant and determine how the vacancy will be filled: by by-election or appointment. The Municipal Act requires Council to within 60 days after the day a declaration of vacancy is made (Sunday, November 10, 2024) to appoint a person to fill the vacancy or pass a by-law requiring a by-election to be held to fill the vacancy. The person appointed or elected to fill a vacancy shall hold the office for the remainder of the term of the person they replaced.

Strategic Priorities:

D.15-Serve, communicate, collaborate and engage with the community to build trust and confidence in municipal services, Council and staff

Financial Considerations:

The Election Reserve Fund has a balance of \$79,824. This would be used to cover any by-election or appointment related costs.

The cost of a by-election for the electors in Ward 1 would be approximately \$33,000 plus staff time. The cost would include the internet/telephone voting provider, mailing, by-election advertising, and computer expenses. There would be extensive additional staff time required for a by-election utilizing the entire Legislative Services staff to organize, update the voters list, educate the public, review and accept candidates' paperwork, tend the Voters Help Desk, and ensure the by-election is conducted in an open and transparent manner.

The cost of appointing an eligible elector would be less at approximately \$3,000 plus staff time, and special meeting(s) of council, with the main costs being for advertising. There would be additional staff time required to organize, educate, review and accept applicants' paperwork, and ensure the appointment process is conducted in an open and transparent manner.

Policy:

Municipal Act, S.O. 2001, c. 25

Context and Background Information:

Filling Vacancies

The vacancy must be filled as per Section 217 of the Act. A by-law regarding Council composition does not come into force until the day the new Council is organized after the first regular election following the passing of the by-law or if the by-law is passed in the year of a regular election before voting day, after the second regular election following the passing of the by-law. Note that a by-election is not a regular election.

The Municipal Act establishes two ways to fill a vacancy: by appointment or by holding a by-election.

263 (1) If a vacancy occurs in the office of a member of council, the municipality shall, subject to this section,

- (a) Fill the vacancy by appointing a person who has consented to accept the office if appointed; or
- (b) Require a by-election to be held to fill the vacancy in accordance with the Municipal Elections Act, 1996.

Section 256 of the Municipal Act sets out the eligibility requirements for a person to be elected or hold office as a member of council of a local municipality. In summary, any person who is entitled to be an elector in the Municipality of Kincardine may be appointed. To be an elector, the person under consideration must on voting day:

- (a) Reside in the municipality or be the owner or tenant of land there, or the spouse of such owner or tenant,
- (b) Be a Canadian Citizen,
- (c) Be at least 18 years old and
- (d) Not be prohibited from voting under Section 17(3) of the Municipal Elections Act, 1996, as amended, or otherwise by law.

Section 258 (1) of the Municipal Act also outlines who is not eligible to be elected as a member of council or to hold office as a member of council including an employee of the municipality.

Please note that Section 29(4) of the Municipal Elections Act states that “if a Municipality is divided into wards, a person is eligible to be nominated for an office in an election in any ward in the municipality.”

Options for Filling Vacancy for the Office of Ward 1 Councillor

Staff are seeking Council’s direction regarding how to proceed with filling the vacancy for the Office of Ward 1 Councillor. The following list of options is not exhaustive but represents common options. Council has the option to fill the vacancy in any way that is in compliance with the legislation. Staff have provided a Council Vacancy Policy containing procedures for the various options.

Option 1 - Appoint a Former Candidate

Council may choose to fill the vacancy by appointing a candidate from the previous regular election (2022-2026). The Ward 1 Councillor was acclaimed as there were no other candidates that ran for this position. There were, however, 8 candidates that ran for other offices that were not elected and may still be eligible. Council could choose to appoint one of them.

Name	Office
Laura Haight	Mayor
Gerry Glover	Deputy Mayor *
Uli Hack	Deputy Mayor
Jeff Hegmans	At-Large
Scott Wilson	At-Large
Carla Glover	At-Large*
Jim David	At -Large
Carol Blake	Ward 2
Linda McKee	Ward 2
Bill McKeeman	Ward 3

*Not Eligible per Section 88.23 (2) (b) of the Municipal Elections Act

This would involve following the “Procedure to Appoint a Previous Candidate to fill a Vacancy” and would need to be done by Sunday November 10, 2024. Part of this procedure is confirming the Previous Candidates eligibility for office under the Municipal Elections Act.

Option 2 - Appoint an Eligible Elector

Council may choose to fill the vacancy by appointing an Eligible Elector by Sunday November 10, 2024. This would involve following the “Procedure to Appoint an Eligible Elector to Fill a Vacancy.”

The Procedure includes an application process for eligible electors, a review of the eligible candidates at a Council Appointment Meeting, including opportunities for candidates to address Council; Council nominating and voting on eligible candidates and a by-law confirming their appointment.

To fill the vacancy within the 60 days required by the Municipal Act and ensure that it is done in an open and transparent manner, the following timeline has been developed based on the above noted procedure:

September 11, 2024	Office of Ward 1 Councillor be declared vacant.
September 16, 2024	Council Vacancy Notice on website
September 23, 2024	Council Vacancy Notice in local newspapers
September 23, 2024	Nomination period opens at 9 a.m.
September 30, 2024	Council Vacancy Notice in local newspapers
October 25, 2024	Nomination period closes at 3 p.m.
Week of November 4	Special Council Appointment Meeting (exact date TBA)
November 10, 2024	Deadline for when vacant office must be filled.

This timeline will allow eligible electors time to review the Council Vacancy Application Form and Declaration of Qualifications to determine if they wish to submit. It will also allow time for them to produce their background information that will include relevant qualifications and why they are interested in the position.

Council and the public will then have adequate time to review the applications prior to the Council Appointment meeting. The candidate selected by Council at the Council Appointment Meeting will be appointed and sworn in at that meeting.

Option 3 - Pass a By-law Requiring a By-Election to be Held

Council has the option of passing a by-law authorizing a by-election to fill the vacancy. The Municipal Elections Act (MEA) states that if such a by-law is passed that the nomination day would occur a maximum of sixty (60) days from the passing of the by-law (early January 2025), with the voting day occurring forty-five (45) days after nomination day (February 2025).

The MEA states that the by-election must be held “as far as possible” in the same manner as the regular election, which would be by telephone and internet voting. The by-election would only be for eligible electors in Ward 1 (approximately 5,600 electors) and would cost approximately \$33,000.

The election would involve the same steps as a regular election including retaining the internet and telephone voting provider, updating the Voter’s List through Elections Ontario, mailing voter information letters, setting up a Voter Help Centre and providing public education regarding the upcoming by-election.

If Council chooses this option, staff will bring back a report in October, outlining the by-election process with a more detailed timeline.

Consultation Overview:

Staff have consulted with the Municipal Act, Municipal Elections Act and other similar sized municipalities that have recently dealt with a Council vacancy.

Origin:

Vacant seat of Ward 1 Councillor

Implementation Considerations:

Once Council has selected an option to proceed with, staff will proceed with the activities associated with that option. With either option, staff will proceed to provide details to the public on the Municipal Website and other communications channels.

Risk Analysis:

The risk of not choosing an option for filling the current vacant office at this time is that there will be less time to plan and provide the public with details of the processes before the November 10, 2024 deadline. If Council does not decide to appoint a person to fill the vacancy or pass a by-law requiring a by-election to be held to fill the vacancy within 60 days, they will be in violation of the Municipal Act.

Attachments: Council Vacancy Policy

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