



Meeting Date: September 18, 2024

Submitted by: James Hutson, Municipal Clerk

Report No: CLK-06-2024

Subject: Process to Fill Ward 1 Council Vacancy

Recommendation:

THAT Report CLK-06-2024 re: Process to fill Ward 1 Council Vacancy be received for information;

AND THAT Council select Option _____ as the method to fill the vacant Ward 1 Council seat.

Purpose:

The purpose of this report is to provide Council with an overview of the available methods which may be utilized to fill the vacant Council seat for Ward 1 and to obtain direction from Council to proceed with one of the options outlined herein.

Background:

At the September 4, 2024 meeting Council received a report respecting the resignation of the incumbent Ward 1 Councillor and subsequently adopted a resolution to declare the office of the ward councillor vacant.

Council may now proceed to select a method to fill the vacant Council seat as per Section 263 (5) of the *Municipal Act, 2001* and must do so within (60) days of the seat being declared vacant. Therefore, a by-law approving the appointment of a new member or authorizing a by-election must be in place by no later than November 3, 2024.

Accordingly, the options available are:

- (1) Appoint a person who has consented to accept the office if appointed; or
- (2) Hold a by-election in accordance with the provisions of the *Municipal Elections Act, 1996*.

Analysis:

The forthcoming analysis section of this report will further detail the methods available to fill the vacant Council seat.

Option 1 – Appoint a Qualified Elector who received the most votes in the 2022 Municipal Election but was not elected

In accordance with the Act, Council may opt to appoint a qualified individual to the vacant office, should they consent to this. One approach which historically has been utilized by Ontario municipalities seeking to fill a vacant Council seat via appointment is to appoint a qualifying individual whom received the most votes in a previous municipal election but was not elected.

The Municipality of Middlesex Centre employed this approach with a previous Council vacancy which arose in 2016 and in 2020. When compared with other methods, appointment of the next-place finisher would be the most cost effective and time efficient means of filling the seat.

As such, Council may consider employing a similar approach to fulfill the current vacancy or may direct staff to explore an alternative appointment process or a by-election.

Election reports from 2022 confirm the following information:

Candidate

Debbie Heffernan 615 votes

Jean Coles 494 votes

The candidate who received the most votes but was not elected in the 2022 Municipal Election was confirmed to be Jean Coles with 494 votes.

Should Council elect to adopt Option 1 to fill the vacant seat, the Clerk will confirm that the individual would consent to accept the office if appointed is still qualified to hold office.

In order to hold the office of a municipal Councillor, an individual must be a qualified elector under the *Municipal Elections Act, 1996*, this being a person who is 18 years of age or older; a Canadian citizen; a resident of the Municipality of Middlesex Centre, or an owner or tenant of land in the municipality or the spouse of such an owner or tenant; and is not prohibited from voting under any other Act or disqualified from holding municipal office.

Should Council adopt this approach and the individual who received the most votes but was not elected declines to accept the office, an alternative method to fill the vacant seat will be required and direction is being sought to authorize this alternative to ensure compliance with the sixty (60) day timeline found under section 263.

Proposed Motion to Adopt Option 1

Should Council wish to adopt Option 1 as the method to fill the vacant Council seat, the following motion wording is proposed:

THAT Report CLK-0x-2024 re: Process to fill Ward 1 Council Vacancy be received for information;

AND THAT Council resolves that Option 1 - Appoint a qualified elector who received the most votes in the 2022 Municipal Election but was not elected be utilized as the method to fill the vacant Ward 1 Council seat;

AND THAT the Municipal Clerk be directed to report back to confirm whether the individual has consented to accepting office if appointed and is still qualified to accept office;

AND FURTHER THAT should the individual who received the most votes but was not elected decline to accept the office or is no longer qualified, the Municipal Clerk shall utilize Option 2 and employ the Council Appointment Procedure as appended to this report.

Option 2 – Appointment through a defined selection process

As per the Act, Council may appoint any qualified individual to fulfill the vacant Council seat and may further define what the process for selecting and appointing the person to fill the office will be.

The Act does not stipulate or outline requirements for an appointment process, outside of defining the eligibility for candidacy to hold office. As such, municipalities have considerable autonomy to establish their own procedures when undertaking an appointment process.

Staff have undertaken research into appointment processes utilized by Ontario municipalities which are intended to establish consistent standards and guidelines for the filling of Council vacancies which occur during a term of office.

Option 2 would approve an appointment process which would permit interested, eligible persons to submit an application for appointment to Council. A call for applicants would be advertised and Council would act as the selection body to consider applications at a meeting of Council.

Should Council opt to direct that a defined appointment process be utilized, a procedure has been prepared and is enclosed as Appendix 'A1.' Timelines associated with the appointment and selection process are anticipated as follows:

September 25th - October 11th Application Period
October 16th Special Council to Consider Applications
October 30th Special Council to Confirm Appointment

Note: Timeline is subject to change.

Proposed Motion to Adopt Option 2

Should Council resolve that this wish to adopt Option 2 as the method to fill the vacant Council seat, the following motion wording is proposed:

 THAT Report CLK-0x-2024 re: Process to fill Ward 1 Council Vacancy be received for information;

 AND THAT Council resolves that Option 2 – Appointment through a defined selection process be utilized as the method to fill the vacant Ward 1 Council seat;

 AND FURTHER THAT the Council Appointment Procedure as appended to this report be approved and employed to fill the vacant Ward 1 Council seat.

Option 3 – Direct Appointment

As a further option, Council may direct that the vacant seat be fulfilled through an appointment where Council appoints an eligible individual without an application process and without referencing the most recent election results. Should this method be endorsed, a by-law will prepared by the Municipal Clerk confirming the appointment, provided the individual selected meets eligibility criteria

Proposed Motion to Adopt Option 3

Should Council resolve that this wish to adopt Option 3 as the method to fill the vacant Council seat, the following motion wording is proposed:

 THAT Report CLK-0x-2024 re: Process to fill Ward 1 Council Vacancy be received for information;

 AND THAT Council resolves that Option 3 – Direct Appointment be utilized as the method to fill the vacant Ward 1 Council seat;

 AND FURTHER THAT the by-law confirming the individual to be appointed to the vacant Ward 1 seat be brought forward to the October 16, 2024 Council meeting.

Option 4 – By-election held in Accordance with the Municipal Elections Act

As per the provisions of the *Municipal Act, 2001* when a vacancy on Council occurs, the current Council may direct that a by-election be undertaken to fill the vacant seat. In accordance with the *Municipal Elections Act, 1996* such a by-election must be conducted as closely as possible to a regular election. Should Council consider this route, Section 263(5) of the *Municipal Act, 2001* requires Council to make that decision and to pass a by-law to fill the vacancy by by-election within sixty (60) days after Council has declared the seat vacant, in this case prior to November 3, 2024.

A by-election may be the most democratic option to fill the vacancy, but will also be the most costly. Though the by-election would be for a single vacant council seat, the baseline costs would be similar to a full election as the same processes/procedures are required regardless of the number of seats to be elected and legislation demands that a by-election be conducted in the same manner as a regular election.

Staff have consulted with the previous election vendor to obtain an estimate for costs associated with the voting technology required to conduct a by-election (for an in person, electronic or hybrid combination of voting). A by-election will result in significant costs to the taxpayer which are estimated to be a minimum of \$35,000 as a total cost to conduct the by-election, not including staff time. Should there be an acclimation, a portion of these costs will be non-refundable.

There will be additional costs associated with voter list management, preparing and mailing voter information letters and offering alternative voting methods which meet the accessibility needs of the community.

Should Council decide to fill the vacancy by by-election, Section 65 of the *Municipal Elections Act* requires the Clerk to establish Nomination Day not more than sixty (60) days from the day Council passes a by-law to hold a by-election and Voting Day shall be forty-five (45) days after Nomination Day. Timelines associated with the by-election process are anticipated as follows:

October 16, 2024	Passage of By-law Authorizing By-election (Nomination Period Opens Immediately)
December 9, 2024	Nomination Period Closes
January 23, 2025	Voting Day

Note: Timeline is subject to change.

Should Council resolve that a by-election be undertaken to fill the vacant seat, a subsequent report outlining the legislative timelines and passage of required by-law(s) would be brought forward to a future meeting of Council.

Proposed Motion to Adopt Option 4

Should Council resolve that they wish to adopt Option 4 as the method to fill the vacant Council seat, the following motion wording is proposed:

THAT Report CLK-0x-2024 re: Process to fill Ward 1 Council Vacancy be received for information;

AND THAT Council resolves that Option 2 – By-election held in Accordance with the Municipal Elections Act be utilized as the method to fill the vacant Ward 4 Council seat.

AND THAT the clerk be directed to prepare a by-law authorizing the

Financial Implications:

A preliminary cost estimate to fill the vacant Council seat via one of the above noted methods is included below:

Method	Preliminary Cost Estimate
Option 1A - Appoint a Qualified Elector who received the most votes in the 2018 Municipal Election but was not elected	\$250.00 Publication of Appointment
Option 1B - Appointment through a defined selection process	\$3,500.00 Advertisement for Candidates, Administration of Vacancy Process, Special Council Meeting
Option 2 – By-election held in Accordance with the Municipal Elections Act	Voting System Costs \$4,958.40 Mailing Costs \$1.45/per voter (2022 rates) 3,673 Electors (2022) \$5,325.85 Additional Costs (Equipment/Rentals/Forms and Printing)

	<p>\$25,000.00</p> <p>Estimated Total</p> <p>\$35,284.40 + Staff Resources</p>
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Conclusion

As outlined in this report, Council has the option to direct the Municipal Clerk to fill the vacant Ward 1 Council seat by way of appointment or by-election. There is a significant cost variation between an appointment process vs a by-election when considering the estimated financial implications of each method. In addition, the time required to proceed with one of the options above will vary, with a by-election requiring a longer time period to fill the vacancy than that of an appointment. Based on the analysis undertaken with respect to this timing and with consideration being given to the cost implications, the Municipal Clerk recommends that Council adopt either option 1 or 2, being an appointment method, to fill the vacant Ward 1 Council seat.

Strategic Plan:

This matter aligns with following strategic priorities:

- 3c. Quality of Life: Meeting the needs of both current and future citizens.
- 5b. Operational Excellence: Maintaining appropriate levels of staffing.

Attachments:

A1 – Council Vacancy Appointment Procedure