



**Meeting Date:** February 3, 2020

**Submitted by:** James Hutson, Municipal Clerk

**Report No:** CLK-03-2021

**Subject:** Process to Fill Ward 4 Council Vacancy

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**Recommendation:**

THAT Report CLK-03-2021 re: Process to fill Ward 4 Council Vacancy be received for information;

AND THAT Council resolves that Option \_\_\_\_\_ as detailed in Report CLK-03-2021 be utilized as the method to fill the vacant Ward 4 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 4 and to obtain direction from Council to proceed with one of the options outlined herein.

**Background:**

On January 6, 2021 Council formally adopted a resolution to declare the office of the Ward 4 Councillor vacant. This decision was made in accordance with the provisions of Section 262 (1) of the *Municipal Act, 2001* as a result of the resignation of the former Ward 4 Councillor for Middlesex Centre.

Council may now proceed to select a method to fill the vacant Council seat as per Section 263 (5) of the Act. Accordingly, the two 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. Council must adopt one of the methods noted herein prior to March 7, 2021 which is within (60) days of the seat being declared vacant.

### **Option 1A – Appoint a Qualified Elector who received the most votes in the 2018 Municipal Election but was not elected**

In accordance with the *Municipal Act, 2001*, Council may opt to appoint an 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. At that time, a vacancy also arose in Ward 4 and Council opted to appoint the runner-up in the 2014 election, Derek Silva, to the role. 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 2018 confirm the following information:

#### Candidate

Derek Silva	826 votes
Sue Cates	481 votes

The candidate who received the most votes but was not elected in the 2018 Municipal Election was confirmed to be Sue Cates with 481 votes.

Should Council elect to adopt Option 1A to fill the vacant seat, the Clerk will require an opportunity to confirm that the individual who received the most votes but was not elected would a) consent to accept the office if appointed as stated in Section 263(1) of the *Municipal Act* and b) is still qualified to hold 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.

In order to hold the office of a municipal Councillor, a person 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.

### **Proposed Motion to Adopt Option 1A**

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

THAT Report CLK-03-2021 re: Process to fill Ward 4 Council Vacancy be received for information;

AND THAT Council resolves that Option 1A: Appoint a Qualified Elector who received the most votes in the 2018 Municipal Election but was not elected as detailed in Report CLK-03-2021 be utilized as the method to fill the vacant Ward 4 Council seat;

AND THAT the Municipal Clerk be directed to report back to the February 17, 2021 Council Meeting to confirm whether the individual who received the most votes but was not elected in the 2018 Municipal Election 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, the Municipal Clerk shall utilize Option 1B.

### **Option 1B – Appointment through a defined selection process**

As per the *Municipal Act, 2001* Council may endorse that an appointment be undertaken 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 *Municipal Act, 2001* and related legislation, such as the *Municipal Elections Act, 1996* 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 which is not based on the appointment of the individual receiving the most ballots in a previous election.

Given the flexibility afforded to municipalities with respect to how to go about appointing an individual to a vacant Council seat, the Municipal Clerk has undertaken a review of similar procedures which have been previously used or proposed by municipalities in Ontario. This procedure defines the selection criteria and accounts for notification as well as voting methods.

Should Council opt to direct that a defined appointment process be utilized, a procedure has been prepared and is enclosed as Appendix 'A.' This procedure as a whole would require endorsement by Council in addition to the selected method, should Council vote to undertake appointment through a defined selection process.

### **Proposed Motion to Adopt Option 1B**

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

THAT Report CLK-03-2021 re: Process to fill Ward 4 Council Vacancy be received for information;

AND THAT Council resolves that Option 1B – Appointment through a defined selection process as detailed in Report CLK-03-2021 be utilized as the method to fill the vacant Ward 4 Council seat;

AND FURTHER THAT Council approves the Council Appointment Procedure as appended to Report CLK-03-2021.

### **Option 2 – 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 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 March 7, 2021. 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.

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 2**

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

THAT Report CLK-03-2021 re: Process to fill Ward 4 Council Vacancy be received for information;

AND THAT Council resolves that Option 2 – By-election held in Accordance with the Municipal Elections Act as detailed in Report CLK-03-2021 be utilized as the method to fill the vacant Ward 4 Council seat.

## 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	\$2500.00 Advertisement for Candidates, Administration of Vacancy Process, Special Council Meeting
Option 2 – By-election held in Accordance with the Municipal Elections Act	\$3.00/per voter \$10,278.00 Legislative Notifications, From Preparation, Equipment Rental, Staff Resources

## Conclusion

As outlined in this report, Council has the option to direct the Municipal Clerk to fill the vacant Ward 4 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 1A or 1B, being an appointment method, to fill the vacant Ward 4 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