
HALDIMAND COUNTY

Report CLE-03-2023 Options to Address Council Vacancy For Consideration by Council in Committee on March 21, 2023



OBJECTIVE:

To provide options and a recommendation for addressing the Ward 4 Councillor vacancy.

RECOMMENDATIONS:

1. THAT Report CLE-03-2023 Options to Address Council Vacancy be received;
2. AND THAT a by-law be presented for enactment to authorize a by-election to fill the Ward 4 Councillor vacancy;
3. AND THAT costs related to the administration of the by-election be funded from the Contingency Reserve;
4. AND THAT supplies and services related to the by-election be procured through single-sourcing as allowed through Procurement Policy 2013-02.

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Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

Due to the Ward 4 Councillor seat being declared vacant on March 6, 2023, Council needs to determine how the vacancy is to be filled. This report speaks to the two options available for filling the vacancy, and for reasons noted below, recommends holding a by-election in June, 2023. In order to provide as much access to voting as possible for voters and based on the success of the general municipal election last October, it is hoped that internet voting can be used during the advance period. Staff are still trying to confirm with election vendors that this is feasible logistically and cost effectively for a by-election. If so, a by-law will need to be passed to authorize this alternative method of voting. If internet voting is not feasible the by-election will be conducted with in-person polling stations only.

BACKGROUND:

On March 6, 2023, Natalie Stam submitted her resignation as Councillor - Ward 4, effective on that date. As required by Section 262 of the *Municipal Act, 2001* (Act), Council declared the office to be vacant at its March 6, 2023 meeting.

The Act provides two options to fill a vacancy on Council. Subsection 263 (1) notes those options to be:

- 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*.

This report provides context and timelines for Council's decision on filling the vacancy.

ANALYSIS:

Option to Appoint

The first option for filling a Council vacancy is to appoint an individual to the position. The legislation does not include any parameters related to the appointment process. Some municipalities have policies or procedures in place to inform the filling of council vacancies. While all of the policies include an open application process, a few include specific timelines on when appointment is allowed and some also include the option to appoint an unsuccessful candidate from the previous election. In reviewing best practices, appointment processes generally involve:

- an application process for interested individuals to outline their interest and qualification;
- a Special Council meeting to consider the applications where applicants have the opportunity to address Council about their interest; and
- a tabulation of ballots by members of Council to determine the successful candidate for filling the vacancy.

The appointment must be made within 60 days of the seat having been declared vacant – in this case it would need to be made by May 5, 2023.

Staff are aware that some members of the community have submitted correspondence to members of Council encouraging the appointment of the second place candidate for Ward 4 from the October 2022 election. Appointing a previous candidate without an open appointment process would limit other residents' opportunity to participate in the process which runs contrary to a key principle of local democracy. A key tenet of democracy is that all interested and eligible people should have an opportunity put their name forward and for electors to choose their representative. Deviating from this principle should only occur where there is a significant and compelling reason to do so such as a vacancy in the very late stages of a Council term where the costs, logistics and Council learning activities would be significant relative to the short timeframe being served. In this instance the Council term is in its very early stages.

Appointing a member of Council at this point could also be seen as undercutting the democratic representation principle as there is no assurance without an election process that the appointee would be seen as representing the choice of the majority of residents in Ward 4, and this is seen as a significant overriding factor in the current situation.

Option to Hold a By-election

The other option for filling the Council vacancy is to hold a by-election. A by-law to authorize the by-election would need to be passed within 60 days of the seat having been declared vacant. The *Municipal Elections Act, 1996* (MEA) requires that nomination forms can be submitted the day after the by-law is passed and Nomination Day would be 30 to 60 days after the by-law is passed, with Voting Day being fixed at 45 days after Nomination Day. This timeline is necessary to conduct all the logistical matters required and to ensure candidates have adequate time to fully participate.

While the by-election would take a little more time than an appointment process, and would incur more costs, it would provide a clear indication of the preference of Ward 4 constituents for local representation and is fully aligned with the values of local democracy.

Considerations between Options

In considering which option to choose to fill the vacancy, Council should weigh multiple factors: efficiency; time and resources required to administer the process; timing, and accountability to constituents. While opting to fill the vacancy through appointment would be quicker and less

expensive, we are currently just four months into a four-year term of Council, and filling the vacancy through by-election would be the option that would be the most transparent option, provide constituents with the result that best reflects their preferred representation, and is the recommended option for the current vacancy.

In many municipalities, by-elections are held to fill vacancies closer to the beginning of the term to ensure democratic representation, whereas closer to the end of the term, it may be deemed expedient to fill a vacancy through appointment to cover a shorter portion of the term. (The MEA does not allow by-elections to be held after March 31st in the year of a regular election.)

By-election

For the reasoning noted above, a by-election is the approach being recommended for filling the Council vacancy and the balance of the report will speak to potential details related to the by-election and other interim matters.

While the maximum timeframes laid out between the Act and the MEA for holding the by-election could stretch into mid-August, holding a by-election during the prime summer months of July or August isn't practical for electors or candidates, so the by-election should take place in June.

Generally speaking, by-elections historically have lower turnout than regular elections. In the 2022 regular election, the total turnout of Ward 4 electors was 2,898 electors or 40.02% of eligible electors - the highest percentage of any of the six wards. Of those electors, 1,163 voted online and 1,735 voted in person. In recognizing the geographic span of the ward, stretching from the western border with Six Nations and Mississauga of the Credit, to the eastern border with the City of Hamilton and Niagara Region, the use of internet voting during the advance period would be beneficial to ensure maximum accessibility for voters. While Hagersville does reflect the most significant urban concentration of population in the ward, it is located in the westernmost portion of the ward, and would not be a convenient voting location for all ward constituents. During a regular election, Vote Anywhere is utilized and statistics show that some Ward 4 voters regularly attend voting locations in Cayuga and Caledonia, presumably due to convenience.

At the time of the writing of this report, it is unclear whether internet voting could be provided by the County's vendor, and staff will provide an update as soon as it's available. Staff prefer to work with the same vendor as previous elections as they are familiar with the hardware, software and procedures, and due to limited time and staffing, contracting with a new vendor would not be efficient.

If internet voting is available during the advance by-election period, one in-person voting location would be arranged on Voting Day in Hagersville. If internet voting is not available for the by-election, two in-person voting locations would be provided during the advance period – one in Cayuga and the other in Caledonia or Hagersville.

A by-law was passed in early 2022 to authorize the use of vote tabulators for all municipal elections going forward. The by-law passed at the same meeting to authorize the use of internet voting was only applicable to the 2022 municipal election, as it was the first time utilizing that alternative method, so a by-law authorizing internet voting for the by-election would be required.

Anticipated timelines:

March 6, 2023 – Council seat declared vacant

March 27, 2023 – by-law passed to authorize by-election (within 60 days of declared vacancy as required by s. 263 of the Act)

Tuesday, March 28, 2023 – Nomination period opens (s. 65 (4) of the MEA)

Friday, May 5, 2023 2 p.m. – Nomination Day (30 – 60 days after by-law passed – s. 65 (4) of the MEA)

Monday, June 19, 2023 – Voting Day (45 days after Nomination Day – s. 65 (4) of the MEA)

Official results could be declared by June 21st and the new member of Council could take their seat at the June 26th Council meeting. Staff would arrange for orientation for the new member of Council to be provided over the summer months, based on material and presentations that have been provided recently to the current Council members.

FINANCIAL/LEGAL IMPLICATIONS:

Due to the unexpected and short timeline involved with procuring supplies and services for the by-election, related purchases fall within emergency procurement as outlined in section 4.03 k. of the Procurement Policy 2013-02 and will be single sourced as competitive procurement won't be feasible.

There are no funds budgeted for a by-election and while efforts will be made to be as efficient as possible with resources, expenditures will need to be made to ensure that the by-election meets legislative requirements and provides convenient voting options for eligible electors. Expenditures will be funded through the Contingency Reserve.

Anticipated expenditures will relate to the tabulator configuration and related software; ballots; online voting system (if utilized); advertising and communication; postage; election worker honoraria and the hiring of a dedicated Election Assistant for two to three months.

The October 2022 election costs were approximately \$250,000. A high level estimate of by-election costs would be somewhere between \$30,000 and \$45,000, with a portion of the costs being offset by approximately \$25,000 gapping of budgeted Councillor salary and benefit expenditures. As noted above, staff will endeavour to be as efficient as possible with expenditures.

STAKEHOLDER IMPACTS:

In recommending a by-election to fill the Council vacancy, the primary intent is to provide accountable representation for eligible electors in Ward 4.

In addition to Clerks Division staff, assistance will be required from staff in the Innovation and Technology Services, Customer Experience and Communications, and Facilities and Parks Operations divisions for preparation and administration of the by-election. There are a number of staff who have already indicated interest in assisting with election poll work, if it's necessary.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

REFERENCES:

1. [Municipal Act, 2001](#)
2. [Municipal Elections Act, 1996](#)
3. [Haldimand County Ward Map](#)

ATTACHMENTS:

None.