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# HALDIMAND COUNTY

## Report CLE-19-2024 Options to Fill Vacant Ward 1 and 4 Council Seats For Consideration by Council in Committee on December 10, 2024

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### OBJECTIVE:

To provide options for addressing the Council vacancies for Ward 1 and Ward 4.

### RECOMMENDATIONS:

1. THAT Report CLE-19-2024 Options to Fill Vacant Ward 1 and 4 Council Seats be received;
2. AND THAT Council selects Option \_\_\_\_\_ to fill the Ward 1 and Ward 4 Council vacancies;
3. AND THAT, if selected, the operating costs related to Option 1 be included in the Tax Supported Operating Budget as a Council Approved Initiative.

**Prepared and respectfully submitted by:** Chad Curtis, Municipal Clerk

**Approved:** Cathy Case, Chief Administrative Officer

### EXECUTIVE SUMMARY:

The Ward 1 and Ward 4 Council seats have been declared vacant. Council now needs to determine how the vacancies are to be filled.

### BACKGROUND:

In accordance with the Municipal Act, 2001 (the Act), when a Member of Council's seat becomes vacant, Council must declare the seat vacant and decide whether to fill it through a by-election or appointment. Following the deaths of Councillor Marie Trainer and Councillor Stewart Patterson, Council has declared the Ward 1 and Ward 4 seats vacant and must now determine how to fill these vacancies for the remainder of the term.

Ward 1 is the western most portion of Haldimand County, spanning from the lakeshore to Six Nations, and containing the towns of Townsend and Jarvis and a portion of Selkirk. Councillor Patterson was appointed by acclamation to the Ward 1 Council seat in the 2022 municipal election.

Ward 4 is geographically the largest ward in Haldimand County, spanning the area between Hagersville, York and Canfield. As the individual who was elected as the Ward 4 Councillor in the 2022 municipal election resigned in March of 2023, this ward has already had one by-election in this term of Council, in which Councillor Trainer was elected. The final cost to Haldimand County for the 2023 Ward 4 by-election was approximately \$75,000.

### ANALYSIS:

When a vacancy on Council occurs, the Act requires that the vacancy be filled through a decision of Council, and provides two options to fill the vacancy.

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.

The municipality has 60 days from the date the seat was declared vacant to either appoint a qualified individual, or pass a by-law requiring a by-election be held.

To be qualified to hold office, a person must be:

- 18 years or age or older
- A Canadian citizen
- A resident of Haldimand County, or an owner of land in the municipality or the spouse of such an owner or tenant
- Not prohibited from holding municipal office or from voting, under any Act.

The person appointed or elected to fill the vacancy will hold office for the remainder of the current term of Council, ending on November 14, 2026.

The Act does not set out specific requirements relating to the appointment of an individual to fill a Council vacancy, other than those relating to qualifications.

Municipal staff contacted representatives from the Association of Municipalities of Ontario (AMO) to request statistics on which method municipalities typically select to fill vacancies on Council. While AMO indicated that they do not keep a comprehensive data set of how vacancies are filled, they did confirm that the majority of Council vacancies for the 2022-2026 term of Council have, to date, been filled by appointment. For each option provided in this report we have included examples of other municipalities that have used that option during this term of Council. It should be noted that the list of municipalities is not exhaustive and is only intended to provide an example of what methods are being utilized to fill Councillor vacancies.

It is important to note that the upcoming Ward Boundary Review will have no impact on the decision made by Council regarding the Ward 1 and Ward 4 Council seats. Any changes made to the existing ward boundaries as a result of the review will not be in effect until the 2026 municipal election.

There are three options for Council consideration as permitted methods to fill the vacancy.

### **Option #1 Pass a By-law Requiring a By-Election be Held to Fill the Council Vacancy**

Council has sixty (60) days to pass a by-law authorizing a by-election. That deadline is January 24, 2025. If a by-election is selected by Council, under the Municipal Elections Act (MEA), the Clerk would be required to set the Nomination Period for candidates (between 30 to 60 days) after the by-law comes into effect. Voting Day is required to be 45 days after Nomination Day. Assuming the by-law is passed at the December 16, 2024 Council Meeting, a by-election would be held between March 1, 2025 and March 31, 2025.

Approximate timelines for a by-election if by-law is passed at the December 16, 2024 Council meeting:

- December 16, 2024 – By-law passed to authorize by-election (within 60 days of declared vacancy as required by s. 263 of the Act)
- December 23, 2024 – Nomination period opens (s. 65 (4) of the MEA)
- January 31, 2025 (2 p.m.) Nomination Day
- March 7, 2025 – Internet voting begins

- March 7-14, 2025 – In-person advanced voting period
- March 17, 2025 – Voting Day
- March 24, 2025 – New Ward 1 and Ward 4 Elected Councillor Sworn in at Council meeting.

Approximate timelines for a by-election if by-law is passed at the January 22, 2025 Council meeting:

- January 22, 2025 – By-law passed to authorize the by-election (within 60 days of declared vacancy as required by s. 264 of the Act)
- January 27, 2025 – Nomination period opens (s.65 (4) of the MEA)
- March 7, 2025 (2 p.m.) Nomination Day
- April 11, 2025 – Internet voting begins
- April 11-28 – In-person advanced voting period
- April 21, 2025 – Voting Day
- May 5, 2025 – New Ward 1 and Ward 4 Elected Councillor Sworn in at Council meeting.

If Council selects this option, the earliest a by-law authorizing a by-election could be presented to Council would be the December 16, 2024, Council meeting. The above timelines are based on the bylaw being authorized on this date. However, if Council chooses to pass a bylaw at the January 22, 2025 Council meeting, all dates above would be adjusted accordingly.

Although internet voting timelines were included in the above projected timelines, at the time of the writing of this report, it is unclear whether Internet voting would be practicable. Given concerns with time and staffing constraints, working with the internet voting contractor used in previous elections is the most feasible option as staff are familiar with their hardware, software and procedures. An update on their availability will be provided when it becomes available.

If Internet voting is available during the advance by-election period, it would run for ten days prior to the election. Eligible electors would be able to vote twenty-four hours a day from anywhere in the world with a secure Internet connection.

A by-election may be the most democratic option to fill the vacancy, but will also be the most expensive and will take the longest in terms of time. Additionally, the demands on staff resources would need to be addressed as a byelection will have an impact on the current work plan and priorities. The 2023 Ward 4 By-election cost Haldimand County approximately \$75,000. This includes the cost to retain the voting provider and fees associated with mailing Voter Information Letters via Canada Post. After consultation with finance staff it is expected that a by-election in Ward 1 and Ward 4 would cost the ratepayers approximately \$150,000. These costs include securing an election vendor, hiring a temporary full-time election coordinator, mailing voter information letters, updating the voters' list, and hiring election workers for the advance vote and election day. There may be an offset to this cost from minimal gapping of salary and benefits during the vacant period for the two seats.

It should be noted that this option would be the lengthiest process to fill the Council vacancy. In addition, there could be potential for voter fatigue considering the number of elections in Ward 4 since 2022.

In 2024, the following municipalities have passed a by-law for a by-election to fill a vacant seat on Council:

- City of Toronto
- Kawartha Lakes

## **Option #2 Direct Appointment of a Candidate**

Council can choose to appoint an eligible individual without a public process as the Act does not prescribe any process. The Clerk would be required to ensure that any appointed person meets the eligibility requirements, and this person would need to consent to the appointment to Office.

Considerations for Direct Appointment by Council:

- An Oath of Office could be administered to the new Councillors by the end of December 2024
- Does not include financial implications other than staff time.
- May not be seen as filling the vacancy through a transparent or democratic process.

In contemplating this option, some additional considerations are as follows:

- Council may choose to fill the vacancy through appointment of the Candidate who ran for the vacated position in the most recent Election or By-election, and who received the most votes, but was not elected;
- Council may choose to fill the vacancy through appointment of a Candidate who ran for any office in the most recent Election, and who received the most votes, but was not elected;
- Council may consider a former member of Council with experience to sit on Council for such a short timeframe;
- Council may choose to consider a member of the community who has demonstrated community involvement despite not having Council experience.

The above are simply suggestions and is not an exhaustive list of considerations.

This option would be the most financially prudent as the only costs would be staff time and would also be the quickest method of appointing a Councillor. In this scenario an appointment by-law and oath of office could be administered as early as the December 16, 2024 Council meeting, minimizing the period of time during which the Ward seats are vacant .

In 2024, the following municipalities made direct appointments:

- City of Kitchener
- City of Belleville

### **Option #3 Appointment by Call of Applications**

An accepted alternate appointment process would be for Council to advertise an open call for applicants for appointment. This process would permit eligible persons to submit an application for appointment to Council including a declaration of qualifications, and they would be provided an opportunity to speak to Council in an open Council meeting. Attachment #1 to this report outlines the detailed process and format which an appointment by call of applications would follow. This format is based on best practice across Ontario municipalities.

The following provides an overview of a potential timeline to facilitate the application process:

- December 10, 2024 – Council considers methods to fill vacancy – Appoint by Call of Applications selected
- December 16, 2024 – Minutes of Council in Committee meeting approved at Council meeting
- December 17, 2024 – Application Period Begins
- January 15, 2025 (2 p.m.) – Application period ends
- January 22, 2025 – Applications considered by Council at Special Council meeting
- January 22, 2025 – New Appointed Councillor Sworn into Office

The timeline above can be amended to allow for applicants to present at a Special Council meeting a week prior to the January 22, 2025 Council meeting to allow time for Council to make a decision.

Should Council decide to pursue the appointment by call for applications, staff would recommend that an additional clause be added to the recommendation to adopt the Appointment Procedures for Filling a Council Vacancy, attached to this report, to give effect to the necessary procedures to be conducted.

Benefits of this approach include:

- An open call for interested eligible candidates ensures every interested and qualified individual is provided the opportunity to be considered by Council and may reach more individuals than the election process.
- Transparent process as the presentations and questions of all eligible candidates must be conducted in an open Council meeting.
- Provides members of the public an opportunity to provide input into the selection of the individual who will represent them on Council.
- Provides an opportunity to identify and select an individual possessing a skillset that may not currently be represented on Council.
- Cost effective method that invites candidates who may otherwise be concerned with financial requirements regarding the need for a campaign, to express interest, which would eliminate barriers to participation.
- A faster way to fill the vacancies than a by-election but not as fast as a direct appointment.

If Council selects to fill the vacancy by appointment, Council would have to appoint an eligible elector by January 24, 2025 (sixty (60) days after the seat has been declared vacant.

An individual wishing to be considered for appointment to the vacancy shall complete the following two forms:

- Ministry of Municipal Affairs and Housing Nomination Form 1 to confirm that they meet the qualifications to hold office; and
- Ministry of Municipal Affairs and Housing Endorsement of Nomination - Form 2 to confirm that they have the signatures and support of twenty-five (25) Haldimand residents

This option would have minimal costs. This option offers a transparent selection of the candidate although may not be seen as filling the vacancy through a democratic process; however, the individuals selecting the candidate have been democratically elected to represent the County.

Staff has prepared a Vacancy Appointment Procedure which is attached to this report and provides the details of an appointment by application process.

The following municipalities have filled a Council vacancy by Call of Applications in 2024:

- Municipality of Mapleton
- Town of Goderich
- Town of Midland
- Municipality of Brockton
- Municipality of Kincardine
- Township of Red Rock

## **FINANCIAL/LEGAL IMPLICATIONS:**

With the unforeseen 2023 by-election in Ward 4, coupled with other unanticipated financial burdens during this term of Council, the election reserve balance is already below its projection to allow adequate funding of the 2026 municipal election. In addition, 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 and accessible voting options for eligible electors. A by-election may require an increase to the tax levy.

Anticipated expenditures will relate to the tabulator configuration and related software; ballots; Internet voting (if utilized); advertising and communication; postage; election worker honoraria and the hiring of a dedicated Election Assistant for two to three months. If this option is approved by

Council, the related costs would be included in the 2025 Tax Supported Operating Budget as a Council Approved Initiative.

If Council chooses to fill the position by appointment, minimal costs for advertising, printing and supplies can be absorbed in the 2025 Operating Budget for the Clerk's Division.

### **STAKEHOLDER IMPACTS:**

If a by-election is selected, 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.

### **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: Yes

Policy: No

### **REFERENCES:**

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

### **ATTACHMENTS:**

1. Procedure for Appointment by Application.