



MUNICIPALITY OF West Elgin

Staff Report

Report To: Council Meeting
From: Jana Nethercott, Clerk
Date: 2023-03-23
Subject: Options for Filling a Vacancy on Council

Recommendation:

That West Elgin Council hereby receives the report from Jana Nethercott, Clerk re: Options for Filling a Vacancy on Council for information purposes.

Purpose:

The purpose of this report is to provide information to Council on what other municipalities have done to fill vacancies on Council along with estimates on costs.

Background:

When a municipality has a vacancy on Council due to a resignation or a death, the Council of the municipality must make a decision with regards to how to fill that vacancy. Section 26 of the *Municipal Act, 2001* provides that:

Filling vacancies

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*. 2001, c. 25, s. 263 (1).

Rules applying to filling vacancies

(5) The following rules apply to filling vacancies:

1. Within 60 days after the day a declaration of vacancy is made with respect to the vacancy under section 262, the municipality shall,
 - i. appoint a person to fill the vacancy under subsection (1) or (4), or
 - ii. pass a by-law requiring a by-election be held to fill the vacancy under subsection (1).
2. Despite paragraph 1, if a court declares an office to be vacant, the council shall act under subsection (1) or (4) within 60 days after the day the court makes its declaration.
3. Despite subsections (1) to (4), if a vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy. 2001, c. 25, s. 263 (5).

Appointment

Should Council determine that the vacancy be filled by appointment this appointment must occur within 60 days of the declaration of the seat being vacant. The *Municipal Act, 2001* only requirements for appointing a member is that the must consent to the appointment and they must be a qualified elector within the Municipality as per the *Municipal Elections Act*.

There are a number of sub-options within the Appointment option:

1. Appoint from Council

Council has the right to appoint one the already sitting members into the Office of the Mayor and then follow the process to declare that seat vacant and determine method of filling the vacancy. Should Council choose this option and more than one member of Council wishes to put their name forward, a process would need to be developed and would most likely take the form of appointing a chair or vice chair for a board or committee, which includes call for nominations, seconding of nomination and voting by secret ballot if more than one nomination.

Advantages	Disadvantages
Ensure the Mayor's and County Council position is filled by a serving elected representative	Will result in a subsequent Council vacancy which will require the process to happen again
Provides representative who is familiar with current municipal issues	
No costs associated with this process	
Minimal staff time associated with this process	

2. Appointment by Call for Applications

Council may approve an appointment process which would permit interested eligible persons to submit an application for appointment to Council. This open call for applications would be advertised on multiple platforms and would include a process including an application, declaration of qualifications, and a procedure would need to be developed, which would include an interview/presentation with Council at a public meeting. Staff have sample procedures that have been provided by other municipalities who experienced the same thing.

Advantages	Disadvantages
Ensure every interested and qualified individual is provided the opportunity to be considered by Council	Does not consider the experience and skills of current Council
Allows applicants the opportunity to address Council	The Mayor's race was acclaimed during the last election process and there may not be any applicants willing to put their name forward again
Provides members of the public an opportunity to provide input into the selection of individual who will represent them on Council and County Council	
Provides an opportunity to identify and select an individual possessing a skillset that may not currently be represented on Council	
Minimal costs associated with this process	

3. Direct Appointment by Council

Council can choose to appoint an eligible individual without a public process as the *Municipal Act, 2001* does not prescribe any process. The Clerk would still need to ensure that any appointed person meets the eligibility requirements, and this person would need to consent to the appointment.

Advantages	Disadvantages
Process would be done quickly, allowing for Council to continue on with full membership in a timely manner	Is not a public process
No costs associated with this process	

4. Appointment from Municipal Election Candidates

Council can appoint the next place finisher in the most recent municipal election. Municipalities have done this in the past under the rationale that this person was judged by the electorate and had in the past consented to the Office. The Clerk would need to contact the person and confirm their eligibility still remains and that they consent to the office. In the current case of the Office of the Mayor, there were no other candidates for the Office.

By-Election

Council can choose to fill the vacancy by directing a by-election be held. In accordance with Section 263(5) of the *Municipal Act, 2001*, a by-law must be enacted within 60 days after the seat is declared vacant.

Subsequent to the enactment of a by-election by-law, nomination day (last day for nominations) must be not less than 30 days and not more than 60 days thereafter. Voting day shall be 45 days after nomination day.

Staff have reached out to Intelivote, the provider used for the 2022 Municipal Election, for a quote to run a by-election. They provided a quote of \$13,050.00. Should there be an acclimation of the position, Intelivote will keep the deposit, which is 30% of the quote or \$3,915.00. This cost does not include the required advertisements and notices that the *Municipal Elections Act, 1996* states must be placed in a local newspaper. Currently there is just over \$11,000.00 left in the Election Reserve Fund from the 2022 election.

Timeline (assuming by-election enacted April 13, 2023)

Nomination Day	May 15, 2023
Voting Day	June 29, 2023
Oath of Office	June 30, 2023 (first opportunity)

Advantages	Disadvantages
Ensures a democratic process is employed for all electors	Significant cost to the taxpayers
	Longer process, thereby leaving a vacancy for a longer period
	Labour-intensive process that will consume staff resources for the next three months
	Should a current member of Council choose to run it could result in another vacancy on Council, thus start the process again

Considerations:

The advantage of appointing someone thru options 1, 2 or 3 includes low to no cost, the process can be completed quickly thereby avoiding a prolonged period of time without a permanent Mayor.

The current council is just shy of 100 days into the term that will last until November 14, 2026.

Analysis:

In researching Council Vacancy's staff have discovered there are 2 other municipalities with vacancy's at this time. Elliott Lake is in a unique position as its court ordered for the Office of the Mayor, so it must wait until all appeal periods have passed, however the staff recommendation is to appoint the runner up from the election. Quinte West had a vacancy for a Councillor position and after a few failed motions (one to call a by-election and one to appoint the next highest vote getter in the past election), they did a direct appointment from Council. Since 2017, there have been 12 vacancies declared across the province, with 9 of them filled by appointment.

After going thru a Council Vacancy, some Council's have had staff develop a Council Vacancy policy to be prepared for these occasional occurrences.

Financial Implications:

Financial Implications are based on what decisions are made and are contained within the report.

Policies/Legislation:

Municipal Act, 2001

Municipal Elections Act, 1996

Respectfully submitted by,

Jana Nethercott, Clerk