



Staff Report

Report To: Council Meeting
From: Jana Nethercott, Clerk
Date: 2023-03-23
Subject: Vacancy of the Office of Mayor

Recommendation:

That West Elgin Council hereby receives the report from J. Nethercott Clerk, re: Vacancy of the Office of the Mayor for information purposes.

Purpose:

The purpose of this report is to provide information to Council on the process to officially declare the Office of the Mayor Vacant, to appoint a representative to the upper tier, County of Elgin Council and on the timelines for the next steps.

Background:

Office of Mayor

Mayor Duncan McPhail was sworn in as Mayor of the Municipality of West Elgin on November 17, 2022 for a four-year term to end on November 14, 2026. Mayor McPhail passed away unexpectedly on March 11, 2023, thereby creating the vacancy in the Office of the Mayor for the Municipality of West Elgin.

Vacancies in a Municipal Council are addressed in Sections 259 thru 267 of the *Municipal Act, 2001*. Section 259 sets out the circumstances where a council member's office becomes vacant by stating:

Vacant seat

259 (1) The office of a member of council of a municipality becomes vacant if the member,

- (a) becomes disqualified from holding the office of a member of council under section 256, 257 or 258;
- (b) fails to make the declaration of office before the deadline in section 232;
- (c) is absent from the meetings of council for three successive months without being authorized to do so by a resolution of council;
- (d) resigns from his or her office and the resignation is effective under section 260;
- (e) is appointed or elected to fill any vacancy in any other office on the same council;
- (f) has his or her office declared vacant in any judicial proceeding;

- (g) forfeits his or her office under this or any other Act; or
- (h) dies, whether before or after accepting office and making the prescribed declarations. 2001, c. 25, s. 259 (1).**

Section 262(1) of the *Municipal Act, 2001* requires that if the office of a member of council becomes vacant under section 259, the council shall at its next meeting declare the office to be vacant, except if a vacancy occurs as a result of the death of a member, the declaration may be made at either of its next two meetings. The Office of Mayor will become vacant through the recommendation of Council. Council can choose to make this resolution at the meeting on March 23, 2023 or April 13, 2023.

The declaration of the vacancy will start the clock on requirements laid out in Section 263(5) of the *Municipal Act, 2001*:

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)

Section 264 of the *Municipal Act, 2001* provides that a person appointed or elected to fill a vacancy shall hold the office for the remainder of the term of the person he or she replaced.

Should Council choose to adopt a resolution today, they will have to choose to either appoint a person to fill the vacancy or pass a by-law to hold a by-election no later than May 22, 2023 (closest regular meeting of Council is May 11, 2023). Council has time to make any decision on which way they want to fill the vacancy and staff will provide a follow-up report with approximate costs of running a by-election and some sample procedures on appointing a person from the public, should Council wish.

County Council Representation

Section 267(2) of the *Municipal Act, 2001* provides that:

If the office of a person who is a member of council of both local municipality and its upper-tier municipality become vacant and the vacancies will not be filled for a period exceeding one

month, the local council may appoint one of its members as an alternate member of the upper-tier council until the vacancies are filled permanently.

Once Council declares the Office of the Mayor Vacant It will take more than a month to either appoint a person to the Office of the Mayor or elect to run a by-election, an alternate member may be appointed to the upper-tier council until such time as the position is filled permanently.

Appointments to Committees

Council will also need to consider how to fill the vacancies for the committees of council that Mayor McPhail was appointed to – Four Counties Transportation Committee, West Elgin Community Centre Board of Management, and Tri-County Water Board.

Recap of Next Steps

Step	Action	Time Line	Result
1	Declare the Office of the Mayor Vacant	Must be done no later than April 13, 2023 Council meeting	<ul style="list-style-type: none"> a) Starts the clock on the 60-day period for Council to either appoint a member of the public or pass a by-law to call a by-election b) May appoint a member to the Upper Tier Council until a permanent replacement for the Office is filled c) May appoint member(s) to fill vacancies on Committees of Council
2	Choose method of filling vacancy	60 days from declaration of vacancy	<ul style="list-style-type: none"> a) Appoint a person who has consented to accept the office. b) Pass a by-law to require a by-election
3a)	Appoint a person who has consented to accept office	No later than 60 days from declaration of vacancy	Procedures will need to be adopted on how this process will take place as the <i>Municipal Act, 2001</i> does not set out requirements, only relating to qualifications.
3b)	Pass by-law to require a by-election	Nominations accepted right away for between 30 and 60 days Election Day 45 days after close of nominations	<i>Municipal Elections Act</i> lays out a procedure for a by-election. It will closely mimic the procedures for the last election in all ways possible.

Policies/Legislation:

Municipal Act, 2001

Municipal Elections Act, 1996

Respectfully submitted by,
Jana Nethercott, Clerk