



MUNICIPALITY OF
West Elgin

Staff Report

Report To: Council Meeting

From: Terri Towstiuc, Clerk

Date: 2024-09-26

Subject: Byelection versus Direct Appointment for 2024 Council Vacancy

Recommendation:

That West Elgin Council hereby receives the report from Terri Towstiuc, Re: Byelection versus Direct Appointment for 2024 Council Vacancy; And

That Council direct the Clerk to proceed with Option _____, being _____, to fill the vacancy of Councillor, Ward 3 for the remainder of the 2022-2026 term of Council.

Purpose:

The purpose of this report is to provide Council with additional information regarding byelections, as requested at the September 12th Council meeting.

Background:

On September 12, the Clerk provided Council with a report that detailed the options available in accordance with West Elgin's Council vacancy policy, the *Municipal Act* and the *Municipal Elections Act*.

Councillor Denning requested further information regarding the cost of a byelection, prior to deciding whether to proceed with the cost of a byelection or proceed with the minimal cost application and appointment process. During the 2022 Election, Ward 3 Councillor was an acclaimed position, with no "runner up", therefore, direct appointment to the position via next highest in votes is not an option.

In preparation for this report, consultation included Association of Municipalities of Ontario (AMO), Elections Ontario, Intelivote, DataFix, The *Municipal Act*, the *Municipal Elections Act* (MEA), West Elgin 2018 Election files and documents, West Elgin Policy "Appointment Procedure for Filling a Council Vacancy", and Clerks from the Municipality of Port Hope, Township of Ramara, Township of Russel and Township of West Lincoln.

The *Municipal Act*, 2001

The *Municipal Act* stipulates that if the office of a member of municipal Council becomes vacant (Section 260(1)), the municipality must pass a motion at its next meeting to declare the seat to be vacant (Section 263(1)).

As noted above, the Office for one (1) Councillor position for Ward Three (3) in the Municipality of West Elgin was declared vacant on September 12, 2024.

The *Municipal Act* further states in Section 263(5) that Council has no more than 60 days **(by November 11, 2024)** to select one of following two options to fill the vacancy (Section 263(1)):

- (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).

In assessing its options, Council may wish to give consideration to the following, among other things.

- Impact of time required to fill the vacancy
- Progression and time remaining in the term of Council
- The impacts on financial and staff resources
- Transparency, fairness and public participation relative to the selection process.
- 2018 voter turnout for full election was 20.91%
- 2022 voter turn-out for Ward 1 was approximately 10%
- 2022 Election cost was \$18,542.64, with only a Ward 1 Election
- Cost for candidates to canvas and advertise for selection (signs, mailouts, time, etc.)
- Timing of byelection (Christmas holidays and 2025 budget deliberations)

OPTION 1 – Fill Vacancy by Call of Applications and Appointment

Council may appoint any person to fill the vacancy that is a qualified elector under the *Municipal Elections Act*, 1996 and is not disqualified from holding office under the *Municipal Act*, 2001 or any other Act.

The *Municipal Act* does not prescribe a specific process Council is required to follow to fill a vacancy by appointment; however, the justification for why an individual was appointed by Council to fill the vacancy should be transparent and allow for public notice in keeping with the principles of the *Municipal Election Act*, 1996.

In 2023, Council chose to accept applications, proceed with an interview process that was open to the public, and choose a candidate that Council felt was best suited for the position of Councillor Ward 1, aligning their goals and insight with the strategic goals of the municipality.

This process allows applicants to apply for the vacant seat at no cost, provide Council with a Statement and address Council for five-minutes at the interview meeting. This also allows the candidate to fill a position for half term, like a “try before you buy” approach, which could encourage a more fulfilling election in 2026. Candidates can apply for Ward 3, regardless of where they live in the municipality, if they are a qualified elector, in accordance with the *Municipal Elections Act*.

While taking this approach may be construed as lacking public participation, Council members were elected by the public, to make informed and well-thought decisions, on their behalf. Currently, Council is halfway through a term with many strategic goals in motion, and this allows Council to select a candidate that best aligns with the strategic priorities of the municipality. Members of the public are also encouraged and welcomed to attend the candidate interview meeting, although there was very little public participation (outside of relations to candidates) at the 2023 interviews.

A strong consideration to this approach is also the timeline (see below) in comparison to the timeline for a by-election. Calls for applications and appointing a new member of Council will also allow the new member to participate in the important annual budget deliberations, which is intended to start at the end of 2024/first of 2025. A Call for Application and appointment is the most efficient and cost-effective approach, with approximately a six-week vacancy.

Proposed Timelines for Call of Application and Appointment:

| | |
|-------------------------------------|--|
| Thursday, September 12, 2024 | Declaration of vacancy |
| Thursday, September 26, 2024 | Council approved application and appointment process |
| Thursday, October 10 & 17, 2024 | Notice in Chronicle for Call of Applications |
| Thursday, October 24, 2024 @ 2 p.m. | Application Deadline |
| Thursday, November 7, 2024 | Special Council Meeting – Applicant Interview |
| Thursday, November 14, 2024 | Councillor Ward 3 to take Oath and Seat |

OPTION 2 – Fill Vacancy by Holding a By-Election

The process to fill a vacancy via by-election is prescribed by the *Municipal Elections Act*. In summation, a by-election is to be conducted following the same rules as a regular election, with the exception of some unique time frames and deadlines.

A by-law indicating that a by-election is required must be passed within 60 days of declaring the vacancy (*Municipal Act* Section 263(5)(1)) which means that a by-law must be adopted no later than by November 11, 2024. If Council chooses to hold a by-election, staff recommend that a by-law be presented for adoption at the next Council meeting on Thursday, October 10, 2024, in order to provide staff adequate time to prepare for the by-election. Providing staff as much time as possible under the *Municipal Elections Act* to conduct a by-election is preferable, as the Clerk's Department must coordinate the election while still completing their regular work tasks, like supporting the administration of Council and Committee meetings, and participate and assist in preparing the annual budget, starting this month, among other various day-to-day tasks.

This is different than during a full election, as Council and Committee meetings are often reduced or cancelled entirely during the election and pre-election periods, as well Clerk's rely heavily on peers in surrounding Clerks departments and AMCTO for the election calendar, webinars and training for important deadlines. Clerks often meet monthly as a group, share costs and resources, and share email group exchanges frequently to support each other during the demanding and hectic election period. During a byelection, the Clerk is essentially facilitating an election on their own, with the exception of Clerks who have assistance from Deputy Clerks, Legislative Coordinators or Election staff/officials. Currently, West Elgin staff are already working at full capacity, and assistance to the Clerk would be sparse, and it is unjust for a Clerk to facilitate an election on their own.

In consultation with AMO, "*of the 80 elected officials that either resigned, were removed or passed away for the 2022-26 term, there have been (or will be) 75 appointments and 16 by-elections. The numbers are a bit off as one municipality started the election year with a 4-member council – not enough candidates, so they had to appoint 5th member, some appointments counted twice as the person sits on upper and lower.*" Historically, byelections are done for municipality's that have vacancies effecting the entire municipality (Mayor, Deputy Mayor, Councillor at large), and appointment selection/direct appointment for Ward Representatives.

In consultation with Municipal Clerks, those who prepared by-elections in 2024, or are currently running a byelection, provided a budget of \$25,000 to \$30,000 to their respective Councils, with one municipality advising the actual cost of \$21,000 (\$25,000 budget). Although requested, Clerks were

reluctant to provide a breakdown of essential costs to bring to a final total, as the numbers can vary depending on vendors. One municipality shared a breakdown, which is quite similar to the cost breakdown shown below. Keeping this in mind, the cost estimate provided could potentially be low, and election expenses are unfortunately non-negotiable.

**Proposed Timelines for Holding a By-Election:
(if a by-law is adopted at the Council Meeting on October 10, 2024)**

| | |
|------------------------------------|--|
| Thursday, September 12, 2024 | Declaration of vacancy |
| Thursday, October 10, 2024 | Adopt a by-law to conduct a by-election (MEA, S. (4) 1 ii) |
| Tuesday, November 12, 2024 | Nomination Period Begins (MEA, S. (4) 1) |
| Friday, December 20, 2024 @ 2 p.m. | Nomination Day; Nomination Period Ends (MEA S. (4) 2) |
| Monday, February 3, 2025 | Voting Day (MEA S. (4) 3) |
| Thursday, February 6, 2025 | Councillor Ward 1 takes Oath and seat |

Financial Implications:

OPTION 1 - Appointment Option

There would be a slight cost if Council decides to appoint by application with the main expense being for advertising, which is estimated to be less than \$1,000. There would be no direct election costs other than advertising in the Chronicle.

OPTION 2 - By-Election Option

The estimated cost to run a by-election would be approximately \$20,000 to \$25,000. This includes the hard costs of equipment, supplies, advertising, etc. as well as soft costs such as labour, including outsourcing necessary vendors. *This option does not include and potential staff overtime and/or additional contact hiring, which is very difficult to estimate.*

| By-election estimated costs | |
|---|--------------------|
| DataFix (2022 was \$1,600) | \$2,000.00 |
| Intellivote (2022 was \$9,900 for Ward 1) | \$9,000.00 |
| Elections Ontario | \$0.00 |
| Advertising (Sole advertising) | \$2,500.00 |
| IT (Based on 2022) | \$4,000.00 |
| Supplies (Stationary) | \$1,000.00 |
| Misc. (Meals, Additional postage) | \$2,000.00 |
| | \$20,500.00 |

Policies/Legislation:

[The Municipal Act](#)

[The Municipal Elections Act](#)

West Elgin Policy "Appointment Procedures for Filling a Council Vacancy"

Alignment with Strategic Priorities:

| Infrastructure Improvement | Recreation | Economic Development | Community Engagement |
|--|--|--|--|
| <input type="checkbox"/> To improve West Elgin's infrastructure to support long-term growth. | <input type="checkbox"/> To provide recreation and leisure activities to attract and retain residents. | <input type="checkbox"/> To ensure a strong economy that supports growth and maintains a lower cost of living. | <input checked="" type="checkbox"/> To enhance communication with residents. |

Respectfully submitted by,

Terri Towstiuć
Municipal Clerk