



Municipality of Port Hope

Staff Report

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Report Title: Method to Fill a Vacancy for Office of Councillor, Ward 2

Report to: Committee of the Whole

Date of meeting: February 20, 2024

Report Author:

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Legislative Services

Department responsible:

Corporate Services

Report Number: CS-03-24

Recommended Action:

1. That Report CS-03-24 be received; and
2. That Council direct Staff to proceed with Option # ____ (Option) in order to fill the Vacancy for Office of Councillor, Ward Two.

Highlights:

- The purpose of this report is to provide Council with options to fill the vacancy declared on February 13, 2024 for the Office of Councillor, Ward 2.
- The report provides estimated timing, financial impacts and considerations of the various appointment or by-election options.
- Depending on the method selected, this report also provides an opportunity for Council to review and consider any necessary by-laws that may need to come forward at a Council Meeting, as well as any next steps to be carried out by the Clerk.
- Direction provided upon consideration of this report will be moved forward for confirmation at the Council meeting of March 5.

Background:

At the February 13, 2024 Council Meeting, after considering Report CS-02-24, through Resolution 18-2024 and in accordance with the Municipal Act, 2001, S.O. 2001, c.25 ("the Act"), Council declared the Office of Councillor, Ward 2 vacant. This was due to Chris Collins resigning from his seat on Council upon being appointed a Justice of the Peace. Per the Justices of the Peace Act, Mr. Collins was no longer eligible to serve as a Member of Council for the Municipality of Port Hope. A Justice of the Peace must terminate other employment and abstain from engaging in any political activities upon appointment by the Province of Ontario.

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Report to: Committee of the Whole

When a vacancy on Council occurs, Council determines how to fill the vacant seat, within the provisions of the Municipal Act for the remainder of the term.

Rules applying to filling vacancies, section 263(5) of the Act:

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, the municipality shall,
 - a. appoint a person to fill the vacancy or
 - b. pass a by-law requiring a by-election be held to fill the vacancy.

Section 256 of the Act sets out the eligibility requirements for persons qualified to be elected or to hold office as a member of a Council of a local municipality.

To be an elector, the person under consideration must, on voting day:

- a. reside in the municipality or be the owner or tenant of land there, or the spouse of such owner or tenant,
- b. be a Canadian Citizen,
- c. be at least 18 years old, and
- d. not be prohibited from voting.

Under section 258(1) of the Act, the following are not eligible to be elected as a member of a council or to hold office as a member of a council:

- an employee of the municipality;
- a person who is not an employee of the municipality but who is the clerk, treasurer, Integrity Commissioner, Auditor General, Ombudsman, registrar or an investigator of the municipality;
- a person who is not an employee of the municipality but who holds any administrative position of the municipality;
- a judge of any court;
- a member of the Legislative Assembly or of the Senate or House of Commons of Canada;
- and a public servant, with certain exceptions set out in Part V of the Public Services of Ontario Act, 2006.

Section 264 of the Act provides that a person appointed or elected to fill a vacancy shall hold the office for the remainder of the term of the person they replaced.

In the current situation, Council must fill the vacancy either by appointing a person who has consented to accept the office or by passing a by-law declaring a by-election prior to **April 13, 2024**. Leaving the seat vacant for the remainder of the term is **not** an option as filling the seat is required by law. In making its determination, Council should consider the costs and timelines associated with filling a vacancy by appointment or by by-election.

Discussion:

Ward 2 has approximately 3,476 qualified electors as defined by legislation. In the 2022 Municipal Election, Ward 2 had 1323 voters cast ballots, a turn out of approximately 38%. Two options to cast ballots were provided to electors. 91% of Ward 2 voters cast

their ballot using internet voting, whereas 9% used the telephone to cast their vote. The overall election turnout for the entire Municipality for the 2022 Municipal election was 43%.

The following provides further details on the options to consider in filling a vacancy of Office of Councillor, Ward 2.

Option 1 – Appointment Process

The Act does not set out specific requirements relating to the appointment of an individual to fill a Council vacancy other than meeting the qualification requirements outlined in the Act, noted in the background section of this report. In accordance with best practices, there are a number of sub-options within the Appointment option:

1A – Appointment from 2022 Municipal Election Candidates

Council can appoint the next runner up, or any other candidate from the 2022 Municipal Election. The results from the 2022 Municipal Election for the Ward 2 are attached as Appendix A. Municipalities have done this in the past under the rationale that this person was previously 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. If so, an Appointment By-law, attached as Appendix B, could be approved at a following Council meeting.

Considerations for Option #1A:

- Results in the earliest filling of the vacancy through appointment process.
- The Clerk would seek written confirmation and qualification and confirm the individual is interested in accepting the appointment.
- An appointment by-law and Oath of Office could be administered to the new Councillor by end of March 2024.
- Results in no financial impact to the Municipality, with the exception of staff time.
- A democratic process was undertaken in October 2022, but due to the time elapsed may not be seen as filling the vacancy through a democratic process.

1B – 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 in keeping with best practices, would include a process including an application, declaration of qualifications, and an interview/presentation with Council at a public meeting. At that public meeting, residents would have an opportunity to submit questions for the candidates to respond, at the discretion of Council. Staff have developed sample procedures, attached as Appendix C, in line with other municipalities who have chosen this option.

The following provides an overview of a tentative timeline to facilitate an appointment through the application process described above:

- February 13, 2024 – Declaration of vacancy, Office of Councillor Ward 2
- March 5, 2024 – Council considers methods to fill vacancy – Appointment by Call for Applications selected

- March 11, 2024 – Application period begins
- March 27, 2024 at 2 p.m. – Application period ends
- April 3, 2024 – Applications considered by Council
- April 9, 2024 – New Councillor Sworn into Office

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 as Appendix C to this report to give effect to the necessary procedures to be conducted.

Considerations for Option #1B:

- Results in the earlier filling of the vacancy through the appointment process. An appointment by-law and Oath of Office could be administered to the new Councillor by early April 2024.
- 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 ask questions or attend the presentations of the applicants in order to learn more about their platform.
- 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, to conduct a campaign, which would eliminate barriers to participation.
- Would require a communications plan to ensure the public and potential candidates are made aware of the appointment process.
- Does have financial implications of approximately \$2,000 for advertising costs and staff time, which could be facilitated within the Corporate Services operational budget.
- Transparent selection of the candidate may not be seen as filling the vacancy through a democratic process.

1C – Direct Appointment by Council

Council can choose to appoint an eligible individual without a public process as the Act 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 to Office.

In order to make a direct appointment, a Council Member would have to nominate a candidate for appointment. The nomination would require a seconder. The motion would then be considered by Council and voted on. If there is a majority vote, then that person would be appointed the Ward 2 Councillor.

Considerations for Option #1C:

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

Should Council choose to proceed with one of the Appointment options outlined, staff will ensure additional communication and advertising is provided related to the option selected.

Option 2 – By-election

Council can choose to fill the vacancy by directing a by-election be held in accordance with the Municipal Elections Act (MEA). Section 65 of the Municipal Elections Act governs by-elections requiring that the by-election be conducted as far as possible in the same way as regular elections, that nomination day must be not less than 30 days and not more than 60 days after the seat is declared vacant and voting day shall be 45 days after nomination day.

All election planning must ensure the principles of the MEA serve as a benchmark and guide for the conduct of municipal elections:

- secrecy and confidentiality of the voting process;
- fair and non-biased;
- accessible to voters;
- integrity of the voting process;
- results of the election reflect votes cast;
- voters and candidates shall be treated fairly and consistently.

If this option is selected, Council would be required to pass a by-law to ensure the Clerk can carry out the by-election. A draft by-law is attached to this report as Appendix D for reference when considering the choice to be made in how Council wishes to proceed to fill the vacancy. Further, if a by-election is the preferred choice to fill the vacancy, then pursuant to Section 42 of the MEA, Council must also pass a by-law for the use of internet and telephone voting, as an alternative voting method (Appendix E). Note that Council passed a similar by-law prior to the 2022 Municipal Election (By-law 68/2021). This is the same method that has been used for the 2014 and the 2018 Municipal Elections.

Typically, by-elections employ the same method of voting as the preceding elections, and staff recommend that internet and telephone voting be employed as an alternate method of voting for this by-election. Staff have already spent a considerable amount of time in 2022 creating administrative processes, training and procedures for internet and telephone voting. This is also the method that voters are accustomed to, as it was most recently used in the 2022/2018 elections. If the method of voting is changed, it would result in significant delays and additional costs as staff would be required to procure new vendors for an alternative form of voting, and develop new procedures, training and communication plans.

The Clerk shall be responsible for conducting the by-election in accordance with the MEA and all applicable policies and procedures.

The MEA purposefully gives the Clerk the authority to set Nomination Day in any by-election to permit the time required to prepare for and conduct a legislatively compliant election. Because a by-election for the Office of Councillor, Ward 2 would be for one single Ward, preparations will still be extensive but not as wide-ranging as a municipality-wide election.

Accessible Elections:

Under both the Accessibility for Ontarians with Disabilities Act, 2005 and the MEA, the Clerk is required to ensure that municipal elections, including by-elections, are accessible to people with disabilities, including both electors and candidates.

If Option 2 is selected, Staff would review and revise the Election Accessibility Plan regarding the identification, removal and prevention of barriers that affect electors and candidates with disabilities and would make the plan available to the public before voting day. Circulation of the plan to the Accessibility Advisory Committee (AAC) would occur but due to timelines staff may not be able to present and solicit feedback from the committee. The AAC recently provided comment on the plan for the 2022 Election and it is not anticipated that many changes would be required.

Timelines:

When setting dates, staff will strive to adhere to the proposed timeline to ensure prompt representation for Ward 2 residents on Council. Additionally, they aim to allow for an ample campaign period, provide sufficient time for voters to cast their votes, and ensure compliance with all legislated deadlines. The following provides an overview of a tentative timeline and options for methods to deliver a by-election should Council pass a by-law to hold a by-election:

- February 13, 2024 – Declaration of Vacancy, Office of Councillor, Ward 2
- March 5, 2024 – Council considers methods to fill vacancy – By-election selected
- March 11, 2024 – Nomination Period begins
- April 22, 2024 – Nomination Day (2 p.m.)
- June 3 – 5, 2024 – Advance Voting Days
- June 6, 2024 – Voting Day
- June 7, 2024 – Official Results
- June 18, 2024 – New Ward Two Elected Official Sworn in at Council Meeting
- July 22, 2024 – Financial Filing Deadline (2 p.m.)

Choosing to fill the vacancy for Office of Councillor, Ward 2 by by-election means that the Office of Councillor, Ward 2 will be vacant for approximately four months from the date that Council declared the vacancy.

Supports and Resources Required:

Typically for the general election, the Council and Committee Calendar is developed such that committee and council meetings are not held the month of the election due to the resources required to support logistics, training of election workers, and facilitate

advance voting and election day. These preparations are extensive and require the full resources of the Clerk's office.

Should Council decide to pursue a by-election, staff would recommend that the 2024 Council and Committee Calendar be amended to:

- Move the May 28 Council Meeting to May 21
- Cancel the June 4 Committee of the Whole Meeting
- Cancel the hold for the June 11 Special Council or Statutory Public Meeting

These changes are necessary to ensure that a successful, uncontroverted election can be held. Should Council approve this change to the calendar, Clerks staff will ensure that the revised calendar and deadlines are circulated internally to ensure that other departments have an opportunity to prepare for the change. Staff recommend that a recommendation clause should be added to give effect to the consideration as part of this option.

In addition, an Election Support secondment may be necessary to execute and deliver the objectives in compliance with the legislation. In addition to Clerks staff, assistance would be required from staff in the Information Technology Services (IT), Communications, Protective Services and/or Facilities divisions for preparation and administration of the by-election. Staff from other divisions may also be seconded to act as Deputy Returning Officers during advance voting days or voting days.

Typically in an election year, the full resources of the Legislative Services division are dedicated to election planning as it is a large corporate project. Although a by-election would be on a smaller scale, it would still require considerable resourcing, and will impact other deliverables for the division.

Communications:

Should Council pass a by-law to hold a by-election in Ward 2, staff will build a communication plan to ensure that a Ward 2 by-election is advertised to potential candidates and to voters. Given the tight timelines of the by-election and the absence of a print newspaper for information dissemination, staff will craft a plan incorporating various print and digital communication methods. Drawing on successful strategies from past elections, this will involve:

- Placing signage at prominent locations in Ward 2
- Sending direct mail communications
- Utilizing social media and website channels
- Posting digital newspaper advertisements
- Displaying posters
- Arranging media interviews to share by-election details
- Providing updates in the municipal newsletters

While time and resource constraints may limit extensive outreach efforts compared to a regular municipal election, staff will create a comprehensive communication plan for the by-election.

Budgetary Considerations:

Staff have reached out to Intelivote, the election provider used in previous general elections for estimated costing to run a ward by-election of approximately 4000 eligible electors based on the same provisions (facilities, accessibility and staffing) as the general election. In reviewing the election budget for the 2022 Municipal Election, the total cost to the Municipality was approximately \$55,000. These costs included the costs to retain the internet and telephone voting provider and Canada Post to mail the Voter Information Letters. These costs did not include overtime or the other significant staffing resources that went into planning the municipal election.

Though the by-election would be for a single vacant council seat, many of the cost requirements would be similar to the previous election as the same steps are required, including mailing the voter information letters and updating the Voter's List. It is anticipated that for the Ward Two By-election, the approximate total cost will be \$25,000.

The outlined costs do not include salaries and wages for an Election Support Position and/or overtime costs related to election workers and municipal staff. Due to resourcing constraints in the Corporate Services division, it is anticipated that overtime costs for the by-election may be significant.

Following a legislative change made recently by the Province, any by-election conducted after January 1, 2024 will use the services of Election Ontario for the preliminary list of electors (PLE) as its voters' list, as opposed to the Municipal Property Assessment Corporation's (MPAC) preliminary list of electors used in the general election. As this is a new process, there may be additional fees and/or processes to be established to integrate the PLE into the Municipality's voter's list management system, DataFix, for recording electors.

Considerations for Option #2 (By-election):

- Lengthy and more labour-intensive process, thereby leaving a vacancy for a longer period.
- Significant costs arising from voting provider, communications materials and voters' list/auditor services requirements.
- Ensures a democratic process is employed for all electors.
- Requires a more extensive communications plan to ensure the public and potential candidates are made aware of key election materials and candidate information.
- Results in electors going to the polls in June 2024.
- By-election voter turnout is historically lower than a general election.

Area Municipalities:

The Clerk consulted area municipalities to determine their processes for filling Council vacancies in the last 10 years. Municipal Elections took place in 2014, 2018 and 2022. The below chart is a snapshot of vacancies that have occurred in area municipalities (Durham and Northumberland) and whether they were filled by Appointment or through a by-election:

Municipality	Year	Position	Filled By
Port Hope	2018	Councillor	Appointment
Cobourg	2016	Councillor (2)	Appointment
Trent Hills	2017	Mayor/Deputy Mayor	Appointment
Alnwick/Haldimand	2017	Councillor	Appointment
Uxbridge	2018	Mayor	Appointment
Uxbridge	2015	Councillor	By-election
Oshawa	2018	Councillor	Appointment
Oshawa	2017	Councillor	By-election
Whitby	2016	Councillor	By-election
Brock Township	2021	Mayor	Appointment
Brock Township	2016	Councillor	By-election

Financial Considerations:

The 2024 Budget does not include funding for the costs of an unplanned appointment or by-election.

If Council chooses to fill the vacancy by by-election, it is estimated that the costs will be approximately \$25,000, not including costs related to staff overtime. This estimate is based on quotes received from election vendors as well as the number of estimated eligible electors in Ward 2.

If this unplanned cost is not offset by savings elsewhere throughout the year, it would result in a draw from our stabilization reserve to fund any deficit at the end of the year.

Communication and Public Engagement:

Following Council’s selection of the preferred method to fill the vacancy for Office of Councillor, Ward 2, staff will ensure that the Municipality’s website is updated to provide further information related to the method, that constituents of Ward 2 are notified should there be a by-election and that advertising is completed to ensure any next steps are communicated in a manner that is inclusive of all and that processes are clear and transparent to Port Hope residents.

Conclusion:

As a result of Council declaring a vacancy for the Office of Councillor, Ward 2 on February 13, 2024, Council must select a method to fill the vacancy. Details for a by-election and appointment processes are outlined in this report and staff seek direction from Council on how to proceed.

Attachments:

Appendix A – 2022 Election Results for Ward 2

Appendix B – Draft By-law for Appointment of Person in the Office of a Member of Council representing Ward Two

Appendix C – Draft Procedures for Appointment by Call for Applications

Appendix D – Draft By-law for By-election

Appendix E – Draft By-law for alternative voting method