



Town of Niagara-on-the-Lake

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REPORT #: CAO-24-039 **COMMITTEE DATE:** 2024-10-16
DUE IN COUNCIL: 2024-10-16
REPORT TO: Special Council
SUBJECT: Options to Fill Vacant Council Seat

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Council receive Staff Report CAO-24-039 entitled “Options to Fill Vacant Council Seat”; and,
- 1.2 Council direct staff to proceed with Option ____ to fill the vacant Councillor Seat.

2. EXECUTIVE SUMMARY

At the Special Council meeting on September 17, 2024, per Report CAO-24-038, Council declared vacant the office of a Member of Council following the resignation of Nick Ruller.

In accordance with the Municipal Act, S.O. 2001, c.25, when the seat of a Member of Council becomes vacant, Council shall within 60 days after the day a declaration of vacancy is made fill the vacant Council office by either appointing a person to fill the vacancy or passing a by-law requiring a by-election.

This report provides Council with a number of options and considerations to fill the vacancy.

Council must act to fill the vacant seat by November 16, 2024.

3. PURPOSE

This report outlines Council’s obligations and options for filling the currently vacant Council Member office.

4. BACKGROUND

At the Special Council meeting on September 17, 2024, per Report CAO-24-038, Council declared vacant the office of a Member of Council following the resignation of Nick Ruller.

Municipal Act Provisions:

When a vacancy on Council occurs, Council is faced with the decision on how to fill the vacant office for the remainder of the term. The Municipal Act provides the following two options:

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.

Section 263(5) establishes the rules applying to filling vacancies.

Rules applying to filling vacancies

263 (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.

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.

Section 256 of the Municipal Act, 2011 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 Municipal Act, 2001, 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.

5. DISCUSSION / ANALYSIS

Historical Experience

Previous Councils for the Town of Niagara-on-the-Lake have filled Council vacancies by appointment. In almost all cases, the candidate with the next highest number of votes (9th place for Municipal Council or 2nd place in the case of Regional Council) were appointed to fill the vacancy for the remainder of the term.

On December 16, 1985, Wilbert Dick was elected as the Town's Regional Council representative. Mr. Dick was elected by Regional Council as Regional Chair. Harold Clement was appointed by Town Council to fill the vacancy of the Regional Council positions.

It is interesting to note that, when asked by the Region to appoint a person to replace Mr. Dick as the Town's representative on Regional Council, the Town of Niagara-on-the-Lake Council chose to appoint Mr. Clement rather than the person who had placed second in the election for Regional representative. Jim Collard was appointed to fill the position left vacant on Council when Mr. Clement was appointed to Regional Council. Mr. Collard had placed ninth in the municipal election held in November, 1985.

On September 21, 1987, Kevan O'Connor was appointed to fill the position left vacant on Council by the resignation of Alderman Michael Dietsch, who left to take the position of MPP. It is also important to note that Mr. O'Connor had placed tenth in the municipal election held in 1985.

In 2002, Rob Copeland resigned his seat as Alderman for the Town of Niagara-on-the-Lake. Council appointed Tom Braybrook, who had finished 9th overall in the 2000 Municipal Election.

In 2008, Gary Zalepa was appointed when a vacancy occurred on Council from the passing of Councillor Bob Howse. Mr. Zalepa finished ninth overall in the 2006 Municipal Election.

In 2010, two candidates ran for Regional Councillor for the Town of Niagara-on-the-Lake in the October 25, 2010 Municipal Election, Gary Burroughs and Dave Lepp. Mr. Burroughs was elected as the Town's Regional Council representative. Regional Council advised on December 9, 2010 that Mr. Burroughs was elected Regional Chair, and therefore created a vacant seat on Regional Council. Council appointed Mr. Lepp, who had placed second in the race for Regional Council to fill the vacancy.

In 2020, Sandra O'Connor was appointed when a vacancy occurred on Council from the resignation of Stuart McCormack. Ms. O'Connor finished ninth overall in the 2018 Election.

The 2022 Municipal elections results are as follows:

Rank Candidate Total Votes

1. Erwin WIENS	4,978
2. Gary BURROUGHS	4,273
3. Wendy CHEROPITA	3,774
4. Tim BALASIUK	3,742
5. Sandra O'CONNOR	3,391
6. Nick RULLER	3,318
7. Adiana CATER (VIZZARI)	3,152
8. Maria MAVRIDIS	2,897
9. Allan BISBACK	2,831
10. John William MCCALLUM	2,481
11. Richard MELL	2,079
12. Alistair (AJ) HARLOND	1,979

Options For Filling the Vacant Seat on Council

The following are a number of options for Council consideration to fill the Councillor vacancy. This list is not exhaustive. Council has the option of filling the vacancy in any way that is in compliance with the legislation.

The 2022 Voters Guide for Ontario Municipal Council and School Board Elections (Appendix I) provides additional information on filling vacancies and notes that “sometimes councils want to put additional restrictions on appointees, such as requiring that an appointee agree not to run in the next regular election. While a Council may set this as a condition for appointment, there is nothing in provincial legislation that would prevent someone who was appointed from running in the next election”.

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

Council has the option of passing a by-law authorizing a by-election. The Municipal Elections Act (“MEA”) states that if such a by-law is passed, that the nomination day would occur a maximum of sixty (60) days from the passing of the by-law (potentially December 2024), with voting day occurring forty-five (45) days after nomination day (potentially February, 2025). The MEA states that a by-election must be held “as far as possible” in the same manner as the regular election, which could entail multiple voting locations and advanced polls. A by-election may be the most democratic option to fill the vacancy, but will also be the most costly.

These costs include things such as retaining tabulators and printing ballots and costs for Canada Post to mail the Voter Information Letters. Though the by-election would be for a single vacant council seat, the cost would be very similar to the previous election as the same steps are required, including updating the Voter’s List.

Option #2: Appointment Process

The Municipal Act, 2001 does not set out requirements relating to the appointment of an individual to fill a Council vacancy, other than those relating to qualifications. In order to be considered for appointment, individuals must meet the qualifications as outlined in the Municipal Elections Act, and listed below:

- i. Reside in or be the owner/tenant of land in the municipality, or spouse
- ii. Canadian Citizen
- iii. At least 18 years of age
- iv. Not be prohibited from voting under section 17(3) of the Municipal Elections Act or otherwise by law

Council declared the Council seat to be vacant at the September 17, 2024 Special Council Meeting. In accordance with the Municipal Act, if Council directs that the vacancy will be filled by appointment, the seat must be filled by November 16, 2024.

Option #2A: Appointment of a Candidate from the 2022 Municipal Election to Fill the Vacancy

Option #2A has been used in the past to appoint the next-place finisher in the most recent municipal election. Should Council opt to consider the appointment of the next-place finisher or another candidate from the 2022 election, the Town Clerk would seek written confirmation and qualification and determine if the individual is interested in accepting the appointment. Option #2A could result in an Oath of Office being administered by the new Councillor toward the end of October 2024.

Option #2B: Appointment by Call for Applications

Option #2B approves 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, and would include a process through an application, declaration of qualifications and a recommended procedure to include an interview/presentation to Council in an open Council Meeting. This format is based on practices in other Ontario municipalities. Staff will provide Council with a Vacancy Appointment Procedure at the next Council Meeting for approval if Option #2B is selected.

Option #2C: Direct Appointment by Council

Option #2C approves an appointment process where Council appoints an eligible individual without an application process and without referencing the most recent election results.

6. STRATEGIC PLAN

The content of this report supports the following Strategic Plan initiatives:

Pillar

2. Good Governance

Priority

4.2 Customer Experience

Action

4.1 a) Streamline Processes

Pillar

4. Optimize Organizational Excellence

Priority

4.3 Culture & Workforce

Action

4.2 a) Customer Experience

7. OPTIONS

- 7.1 Option #1: Pass a By-law Requiring a By-Election be Held to Fill the Council Vacancy
- 7.2 Option #2A: Appointment of a Candidate from the 2022 Municipal Election to Fill the Vacancy
- 7.3 Option #2B: Appointment by Call for Applications
- 7.4 Option #2C: Direct Appointment by Council

8. FINANCIAL IMPLICATIONS

There will be significant costs to fill the vacant Council seat if Council directs that a by-election be held to fill the vacancy. The existing funds in the election budget would not be sufficient to cover the 2026 election in addition to a by-election.

9. ENVIRONMENTAL IMPLICATIONS

N/A

10. COMMUNICATIONS

The strategy for communication will be directly related to the decision of Council in regards to the options presented in this report.

11. CONCLUSION

Staff recommends that Council approve one of the Option 2 variants.

12. PREVIOUS REPORTS

Report CAO-24-038 Declaration of Vacancy in the Office of a Member of Council – Nick Ruller

Report CS-20-015 Declaration of Council Vacancy

13. APPENDICES

- Appendix I – [2022 Voters' Guide – Ontario Municipal Council and School Board Elections](#)

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