



Corporate Procedure

Procedure: Filling Vacancies of Members of Council

Category: Departmental

Policy Author: City Clerk’s Office

Related Policies: n/a

Approved By: City Council

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Purpose

In accordance with the Municipal Act, S.O. 2001, c.25, when the seat of a member of Council becomes vacant during the term of office, Council may fill a vacancy by appointing a person who has consented to accept the office if appointed, or requiring that a By-election be held to fill a vacancy in accordance with the Municipal Elections Act, S.O., 1996, c.32

The purpose of this procedure is to outline the process for filling a vacancy on Council.

Scope

This procedure shall apply to Council when a vacancy is declared by Council. This procedure also applies to the City Clerk or their designate when fulfilling the duties and requirements when a vacancy is to be filled.

Definitions

“**Act**” means the Municipal Elections Act, 1996, S.O., 1996, c.32, Sched. as amended.

“**Candidate**” means an individual seeking to be appointed to fill a vacancy in the office of Councillor, having met the eligibility requirements and who has completed the requisite documentation as required by this procedure.

“**Chair**” means the Member of Council presiding at the Council meeting to appoint an individual to fill a Council vacancy.

“**City**” means The City of Hamilton.

“**Council**” means the Council of The City of Hamilton.

"Eligible Elector" has the same meaning as subsection 17(2) of the *Municipal Elections Act, 1996*, namely a person:

- a) who is a resident of the City of Hamilton, or an owner or tenant of land in Hamilton or the spouse of such an owner or tenant;
- b) who is a Canadian Citizen;
- c) who is at least 18 years old; and,
- d) who is not prohibited from voting under any other Act or from holding municipal office.

"Lot" means a method of determination by placing the names of the Candidates on equal size pieces of paper and placed in a container with one Candidate name being drawn by the City Clerk.

"Procedural By-law" City of Hamilton By-law 21-021; A By-law to Govern the Proceedings of Council and Committees of Council

"Vacancy" means a seat on Council that is vacant in accordance with Section 259 of the *Municipal Act, 2001*.

Procedure

1.0 Declaring a Vacancy

1.1 Council is required to declare a seat vacant in accordance with Section 262(1) the *Municipal Act, 2001*, as amended.

1.2 Council shall determine whether to fill the vacancy, within 60 days after the day a declaration of vacancy is made, in accordance with Section 263 of the *Municipal Act 2001*, as amended by either:

- a. appointing a person who has consented to accept the office if appointed; or
- b. passing a by-law requiring a by-election be held to fill the vacancy.

Exceptions to Section 263 of the *Municipal Act, 2001*, as amended, include:

Section 65 (2) of the *Municipal Elections Act, 1996*, that no by-election shall be held to fill an office if the vacancy occurs after March 31 in the year of a regular election; and

Section 263(5)3. of the *Municipal Act, 2001*, as amended, if a vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy.

2.0 Considerations for Filling Vacancy

2.1 In order to help Council make its determination, staff will provide a report outlining the costs and timelines associated with filling a vacancy by appointment or by by-election.

3.0 By-Election

3.1 In accordance with Section 263 (5) of the *Municipal Act*, 2001, Council shall pass a by-law calling for a by-election within 60 days of declaring a vacancy on Council.

3.2 All other procedures regarding a by-election shall be administered by the Clerk in accordance with Section 65 of the *Municipal Elections Act*, 1996.

4.0 Appointment to Council

4.1 In accordance with Section 263(5)(1)(i) of the *Municipal Act*, 2001, any vacancy is to be filled by appointment shall be completed within 60 days of declaring the vacancy.

4.2 Once appointment is selected, Council must identify the Council meeting date where the review and selection of candidates will be held.

5.0 Notice

5.1 The City will post a Council Vacancy notice on the City's website, social media and in the local newspaper. The notice will outline the requirements to be considered for an appointment and the application process.

6.0 Application

6.1 Any individual wishing to be considered for appointment to fill the Council vacancy will complete and submit the following documents to the City Clerk by 2pm on the day of the nomination deadline:

- a) Nomination Paper - Form 1
- b) Endorsement of Nomination – Form 2
- c) CV/Resume (maximum of 3 pages including cover letter)

6.2 Any individual wishing to be considered for appointment to fill the Council vacancy will be required to provide identification to prove their identity and qualifying address to the satisfaction of the City Clerk. To be eligible to hold office as a Member of Council, a candidate must be an Eligible Elector and meet the following criteria:

- a) 18 years of age or older
- b) A Canadian Citizen
- c) A resident of the City of Hamilton, or an owner or tenant of land in the Municipality, or the spouse of such an owner or tenant; and
- d) Not prohibited from voting under any other Act or from holding municipal office.

6.3 The City Clerk will review the applications and confirm and certify eligibility.

6.4 The City Clerk will create a list of all eligible Candidates that have complied with the application process. All applications shall be considered public documents and will be made available for public viewing on the City's website and the Council meeting agenda.

6.5 The agenda for the Special Council Meeting will be published according to the timelines set out in the Procedural By-Law 21-021.

6.6 A Candidate who wishes to withdraw their application shall do so in writing to the City Clerk. The deadline for any withdrawal shall be any time up to noon of the day before the scheduled City Council meeting to fill the vacancy.

7.0 Selection

7.1 A vote to fill a vacancy on Council by appointment will occur at a Special Council meeting.

7.2 All certified candidates who have submitted an application for the vacant seat will be notified by the City Clerk of the date and time of the special meeting of Council. Certified Candidates will be required to confirm their intent to address Council during the Special Council meeting.

7.3 At the meeting, the Chair will make a short statement for the purpose of the meeting and will identify the order of the proceedings to be followed.

7.4 Each Candidate will be provided with a period of 5 minutes to address Council. The order of speakers will be randomly determined by Lot by the City Clerk and outlined on the agenda.

8.0 Voting Process

8.1 Upon considering all submissions of the Candidates, Council will proceed to vote as follows:

- a) Members of Council will vote openly
- b) Candidate names will be displayed in alphabetical order by the City Clerk
- c) Members of Council will vote for one Candidate only

8.2 In order for a vacancy to be filled, a Candidate must receive greater than 50% of the votes of Council members present.

8.3 If on the first ballot, a Candidate receives greater than 50% of the votes from the members of Council present, they shall fill the vacancy.

8.4 If on the first ballot, no Candidate receives greater than 50% of the votes from the members of Council present, then;

- a) the Candidate who received the fewest number of votes, in addition to any candidate(s) who received zero votes, will be excluded from further consideration and will be removed from the next ballot.
- b) Another vote will be taken with the updated list of Candidates.
- c) The process outlined in 8.3(a) will continue until a single candidate receives greater than 50% of the votes from the members of Council present.

8.5 Where the votes cast are equal for all the Candidates and if:

- a) There are three or more Candidates remaining, the City Clerk will by Lot select one such Candidate to be excluded from the subsequent voting;
- b) If only two (2) Candidates remain, the tie will be broken by selecting a Candidate by Lot to fill the vacancy, as conducted by the City Clerk.

8.6 Upon conclusion of the voting, the City Clerk will declare the Candidate receiving greater than 50% of the votes of the voting members of Council present to be the Candidate selected.

8.7 The appointment of the Candidate will be made by by-law. A by-law confirming the appointment will be enacted by Council.

8.8 Where a situation occurs that is not otherwise accounted for in these procedures, the City Clerk shall recommend an alternate process to Council, which Council may adopt with a simple majority vote.

9.0 Acclamation

9.1 If the Official List of Candidate(s) includes only one candidate, the City Clerk will declare the vacancy filled by acclamation. A by-law will be prepared and submitted to Council for enactment.

10.0 Authority of the Clerk

10.1 The City Clerk has the authority to make decisions outside of this procedure to fulfill Council's direction to fill vacancies.

Documents

Municipal Elections Act, 1996, as amended.

Municipal Act, 2001, as amended

City of Hamilton Procedural By-Law 21-021

Revision History

The procedure was prepared in September 2021.