




CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
City Clerk's Office

TO:	Mayor and Members of Council
COMMITTEE DATE:	September 29, 2021
SUBJECT/REPORT NO:	Declaration and Method to Fill the Vacancy for the Office of Councillor in Ward 5 (FCS21093) (Ward 5)
WARD(S) AFFECTED:	Ward 5
PREPARED BY:	Aine Leadbetter (905) 546-2424 Ext. 5555
SUBMITTED BY:	Andrea Holland City Clerk
SIGNATURE:	

RECOMMENDATION(S)

(a) That City Council under sub-section 262(1) of the *Municipal Act, 2001*, as amended, declare a vacancy in the Office of Councillor, Ward 5.

(b) That Council direct the City Clerk to fill the vacancy for the Office of Councillor in Ward 5 by way of the option outlined below:

Option A – Through Appointment. That City Council fill the vacancy by appointing a person qualified to hold office in the City of Hamilton at a special Council Meeting;

or

Option B – Through By-election. That the City Clerk hold a by-election to fill the vacancy in accordance with the *Municipal Elections Act, 1996*; and

(c) That Council approve the Procedure for Filling Vacancies of Members of Council, attached as Appendix A.

EXECUTIVE SUMMARY – N/A

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Financial:

Option A – Staff estimate that filling the Council vacancy through appointment would cost approximately \$10,000. This estimate is largely based on the costs associated with advertisement, including the publication of the notice of nomination for office. This option would be funded out of the current election reserve.

Option B – Staff estimate that it would cost approximately \$190,000 to conduct a By-Election to fill the Council vacancy. This figure is largely comprised of staffing costs, as a temporary Coordinator would be recruited to plan and execute the by-election as current staff is in the process of preparing for the 2022 Municipal Election. Additional staff would be required for the polls on advance vote and voting days. Funding would be allocated to adhere to Public Health protocols, including ensuring proper PPE, signage and sanitation/cleaning supplies required for each poll location. The remainder of the budget estimate accounts for the costs associated with elections supplies, including ballots, voter information cards, and communications. Any costs associated with running the by-election would need additional funding to the election reserve account and would be presented during the 2022 operating budget.

Staffing:

Option A – Through Appointment:

No additional staffing will be required to complete the filling of the vacancy through appointment. Any on boarding of the new Member of Council will be completed using existing staffing.

Option B – Through By-Election:

Staff within the Office of the City Clerk are currently executing the work plan for the 2022 Municipal Election. Additional staff will be recruited to deliver the by-election, should Council select to fill the Ward 5 vacancy by this method. The costs associated with this increase in staffing is reflected in the financial costs listed above. Given staff have been redeployed for the purposes of responding to the Pandemic, there is a concern that these costs may rise if the City Clerk needs to fill most of the poll locations with single day recruitments.

Legal: N/A

HISTORICAL BACKGROUND – N/A

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Councillor Chad Collins sent his resignation to the City Clerk with an effective date of September 24, 2021. Councillor Collins was recently elected as a Member of Parliament to the House of Commons and under Section 258 (1) 3. of the *Municipal Act 2001*, as amended, a person may not hold both elected positions. Under section 259 (1) (a), his seat becomes vacant and Council is required to declare the seat vacant at the next meeting of Council.

Municipal Act, 2001, as amended,

Declaration

262 (1) If the office of a member of a 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. 2001, c. 25, s. 262 (1).

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*. 2001, c. 25, s. 263 (1).

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).

Term

264 A person appointed or elected to fill a vacancy under section 263 shall hold office for the remainder of the term of the person he or she replaced. 2001, c. 25, s. 264.

Option A – Through Appointment

If Council chooses to fill the vacancy with an appointment, the *Municipal Act, 2001*, as amended, outlines the timeframe for this process with an appointment within 60 days of the declared vacancy – September 29, 2021. Staff have drafted a detailed Procedure for Filling Vacancies of Members of Council outlined in Appendix A. While the Legislation provides options for Council to consider, previous corporate documentation on filling vacancies has been very high level and staff are putting forth the Procedure attached to provide greater clarity of the process to be followed.

Action	Date
Declaration of Vacancy	September 29, 2021
Decision to fill vacancy through appointment	September 29, 2021
Public advertising of Position	October 3 – 16, 2021
Application Deadline Date	October 29, 2021; 2pm
Confirmation of Eligibility by the City Clerk	November 4, 2021
Special Council Meeting for Appointment Selection	November 12, 2021
Inaugural Council Meeting for the New Member of Council	November 24, 2021

Option B – Through By-Election

If Council chooses to fill the vacancy through a by-election, the *Municipal Elections Act, 1996* determines the process and timelines for the City Clerk to deliver the by-election. The *Municipal Elections Act, 1996* specifies Election Day is 45 days after Nomination Day. As noted above, the By-Election team will be recruited to work on the by-election to allow those staff working on the 2022 Municipal Election to stay on track to meet the deadlines associated with the work plan. If a by-election is pursued, staff will return with a by-law for adoption on November 24, 2021. Staff will require this time to ensure a vendor can be sought to meet the technology, election supplies and materials to deliver the election within timelines. The Province is currently preparing for the Provincial election in the spring of 2022, and therefore the City will be unable to leverage the Provincial Voting Technology Leasing Program. This adds to a delay in staff bringing the by-law forward for adoption. Additionally, staff will work with Public Health to ensure all health and safety protocols are followed to ensure voting is safe for the electorate and staff working at polls.

Action	Date
Declaration of Vacancy	September 29, 2021
Decision to fill vacancy through By-Election	September 29, 2021
Council approved By-Law for By-Election	November 24, 2021
Nominations begin	December 6, 2021
Preliminary List of Electors from MPAC	December 31, 2021
Nomination Day (closes 2 p.m.)	January 21, 2022

Advanced Voting	February 25, 2022
Advanced Voting	February 26, 2022
Election Day (45 days after Nomination Day)	March 7, 2022
Inaugural Council Meeting for the Newly Member of Council	March 30, 2022

The *Municipal Act, 2001*, as amended provides that Council, within 60 days after the day the office is declared vacant (September 29, 2021), either fill the vacancy by appointing a person or pass a by-law requiring that a by-election be held to fill the vacancy. The City Clerk is seeking direction from Council on how to fill this vacancy. Staff have provided a Filling Vacancies of Members of Council Procedure, attached as Appendix A. Staff are seeking approval of this procedure which provides both Council and the public with the outline of how an appointment process would be handled and that any by-election will be carried out in accordance with the *Municipal Act, 2001*, as amended and *Municipal Elections Act, 1996*.

Membership on Boards and Committees

Councillor Collins sits on the following boards and committees and staff recommend these be backfilled by appointment by Council. Staff will work with existing members of these entities to backfill the Chair and Vice Chair positions immediately. Staff will seek direction from Council on backfilling these appointments, once a new Member is appointed or elected for Ward 5.

Councillor Collins – Committees 2021

Standing Committees and /or Boards:

- General Issues Committee
- Board of Health
- Audit, Finance and Administration Committee
- Planning Committee
- Public Works Committee

Advisory Committee / Sub-Committees / Board of Directors / Shareholders:

- Affordable Housing Site Selection – Chair
- Airport Sub-Committee
- CityHousing Hamilton Corporation Board of Directors
- CityHousing Hamilton Corporation Shareholder
- Development Charges Stakeholders Sub-Committee
- Expanding Housing and Support Services for Women, Non-Binary and Transgender Community Sub-Committee

- Hamilton Conservation Authority Board of Directors
- Hamilton Enterprises Holding Corporation Shareholder
- Hamilton Farmers' Market - Sole Voting Member
- Hamilton Licensing Tribunal – Vice-Chair
- Hamilton Police Services Board
- Hamilton Port Authority - City of Hamilton Liaison Committee
- Hamilton Renewable Power Inc. Shareholder
- Hamilton Street Railway Board of Directors
- Hamilton Street Railway Shareholder
- Hamilton Utilities Corporation Shareholder
- Housing and Homelessness Advisory Committee
- Interview Sub-Committee to Audit, Finance and Administration
- Multi-Year Budget Planning Sub-Committee
- Red Hill Valley Joint Stewardship Board
- School Board Properties – Chair
- Selection Committee
- Stoney Creek Business Improvement Area
- Transit Area Rating Review Sub-Committee
- West Harbour Development Sub-Committee

RELEVANT CONSULTATION

If Council chooses to hold a by-election to fill the Ward 5 Council seat, staff within the Office of the City Clerk will consult with the following entities to deliver the by-election:

- City of Hamilton Public Health, Legal Services, Customer Contact Centre, Corporate Communications
- Hamilton Wentworth Catholic School Board
- Hamilton Wentworth Public School Board
- Conseil Scolaire Catholique MonAvenir
- Conseil Scolaire Viamonde
- Ministry of Municipal Affairs and Housing;
- Chief Electoral Officer
- Municipal Property Assessment Corporation

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S) – N/A

ALTERNATIVES FOR CONSIDERATION – N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix A – Filling Vacancies of Members of Council Procedure