



## REPORT

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**TO:** Mayor Lawlor and Members of Council

**FROM:** Valerie Petryniak, Town Clerk & Director of Legislative Services

**DATE:** February 19, 2025

**REPORT NO.:** ADMIN-2025-005

**SUBJECT:** Council Vacancy

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### RECOMMENDATION:

THAT Report No. ADMIN-2025-005 dated February 19, 2025 regarding a Council Vacancy be received;

AND FURTHER THAT Council direct the Clerk to proceed with option \_\_\_\_ to fill the vacant seat on Council, should a vacancy occur as a result of the Provincial Election on February 27, 2025.

### KEY POINTS:

The following are key points for consideration with respect to this report:

- The *Municipal Act, S.O. 2001, c. 25* states that when a seat of a Member of Council becomes vacant, Council is required to declare the seat vacant and determine if the seat will be filled by appointment or a by-election.
- There is potential for a Council vacancy should one of the Town's Councillors be elected to the Assembly of Ontario at the February 27, 2025 Provincial Election.

### BACKGROUND AND DISCUSSION:

Section 259 of the *Municipal Act, 2001, S.O. 2001, c. 25*, (the Act) outlines the conditions under which the office of a member of Council of a municipality becomes vacant. These conditions include disqualification under specific sections of the Act, absence from Council meetings for three successive months without authorization, resignation or by forfeiting their office under this or any other Act. Section 9.1 of the *Legislative Assembly Act, R.S.O. 1990, c. L10* states that a member of the Assembly is

not eligible to hold office as a member of the council of a municipality. Section 9.2 further states that a person who is elected a member of the Assembly while holding an office in a municipality, may continue to hold such office until the end of the day on which the election results are published in The Ontario Gazette, at which time the member shall be deemed to have resigned from the municipal office.

With the provincial election taking place on February 27, 2025 there is a possibility one of two Town Councillors could be elected to the Assembly of Ontario, therefore automatically resigning their seat on Council. When the office of a member of council becomes vacant under Section 259 of the Act, Council shall declare the office to be vacant at it's next meeting. Staff anticipate this date to be March 24, 2025.

Once Council has declared the seat vacant, the Act states that within 60 days Council must decide on how to fill the vacancy for the remainder of the term. The Act provides two options; by appointing a person who has consented to accept the office if appointed, or require a by-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996*. By declaring a seat vacant on March 24, 2025, Council has until May 23, 2025 to either appoint a person to fill the vacancy or to pass a by-law requiring a by-election.

#### Option #1 – Filling the vacancy by appointment

Neither the *Municipal Act*, nor the *Municipal Elections Act* provide for any rules on how an appointment should be carried out. It is important however, to conduct an appointment through a fair and transparent process.

Appointing someone to fill the vacancy has the advantage of being less costly than conducting a by-election and allows for the vacancy to be filled much sooner. However, this method may be perceived as less democratic. In reviewing best practices at several municipalities, these options for filling a vacancy can be considered.

- A. Direct appointment of Election Candidate – In this method, Council fills the vacancy by appointing the Candidate who ran for vacant position in the most recent municipal election and received the most votes but was not elected. This method of appointment can be viewed as being more democratic than the next method, as the candidate has already campaigned and received votes from the public.

Should Council choose this method, a new member could be sworn in at the **April 14, 2025, Council meeting.**

- B. Direct appointment through application – In this method Council may choose to fill the vacancy by appointing a candidate who has expressed interest in the position through an application process. A vote to fill a vacancy in this manner would take place at an open Council meeting, or Special Council meeting.

Should Council choose this method, a new member could be sworn in at the **May 5, 2025, Council meeting.**

A detailed process for both appointment methods can be found in the attached Appendix A.

There would be minimal costs associated with the appointment process as all work associated with preparing for an appointment would be completed during normal staff working hours, with the exception of a Special Council meeting for Option #1B. Should Council choose to fill the vacancy by appointment, the appointment shall be made within 60 days of Council declaring the seat vacant. By declaring the seat vacant on March 3, 2025, the appointment is to be completed no later than May 2, 2025.

Should Council choose filling the vacancy by either appointment method, staff recommend adding a third paragraph in the recommendation of this report to read:

**AND FURTHER THAT Council follow the process to fill a vacancy as outlined in Appendix A, prior to May 23, 2025.**

#### Option #2 – By-election

A by-election is to be conducted in as much the same way as regular elections with the exception of specific rules and dates for a by-election as set out in the Municipal Elections Act.

Should Council choose to fill the vacancy through by-election, a by-law must be passed within 60 days from the date Council declares the vacancy. Once a by-law has been adopted by Council, the clerk shall fix nomination day to be no less than 30 and no more than 60 days after the passing of the by-law. Voting day will take place 45 days after nomination day.

Staff will need time to prepare for a by-election. Some of the key tasks are as follows:

- Procure election equipment including vote tabulators and laptops to be used at voting locations;
- Prepare and order ballots;
- Prepare and mail voter notification cards telling voters where and how they can vote;
- Logistics and accuracy testing on all election equipment;
- Hire staff for Advanced Voting days and Election Day;
- Follow all other legislative requirements as set out in the Municipal Elections Act.

Based on pricing from the 2022 Municipal Election, staff estimate the cost of holding a by-election to be around \$45,000. This amount will need to be funded from the tax rate stabilization reserve.

Should Council decide on a by-election, staff will need time to prepare and suggesting the following dates:

**By-law adopted to hold a By-Election – April 14, 2025**

**Nomination Day – must be a date between May 14 and June 13, 2025**

**Voting Day – to follow 45 days after Nomination Day**

This timeline remains within the date parameters as set by the Act, and allows staff time to prepare for the election.

Should Council choose to fill the vacancy with a by-election, staff recommend adding the following paragraphs to the recommendation of this report to read:

**AND FURTHER THAT staff prepare a by-law for Council's adoption on April 14, 2025 requiring that the vacancy for Ward x Local Councillor be filled by way of a by-election.**

#### Factors to Consider

As Council weighs the pros and cons on the methods of filling a vacancy, there are several factors that should be taken into consideration.

1. Next Regular Election – The proximity of the next regular election should be considered when determining how to fill a Council vacancy. How much time will be left in the term after the new member is officially sworn in? The Municipal Act does not allow a vacancy to be filled through a by-election after March 31<sup>st</sup> of an election year. If the vacancy occurs within 90 days before voting day, the municipality is not required to fill the vacancy.
2. Restricted Acts after nomination day (Lame Duck) – When considering the time left in this Council term, there is a possibility Council could go into a Lame Duck period on August 21, 2026 until Voting Day, October 26, 2026. A Lame Duck period is where Council is limited in the decisions it can make.
3. Costs – any costs associated with filling a vacancy will need to come from the tax-rate stabilization reserve.
4. Public Interest- Statistically there is lower public interest in a by-election when voting to replace a member of Council. In the 2022 Municipal Election which included a Mayoral race, the voter turnout was 28.09%. The previous by-election held in Halton Hills for one vacant seat saw a voter turnout of 15.62%.

This report outlines the necessary steps for declaring and filling a Council vacancy in accordance with the Municipal Act and Municipal Elections Act. Council must weigh the pros and cons of each method and determine which method is the most logical for this Council at the time of a vacancy.

**STRATEGIC PLAN ALIGNMENT:**

This report is administrative in nature and does not have an impact on the Town's Strategic Plan.

**RELATIONSHIP TO CLIMATE CHANGE:**

This report is administrative in nature and does not directly impact or address climate change and the Town's Net Zero target.

**PUBLIC ENGAGEMENT:**

Public Engagement was not needed as this report is administrative in nature. However, depending on which method to fill a vacancy is chosen, staff will work with Communications staff to notify the public in the appropriate manner.

**INTERNAL CONSULTATION:**

The CAO was consulted in the drafting of this report.

**FINANCIAL IMPLICATIONS:**

Depending on the chosen method, there could be an immediate financial impact that will require a funding source.

Reviewed and approved by,

Chris Mills, Chief Administrative Officer