

Staff Report



Corporate Services Department

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REPORT TO: Finance and Corporate Services Committee

DATE OF MEETING: January 8, 2024

SUBMITTED BY: Amanda Fusco, Director of Legislated Services/City Clerk, 519-741-2345 ext. 7809

PREPARED BY: Amanda Fusco, Director of Legislated Services/City Clerk, 519-741-2345 ext. 7809

WARD(S) INVOLVED: 10

DATE OF REPORT: December 21, 2023

REPORT NO.: COR-2024-007

SUBJECT: Method to Fill a Vacancy for Office of Councillor, Ward 10

RECOMMENDATION:

THAT Council selects option # ____ (Option) as presented in Corporate Services report COR-2024-007 Method to Fill a Vacancy for Office of Councillor, Ward 10.

REPORT HIGHLIGHTS:

- The purpose of this report is to provide Council with options to fill the vacancy declared on December 14, 2023 for the Office of Councillor, Ward 10.
- The report provides estimated timing, financial impacts and considerations of the various appointment or by-election options.
- To approve any necessary by-laws dependent on the method selected by Council to provide for next steps to be carried out by the Clerk.
- This report supports the delivery of core services.

BACKGROUND:

At the December 14, 2023 Special Council Meeting through report COR-2023-547, in accordance with section 262 of the Act, Council declared the office of Councillor for Ward 10 vacant arising from Aislinn Clancy's resignation due to their election to Provincial Parliament. When a vacancy on Council occurs, Council determines how to fill the vacant seat for the remainder of the term. The City relies upon the *Municipal Act, 2001, S.O. 2001, c.25* ("the Act") provisions with respect to filling a vacant seat. Section 263(5) of the Act 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, 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 263(5) further notes that should a vacancy occur within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy.

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 February 14, 2024. In making its determination, Council should consider the costs and timelines associated with filling a vacancy by appointment or by by-election.

REPORT:

Ward 10 is made up of approximately 18,901 electors. In the 2022 Municipal Election (“general election”), Ward 10 had 5,009 voters cast ballots, a turn out of 28%. The following provides further details on the options for Council to consider in filling the vacancy of Office of Councillor, Ward 10.

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 those relating to qualifications.

To be considered for appointment, individuals must meet the qualifications as outlined in the *Municipal Elections Act, 1996, S.O. 1996, c. 32 (MEA)*, noted above.

In accordance with best practices, there are a number of sub-options within the Appointment option:

A) Appointment from 2022 Municipal Election Candidates

Council can appoint the next place finisher from the 2022 Municipal Election. Municipalities have done this in the past under the rationale that this person was judged by the electorate recently 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 the next Council meeting. The results from the 2022 municipal election for the specific ward office are attached as Appendix A.

Considerations for Option #1A:

- Results in the earliest filing of the vacancy through appointment process.
- The City Clerk would seek written confirmation and qualification and determine if the individual is interested in accepting the appointment.
- An appointment by-law and Oath of Office could be administered to the new Councillor by the end of January 2024.
- Does not include financial implications other than staff time.
- Candidates may no longer be eligible or interested in filling the vacancy.
- 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.

B) 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. Staff have developed sample procedures, attached as Appendix C, in line with other municipalities who have chosen this route.

The following provides an overview of timeline to facilitate the application process:

- **December 14, 2023** – Declaration of vacancy, Office of Councillor Ward 10
- **January 8, 2024** – Council considers methods to fill vacancy – Appointment by Call for Applications selected
- **January 9, 2024** Application period begins
- **January 25, 2024 at 2 p.m.** Application period ends
- **January 29, 2024** Applications considered by Council
- **February 12, 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 filing of the vacancy through appointment process. An appointment by-law and Oath of Office could be administered to the new Councillor by the end of February 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 provide input into the selection of individual who will represent them on Council.
- 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 regarding the need for a campaign to express interest, 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 \$2,500 for advertising costs and staff time.
- Transparent selection of the candidate may not be seen as filling the vacancy through a democratic process.

C) 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.

Considerations for Option #1C:

- Results in the earlier filing of the vacancy through appointment process. An Oath of Office could be administered to the new Councillor by the end of January 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 MEA. 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.

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.

If 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. Further, pursuant to Section 42 of the MEA, Council has passed a by-law (By-law 2006-135) for the use of vote count tabulators, as an alternative voting method. The Clerk shall be responsible for conducting the by-election in accordance with the MEA and all applicable policies and procedures.

The Act purposefully gives the Clerk the authority to set Nomination Day in any by-election to permit the Clerk the time required to prepare for and conduct a legislatively compliant election. Because a by-election for the Office of Councillor 10 would be for one single Ward, preparations will still be extensive but not as wide-ranging as a City-Wide election.

Accessible Elections

Under both the *Accessibility for Ontarians with Disabilities Act, 2005* and the MEA, the City 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 Grand River Accessibility Advisory Committee (GRAAC), Mayor's Advisory Council for Kitchener Seniors (MACKS) and the Equity and Anti-Racism Committees would occur but due to timelines staff may not be able to present and solicit feedback from the groups. The Plan would not be markedly different from the general Election Accessibility Plan so the chance of changes is low.

Timing

In determining dates, staff would endeavor to make every effort to follow the proposed timeline to ensure not only that Ward 10 residents have representation on Council as soon as possible, but that an adequate campaign period is provided, there is time for voters to vote and all legislated timelines are met. The following provides an overview of timeline and options for methods to deliver a by-election should Council pass a by-law to hold a by-election:

- **December 14, 2023** – Declaration of Vacancy, Office of Councillor Ward 10
- **January 8, 2024** – Council considers methods to fill vacancy – By-Election selected
- **January 15, 2024** Nomination Period Begins
- **February 23, 2024** Nomination Day (2 pm)
- **April 4, 2024** Advance Voting Day
- **April 5, 2024** Advance Voting Day
- **April 6, 2024** Advance Voting Day
- **April 8, 2024** Voting Day
- **April 10, 2024** Official Results
- **April 15, 2024** New Ward 10 Elected Official Sworn in at Council Meeting

- **May 23, 2024** Financial Filing Deadline (2 pm)

Choosing to fill the vacancy for Office of Councillor, Ward 10 by by-election means that the Office of Councillor, Ward 10 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.

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

- reschedule the March 18, 2024 Audit/Council meeting to March 4, 2024
- eliminate the March 25, 2024 Standing Committee meeting
- eliminate the April 8, 2024 Council meeting

to ensure that a successful, uncontroverted election can be held. Should Council support this, a recommendation clause should be added to give effect to the consideration.

In addition, an Election Project Manager secondment would 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 Technology and Innovation Services (IT), Corporate Customer Service, Communications, and Facilities divisions for preparation and administration of the by-election.

Communications

Should Council pass a by-law to hold a by-election in Ward 10, staff will work with Corporate Communications to build a comprehensive communication plan to ensure that a Ward 10 by-election is advertised to potential candidates and to voters.

Budgetary Considerations

Staff have reached out to Dominion Voting Services, the election equipment provider used for the general election, for estimated costing to run a ward by-election of approximately 20,000 eligible electors based on the same provisions (facilities, accessibility and staffing) as the general election.

A budgetary quotation of \$54,000.00 was provided for the voting equipment and consumables. These costs would be reduced slightly if the number of voting locations used were condensed. A list of the facilities used in the general election is included in Appendix A. If an acclamation were to occur, the City would still bear approximately \$22,000 in costs arising from the programming of the election definition.

A quotation was provided for the provision and mailing of voter notification cards (VNCs), based on a single card mailed to each elector of \$23,000 (\$5,000 for the over notification cards and \$18,000 in Canada Post charges). These costs would be reduced slightly if voter cards were grouped by address into "multis" as conducted in the general election.

These costs do not include salaries and wages for an Election Project Manager and/or election workers or required advertisements and notices that the MEA states must be placed in a local newspaper.

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 City's voter's list management system, DataFix, for recording electors.

Considerations for Option #2:

- Lengthy and more labour-intensive process, thereby leaving a vacancy for a longer period.
- Significant costs arising from voting equipment and services requirements.
- Ensures a democratic process is employed for all electors.
- Requires a 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 April 2024.
- May result in low voter turnout for ward specific vacancy.

As a result of Council declaring a vacancy for the Office of Councillor, Ward 10 on December 14, 2023, Council must select a method to fill the vacancy. Details for a by-election and appointment processes are outlined in report COR-2024-007 and staff seek direction from Council on how to proceed.

Following Council's selection of the preferred method to fill the vacancy for Office of Councillor, Ward 10, staff will ensure that the City's website is updated to provide further information related to the method, that constituents of Ward 10 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 Kitchener residents.

STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

FINANCIAL IMPLICATIONS:

There is no funding set aside for the costs of an unplanned by-election.

If Council chooses to fill the vacancy by by-election, it is estimated that the costs will be between \$77,000 and \$97,000. This estimate is based information the City Clerk has obtained noted above, and on the number of eligible electors in Ward 10.

Costs arising from a By-election would result in the Election cost centre being overbudget. Should this unbudgeted expenditure contribute to an overall operating deficit for the City of Kitchener in 2024, the negative variance would be funded from the Tax Stabilization Reserve Fund which exists for the purpose of offsetting unforeseen budget variances. There is a sufficient balance in the TSRF to cover any deficit caused by a by-election.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City’s website with the agenda in advance of the council / committee meeting.

PREVIOUS REPORTS/AUTHORITIES:

- COR-2023-547 - Declaration of Vacancy for the Office of Councillor, Ward 10
- *Municipal Act, 2001*
- *Municipal Elections Act, 1996*

APPROVED BY: Victoria Raab, General Manager, Corporate Services

ATTACHMENTS:

Appendix A: 2022 Election Results for Ward 10 and Voting Locations

Appendix B: Draft By-law for Appointment of Person in the office of a member of council representing Ward 10

Appendix C: Draft Procedures for Appointment by Call for Applications

Appendix D: Draft By-law for By-election

Appendix E: Council Vacancy Municipal Scan (2023)