



2021 Division Road North
Kingsville, Ontario N9Y 2Y9
(519) 733-2305
www.kingsville.ca
kingsvilleworks@kingsville.ca

Date: August 17, 2017
To: Mayor and Council
Author: Jennifer Astrologo, Director of Corporate Services
RE: Council Vacancy – Resignation of Councillor McIntyre
Report No.: CS-2017-016

AIM

To provide Council with information relating to the resignation of Councillor McIntyre and the options available to fill said vacancy on Council.

BACKGROUND

At the August 14th Regular Meeting of Council, Councillor McIntyre submitted correspondence communicating her resignation from Council, effective immediately. That correspondence was received by Council and filed with the Clerk at the conclusion of the Council Meeting in accordance with s. 260 of the *Municipal Act, 2001* (the “Act”).

This report is provided to outline the requirements of the *Act* when a Councillor resigns, the options available to fill the vacancy and the timelines in which said vacancy must be filled.

DISCUSSION

In accordance with section 259 of the *Act*, the office of a member of council becomes vacant if the member resigns from his/her office by filing notice with the clerk. Councillor McIntyre’s resignation was filed with the Clerk following the August 14, 2017 Regular Meeting. Therefore, Council must declare the office of a member of council vacant at its August 28, 2017 meeting.¹

Since this vacancy has occurred more than 90 days before a regular election, the Town must fill the vacancy.

¹ Section 262 of the *Act*.

Under section 263(1) of the *Act*, the Town has two (2) options by which they may fill the vacancy:

1. Appoint a person who has consented to accept the office if appointed, or
2. Hold a by-election in accordance with the *Municipal Elections Act, 1996* (“MEA”).

The *Act* requires that if Council chooses to appoint a person to fill the vacancy, the appointment must be made within sixty (60) days after the seat was declared vacant. Therefore, the appointment must be made by October 27, 2017.

If Council chooses to hold a by-election, the by-law authorizing a by-election must be passed within sixty (60) days of the declared vacancy. Similar to the deadline for an appointment, the election by-law must be passed by October 27, 2017.

The qualifications to hold office remain the same. The elected/appointed individual must meet the following qualifications:

- 18 years of age or older;
- Be a Canadian citizen;
- Reside in Kingsville or is the owner or tenant of land in Kingsville, or is the spouse of such an owner or tenant of land; and
- Is not prohibited from voting under any other Act or is disqualified from holding municipal office.

Finally, the new Councillor will serve from the time their oath of office is taken to the end of the current term of Council, being November 30, 2018.

Outlined below are options available to fill the vacancy left by Councillor McIntyre’s resignation for Council’s consideration. Regardless of the method that is selected by Council, it is recommended that Council consider the adoption of a Council Vacancy Policy which sets out the options available to Council in the event of a vacancy and the process to be followed depending on the method selected. Attached at Appendix B is a sample Council Vacancy Policy, based on the best practices of other municipalities which sets out in some detail the options available to Council.

Option 1 – Appointment

The *Act* does not prescribe how an appointment is carried out. In fact, The Municipal Councillor’s Guide 2014, which is published on the Ministry of Municipal Affairs and Ministry of Housing website specifically articulates that “Council decides what process it will use to choose the person it appoints.”² In this regard, there are two (2) options for consideration: i) appointment of an unsuccessful candidate from the 2014 election, or ii) application process.

² The Municipal Councillor’s Guide 2014, pg. 28

i) Appointment - Unsuccessful Candidate from Previous Election

Council may elect to choose the unsuccessful candidate with the greatest number of votes from the previous election. This is viewed as the most democratic means of appointing a member to Council as it represents the wishes of the votes who cast ballots in the most recent election. Attached at Appendix A is the Certificate of Election Results, as executed by the then Clerk, Ruth Orton, which provides a listing of all candidates and the number of votes that were received by each. Mr. Driedger is the next highest vote getter and remains eligible for appointment. If Mr. Driedger does not accept the appointment, the appointment would be offered to the next highest vote getter who is eligible and so forth until a candidate accepts the appointment.

Kingsville took this approach back in 2011 when Councillor Stiffler resigned from Council. On September 12, 2011, Council extended an invitation to Ms. Beth Riddiford to fill the vacancy (motion 713-2011).

ii) Appointment - Call for Applications

Alternatively, Council may choose to proceed by advertising the vacancy and allowing persons interested in holding office to submit an application. If Council wishes to proceed by making a call for applications, it is strongly recommended that a procedure be adopted for filling a vacancy in this manner. Similar to an election, the procedure would include public notices, information about the vacancy, coordination of applications, a system for hearing deputations and voting (see sample policy at Appendix B).

An open call for qualified applicants would be placed in the local papers, on the municipal website and on social media for a period of time (i.e. 3 weeks). Interested and qualified applicants would submit an application, on the prescribed form, and a declaration with the Clerk. At least one public meeting would be held to allow applicants the opportunity to make representations to Council and the public.

Below is a chart outlining the estimated timelines and related matters that would be carried out in relation to the call for applications process.

Date	Meeting	Activity
August 28, 2017	Council Meeting	Council seat declared vacant
September 11	Council Meeting	Council Vacancy Policy adopted
September 12 – October 3	Notice of Applications	Applications/Declarations submitted to Clerk
October 16	Public Meeting	Deputations by Applicant and Vote by Council
October 23	Council Meeting	Council passes By-law to appoint new Councillor and Oath of Office is taken
October 2017		Orientation for new Councillor
November 13	Council Meeting	First meeting for new Councillor

This option allows Council to appoint a new member using an open and transparent process and has been used by other municipalities that used an appointment process to fill a council vacancy. In 2016, at least three (3) municipalities (Tay Township, Town of Wasaga Beach and Township of Puslinch) used this method of filling a council vacancy.

It is estimated that the costs of this method would be approximately \$1,500.

Option 2 – By-election

Council may also choose to fill the vacancy by requiring a by-election to be held. As mentioned above, if this option is selected, a by-law authorizing the by-election must be adopted by Council by October 27, 2017.

Section 65 of the *MEA* requires that Nomination Day be set no less than thirty (30) and no more than sixty (60) days from the date the by-law to hold the election is passed. Voting Day must be held forty-five (45) days after Nomination Day.

Additionally, the *MEA* requires that by-elections “be conducted as far as possible in the same manner as regular elections.” The 2014 election was conducted by telephone and internet voting, and the Town recently passed By-law 53-2017 authorizing vote by mail with three ballot return stations for the 2018 election. The Town is not required to conduct a by-election using the same method as was provided for in the previous election. The *MEA* expressly permits a municipality to pass another by-law authorizing another alternative method of election.

The table below estimates the timelines if Council chose to fill the vacancy via a by-election.

Date	Meeting	Activity
August 28, 2017	Council Meeting	Council seat declared vacant
September 11	Council Meeting	Council Vacancy Policy adopted
October 23	Council Meeting	Council passes By-law to hold a by-election
December 22		Nomination Day (60 days after the by-law is passed)
February 15, 2018		Voting Day
February		Orientation for new Councillor
February 26	Council Meeting	First meeting for new Councillor

Councillors are elected at-large. There is no ward system in Kingsville. Therefore, the costs of a by-election would be the same as the costs of a regular election and would cost a minimum of \$55,000.

While this method of election respects the democratic process, the vacancy left by Councillor McIntyre's resignation will take longer to fill given the timelines prescribed by the legislation. The new member of Council would likely not be elected until late January/early February and sworn into office thereafter, leaving approximately nine (9) months left in the term of office. Additionally, this method of election would be more costly, and more labour intensive for the Corporate Services Department.

Summary

The decision as to the method to fill the vacancy is one that rests entirely with Council. However, to meet the legislative requirements, Council must declare the office of a member of council vacant at the August 28, 2017 Council Meeting and must either appoint a new member of Council or adopt a by-election by-law by October 27, 2017.

LINK TO STRATEGIC PLAN

No direct link to the strategic plan.

FINANCIAL CONSIDERATIONS

As noted above, the by-election options is the most expensive method to fill the vacancy. At the April 10, 2017 Regular Meeting, the costs of the 2018 election were estimated at a minimum of \$55,000. Since the Town of Kingsville's council members are elected at-large, the cost of a by-election will be the same as the costs of a regular election.

The costs associated with either of the appointment processes are nominal and would likely not exceed \$1,500.

Currently, there is \$15,000 in Election Reserves. The costs associated with either method will first be drawn from the Election Reserves.

CONSULTATIONS

Ministry of Municipal Affairs
Laura Moy, Director of Corporate Services/Clerk, Town of Tecumseh

RECOMMENDATION

That Council declare the office of a member of council vacant;

And that Council consider the options available to fill the vacancy, with a decision to be made at the September 11, 2017 Regular Council Meeting.

Jennifer Astrologo

Jennifer Astrologo, B.H.K (hons), LL.B.
Director of Corporate Services/Clerk

Peggy Van Mierlo-West

Peggy Van Mierlo-West, C.E.T.
Chief Administrative Officer