



Council Report

Report Number: CLK2024-003
Meeting Date: November 19, 2024
Title: Declaration of Vacancy and Options for Replacement – Councillor Ward 5
Description: Municipal Act, 2001 Sections 259 (1d), 262 (1) and 263
Author and Title: Cathie Ritchie, City Clerk

Recommendation(s):

That Report CLK2024-003, **Declaration of Vacancy and Options for Replacement – Councillor Ward 5**, be received;

That the Council seat for Ward 5 in the City of Kawartha Lakes be declared vacant under 262 (1) of the Municipal Act, 2001, S. O. 2001, as amended, for the reason outlined within Section 259 (1)(d) of the Municipal Act, 2001, S. O. 2001; and

That City of Kawartha Lakes Council, in accordance with Section 263 (1) (a) of the Municipal Act, 2001 shall fill the vacant position of Ward 5 through Option _____, namely

_____.

Department Head: _____

Financial/Legal/HR/Other: _____

Chief Administrative Officer: _____

Background:

Effective November 1, 2024 Eric Smeaton Ward 5 Councillor resigned formally by delivering his letter of resignation to the City Clerk.

The purpose of this report is to declare the Office of Councillor, Ward 5 vacant and for Council to determine the method to fill the vacancy.

Rationale:

Council is required to set the direction for the City Clerk to ensure the method to filling the vacancy for Office of Councillor, Ward 5 is within the timelines and provisions set out by the Municipal Act.

To consider any necessary funding and by-laws is dependent on the method selected by Council to provide for next steps to be carried out by the City Clerk.

Vacant seat

259 (1) The office of a member of council of a municipality becomes vacant if the member,(d) resigns from his or her office and the resignation is effective under section 260;

Resignation as member

260 (1) A member of council of a municipality may resign from office by notice in writing filed with the clerk of the municipality.

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.

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.

Options for Method to Fill Vacancy

Appointment Process

The Act does not set out requirements relating to the process for appointment of an individual to fill a Council vacancy, other than those relating to qualifications.

Option #1A - By Results from Previous Election

Council has the option of filling the vacancy through appointment of a 2022 Council Candidate starting with the candidate who received the second-most number of votes in the previous Municipal Election. Should the second Candidate decline, the City Clerk is authorized to offer the Councillor vacancy to the next Candidate with the most number of votes. If declined, the offer process would continue until the list of 2022 Ward 5 Candidates is exhausted. Absent of an acceptance from any of the Candidates, the matter would be brought back to Council for further direction.

Should Council wish to pursue this option, the City Clerk would seek written confirmation of acceptance from the candidate(s) and confirm qualifications.

This option does not include financial implications other than staff time.

Option #1A could result in an Oath of Office being administered to the new Councillor in the next few months.

Councillor Ward 5 (Elector Count 9,969 based on 2022 Election)

Candidate	Votes	Percentage of Eligible Votes
Janet Di Bello	569	15.11%
Duncan Gallacher	699	18.57%
Gloria Graham-Weir	125	3.32%
Wesley Letsholo	190	5.05%
Eric Smeaton	2182	57.95%
Declined to Vote	50	
Spoil This Ballot	12	
Implicit Blanks	16	
Total Number of Votes:	3843	

Option #1B - By Simple Appointment

Council has the option to fill the vacancy without a formal selection process. Council may choose to fill the vacancy by appointing any qualified individual as outlined in Section 256 of the Act.

The City Clerk would seek written confirmation and qualifications and determine if the individual is interested in accepting the appointment.

This option does not include financial implications other than staff time.

Option #1B could result in an Oath of Office being administered to the new Councillor within the 60-day period following the declaration of office vacancy.

Option #1C - By Advertising

Council could follow 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, and would include a process through an application, declaration of qualifications and a recommended procedure to include an interview/presentation to Council in an open Council Meeting.

At an Open Meeting, Council would request each eligible candidate to provide a presentation. Council will ask the candidates predetermined questions. This process also could include a voting procedure to ensure fair and transparent voting occurs, to select a final candidate within the 60-day period following the declaration of office vacancy. This option has minimal financial implications other than staff time and advertising.

By-Election

Option #2 - Internet Voting

The City Clerk would be responsible for conducting a by-election in accordance with the Municipal Elections Act and all applicable City policies and procedures. Council is required to pass a by-law to ensure the City Clerk can carry out the by-election. Further, pursuant to Section 42 of the MEA an alternative voting method will be identified in the by-law.

Over the past two elections, Internet voting has proven to be straight forward, cost effective and accessible. The primary benefits offered by internet voting are convenience and accessibility, with the potential for minimal to moderate increase in voter turnout. Municipal By-Elections often have significantly lower turnout than General Elections.

Internet voting provides an effective and rapid count of the votes at the close of voting, usually in less than an hour.

Potential barriers to participation by internet voting include internet access and requirements for assistance. Voter assistance would be available at City Hall where Election Staff can provide computers and support to help guide electors through the process. Internet voting provides additional accessibility options to electors, including the ability to vote away from home for students studying outside the geographic area, and for electors working or vacationing away from home.

The internet voting option also negates ballot waste and the potential for an elector to incorrectly mark a ballot, with a virtual ballot and defined fields to mark the ballot.

The By-Election process is mandated by the Municipal Elections Act and will be conducted in the same manner as the 2018 and 2022 Elections. Even though the Election is reduced to Ward 5, it will take several months to complete. The successor would not be sworn in until likely Q2 of 2025, and as such, the seat will remain vacant until then.

The estimated cost is approximately \$25,000-\$40,000 for software vendor, hardware rental, printing and mailing, advertising, staff overtime.

Summary and Time Restrictions

Section 263 (1) of the Municipal Act, 2001 (Act) authorizes a municipality to fill a vacancy either by by-election or appointment.

Section 263 (5) (1) notes that a municipality must select the method to fill the vacancy within 60 days after declaration of vacancy has been made. (January 18, 2025)

Council is to declare a vacancy for the Office of Councillor, Ward 5 on November 19, 2024; therefore, Council must decide how to fill the vacancy within 60 days of declaring the vacancy. (January 18, 2025)

Should Council wish to conduct a by-election to fill the vacancy, a by-law is required. A By-law would be brought forward at a duly called Council Meeting (Written depending on the option selected).

The minimum time for the nomination period and Nomination Day is to be set not less than 30 days and no more than 60 days from the date Council passes the by-law to hold a by-election. Voting Day must be 45 days after Nomination Day.

Should Council wish to fill the vacancy via appointment, the appointment process shall be completed within the 60 days (on or before January 18, 2025).

Other Alternatives Considered:

The Municipal Act regulates the options for filling a vacancy.

Alignment to Strategic Priorities

1. Good Government

Following Council's selection of the preferred method to fill the vacancy for Office of Councillor, Ward 5, staff will ensure that the City's website is updated to provide further information related to the method, that constituents of Ward 5 are notified and that advertising is done to ensure any next steps are communicated in a manner that is inclusive of all and that processes are clear and transparent.

Should Council choose to have a by-election, accessibility issues will be considered in the planning and implementation of this decision to ensure that the vote is accessible to all voters in accordance with legislation.

Financial/Operation Impacts:

To mitigate the impact of the municipal election that occurs every four years, the City's operating budget includes a contribution annually to the Election Reserve to cover costs associated with regular municipal elections. Any costs associated with a By-Election would be expensed through the Election Reserve. The reserve would be reconciled in the 2026 budget to fund the forecasted expenditures to implement the 2026 General Election.

Consultations:

Director of Corporate Services
Deputy Clerks

Attachments:

None

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Department Head: Ron Taylor, Chief Administrative Officer