

OPTIONS TO FILL A VACANCY IN THE OFFICE OF MAYOR

Recommendation

The Deputy City Manager and City Solicitor and the Clerk recommend:

That direction be given as to the manner in which the vacant seat of the Office of the Mayor is to be filled, and any additional vacancies that may result should an appointment be made from within Council.

Purpose

The passing of Mayor Jackson leaves the Office of the Mayor vacant. In accordance with the Municipal Act, Council has declared the seat vacant. This report outlines the options and issues for consideration by Council in respect of the process to fill the vacancy.

Background - Analysis and Options

Appointment

At a Council meeting called for the purpose, Council shall appoint a person who has consented to fill the vacancy and who is qualified for the office to which they are to be appointed. To be qualified for Mayor, the person must be a Member of Council on the date of the appointment. For all other offices, the person must be qualified to hold office as a Member of Council.

If more than one person is nominated for appointment to fill a vacancy, a vote of the Members of Council shall be taken.

A person nominated who receives the votes of more than one-half the number of all Members of Council (4 or more), shall fill the vacancy for which the vote was taken.

If no majority vote is received, then the candidate with the fewest votes is dropped and the vote taken again and the process is repeated until a candidate receives a majority vote.

While there is no specific time limit by which an appointment must be made stipulated in the Municipal Act, regard may be had for the provision respecting a vacancy occurring after March 31 in an election year, which requires the appointment to be made within 45 days after the vacancy occurs. However, in the event that a Regional Councillor was appointed to the Office of the Mayor, a vacancy would occur in the office of Local and Regional Councillor. This vacancy would have to be filled by an appointment within 60 days after the vacancy occurs in accordance with subsection 9(9) of the Regional Municipalities Act. The person appointed could be a member of council or a person who is eligible to be elected a Member of Council.

Any resulting vacancy that occurs in the office of a local councillor shall be filled with a person qualified to hold office as a Member of Council.

The provision respecting appointments is mandatory and provides that "council shall appoint", except where a by-election has been called. Accordingly, staff are of the opinion that all vacancies must be filled by either an appointment or by-election.

Inquiries have been made as to whether Council may appoint a person to fill a vacancy in a Ward Councillor seat resulting from previous appointments, provided the person agrees not to be a candidate in the 2003 election. There is no authority to restrict an individual from being a candidate in an election if they meet the statutory qualifications for the position. Any such

agreement purported to be entered into would be, in our opinion, not within Council's authority and would be unenforceable.

By-election

Council **may** pass a by-law to require an election to be held, in accordance with section 65 of the Municipal Elections Act, to fill the vacancy rather than make an appointment. The by-election would be held no later than 61 days after the date that Council passes the by-law requiring the election to be held

The cost of a by-election to fill the vacancy in the office of Mayor would be approximately \$300,000.00, and for the office of Local Councillor would be approximately \$150,000.00. While funds are available in the Election Reserve for an election in 2002, it would require additional funding in the 2003 budget for the regular election to be held in November 2003.

The timing of the by-election may be affected by the summer months. It would be advisable to provide for all vacancies to be filled prior to the commencement of the summer months. This requires that in the event that a by-election is called, in order to allow for a 61-day period, the by-law must be passed no later than April 29, 2002, to ensure that the election occurs prior to the end of June, 2002.

Conclusion

Council may fill the vacancy in the Office of the Mayor by appointment or direct that a by-election be held to fill the position. Council direction is respectfully requested.

Respectfully submitted,

Theresa A. Caron
Deputy City Manager and City Solicitor

John D. Leach
Clerk