

Municipality of Lakeshore – Report to Council

Legal and Legislative Services

Legislative Services



To: Mayor and Members of Council
From: Brianna Coughlin, Division Leader – Legislative Services
Date: August 6, 2024
Subject: 2022 Council Vacancy – Ward 2 Councillor

Recommendation

Declare the position of Ward 2 Councillor vacant, as required by the *Municipal Act, 2001*; and

Direct that the vacancy be filled through Option #_____, as detailed in the report presented at the September 10, 2024 Council meeting.

Strategic Objectives

This is not related to a Strategic Objective; it is a legislative requirement of the *Municipal Act, 2001* (“Act”).

Background

On July 25, 2024, the Municipality of Lakeshore (“Municipality”) was advised of the sudden and unfortunate passing of Councillor Paddy Byrne, Ward 2 Councillor.

Section 262(1) of the Act provides that when an office of a member of Council becomes vacant due to the death of a member, Council shall declare the office vacant at one of its next two meetings.

When a vacancy on Council occurs, Council is faced with the decision on how to fill the vacant seat for the remainder of the term. The Act provides the following two options:

Filling vacancies

263 (1) If a vacancy occurs in the office of a member of council, the municipality shall, subject to this section,

(a) fill the vacancy by appointing a person who has consented to accept the office if appointed; or

(b) require a by-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996*.

Section 263(5) establishes the rules applying to filling vacancies.

Rules applying to filling vacancies

(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).

2. Despite paragraph 1, if a court declares an office to be vacant, the council shall act under subsection (1) or (4) within 60 days after the day the court makes its declaration.

3. Despite subsections (1) to (4), if a vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy.

The person appointed or elected to fill a vacancy shall hold the office for the remainder of the term of the person they replaced.

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:

1. Except in accordance with section 30 of the *Municipal Elections Act, 1996*,
 - i. an employee of the municipality,
 - ii. a person who is not an employee of the municipality but who is the clerk, treasurer, Integrity Commissioner, Auditor General, Ombudsman or registrar referred to in section 223.11 or an investigator referred to in subsection 239.2 (1) of the municipality, or
 - iii. a person who is not an employee of the municipality but who holds any administrative position of the municipality.
2. A judge of any court.
3. A member of the Assembly as provided in the *Legislative Assembly Act* or of the Senate or House of Commons of Canada.
4. Except in accordance with Part V of the *Public Service of Ontario Act, 2006* and any regulations made under that Part, a public servant within the meaning of that Act.

Comments

In determining the best method to fill the vacancy, Council should consider such factors as time to complete the process, costs associated with implementing the selected solution, representative democracy and duration of the vacancy.

Should Council declare the seat vacant on September 10, 2024, Council must choose the option of appointment or by-election by November 9, 2024.

Option 1 – Appoint the person with the next highest votes

As noted above, Council may choose to appoint a person to fill the vacancy. This is often a person who ran in the last election and usually the candidate with the highest number of votes who was not elected as a Council member.

In 2022, there were only two individuals who ran for the position of Ward 2 Councillor: Paddy Byrne (elected) and Michael Hoffman.

Should Council choose Option 1, the Clerk would contact Mr. Hoffman to seek written confirmation of qualification and determine if there is interest in accepting the appointment.

Table 1 - Timeline for Option 1

September 10, 2024	Council declares the seat vacant and selects Option 1 to appoint the person with the next highest number of votes in the 2022 Election
September 11, 2024	Clerk contacts the person with the next highest votes, confirms eligibility and consent of the person to be appointed
October 8, 2024	Council appoints the individual. New Councillor takes the oath of office and commences term
October 2024	Orientation and training of new Councillor
October 22, 2024	First meeting of Council with new Councillor

Option 2 – Appoint a person who applies

Council may choose to appoint a person to fill the vacancy by first requesting letters of interest or applications from persons who wish to serve as Ward 2 Councillor, and appoint a member from those applicants.

The Act does not set out any specific requirements relating to the appointment of a person to fill a Council vacancy, other than those relating to qualifications as specified in section 256 of the Act (see Background section above). In order to be considered for appointment, individuals must meet the eligibility requirements as set out in the *Municipal Elections Act, 1996* (the “MEA”).

The legislated timeline remains the same for the appointment under Option 1 or Option 2; the appointment must be completed within 60 days.

Should Council choose Option 2, the Clerk would bring a further report to Council to approve the procedures for the application process, and then proceed with advertising.

Table 2 - Timeline for Option 2

September 10, 2024	Council declares the seat vacant and selects Option 2 to seek applications from persons who wish to serve as Councillor – Ward 2
September 24, 2024	Council approves the procedures for the application and appointment process
September 25, 2024	Clerk initiates a Notice for Application for Appointment to be distributed through the municipal website, social media and newspaper
October 16, 2024	Deadline to submit applications to the Clerk
October 29, 2024	Special Council meeting to hear applicant delegations to Council (if approved within the procedures)
November 5, 2024	Council appoints the individual. New Councillor takes the oath of office and commences term
November 2024	Orientation and training of new Councillor
November 19, 2024	First meeting of Council with new Councillor

Option 3 – By-Election

Instead of appointing a person to fill the vacancy, Council may choose to proceed with a by-election. Section 65 of the MEA requires that a by-election be conducted as far as possible in the same way as regulation elections. In this case, it would be conducted the same way as the 2022 Election, in-person voting with the use of vote counting tabulators.

If Council chooses Option 3, a by-law will be required to be passed to ensure the Clerk can carry out the by-election. The Clerk would fix Nomination Day not less than 30 days and not more than 60 days after the by-law is passed. Voting day is required to be 45 days after Nomination Day.

While a by-election for Ward 2 would be smaller than a municipal-wide election, the preparations will not be as wide-ranging but will still be extensive. The Clerk would need to review and amend the Elections Procedure manual and Municipal Election Accessibility Plan, to be posted on the municipal website for public view. Election staff training would need to be undertaken and contracts would need to be entered into relating to voting locations, vote counting software and tabulator rentals. In addition, the legislative responsibility for the voters' list has moved from the Municipal Property Assessment Corporation (MPAC) to Elections Ontario. While this is a welcome change for municipal elections, it is a process that would need to be worked through under tight timelines of the by-election.

Table 3 - Timeline for Option 3

September 10, 2024	Council declares the seat vacant and selects Option 3 to proceed with a by-election
October 8, 2024	Council approves a by-law to hold a by-election (by-law must be passed within 60 days of declaring the seat vacant, therefore must be passed by November 9)
October 2024	Clerk sets the nomination date (Nomination Day must not be less than 30 days and not more than 60 days after the by-law is passed)
November/December, 2024	Nomination Day
January/February 2025	Voting Day (45 days after Nomination Day)
February/March 2025	New Councillor takes the oath of office and commences term
February/March 2025	Orientation and training of new Councillor
February/March 2025	First meeting of Council with new Councillor

Financial Impacts

The table below outlines the estimated financial impacts for each of the options outlined in the report.

Table 4 – Financial Impacts for Option 1, 2 and 3

<p>Option 1</p> <p>Appointment of person with next highest votes</p>	<p>Costs would include Administration’s time for the swearing in of a new Council member and the orientation and training process.</p> <p>There would be no costs related to an election or advertising costs. It is the most time-efficient and cost-effective method.</p>
<p>Option 2</p> <p>Appointment of person that applies</p>	<p>Costs would include Administration’s time for the preparation of the appointment procedures, administration of the application process, for the swearing in of a new Council member and the orientation and training process. There would also be advertising costs, estimated to be \$1,500.</p> <p>There would be no costs related to an election. This option is considered the second most cost-effective method.</p>
<p>Option 3</p> <p>By-election</p>	<p>Administration has not confirmed costs at this time but has estimated to following:</p> <ul style="list-style-type: none"> • software, ePoll kits and tabulator rentals: \$35,000 • advertising: \$5,000 • postage for Voter Information Cards: \$4,500 <p>The total estimated costs are \$44,500, exclusive of Administration’s time for training, conducting the election, the swearing-in of a new Council member and the orientation and training process for the new Council member.</p> <p>This option is considered the most labour-intensive and costly option.</p>

Report Approval Details

Document Title:	Council Vacancy - Ward 2 Councillor.docx
Attachments:	
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This report and all of its attachments were approved and signed as outlined below:

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Submitted by Susan Hirota

Approved by the Corporate Leadership Team