



The Corporation of the Municipality of Wawa Clerk Report

Prepared For: Council	Report No.: CC 2021-10
Agenda Date: November 16, 2021	File No.: 9.1

Subject

The purpose of this report is to provide the Members of Council with the options available to fill both the vacant office of the Mayor and if the Mayor is appointed from existing Members, the vacant Councillor position.

Summary of Recommendation

THAT Council declare the Office of Mayor to be vacant as mandated by the Municipal Act, 2001, effective December 1, 2021; and

THAT Council accept the staff recommendation to fill the Office of Mayor by appointing a current member of Council to the position at its next Regular Meeting scheduled December 14, 2021; and

THAT Council accept the staff recommendation and pass a Resolution at its Regular Meeting scheduled December 14, 2021, to fill the vacant Council position by appointing a qualified candidate selected through an open, public call for applications process as set-out in this report; and

THAT Council receive Staff Report CC 2021-10 for information purposes.

Policies Affecting the Proposal

There are no existing municipal policies respecting the filling of Council vacancies. Council may wish to discuss the possibility of developing a Policy to fill vacancies on Council in the future.

Background

Section 259 of the *Municipal Act, 2001*, addresses the issue of Vacant Seats on Council. The section specifically states that the office of a member of Council of municipality becomes vacant if the member forfeits his or her office under this or any other Act and the Act requires that if the office a member of council becomes vacant under Section 259, the council shall at its next meeting declare the office to be vacant.

When a vacancy occurs, Council must determine how to fill the vacant seat for the remainder of the term. The Act provides the following two options:

Section 263 (1) Filling Vacancies – *If a vacancy occurs in the office of a member of council, the municipality shall, subject to the following:*

(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. 2001, c. 25, s. 263 (1).

Section 263 (5) Rules applying to filling vacancies – *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).*

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 council term.

Options

Council has several options available under the Municipal Act to fill a vacancy;

- Option 1: Appointment (two appointment alternatives are outlined)**
- Option 2: By-Election**

Under normal circumstances, rules applying to filling vacancies require that appointments to fill the vacancy occur within 60 days of the declaration, meaning council must appoint a candidate within 60 days of declaring the seat vacant.

Wawa Policy No. GG-003: Council Procedural By-Law, Article 2.6 Absence of Mayor states, “in the absence of the Mayor, if he or she refuses to act or if the office is vacant, the Deputy Mayor shall carry out the Mayor’s duties and shall have all the rights, powers and authority of the Head of Council.”

The selection of Deputy Mayor would be filled in accordance with the Procedural by-law following the filling of the Mayor’s position which would be that the Deputy Mayor would be selected from amongst the Members of Council and approved by Resolution of Council.

Analysis

Council must determine how to fill the position of Mayor and Deputy Mayor and how to fill the vacant position on Council. The following lists several options available to Council to fill the vacancies.

Appointment Process – Discussion of Options

Council has the option to fill the vacant position of Mayor by appointing a current member of Council to the position. An appointment of a current member of Council would trigger a vacancy in a Council position that would then have to be filled. Council may fill the vacant position of Council first, then appoint from among the members a Mayor or it may direct the Clerk to hold a By-Election.

Option 1(a) – Appointment from 2018 Municipal Election Candidates

Recently, Council chose to appoint the next-place finisher in the 2018 municipal election and appointed Ms. Cathy Cannon to the position of Councillor. According to election results from 2018, the sixth and seventh placed candidates each received less than 40% of all votes cast.

Option 1(b) – Appointment by Call for Applications

Because the Act does not prescribe an appointment process to fill a council vacancy, Council may approve an appointment process which would permit interested, eligible persons to apply for appointment to Council. This open call for applications would be placed through the local media. The process would include an application, declaration of qualifications, and inclusion of a public meeting component to allow depositions from the applicants. This specific format is based on practices used in other communities and past Wawa Councils have used this process on several occasions.

Option 1(c) – Direct Appointment by Council

Council is permitted to appoint an eligible candidate to Council without an application process and without referencing recent election results.

Option 2 – By-Election

Council may decide to fill the vacancy by directing that by-election be conducted. In accordance with Section 263(5) of the Municipal Act, a by-law must be enacted within 60 days after the seat is declared vacant. After the enactment of a by-election by-law, nomination day must be not less than 30 days and not more than 60 days thereafter. Voting day shall then be 45 days after nomination day.

For example, if council declared a seat vacant on December 14, 2021, a by-election by-law would be required on January 11, 2022. Should the decision be made to conduct a by-election, the Clerk must set Nomination Day within 60 days of passing a by-law requiring the by-election. Theoretically, Nomination Day could be March 14, 2022 and Election Day would be April 29, 2022, and the new member would be sworn in on May 3, 2022. **These dates noted are for demonstration purposes only.**

Based on the 2018 election, the costs associated with a by-election are estimated to be approximately \$20,000 given additional considerations related to conducting an election during the pandemic. In the 2018 municipal election, there were 2103 eligible electors with 837 ballots cast resulting in a voter turnout of 39.80%.

If council selects the option for a by-election, the Clerk would be required to contact suppliers that would form an integral part of ensuring an election is conducted in the same manner as a regular municipal election, as is required in accordance with the MEA. The Clerk would determine the timelines for the election based on the outcome of discussions with suppliers. **The next Municipal Election is scheduled to occur on October 24, 2022.**

Staff Recommendation

A) Office of the Mayor

Staff recommend that the existing members of Council select from among themselves the next Mayor to serve the remainder term of office. The existing members are most knowledgeable with current affairs and have received the required training to perform the duties of Mayor resulting in a more seamless and quick transition to the position. Other options are not recommended due to the cost and length of time to fill the position.

B) Selection of New Member of Council

Option 1(a): Appointment from 2018 Candidates

Council replaced the vacant Councillor's position in September from the candidate who received the next highest number of votes cast following the elected members. Since the votes cast for the remaining persons who ran fell below 40 percent of votes cast and both candidates received close to the same number of votes, it would be fair to provide opportunity for both former candidates to apply in addition to other qualified members of the public.

This option is not recommended.

Option 1(b): Appointment by Call for Applications

Advertising for qualified applicants to fill the vacancy would be quick and cost-effective. It would take a couple weeks to advertise, receive applications and interview potential candidates. Advertising for applicants would occur after December 14th for about three weeks with interviews possibly occurring in late January 2022. The new Councillor could be appointed in early to mid-February 2022.

This option is recommended.

Option 1(c): Direct Appointment by Council

Council may wish to consider advertising for candidates with an application submission requirement, and then amongst the members of Council select a candidate it deems suitable for the vacant position. Although this may be a quick solution, it would be viewed as the least favourable option in terms of transparency and democracy.

Option 1(c) is not recommend.

Option 2: Direct the Clerk to conduct a By-Election

The last election was held on October 22, 2018 and the cost was \$17,081.47. There is no difference in conducting a by-election verses a regular election. The cost for a by-election in 2022 is estimated at \$20,000. The next Municipal Election will be conducted on **October 24, 2022**. The Municipality would be required to absorb the by-election costs in 2022 and ensure it budgets another \$20,000 for the Fall election. This would bring the cost for the 2022 Municipal Election to \$40,000.

Option 2 is not recommended.

Prepared By: Cathy Cyr, Clerk	Approved By: M. O'Neill, CAO-Treasurer
Signature 	Signature: 

Attachments

Appendix A – 2021 Recommended Council Appointment Procedures
Appendix B – 2021 Recommended Application Form

APPENDIX "A"

Council Vacancy – Application for Appointment Procedure

The Municipal Clerk, or designate, shall be responsible for interpreting and, where appropriate, facilitating the Application for Appointment Process. For the purpose of this procedure, the term "lot" means a method of determination by placing the names of the Candidates on equal size pieces of paper and placed in a container with one name being drawn by the Clerk or designate.

Application Procedure:

1. The process will be initiated through an advertisement placed in the local newspaper and on the Municipal website, indicating Council's intent to appoint a qualified elector to fill the seat vacancy and calling for applications for a minimum of two weeks following Council's decision to fill the vacancy by application for appointment process.
2. Such Notice shall indicate Council's intention to appoint an individual to fill a vacancy and shall outline the nomination process.
3. Interested persons will be required to complete an application and Consent of Nomination and a Declaration of Qualification, provide personal identification showing their name and qualifying address within the Municipality of Wawa, and may be required to provide a written response to specific questions as may be determined by Council.
4. Applicants are referred to hereinafter as Candidates.
5. Candidate(s) may submit, to the Clerk, a personal statement of qualification for consideration of Council. Personal statements shall not exceed two pages in length and will include the Candidate name and address. Statements that do not comply shall not be included in the Council meeting agenda or provided to Council by the Clerk.

Candidates will be advised of the deadline for submission of a personal statement.
6. Once submitted, the forms will be made available to the public in the same way as a nomination form for a Candidate in a municipal election or by-election and may be included on a Council agenda published on the municipal website.
7. A deadline will be established for filing the Consent of Nominee and Declaration of Qualification, as determined by Council in consultation with the Clerk.
8. Individuals who have submitted the necessary forms may appear before Council at a date and time so determined by the Council, and the Clerk will advise all applicants of the established date and time.

9. The Clerk will create a list of all Candidates and publicly post said list on the Municipality's website and at the Town Hall. This list will be updated as applications are received, once deemed complete by the Clerk.
10. Notwithstanding the requirement of the Municipality's Procedural By-law, the agenda for the meeting shall be set by the Clerk to allow for the orderly proceeding of selecting a Candidate and the agenda shall include the following:
 - a. A certified list of all Candidates listed in alphabetical order, by last name;
 - b. Any personal statement of qualification for consideration of Council;
11. Copies of all application documents will be included with the agenda package for the Appointment Meeting and will be made available as part of the public agenda posted on the Municipal website.

The Agenda shall be published to Members of Council and to the public in the same manner as a Regular or Special Council agenda.

Procedure at Appointment Meeting of Council:

1. At the Appointment Meeting which may be at a Regular or Special Meeting of Council, the Mayor shall make a brief statement to outline the purpose of the meeting and the order of proceedings;
2. The Clerk will provide a list of Candidates who have completed the Consent of Nominee and Declaration of Qualification, and the Mayor will call for a motion to consider the Candidates to fill the vacancy, as follows:
 - a. **"RESOLVED THAT** the following individuals who have signified in writing that they are legally qualified to hold office and consented to accept the office if they are appointed to fill the vacancy, be considered for appointment to fill such vacancy";
3. Copies of all application documents will be included with the agenda package for the Appointment and will be made available as part of the public agenda posted on the Municipal website;
4. Candidates will be sequestered in an adjacent room until it is their time to answer questions posed by Council. Once a Candidate has answered the questions, they will return to a separate room until all Candidate interviews are complete.
5. At the Council Meeting, each Candidate will be afforded an opportunity to address Council for a period not to exceed ten (10) minutes.
6. The order of speaking will be alphabetical by last name.
7. Each member of Council will be allowed no more than one question to each Candidate and responses from Candidates shall be limited to a maximum of two (2) minutes per question.

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8. Upon hearing all Candidate submissions, Council will proceed to vote, by way of a public ballot vote, similar to the Ranked Voting process, in rounds of voting as follows:
- a. Candidate names will be displayed on the Council Chamber viewing screen and shall be displayed in alphabetical order, by last name for use in a public tally of votes;
 - b. Each of the pieces of paper to be used as either ballots, or to be used by the Clerk to draw names in accordance with Section 8(m) (i)(ii) will be equal in size and type;
 - c. Only the Clerk or Clerk's designate may handle the papers, ballots and Container referenced in this procedure, save and except the Members being permitted to mark their ballots;
 - d. Ballots will be provided to Members of Council in the form of a voting card on which to indicate their choice of Candidate in writing; and all voting cards shall be of identical size, paper quality, and colour and shall be pre-printed with the Member's name and a place to be initialled by the Member;
 - e. The first-round ballots may contain the name of each Candidate, in alphabetical order by surname and have a box immediately preceding the surname in which the Member of Council may mark an "X" beside the name of the Candidate of their preference;
 - f. All subsequent ballots shall be in the form described in (d) above however will not contain any Candidate names in a pre-printed format;
 - g. The Clerk will ask Members of Council to vote by clearly printing the name of their preferred Candidate on the ballot, initialling the ballot for authentication purposes, folding the ballot and returning it directly to the Clerk;
 - h. Any Round One ballot marked with more than one "X", or any subsequent round ballot that is not legibly printed, or any ballot that does not contain the authentication initials of the Member of Council shall be considered a spoiled ballot and shall not be included in the tally;
 - i. The Clerk will read aloud the Member's name and selected Candidate and announce the tallies of all votes, while maintaining the tally on the viewing screen;
 - j. If the Candidate receiving the greatest number of votes cast does not receive more than one-half the votes of all voting Members of Council, the Candidate or Candidates who received the fewest number of votes shall be excluded from consideration;

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- k. The vote will be taken again by the Clerk and, if necessary, more than once, excluding in each successive vote the Candidate or Candidates who receive the fewest number of votes*;
 - l. The process shall be repeated until the Candidate receiving the greatest number of votes has also received more than one-half of the votes of the voting Members of Council;
 - m. In the event the votes cast are equal for all Candidates:
 - i. If there are three or more Candidates remaining, the Clerk shall by lot select one such Candidate to be excluded from subsequent voting;
 - ii. If only two Candidates remain, the tie shall be broken and vacancy shall be filled by the Candidate selected by lot, as conducted by the Clerk, wherein the first name drawn shall be declared the successful Candidate**;
 - n. Upon conclusion of the voting, the Clerk will declare to be elected the Candidate receiving the votes of more than one-half of the number of voting Members, or as provided in 8 (m)(ii);
 - o. A by-law confirming the appointment shall be enacted by Council to appoint the successful Candidate to the office for the remainder of the term and the Clerk will administer the Oath of Office to the successful Candidate;
 - p. The Minutes of the Appointment Meeting shall include a full disclosure of all voting results, including the name of each Member of Council and their selected Candidate in all voting rounds.

Explanation of Voting:

Example: In a contest with four (Candidates) and four (4) Members of Council present, a Candidate would

need a minimum of three (3) votes to be Appointed:

Round One:

- Candidate A – 2 votes
- Candidate B – 1 votes
- Candidate C – 1 vote
- Candidate D – 0 votes

In this scenario, as no majority vote was achieved, Candidate D is eliminated from further voting and another round of voting will occur.

Round Two:

- Candidate A – 2 votes
- Candidate B – 2 votes
- Candidate C – 0 vote

In this scenario, Candidate C is eliminated and a further voting round will occur.

Round Three – Scenario “A”: Candidate A is the Successful Appointee

Candidate A – 3 votes

Candidate C – 1 votes

Round Three – Scenario “B”: Clerk Proceeds with i(ii), Determination by Lot**

Candidate A – 2 votes

Candidate B – 2 votes

**The process of determination by lot in the event of a tied vote is provided for in the Municipal Elections Act, 1996, Subsection 63(10). Although it specifically relates to recount procedures, it is an accepted practice throughout Ontario in this type of voting process.

APPENDIX B



**APPLICATION FORM
MUNICIPALITY OF WAWA
COUNCIL VACANCY**



Application for Appointment to Municipal Council

Complete this application form in its entirety. A resume (which provides education, experiences and interests in support of your application) **may be** attached to this application form. Should the application form not be fully completed, the Municipality reserves the right to reject the application. The provision of any false or misleading information on this application will be enough reason for the Municipality to reject the application or to terminate an appointment.

Please Print or Type

<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.			Full Name of Applicant:		
Street and Mailing Address:				Postal Code:	
Telephone Number (home):		Telephone Number (work):		Cellular Number:	
Facsimile Number:			Email Address:		

Eligibility Requirement	Yes	No
A Canadian citizen.	<input type="checkbox"/>	<input type="checkbox"/>
At least 18 years of age.	<input type="checkbox"/>	<input type="checkbox"/>
Resides or is the owner or tenant of land in the Municipality of Wawa, or the spouse of such owner or tenant.	<input type="checkbox"/>	<input type="checkbox"/>

Date: _____ Signature: _____
 (By signing this form, you consent to having your name publicly released)

Deadline for Receipt of Application is **2:00 p.m. on** _____.

Return Application Form in a Sealed Envelope in person, or e-mail to:

Cathy Cyr, Clerk, ccyr@wawa.cc
 The Corporation of the Municipality of Wawa
 40 Broadway Avenue, P.O. Box 500
 Wawa, ON P0S 1K0

Personal information on this form is collected under the authority of the Municipal Elections Act, 1996, and will be used for the council vacancy replacement process and will be made available for public inspection in the office of the Clerk, Municipality of Wawa, until the next municipal election. Questions about this collection of personal information should be directed to the Clerk 40 Broadway Avenue, Wawa, Ontario P0S 1K0 705-856-2244 ccyr@wawa.cc.