



Policy Name: Council Vacancy Policy	Policy No: S201-22
Committee approval date:	
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Department/Division:	Council

1. Purpose

- 1.1. The purpose of this policy is to provide for an accountable and transparent process for filling a Vacancy on Town Council in accordance with the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended (“the Act”) and the *Municipal Elections Act, 1996, S.O. 1996, c.32*, as amended (“the MEA”).
- 1.2. This policy will be applied to any Council office declared Vacant on Town of Pelham Council during the Term of Office.

2. Statement of Principle

- 2.1. In accordance with the Act, when the seat of a Member of Council becomes Vacant during the Term of Office, Council may fill the Vacancy by appointing a person who has consented to accept the office, or by requiring a By-election to be held to fill the Vacancy in accordance with the MEA.
- 2.2. Section 264 of the Act specifies that the person appointed or elected to fill a Vacancy shall hold office for the remainder of the term of the person they replaced.
- 2.3. Any person filling a Vacancy on Council must be an Eligible Elector in the Town of Pelham and meet all other eligibility requirements in accordance with the Act and the MEA.

3. Definitions

“Appointment” means the process of Council appointing a qualified individual to fill a Vacancy for the remainder of the current Term of Office.

“By-election” means an election, other than a regular election, to fill a Vacancy on Council, conducted in accordance with the *Municipal Election Act, 1996*.



“Candidate” means an individual seeking to be appointed to fill a Vacancy in the office of Mayor or Councillor, having met the eligibility requirements and who has completed the requisite documentation as required by this procedure.

“Chair” means the Member of Council presiding at the Council meeting to appoint an individual to fill a Council Vacancy.

“Clerk” means the Town Clerk of the Town of Pelham, or their designate.

“Council” means the Council of Town of Pelham.

“Councillor” means a person elected or appointed as a Member of Council, other than the Mayor.

“Eligible Elector” has the same meaning as subsection 17(2) of the *Municipal Election Act, 1996*:

- a) who is a resident of the Town of Pelham, or an owner or tenant of land in Pelham or the spouse of such an owner or tenant;
- b) who is a Canadian Citizen;
- c) who is at least 18 years old; and
- d) who is not prohibited from voting under any other Act or from holding municipal office.

“Mayor” means the Head of Council, elected, or appointed, for the Town of Pelham.

“Member of Council” means the Town of Pelham’s elected representatives, comprised of the Mayor, Deputy Mayor and Councillors.

“Regular Election Year” means the year established for a regular municipal election in accordance with the *Municipal Election Act, 1996*.

“Term of Office” means the period of time a member is elected to hold office for which they are elected in accordance with the *Municipal Election Act, 1996*.

“Town” means the Corporation of the Town of Pelham.

“Vacant” or “Vacancy” means when a seat on Council has become Vacant in a manner described by the *Municipal Act, 2001*.



4. General Provisions

- 4.1. Council is first required to declare the seat Vacant in accordance with section 262(1) of the Act. A person must be appointed to fill the Vacancy, or a by-law must be passed requiring a By-election be held to fill the Vacancy, within 60 days after the day the declaration of Vacancy is made.
- 4.2. In accordance with section 65(2) of the MEA, no By-election shall be held to fill an office that becomes Vacant after March 31 in the year of a regular election. Further, in accordance with section 263(5)(b) of the Act, if a Vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the Vacancy.
- 4.3. The vote to appoint a member to fill the Vacancy shall occur at an open meeting of Council.
- 4.4. Council may waive this Council Vacancy Policy at any time, requiring a two-thirds majority vote to carry.
- 4.5. The Clerk has the authority to make minor technical amendments to this Policy as may be required from time-to-time.

5. Declaring a Vacancy

- 5.1. Council is required to declare a seat Vacant in accordance with section 262(1) the Act.
- 5.2. In accordance with the Act, if a Vacancy occurs within 90 days before voting day of a Regular Election Year, the municipality is not required to fill a Vacancy on Council.
- 5.3. Council shall determine whether to fill the Vacancy, within 60 days after the day a declaration of Vacancy is made, in accordance with section 263 of the Act, as amended by either:
 - a. Appointing a person who has consented to accept the office if appointed; or
 - b. Passing a by-law requiring a By-election be held to fill the Vacancy.
- 5.4. Exceptions to section 263 of the Act include:



5.4.1. Section 65(2) of the Act, that no By-election shall be held to fill an office if the Vacancy occurs after March 31 in the year of a regular election; and

5.4.2. Section 263(5)(b) if a Vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy.

5.5. The vote to appoint a Candidate to the Vacancy shall occur at an open meeting of Council.

5.6. In making its determination, Council shall consider the costs and timelines associated with filling a Vacancy by Appointment or By-election.

6. Eligibility Requirements

6.1. Any appointed individual filling a Vacancy must meet the eligibility requirements of office as outlined in the MEA, as an Eligible Elector.

7. Appointment

7.1. Due to the expense in both time and cost in conducting a By-election preference will be given to the of filling Council Vacancies through the Appointment processed as outlined in Section 8 of this Policy.

7.2. However, should Council determine to conduct a By-election to fill a Vacancy on Council, rather than making an Appointment pursuant to this Policy, Council may do so by a two-thirds majority vote, following the formal declaration of the Vacancy as specified in Section 9 of this Policy.

8. Appointment Process

8.1. Appointment Procedure to Fill a Council Vacancy in the Office of the Mayor

8.1.1. Council shall declare the seat of the Mayor to be Vacant in accordance with the Act.

8.1.2. The vote to appoint a Member of Council to the position of Mayor shall occur at an open meeting of Council.

8.1.3. Any Member of Council wishing to be considered for Appointment to the Vacancy shall advise the Clerk in writing by 72 hours, prior to the meeting of



Council to be included in the agenda.

8.1.4. At the open meeting of Council, the following process shall take place:

8.1.4.1. The Clerk will preside over the portion of the meeting and will make an opening statement and outline the order of business for the meeting.

8.1.4.2. The Clerk will read into the record and provide the list of names of those Members of Council who have indicated their interest in being appointed to the Vacancy for Mayor.

8.1.4.3. Each Candidate will be provided an opportunity to address Council for up to five (5) minutes. The order of speaking will be determined alphabetically by surname.

8.1.4.4. Upon hearing all the submissions of the Candidate(s), Council will proceed to vote as follows:

- a. In conducting the vote, the Clerk shall call the names of the Members of Council, in alphabetical order according to their surnames, and each such member shall, after their name is called, verbally indicate the applicant of their choice.
- b. The Clerk shall keep count of the votes received for each applicant. The Clerk shall announce the results after each vote. If after all votes are cast, no applicant receives the majority of votes cast, the applicant receiving the least number of votes shall be eliminated.
- c. If the applicants with the least number of votes receive an equal number of votes, the Clerk shall place the names of these applicants, on equal size pieces of paper, in a suitable container and draw one name. The name drawn shall be eliminated.
- d. Council shall proceed to vote again until an applicant receives the majority of votes cast, at which time Council shall pass a resolution appointing that person to fill the Vacancy.
- e. If there are only two (2) applicants left and they each receive the same number of votes, the Clerk shall place the names of the two (2) applicants, on equal size pieces of paper, in a ballot box and draw one name. The name drawn shall be selected to fill the Vacancy, at which time Council shall pass a resolution appointing that person to fill the Vacancy.



- f. Should only one (1) Member of Council, (1) Candidate, put their name forward for consideration for the appointment to the fill Vacancy for Mayor, a motion duly moved and seconded will be required and successfully carried by the majority of Council present to confirm the appointment.
- g. The Clerk shall act as Chair for the consideration of the motion. The Clerk will declare whether the appointment bylaw was carried or lost.
- h. In the event that the motion to appoint the sole candidate be lost, Council shall then immediately, before rising from the meeting, pass the necessary bylaw for the calling of a By-election for position of Mayor.
- i. The appointment of the Candidate will be made by by-law. A by-law confirming the appointment will be enacted by Council.

8.1.5. If no Member of Council advises of their interest to be considered for the Appointment, Council shall then without delay or comment pass a by-law for the calling of a By-election for the Office of Mayor in accordance with the provisions of the MEA.

8.2. Appointment Procedure to Fill a Vacancy in the Office of Councillor

8.2.1. Council shall declare the seat of the Councillor to be Vacant in accordance with the Act.

8.2.2. Once declared, the Vacancy shall be filled in the manner set out below, unless Council chooses to proceed with a By-election, by a two-thirds vote, pursuant to section 9 of the Policy:

8.2.2.1. Offered to the Runner-up

- a. The Vacant position will be offered to the Candidate that finished in the runner-up position in the last Regular Municipal Election for the position of the applicable Ward Councillor. If the Ward Councillors were acclaimed in the last regular election, proceed to section 8.2.2.2 of this Policy.
- b. For the runner-up Candidate to qualify, that individual's total number of votes must be greater than 50 percent of the number of votes achieved by the candidate who finished directly before them. If the



individual does not agree to fill the position or is no longer eligible to hold office, proceed to section 8.2.2.2 of this Policy.

8.2.2.2. Advertisement Asking for Applications of Interest

- a. The Clerk shall place advertisement(s) asking interested eligible individuals to apply by application process to fill the Vacant Councillor seat. The deadline for submitted applications shall be established by the Clerk.
- b. The names of the eligible individuals who submit an application will be made public after the closing date of applications.
- c. Eligible applications may be reviewed in a closed session of Council. Council may reduce the list of names for consideration by vote in an open session of Council.
- d. The remaining applicants, if more than one, will then be notified to appear at a meeting of Council. Each applicant shall make a presentation of up to ten minutes. The order of speaking will be determined alphabetically according to surname. Council is permitted to ask questions of the Candidate on their interest in serving on Council.
- e. Council may meet in a closed session for a final review of the remaining applicants.
- f. The vote to fill the Vacancy shall occur at an open session of Council. Each member of Council shall have one (1) vote. The Clerk will preside over the vote.
- g. In conducting the vote, the Clerk shall call the names of the Members of Council, in alphabetical order according to their surnames, and each such member shall, after their name is called, verbally indicate the applicant of their choice.
- h. The Clerk shall keep count of the votes received for each applicant. The Clerk shall announce the results after each vote. If after votes are cast, no applicant receives the majority of votes cast, the applicant receiving the least number of votes shall be eliminated.



- i. If the applicants with the least number of votes receive an equal number of votes, the Clerk shall place the names of these applicants, on equal size pieces of paper, in a ballot box and draw one name. The name drawn shall be eliminated. Council shall proceed to vote again until an applicant receives the majority of votes cast, at which time Council shall pass a resolution appointing that person to fill the Vacancy.
- j. If there are only two (2) applicants left and they each receive the same number of votes, the Clerk shall place the names of the two (2) applicants, on equal size pieces of paper, in a ballot box and draw one name. The name drawn shall be selected to fill the Vacancy, at which time Council shall pass a resolution appointing that person to fill the Vacancy.

9. By-Election

9.1. Should Council make the determination to proceed to fill a Vacancy on Council utilizing a By-election rather than by Appointment and having passed the requisite resolution the following process will then apply:

- 9.1.1. According to section 263(5) of the Act, Council shall pass a by-law calling for a By-election within 60 days of declaring a Vacancy on Council.
- 9.1.2. All other procedures regarding a By-election shall be administered by the Clerk in accordance with section 65 of the MEA.
- 9.1.3. According to MEA, section 65(4)(1)(i), the Clerk shall fix nomination day to be a day not more than that 60 days after the Town calling for a By-election and voting day for a By-election shall be 45 days after nomination day.