

15 July 2009



**CITY COUNCIL
COMMITTEE REPORT**

TO: MAYOR & COUNCIL

FR: Joanne L. McMillin, City Clerk

RE: Council Vacancy – Selection Process

BACKGROUND:

This report is further to Council adopting a resolution to declare Councillor Poirier's seat vacant effective July 31, 2009. In accordance with the *Municipal Act, 2001*, as amended, the municipality shall undertake the following:

- (a) fill the vacancy by appointing a person who has consented to accept the office, by resolution, or
- (b) pass a by-law requiring a by-election to be held to fill the vacancy in accordance with the Municipal Elections Act.

In accordance with the Act, when filling vacancies at this point in the Term, the following rule shall apply:

- (a) within 60 days of declaring the seat vacant, Council shall fill the vacancy as per the above (deadline is September 28, 2009).

Should a seat become vacant within 90 days prior to voting day in a regular election year, the vacancy does not require to be filled, however such is not the case at this time.

Analysis of Options:

In reviewing the process used in another municipality, I was advised the Clerk's Office had consulted with their legal advisor, the Ministry of Municipal Affairs and Housing, and other municipalities and presented similar options to fill a vacancy as follows:

- (1)** In the 2006 Election, 16 candidates ran for Council of which 6 were elected to office. Council may consider approaching the person with the next highest number of votes who was not elected to office to serve out the current term; **however it is not a mandatory requirement to do so.**

Alternatively, Council may wish to approach any of the other eligible candidates from the 2006 election (from either the Mayor or Councillor ballot) who was not elected. If interested to be appointed to serve out the term, Council would select a candidate based on a selection or voting process as agreed upon by Council in consultation with the Clerk (keeping in mind there are 3 ineligible candidates.)

- (2) Another option would be to advertise for interested qualified persons from the general public from which Council would either select and appoint someone directly from the list or appoint through a voting process that is agreed upon by Council and conducted by the Clerk.

- (3) Another method proposes appointing a previous Mayor or Councillor with experience that would be willing to serve out the remainder of term. Being that it is so late in the term, appointing a previous Mayor or Councillor with the knowledge of the office of Councillor would likely be an asset to the municipality, over training someone completely new.
- (4) Council may also consider a direct appointment from the public-at-large who has agreed to let their name stand and serve out the term and who is qualified to hold office.
- (5) Finally, Council may consider all names from past Council's, from the 2006 ballot, and from any resulting advertising, or any combination thereof.

The Municipal Act provides Council with some discretion concerning the filling of vacancies by appointment. Council can consider and choose any of the options or any other option, provided Council agrees and supports the outcome of the process, and that the person to be appointed is eligible to hold office. It should be clearly noted that any person appointed by Council must meet the qualifications as per the *Municipal Elections Act, 1996* and the *Municipal Act, 2001* and that they are not ineligible under these Acts or any other Act to hold office.

By-election:

A by-election at this juncture of the Council Term would necessitate significant staff time and resources and significant costs to the City and such costs are not currently identified in the 2009 budget. Further, the window of opportunity to conduct an election is quite short, and aside from the expense, it would be a challenging task to complete. What would normally be an eleventh month process to complete during a regular election would have to be incorporated into a 2½ month period to fulfill a term of less than one year (even though it is to elect only one member, the same process is required).

Option to appoint - how:

To ensure an appointment is made in a fair, equitable and public manner; the following selection processes based on the number of potential persons to fill this vacancy through advertising, is set out below for consideration:

- 1) If only one person has expressed an interest to let their name stand, Council could consider only that person;
- 2) Or, that person could be considered in conjunction with other names, including past Council Members;
- 3) If there are two or more names to consider, Council could i) cast their choice by secret ballot conducted and tallied by the Clerk during an open meeting, or ii) discuss openly until concurrence is reached (remember this is a very open process and all names would be public). In the event of a tie (which would not be considered negative for this purpose), the appointment would be determined by draw either by the Mayor or Clerk, who will announce the result.

Formalities & Timing:

Following Council's formal approval of the appointment, the successful candidate will be appointed by resolution, including appointments to any required Boards/Commissions. At the time Council's formal approval of the appointment by resolution is made, the successful person will be required to sign the declaration of qualification and take the Oath of Office.

The appointment to fill the vacancy **must be made by Monday, September 28, 2009** so it is recommended an appointment be recommended at the September 14 Committee meeting

with a view to a formal appointment at either Council's September 21 regular meeting, or at a special meeting prior to September 28, 2009.

BUDGET:

Current Budget Allocation: Appointment Method – Within Current Budget.

Depending on the method chosen for appointment, there may be some costs associated with advertising and other small miscellaneous expenses that would be within the current budget.

By-Election: \$40,000.00 +/- not identified in the 2009 Budget.

COMMUNICATION PLAN/Notice By-law Requirements:

Not applicable at this time.

RECOMMENDATION:

THAT on July 13, 2009, Council declared Andrew Poirier's Councillor seat 'vacant' as at July 31, 2009; and

THAT in order to conduct the filling of this vacancy in the most fair, transparent and effective manner possible, Council hereby directs the City Clerk to prepare an advertisement calling for interested persons who meet the necessary qualifications, to allow their name to stand for appointment to complete the term of office to November 30, 2010; and

THAT Council reserves the right to include other eligible persons for consideration, including former Members of Council with those received through the advertising process; and

THAT the selection process will be determined based on the number of names received for consideration for appointment; and further

THAT in keeping with legislative timeframes, an appointment to fill the vacant seat on Council will take place at a meeting of Council to be held before September 28, 2009.