

<b>Administrative Policy No:</b>	
<b>Policy:</b>	Council Vacancy Policy
<b>Effective:</b>	
<b>Revised:</b>	
<b>Current Legislation:</b>	<i>Municipal Act, 2001, S.O. 2001, c. 25</i> <i>Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.</i>
<b>Applicable to:</b>	Members of Council and office of Regional Councillor

**1. POLICY**

The Corporation of the City of Port Colborne (the "City") must comply with the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25*, when a Vacancy occurs on City or Regional Council. This policy is intended to establish an open, accountable and transparent process for filling a Vacancy on City or Regional Council in accordance with the *Municipal Act, 2001, S.O. 2001, c. 25* and the *Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.*

**2. PURPOSE**

The purpose is to provide Council with options that may be followed when a Vacancy occurs.

**3. SCOPE**

This policy shall apply to members of Council for the purpose of filling vacancies on City Council or when requested to provide a recommendation for filling vacancies on Regional Council. When appointing an individual to fill a Vacancy, Council will be mindful of the diverse population of the City of Port Colborne and will seek to reflect that diversity in its appointments.

**4. DEFINITIONS**

"Act" means the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.

"Appointment" means the process of Council appointing an individual, by majority vote, who is qualified to hold office under the Act to fill a Vacancy on Council for the remainder of the current Council term.

"By-election" means an election, other than a regular election, held to fill a Vacancy on Council that is conducted in accordance with the *Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched.*, as amended.

"Candidate" means an individual seeking to fill a Vacancy on Council, who is qualified to hold office under the Act and who has completed and submitted all documentation as required by the Act and this policy.

"City Clerk" means the Clerk of the City of Port Colborne, or designate, as appointed by Council.

"Council" means the Council of the City of Port Colborne and "City Councillor" has a corresponding meaning.

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"Qualified person" means as it is prescribed by the *Municipal Elections Act, 1996*, as amended.

"Regional Council" means the Council of the Niagara Region and "Regional Councillor" has a corresponding meaning.

"Vacancy" means when a seat on City Council or Regional Council has become vacant in accordance with Section 259 of the Act.

## **5. GENERAL**

**a) Declaring a Vacancy** – Upon the happening of one of the events set out in subsection 259(1) of the Act, in accordance with Section 262(1) of the Act, Council shall declare a Vacancy on City Council:

- i. In the case of the death of a Member of Council, at one of the next two meetings of Council; or
- ii. In any other case, at the next meeting.

If Regional Council declares an office of one of its members that represents the lower tier municipality to be vacant, the policy of Niagara Regional Council is to advise the municipality of any actions to be taken to fill the vacant seat.

**b) Filling a Vacancy** – In accordance with Section 263(5) of the Act and, subject to Section 5(c)(ii) below, when a Vacancy in the office of City Councillor or Regional Councillor occurs, within 60 days after the day a declaration of Vacancy is made with respect to a Vacancy, the City shall:

- i. Appoint a person to fill the Vacancy at an open meeting of Council; or
- ii. Pass a by-law requiring a By-election be held to fill the Vacancy.

Notwithstanding anything within this Policy, in accordance with Section 65(2) of the *Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched*, no By-election shall be held to fill an office if the Vacancy occurs after March 31 in the year of a regular election. In accordance with Section 263(5)(3) 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.

**c) Filling a Vacancy by Appointment**

When filling a Vacancy by appointment, Council reserves the right to inquire with any potential Candidate about their experience, interests and priorities. Council may also consider any unique skills and perspectives that each Candidate presents along with a view to increase equity and diversity. Council may encourage applicants with specific skills, experiences or perspectives.

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- i. **Office of the Mayor** – If a Vacancy in the office of the Mayor occurs at a time prior to March 31 in the year of a regular election a By-election must be held. If the Vacancy in the office of the Mayor occurs after March 31 in the year of a regular election, Council shall fill the Vacancy by appointing a person who has consented to accept the office if appointed. If a Vacancy in the office of the Mayor is to be filled by appointment, Council may choose to fill the Vacancy by appointing:

- a current member of Council;
- the Candidate who finished second in the most recent regular election and received at least 70 percent of the votes achieved by the successful Candidate; or
- any other Qualified person as outlined in the Act.

If an appointment is made to the office of the Mayor, the Special Powers and Duties of the Head of Council as noted in Part VI.1 of the Act, do not remain in force and effect for the remainder of the term.

- ii. **Office of Regional Councillor** – If a Vacancy is declared for the office of Regional Councillor the Niagara Region's current policy is to provide direction on any actions necessary of the lower tier municipality. This may be subject to change based on the Region's policy at the time the Vacancy occurs. Should Council be requested to make a recommendation to Regional Council on filling the Vacancy and Council recommends that the Vacancy be filled by appointment, Council may recommend that Regional Council fill the Vacancy by appointing, in no particular order:

- a current City Councillor;
- the Candidate who finished second in the most recent regular election and received at least 70 percent of the votes achieved by the successful Candidate; or
- any other Qualified person as outlined in the Act.

- iii. **Office of City Councillor** – If Council decides to fill a Vacancy in the office of City Councillor by appointment Council may choose to fill the Vacancy by appointing, in no particular order:

- the unsuccessful Candidate who ran for the same office in the most recent regular election, and received the closest number of votes to the successful candidate, totalling at least 70 percent of the votes received by that successful candidate;
- any other Qualified person as outlined in the Act.

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iv. **Process for Filling a Vacancy by Appointment of a Qualified Person** – If Council decides to consider the appointment of a person who is not a current member of Council or an unsuccessful Candidate for the same office in the most recent regular election as described in 5(c)(i), (ii) or (iii) above, the following process may be followed:

1. As a minimum, an advertisement will be placed on the City of Port Colborne's website. To increase awareness of a Vacancy, other methods to communicate such as media releases, newspaper/digital advertisement, and outreach to various organizations may be undertaken in consultation with Corporate Communications.
2. The advertisement will request that Qualified persons interested in filling the Vacancy submit a resume describing their qualifications for office and a written consent to accept the office if appointed to the Office of the City Clerk within a prescribed time. The advertisement will also include the date of the Council meeting where the matter will be considered. If Council has identified any experiences, skills or perspectives being sought, these will be identified in the advertisement.
3. At the appropriate Council meeting, the Chair will call for a motion from Council as follows: "That (Candidates) \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ who have signified in writing their interest in being appointed to the office of \_\_\_\_\_ be considered for appointment." Through this motion Council may choose to short list who will be able to make a presentation and be considered for appointment.
4. The shortlisted Candidates will be invited to make a presentation in alphabetical order, no longer than five minutes.
5. Once the presentations are complete, Council will vote publicly for their preferred Candidate. The voting process shall be in accordance with Appendix A.

d) **Filling a Vacancy – By-election** – If a Vacancy occurs for the office of City Councillor or Regional Councillor, Council shall endeavour to fill the Vacancy by using the appointment options outlined in this Policy prior to considering that a By-election be called to fill the Vacancy. However, in accordance with the Act, a By-election is required for the Office of the Mayor with the exception of a Vacancy after March 31 in a regular election year.

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**6. MUNICIPAL CONFLICT OF INTEREST ACT**

In accordance with Section 4(g) of the *Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50*, any current member of Council who is being considered for appointment to fill a Vacancy for the position of Mayor is not required to declare a pecuniary interest in relation to the appointment process and associated voting.

**7. RECORDS AND CORRESPONDENCE**

The City Clerk shall retain all records and materials related to this policy in accordance with the *Municipal Elections Act, 1996, S.O. 1996, c. 32, Sched*, and despite anything in the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56*, documents and materials filed or prepared by the City Clerk are public records, until their destruction and may be inspected by any person at the City Clerk's Office.

**8. COMPLIANCE**

Nothing in this Policy shall be interpreted as denying Council its authority to do anything permitted or required under the Act.

### **Appendix A to Council Vacancy Policy: Voting Process**

1. Upon considering all submissions of the Candidates, Council will proceed to vote by ballot as follows:
  - a) Members of Council will vote in open session
  - b) Candidate names will be put in alphabetical order by the City Clerk
  - c) Members of Council will vote for one Candidate only
2. In order for a Vacancy to be filled, a Candidate must receive greater than 50% of the votes of Council members present.
3. If on the first ballot, a Candidate receives greater than 50% of the votes from the members of Council present, the Vacancy is deemed filled.
4. If on the first ballot, no Candidate receives greater than 50% of the votes from the members of Council present then:
  - a) the Candidate who received the fewest number of votes, in addition to any Candidate(s) who received zero votes, will be excluded from further consideration and will be removed from the next ballot.
  - b) another vote will be taken with the updated list of Candidates.
  - c) the process as outlined will continue until a single Candidate receives greater than 50% of the votes from the members of Council present.
5. Where the votes cast are equal for all Candidates:
  - a) if there are three or more Candidates remaining, the City Clerk will by lot select one such Candidate to be excluded from the subsequent voting.
  - b) if two Candidates remain, the tie will be broken by selecting a Candidate by lot to fill the Vacancy, as conducted by the City Clerk.
6. Upon conclusion of the voting, the City Clerk will declare the Candidate receiving greater than 50% of the votes of the voting members of Council present to be the Candidate selected and Council shall consider the motion to appoint (or, in the case of a Regional Councillor, recommend the appointment of) that Candidate.
7. Where a situation occurs that is not otherwise accounted for in these procedures, the City Clerk shall recommend an alternate process to Council, which Council may adopt with a majority vote.