

# Corporate Policy and Procedure

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Policy	<b>City Council Vacancy Policy</b>
Category	Departmental
Authority	City Clerk's Office
Related Policies	N/A
Approved By	City Council
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## Policy Statement

The City of Guelph is committed to open, accountable and transparent government.

## Purpose

In accordance with the Municipal Act, S.O. 2001, c.25, 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 holding a by-election.

The purpose of this policy is to establish an accountable and transparent process for filling Council vacancies that occur during a term of office.

## Scope

This procedure applies to any Council seat which is declared vacant during the term of office.

## Definitions

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

"Appointment" means the appointment of a qualified individual, by majority vote of Council, to fill a vacancy on Council for the remainder of the current term of office.

"By-Election" means an election, other than a regular election, held to fill a vacancy on Council and that is conducted in accordance with the Municipal Elections Act, 1996, as amended.

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

“Clerk” means the Clerk of the City of Guelph, or their designate, as appointed by Council.

“Council” means the Council of the City of Guelph.

“Lot” means a method of determination where the names of the candidates are placed on equal-sized pieces of paper and put in a container with one name being drawn by the Clerk.

“Term of Office” means the period of time a member is elected to hold office in accordance with the Municipal Elections Act, 1996, as amended.

“Vacancy” means when a seat on Council has become vacant in a manner described by the Act.

## **General**

### **Declaration of Vacancy**

Council is required to declare a seat vacant in accordance with [Section 262\(1\)](#) of the Act.

### **Method of Filling Vacancy**

Council shall determine, within 60 days after the day a declaration of vacancy is made, whether to fill a vacancy, in accordance with [Section 263](#) of the Act, by:

- 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.

### **Limitation on Method of Filling Vacancy**

In accordance with [Section 65\(2\)](#) of the Municipal Elections Act, no by-election shall be held when a vacancy occurs after March 31 in the year of a regular election.

If a vacancy occurs 90 days or less before voting day in the year of a regular election, the municipality is not required to fill the vacancy.

### **Appointments to Occur at Special Council Meetings**

The vote to appoint an individual to fill a vacancy shall occur at an open Special Council meeting.

### **Two-Third Majority Required to Suspend Policy Requirements**

Council may suspend provisions of the City Council Vacancy Policy at any time; such a vote requires a two-thirds majority of the whole of Council (nine votes) to be approved.

## **Procedure By-law**

Proceedings of Special Council meetings conducted under this policy shall be governed by the Procedure By-law. In the event of any conflict between the Procedure By-law and this policy, the provisions of this policy shall prevail.

Where a situation occurs that is not otherwise accounted for in these proceedings, the Clerk shall recommend an alternate process to Council, which Council may adopt with a simple majority vote.

## **Appointment Procedures**

Appointment procedures with respect to this Policy are contained as:

- **Schedule 1** - Appointment Procedure to Fill a Vacancy in the Office of the Mayor
- **Schedule 2** – Appointment Procedure to Fill a Vacancy in the Office of Councillor

## **Eligibility Requirements**

Any individual filling a vacancy must meet the eligibility requirements noted in the Municipal Elections Act, namely a person:

- a. Who is a resident of the City of Guelph, or an owner or tenant of land in the City or a 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.

If an employee of the City of Guelph seeks appointment or runs in a by-election, the employee shall give written notice, in advance, of their intention to take unpaid leave. The unpaid leave must begin as of the day the employee files nomination papers. If the employee is appointed to office, they will be deemed to have resigned from their position with the City immediately before making the declaration of office.

## **Filling a Vacancy by Appointment**

### **Office of the Mayor**

In accordance with Section [284.12\(3\)](#) of the Act, a vacancy in the Office of the Mayor may only be filled by appointment should the vacancy occur after March 31 in the year of a regularly scheduled election. Within 60 days of the declaration of vacancy, City Council may choose to fill the vacancy by appointing:

- a. A current member of Council; or

- b. The candidate who ran for the position of Mayor in the previous regular election, who received the next greatest number of votes but was not elected; or
- c. An open call for individuals for consideration by Council through a public appointment process.

### **Office of Councillor**

If a vacancy in the Office of Councillor is to be filled by appointment, Council may choose to fill the vacancy by either:

- a. Appointing the candidate who ran for the position that is vacant in the previous regular election, who received the next greatest number of votes but was not elected; or
- b. An open call for individuals for consideration by Council through a public appointment process.

### **Filling a Vacancy by By-election**

If a vacancy for either the Office of Mayor or Councillor is to be filled by a by-election, Council, within 60 days of declaring the seat vacant, shall pass a by-law to fill the vacancy by by-election.

A by-election shall then be held in accordance with the Municipal Elections Act, and the Clerk shall be responsible for conducting the by-election.

# **Schedule 1**

## **Appointment Procedure to Fill a Vacancy in the Office of the Mayor**

The Clerk shall be responsible for facilitating the appointment application process. The Clerk has the authority to make minor technical amendments to this procedure as needed. The procedures and process for appointing an individual to the Office of the Mayor, through a call for nominees or from previous election candidates, is the same as listed in Schedule 2.

## **Appoint a Current Member of Council**

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

Any member of Council wishing to be considered for appointment to the vacancy shall advise the Clerk in writing by 10:00 a.m. the Friday before the Special Council meeting scheduled for the purpose of filling the vacancy.

The vote to appoint a member to the position of Mayor shall occur at an open Special Council meeting called for that purpose.

Despite [section 4.11](#) of the Procedure By-law, only written correspondence will be accepted at the Special Council meeting to appoint.

At the meeting, the following shall take place:

1. The Chair shall make a short statement of the purpose of the meeting and the general order of proceedings to be followed.
2. The Clerk will provide the Chair with a list of the names of those Members of Council who have indicated in writing their interest in being appointed to the vacancy.
3. Each of the candidates shall be afforded the opportunity to address Council for not more than five minutes. The order of speaking will be in alphabetical order by last name.
4. Each Member of Council not being considered for the appointment will be allowed no more than two questions for each candidate.
5. Upon hearing all candidate submissions, Council will proceed to vote by way of a recorded public vote in accordance with the Procedure By-law, as follows:
  - a. Members of Council will vote openly;
  - b. Candidate names will be displayed in alphabetical order by the Clerk;
  - c. Members of Council will vote for one candidate only.
6. The candidate who receives the votes of more than one-half of the number of members of Council present shall fill the vacancy.

7. A by-law confirming the appointment shall be approved by Council, formally appointing the successful candidate to the office for the remainder of the current term of Office.
8. The Clerk will administer the Declaration of Office as required by subsection [232\(1\)](#) of the Act.

## **Schedule 2**

### **Appointment Procedure to Fill a Vacancy in the Office of Councillor**

The Clerk shall be responsible for interpreting and, where appropriate, facilitating the appointment application process. The Clerk has the authority to make minor technical amendments to this procedure as needed.

In accordance with section [263\(5\)](#) of the Act, the vote to appoint a member to the position of Councillor from previous election candidates or by call for nominees shall be held within 60 days from the declaration of the vacancy and shall occur at a Special Council meeting.

### **Appointment from Previous Election Candidates**

Council shall declare the seat of the Member of Council to be vacant in accordance with the Act.

The Clerk shall provide Council with a report including:

- The details regarding the results of the most recent election for the vacant office.
- Whether the candidate who received the greatest number of votes without being elected is willing, eligible, and able to fill the vacancy.
- If the candidate who received the greatest number of votes without being elected is willing, eligible, and able to fill the vacancy, City Council will pass a resolution appointing that person to fill the vacancy.

A by-law confirming the appointment of an individual to the Office of Councillor for the remainder of the term of office shall be approved by City Council.

The Clerk will administer the Declaration of Office as required by subsection 232(1) of the Act.

### **Appointment by Call for Nominees**

Council shall declare the seat of the Member of Council to be vacant in accordance with the Act.

### **Notice**

The Clerk shall post a Council Vacancy Notice on the City's website, social media and in a local newspaper. The notice shall indicate Council's intention to appoint an individual to fill a vacancy, the requirements to be considered for an appointment and the application process.

### **Application**

Applications to fill the vacant seat may be filed with the Clerk commencing on a time and date set by the Clerk. Any individual wishing to be considered for appointment to fill the vacancy will complete and provide the following documents to the Clerk in person by the deadline established by the Clerk:

- Council Appointment Consent of Nominee Form
- Council Vacancy Declaration of Qualifications Form

Candidates may also choose to submit a personal statement of qualifications, to a maximum of five 8.5 X 11 pages in length, for consideration of Council. This statement must comply with [section 4.12.4](#) of the Procedure By-law.

Any individual wishing to be considered for appointment to fill the Council vacancy will be required to provide identification to prove their eligibility to the satisfaction of the Clerk.

It is the candidate's sole responsibility to meet any deadlines, as set out by the Clerk, complete the application, and otherwise comply with the requirements of this policy.

The City Clerk will create a list of all eligible candidates who have complied with the application process. All applications shall be considered public documents and will be made available for public viewing in the same way as a nomination for a candidate in a municipal election or by-election and shall be available for viewing in the Clerk's Office at City Hall, 1 Carden Street, Guelph, Ontario. Personal statements of qualifications will be made available for public viewing on the City's website through the Special Council meeting agenda.

The agenda for the Special Council meeting will be published according to the timelines set out in the Procedure By-law.

A candidate who wishes to withdraw their application may do so in person and in writing to the Clerk. The deadline for any withdrawal shall be any time up to 10:00 a.m. on the Friday before the date of the Special Council meeting to fill the vacancy.

### **Council Meeting**

The vote to appoint a candidate shall occur at an open Special Council meeting called for that purpose. All qualifying candidates who have submitted an application for the vacant seat will be notified by the City Clerk of the date and time of the Special Council meeting.

Despite section 4.11 of the Procedure By-law, only written correspondence will be accepted at the Special Council meeting to appoint.

At the meeting, the following shall take place:

1. The Chair shall make a short statement of the purpose of the meeting and the general order of the proceedings to be followed.
2. The Clerk will provide a list of qualified candidates.
3. Each candidate will be allotted five minutes to address Council.
4. The order of speaking will be in alphabetical order by last name.
5. Each Councillor will be able to ask up to two questions per candidate.



6. Upon hearing all candidate submissions, Council will proceed to vote by way of a recorded public vote in accordance with the Procedure By-law, as follows:
  - a. Members of Council will vote openly;
  - b. Candidate names will be displayed in alphabetical order by the Clerk;
  - c. Members of Council will vote for one candidate only.
7. For the vacancy to be filled, a candidate must receive greater than 50% of the votes of the Council members present.
8. If on the first ballot, a candidate received greater than 50% of the votes from the members of Council present, then Council shall appoint them to fill the vacancy.
9. If on the first ballot, no candidate receives greater than 50% of the votes of the members of Council present, then;
  - a. The candidate or candidates 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 outlined in 9(a) and (b) will be repeated until a single candidate receives greater than 50 percent of the votes from the members of Council present.
10. Where the votes cast are equal for all the candidates, and if there are three or more candidates remaining, the Clerk will, by Lot, select one such candidate to be excluded from the subsequent voting.
11. Where the votes cast are equal, and where only two candidates remain, the Clerk will, by Lot, select one candidate, and that candidate will be deemed to be the successful candidate.
12. A by-law confirming the appointment shall be enacted by Council appointing the successful candidate to the office for the remainder of the term of Office.
13. The Clerk will administer the Declaration of Office as required by subsection 232(1) of the Act.