



Corporate Services Commission – Legislative Services
TOWN OF NEWMARKET
395 Mulock Drive
P.O. Box 328
Newmarket, ON L3Y 4X7

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905.895.5193

May 5, 2014

CORPORATE SERVICES REPORT - LEGISLATIVE SERVICES 2014-11

TO: Committee of the Whole

SUBJECT: Potential Ward 3 Council Vacancy

ORIGIN: Andrew Brouwer, Director of Legislative Services/Town Clerk

RECOMMENDATIONS

THAT Corporate Services Report – Legislative Services 2014-11 dated May 5, 2014 regarding “Potential Ward 3 Council Vacancy” be received and the following recommendation be adopted:

a) THAT should a vacancy occur in the Ward 3 Council seat as a result of the June 12, 2014 provincial election, the following provisions would apply:

- i) THAT the Ward 3 Council seat be declared vacant by resolution at Council’s June 23, 2014 meeting and be filled by means of a Council appointment of an eligible elector in the Town of Newmarket in accordance with the *Municipal Act*;**
- ii) AND THAT the Clerk’s Council Vacancy Procedures (attached as Schedule “A”) be approved;**
- iii) AND THAT the Clerk schedule a Special Council meeting on July 21, 2014 (7 p.m.) to consider qualified Ward 3 Council vacancy candidates and appoint a qualified Ward 3 Council vacancy candidate.**

Purpose

This report is presented in advance of the June 12, 2014 provincial election to allow for as much time as possible for the Clerk to prepare and administer an appointment process, which would be required to fill the Ward 3 Council vacancy in accordance with the *Municipal Act*.

Should the Ward 3 Councillor be elected to the Legislative Assembly of Ontario, staff will prepare a resolution which is required to be passed by Council at its June 23, 2014 meeting. The Clerk’s Council Vacancy Procedures (attached as Schedule “A”) would also come into effect.

Background

A municipal councillor in Ontario can run for office of a member of the Legislative Assembly of Ontario, but must either resign from municipal office when elected or they are automatically deemed to have resigned on the Saturday following the provincial election, when the results are published in the Ontario Gazette

(June 14, 2014 in the case of the June 12, 2014 provincial election). Resignation occurs when a municipal councillor provides the Clerk with written notice of resignation.

Once results of the provincial election are published in the Ontario Gazette or the Clerk is in receipt of a written resignation, Council shall declare the seat vacant at its next meeting (June 23, 2014) and the seat must be filled within 60 days of Council's declaration (or August 22, 2014) by means of an appointment of an eligible elector who is not a Member of Council. The *Municipal Elections Act, 1996* specifically restricts Council from calling a by-election should the vacancy occur after March 31 of an election year.

To apply, an individual must be, at the time of their application:

- At least 18 years of age; and
- A Canadian citizen; and
- Reside in Newmarket, or own or rent property in Newmarket. An individual may also be the spouse of an owner or renter of property in Newmarket; and,
- Not prohibited from running for municipal office by law.

The *Municipal Elections Act, 1996* provides that "no person may hold more than one office governed by the *Municipal Elections Act, 1996* at the same time anywhere in Ontario;" therefore, no Member of Council can be appointed to fill the Ward 3 Council vacancy.

All GTA municipalities having authorized an appointment process have filled their vacancies following an open call for qualified council vacancy applicants and at least one public meeting to allow deputations from applicants. Like an election, procedures, including notices, information about the vacancy, coordination of applications, procedures for hearing deputations and voting are recommended by the clerk. Schedule "A" outlines draft procedures recommended by the Clerk for adoption by Council, based on similar procedures adopted by other GTA municipalities, taking into consideration a shortened timeframe. Schedule "B" is a proposed timeframe for the appointment process. The application process will be administered by the Clerk in a similar fashion to the nomination process required by candidates for municipal office in an election.

The municipality is not permitted to introduce additional requirements on Ward 3 Council vacancy applicants in advertising the vacancy beyond what is required by law, such as a commitment from the applicant that he or she will not register as a candidate in the October 27, 2014 municipal election.

The *Municipal Act* does permit the municipality to keep the seat vacant if the vacancy occurs within 90 days of the election (or July 29, 2014). This provision cannot be exercised by the municipality since the vacancy will be effective upon the receipt of a written notice of resignation or automatically on June 14, 2014 when the results of the provincial election are published in the Ontario Gazette. There is no ability for the municipality to vary from requirement to fill the vacancy through an appointment, despite the short timeframe between the vacancy and July 29, 2014. The intent of the legislation is to have the Council vacancy filled, and Council has a statutory duty to ensure this occurs on or prior to August 22, 2014.

Following their appointment by Council, the Ward 3 Councillor will serve from the time their oath of office is taken to the end of the current term of Council or November 30, 2014.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

Consideration of options for the potential Ward 3 Council vacancy supports the Town's strategic directions of a well-equipped, managed and respected municipality by ensuring service excellence and promoting engagement in civic affairs.

CONSULTATION

This report was prepared with input from the Ministry of Municipal Affairs and Housing and, Office of the Chief Administrative Officer and Legal Services Department.

HUMAN RESOURCE CONSIDERATIONS

There are no human resources considerations related to this report.

BUDGET IMPACT

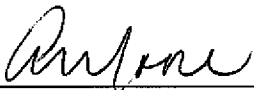
Coordination of the appointment process is accommodated within the approved budget of the Legislative Services Department.

CONTACT

For more information on this report, please contact Andrew Brouwer, Director of Legislative Services/Town Clerk at abrouwer@newmarket.ca or at 905 953-5300, ext. 2211.



Andrew Brouwer, Director of Legislative Services/Town Clerk



Anita Moore, Commissioner of Corporate Services

Schedule A – Draft Ward 3 Council Vacancy Appointment Procedure

Draft Ward 3 Council Vacancy Appointment Procedure

Purpose

The following procedure will be used when appointing an individual to fill the Ward 3 Council vacancy.

Definitions

“Act” means *Municipal Elections Act, 1996*, S.O., 1996, c.32, as amended.

“Candidate” means an individual seeking to fill the Ward 3 Council vacancy 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 the Ward 3 Council vacancy.

“Clerk” means the Clerk or his designate.

“Council” means the Council of the Corporation of the Town of Newmarket.

“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 candidate name being drawn by the Clerk.

General

1. Any individual filling the Ward 3 Council vacancy must meet the eligibility requirements of office as outlined in the Act as noted below:
 - 18 years of age or older;
 - a Canadian citizen;
 - a resident of the Town of Newmarket, or an owner or tenant of land in the Town or the spouse of such an owner or tenant; and
 - not prohibited from voting under any other Act or from holding municipal office.
2. If an employee of the Town of Newmarket seeks appointment to Council, the employee is required to give Council written notice, in advance, of his or her intention to take unpaid leave, in accordance with the Act. If the employee is appointed to office, he or she will be deemed to have resigned from their position with the Town immediately before making the declaration of office.

Schedule A – Draft Ward 3 Council Vacancy Appointment Procedure

Appointment Procedure

1. The Clerk will post a Ward 3 Council Vacancy notice on the Town website and in the local newspaper for two (2) consecutive weeks after the vacancy occurs. The notice will outline the application process.
2. Any individual wishing to be considered for appointment to the Ward 3 Council vacancy will complete and sign the Ward 3 Council Vacancy Application Form (Appendix A) and a Ward 3 Council Vacancy Declaration of Qualification (Appendix B) and will submit the forms to the Clerk by Friday, July 4, 2014 (4:30 p.m.).
3. A vote to fill a vacancy on Council by appointment will occur at an open Council Meeting.
4. At the meeting, the following will take place:
 - a. The Chair will make a short statement for the purpose of the meeting and the general order of proceedings to be followed.
 - b. The Clerk will provide to the Chair a list of the names of qualified applicants and the Chair will call for a motion from Council in the following form:

“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 Ward 3 Council vacancy, be considered for appointment to fill such vacancy.”
 - c. Each of the candidates will be afforded the opportunity to address Council for a period of not more than ten (10) minutes. The order of speaking will be determined by lot. The Clerk will place the names of all candidates in a container and randomly draw the names.
 - d. Each member of Council will be permitted two (2) questions to each candidate.
 - e. Upon hearing all the submissions of the candidates, Council will proceed to vote as follows:
 - i. Members of Council will vote by way of public vote as required by the *Municipal Act*.
 - ii. Candidate names will be displayed on the monitors in alphabetical order, in the Council Chamber by the Clerk.
 - iii. The Clerk will place the names of all Members of Council in a container and randomly draw their names to determine the order of the vote.
 - iv. Members of Council will vote for one (1) candidate only and votes will be cast verbally.
 - v. The Clerk will tabulate the results.

Schedule A – Draft Ward 3 Council Vacancy Appointment Procedure

- vi. 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 will be excluded from further consideration. 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. This process will 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.
- vii. Where the votes cast are equal for all the candidates and if:
 - 1. There are three or more candidates remaining, the Clerk will by lot select one such candidate to be excluded from the subsequent voting;
 - 2. Only two candidates remain, the tie will be broken by selecting a candidate by lot, as conducted by the Clerk.
- f. Upon conclusion of the voting, the Clerk will note the candidate receiving the votes of more than one-half of the number of the voting members of Council or the candidate selected through section (e)(vii)(2).
- g. The appointment of the candidate will be made by by-law.

Appendices to Draft Ward 3 Council Vacancy Appointment Procedure

A – Application Form

B – Declaration of Qualification



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Appendix A

Ward 3 Council Vacancy Application Form

Please complete this form in its entirety. Please print clearly.

First name		Last name
Qualifying Address		City
Province		Postal Code
Telephone (work)	Telephone (home)	Email

Eligibility

Requirement	Yes	No
Canadian citizen		
Minimum 18 years of age		
Eligible Newmarket elector (owner or tenant of land in Newmarket or the spouse of such owner or tenant of land in Newmarket)		
Not prohibited from voting otherwise by law		

Attachments

You may attach a letter of interest and/or resume/curriculum vitae which shall be no more than four (4) pages in length. By signing this form, you consent to having this application form and any attachments made public, including distribution to Members of Council and senior staff and inclusion on a public Council agenda.

Date	Signature

Deadline for receipt of Council Vacancy Application Form: Friday, July 4, 2014, 4:30 p.m.

Return Council Vacancy Application Form and any attachments in sealed envelope in person, to:

Andrew Brouwer, Director of Legislative Services/Town Clerk
395 Mulock Drive, Newmarket, ON L3Y 4X7



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Appendix B

Ward 3 Council Vacancy Declaration of Qualification

I, _____, an applicant mentioned in this application form, declare that I am presently legally qualified, or would be presently legally qualified if I were not a member of the Legislative Assembly of Ontario or the Senate or House of Commons of Canada, to be appointed and to hold the office to which I have applied for appointment and I make this solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath

DECLARED before me at the Town of Newmarket, in the Regional Municipality of York, this _____ day of _____, 2014.

(Signature of candidate)

(Signature of Clerk or Commissioner of Oaths)

Schedule B – Proposed Timeframe for Appointment Process

<u>Date (2014)</u>	<u>Activity</u>
June 12	Provincial election
June 14	Provincial election results published in Ontario Gazette
Week of June 16 & 23	Notice of vacancy – local newspaper & Town website
July 4, 4:30 p.m.	Due date for application
Week of July 9	Applications reviewed by Clerk, eligible candidates certified for consideration by Council by Clerk
	Certified candidate materials distributed to Council for review
	Certified candidate materials posted on Town's website
July 17	Special Council meeting agenda published
July 21, 7 p.m.	Special Council meeting to consider appointment
August 11, 7 p.m.	Regular Council meeting to include swearing-in of appointed Ward 3 Councillor
November 30	Current term of Council ends