

Filling of Councillor Vacancies: A Legislative Framework

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Purpose

- Outline legislative framework for the filling of vacancies on Ontario municipal councils
- Provide a historical overview of how vacancies on Markham Council have been addressed
- Seek direction on the preparation of a Council Policy regarding the filling of future vacancies

Background

- Vacancies on a municipal Council can occur for a number of reasons, including:
 - Death of a Councillor (Sect. 259 of Municipal Act (MA))
 - Loss of eligibility of a Member of Council (Sect. 259 of MA)
- Council must declare a Councillor seat vacant at its next meeting*
 - *Exception: in the case of a death of a member where declaration can be made at either of the next 2 meetings of municipal Council

Rules Applying to Filing Vacancies

- Within 60 days of declaring a seat vacant, Council must either:
 1. Appoint a person to fill the vacancy; OR
 2. Pass a by-law requiring a By-Election to fill the vacancy

Exceptions:

- If a vacancy occurs within 90 days before Voting Day of a regular Municipal Election, a municipality is NOT required to fill a vacancy (Sec. 263(5) of MA)
- No By-Election shall be held to fill a vacancy that occurs after March 31st in a Municipal Election year (Sec. 65(2) of Municipal Elections Act (MEA))

Rules Applying to Filing Vacancies (Cont'd)

- A person appointed or elected to fill a vacancy shall hold Office for the remainder of the term of the person he or she replaced (Sec. 264 of MA)
- Any such person who still wants to serve as a Member of Council will be required to run in the next general municipal election

Option 1: Appointment

Statutory Requirements for eligibility:

- An Appointee must be an eligible voter in Markham & not disqualified from running for Office:

- Canadian citizen
- 18 years of age
- Owner or tenant of land in Markham or the spouse of such an owner or tenant in Markham
- Not disqualified to hold office by statute

Option 1: Appointment (Cont'd)

Considerations:

- Legislation not prescriptive on appointment process
- Variations exist in appointment processes followed by Ontario municipalities
- At a minimum, appointment process should:
 - Afford the Clerk an opportunity to confirm eligibility of candidates
 - Be adopted by Council prior to the commencement of the process

Option 1: Appointment (Cont'd)

Advantages:

- Less costly than a By-Election
- Vacancy filled sooner than By-Election

Disadvantages:

- Could be perceived as less democratic
- Could be perceived as Council affording an advantage to a particular individual should she/he decide to run in a future Municipal Election.

Option 2: By-Election

Statutory Timeframes:

- By-Elections will be conducted by the Clerk in accordance with the Municipal Elections Act (MEA)
- Council must pass a by-law to hold a By-Election within 60 days of declaring the vacancy
- Nomination Day will be set by the Clerk to be a day not more than 60 days after the municipality passes a By-law authorizing the By-Election (Sec. 65 (4) of MEA)
- Voting Day must take place 45 days after Nomination Day (Sec. 65 (4) of MEA)

Option 2: By-Election (Cont'd)

Sample Ward By-Election Timeframes from 2009 By-Election

- September 15, 2009 – Declaration of ward vacancy, Markham Council adopts a by-law to hold By-Election
- October 9, 2009 – Nomination Day
- November 23, 2009 – Voting Day
- November 26, 2009 – Declaration of Office taken by successful candidate

Option 2: By-Election (Cont'd)

Advantages:

- Viewed as more democratic than an appointment

Disadvantages:

- Vacancy would take longer to fill
- More costly than an appointment process:
 - ~\$505,000 – Town-Wide (Based on 2010 Municipal Election)
 - ~\$91,000 – Ward (Based on 2009 By-election)
 - Voter turnout generally low for By-Elections

Option 2: By-Election (Cont'd)

- Voter Turnout in Markham Ward By-Elections

Year	Turnout
1993	22%
1998	18%
2009	23.7%

Past Practices in Markham

Type of Vacancy	Reason for Vacancy	Date Vacancy Declared	Method of Filling Vacancy	% of voter turnout	Person Appointed/ Elected	Date Appointed/ Sworn In
Mayor	Mayor Tony Roman passed away	November 24, 1992	Appointment	N/A	Regional Councillor Frank Scarpitti	November 24, 1992
Regional Councillor	Regional Councillor appointed Mayor	November 24, 1992	Appointment	N/A	Councillor Ken Dunphy	November 24, 1992
Ward Councillor	Councillor appointed to Regional Council	November 24, 1992	By-election	22%	Councillor Ron Maheu	April 13, 1993
Regional Councillor	Regional Councillor Bill Fisch appointed as Regional Chair	December 11, 1997	Appointment	N/A	Councillor Tony Wong	January 13, 1998
Ward Councillor	Councillor appointed to Regional Council	January 13, 1998	By-election	18.39%	Councillor Khalid Usman	March 19, 1998
Regional Councillor	Regional Councillor Tony Wong passed away	September 15, 2009	Appointment	N/A	Councillor Joe Virgillio	September 15, 2009
Ward Councillor	Councillor appointed to Regional Council	September 15, 2009	By-election	23.77%	Councillor Don Hamilton	November 26, 2009

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Other Considerations

Decision Factors:

- Proximity to the next regular Municipal Election
- Costs (e.g., municipality-wide vs. ward in the case of a By-Election)
- Public interest
- Ultimate decision solely rests with Markham Council

Council Policy

- Very few Ontario municipalities have policies formally governing Council vacancies.

Municipality	Policy
City of Burlington	• Fill vacancies by appointment
City of Toronto	• By-elections used in first 3 years of term • Appointment used for any vacancies occurring after January 1st of an election year.
Town of Oakville	• By-election used in first two years of term • Appointment used for any vacancies occurring after January 1st of the third year of term of Council.

Next Steps

- Staff is seeking direction on the preparation of a Policy governing how future vacancies on Markham Council will be addressed

Questions?