



Township of Essa **“Council Vacancy – Policy and Procedure”**

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| SUBJECT: COUNCIL VACANCY POLICY | POLICY NO: C10-2021 | Effective Date: June 16, 2021 | Resolution No: CW091-2021 |
| SCOPE: COUNCIL | | Revised: n/a | |

1. PURPOSE:

The purpose of this procedure is to provide for a clear, accountable and transparent process for the filling of council vacancies which occur during a term of Council.

2. POLICY PRINCIPLES

In accordance with the *Municipal Act*, S.O. 2001, c.25, as amended, when the seat of a member of Council becomes vacant during the term of office, Council may fill a vacancy by appointing a person who has consented to accept the office if appointed, or by requiring that a by-election be held to fill a vacancy in accordance with the *Municipal Elections Act*, S.O. 1996, c.32.

This Policy will provide for a clear, accountable and transparent process for filling vacancies on Council.

3. SCOPE

This procedure applies to any vacancy on Council which occurs during the term of office.

4. DEFINITIONS

In this Procedure, the following terms have the meanings as set out below:

“*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 Council.

“*Appointment by Open Call for Applications*” refers to the process for eligible individuals to submit an application to fill a council vacancy, once declared.

“*Appointment by Direct Nomination*” refers to the process used by Council to appoint an eligible by directly nominating:

- a) an existing member of Council to fill the vacant seat of Mayor or Deputy Mayor; or,
- b) a qualified individual to fill the vacant seat of Mayor or Deputy Mayor.

“*By-election*” means an election (other than a regular election) held to fill a vacancy on Council and that is conducted in accordance with Section 65 of the Municipal Elections Act, 1996, as amended.

“*Candidate*” means any individual qualified to be elected to hold office as a member of Council in accordance with the Municipal Elections Act.

“*Clerk*” means the Clerk of the Township of Essa or his/her designate.

“*Council*” means the Council of the Township of Essa.

“*Regular Election Year*” means the year established for a regular municipal election in accordance with the Municipal Elections Act, 1996, as amended.

“*Term of Office*” means the period of time a member is elected to hold office for which he/she is elected in accordance with the Municipal Elections Act, as amended.

“*Vacancy*” means when a seat on Council has become vacant in a manner described in Section 259 of the Municipal Act, S.O. 2001, c.25, as amended.

5. GENERAL

The Township Clerk or designate in consultation with the Chief Administrative Officer shall be responsible for interpreting, and where appropriate, administering the Council Vacancy Policy. The Clerk or designate has the authority to make minor technical amendments to this Procedure as may be required from time to time to ensure compliance with legislation.

5.1 DECLARING A SEAT TO BE VACANT

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

Within 60 days after the day a Declaration of Vacancy is made by Council, Council shall:

- Pass a By-law to call for a By-election; or
- Fill the council vacancy by appointment in accordance with section 263 of the Municipal Act.

In making its determination, Council will consider the costs and timelines and other factors associated with filling a vacancy by appointment or by by-election.

5.2 ELIGIBILITY REQUIREMENTS

Any individual filling a vacancy must meet the eligibility requirements of office as outlined in the Municipal Act and the Municipal Elections Act, 1996, as noted below:

- 18 years of age or older;
- A Canadian Citizen;
- A resident of the Township of Essa, or an owner or tenant of land in the Township or the spouse of such an owner or tenant; and
- Not prohibited from voting under any other Act or from holding municipal office.

5.3 CANDIDATE REQUIREMENTS

5.3.1 All individuals wishing to be considered for appointment to the vacancy shall submit to the Clerk prior to the deadline as established by the Clerk:

- Council Vacancy Application Form
- Declaration of Qualification Form
- Personal identification as deemed acceptable in accordance with the *Municipal Elections Act*.

5.3.2 Failure to file the required documents by the deadline established by the Clerk shall result in the application being void.

5.3.3 If the Clerk determines that the individual is not eligible to be an elector within the Township of Essa, the application shall be rejected and the applicant advised in writing as soon as possible.

6. METHODS FOR FILLING COUNCIL VACANCY

Council will determine which method to use when filling a vacancy and will follow the process for the selected method as outlined in the applicable Schedules attached to this Policy and Procedure.

6.1 BY BY-ELECTION

Should Council decide to fill the vacancy by calling a by-election, it is required that a By-law be enacted within 60 days of the seat being declared vacant. When using this method to fill the vacancy, the Municipal Elections Act stipulates that the by-election is to be conducted as far as possible in the same manner as a regular election.

If a vacancy is to be filled utilizing this method, the by-election shall be held in accordance with the *Municipal Elections Act*, 1996, as amended.

6.2 BY APPOINTMENT

Section 263 of the *Municipal Act*, 2001, provides that Council may, within sixty (60) days after declaring the seat vacant, fill the vacancy by appointing a person who has consented to accept the appointment.

As confirmed with Senior Policy Advisors, the Ministry of Municipal Affairs and Housing advise that section 239 of the *Municipal Act* does not provide for any provisions for Council to move into Closed Session when filling a vacancy. As such, all deliberations and discussions shall be held in the public forum in accordance with the *Municipal Act*, 2001.

The *Municipal Act*, 2001, does not prescribe a process to be followed in filling a vacancy by appointment. As such, a written process has been developed and is attached as Schedules 1 and 2 to assist with a clear and transparent process, should Council decide to fill a vacancy through appointment. The following is a brief summary of the processes that can be used when filling a council vacancy by appointment:

6.2.1 APPOINTMENT BY DIRECT NOMINATION

If a vacancy in the office of Mayor or Deputy Mayor has been declared, Council can proceed in filling this seat by appointment through direct nomination within 60 days of the seat having been declared to be vacant.

If a vacancy in the Office of Mayor or Deputy Mayor is to be filled by direct nomination, Council may choose to directly nominate:

- a) A current member of Council; or
- b) Any qualified individual as outlined in Section 256 of the Municipal Elections Act.

Refer to Schedule "1" for the procedure to be followed when using this method.

6.2.2 APPOINTMENT BY OPEN CALL FOR APPLICATIONS

If a vacancy in the office of Mayor, Deputy Mayor or Ward Councillor has been declared, Council can proceed in filling this seat through appointment by an open call for applications. Council would be required to fill this seat by appointment within 60 days of the seat having been declared. This method would require eligible individuals to submit an application to the Clerk.

Refer to Schedule "2" for the procedure to be followed when using this method.

7. ACCESSIBILITY

The municipality shall provide this document in an alternative format, upon request.

The municipality shall make every reasonable effort to assist persons requiring accommodation throughout the process outlined in this Policy and Procedure, upon request.

8. SCHEDULES ATTACHED TO POLICY

- 1 – Procedure for Appointment by Direct Nomination
- 2 – Procedure for Appointment by Open Call for Applications

9. APPENDICES

- 1 – Council Vacancy Application Form
- 2 – Declaration of Qualification Form



Council Vacancy Procedure - Schedule 1

Procedure for Appointment by Direct Nomination

This method may be used to fill a **vacancy for the seat of Mayor or Deputy Mayor**.

1. GENERAL

- 1.1 Once a seat on Council has been declared to be vacant, the Clerk shall post a Council Vacancy Notice in the local newspaper, on the Township's website and on social media outlets. The Notice shall indicate the following:
- The seat which has been declared to be vacant (ie: Deputy Mayor or Mayor)
 - The method to be used by Council in filling the vacancy (Open Call for Applications or by Direct Nomination)
 - The date for the Special Meeting of Council to be held for the consideration of Council in filling the vacancy.

The Notice will also steer interested applicants to refer to this written process.

- 1.2 During an open meeting of Council, members shall directly nominate:
- (a) an existing member of Council; or
 - (b) any qualified individual as outlined in Section 256 of the Municipal Elections Act.

to consider for appointment in filling the vacant seat of Mayor or Deputy Mayor.

If Council does not select to nominate any one individual directly to fill the seat of Mayor or Deputy Mayor, then the Clerk shall proceed to use the Open Call for Applications method in filling the vacancy.

- 1.3 Each nomination is required to be moved and seconded and voted on by Council (majority required for each individual nominated). A resolution shall be passed to confirm the individual(s) nominated for consideration in filling the vacancy.
- i. If only one individual is directly nominated by a member of Council to fill the vacancy of Mayor or Deputy Mayor, however a majority vote to support the nomination is not obtained, then the Clerk shall automatically default to the Procedure for Appointment by Open Call for Applications in filling the council vacancy.
 - ii. If only one individual is directly nominated by a member of Council and receives a majority vote of Council thereby confirming support of the nomination, then the Clerk shall declare that person to be the successful candidate in filling the position of Mayor or Deputy Mayor immediately, only upon the nominated candidate having consented to fill the vacancy. A By-law would be required to be enacted to confirm the appointment.
 - iii. If Council nominates more than one individual to fill the vacancy for the seat of Mayor or Deputy Mayor, and a majority vote has been cast to support each nomination, then the Procedure in Section 2 shall be followed.

- 1.4 Following the meeting where direct nominations are made by Council and are supported by a majority vote (resolution is passed), the Clerk shall contact the nominees and have them complete a Council Vacancy Application Form and

Declaration of Qualification Form. Individuals whom are nominated by Council shall provide personal identification showing their name and qualifying address within the Township of Essa.

- 1.5 The Clerk shall review and certify that the nominees are eligible for consideration by Council by appointment.
- 1.6 In accordance with section 4 of the *Municipal Conflict of Interest Act*, members of Council being considered for appointment are not required to declare a pecuniary interest when the item is being considered and voted upon.
- 1.7 Any member being considered for appointment to fill the vacant seat on Council shall not chair any meeting(s) where the matter is being considered and voted upon.

2. Council Meeting to Consider Appointment of Nominees to Fill Vacancy

- 2.1 A vote to fill the vacancy of Mayor or Deputy Mayor shall occur at an open meeting of Council. The meeting may be a regular Council meeting (if only one candidate has been nominated at a previous meeting of Council), or a Special Council meeting of Council that is called for that purpose (if more than one candidate has been nominated at a previous meeting of Council).
- 2.2 If more than one nominee is to be considered for the vacancy, the names shall be displayed in the room where the meeting is taking place. The Clerk shall read out the names of all nominees in alphabetical order by surname. The Clerk shall place the names of all nominees in a container and draw the names randomly by lot to decide the order of speaking.
- 2.3 In an effort to provide for an even playing field, all nominees shall be sequestered until such time as the Clerk or designate calls upon the speaker to enter the meeting room.
- 2.4 Nominees will be permitted a **maximum of five (5) minutes each** to speak with no extension, prior to Council voting to fill the vacancy.
- 2.5 Each member of Council will be permitted to pose one question to each nominee. All questions of Council will be deemed to be confidential and will be pre-determined. All questions of Council shall be the same for each candidate and shall be asked immediately following the speaker's presentation to Council.

Each speaker shall be allotted a **maximum two-minute timeframe (per question) to answer each question** of Council. Speakers shall be cut off immediately at two minutes.
- 2.6 Once each candidate has finished answering the questions of Council, they shall be moved to a room separate from candidates that have not been interviewed, until such time as all speakers have finished being interviewed by Council.
- 2.7 After all interviews have concluded, the Chair may provide an opportunity for members of Council to discuss the outcome of the interviews in the public forum prior to voting.
- 2.8 If the slate of candidates includes more than one qualified individual, voting will be conducted in accordance with Section 3 below.

3. Voting Procedure – Direct Appointment by Council Nomination

- 3.1 Each member of Council is entitled to **one (1) vote only**.
- 3.2 Council members shall cast their vote by ballot.
- 3.3 Any member of Council that abstains from voting foregoes their vote.
- 3.4 The Clerk or designate shall tabulate the results. The results shall be disclosed and the winner declared.
- 3.5 If a tie has resulted after members of Council have cast their votes, the Chair will proceed in asking one (1) additional question which will be directed ONLY to the candidates that have tied. (The question will be confidential and pre-determined and shall be the same question for the tied candidates. Candidates will be provided a two-minute timeframe to provide an answer and shall be cut off promptly at two minutes.).
- 3.6 The order of speakers shall be in accordance with section 2.2 of Schedule 1.
- 3.7 Speakers shall be sequestered until such time as the Clerk or designate calls upon the speaker to enter the meeting.
- 3.8 After each speaker has answered the question, Council members shall once again cast their vote.
- 3.9 The Clerk or designate shall tabulate the results. The results shall be disclosed, and the winner declared.
- 3.10 If the voting results in another tie, then the Clerk or designate will break the tie by placing the names of both candidates into a container and randomly draw the name of the successful candidate.
- 3.11 Upon conclusion of voting, the Clerk will announce the successful candidate having received the greatest number of votes cast by voting members of Council, or the candidate selected through 3.10.

Council shall pass the following motion appointing the successful candidate as follows:

“Be it resolved that (Candidate)_____ be appointed to the Office of (Name of Office) _____ for the Township of Essa, for the remainder of the (Term of Office) _____ Term of Council.”

- 3.12 The Clerk will administer the Declaration of Office required by subsection 232(1) of the Municipal Act, 2001, after the winner has been declared in the meeting.
- 3.13 The By-law confirming the appointment of the successful candidate to fill the vacant seat of Mayor or Deputy Mayor will be made in the same meeting following the Declaration of Office.



Council Vacancy Procedure - Schedule 2

Procedure for Appointment by Open Call for Applications

This method shall be used to fill a **vacancy for the seat of a Ward Councillor**.

(This method may be used to fill a vacancy for the seat of Mayor or Deputy Mayor ONLY if the method for Direct Nominations is not being used.)

1. General

- 1.1 Once a seat on Council has been declared to be vacant, the Clerk shall post a Council Vacancy Notice in the local newspaper, on the Township's website and on social media outlets. The Notice shall indicate the following:
 - The seat which has been declared to be vacant (ie: Ward Councillor, Deputy Mayor or Mayor)
 - The method to be used by Council in filling the vacancy (Open Call for Applications or by Direct Nomination)
 - The date for the Special Meeting of Council to be held for the consideration of Council in filling the vacancyThe Notice will also steer interested applicants to refer to this written process.
- 1.2 Interested persons shall complete a Council Vacancy Application Form and a Declaration of Qualification Form and submit the completed forms to the Clerk or designate. In addition, the applicant is required to provide a personal statement detailing their background information and personal qualifications as well as personal identification showing their name and qualifying address within the Township of Essa.
- 1.3 The intake period for applications to be submitted for consideration in filling the vacancy shall be twenty-one (21) days. The intake period shall commence within the first thirty (30) days from the date that the seat was declared to be vacant.
- 1.4 The Clerk shall review and certify that the candidates are eligible for consideration by Council by appointment upon the close of the intake period and shall post the certified candidate names on the website with the accompanying Council Vacancy Application Form and the Declaration of Office Form.
 - * *If no individuals have submitted an application for Council's consideration to fill the vacancy after the close of the initial intake period, then the Clerk or designate shall re-advertise.*
 - ** *If no applications have been received after the Notice has been advertised a second time, then Council shall proceed to nominate an individual to fill the vacancy.*
- 1.5 A candidate who wishes to withdraw their application may do so in person (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.

- 1.6 A Special Meeting of Council shall be called within 30 days of the close of the intake period, but not longer than 60 days from when the seat was declared to be vacant. The purpose of the Special Meeting of Council will be for Council to consider the certified applicants to fill the vacancy. The appointment of the successful candidate will take place following the vote by members of Council at the Special Meeting.

Please Note: If only one individual has submitted an application for appointment through the Open Call for Applications, then a Special Meeting of Council might not be required (see section 2.2).

1.7 Short-listing

- 1.7.1 Should the municipality be in receipt of more than six (6) applications after the close of the intake period, Council may short-list the candidates.

Short-listing will take place at the start of the same Special Meeting scheduled to fill the Council vacancy, prior to any final interviews taking place. However, dependent upon the number of applications received, Council may schedule an additional Special Meeting to consider the applicants to short-list.

- 1.7.2 Council may short-list the candidates by way of the following:
- Reviewing all Council Vacancy Applications and personal statements submitted to the Clerk's Office; **and**
 - Extending one (1) question from Council to each applicant, of which is confidential and pre-determined and is the same for each applicant.

Candidates shall be provided two (2) minutes to provide Council with their response.

- 1.7.3 Candidates will be selected based on various factors, including their contributions to the municipality. All decisions of Council are considered as final.

- 1.7.4 A resolution shall be passed in said Special Meeting of which will confirm the names of the candidates that will proceed to the final interview.

2. Council Meeting to Consider Candidates to Fill Vacancy

- 2.1 A vote to fill a vacancy on Council shall occur at an open meeting of Council. The meeting may be a Regular Council meeting (if only one qualified candidate has submitted the necessary applications), or a Special Meeting of Council that is called specifically for the purpose of providing a platform to the qualified candidates to speak, and for the purpose of voting on the candidates (if more than one qualified candidate has submitted the necessary applications).

- 2.2 If only one qualified candidate has filed the necessary forms prior to the deadline, Council may:

- appoint that individual to the fill the vacancy, or
- vote to hold a second shortened intake period in order to determine if there is any additional interest.

- 2.3 Candidate names shall be displayed in the room where the meeting is taking place. The Clerk shall read out the names of all candidates in alphabetical order

by surname. The Clerk shall place the names of all nominees in a container and draw the names randomly by lot to decide the order of speaking.

- 2.4 In an effort to provide for an even playing field, all candidates shall be sequestered until such time as the Clerk or designate calls upon the speaker to enter the meeting room.
- 2.5 Candidates will be permitted a **maximum of five (5) minutes each to speak** to Council with no extension, prior to Council voting to fill the vacancy.
- 2.6 Each member of Council will be permitted to pose one question to each candidate. All questions of Council will be deemed to be confidential and will be pre-determined. All questions of Council shall be the same for each candidate and shall be asked immediately following the speaker's presentation to Council.

Each speaker shall be allotted a **maximum two-minute timeframe (per question) to answer each question** of Council. Speakers shall be cut off at two minutes.
- 2.7 Once each candidate has finished answering the questions of Council, they shall be moved to a room separate from candidates that have not been interviewed, until such time as all speakers have finished being interviewed by Council.
- 2.8 The Chair may provide an opportunity for members of Council to discuss the outcome of the interviews in the public forum prior to proceeding to the vote.
- 2.9 If the slate of candidates includes more than one qualified individual, voting will be conducted in accordance with Section 3 below.

3. Voting Procedure – Appointment by Open Call for Applications

- 3.1 Each member of Council is entitled to **one (1) vote only**.
- 3.2 Council members shall cast their vote by ballot.
- 3.3 Any member of Council that abstains from voting foregoes their vote.
- 3.4 The Clerk or designate shall tabulate the results. The results shall be announced and the winner declared.
- 3.5 If a tie has resulted after members of Council have cast their votes, the Chair will proceed in asking one (1) additional question which will be directed ONLY to the candidates that have tied. (The question will be confidential and pre-determined and shall be the same question for the tied candidates. Candidates will be provided a two-minute timeframe to provide an answer and shall be cut off promptly at two minutes.)
- 3.6 The order of speakers shall be in accordance with section 2.3 of Schedule 2.
- 3.7 Speakers shall be sequestered until such time as the Clerk or designate calls upon the speaker to enter the meeting.
- 3.8 After each speaker has answered the question, Council members shall once again cast their vote.
- 3.9 The Clerk or designate shall tabulate the results. The results shall be announced, and the winner declared.

- 3.10 If the voting results in another tie, then the Clerk or designate will break the tie by placing the names of both candidates into a container and randomly draw the name of the successful candidate.
- 3.11 Upon conclusion of voting, the Clerk will announce the successful candidate having received the greatest number of votes cast by voting members of Council, or the candidate selected through 3.10.

Council shall pass the following motion appointing the successful candidate as follows:

“Be it resolved that (Candidate)_____ be appointed to the Office of (Name of Office)_____ for the Township of Essa, for the remainder of the (Term of Office)_____ Term of Council.”

- 3.12 The Clerk will administer the Declaration of Office required by subsection 232(1) of the Municipal Act, 2001, after the winner has been declared in the meeting.
- 3.13 The By-law confirming the appointment of the successful candidate to fill the vacant seat of Ward Councillor, Mayor or Deputy Mayor will be made in the same meeting following the Declaration of Office.

**TOWNSHIP OF ESSA****Appendix 1
COUNCIL VACANCY APPLICATION FORM****Please complete this form in its entirety and submit in person with identification to:****Township of Essa
Attention: Clerk / Deputy Clerk
5786 County Road 21
Utopia, On L0M 1B0****To make an appointment to submit your
completed forms, please call the Township
of Essa at 705-424-9917****Clerk – Extension 117
Deputy Clerk – Extension 116****Forms that are faxed or emailed will not be accepted.****Application to Fill Seat of**

(Ward Councillor, Deputy Mayor, Mayor)

APPLICANT NAME

Last Name

Given Name(s)

QUALIFYING ADDRESS WITHIN MUNICIPALITY

Suite/ Unit No.

Street No.

Street Name

City/Town

Province

Postal Code

MAILING ADDRESS **SAME AS QUALIFYING ADDRESS ABOVE**

Suite/ Unit No.

Street No.

Street Name

City/Town

Province

Postal Code

CONTACT INFORMATION

Telephone No. (including area code)

Business

Home/Cell

Email Address

Eligibility Requirements**Yes****No**

Canadian Citizen

Minimum 18 years of age

Eligible Elector in the Township of Essa (owner or tenant
or spouse of such owner or tenant)

Not prohibited from voting otherwise by law

**Explain why you would like to serve on Council (if extra space required, please attach
additional pages****CONSENT****Yes****No****If appointed, will you accept the appointment to fill the vacancy?**_____
Signature of Applicant



Appendix 2

TOWNSHIP OF ESSA DECLARATION OF QUALIFICATION FORM

| DECLARATION OF QUALIFICATION |
|--|
| <p>I _____, the applicant mentioned in this application form, declare that I am presently legally qualified, or would be presently legal 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.</p> |
| <p>DECLARED before me at the Township of Essa, in the County of Simcoe, this _____ day of _____, 20____.</p> |

Signature of Applicant

Signature of Clerk or Commissioner

Identification Verified
Copy Attached? Y / N

Received by:

Date:

| To be completed by Clerk or Deputy Clerk after the close of Call to Fill Vacancy | | |
|--|--|------------------------------|
| CERTIFICATE | | |
| <p>I, the undersigned Clerk of this municipality do hereby certify that I have examined the application form of the aforesaid applicant filed with me and am satisfied that the individual is qualified for appointment to municipal office.</p> | | |
| | | |
| Signature of Clerk or Designate | | Date of Certification |

Personal information collected on the Council Vacancy Form and the Declaration of Qualification Form is pursuant to the Municipal Act and is collected in accordance with the Municipal Freedom of Information and Protection of Privacy Act and will be used for the purpose of determining a nominee's eligibility for appointment to municipal office. **These two forms will be attached to a Special Meeting Agenda where Council will consider the appointment of nominees to fill a vacancy and will be posted on the Township's website. Questions can be directed to the Clerk or Deputy Clerk.**