

Town of Pelham Council Report

Wednesday, March 05, 2025

Subject: Options to Fill Vacant Niagara Regional Council Seat for the Balance of the 2022-2026 Term

Prepared By: Sarah Leach, Acting Town Clerk

Department: Clerk's Office

Recommendation:

BE IT RESOLVED THAT Council receive report 2025-0067 "Options to Fill Vacant Niagara Regional Council Seat for the Balance of the 2022-2026 Term," for information;

AND THAT the vacancy on Niagara Regional Council be filled through Option No. _____, as outlined in the report.

Background:

Under the *Municipal Act, 2001*, S.O. 2001, c.25 (*Municipal Act, 2001*), when a Council seat becomes vacant, Council must officially declare the vacancy and determine whether to fill it through appointment or by-election.

A vacancy can occur in several different ways, including: (i) the death or resignation of a member, (ii) when a member becomes disqualified from holding office, (iii) when a member is absent from the meetings of council for three successive months without being authorized to do so by a resolution of council, (iv) is appointed or elected to fill any vacancy in any other office on the same council, or (v) forfeits his or her office under this or any other Act.

The *Municipal Act, 2001* mandates that Council must fill a vacant seat within 60 days of declaring the vacancy unless the vacancy occurs within 90 days of a municipal election.

On February 19, 2025, Regional Councillor Diana Huson announced her resignation from Niagara Regional Council, effective March 15, 2025. Councillor Huson is Pelham's directly elected Regional Councillor, serving alongside Mayor Junkin, who also holds the position by virtue of office.

On February 20, 2025, Regional Council declared Councillor Huson's seat vacant, effective March 15, 2025. The Region is required to fill the vacant seat by May 14, 2025,

pursuant to section 259 of the *Municipal Act, 2001*. To fill this vacant seat, Council has the choice of either (i) appointing a qualified elector or (ii) calling a by-election in accordance with the *Municipal Act, 2001*.

The Niagara Region is required to approve Pelham's recommendation to comply with its policy C2-001, unless the Region determines that the recommendation contravenes the *Municipal Act, 2001*, or the *Municipal Elections Act, 1996*.

Filling Vacancies under the *Municipal Act, 2001*

Section 263 (1) states that "if a vacancy occurs in the office of a member of council, the municipality shall, subject to this section,

(a) fill the vacancy by appointing a person who has consented to accept the office if appointed; or

(b) require a by-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996*. 2001, c. 25, s. 263 (1)."

Section 263(5) establishes the rules that apply to filling vacancies.

Analysis:

On September 6, 2023, Council approved Council Vacancy Policy S201-22, which governs the process for filling vacancies in positions elected through municipal elections conducted by the Town of Pelham. By extension, Regional Councillors are treated identically to Town Councillors under these provisions.

As noted above, Council has two options for filling the vacancy: appointment or by-election. Various alternatives are available under the appointment process. Each option is outlined below, including key considerations such as adherence to policy and potential external factors.

Option #1: Appointment Process

The *Municipal Act, 2001*, does not set out any specific requirements relating to the appointment of an individual to fill a council vacancy, other than those relating to qualifications. To be considered for appointment, individuals must meet the following qualifications, as outlined in the *Municipal Elections Act, 1996* (MEA):

1. Reside in or be owner/tenant of land in the municipality, or spouse.
2. Canadian Citizen.
3. At Least 18 years of age.
4. Not be prohibited from voting under section 17(3) of MEA or otherwise by law.

Since the seat was declared vacant effective March 15, 2025, the Region must complete the appointment process by May 14, 2025, should Council choose to fill the vacancy through appointment.

The following sub-options under Option #1 align with the Council Vacancy Policy. The Policy prioritizes the appointment process over a by-election but does not prioritize any specific appointment method.

Option #1(a): Appointment of a Candidate from the 2022 Municipal and School Board Election

This option offers the vacant position to the runner-up candidate from the 2022 Municipal and School Board Election for Regional Councillor. To qualify, the runner-up must have received at least 50% of the total votes earned by the winning candidate.

According to the certified 2022 Regional Council results, the second-place candidate, Wally Braun, received 1,026 votes, while Diana Huson, the winning candidate, received 3,461 votes. Pursuant to the Council Vacancy Policy, Wally Braun is not eligible for appointment, as his vote count is less than 50% of the total votes earned by the winning candidate.

Option #1(b): Appointment by Call for Applications

This option involves the Clerk initiating a public application process to seek interested and eligible individuals to fill the vacant Regional Council seat. The application deadline would be established by the Clerk.

Once the application period closes:

- The names of all eligible applicants will be made public.
- Council may review the eligible applications in a closed session.
- In an open session, Council may narrow down the list of candidates for further consideration.

If more than one applicant remains after this process:

- The selected candidates will be invited to appear before Council.
- Each applicant will be given up to 10 minutes to present their qualifications and interest in serving.
- Council members will have the opportunity to ask questions.
- Council may hold a final closed session review of the remaining candidates.
- The final vote to appoint a candidate will take place in an open session.

If Council selects this option, the Clerk will provide a detailed report at the next Council meeting, outlining the relevant timelines and procedural steps.

Option #1(c): Direct Appointment by Council

Option #1(c) approves an appointment process in which Council appoints an eligible individual without requiring an application process. This may include either a member of the public or a current member of Council.

If a sitting Council member seeks and is successfully appointed to the vacant Regional Councillor position, they would be required to vacate their Town Council seat. This requirement is addressed in Sections 259(1) and 261(1) of the *Municipal Act, 2001*, as follows:

- Section 259(1) states that a member's seat becomes vacant if they are elected or appointed to fill a vacancy in another office on the same council (within the same council structure—from Town Council to Regional Council).
- Section 261(1) states that except where otherwise provided, no person may hold more than one office governed by the *Municipal Elections Act, 1996*, at the same time anywhere in Ontario.

Following the Regional Councillor's appointment, the process outlined in this report would then apply to the vacant Town Council seat. This would require declaring the Town Council seat vacant and initiating the process to fill that vacancy. At that time, Town Council would need to decide how to fill the Ward Councillor seat—either through appointment or a by-election. As previously noted, the Council Vacancy Policy encourages appointment for the various reasons outlined in this report. However, conducting a ward by-election is significantly more cost-efficient than a municipal-wide by-election. For reference, the 2020 Ward One by-election cost approximately \$26,000. Considering inflation and the need to rent vote-tabulation equipment, it is reasonable to anticipate that a future ward by-election would cost upwards of \$40,000.

While the legislation prescribes the timeline for conducting a by-election following the declaration of a vacancy, the Clerk's Department would have some additional time to organize a ward by-election. This is because the timeline would begin from the date the Town Council seat is declared vacant rather than from March 15, 2025.

Council has the option to make a direct appointment at its meeting on March 5, 2025, or select this option with the flexibility to make the appointment later. Should multiple Council members express interest in the position, Council may direct the Clerk to

schedule a future agenda item, allowing each interested member to deliver a 10-minute presentation for consideration. A vote on the successful candidate would be conducted publicly. If Council opts to appoint a member from within, the Clerk would bring forward a similar report in the future. A decision regarding the appointment versus a by-election for the Town Council seat can be made at the next regular meeting, or deferred for a period of time, as Council prefers.

Appointment Process Considerations

The appointment process may be considered less democratic than a by-election, as it does not involve direct voter participation. However, it remains a structured and transparent process that allows interested individuals to apply, candidates to present, and Council deliberation.

This open and merit-based approach ensures a fair and efficient method for filling the vacancy, particularly when considering factors such as time, cost, and voter fatigue. While a direct appointment eliminates the public application process, it remains well within Council's authority to determine that this is the most efficient and effective option. A direct appointment streamlines the process, enabling a timely decision. Additionally, the direct appointment of a Council member is a decision rooted in political legitimacy, as it involves selecting an experienced representative to fill the vacant position. This ensures immediate representation, minimizes the learning curve, and provides relatively uninterrupted continuity in leadership.

A significant advantage of the appointment process is its efficiency in both time and cost. Council must consider the remaining length of the term, with the 2026 Municipal and School Board Election scheduled for October 26, 2026. Given that the current term is in its latter half, an appointment ensures the vacancy is filled promptly. Additionally, the appointment process eliminates the need for a municipal-wide by-election, thereby avoiding significant costs and resource allocation.

A review of the Town's recent history with Council vacancies shows that three of four vacancies, occurring midway or later in the term, were filled by appointment—demonstrating a consistent precedent for this approach in similar situations.

Option #2: Pass a By-law Requiring a By-Election to be Held to Fill the Vacancy

Under the *Municipal Act, 2001*, Council has sixty (60) days, until May 14, 2025, to pass a by-law authorizing a by-election.

Under the MEA, if a by-law is passed, nomination day must occur within a maximum of sixty (60) days from the by-law's passage (likely in May or June 2025). Voting day would then take place forty-five (45) days after nomination day (potentially in July 2025).

The MEA mandates that a by-election must be conducted “as far as possible” in the same manner as the previous regular election. Accordingly, the Town would be required to hold the by-election in person, including advance voting options.

Should Council choose to proceed with a by-election, the Clerk will prepare a report outlining the official timeline in accordance with legislative requirements. Furthermore, if Council decides to move forward with the by-election, a two-thirds majority vote would be required, as this decision would depart from the Council Vacancy Policy.

By-election Considerations

A by-election may be the most democratic option to fill the vacancy; however, it will also be the costliest option. The 2022 Municipal and School Board election, excluding inaugural activities, cost approximately \$85,000, plus unaccounted staff time. While this municipal-wide by-election would only be for a single vacant seat, the costs would be comparable to the previous election, as the same processes are required, such as ordering ballots, mailing voter information cards and obtaining voting equipment. A potential reduction in the number of voting locations—previously set at two per Ward—could present the opportunity for cost savings.

This by-election would also incur additional costs related to the rental of vote-tabulating equipment. After the 2022 Municipal and School Board Election, the Town's voting equipment from 1999 became unusable due to the vendor no longer supporting it and the unavailability of replacement parts. Should a federal election be called, securing voting equipment may prove challenging.

Funding for the by-election would be drawn from the Election Reserve Fund, which would necessitate a significant increase in the 2026 transfer amount to ensure sufficient funds are available for the upcoming 2026 Municipal and School Board Election.

An additional significant consideration is the timing of this by-election, which falls shortly after the provincial election (February 27, 2025) and a potential federal election (estimated spring/summer). This could lead to voter fatigue or voter apathy, as citizens may be reluctant to vote too frequently, potentially impacting voter turnout.

Temporary Representation:

Pursuant to the Niagara Region's Procedural By-law, the Town is not permitted to appoint a temporary representative to Regional Council. Section 23.1 of the By-law applies only to temporary vacancies, specifically when a current member of both councils is unable to act for a period exceeding one month. However, it does not extend to situations where a member has resigned, as this creates a vacancy rather than a temporary absence.

Furthermore, the procedural by-law does not contain any provisions allowing for the appointment of a temporary member in the event of a resignation. It strictly permits the designation of alternates only in cases of temporary absences, not permanent vacancies.

Financial Considerations:

Option #1(b): This option would require minimal dedicated staff time from the Clerk and Communications Specialist. There are no significant election-related expenses.

Option #1(c): Should Council choose to directly appoint one of its sitting members, this decision could trigger a by-election to fill the resulting vacancy. For reference, the 2020 Ward One by-election cost approximately \$26,000. Inflation and the need to rent vote-tabulation equipment are expected to increase costs, estimated at \$40,000. The 2020 by-election incurred extra expenses due to COVID-19 safety measures, which would not be applicable in a future by-election.

Option #2: The 2022 Municipal and School Board Election totalled approximately \$85,000. Based on this figure, the estimated cost for a municipal-wide by-election would be similar to that of the 2022 Election. Potential cost savings could arise from measures such as fewer polling stations, reduced staffing requirements, limited software purchases, no candidate nights, and reduced advertising efforts. However, new expenses, such as vote machine equipment rental—which were not captured in either the 2020 or 2022 elections—would need to be factored in.

The Election Reserve could cover these costs, but this would impact the 2026 election budget.

Alternatives Reviewed:

Under the Council Vacancy Policy, Council is guided to select an appropriate appointment process for filling a vacancy. However, due to the specific circumstances surrounding this vacancy, one of the two available appointment processes is not applicable in this instance, namely Option #1(a), the Appointment of a Candidate from the 2022 Municipal and School Board Election. Should Council choose to forgo the appointment process altogether, they may opt for Option #2: a by-election, as an alternative method to fill the vacancy.

Strategic Plan Relationship: Enhancing Capacity and Future Readiness

This report supports enhancing capacity and future readiness by offering a transparent and efficient approach to filling the vacant Regional Council seat. Opting for the appointment process rather than a by-election ensures timely representation while preserving financial resources for the upcoming 2026 municipal election.

Consultation:

Municipal resources relating to the appointment and by-election process.
Niagara Regional Clerk

Other Pertinent Reports/Attachments:

Council Vacancy Policy
Niagara Regional Policy C2-001 Filling of Vacancies in the Office of Regional Councillor

Approved and Submitted by:

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