

## Report to Corporate Services Committee

**To:** Chair and Members  
Corporate Services Committee  
**From:** Cathy Saunders, City Clerk  
**Subject:** Declaration of Vacancy – Office of Councillor, Ward 13  
**Date:** Sept 27, 2021

## Recommendation

That the following actions be taken with respect to the Office of Councillor, Ward 13:

- a) the report dated September 27, 2021 entitled “Declaration of Vacancy– Office of Councillor, Ward 13” **BE RECEIVED**; and,
- a) in accordance with section 262 (1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, the Office of Ward 13 **BE DECLARED** vacant.

## Analysis

### 1.0 Background Information

#### 1.1 Previous Reports Related to this Matter

None.

#### 1.2 Legislative Context

As a result of Arielle Kayabaga’s recent election as a Federal Member of Parliament, in accordance with section 258(1)3. of the *Municipal Act, 2001*, S.O. 2001, c. 25 (MA), Arielle Kayabaga is no longer eligible to hold office as a Member of Council:

#### **Ineligible**

**258** (1) The following are not eligible to be elected as a member of a council or to hold office as a member of a council:

3. A member of the Assembly as provided in the Legislative Assembly Act or of the Senate or House of Commons of Canada.

As Arielle Kayabaga is now ineligible to hold office, the office Councillor, Ward 13 is deemed to be vacant as provided for in the MA:

#### **Vacant seat**

**259** (1) The office of a member of council of a municipality becomes vacant if the member,

- (a) becomes disqualified from holding the office of a member of council under section 256, 257 or 258;

As a result, Municipal Council must undertake the following actions:

- i) declare the office vacant in accordance with section 262(1) of the MA;
- ii) within 60 days after the day a declaration of a vacancy of office is made, fill the vacancy by appointing a person who has consented to accept the office if appointed; or pass a by-law requiring a by-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996* (MEA).

In accordance with section 262 of the MA, the Municipal Council is required to declare the office Councillor, Ward 13 vacant at the Municipal Council meeting to be held on October 5, 2021:

#### **Declaration**

**262** (1) If the office of a member of a council becomes vacant under section 259, the council shall at its next meeting declare the office to be vacant, except if a vacancy occurs as a result of the death of a member, the declaration may be made at either of its next two meetings.

The MA sets out the following with respect to the filling of a vacancy of the office of a Member of Council:

#### **Filling vacancies**

**263** (1) 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.

#### **Rules applying to filling vacancies**

(5) The following rules apply to filling vacancies:

1. Within 60 days after the day a declaration of vacancy is made with respect to the vacancy under section 262, the municipality shall,
  - i. appoint a person to fill the vacancy under subsection (1) or (4), or
  - ii. pass a by-law requiring a by-election be held to fill the vacancy under subsection (1).

#### **Term**

**264** A person appointed or elected to fill a vacancy under section 263 shall hold office for the remainder of the term of the person he or she replaced.

## **2.0 Discussion**

### **2.1 Filling the Vacancy**

Council is required to fill the vacancy by means of an appointment or by passing a by-law to hold a by-election within 60 days after October 5, 2021, (being the date on which Municipal Council declares the Office vacant) being December 3, 2021. As noted above, the MA provides two options for Municipal Council to consider when filling a council vacancy: appointing an individual that has consented to the appointment and is qualified to hold office; or the holding of a by-election. The City of London does not have a procedure regarding the filling of vacancies on Municipal Council and instead relies on the provisions set out in the MA. The City of London did undertake an appointment process in 2014, as a result of the vacancy of the office of Councillor, Ward 5, however in that circumstance, there was no other option available given that the vacancy occurred after March 31<sup>st</sup> in the year of a regular election. Section 65 of the MEA provides for the following:

#### **No by-election after March 31 in year of regular election**

65(2) Despite any Act, no by-election shall be held to fill an office that becomes vacant after March 31 in the year of a regular election and no by-election shall be held with respect to a question or by-law after March 31 in the year of a regular election unless it is held in conjunction with a by-election for an office.

## **Conclusion**

It is within the purview of Municipal Council to determine the process that best fits the circumstances surrounding the vacancy (e.g. position, timing, etc.). More detailed information regarding options for filling the vacancy in Ward 13 will be provided in an upcoming report to the Corporate Services Committee.

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**Recommended by:** Cathy Saunders, City Clerk