

## Report to Corporate Services Committee

**To:** Chair and Members  
Corporate Services Committee  
**From:** Cathy Saunders, City Clerk  
**Subject:** Filling of Vacancies on Municipal Council  
**Date:** October 12, 2021

### Recommendation

That on the recommendation of the City Clerk, the vacancy of the Office of Councillor Ward 13 BE FILLED by means of the appointment of an individual in accordance with section 263(1)(a) of the *Municipal Act, 2001* by the process provided for in the attached Appendix "A".

### 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* ("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;

##### **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.

In accordance with section 262(1) of the MA, the Municipal Council declared the office Councillor, Ward 13 vacant at the Municipal Council meeting held on October 5, 2021.

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**

As noted above, provincial legislation 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 *Municipal Act, 2001*. 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.).

Given that the general Municipal Election is to be held on October 24, 2022 and nominations for that election open on May 1, 2022, Municipal Council may wish to consider implementing an appointment process rather than holding a by-election to fill the Office of Ward 13 vacancy. It is noted that the timelines for a by-election as set out in this report and as determined by the MEA, would result in the vacancy not being filled until early February 2022, three months before nominations open for the regular election. It is also noted that should a by-election be held, resources in the City Clerk's Office that will be focusing on preparing for the regular election, will also need to focus on preparing for a by-election. This will be challenging from a resources and timing perspective.

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 *Municipal Elections Act, 1996* (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.

### **Appointment Process**

As noted above, the City Clerk recommends that the Municipal Council proceed with an appointment process to fill the vacancy in accordance with a procedure be established by Municipal Council which is discussed later in this report.

In accordance with Section 263(5)(1)(i) of the MA, if a vacancy is to be filled by appointment, it shall be filled within 60 days of declaring the vacancy. If Municipal Council wishes to fill the vacancy in Ward 13 via an appointment process, the appointment would need to be made on or before December 3, 2021.

The City Clerk’s Office previously canvassed a number of municipalities’ processes and has found the following options have been used to fill vacancies on council, other than the Head of Council:

1. Invite applications from any interested qualified elector to be considered for the vacancy and provide applicants with an opportunity to address Municipal Council and respond to questions before a vote is taken.
2. Appoint an eligible candidate from the most recent municipal election who ran for the same office or another office.
3. Appoint any other qualified individual who consents to the appointment.

A draft appointment process has been attached as Appendix “A” to this report for Municipal Council’s consideration.

The following table sets out the vacancy appointment timelines based on the Council Meeting schedule should Municipal Council wish to undertake an appointment process.

**FILLING OF VACANCY TIMELINES – APPOINTMENT PROCESS**

October 5, 2021	Council declares the office of Ward 13 Councillor vacant
No later than December 3, 2021	Council appoints a person to fill the vacancy (latest Council Meeting to meet the deadline November 16, 2021)

**By-election**

Although the City Clerk is not recommending that a by-election be held, should the Municipal Council determine otherwise, by-elections are to be conducted by the Clerk in accordance with section 65 of the *Municipal Elections Act, 1996* (MEA). The following section summarizes the requirements under the MEA and MA when holding a by-election to fill a vacancy:

**FILLING OF VACANCY TIMELINES – BY-ELECTION PROCESS**

October 5, 2021	Council declares the office of Ward 13 Councillor vacant
No later than December 3, 2021 (latest scheduled Council Meeting to meet deadline is November 16, 2021)	Council passes a by-law requiring that a by-election be held to fill the vacancy
No later than February 1, 2022 (2 PM) (based on the by-law passing on December 3, 2021).	Clerk to fix date of Nomination Day not less than 30 days and not more than 60 days after the council of the clerk’s municipality passes a by-law indicating a by-election is required
March 18, 2022 (based on a Nomination Day of February 1, 2022)	Voting day shall be 45 days after nomination day. No election shall be held after March 31 in the year of a regular election.

To assist the Municipal Council, should it be determined that a by-election is to be held, the Civic Administration has prepared following draft motion and the attached proposed by-laws and timelines for Municipal Council’s consideration:

“That the following proposed by-laws BE INTRODUCED at the Municipal Council meeting to be held on October 26, 2021 with respect to the filling of the vacancy of the Office or Ward 13, Council

- a) the attached proposed by-law (Appendix “B”) being “A by-law to provide for a by-election for the office of Councillor, Ward 13” to be held in accordance with the *Municipal Elections Act, 1996*;
- b) the attached proposed by-law (Appendix “C”) being “A by-law to establish the dates for advance voting and the hours during which voting places shall be open on those dates for the by-election being held to fill the vacancy of the office of Councillor, Ward 13”;
- c) the attached proposed by-law (Appendix “D”) being “A by-law to authorize the use optical scanning vote tabulators and proxy voting for the by-election being held to fill the vacancy of the office of Councillor, Ward 13”;

it being noted that in accordance with Bill 218, Supporting Ontario's Recovery and Municipal Elections Act, 2020 and in accordance with the *Municipal Elections Act, 1996*, the by-election to fill the vacancy of the office Councillor, Ward 13 shall be a First Past the Post election; and,

- d) the by-election BE HELD pursuant to section 263(1)(b) of the *Municipal Act, 2001* in accordance with the *Municipal Elections Act, 1996* on the timelines set out in the attached Appendix “E”.

Should the Municipal Council pass a by-law to hold a by-election in Ward 13, the City Clerk recommends the following timelines:

**FILLING OF VACANCY TIMELINES – 2022 WARD 13 BY-ELECTION**

By-law passed to hold a by-election	October 26, 2021
Nomination Period ends (Nomination Day)	December 17, 2021
Advance Voting Day	January 16, 2022
Voting Day	January 31, 2022

**By-election Covid-19 Impacts**

In response to COVID-19, the City Clerk’s Office has reached out to the Middlesex London Health Unit (MLHU) for guidance regarding hosting a potential by-election within the timelines outlined above. In summary, the MLHU has provided the following guidance:

Encourage physical distancing to be enforced at all polling stations:

- o 2 m distance in line
- o 2 m distance between voting booths
- o Maximize physical distancing between staff
- o Masking required for all staff and voters
- o If polling station is at a school, make sure there is a completely separate entrance and no mixing of students and voters.
- o Ensure line management will be key, particularly given that it will be the winter. The line-up must be controlled and spaced, and no crowding can occur.
- o Hand sanitizer should be abundant.
- o Staff should all be vaccinated.

Should a by-election be held, the City Clerk is recommending that the Ward 13 By-election be conducted with in-person voting with the option to vote by mail. Voters would also have the option to use proxy voting or curbside voting at the polling station. The Elections Office will focus on increased communication to the public about voting

options to ensure a safe and inclusive election process. The Elections Office will work to implement the measures recommended by the MLHU.

### **3.0 Financial Impact/Considerations**

A by-election to fill the vacancy in Ward 13 is estimated to cost between \$165,000 to \$180,000. Costs associated with holding a by-election include but are not limited to election technology, election workers, voting locations, voting supplies (including PPE), voter education and election accessibility. Costs for the by-election would be funded from the Municipal Election Reserve Fund.

If Municipal Council wishes to fill the vacancy by appointment, financial implications are anticipated to be minimal. Costs associated with the attached appointment process in Appendix "A" are estimated to be between \$3,000 - \$3,500. Costs associated with the appointment process would be funded from the Municipal Election Reserve Fund.

Financial Planning and Business Supports has confirmed that the Municipal Election Reserve Fund has sufficient available funding to finance the costs of either a by-election or position appointment.

## **Conclusion**

Given the timing of the regular Municipal Election to be held on October 24, 2022 and the process, resources and costs to carry out a by-election, the City Clerk recommends that the Municipal Council undertake the appointment process to fill the Office of Ward 13 vacancy, rather than requiring that a by-election be held.

<b>Prepared by:</b>	<b>Jeannie Raycroft, Manager, Licensing and Elections</b>
<b>Submitted by:</b>	<b>Sarah Corman, Manager II, Licensing and Elections</b>
<b>Recommended by:</b>	<b>Cathy Saunders, City Clerk</b>

## Appendix “A”

### Procedure to Appoint a Member of Council to Fill the Vacancy in the office of Councillor, Ward 13 2021

#### 1.0 Definitions

“Absolute Majority” – means fifty percent plus one (50% +1) of the available votes.

“Appointment” shall mean an appointment by Council to fill a vacancy in a Ward seat, in accordance with the *Municipal Act, 2001, c.25*.

“Chair” shall mean the member of Council presiding at the Council meeting at which an appointment to fill the vacancy in a Ward seat is being considered.

“Council” shall mean the Municipal Council of The Corporation of the City of London.

“Council Appointment Meeting” means the regular or special council meeting where Council may appoint a member to fill a vacancy in a Ward seat.

“Member” shall mean a member of the Council.

“Motion” shall mean a proposal by a member for the consideration of Council that is moved by a member and seconded by another member.

“Slate of Nominees” shall mean a list of all individuals who have been nominated, and have consented to that nomination, for appointment to fill a vacancy in a Ward seat.

#### 2.0 General

To be eligible for nomination for appointment to a vacant Ward seat, that individual must be eligible to hold office in accordance with the *Municipal Act, 2001, c.25* and the *Municipal Elections Act, 1996* and must not otherwise be disqualified from holding the office.

#### 3.0 Process

The City Clerk shall post a Council Vacancy on the Municipal website and in the local newspaper for up to two (2) consecutive weeks.

Any individuals wishing to be considered for appointment to fill the Council vacancy shall complete an appointment application form approved by the Clerk and will submit the form to the Clerk, in person, by the date and time established.

Any individual wishing to be considered for appointment to fill the Council vacancy will be required to provide identification and qualifying address to the satisfaction of the City Clerk.

The City Clerk shall receive applications from individuals interested in appointment to the vacant Ward 13 seat by \_\_\_\_\_ on \_\_\_\_\_. Applicants will be required to provide a signed Declaration of Eligibility, as well as a signed Consent to Nomination. The City Clerk shall certify the eligibility of any applicants to fill the vacancy on the Municipal Council.

The City Clerk shall compile the applications for filling the Ward 13 vacancy and present the list of applicants to the Municipal Council, for its consideration at its meeting to be held at \_\_\_\_\_, on\_\_\_\_\_.

If the Official List of Candidate(s) includes only one (1) candidate, the City Clerk will declare the candidate elected by a by-law which will be prepared and submitted to Council for enactment.

If the official list of Candidate(s) includes more than one (1) candidate, voting will be conducted as follows:

All applicants who have consented to their nomination, confirmed their eligibility and whose eligibility has been certified by the City Clerk shall be included on the slate of nominees in alphabetical order, for consideration for appointment.

The Chair will then call for a motion to confirm the slate of nominees, which shall require a majority vote of Council.

The City Clerk shall prepare a ballot listing the Council approved slate of nominees and provide a copy of the ballot to each Member of Council.

Each Council Member may vote for one (1) candidate to be recommended for appointment. All votes will be tabulated electronically by the City Clerk.

The candidate that receives an Absolute Majority of the available votes shall be recommended for appointment.

If after the first round of counting, one candidate does not receive an Absolute Majority of available votes, the candidate(s) who received the least amount of votes and those with zero votes are removed from the slate and the vote is held again until one candidate to be recommended for appointment receives an Absolute Majority of the available votes.

#### Resolution of tie – recommended candidate

In the event of a tie between two or more candidates who receive the same number of votes, the following procedure shall be followed with any modifications Municipal Council deems necessary:

A run-off vote between the tied candidates shall be conducted and tabulated electronically. The candidate(s) that receive(s) the most votes in the run-off shall be recommended for appointment.

In the event of a tie between the same two or more candidates in a run-off vote, the tie will be resolved by lot as follows and the candidate chosen by lot shall be declared eligible for recommendation:

a) The Clerk shall, in full view of the Committee, write the name of each tied candidate on a similar size paper, fold the papers with each candidate's name in two (2) equal parts and deposit these papers, in full view of all persons present, in an open-end box.

b) The Clerk shall ensure that the contents have been displaced sufficiently, and proceed to draw name(s) for the purpose of determining the candidate(s) who shall be recommended for appointment.

If it becomes apparent by reason of an equality of votes that no candidate can obtain sufficient votes to be recommended for appointment by, Municipal Council may repeat the selection process detailed in this policy with any necessary modifications in order to make a recommendation for appointment.

If it becomes impractical to tabulate the votes electronically, the selection process may be conducted and recorded manually in accordance with this Policy. The manual process shall follow the procedures outlined in this Policy, to the extent possible.

The candidate that achieves the threshold or is the last remaining nominee on the ballot shall be appointed by a majority vote of Council.

## APPENDIX “B”

Bill No.  
2021

By-law No. E.-\_\_\_\_\_

A by-law to provide for a by-election for  
the office of Councillor, Ward 13

WHEREAS there is a vacancy in the office of Councillor, Ward 13;

AND WHEREAS section 263(5)1.ii. of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (“*Municipal Act, 2001*”) requires the municipality to pass a by-law requiring a by-election be held to fill the vacancy under section 263(1) within 60 days after the day a declaration of vacancy of an office of a member of council is made with respect to the vacancy under section 259 of the *Municipal Act, 2001*,

NOW THEREFORE the Municipal Council of The Corporation of the City of London hereby enacts as follows:

1. That a by-election shall be held to fill the vacancy in the office of Councillor, Ward 13 .
2. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on October 26, 2021.

Ed Holder  
Mayor

Catharine Saunders  
City Clerk

First Reading –  
Second Reading –  
Third Reading –



## APPENDIX “C”

Bill No.  
2021

By-law No. E.- \_\_\_\_\_

A by-law to establish the dates for advance voting and the hours during which voting places shall be open on those dates for the by-election being held to fill the vacancy of the office of Councillor, Ward 13.

WHEREAS section 65(3) of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched, as amended (“*Municipal Elections Act, 1996*”), provides that the clerk shall conduct a by-election as far as possible in the same way as a regular election;

AND WHEREAS section 43(1) of the *Municipal Elections Act, 1996* provides that before voting day, each local municipality shall hold an advance vote on one or more dates;

AND WHEREAS subsection 43(2) of the *Municipal Elections Act, 1996*, provides that subject to subsection 43(3), the clerk shall establish, the date or dates on which the advance vote is held; the number and location of voting places for the advance vote; and the hours during which the voting places shall be open for the advance vote, which may be different voting places;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The advance voting date and time for the by-election being held to fill the vacancy of the office of Councillor, Ward 13 shall be held on Saturday, January 16, 2022 from 10:00 AM to 8:00 PM.
2. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on October 26, 2021.

Ed Holder  
Mayor

Catharine Saunders  
City Clerk

First Reading –  
Second Reading –  
Third Reading –

## APPENDIX “D”

Bill No.  
2021

By-law No.

A by-law to authorize the use of poll optical scanning vote tabulators, voting by mail, advance voting and proxy voting for the by-election being held to fill the vacancy of the office of Councillor, Ward 13;

WHEREAS subsection 42(1)(a) of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched, as amended (“*Municipal Elections Act, 1996*”), provides that the council of a local municipality may pass a by-law authorizing the use of voting and vote-counting equipment such as voting machines, voting recorders or optical scanning vote tabulators;

AND WHEREAS subsection 42(1)(b) of the *Municipal Elections Act, 1996*, provides that the council of a local municipality may pass a by-law authorizing electors to use an alternative voting method, such as voting by mail, that does not require electors to attend at a voting place in order to vote;

AND WHEREAS subsection 42(5) of the *Municipal Elections Act, 1996*, provides that when a by-law authorizing the use of an alternative voting method is in effect, sections 43 (advance vote) and 44 (voting proxies) apply only if the by-law so specifies;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The use of poll optical scanning vote tabulators for the purpose of counting votes at Municipal Elections is hereby authorized.
2. Sections 43 (Advance Votes) and 44 (Voting Proxy) of the *Municipal Elections Act, 1996*, apply to the by-election being held to fill the vacancy of the office of Councillor, Ward 13.
3. The use of voting by mail be provided upon request to qualified voters as an alternative voting method that does not require electors to attend at a voting place in order to vote at Municipal Elections is hereby authorized.
5. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on October 26, 2021

Ed Holder  
Mayor

Catharine Saunders  
City Clerk

First Reading –  
Second Reading –  
Third Reading –

**APPENDIX “E”**

**PROPOSED TIMELINES FOR HOLDING A BY-ELECTION**

**FILLING OF VACANCY TIMELINES – 2022 WARD 13 BY-ELECTION**

Declaration of Vacancy	October 5, 2021
By-law passed to hold a by-election	October 26, 2021
Nomination Period ends (Nomination Day)	December 17, 2021
Advance Voting Day	January 16, 2022
Voting Day	January 31, 2022