

REPORT FROM THE DIRECTOR OF CLERKS AND PLANNING SERVICES RE: VACANCY OF THE OFFICE OF MAYOR

OBJECTIVE

To ensure the continued good governance of the Corporation of the City of Elliot Lake.

RECOMMENDATION

That Council selects an option to fill the vacancy of the Office of the Mayor (Head of Council)

Option 1

That the Office of the Mayor vacancy be filled by appointing a current member of Council;

That the Clerk provide notice to the public of the method selected by Council;

That the Clerk be delegated authority to prepare and approve meeting procedures to support the selection and appointment of a member of Council to the Office of the Mayor;

That the selection and appointment of a Mayor take place at the Regular Council Meeting scheduled to occur on February 12, 2024, at 7:00 p.m.; and

That the Clerk bring forward a report to the February 12, 2024, Council meeting as to how the subsequent vacancy arising from the appointment of Mayor from an existing member of Council will be resolved.

OR

Option 2

That the Office of the Mayor vacancy be filled by an open call for nominations from qualified individuals;

That the Clerk provide notice to the public of the method selected by Council, the application period, individual qualifications, and other relevant considerations necessary for interested members of the community to be considered for appointment;

That the Clerk be delegated authority to prepare and approve meeting procedures to support the selection of a certified candidate by Council consistent with the principles of the Municipal Elections Act; and

That the selection and appointment of a candidate take place at the Regular Council Meeting to occur on February 12, 2024, at 7:00 p.m.

OR

Option 3

That the Office of the Mayor vacancy be filled by appointing a candidate from the 2022 Municipal Election;

That the Clerk provide notice to the public of the method selected by Council and undertake the actions necessary to confirm the interest and eligibility of <Insert Name> for appointment;

That the Clerk be delegated authority to prepare and approve meeting procedures to support the selection and appointment of a candidate in the 2022 Municipal Election to the Office of the Mayor; and

That should <Insert Name> be certified by the Clerk as qualified to hold office, the selection and appointment take place at the Regular Council Meeting scheduled to occur on February 12th, 2024 at 7:00 p.m.

OR

Option 4

That the Office of the Mayor vacancy be filled by holding a by-election;

That the Clerk provide notice to the public of the method selected by Council;

That the Clerk be authorized to bring forward the necessary by-law to hold a by-election to fill the vacancy of the Mayor and to authorize the use of "Vote by Mail" (if available) and vote tabulators as the preferred voting method for the by-election to be held on May 27th, 2024; and

That the by-law be brought forward to the February 12, 2024 Council meeting.

BACKGROUND

On January 12, 2023, Council declared the seat of Head of Council vacant pursuant to the decision of Justice Rasiah in Elliot Lake (Integrity Commissioner) v Patrie.

On February 13, 2023 Justice Burke heard a motion by Mr. Patrie regarding the vacancy and ordered the Corporation of the City of Elliot Lake to "take no further action pursuant to the provisions of Section 236 of the *Municipal Act, 2001, S.O. 2001, c. 25* to fill the seat of the Head of Council or make any interim appointment of a Head of Council until the Appeal of Chris Patrie is heard and determined by the Divisional Court".

On December 15, 2023, Mr. Patrie's appeal was dismissed by the Divisional Court. Accordingly, the sixty (60) day timeline to either appoint an individual to fill the vacancy or to pass a by-law declaring a by-election commenced as of that date (December 15, 2023)

As per the Municipal Act (the “Act”), the following rules apply to filling vacancies:

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*. 2001, c. 25, s. 263 (1).

The Office of the Mayor was declared vacant as of December 15, 2023. As the next municipal election is not scheduled until 2026, the office must be filled.

Council must decide whether to appoint a “qualified elector” as Mayor or hold a by-election by enacting a by-law within sixty (60) days of declaring the seat vacant, which means no later than February 13, 2024.

A “qualified elector” is an individual who is:

- A Canadian citizen;
- 18 years or older;
- A resident, owner or tenant of land in the City of Elliot Lake, or the spouse of an owner or tenant of land; and
- Not prohibited by law from holding office.

The term *of office* for a person appointed or elected to fill a vacancy is the remainder of the current term of Council. The current term of Council ends on November 14, 2026.

ANALYSIS

Options for Filling the Vacancy in the Office of the Mayor

As noted above, Section 263 of the Act provides Council with two options for filling the vacancy:

- Appoint a qualified person; or
- Hold a by-election

Option 1 – Appointment of an Existing Member of Council

Council may choose to appoint a current member of Council to fill the vacancy.

Should Council choose to fill the vacancy by appointing a current member of Council as Mayor, the Clerk would be delegated to develop procedures that ensure a fair process to all members of Council who may have an interest in the appointment.

This option would be employed at the February 12, 2024, Regular Council meeting.

Option 2 – Appointment through an Open Call for Qualified Applicants

An appointment by an open call for qualified persons would allow any member of the public to submit an application to the municipality to be considered for appointment. Should Council choose to fill the vacancy by appointing through an Open Call for Qualified Applicants, the Clerk would develop more detailed procedures to manage the selection process in order to assist Council and to ensure compliance with the principles of the *Municipal Elections Act*. This option would require an application period.

Option 3 – Appointment of a 2022 Municipal Election Candidate

Another option available to Council is the appointment of an individual who ran as a candidate for the position of Mayor in the 2022 Municipal Election. Should Council choose to appoint the runner-up for the position of Mayor from the 2022 Municipal Election, Council will need to identify the appropriate candidate, and a copy of the certified 2022 Municipal Election results are attached. Council will need to provide the Clerk with enough opportunity to confirm the eligibility of the candidate for appointment and their willingness to be appointed before the formal selection and appointment of the individual to the Office of Mayor. While this process has been used in the past to fill vacancies, there is no requirement to continue this practice. This process would be employed at the February 12, 2024, regular council meeting.

Option 4 – By-Election

The final option available to Council is to pass a by-law requiring a by-election to be held to fill the Office of the Mayor. As noted earlier, after declaring a seat vacant, a by-law to call a by-election must be passed within 60 days of declaring the seat vacant (the deadline to pass the by-law would be February 13, 2024). Under Section 65 of the Municipal Elections Act, 1996, if Council determines that a by-election is to be held, the Clerk is responsible for setting the date of nomination day, which is to be a day not less than thirty (30) and not more than sixty (60) days after enacting the by-law authorizing a by-election. Voting day shall be forty-five (45) days after nomination day. Selecting a by-election is a longer process, leaving the Mayor's seat vacant longer, and is labour-intensive consuming staff resources for the next five months.

The following table outlines the likely dates related to a by-election:

By-Election Timelines	Date
By-law requiring a By-Election	Monday, February 12, 2024
Nomination Period	Commences Tuesday, February 13, 2024, and ends at 2:00 p.m. on Friday, April 12, 2024
Nomination Day	Friday, April 12, 2024
Election Day	Monday, May 27 th , 2024
Mayor-Elect Takes Oath of Office	Monday, June 10 th , 2024

FINANCIAL IMPACT

The 2022 Operating Budget recognized that the elections reserve was underfunded based on actuals from the 2018 election cycle. Since that time, \$22,500 annually is contributed to the reserve from the operating budget for future elections.

Elections Reserve	2017	2018	2019	2020	2021	2022	2023 <i>(unaudited)</i>	2024 <i>(estimated)</i>
Opening Balance	\$56,666	\$78,176	\$13,242	\$33,793	\$54,554	\$75,390	\$47,148	\$69,648
Contributions	\$20,000	\$0	\$20,000	\$20,000	\$20,000	\$22,500	\$22,500	\$22,500
Expenses	\$0	\$65,800	\$0	\$0	\$0	\$52,216	\$0	\$0
Interest	\$1,510	\$866	\$551	\$761	\$836	\$1,474	TBD	\$0
Closing Balance	\$78,176	\$13,242	\$33,793	\$54,554	\$75,390	\$47,148	\$69,648	\$92,148

Option 1 – The appointment of an Existing Member of Council can be executed at no cost to the municipality.

Option 2 – Appointment through an Open Call for Qualified Applicants and Option 3 – Appointment of a 2022 Municipal Election Candidate will have a minimal cost, estimated at less than \$500, and would be absorbed within the Clerk’s general operating budget.

Option 4 – By-Election has the same requirements as the full election (2018/2022), using a blended average of the prior two elections, the estimated cost is \$59,000.

Options	Est. Cost
1 – Appointment of an Existing Member of Council	\$0
2 – Appointment through an Open Call for Qualified Applicants	<\$500
3 – Appointment of a 2022 Municipal Election Candidate	<\$500
4 – By-Election	\$59,008

Should Council proceed with Option 4, it is recommended that the transfer to the elections reserve be reflective of the by-election in the 2024 and 2025 Operating Budget. Where over the course of 2024 and 2025 the estimated \$59,000 is accounted for to ensure that reserve levels are maintained in anticipation of the 2026 regularly scheduled election cycle.

LINKS TO STRATEGIC PLAN

Strong Municipal Corporate Administration and Governance

SUMMARY

In summary, with the position being declared vacant on December 15th, 2023 the position should be filled by February 13th, 2024 (60 days). The next regularly scheduled meeting is February 12th, 2024 and timelines to meet that date will be dependent on which Option is supported. Council also has the option to call a Special Meeting.

It is recommended that Council select an option to fill the vacancy of the Office of the Mayor (Head of Council)