



CORPORATE POLICY MANUAL

Policy Name: Council Vacancy Policy	Policy Number: CP-2024-1
Adopted: January 10, 2024	Division/Department: Clerks
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Review by Date: As required	Last Modified: n/a

1. Purpose

The purpose of this policy is to provide for an accountable and transparent process for the filling of any Council vacancies that occur during a term of office and to set out the procedures to be followed.

2. Policy Statement

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 (eligible elector) who has consented to accept the office if appointed, or requiring that a By-election be held to fill a vacancy in accordance with the *Municipal Elections Act, S.O., 1996, c.32*, as amended.

The Town Clerk, or designate, shall be responsible for interpreting and, where appropriate, facilitating the appointment application process. The Clerk has the authority to make minor amendments to this procedure as may be required from time to time.

3. Definitions

For the purposes of this Policy:

- a) **“Act”** means the *Municipal Act, S.O. 2001, c.25*, as amended.
- b) **“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 Council term.
- c) **“By-election”** means an election held to fill any vacancy in accordance with the provisions of Section 65 of the *Municipal Elections Act, 1996*, as amended.
- d) **“Candidate”** means an individual seeking to be appointed to fill a vacancy in the office of Councillor, having met the eligibility requirements and who has completed the requisite documentation as required by this procedure.

- e) “**Chair**” means the member of Council presiding at the Council meeting to appoint an individual to fill a Council vacancy.
- f) “**Clerk**” means the Clerk or the designate of the Town of Midland as appointed by Council.
- g) “**Council**” means the Council of the Town of Midland.
- h) “**Eligible Elector**” has the same meaning as subsection 17(2) of the *Municipal Elections Act*, namely a person:
 - a. Who is a resident of the Town of Midland, or an owner or tenant of land in the municipality or the spouse of such an owner or tenant;
 - b. Who is a Canadian Citizen;
 - c. Who is at least 18 years of age; and
 - d. Who is not prohibited from voting under any other Act or from holding municipal office.
- i) “**Lot**” means a method of determination by placing the names of the Candidates on equal size pieces of paper and placed in a container with one Candidate name being drawn by the Clerk.
- j) “**Municipality**” means The Corporation of the Town of Midland.
- k) “**Municipal Elections Act**” means the *Municipal Elections Act, S.O., 1996, c. 32, as amended*.
- l) “**Nominee**” means an individual seeking to fill a vacancy on Council who meets the eligibility requirements and who has completed the requisite documentation as outlined in this procedure.
- m) “**Procedure By-law**” means the By-law adopted by Council for governing the proceedings of its Council, the conduct of its Members and the calling of Meetings.
- n) “**Regular Election Year**” means the year established for a regular municipal election in accordance with the *Municipal Elections Act*.
- o) “**Term of Office**” means the period of time a Candidate is elected to hold office for which they are elected in accordance with the *Municipal Elections Act*.
- p) “**Vacancy**” means when a seat on Council has become vacant in a manner described in section 259 of the Act.

4. General

4.1 Council is required to declare a seat vacant in accordance with the *Act*.

4.2 In accordance with the *Act*, the following rules apply to filling vacancies:

Section 263(5) states:

1. Within 60 days after the day a declaration of vacancy is made with respect to the vacancy under section 262 of the *Act*, 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).

2. Despite paragraph 1, if a court declares an office to be vacant, the council shall act under subsection (1) or (4) within 60 days after the day the court makes its declaration.
3. Despite subsections (1) to (4), if a vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy. 2001, c. 25, s. 263 (5).

4.3 Section 264 of the *Municipal Act*, 2001, provides that the person appointed or elected to fill a vacancy shall hold the office for the remainder of the term of the person they replaced.

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

5.0 Eligibility Requirements:

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

- 18 years of age or older;
- a Canadian citizen;
- a resident of the Town of Midland, or an owner or tenant of land in the Town or the spouse of such an owner or tenant; and
- not prohibited from voting under any other Act or from holding municipal office.

5.2 If an employee of the Town of Midland seeks appointment to Council, the employee shall give Council written notice, in advance, of his or her intention to take unpaid leave. If the employee is appointed to office, they will be deemed to have resigned from their position with the Town immediately before making the declaration of office.

6.0 Option #1 Filling a Vacancy by direct Appointment.

6.1 Within 60 days of declaring a seat vacant, Council shall appoint a new member by By-law.

6.2 a) Direct Appointment by Nomination

If the Vacancy is in the office of the Mayor or Deputy Mayor, Council may choose to fill the vacancy by appointing a current Member of Council who is a qualified individual as outlined in Section 256 of the *Act*.

The appointment of a current member of Council to fill a vacancy in any other office on Council shall take place at a Regular Meeting of Council, or a Special Meeting of Council called for such purposes, within 60 days of declaring a Vacancy.

Only a Member of Council elected for the term in which the Appointment is taking place will be considered eligible for appointment.

At the Regular or Special Meeting of Council, the Chair may call for nominations from the floor. The Chair will request that any Member of Council interested in being nominated to indicate their interest by raising their hand. Anyone being considered for nomination must be present in Council Chambers.

Individuals seeking appointment to the position of Mayor or Deputy Mayor who are current members of Council (nominees) shall declare a pecuniary interest.

Upon receipt of nomination, the Chair will ask if the nominee(s) accept the nomination. Nominations shall be confirmed by Resolution.

If there is only one nominee, the Clerk then shall declare and confirm the nominee to be appointed to the office and a Resolution shall be passed.

If there are multiple nominees, then Council will debate the matter and pass a Resolution to appoint a Member to the vacant office.

The required By-law will then come forward to the next Council meeting for approval.

At that meeting, the Clerk will administer the Declaration of Office required by subsection 232 of the *Act*, at the meeting where the By-law referred to in this section of this procedure is enacted by Council or as directed by Council.

b) Direct appointment of Election Candidate

Council may fill the vacancy by appointing the Candidate who ran for the position that is vacant from the most current Election who received the most votes but was not elected.

The Candidate shall reaffirm that they meet the eligibility requirements of office as outlined in the *Act* and the *Municipal Elections Act*.

If the individual is no longer qualified to hold office, the appointment shall be to the next Candidate who ran for the position that is vacant from the most current Municipal Election who received the second most votes but was not elected, and so on.

c) Direct Appointment by Application

If the Vacancy is in the office of the Mayor or Deputy Mayor, Council may choose to fill the vacancy by appointing a current Member of Council or Candidate in the most current Election who are qualified individuals as outlined in Section 256 of

the *Act*.

The appointment of a current member of Council to fill a vacancy in any other office on Council shall take place at a Regular Meeting of Council, or a Special Meeting of Council called for such purposes, within 60 days of declaring a Vacancy.

Any Member of Council or a Candidate in the most current Election wishing to be considered for appointment to the vacancy shall advise the Clerk in writing and complete and sign the Council Vacancy Application form (Appendix 1) by 12:00 noon the Wednesday prior to the meeting.

Individuals seeking appointment to the position of Mayor or Deputy Mayor who are current members of Council (nominees) shall declare a pecuniary interest.

A vote to fill a vacancy of Mayor or Deputy Mayor by appointment shall occur at an Open Council Meeting in accordance with the provisions of this policy.

If the Vacancy is in the office of Councillor, Council may choose to fill the vacancy by appointing any qualified individual as outlined in Section 256 of the *Act*.

- 6.3 A vote to fill a vacancy on Council by appointment shall occur at an Open Council Meeting.
- 6.4 The appointment of the Candidate shall be made by By-law. A By-law confirming the appointment shall be enacted by Council at its next meeting.
- 6.5 The Clerk will administer the Declaration of Office required by subsection 232 of the *Act*, at the meeting where the By-law referred to in section 6.4 of this procedure is enacted by Council or as directed by Council.

7.0 Option #2 - Filling a Vacancy by Appointment by the Call for Nominees

- 7.1 Within 60 days of declaring a seat vacant, Council shall appoint a new member by By-law.
- 7.2 The Clerk shall post a Council Vacancy Notice (Appendix 1) on the Town website and social media and other platforms following Council's decision to fill a vacancy by appointment, for a number of weeks as determined by the Clerk. The notice shall indicate Council's intention to appoint an individual to fill a vacancy and shall outline the application process.
- 7.3. Any individual wishing to be considered for appointment to the vacancy shall complete and sign a Council Vacancy Application Form (Appendix 2), a Declaration of Qualifications Form (Appendix 3) and Candidate Information Form (Appendix 4) approved by the Clerk and will submit the forms by the deadline

established by the Clerk.

- 7.4 Candidate(s) may submit to the Clerk a personal statement of qualification for consideration of Council. Personal statements will be typewritten in a 12-point font size on letter size (8 1/2" by 11") paper and shall not exceed two (2) pages in length and will include the Candidate's name and address. Statements that do not meet these requirements shall not be included in any Council meeting agenda or provided to Council by the Clerk. The Clerk will advise the Candidate(s) of the deadline for submission of a personal statement and that it will appear on the public agenda for the Open Council Meeting in which the candidate selection occurs.
- 7.5. Any individual wishing to be considered for appointment to fill the Council vacancy shall be required to provide identification to prove their identity and qualifying address to the satisfaction of the Clerk.
- 7.6 It is the Applicant's sole responsibility to meet any deadline or otherwise comply with any requirement of this policy, the Act or the *Municipal Elections Act*.

8.0 Council Meeting – Interviews and Selection

- 8.1 A vote to fill a vacancy on Council by appointment shall occur at an open Council Meeting. The meeting may be a Regular Council Meeting or a Special Council Meeting called for that purpose.
- 8.2 Notwithstanding the requirement of the Procedure By-law, the agenda for the meeting shall be set by the Clerk to allow for the orderly proceeding of selecting a Candidate. The agenda shall include the following:
 - 8.2.1 A certified list of all Candidates listed in alphabetical order by last name.
 - 8.2.2 Any personal statement of qualifications for consideration of Council.
- 8.3 At the meeting, the following will take place:
 - 8.3.1 The Chair will make a short statement of the purpose of the meeting and the general order of proceedings to be followed.
 - 8.3.2. Individuals seeking appointment to the position of Mayor and/or Deputy Mayor and Councillor who are also current members of Council (nominees) shall declare a pecuniary interest.
 - 8.3.3 The Clerk will provide to the Chair a list of the names of qualified Candidates and the Chair shall call for a motion from Council in the following form:

“THAT the following individuals, who have signified in writing that they are legally qualified to hold office and consented to accept the office if they are appointed to fill the vacancy, be considered for appointment to fill such vacancy.”

- 8.4 Candidates will be sequestered in an adjacent room until it is their time to answer the questions posed by Council. Once the candidate has answered the questions, they may remain in the Council Chambers. In the event of a virtual meeting, the candidate will be sequestered into the virtual waiting room and will be required, in advance and in writing, to declare the following oath:

“I hereby solemnly swear to uphold the integrity of the Council vacancy appointment process for the vacant seat of Council by declaring that I, or any agent on my behalf, will not view the livestream proceedings of the meeting while the candidate interviews are in progress.”

- 8.5 Each of the Candidates shall be provided the opportunity to address Council. If there are more than five (5) Candidates, they may be afforded up to five (5) minutes to address Council. If there are less than five (5) Candidates, they may be afforded up to ten (10) minutes to address Council. The timing will be at the Clerk’s discretion once all applications are received. The order of speaking will be determined by alphabetical order by last name.
- 8.6 Each member of Council will be permitted one question(1) to each Candidate. Candidates shall be limited to a maximum of two (2) minutes per question.
- 8.7 Upon hearing all the submissions of the Candidates, Council will proceed to vote as follows:
- 8.7.1. Members of Council will vote by way of public vote as required by the Act.
 - 8.7.2. Candidate names will be displayed in alphabetical order on a screen or in another appropriate manner to be visible.
 - 8.7.3 Members of Council shall vote for one Candidate only.
 - 8.7.4 The Clerk will place the names of all Members of Council in a container and randomly draw their names to vote.
 - 8.7.5 Members of Council shall verbally and, in writing cast, their vote for one (1) Candidate. Once the written vote is cast, the Council member will reveal their vote to the public and verbally announce it. The written ballot is the official record of the vote. All ballots shall be identical in size, paper quality and colour and shall be pre-printed with the Council Member’s name and signature and shall be

returned directly to the Clerk or designate, unless the meeting is held electronically. In that case, Council Members shall deliver their ballots to the municipal office or drop-box as directed by the Clerk.

- 8.7.6 The Clerk will tabulate the votes.
- 8.7.7 Candidates receiving zero votes will be automatically eliminated from the voting process.
- 8.7.8 If the Candidate receiving the greatest number of votes cast does not receive fifty percent plus one of all voting members of Council (five votes), the Candidate or Candidates who received the fewest number of votes shall be excluded from further consideration.

The vote will be taken again by the Clerk and, if necessary, more than once, excluding in each successive vote the Candidate or Candidates who receive the fewest number of votes. This process shall be repeated until the nominee receiving the greatest number of votes has also received more than one-half of the votes of the voting members of Council.

The exception to this will be when two Candidates with the lowest votes are tied. In this case, the vote will be taken again by the Clerk to include the tied Candidates. If the results remain the same and the Candidates remain tied, the tie shall be broken by selecting a Candidate by Lot to proceed, as conducted by the Clerk. The vote will be taken again by the Clerk for the remaining Candidates.

- 8.7.9 Where the votes cast are equal for all the Candidates and if:
 - 1. There are three or more Candidates remaining, the Clerk shall by Lot select one such Candidate to be excluded from the subsequent voting;
 - 2. Only two (2) Candidates remain, the tie shall be broken by selecting the successful candidate by Lot, as conducted by the Clerk.
- 8.7.10 Upon conclusion of the voting, the Clerk will note the Candidate receiving the votes of fifty percent plus one (five votes) of all voting members of Council or the Candidate selected through the process detailed in section 8.7.8 or 8.7.9 (2).
- 8.7.11 The appointment of the successful Candidate shall be made by By-law. A By-law confirming the appointment shall be enacted by

Council at its next meeting or Council shall direct the Clerk how to proceed further.

9.0 Option #3 - Filling a Vacancy by a By-election:

- 9.1 In accordance with Section 263(5) of the *Act*, and within 60 days of declaring a seat vacant, Council shall pass a By-law to fill the vacancy by By-election.
- 9.2 A By-election shall be held in accordance with the *Municipal Elections Act*.
- 9.3 The Clerk or designate shall be responsible for conducting any By-election in accordance with the *Municipal Elections Act* and all applicable policies and procedures.

10.0 Responsibilities:

- 10.1 The Clerk shall be responsible for interpreting and where appropriate administering the Council Vacancy Policy and applicable procedures.
- 10.2 The Clerk has the authority to make minor technical amendments to this procedure as may be required from time to time to ensure compliance with legislation.

RELATED DOCUMENTS:

- Appendix 1 - Council Vacancy Public Notice Template
- Appendix 2 - Council Vacancy Application Form
- Appendix 3 - Council Vacancy Declaration of Qualifications
- Appendix 4 – Candidate Information Release Form



Appendix 1

Public Notice Council Vacancy

TAKE NOTICE that a vacancy exists on the Town of Midland Council for one (1) [*insert position*]. Council has determined to fill this vacancy by appointment through a Call for Nominees in accordance with the Town of Midland's Council Vacancy Policy.

The Term of this position is from the date of Council appointment for the balance of the Council term until November 14, 2026.

A candidate for Municipal office must be a qualified municipal elector as set out in the *Municipal Elections Act, 1996* and fulfill all of the following requirements:

- Resides in or be the owner or tenant of land in Town of Midland, or the spouse of such owner or tenant;
- Is a Canadian citizen;
- Is at least 18 years old; and,
- Is not prohibited from voting under Section 17(3) of the *Municipal Elections Act, 1996* or otherwise by law.

Interested Nominees must complete a Council Vacancy Application Form and a Declaration of Qualification Form with the Clerk's Office. Nominations will be accepted by the Clerk's Office during regular business hours until XX at 2:00 p.m.

An appointment must be scheduled with the Clerk or designate for this purpose.

Candidates may also submit to the Clerk, a personal statement of qualification for consideration of Council. Personal statements must be typewritten in a 12-point font on letter size (8 1/2 x 11") paper, shall not exceed two (2) pages in length and shall include the Candidate's name and address. Statements that do not meet these requirements shall not be included in any Council meeting agenda or provided to Council by the Clerk.

Certified registered Candidates will be afforded the opportunity to address Council for a period of not more than ten (10) minutes and will be asked questions of Council in an open Public Meeting to be held (Date) at (Time) in a virtual Council meeting.

Prior to submitting an application, interested individuals should refer to the *Municipal Act, 2001* and the *Municipal Elections Act, 1996* for further details relating to the required qualifications.

Any qualified individual may submit with identification, **in person only** to the Clerk or designate a Council Vacancy Application Form and a Declaration of Qualification Form, by 2:00 PM on *[insert date]* at the Municipal Office located at 575 Dominion Avenue, Midland, Ontario.

Inquiries regarding this matter may be directed to:

Sherri Edgar, Town Clerk
705-526-4275, Ext 2210 or sedgar@midland.ca

Sarah Cathcart, Committee Coordinator/Deputy Clerk
705-526-4275, Ext 2208 or scathcart@midland.ca

Council Vacancy Application Forms and Declaration of Qualification Forms are available from the Office of the Clerk located at the address above or online at www.midland.ca.



**THE CORPORATION OF THE
TOWN OF MIDLAND**

575 Dominion Avenue
Midland, ON L4R 1R2
Phone: 526-4275
Fax: 526-9971
info@midland.ca

<p>NOTE</p> <ul style="list-style-type: none"> A Council Vacancy Application may only be filed in person; it may <u>not</u> be faxed or e-mailed. It is the responsibility of the person applying to file a complete and accurate application. Please print or type information (except signatures) 	<h2 style="margin: 0;">Council Vacancy Application Form</h2>
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**Council Vacancy Application of a person to be a candidate for appointment to the position
of _____ for the Town of Midland**

Candidate Full Name:	For the Office of:
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Candidate's full **qualifying address** within the municipality

Street Number:	Street Name:
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Municipality	Province	Postal Code
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Candidate's full mailing address (if different from qualifying address above)

Street Number:	Street Name:
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Municipality	Province	Postal Code
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Declaration of Qualification and Consent

I _____ the applicant mentioned in this form, declare that I am presently legally qualified to be appointed to hold the office of _____, and I consent to accept the appointment to that office, if appointed. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Declared before me at the Town of Midland in the County of Simcoe this _____ day of _____, 2024. _____ Signature of Clerk or Commissioner, etc.	_____ Signature of Applicant
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Date Filed (yyyy/mm/dd)	Time Filed	Candidate or Agent Initial	Signature of Clerk or Designate
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Certification by Clerk or Designate

I the undersigned clerk of this municipality do hereby certify that I have examined the application of the aforesaid applicant filed with me and am satisfied that the nominee is qualified to be appointed and that the appointment complies with the *Act*.

Signature	Date Filed (yyyy/mm/dd)
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Form EL18(A)

DECLARATION OF QUALIFICATIONS – COUNCIL

Municipal Elections Act, 1996

**DECLARATION OF QUALIFICATIONS FOR THE TOWN OF MIDLAND - COUNCIL
VACANCY CANDIDATES**

I, _____, a nominated candidate for the
office of:

- Mayor
 Deputy Mayor
 Councillor

Do Solemnly Declare That:

1. I am qualified pursuant to the *Municipal Elections Act, 1996* and the *Municipal Act, 2001* to be elected to and to hold the office of:

- Mayor
 Deputy Mayor
 Councillor

2. Without limiting the generality of paragraph 1, I am at least eighteen years of age, a Canadian citizen, a resident of the Town of Midland or the owner or tenant of land in the Town of Midland or the spouse of such owner or tenant.

3. I am not ineligible or disqualified under the *Municipal Elections Act, 1996*, the *Municipal Act, 2001*, the Municipal Conflict of Interest Act or any other Act to be elected to or hold the above-mentioned office.

4. Without limiting the generality of paragraph 3,

- I am not an employee of the Town of Midland, or if I am an employee of the Town of Midland, I am on an unpaid leave of absence as provided for by section 30 of the *Municipal Elections Act, 1996*.
- I am not a judge of any court.
- I am not a member of the Assembly as provided in the Legislative Assembly Act or of the Senate or House of Commons of Canada or, if I am such a person, I will provide proof of my resignation in a form satisfactory to the Clerk of the Town of Midland prior to 2:00 p.m. on (INSERT DATE). I understand that the

Clerk of the Town of Midland will reject my nomination for the above-mentioned office if I fail to provide proof of resignation by this deadline.

- I am not a member of the Executive Council of Ontario or a federal Minister of the Crown.
 - I am not a Provincial Crown employee within the meaning of the *Public Service of Ontario Act, 2006*, or if I am a Crown employee, I have followed and will continue to follow all the relevant provisions of Part V of such Act.
 - I am not Federal employee within the meaning of the Public Service Employment Act, or if I am a Federal employee, I have followed and will continue to follow all the relevant provisions of Part 7 of such Act.
5. I am not prohibited from voting at the municipal election under subsection 17(3) of the *Municipal Elections Act, 1996*.
6. Without limiting the generality of paragraph 1,
- I am not a person who is serving a sentence of imprisonment in a penal or correctional institution.
7. I am not prohibited because of conviction of a corrupt practice described in s. 90(3) of the *Municipal Elections Act, 1996* from voting in a municipal election.
8. I am not a person who was convicted of a corrupt practice under the *Municipal Elections Act, 1996* or of an offence under the Criminal Code (Canada) in connection with an act or omission with respect to a municipal election during the last two regular elections prior to Monday, October 24, 2022.
9. I am not disqualified from being elected to or holding office by reason of any violations of the election campaign financial requirements or violations for not filing the financial statement pursuant to the *Municipal Elections Act, 1996*. AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

Declared before me at the Town of Midland

This _____ day of _____, 2024

(Signature of candidate)

(Signature of Clerk or designate)

Personal information on this form is collected under the authority of the *Municipal Elections Act (1996)* and will be used for the nomination process for office in the municipal election and will be available for public inspection in the Office of the Clerk, Town of Midland until the next municipal election. Questions about this collection of personal information should be directed to the Clerk, Town of Midland, 575 Dominion Avenue, Midland, Ontario L4R 1R2, (705) 426-4275 ext. 2210.



Council Vacancy

Candidate Information Release Form

I, _____, having applied for the position of Deputy Mayor in the Town of Midland do hereby consent to the Town of Midland using the personal information contained in my submission for the purpose of providing information to the public and the posting of the recruitment information.

Dated at the Town of Midland this _____ day of _____, 2024.

Signature of Candidate