

To: Council in Committee of the Whole

From: Andrew Brouwer, City Clerk,  
Corporate Services Department

Report Number: CNCL-18-41

Date of Report: May 17, 2018

Date of Meeting: May 22, 2018

Subject: Council Vacancy

File: A-2140

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## **1.0 Purpose**

The purpose of this report is to provide a summary of the community consultation completed in support of the Council Vacancy Policy and to identify and assess options available to Council in determining the method used to fill the Regional and City Councillor vacancy.

## **2.0 Recommendation**

It is recommended to City Council:

That in accordance with Report CNCL-18-41 concerning the Council Vacancy, one of the four methods identified in Section 5.4 be selected and the proposed recommendation adopted to give effect to Council's selection.

## **3.0 Executive Summary**

On April 13, 2018, former Councillor Bob Chapman resigned as Regional and City Councillor. On April 30, 2018 Council declared the seat vacant. Between May 2 and 14, 2018 City staff undertook a community consultation initiative to receive feedback from the community on how Council should resolve the vacancy resulting from former Councillor Chapman's resignation.

The results gathered during the consultation express support for filling the vacancy using an open call for applications from qualified members of the public. The consultation also identified certain qualities or characteristics that an individual appointed by Council should possess. These include: an understanding of the role and responsibilities of Council and the City; a recognized community leader or champion; an active volunteer within the community and capacity to "hit the ground running" and make an immediate contribution to Council and the City.

The vacancy must be filled by an individual who is qualified to hold municipal office. The basic qualifications require an appointee to be:

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

There are generally four methods which can be employed by Council to fill the Regional and City Councillor vacancy:

- An open call for applications from qualified individuals;
- The appointment of a current City Councillor;
- The appointment of a Regional and City Councillor candidate in the 2014 municipal election; and,
- The nomination of qualified individuals by members of Council.

Should it be Council's decision to appoint a current City Councillor, Council must also determine how the subsequent City Councillor vacancy will be addressed. Whatever method is selected by Council, the City Clerk must be provided an opportunity to review and confirm the eligibility of each potential appointee.

## **4.0 Input From Other Sources**

None.

## **5.0 Analysis**

### **5.1 Overview of the Council Vacancy Policy**

The Council Vacancy Policy (found as Attachment 1) approved in November 2017 establishes a transparent process that assists Council in determining how vacancies will be resolved. The policy provides for public input into Council's decision-making process and public notice of key decisions.

The process required by the policy can be broken into two general phases. The first phase, which follows the declaration of the vacancy, requires community consultation, including at least one public open house to receive public input on how the vacancy ought to be resolved. Following the completion of the public consultation process, a staff report is prepared summarizing the input received, identifying certain options available to Council and other considerations that may be relevant in the circumstances. This report is considered by Council at a public meeting where Council determines the method used to fill the vacancy.

The second phase follows Council's decision on the method and sees the City Clerk undertake supporting actions necessary to give effect to Council's direction. Public notice is provided of the method selected and the meeting where Council is expected to fill the vacancy.

## **5.2 Community Engagement Feedback**

Following Council's declaration of a vacancy in the Office of Regional and City Councillor, a community consultation initiative was undertaken between May 1 and 14, 2018. Notice to the public of the consultation was provided to the community on May 2, 2018.

Opportunities for input included:

- A survey on connectoshawa.ca;
- An open house hosted by staff on May 10, 2018; and,
- Hard copy surveys available at Service Oshawa.

In total, 64 individuals participated in the public consultation, with 59 completing the survey available on Connect Oshawa and five attending the open house coordinated by staff. Overall, participants exhibited a preference for the vacancy to be resolved by way of an open call to qualified individuals, with the appointment of a sitting City Councillor to the vacant Regional and City Councillor position being the second option most preferred by participants. The appointment of a 2014 candidate, the nomination of a qualified candidate by Council and another type of option not provided for in the survey were not favoured by respondents. A summary of the results obtained from the Connect Oshawa survey is found as Attachment 2.

Should Council choose to fill the vacancy by appointing a City Councillor to the vacant Regional and City Councillor office, the survey showed that the resulting vacancy in the office of City Councillor should be filled by an open call to the public.

Participants were also canvassed on their preferences with respect to certain characteristics exhibited or possessed by an individual to be appointed to Council. Opinions respecting the following were sought:

- The appointee's understanding of the role and responsibilities of Council and the City;
- The perception of the appointee as a community leader/champion;
- The appointee's involvement as an active volunteer within their neighbourhood, the City or the Region;
- The ability of the appointee to "hit the ground running";
- The appointee's plans to stand as a candidate in the 2018 municipal election; and,
- Any experience the appointee may have as a former member of Council.

Participants agreed that it is important that the individual selected by Council have an understanding of the role and responsibilities of Council and the City, should be a recognized community leader and/or champion, be an active volunteer within the community and have the ability to make an immediate contribution. Respondents did not believe that it was important that the individual appointed by Council rule out a potential run in the October municipal election, or that the individual have previous experience as a member of Council.

### **5.3 Subsequent Vacancies**

Should Council appoint a sitting City Councillor to the vacant office, Council must determine how the subsequent vacancy will be resolved. Council could select from among the options identified in Section 5.4, save and except for the option of appointing a sitting City Councillor identified in Section 5.4.2. as an individual may not concurrently hold more than one office.

### **5.4 Methods Available to Council**

Several different methods for filling the vacancy are available to Council. The following section provides an overview of each of the options available, some of the potential advantages and disadvantages of the approach and a proposed recommendation for adoption should Council choose to proceed with the method. Regardless of the method selected by Council, every individual must meet the statutory qualifications identified in Section 5.6.

#### **5.4.1 Open Call for Qualified Persons**

An open call for qualified persons would allow any member of the public to apply and be considered for appointment. This was the option favoured most by participants during the public consultation process. Prior to placing an individual's name before Council each applicant's eligibility would be confirmed and certified by the City Clerk following the procedure outlined in Section 5.4.1.1.

##### **5.4.1.1 Overview of Process**

Should Council choose to fill the vacancy using an open call, applications would be accepted between 8:30 a.m. on May 25, 2018 and 12:00 p.m. on June 18, 2018. Information would be made available on the City's website and promoted through the City's social media accounts and local newspapers. City Clerk Services would also host an Open House on June 12, 2018 between 6:30 p.m. and 8:30 p.m. in the Committee Room, City Hall to answer any questions.

During the application period, each applicant would be required to submit the following information to City Clerk Services:

- A completed application for appointment form;
- Identification confirming the applicant's residency within Oshawa, or their status as an owner or tenant of land in Oshawa, or the spouse of an owner or tenant; and,
- A letter, no longer than one page, identifying why the individual feels they are the best positioned to fill the vacancy.

At the end of the application period, the City Clerk would review the applications received and verify the eligibility of each applicant.

The list of certified applicants and their written submissions would be included on the agenda of a Special Council meeting scheduled for June 28, 2018 at 6:30 p.m. At the meeting, each applicant would have the opportunity to provide a five minute delegation,

followed by any questions from Council. Members of the public would also be permitted to make delegations to Council concerning any of the applicants being considered.

To support Council and in keeping with the Council Vacancy Policy and principles of the Municipal Elections Act, the City Clerk would develop meeting procedures to be used to manage the selection process. A swearing-in ceremony would be scheduled at a later date.

**5.4.1.2 Advantages and Disadvantages**

<b>Advantages</b>	<b>Disadvantages</b>
Ensures every interested and qualified individual is provided the opportunity to be considered by City Council.	Requires greater administrative resources to administer while simultaneously undertaking preparations for the October municipal election.
Allows certified individuals the opportunity to address City Council.	Does not take into account the results of previous elections.
Ensures members of the public are afforded the opportunity to provide input into the selection of the individual who will represent them on City Council and Regional Council.	Depending on the individual selected, may require additional effort to onboard the selected applicant and bring them up to speed on current City and Regional initiatives.
Provides an opportunity to identify and select an individual possessing a skillset that may not currently be represented within the membership of City Council.	
Provides Council with an opportunity to select an individual who represents the diversity of the Oshawa community.	

**5.4.1.3 Proposed Recommendation – Option 1**

That the vacancy in the Office of Regional and City Councillor be filled by an open call for nominations from qualified individuals;

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

That the selection and appointment of a candidate take place at a Special Council Meeting to occur on June 28, 2018 at 6:30 p.m.

**5.4.2 Appointment of City Councillor**

Similar to the approach taken by Council in March 2017, Council may choose to appoint a current City Councillor to the vacancy.

**5.4.2.1 Overview of Process**

Should Council proceed to fill the vacancy by appointing a current City Councillor to the Regional and City Councillor vacancy, the City Clerk would be delegated authority to develop and approve meeting procedures that provide fairness to all City Councillors who may have an interest in the appointment. The resulting procedures would be employed at the June 25, 2018 Council meeting where the vacancy will be filled.

When selecting this method, City Council would be required to also identify how the subsequent vacancy arising from the appointment of a City Councillor will be resolved by selecting from one of the options identified in Section 5.4.1, 5.4.3 or 5.4.4. The City Clerk would then undertake the supporting actions necessary to give effect to Council's selection.

**5.4.2.2 Advantages and Disadvantages**

<b>Advantages</b>	<b>Disadvantages</b>
Provides a representative who is familiar with current City and Regional initiatives.	Will result in a subsequent vacancy in the Office of City Councillor which requires additional direction from City Council.
Offers representation on City and Regional Council by an individual who has been democratically elected.	May be perceived as providing an advantage to a current City Councillor who may contest a Regional and City Councillor office in the October municipal election.

**5.4.2.3 Proposed Recommendation – Option 2**

That the vacancy in the Office of Regional and City Councillor be filled by appointing a City Councillor;

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

That the City Clerk be delegated authority to prepare and approve meeting procedures to support the selection and appointment of a City Councillor to the Office of Regional and City Councillor;

That the selection and appointment of a City Councillor take place at the Regular Council Meeting scheduled to occur on June 25, 2018; and,

That the subsequent vacancy in the Office of City Councillor be filled by: <insert option selected by Council to resolve subsequent vacancy>.

**5.4.3 Appointment of a 2014 Regional and City Councillor Candidate**

Another option that is available is the appointment of an individual who ran as a candidate for the office of Regional and City Councillor in the 2014 municipal election.

**5.4.3.1 Overview of Process**

If Council chooses to appoint a candidate from the 2014 municipal election, Council must adopt the proposed recommendation contained in Section 5.4.3.3. and identify the candidate suggested for appointment. The identification of the candidate from the outset is required to provide the City Clerk with the opportunity to confirm the eligibility of the candidate for appointment and their willingness to be appointed prior to the formal selection and appointment of the individual to the Regional and City Councillor office. It is recommended that more than one candidate be identified in the event the initial candidate is no longer qualified to hold office or will not consent to the appointment.

The identification of the candidate(s) also enhances the transparency of the appointment process and will be included in the subsequent public notice provided to the community as required by the Council Vacancy Policy.

Following the confirmation of the candidate(s) eligibility, the list of certified candidate(s) would be provided to Council at the Council meeting scheduled for June 25, 2018 Council would be required to select and appoint a candidate. A swearing-in ceremony would be scheduled at a later date.

**5.4.3.2 Advantages and Disadvantages**

<b>Advantages</b>	<b>Disadvantages</b>
Candidate participated in previous municipal election (i.e., democratic participation, community engagement).	May be perceived as providing an advantage to a potential candidate in the 2018 municipal election.
	Community support for individual may have changed since previous municipal election.
	Candidate may no longer hold qualifications or have an interest in being appointed.

### 5.4.3.3 Proposed Recommendation – Option 3

That the vacancy in the Office of Regional and City Councillor be filled by appointing a candidate from the 2014 Municipal Election;

That the City 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(s)>> for appointment;

That the City Clerk be delegated authority to prepare and approve meeting procedures to support the selection and appointment of a candidate in the 2014 municipal election to the Office of Regional and City Councillor; and,

That should <<Insert Name(s)>> be certified by the City Clerk as qualified to hold office, the selection and appointment take place at the Regular Council Meeting scheduled to occur on June 25, 2018.

### 5.4.4 Nomination of Qualified Person by City Council

Finally, City Council may also choose to exercise the discretionary authority provided to it by the Provincial Legislature and nominate any qualified person to fill the vacancy.

#### 5.4.4.1 Overview of Process

Should Council choose to fill the vacancy by accepting nominations from members of Council, each Member of Council should be afforded the opportunity to put forth a name for consideration. Public notice of the method selected by Council and the nominee(s) identified by Council will be provided to the community. The list of nominee(s) will be provided to the City Clerk who will contact each nominee and confirm the individual's interest and eligibility for appointment. Following certification by the City Clerk, the list of nominee(s) will be presented to Council at the Regular Council Meeting scheduled for June 25, 2018.

To support the selection and appointment process, the City Clerk will also be delegated authority to develop and approve meeting procedures for use at the June 25, 2018 Council meeting where the selection of the nominee to fill the will be undertaken. A swearing-in ceremony would be scheduled at a later date.

#### 5.4.4.2 Advantages and Disadvantages

Advantages	Disadvantages
Given time remaining in term of Council, may be viewed as an efficient manner of appointment.	May not be viewed as democratic.



#### **5.4.4.3 Proposed Recommendation – Option 4**

That the vacancy in the Office of Regional and City Councillor be filled by appointing a qualified person(s) nominated by City Council;

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

That the City Clerk be delegated authority to prepare and approve meeting procedures to support the selection and appointment of qualified person(s) nominated by members of Council to the Office of Regional and City Councillor; and,

That should <<Insert Name(s)>> be certified by the City Clerk as qualified to hold office, the selection and appointment of << Insert Name(s) >> take place at the Regular Council Meeting scheduled to occur on June 25, 2018.

### **5.5 Considerations**

While determining the method most appropriate to fill the vacancy, Council may wish to give thought to the following considerations which are analyzed in additional depth below:

- The limited period of time remaining in the term (ending November 30, 2018);
- Representative needs at the City and Regional levels;
- The availability of a qualified individual capable of fulfilling the role;
- The potential to provide an advantage to a potential or registered candidate in the 2018 municipal election; and,
- Administrative resources necessary to properly onboard and orientate the selected individual.

#### **5.5.1 Term Remaining – Ends November 30, 2018**

The current term of Council ends on November 30, 2018. Accordingly, the individual chosen by Council to fill the vacancy would serve a maximum of five months, with two months of that period occurring during Council's summer recess. As a result, the individual selected to fill the vacancy would attend one cycle of regular meetings at City Council and Regional Council. No regular meetings are scheduled during October and November in an election year. At the City level, the appointee would be expected to attend two standing committee meetings and one regular Council meeting, plus any other special meetings that may be called during the balance of the term.

#### **5.5.2 Representative Needs**

Council may wish to take into consideration the needs of the Oshawa community in determining how the vacancy is filled and who is selected to serve. In addition to their contributions to Council's decision-making process, Members of Council also serve to assist members of the community when interacting with the City and Regional

bureaucracy. Council may wish to give consideration to the appointee's knowledge and past experience serving as a representative to those interacting with administrative bodies and similar organizations.

### **5.5.3 Availability of a Qualified Individual**

With the limited amount of time left, Council may wish to give consideration to individuals with previous political experience, particularly at the municipal level. This familiarity may reduce the time and effort required to bring the individual up to speed and offer more effective representation to the Oshawa community during the time remaining in the term.

### **5.5.4 Advantaging a Current or Prospective Municipal Candidate**

The nomination period for individuals seeking to run for municipal office is currently open and closes at 2:00 p.m. on July 27, 2018. As a result, it is possible that individuals interested in being appointed to the vacancy may also stand as candidates in the 2018 municipal election. While Council cannot impose additional qualifications over and above the statutory requirements identified in Section 5.6 which would prohibit a candidate from being appointed to the vacant office, Council may wish to consider how the method selected and the individual chosen may influence the municipal election.

### **5.5.5 Other Administrative Considerations**

Much of the administrative work required to onboard a new member of Council falls to staff who are currently undertaking preparations in support of the 2018 municipal election. Council may wish to consider how the method selected and the individual appointed will potentially impact the current and future workloads assigned to staff within City Clerk Services, Corporate Communications and other areas of the City.

## **5.6 Candidate Qualifications**

The Municipal Elections Act establishes certain criteria that must be satisfied for individuals to hold municipal office. To be eligible for appointment, each individual must be:

- A Canadian citizen;
- 18 years or older;
- A resident of the City of Oshawa; or
- An owner or tenant of land in the City of Oshawa, or the spouse of an owner or tenant;
- Not prohibited from voting; and,
- Not disqualified by any legislation from holding municipal office.

Individuals who may not hold office include:

- A judge of any court;
- A member of the Provincial Legislature;
- A member of the House of Commons or Senate who has not resigned from their office; and,

- A candidate who failed to file their primary or supplementary financial statement in the last municipal election.

City Council may not introduce additional requirements over and above the statutory criteria noted above. Council may take into account an applicant's stated position on certain matters but may not impose additional requirements that would prohibit an individual's application from being certified by the City Clerk. For example, City Council may not seek or require a commitment from an individual that they not register as a candidate in the upcoming municipal elections.

Regardless of the method selected by Council, save for the method identified in Section 5.4.2. where it is presumed a sitting City Councillor meets the eligibility criteria, the City Clerk is required to review and confirm the eligibility of each potential candidate prior to the individual being selected and appointed by City Council.

## **6.0 Financial Implications**

Costs of \$1000 or less are anticipated in order to provide notice to the community of the method selected by City Council and the date(s) at which Council will select and appoint a candidate to the Office of Regional and City Councillor. Any costs incurred will be funded from the Election Reserve.

## **7.0 Relationship to the Oshawa Strategic Plan**

This report supports the theme of deliberate community engagement contained within the Oshawa Strategic Plan.



Andrew Brouwer, City Clerk,  
Corporate Services Department

**Item: CNCL-18-41  
Attachment 1**

**File: A-1010**

**Council Vacancy Policy**

Approved: November 15, 2017

**1. Policy Statement**

The Council of the City of Oshawa is committed to an open and transparent process when determining how vacancies on City Council will be filled that provides opportunities for public input and incorporates procedures which support the legislative roles and responsibilities of City Council and the City Clerk.

**2. Scope**

This policy applies to any vacancy that occurs on City Council.

**3. Sources**

Municipal Act, 2001, S.O. 2001, c. 25  
Municipal Elections Act, 1996, S.O. 1996, c. 32  
Corporate Advertising Policy  
Report CM-17-31 – Council Vacancy Policy

**4. Procedure**

**4.1. Declaration of Vacancy**

Where a vacancy on City Council occurs, in accordance with Section 259 (1) of the Municipal Act, City Council shall declare the seat vacant at the next regularly scheduled Council meeting, or in the case of the death of a Member at one of the next two regularly scheduled Council meetings.

Following the declaration of the Council vacancy, a notice will be provided on the City's website, social media and in newspapers, in accordance with the City's Corporate Advertising Policy, advising of:

- The office for which the vacancy applies; and,
- The date, time and location of an open house hosted by the City Clerk to gather input on the method of filling the Council vacancy; and,
- Any additional public consultation measures to gather input on the method of filling the Council vacancy deemed appropriate by the City Clerk; and,
- The date and time of the meeting where Council will determine the method used to fill the Council vacancy.

#### **4.2. Restriction on By-election**

In accordance with Section 65(2) of the Municipal Elections Act, should a vacancy occur after March 31<sup>st</sup> in the year of an election, Council will not hold a by-election.

#### **4.3. Restriction on Appointment**

As permitted by Section 263(5)3 of the Municipal Act, should a vacancy occur within 90 days of Voting Day in the year of an election, Council will declare the seat vacant and will not appoint an individual. The office will remain vacant until the next term of Council is established and the provisions of this policy do not apply.

#### **4.4. Staff Report**

Following the public consultation period, the City Clerk shall prepare a public report to Council summarizing any public feedback received, assess the merits of various options available to Council and identify other relevant considerations and recommendations for Council's consideration.

#### **4.5. Meeting to Determine Method of Filling Vacancy**

The meeting where Council determines the method for filling the vacancy shall be a public meeting. At the meeting Council will consider the staff report prepared in Section 4.4 and will deal exclusively with how the vacancy will be filled, without making an appointment of any individual.

If Council determines that the vacancy is to be filled by an appointment, Council shall identify the preferred method of appointment and direct the City Clerk to take the steps necessary to facilitate Council's decision. Council's preferred method of appointment shall have regard to the City Clerk's legislative responsibility to qualify individuals for appointment.

If Council determines that the vacancy is to be resolved by a by-election, Council shall direct the City Clerk to bring forward a by-law for Council's approval at a time that most effectively facilitates the conduct of a by-election.

#### **4.6. Subsequent Vacancies**

Should Council's decision in Section 4.5 on the method used to fill a vacancy result in an immediate vacancy in another office, Council will determine, at the same meeting, the method used to fill any and all subsequent vacancies on Council arising from the initial decision.

For clarity, the requirements identified in Sections 4.1, 4.4 and 4.5 of this policy do not apply to subsequent vacancies.

#### **4.7. Selection and Appointment of Individual or Approval of By-law**

Should Council opt to fill the vacancy by appointing an identified individual, or seek applications from all qualified individuals, the City Clerk shall provide a notice of Council's intent to fill the vacancy by an appointment and the date, time and location of the meeting where Council intends to fill the vacancy. Notice will be provided on the City's website, social media and in newspapers in accordance with the City's Corporate Advertising Policy.

The City Clerk shall develop procedures deemed appropriate to give effect to the manner of appointment selected by Council and will ensure such procedures are in keeping with the provisions and principles of the Municipal Elections Act.

Should Council choose to fill the vacancy by by-election, the City Clerk shall prepare and bring forth a by-law authorizing a by-election within the statutory timeframes in a manner and at a time which in his or her opinion, most effectively supports the delivery of a by-election.

A notice of the date, time and location of the meeting where Council will approve the by-law authorizing a by-election will be provided on the City's website, social media and in newspapers in accordance with the City's Corporate Advertising Policy.

The City Clerk shall conduct the by-election in accordance with the provisions of the Municipal Elections Act.

## Summary of Connect Oshawa Survey Results

### Participant Preferences Respecting Appointment Method

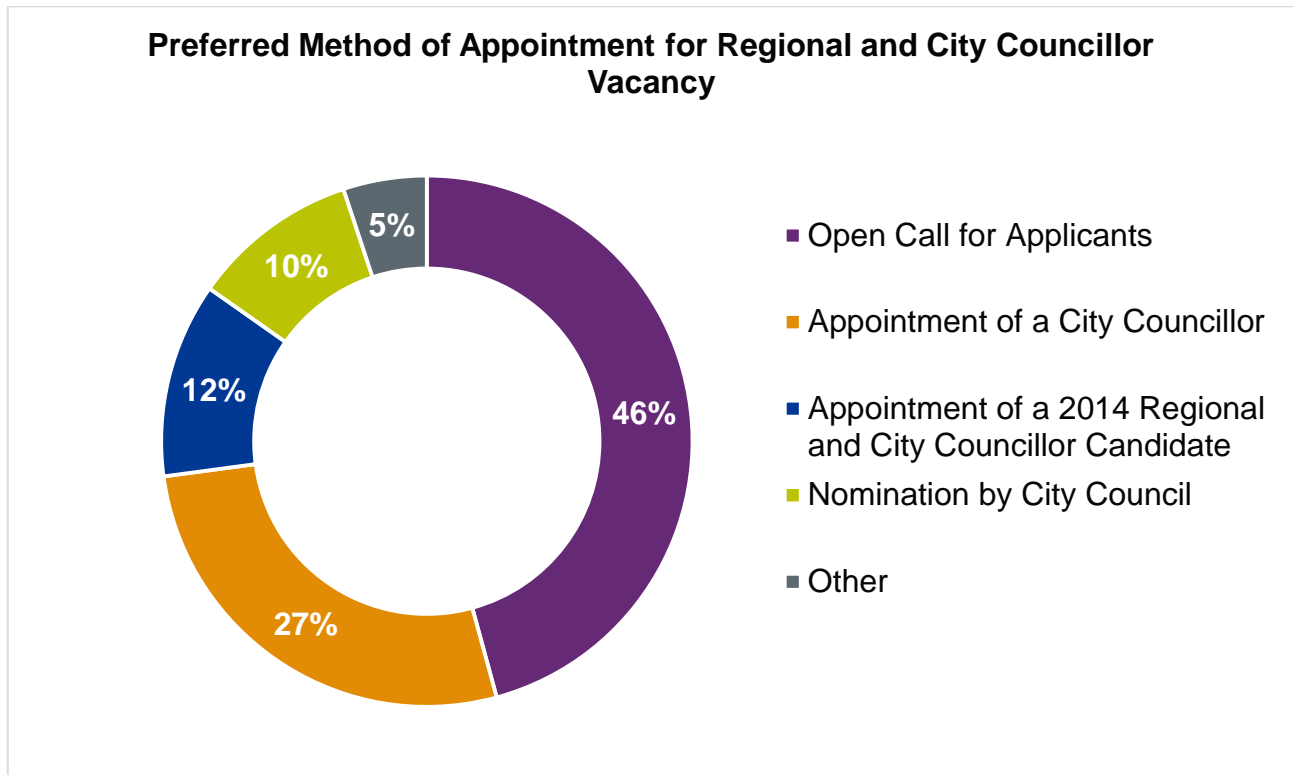


Figure 1 - Preferred Method of Appointment for Regional and City Councillor Vacancy

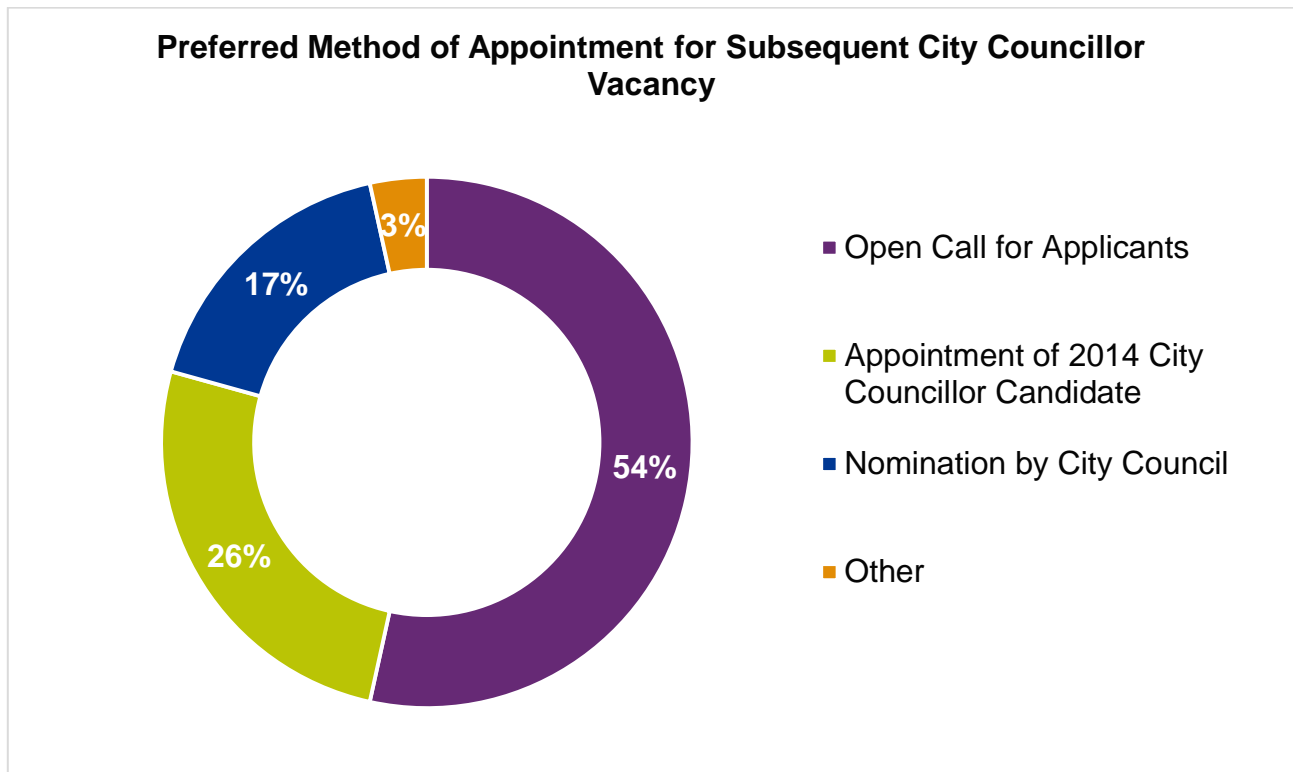


Figure 2 - Preferred Method of Appointment for Subsequent City Councillor Vacancy

**Participant Preferences Respecting Characteristics and Qualities of Appointee**

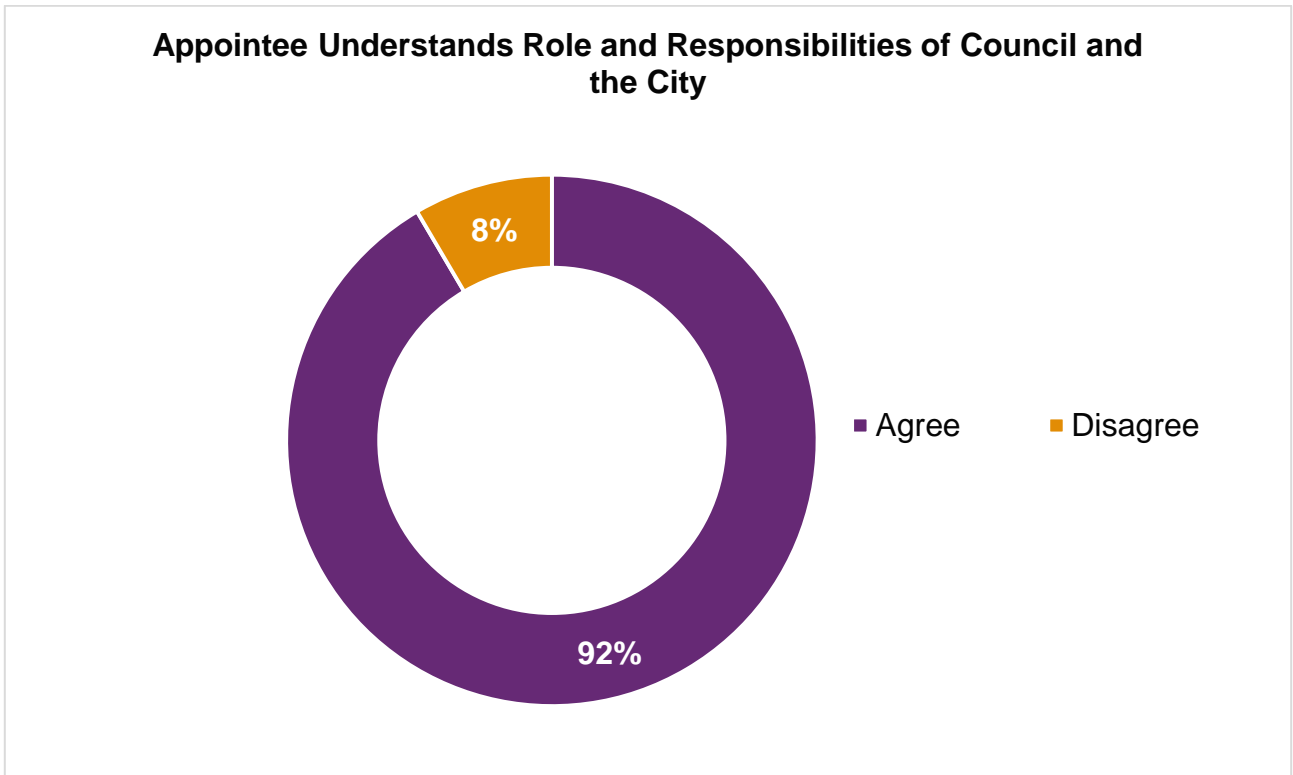


Figure 3 - Understands Roles and Responsibilities of Council and the City

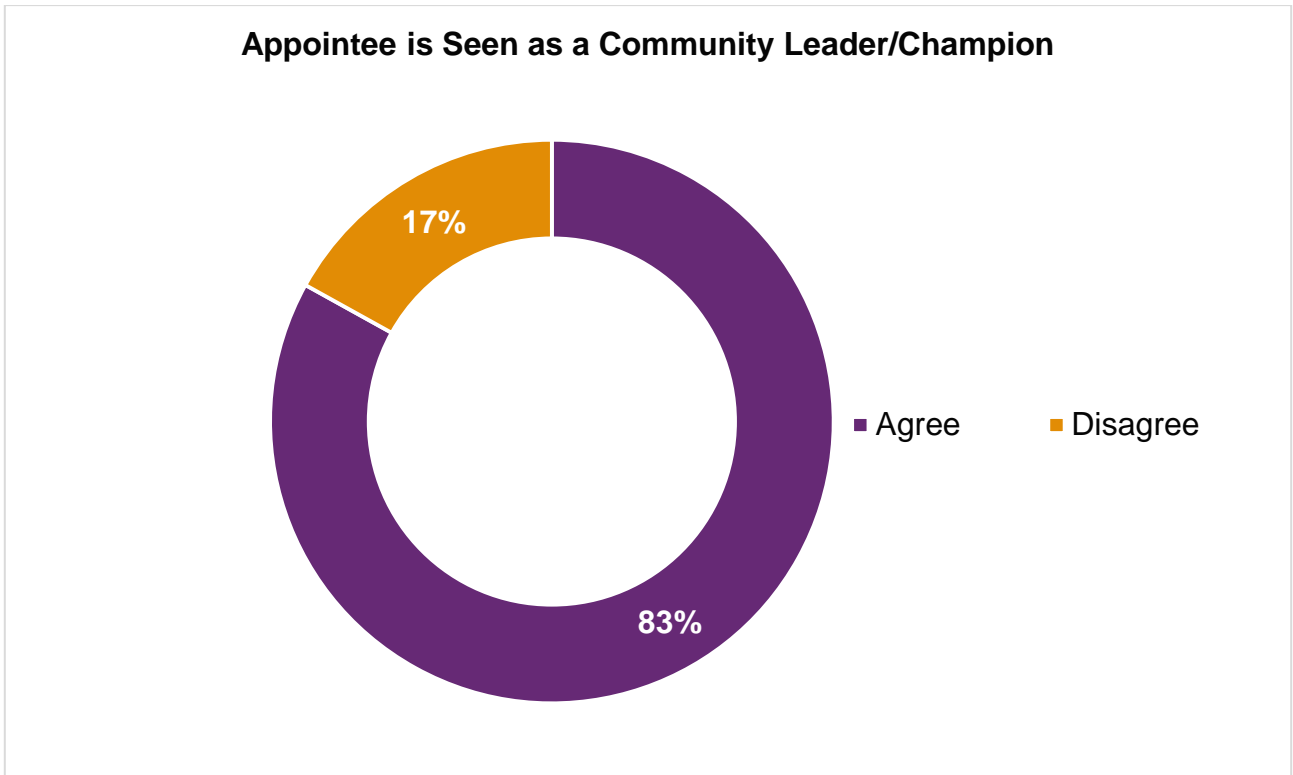


Figure 4 - Seen as Community Leader/Champion



**Appointee is an Active Volunteer in the Community, City or Region**

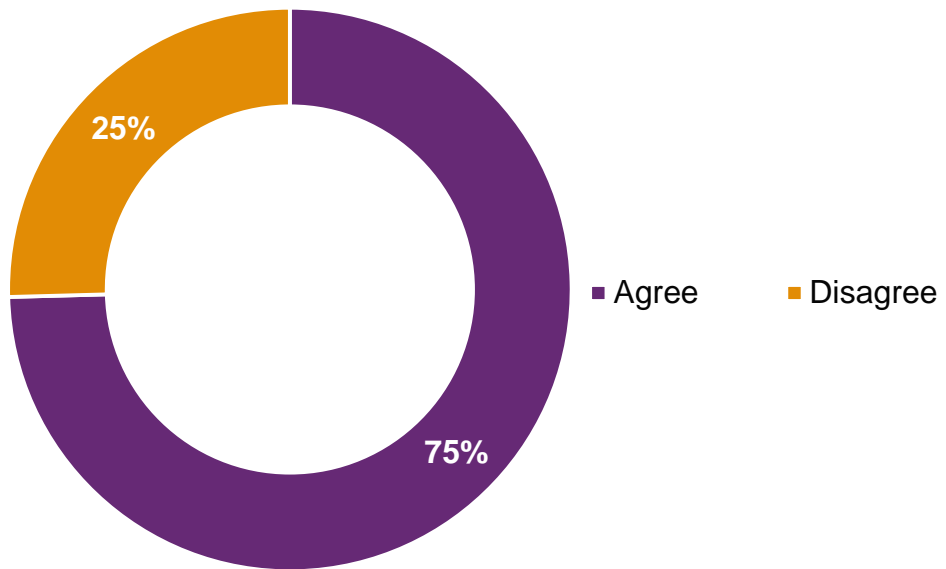


Figure 5 - Appointee is an Active Volunteer in the Community, City or Region

**Appointee can "Hit the Ground Running"**

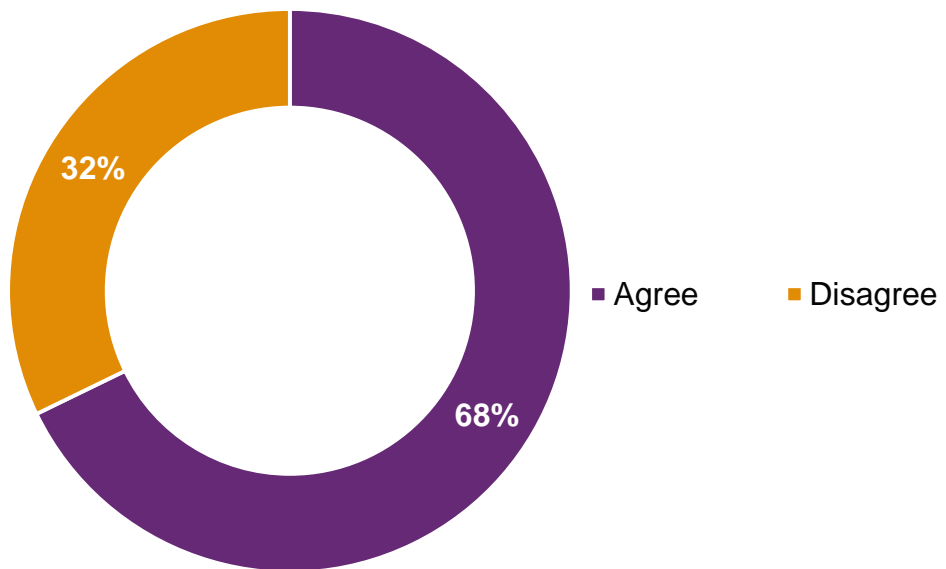


Figure 6 - Appointee Can "Hit the Ground Running"

**Appointee Should Not be a Candidate in the 2018 Municipal Election**

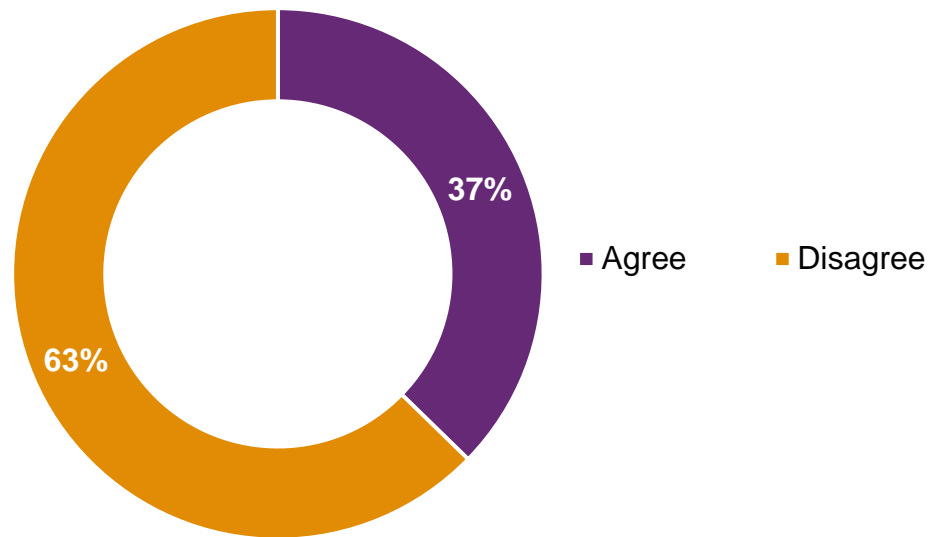


Figure 7 - Appointee Should Not be a Candidate in the 2018 Municipal Election

**Appointee Should Have Experience as a Former Member of Council**

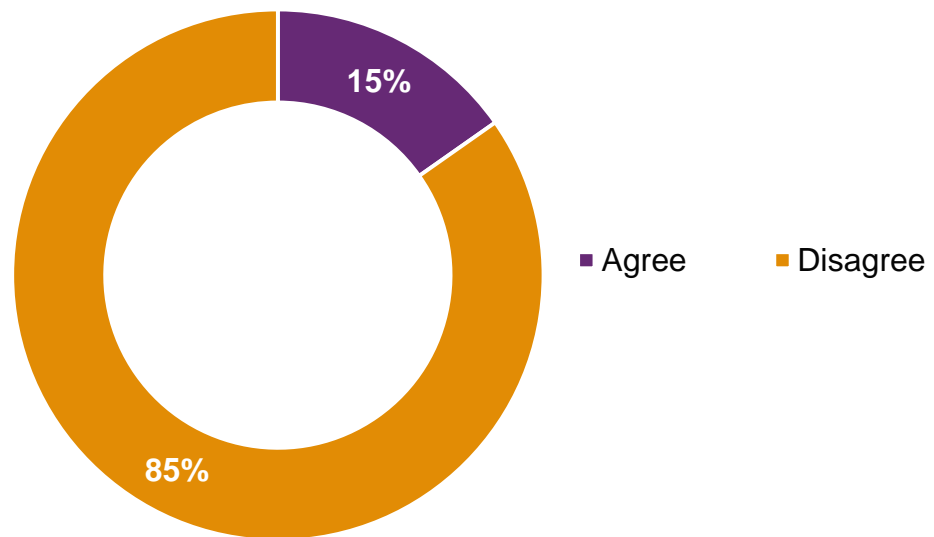


Figure 8 - Appointee Should Have Experience as a Former Member of Council