



STAFF REPORT ACTION REQUIRED

Declaring the Office of Councillor, Ward 3 – Etobicoke Centre Vacant and Deciding the Method to Fill the Vacancy

Date:	August 19, 2013
To:	City Council
From:	City Clerk
Wards:	All
Reference Number:	

SUMMARY

This report outlines for Council's consideration the options for filling the vacancy in Ward 3 – Etobicoke Centre, as a result of the recent election of Councillor Doug Holyday to the Legislative Assembly. Together, the *City of Toronto Act, 2006* ("COTA") and the *Municipal Elections Act, 1996* ("MEA") prescribe the rules and impose deadlines with respect to filling a vacancy.

Council must declare the office vacant and may choose to fill the vacancy by appointment or by conducting a by-election. If a by-election is adopted, Election day will be on Monday, November 25, 2013. Council must also authorize the dates and hours for the advance vote and decide whether to authorize a contribution rebate program.

RECOMMENDATIONS

The City Clerk recommends that:

1. City Council declare the office of Councillor, Ward 3 – Etobicoke Centre to be vacant; and
2. City Council decide which of the following options to adopt:

Option A - Appointment

- a. Fill the vacancy by appointing a person qualified to hold office in the City of Toronto following the process set out in Appendix "A" to this report; and
 - i. schedule a special meeting of Etobicoke York Community Council on Thursday, October 3, 2013 at 9:30 a.m. for the purpose of considering and recommending to Council its preferred candidate; and
 - ii. schedule a special meeting of City Council on Thursday, October 10, 2013 at 9:30 a.m. for the purpose of considering and appointing a candidate to the office.

OR

Option B – By-election

- b. Require that a by-election be held to fill the vacancy in Ward 3 – Etobicoke Centre; and
 - i. establish the dates and hours of the advance votes as outlined in the draft bill at Appendix "B", and as follows:

Saturday, November 16, 2013 and Sunday, November 17, 2013
from 10 a.m. to 6 p.m.
 - ii. authorize a contribution rebate program for payment of rebates to persons who make contributions to candidates in this by-election, similar to the provisions recently passed by Council for the 2014 municipal election, and as outlined in the draft bill in Appendix "C".
 - iii. direct the Deputy City Manager and Chief Financial Officer to adjust the City Clerk's Office 2013 operating budget to reflect the funds required to conduct the by-election.

Financial Impact

If Council chooses to fill the vacancy by appointment, there will be minimal costs for advertising, printing and supplies and can be absorbed in the 2013 City Clerk's operating budget.

The *MEA* requires the municipality to pay the costs incurred to conduct a by-election for a vacancy on council. Should Council choose to fill the vacancy through a by-election, the cost for administering the by-election would be approximately \$175,000, exclusive of a contribution rebate program.

If Council chooses to authorize a Contribution Rebate Program for candidates in the by-election there will be additional costs of approximately \$50,000.

Additional costs may also be incurred if any candidate in the by-election is subject to a compliance audit proceeding. The cost of an audit is dependent on a number of factors including the size of the campaign and the complexity of the audit. Under the *MEA*, the City has a statutory responsibility to pay the ensuing costs.

Although the cost cannot be forecasted with precision, the total cost of the by-election including the contribution rebate program is estimated to be approximately \$225,000. The City Clerk's Office's 2013 approved Operating Budget will need to be adjusted to cover any by-election costs with funds fully recovered from the Election Reserve.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial implications.

DECISION HISTORY

At its February 1-3, 2000 meeting, City Council adopted the Policy on Filling Vacancies on City Council: (Clause No. 1 of Report 2 of the Administration Committee)

<http://www.toronto.ca/legdocs/2000/agendas/council/cc/cc000201/cofa.htm>

<http://www.toronto.ca/legdocs/2000/agendas/council/cc/cc000201/adm2rpt/cl001.htm>

ISSUE BACKGROUND

On August 1, 2013, Councillor Doug Holyday (Ward 3 – Etobicoke Centre) was elected as a Member of the Legislative Assembly in the provincial by-election.

Section 9 of the *Legislative Assembly Act* states that a member of municipal council is "deemed to have resigned" his or her office at the end of the day on which the election of such person to the Assembly is published in the Ontario Gazette. The election return for Etobicoke-Lakeshore was published in the Ontario Gazette on August 17, 2013.

The *COTA* provides that Council, within 60 days after the day the office is declared vacant, either fill the vacancy by appointing a person or passing a by-law requiring a by-election to be held to fill the vacancy.

The *MEA* provides that should a vacancy occur on or before March 31st in the year of a regular election, Council can choose to fill the vacancy by appointment or through a by-election. After March 31 in the year of a regular election, Council must appoint.

City Council, at its February 1-3, 2000 meeting, adopted the Policy on Filling Vacancies on City Council, which provides an earlier cut-off date than the *MEA*, to determine

whether a vacancy must be filled by appointment or through a by-election in the year prior to an election:

- "(1) any vacancy in the office of the Mayor or a Councillor declared by Council prior to November 30 in the year prior to an election year be filled through the conduct of a by-election;
- (2) any vacancy in the office of the Mayor or a Councillor declared by Council after November 30 in the year prior to an election year shall be filled through an appointment."

This policy guides Council's decision making process in determining how vacancies are to be filled. Notwithstanding the foregoing policy, Council must make a formal decision on the method of filling a Council vacancy as each vacancy occurs.

Section 209 of *COTA* provides that the person appointed or elected to fill the vacancy holds office for the remainder of the term of office of the person whose place is vacant. The current term of office ends on November 30, 2014.

Option A – Filling the Vacancy by Appointment

Council may fill the vacancy by appointing a person qualified to hold municipal office in the City of Toronto, other than a current Member of City Council.

Section 208 of *COTA* provides that Council may within 60 days after declaring the seat vacant, fill the vacancy by appointing a person who has consented to accept the appointment.

To be qualified to hold office, a person must be:

- (i) 18 years of age or older
- (ii) a Canadian citizen
- (iii) a resident of the City of Toronto, or an owner or tenant of land in the City or the spouse of such an owner or tenant
- (iv) not prohibited from voting under any Act or from holding municipal office

However, the legislation does not provide the process that Council must follow to fill the vacancy. If Council chooses to fill the vacancy by appointment, staff recommend that Council adopt the process set out in Appendix "A" which is essentially the same process Council has followed in the past.

If Council adopts this process, the City Clerk would advertise to invite applications from qualified electors for consideration by the Etobicoke York Community Council at a special meeting to be held at 9:30 a.m. on Thursday, October 3, 2013.

Council would consider the recommendation from the Etobicoke York Community Council at a special meeting at 9:30 a.m. on Thursday, October 10, 2013. Special meetings of both Community Council and City Council are required in order to meet the statutory appointment deadline of October 25, 2013.

Option B – Filling the Vacancy by By-election

Council can also choose to fill the vacancy by requiring a by-election to be held. Section 208 of *COTA* provides that within 60 days after Council declares a seat vacant, Council may pass a by-law requiring a by-election to be held to fill that vacancy.

Under section 65 of the *MEA*, if Council determines that a by-election is to be held, the Clerk is responsible for setting the date of nomination day, which cannot be more than 60 days after the passing of the by-law requiring the by-election. Voting day must be 45 days after nomination day.

Should Council pass the necessary by-law at its special meeting of August 26, 2013, nomination day would be Friday, October 11, 2013 and voting day would be Monday, November 25, 2013.

Council is also required to pass a by-law establishing one or more days for the advance vote and the hours during which voting places shall be open on those dates. The Clerk recommends that Council establish advance vote dates and hours as follows:

Saturday, November 16, 2013 and Sunday, November 17, 2013
from 10 a.m. to 6 p.m.

A draft bill outlining the proposed date and hours of the advance votes for the by-election is attached as Appendix "B".

The estimated cost of administering the by-election is approximately \$175,000. This cost estimate is based upon the fact that the *MEA* requires by-elections to "be conducted as far as possible in the same way as regular elections."

Contribution Rebate Program

Additional costs will be incurred if Council chooses to implement a Contribution Rebate Program for candidates in the by-election. It is difficult to accurately estimate the cost of this program as it is dependent upon many factors including the number of candidates, the number of contributors and amount of the contributions.

Based on the review of contributions from previous elections and by-elections, the program would cost approximately \$50,000. Attached in Appendix "C" is a draft bill which is essentially the same as the one Council recently passed for the 2014 municipal election.

Compliance Audit Proceedings

Following a by-election, an elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of the *MEA* relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances.

If Council chooses to fill the vacancy by requiring a by-election to be held, additional costs may be incurred if there are subsequent compliance audit proceedings.

The cost of an audit is dependent on a number of factors including the size of the campaign and the complexity of the audit. The *MEA* requires the City to pay the "auditor's costs of performing the audit (section 81(13)) and "all costs in relation to the committee's operations and activities" (section 81.1(5)).

CONTACT

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SIGNATURE

Ulli S. Watkiss
City Clerk

ATTACHMENTS

- Appendix "A" – Procedures for Filling the Vacancy in the Office of Councillor, Ward 3 – Etobicoke Centre through an Appointment
- Appendix "B" – Draft Bill to Require a By-election and to Establish Advance Vote Dates and Hours
- Appendix "C" – Draft Bill for a Contribution Rebate Program

Appendix "A"
Procedures for Filling the Vacancy in the Office of Councillor
Ward 3 – Etobicoke Centre through an Appointment

1. Advertisements shall be placed in one major daily newspaper and in one local newspaper serving the ward. The advertisements shall indicate Council's intention to appoint a qualified elector to fill the vacancy and outline the process one must follow to be considered.
2. All interested persons must complete a Consent of Nominee and Declaration of Qualification and provide personal identification showing their name and qualifying address within the City of Toronto. The forms will be available at the information session to be held at the Etobicoke Civic Centre from 7:00 p.m. to 9:00 p.m. on Wednesday, September 25, 2013.
3. The deadline for filing the Consent of Nominee and the Declaration of Qualification for Council's consideration shall be 12:00 noon on Thursday, September 26, 2013 and must be filed with the City Clerk.
4. The candidates who have completed a Consent of Nominee and a Declaration of Qualification and provided personal identification satisfactory to the Clerk, may appear before the Etobicoke York Community Council at its special meeting on Thursday, October 3, 2013 at 9:30 a.m.

Procedure at Community Council

5. The Chair or Presiding Officer shall make a short statement of the purpose of the meeting and the general order of proceedings to be followed.
6. The Clerk will provide to the Chair or Presiding Officer, a list of the names of those candidates who have completed the Consent of Nominee and Declaration of Qualification and the Chair or Presiding Officer will call for a motion from the Etobicoke York Community Council in the following form:

Moved by...

THAT the following persons, who have signified in writing that they are legally qualified to hold the office of Councillor and consented to accept the office if they are appointed to fill the vacancy of Councillor, Ward 3 – Etobicoke Centre, shall be considered for appointment to fill such vacancy.

7. Each of the candidates shall be afforded the opportunity to address the Community Council for a period of not more than five minutes. Candidates will speak in the order (date and time) in which they submitted their Consent of Nominee and Declaration of Qualification to the City Clerk.

8. Each Member of the Etobicoke York Community Council will be allowed no more than one question to each candidate.
9. Following consideration by the Community Council of all submissions, the Community Council will proceed to vote as follows:
 - (a) Members of the Community Council will vote by way of ballot;
 - (b) Members of the Community Council must sign and print their name on the ballot; ballots that do not contain both the signature and name of the Member will be rejected from the count;
 - (c) if the candidate who receives the greatest number of votes cast does not receive more than one-half the votes of all Members of the Community Council present and voting, the candidate or candidates who received the fewest number of votes shall be excluded from the voting and the vote shall be taken again by the Clerk or designate and, if necessary, more than once, excluding in each successive vote the candidate or candidates who received the fewest number of votes in the proceeding vote, until the candidate receiving the greatest number of votes has also received more than one-half of the votes of the Members of the Community Council present and voting;
 - (d) where the votes cast are equal for all the candidates:
 - (i) if there are three or more candidates remaining, the Clerk or designate shall by lot select one such candidate to be excluded from the subsequent voting;
 - (ii) if only two candidates remain, the tie shall be broken and the candidate selected by lot conducted by the Clerk or designate shall be the candidate selected by the Community Council for Council's consideration;
 - (iii) "lot" means the method of determining the candidate to be excluded or the candidate to fill the vacancy, as the case may be, by placing the names of the candidates on equal size pieces of paper placed in a container and one name being drawn by the Clerk or designate.
10. Upon conclusion of the voting, the Chair or Presiding Officer will declare the candidate receiving the votes of more than one-half of the number of the Members of the Etobicoke York Community Council present and voting to be the candidate selected by the Community Council for Council's consideration. The name of the selected candidate will be forwarded to Council.

Procedure at City Council

11. The candidates who completed a Consent of Nominee and a Declaration of Qualification and provided personal identification satisfactory to the Clerk, may appear before City Council at a special meeting of Council to be held at 9:30 a.m. on Thursday, October 10, 2013. Candidates may appear before Council whether or not they attended at the Etobicoke York Community Council.
12. The Speaker or Presiding Officer shall make a short statement of the purpose of the meeting and the general order of proceedings to be followed.
13. The Clerk will provide to the Speaker or Presiding Officer, a list of the names of those candidates who have completed the Consent of Nominee and Declaration of Qualification and the Speaker or Presiding Officer will call for a motion from Council in the following form:

Moved by...

THAT the following persons, who have signified in writing that they are legally qualified to hold the office of Councillor and consented to accept the office if they are appointed to fill the vacancy of Councillor, Ward 3 – Etobicoke Centre shall be considered for appointment to fill such vacancy.

14. Each of the candidates shall be afforded the opportunity to address Council for a period of not more than five minutes. The order of speaking will be determined by lot. (The Clerk shall place the names of all candidates on equal size pieces of paper in a container and randomly draw the names.)
15. Each Member of Council will be allowed no more than one question to each candidate.
16. Following consideration by Council of all submissions, Council will proceed to vote as follows:
 - (a) Members of Council will vote by way of ballot;
 - (b) Members of Council must sign and print their name on the ballot; ballots that do not contain both the signature and name of the Member will be rejected from the count;
 - (c) if the candidate who receives the greatest number of votes cast does not receive more than one-half the votes of all Members of Council present and voting, the candidate or candidates who received the fewest number of votes shall be excluded from the voting and the vote shall be taken again by the Clerk and, if necessary, more than once, excluding in each successive vote the candidate or candidates who received the fewest number of votes in the proceeding vote, until

the candidate receiving the greatest number of votes has also received more than one-half of the votes of the Members of Council present and voting;

- (d) where the votes cast are equal for all the candidates:
 - (i) if there are three or more candidates remaining, the Clerk shall by lot select one such candidate to be excluded from the subsequent voting;
 - (ii) if only two candidates remain, the tie shall be broken and the vacancy shall be filled by the candidate selected by lot conducted by the Clerk;
 - (iii) "lot" means the method of determining the candidate to be excluded or the candidate to fill the vacancy, as the case may be, by placing the names of the candidates on equal size pieces of paper placed in a container and one name being drawn by the Clerk.

- 17. Upon conclusion of the voting, the Clerk will declare to be appointed the candidate receiving the votes of more than one-half of the number of the Members of Council present and voting.
- 18. A by-law confirming the appointment shall be enacted by Council appointing the successful candidate to the office for the remainder of the term of the present Council.

Appendix "B"
Draft Bill to Require a By-election and to Establish Advance Vote Dates and Hours

CITY OF TORONTO

BY-LAW No. _____

To require a by-election in Ward 3 – Etobicoke Centre and to establish advance votes dates and hours

WHEREAS the Office of Councillor, Ward 3 – Etobicoke Centre has become vacant; and

WHEREAS section 208 of the *City of Toronto Act, 2006* provides that, if the office of a member of council becomes vacant, the council may, by by-law require a by-election to be held to fill the vacancy; and

WHEREAS subsection 43(1) of the *Municipal Elections Act, 1996*, requires Council to establish the dates and times for an advance vote;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. A by-election shall be held to fill the vacant council seat for Ward 3 – Etobicoke Centre.
2. Advance votes shall be held on the following dates and during the following hours:

Saturday, November 16, 2013 and Sunday, November 17, 2013
from 10:00 a.m. to 6:00 p.m.

Enacted and passed on

FRANCIS NUNZIATA
Speaker

ULLI S. WATKISS
City Clerk

Appendix "C"
Draft Bill for a Contribution Rebate Program

CITY OF TORONTO

BY-LAW No. _____

To authorize the payment of rebates to individuals who contribute to candidates for office of Councillor, Ward 3 – Etobicoke Centre in the 2013 by-election

WHEREAS subsection 82(1) of the *Municipal Elections Act, 1996*, as amended (“the *Act*”), provides that a municipality may, by by-law, provide for the payment of rebates to persons who make contributions to candidates for an office on the municipal council;

WHEREAS subsection 78(7) of the *Act*, provides that a municipality may, by by-law, authorize candidates seeking election to municipal office to file their financial statements and any required auditor’s reports (the “financial statements”) electronically, subject to such conditions and limits as are set out in the by-law;

WHEREAS subsection 78(7) of the *Act*, provides that the financial statements may be electronically filed if the local council has passed an enabling by-law [the “Electronic Financial Filing System (EFFS) By-law”], being City of Toronto By-law No. 1178-2009;

WHEREAS candidates who choose to file financial statements electronically under the provisions of EFFS By-law must also file original financial statements with the Clerk in accordance with the requirements and deadlines set out in the *Act*; and

WHEREAS candidates who choose to file financial statements electronically under EFFS must also issue all contribution receipts electronically even if the candidates are not participating in the City of Toronto contribution rebate program established under this By-law;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The payment of rebates to individuals who make contributions to candidates in the 2013 by-election to fill the vacancy in the office of Councillor, Ward 3 Etobicoke Centre, is authorized.
2. An individual who, during the 2013 by-election, makes a contribution to a candidate for an office on the council of the City of Toronto may, on or after August 27, 2013, apply to the Clerk of the municipality (the “Clerk”) for a rebate.
3. Notwithstanding section 66 of the *Act*, only a contribution of money will be eligible for a campaign contribution rebate.

4. The application for rebate must be received by the Clerk on or before 4:30 p.m., six months after the end of the supplementary reporting period set out in the Act, or January 24, 2015.
5. Despite sections 4, 6, 7, 10 and subsections 11(a) and 11(c), where an applicant for a rebate claims that their application was mailed, but not received by the Clerk prior to the application deadline set out in section 4, that applicant can provide an affidavit to the Clerk, in a form satisfactory to the Clerk, attesting to the facts, and the Clerk is authorized to process that application in accordance with the relevant provisions of this by-law.
6. The application for rebate shall be in the form established for that purpose by the Clerk.
7. The application for rebate shall include a receipt in the form provided by the Clerk that is signed by or on behalf of the candidate.
8. To participate in the contribution rebate program, a candidate for an office on the municipal council:
 - (a) must file an audited Financial Statement and Auditor's Report in compliance with subsections 78(1) to (4) of the *Act*; and
 - (b) shall include with the documents filed under subsection 78(1) or (2) of the *Act*, as the case may be, a copy of the receipt issued for the contribution and a copy of all campaign expense invoices incurred as part of the campaign.
9. A contributor, including the candidate and his or her spouse, to a candidate for an office on the municipal council whose campaign period is extended under paragraph 4 or 5 of subsection 68(1) of the *Act*, will not be eligible to receive a rebate application until after the candidate's campaign closes and the final document is filed under subsection 78(2) of the *Act* or subsection 11(d) of this by-law.
10. The Clerk shall compare the receipt filed by the applicant and the copy filed by the candidate to ensure consistency.
11. The Clerk shall pay the applicant a rebate in accordance with sections 12 and 13 if the following conditions are met:
 - (a) The application complies with sections 4, 6 and 7;
 - (b) The candidate has complied with section 8;

- (c) The Clerk is satisfied that the receipt filed by the applicant and the copy filed by the candidate are consistent;
 - (d) The Clerk is satisfied that the candidate has filed any financial statement and auditor report required by *Act* by relevant filing dates set by s. 77, s. 79.1 or by court order under s. 80, and, that no such document shows on its face that the candidate has incurred expenses exceeding what is permitted under section 76 of the *Act*;
 - (e) The Clerk is satisfied that the candidate has paid any surplus in accordance with the provisions of section 79 and 79.1 of the *Act* within the time period stipulated in that section; and
 - (f) The time for an application for a compliance audit under section 81 of the *Act* has expired and any proceedings in relation to a compliance audit have been completed.
- 12.** (1) Subject to section 13, the rebate shall be calculated as follows:
- (a) If the contribution is \$300.00 or less, the rebate is 75 per cent of the contribution;
 - (b) If the contribution is more than \$300.00 but not more than \$1,000.00, the rebate is \$225.00 plus 50 per cent of the difference between the contribution and \$300.00;
 - (c) If the contribution is more than \$1,000.00, the rebate is the lesser of:
 - (i) \$575.00 plus 33-1/3 per cent of the difference between the contribution and \$1,000.00; or
 - (ii) \$1,000.00.
- (2) Contributions of less than \$25.00 will not receive a rebate.
- 13.** An applicant who makes contributions to more than one candidate may apply for a rebate in respect of each contribution, but is not entitled to receive total rebates amounting to more than the following maximums:
- (a) If the total of the applicant's contributions to all candidates is \$300.00 or less, the maximum is 75 per cent of that total;

- (b) If the total of the applicant's contributions to all candidates is more than \$300.00 but not more than \$1,000.00, the maximum is \$225.00 plus 50 per cent of the difference between that total and \$300.00; or
 - (c) If the total of the applicant's contributions to all candidates is more than \$1,000.00, the maximum is the lesser of:
 - (i) \$575.00 plus 33-1/3 per cent of the difference between that total and \$1,000.00, or
 - (ii) \$1,000.00.
- 14.** Any election campaign surplus funds that become the property of the City according to the *Act* will be deposited into the Elections Reserve Fund XR1017.
- 15.** If candidates choose to participate in the Electronic Financial Filing System, the following provisions apply:
- (1) Candidates must issue all contribution receipts electronically (whether or not eligible for a contribution rebate) as well as file the prescribed financial statements in accordance with the Act, this by-law and the EFFF By-law.
 - (2) Despite section 7, contribution receipts issued through the EFFF must have either the original or electronic signature of the candidate or their designate.
 - (3) Despite subsection 8(b), candidates are not required to attach paper copies of their contribution receipts with the original financial statements filed with the City Clerk, provided the contribution receipts are electronically issued through the EFFF. Candidates must still attach copies of their campaign expense invoices to the original financial statement filing.
 - (4) Despite subsection 8(b), candidates must submit their electronic contribution receipts, as part of filing their electronic financial statements through the EFFF, within 48 hours of filing the original financial statements with the City Clerk, and no later than within 48 hours after the filing deadlines set out in the Act, whichever is earlier.

Enacted and passed on 2013.

FRANCES NUNZIATA
Speaker

ULLI S. WATKISS
City Clerk