

## **Filling of Vacancies on City Council**

<b>Date:</b>	April 29, 2014
<b>To:</b>	City Council
<b>From:</b>	City Clerk
<b>Wards:</b>	All

### **SUMMARY**

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While City Council has previously adopted a policy intended to guide it when vacancies occur on Council, there is little to no value in maintaining such a policy or adopting a new one. City Council will always be influenced by the circumstances surrounding each vacancy and Council cannot be bound by the policy in any event. When vacancies occur City Council must meet to formally declare the office vacant and approve the method to fill the vacancy in accordance with provincial law. Regardless of the pre-existence of a policy on which method to select, that policy is not binding when vacancies occur.

The City Clerk recommends therefore that City Council rescind its previous policy and instead select a method on a case-by-case basis.

### **RECOMMENDATIONS**

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The City Clerk recommends that:

1. City Council rescind its previous policy regarding filling vacancies on City Council, and instead consider the method of filling each vacancy as it arises.

#### **Financial Impact**

There are no financial impacts of adopting the recommendations in this report. The financial impact of the method of filling vacancies will be reported on a case by case basis.

## DECISION HISTORY

At its meeting of October 8, 9, 10 and 11, 2013, City Council requested the City Clerk to review and report directly to City Council on the February 2000 policy on filling vacancies in light of the change in length of the term of office from 3 to 4 years.

A summary of vacancies since amalgamation and the method used to fill them is attached for information.

The 2000 policy can be viewed here:

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

## COMMENTS

### Provincial Law Governs the Filling of Vacancies:

When a vacancy on City Council occurs, the City of Toronto Act (COTA) requires City Council to officially declare the seat vacant at its next meeting (or one of its next two meetings in the event of a death of a Member).

Within 60 days of declaring the office vacant, City Council must select the method of filling the vacancy - i.e., either by appointment or by by-election.

The Municipal Elections Act (MEA) also applies. If a vacancy occurs after March 31 in an election year, City Council must appoint someone. A by-election is not permitted.

Furthermore under COTA, if the vacancy occurs with 90 days of Election Day (e.g. July 29 in 2014), City Council is not required to fill the vacancy.

When City Council has opted to fill vacancies by appointment, it has also established the rules under which the appointment will be made since neither COTA or the MEA prescribe any particular process.

### Summary of Provincial Timelines

Timing	Step	Authority
At the next meeting of City Council (or next two meetings if vacancy due to death)	Declaring a seat vacant	COTA, s.207
Within 60 days of declaring the seat vacant	Selecting a Method of filling the vacancy	COTA, s. 208(3)
<b>Options</b>		
Up to March 31 in election year	Must fill by by-election or appointment	COTA, s. 208(3)
Between March 31 and 90 days before election day	Must fill by appointment only; by-election prohibited	MEA, s. 65(1)
Within 90 days of election day	May fill by appointment or may leave the office vacant; by-election prohibited	COTA, s. 208(3) and MEA, s.65(1)

## **City Council Adopted a Policy in 2000**

City Council adopted a policy on February 1-3, 2000 establishing an earlier cut-off date for the holding of by-elections. The policy provides that vacancies occurring on or before November 30 in the year before a regular election be filled by by-election, and vacancies occurring afterwards be filled by appointment.

City Council adopted this policy when the term of office for Members of Council was three years. The Province increased the term of office to 4 years effective with the 2006-2010 term.

## **Is a Policy on Selection of a Method Beneficial?**

There is little benefit in having a policy on the selection of a method in advance of vacancies occurring. In fact, the additional timelines have the potential to complicate the decision-making process.

First, each vacancy will have its own circumstances, and the policy is not binding on City Council. City Council must make the decision in each case.

Second, having a policy does not save time or simplify decision-making since the steps in Provincial law must be followed in any case.

## **The Case for Case-by-Case**

Since City Council must meet to declare offices vacant and subsequently choose the method of appointment, the City Clerk recommends that Council not constrain itself by pre-determining the method in advance. Instead it should consider all of the circumstances, including the timing, to address vacancies as they occur.

## **Processes when appointment is the selected method**

When City Council has opted for appointment as the method of filling a vacancy in the past, it has used two variations of process. In some cases City Council has heard from applicants directly before accepting nominations and voting on an appointee.

In more recent cases City Council has added an additional round of presentations by candidates at the respective community council. This has added additional time and steps to the process and in some instances may seem an unnecessary duplication of effort.

In any event, City Council must make the appointment. City Council may not delegate the filling of a vacancy to the community council.

As with the method of filling the vacancy itself, when City Council decides to fill a vacancy through appointment, it should adopt a process that is specific to the circumstances at the time the vacancy occurs. This will allow City Council to select the right combination of tools and processes such as nominations, interviews and public meetings that fit the situation.

## **Alternatives Considered**

Alternatives to these recommendations include:

- Do nothing, and leave the 2000 policy in place
- Amend the prevailing policy by establishing different timing or conditions for the appointment vs. by-election methods

In both cases however, the resulting policy will not be binding on City Council when vacancies occur and City Council will still be required to select a method based on the situation at hand.

## **CONTACT**

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## **SIGNATURE**

City Clerk

## **ATTACHMENTS**

Attachment 1 – List of Council Vacancies Since Amalgamation

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(April 29, 2014)

Year	Declared Vacant	Office	Ward	By-Election	Appointment	Comments
1999	July 29, 1999 December 14, 1999	Councillor Councillor	16 Scarborough Highland Creek 6 North York Humber	September 23, 1999	February 1, 2000	By-law 516-1999
2000 *	February 1, 2000	Councillor	21 Toronto Davenport		March 1, 2000	
2001	October 4, 2001	Councillor	31 Beaches East York	December 3, 2001		By-law 869-2001
2003 *	February 7, 2003 March 26, 2003	Councillor Councillor	30 Toronto-Danforth 17 Davenport		March 26, 2003 May 22, 2003	By-law 96-2003 By-law 182-2003
2005	December 8, 2005 December 7, 2005	Councillor Councillor	20 Trinity-Spadina 41 Scarborough-Rouge River		January 31, 2006 January 31, 2006	By-law 1076-2005 By-law 1054-2005
2006 *	June 29, 2006	Councillor	35 Scarborough Southwest		July 25, 2006	By-law 555-2006
2013	August 26, 2013	Councillor	3 Etobicoke-Centre		October 10, 2013	By-law 1236-2013

\*election years