

## **Declaring the Office of Councillor, Ward 2 – Etobicoke North Vacant and Deciding the Method to Fill the Vacancy**

**Date:** April 25, 2016  
**To:** City Council  
**From:** City Clerk  
**Wards:** All

### **SUMMARY**

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This report outlines for Council's consideration the options for filling the vacancy in Ward 2 – Etobicoke North, as a result of the recent passing of Councillor Rob Ford. 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 either by appointment or by conducting a by-election. If a by-election is adopted, Council must establish the dates and hours for the advance vote and decide whether to authorize a contribution rebate program.

### **RECOMMENDATIONS**

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The City Clerk recommends that:

1. City Council declare the office of Councillor, Ward 2 – Etobicoke North to be vacant.
2. City Council adopt one of the following options to fill the vacancy:

#### **Option A – Appointment**

a. City Council fill the vacancy by appointing a person qualified to hold office in the City of Toronto at a special meeting to be held on Thursday, June 9, 2016 at 9:30 a.m. in the Council Chamber, in accordance with the following:

1. The City Clerk shall advertise the vacancy inviting any interested and qualified applicants to seek appointment to City Council;

2. Interested persons shall complete a Consent of Nominee and Declaration of Qualification and provide personal identification showing their name and qualifying address within the City of Toronto;
3. The deadline for submitting the required forms to the City Clerk shall be Friday, May 27, 2016 at 4:30 p.m.;
4. The City Clerk shall submit a report with the list of applicants for publication on the agenda of the June 9, 2016 City Council meeting;
5. Each applicant shall be provided the opportunity to address City Council for up to 5 minutes;
6. The order in which applicants address City Council shall be determined by lot drawn by the City Clerk when City Council begins its debate on the item;
7. Members of City Council shall be entitled to ask one question of each candidate;
8. City Council shall vote on the appointment by ballot in accordance with the Council Procedures; and
9. City Council shall enact a by-law confirming the appointment of the successful candidate to the office for the remainder of the term of the present Council.

OR

**Option B – By-election**

- b. Require that a by-election be held to fill the vacancy in Ward 2 – Etobicoke North; and
  1. establish the dates and hours of the advance vote as outlined in the draft bill at Appendix "A", as Saturday, July 16, 2016 and Sunday, July 17, 2016, from 10 a.m. to 6 p.m.
  2. 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 "B".
  3. direct the Deputy City Manager and Chief Financial Officer to adjust the City Clerk's Office 2016 operating budget to reflect the funds required to conduct the by-election.

## **FINANCIAL IMPACT**

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If Council chooses to fill the vacancy by appointment, there will be minimal costs for advertising, printing and supplies, which can be absorbed in the 2016 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 as soon as possible after the Clerk has signed a certificate verifying the amount. 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 which are estimated to be approximately \$50,000.

Additional costs may also be incurred if any candidate in the by-election is subject to a compliance audit. 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.

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 2016 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**

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At its meeting of May 6, 2014, City Council rescinded its previous policy regarding filling vacancies on City Council, opting instead to consider the method of filling each vacancy as the occasion arises:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC51.7>

## **COMMENTS**

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### **Issue Background**

On March 22, 2016, Councillor Rob Ford (Ward 2 – Etobicoke North) passed away, leaving his seat on council vacant.

COTA states that when a vacancy on City Council occurs due to the death of a member, Council must officially declare the seat vacant at one of its next two meetings. Council must deal with the vacancy at its May 3 & 4 meeting as it will be the second meeting after the death of Councillor Ford.

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

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, 2018.

### **Option A – Filling the Vacancy by Appointment**

City 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 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:

- 18 years of age or older
- a Canadian citizen
- 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
- not be prohibited from holding municipal office or from voting under any Act.

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 Recommendation 2a which is the same process Council has followed for the most recent appointments in 2014 for Ward 5, Etobicoke-Lakeshore and Ward 20, Trinity Spadina.

If Council adopts this process, the City Clerk would advertise to invite applications from qualified electors for consideration by the City Council at a special meeting to be held at 9:30 a.m. on June 9, 2016.

### **Option B – Filling the Vacancy by By-election**

Council can also choose to fill the vacancy by by-election. Section 208 of COTA provides that within 60 days of Council declaring 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 meeting of May 3, 2016, nomination day would be Friday, June 10, 2016 and voting day would be Monday, July 25, 2016.

These dates have been chosen based on various factors including statutory holidays, long weekends and major events occurring during the same period.

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. In keeping with what has been done in previous by-elections, the Clerk recommends that Council establish advance vote dates and hours as follows:

Saturday, July 16, 2016 and Sunday, July 17, 2016, 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 "A".

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**

Section 82(1) of the Municipal Elections Act, 1996 ("MEA") provides that a municipality may, by by-law, authorize a contribution rebate program for the payment of rebates to individuals who make contributions to candidates for office on municipal council.

Should Council decide to implement a contribution rebate program for the Ward 2 by-election, it is recommended that the program parameters be the same as those for the 2014 general election. Attached as Appendix "B" is a draft bill outlining the conditions under which a person is entitled to a rebate and the formula for calculating the rebate amounts payable.

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 is likely to cost approximately \$50,000.

### **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.

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)).

## **Government Management and Audit Committee Vacancies**

The vacancy of the Ward 2 Councillor results in vacancies on the Government Management Committee and the Audit Committee. Customarily when vacancies occur, City Council assigns resulting committee vacancies to the incoming Councillor, in keeping with the requirement of the Council Procedures that every Member is required to sit on at least one standing committee.

## **CONTACT**

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## **SIGNATURE**

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Ulli S. Watkiss  
City Clerk

## **ATTACHMENTS**

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Appendix A – Draft Bill to Require a By-election and to Establish Advance Vote Dates and Hours  
Appendix B –Draft Bill for a Contribution Rebate Program