



REPORT FOR ACTION

Declaring a Vacancy in the Office of Councillor, Ward 22, Scarborough-Agincourt

Date: June 24, 2020

To: City Council

From: City Clerk

Wards: 22

SUMMARY

The purpose of this report is to advise Council of the vacancy in the office of Councillor Karygiannis for Ward 22, resulting from the Court of Appeal decision of June 24, 2020.

On November 6, 2019 the City Clerk served a notice of default on Jim Karygiannis pursuant to s. 88.23(3) of the Municipal Elections Act (the "Act"). This notice advised him that he had filed a financial statement that showed on its face that he had incurred expenses exceeding what was permitted. By operation of law, he had forfeited the office of Councillor for Ward 22. Mr. Karygiannis applied to the Superior Court of Justice seeking relief from forfeiture. The Superior Court granted him this relief on November 25, 2019, and he resumed the office of Councillor for Ward 22 at the time. The Superior Court of Justice decision was appealed by a member of the public and the Court of Appeal has set it aside, issuing a declaration that Mr. Karygiannis is subject to the penalties imposed by section 88.23(2) of the Act, which include the forfeiture of his seat as City Councillor for Ward 22. The Court of Appeal's decision was issued on, and is of force and effect as of, June 24, 2020.

The report recommends that City Council declare Ward 22 vacant as required by the City of Toronto Act, 2006. The report further recommends that City Council defer making a decision as to whether to fill the vacancy by appointment or by passing a by-law requiring a by-election until the September 30, 2020 Council meeting, pursuant to authority established by Ontario Regulation 73/20, an Order made under section 7.1(2) of the Emergency Management and Civic Protection Act.

The City Clerk will report further to the September 30, 2020 Council meeting with options to fill the vacancy including costs, timelines and pandemic considerations associated with those options.

RECOMMENDATIONS

The City Clerk recommends that:

1. City Council declare a vacancy in the office of Councillor, Ward 22 – Scarborough Agincourt.
2. City Council defer making a decision as to whether to fill the vacancy by appointment or by passing a by-law requiring a by-election until the September 30, 2020 Council meeting, pursuant to authority established by Ontario Regulation 73/20, an Order made under section 7.1(2) of the Emergency Management and Civic Protection Act.

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FINANCIAL IMPACT

The financial impact of the vacancy and the filling of the vacancy will be outlined in the subsequent report from the City Clerk.

DECISION HISTORY

The City Clerk submitted a report (November 18, 2019) to City Council regarding the vacancy in Ward 22 and promised a supplementary report once the outcome of an application before the Superior Court of Justice by Mr. Karygiannis was known. The Clerk submitted a supplementary report to inform City Council that the Superior Court of Justice had granted an application by Mr. Karygiannis for relief from forfeiture under s. 88-23 of the Municipal Elections Act and that he had resumed the office of Councillor for Ward 22.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC12.2>

Issue/Background

On November 6, 2019 the City Clerk served a notice of default on Jim Karygiannis under s. 88.23(3) of the Municipal Elections Act, advising him that he had forfeited the office of Councillor for Ward 22.

Mr. Karygiannis made an application to the Superior Court of Justice seeking an order for relief from forfeiture of the office to which he was elected. In a decision dated November 25, 2019, Mr. Justice Chalmers granted Mr. Karygiannis relief citing s. 92(2) of the Municipal Elections Act which, in the context of the prosecution and conviction of a candidate for a campaign finance offence, provides that the penalties in s. 88.23(2) of the Act do not apply if the candidate, acting in good faith, committed the offence inadvertently or because of an error in judgement. The Court held that these good faith, inadvertence, and error in judgment exceptions also apply in the case of automatic penalties set out in s. 88.23(1) of the Act.

The order granting relief did not affect an ongoing compliance audit involving the Member, or the Compliance Audit Committee's discretion to determine whether to commence legal proceedings against him following receipt and consideration of an auditor's report.

COMMENTS

Jim Karygiannis has forfeited the office of Ward 22 Councillor

The Superior Court of Justice's decision granting Mr. Karygiannis relief from forfeiture was appealed by a member of the public. On June 24, 2020 the Court of Appeal released its decision and set aside the previous Superior Court of Justice decision. The Court of Appeal also issued a declaration that Mr. Karygiannis was subject to the automatic penalties imposed by section 88.23(2) of the Act. These penalties applied because Mr. Karygiannis filed a supplementary financial statement that showed on its face the candidate incurred expenses exceeding what was permitted under section 88.20(9) of the Act.

Section 88.23(2)(a) of the Act provides that Mr. Karygiannis forfeits the office to which he was elected. Section 88.23(2)(b) of the Municipal Elections Act provides that Mr. Karygiannis is ineligible to be elected or appointed to City Council until after the next regular election has taken place on October 2022.

City Council must declare the seat vacant

Section 204 of the City of Toronto Act, 2006 ("COTA") provides that the office of a member of Council becomes vacant if the member, among other things, forfeits his or her office under that or any other Act. COTA also requires that Council declare the office to be vacant at its next meeting which is the June 29, 2020 Council meeting.

Considerations to fill the vacancy

COTA requires City Council to appoint a person to fill the vacancy or pass a by-law requiring a by-election to fill the vacancy within 60 days after City Council declares the office to be vacant. This timeline would require Council to appoint a new Councillor or pass a by-law requiring a by-election by no later than August 28, 2020.

The COVID-19 public health emergency, the uncertainty as to how long the emergency will last, and the resulting limitations to the normal operation of the City and the daily life of its residents, are obstacles that will impact City's ability to meet COTA's requirement that a decision to appoint or pass a by-law to require a by-election take place 60 days after the office is declared vacant.

The Province of Ontario declared a state of emergency on March 17, 2020, and subsequently enacted Ontario Regulation 73/20, an Order made under section 7.1(2) of the Emergency Management and Civic Protection Act with respect to limitation periods. City Council has authority, under the terms of this regulation, to defer making a decision regarding how the vacancy can be filled until the September 30, 2020 of City Council.

This report recommends that the decision be deferred because of the above listed considerations.

Deferring this decision will enable Council to make a decision on whether to appoint or pass a by-law requiring a by-election to its meeting on September 30, 2020 when staff should be able to report with more certainty about the options available. Ontario Regulation 73/20 is currently in place until September 11, 2020. City Council will not be able to defer making its decision after that date unless Ontario Regulation 73/20 is extended.

The City Clerk will report to the September 30, 2020 Council meeting with further information to fill the vacancy including costs, timelines and pandemic considerations in the event that Council chooses to fill the vacancy through a by-election.

CONTACT

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SIGNATURE

Ulli S. Watkiss
City Clerk