

Declaring the Office of Councillor, Ward 44 – Scarborough East Vacant and Deciding the Method to Fill the Vacancy

Date: May 17, 2017

To: City Council

From: City Clerk

Wards: All

SUMMARY

This report outlines for Council's consideration the options for filling the vacancy in Ward 44 – Scarborough East, as a result of the recent passing of Councillor Ron Moeser. 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 for Councillor, Ward 44 vacant and may choose to fill the vacancy either by appointment or by conducting a by-election. If Council chooses to fill the vacancy by holding a by-election, Council must decide whether to authorize a contribution rebate program.

Should Council choose to fill the vacancy by conducting a by-election, this will have a significant operational impact to the allocation of staff resources for the planning and implementation of the 2018 municipal election, which will be take place in October 2018 (or in less than 18 months). Due to the considerable recent legislative amendments to the MEA, the successful planning and implementation of the MEA changes will be impacted if staff resources are diverted to planning and executing the by-election to fill this vacancy.

RECOMMENDATIONS

The City Clerk recommends that:

1. City Council declare a vacancy in the office of Councillor, Ward 44 – Scarborough East.
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 Wednesday, June 28, 2017 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 Monday, June 19, 2017 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 28, 2017 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 44 – Scarborough East, as outlined in the draft bill in Appendix "A"; and

1. Authorize a contribution rebate program for payment of rebates to persons who make contributions to candidates in this by-election, similar to the provisions that Council passed for the 2014 municipal election and the recent Ward 42 by-election, but updated to be consistent with the

recent amendments to the Municipal Elections Act, 1996, and as outlined in the draft bill in Appendix "B".

2. Direct the Deputy City Manager and Chief Financial Officer to adjust the City Clerk's Office 2017 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, which can be absorbed in the 2017 City Clerk's Office 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.

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 2017 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 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

Issue Background

On April 18, 2017, Councillor Ron Moeser (Ward 44 – Scarborough East) 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 24, 25 & 26 meeting as it will be the second meeting after the death of Councillor Moeser.

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 will 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 28, 2017.

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. The last date to hold a by-election is on Friday, September 8, 2017.

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".

Should Council choose to fill the vacancy by conducting a by-election, this will have a significant operational impact to the allocation of staff resources for the planning and implementation of the 2018 municipal election, which will be take place in October 2018 (or in less than 18 months). Due to the considerable recent legislative amendments to the MEA, the successful planning and implementation of the MEA changes will be impacted if staff resources are diverted to planning and executing the by-election to fill this vacancy.

Contribution rebate program

Section 82(1) of the 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 44 by-election, it is recommended that the program parameters be similar to the provisions that Council passed for the 2014 municipal election and the recent Ward 42 by-election, but with one minor exception.

The exception is a technical amendment to the contribution rebate program provisions to ensure consistency with the wording in the recently amended MEA, which no longer considers a donation of "\$25 or less" that is donated at a fundraiser to be a contribution. Accordingly, the provisions of the contribution rebate program should be amended so that contributions of "\$25 or less" will not receive a rebate. Previously, contributions of "less than \$25" were not eligible for a rebate.

Attached as Appendix "B" is a draft bill outlining the conditions under which an individual 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 88.33(16)) and "all costs in relation to the committee's operations and activities" (section 88.37(7)). The costs for any compliance audit proceedings will be funded from the Election Reserve.

Economic Development Committee, Scarborough Community Council, and City-School Boards Advisory Committee Vacancies

There are also vacancies on the Economic Development Committee, Scarborough Community Council and the City-School Boards Advisory Committee as a result of the death of Councillor Moeser. 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

Ulli S. Watkiss
City Clerk

ATTACHMENTS

Appendix A – Draft Bill to Require a By-election

Appendix B – Draft Bill for a Contribution rebate program

Appendix A

Draft By-law to require a by-election in Ward 44 - Scarborough East

Whereas the Office of Councillor, Ward 44 – Scarborough East 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

The Council of the City of Toronto enacts:

1. A by-election shall be held to fill the vacant council seat for Ward 44 – Scarborough East.

Enacted and passed on May, 2017.

Frances Nunziata,
Speaker

(Seal of the City)

Ulli S. Watkiss,
City Clerk

Appendix B

Draft By-law to authorize the payment of rebates to individuals who contribute to candidates for office on City Council in the 2017 Councillor Ward 44 by-election

Whereas subsection 88.11(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 individuals who make contributions to candidates for an office on the municipal council; and

Whereas subsection 88.25(11) of the Act states that the Clerk may provide for electronic filing under this section and may establish conditions and limits with respect to electronic filing, and the City has established conditions and limits related to electronic filing as set out in the Electronic Financial Filing System (EFFS) By-law, being City of Toronto By-law No. 1178-2009; and

Whereas candidates who choose to file financial statements and any required auditor's report (the "financial statement") electronically under the provisions of the EFFS By-law must also file original financial statements with the Clerk of the municipality (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 the 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 enacts:

1. The payment of rebates to individuals who make contributions to candidates for an office on the municipal council for the 2017 Councillor Ward 44 by-election is authorized.
2. An individual who, during the 2017 Councillor Ward 44 by-election, makes a contribution to a candidate for an office on the Council of the City of Toronto may, on or after the first day of nominations for this by-election, apply to the Clerk for a rebate.
3. Notwithstanding section 88.15 of the Act, only a contribution of money will be eligible for a campaign contribution rebate.
4. All contributions must comply with sections 88.8, 88.9 and 88.15 of the Act.
5. 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.

6. Despite sections 5, 7, 8, 11 and subsections 12A and 12C of this by-law, 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 5, 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.
7. The application for rebate shall be in the form established for that purpose by the Clerk.
8. 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.
9. 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 88.25(1) to (7) of the Act; and
 - B. Shall include with the documents filed under subsection 88.25(1) or (5) 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.
10. 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 88.24(1) of the Act, will not be eligible to receive a rebate until after the candidate's campaign closes and the final document is filed under subsection 88.25(4) of the Act or subsection 12D of this by-law.
11. The Clerk shall compare the receipt filed by the applicant and the copy filed by the candidate to ensure consistency.
12. The Clerk shall pay the applicant a rebate in accordance with sections 13 and 14 of this by-law if the following conditions are met:
 - A. The application complies with sections 5, 7 and 8 of this by-law;
 - B. The candidate has complied with section 9 of this by-law;
 - 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 the Act by relevant filing dates set by ss. 88.30(1), (2) and 88.32 of the Act or by court order under s. 88.23 of the Act and that no such document shows on its face that the candidate has incurred expenses exceeding what is permitted under section 88.20 of the Act;

E. The Clerk is satisfied that the candidate has paid any surplus in accordance with the provisions of sections 88.31 and 88.32 of the Act within the time period stipulated in that section; and

F. The time for an application for a compliance audit under section 88.33 of the Act has expired and any proceedings in relation to a compliance audit have been completed.

13. Calculation of Rebate.

A. Subject to section 14 of this by-law, the rebate shall be calculated as follows:

(1) If the contribution is \$300.00 or less, the rebate is 75 per cent of the contribution;

(2) 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;

(3) If the contribution is more than \$1,000.00, the rebate is the lesser of:

(a) \$575.00 plus $33\frac{1}{3}$ per cent of the difference between the contribution and \$1,000.00; or

(b) \$1,000.00.

B. Contributions of \$25.00 or less will not receive a rebate.

14. 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:

(a) \$575.00 plus $33\frac{1}{3}$ per cent of the difference between the total and \$1,000.00; or

(b) \$1,000.00.

D. Contributions of \$25.00 or less will not receive a rebate.

15. 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.

16. If candidates choose to participate in the Electronic Financial Filing System (EFFS), the following provisions apply:

A. 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 EFFS By-law.

B. Despite section 8 of this by-law, contribution receipts issued through the EFFS must have either the original or electronic signature of the candidate or their designate.

C. Despite subsection 9B of this by-law, 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 EFFS. Candidates must still attach copies of their campaign expense invoices to the original financial statement filing.

D. Despite subsection 9B of this by-law, candidates must submit their electronic contribution receipts, as part of filing their electronic financial statements through the EFFS, within 48 hours of filing the original financial statements with the Clerk, and no later than within 48 hours after the filing deadlines set out in the Act, whichever is earlier.

Enacted and passed on May , 2017.

Frances Nunziata,
Speaker

Ulli S. Watkiss
City Clerk

(Seal of the City)