

Deciding the Method to Fill the Vacancy in Office of Councillor, Ward 22 - Scarborough Agincourt

Date: October 21, 2020
To: City Council
From: Interim City Clerk
Wards: All

SUMMARY

At its September 30, October 1 and 2 meeting, City Council declared a vacancy in the office of Councillor, Ward 22 - Scarborough Agincourt, and deferred the decision as to whether to fill the vacancy by appointment or by-election.

The City of Toronto Act, 2006 provides that Council, within 60 days after the day the office is declared vacant, either fill the vacancy by appointing a person or pass a by-law requiring that a by-election be held to fill the vacancy. The 60-day clock started with the Supreme Court of Canada's decision on September 24.

RECOMMENDATIONS

The City Clerk recommends that:

1. 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 Friday, November 20, 2020 at 9:30 a.m., 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, November 13 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 November 20 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 procedures to be determined by the City Clerk; 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 22 – Scarborough Agincourt, 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 the by-election as outlined in the draft bill in Appendix "B".
2. Direct the Chief Financial Officer and Treasurer to increase the City Clerk's Office 2021 Operating Budget by \$550,000 gross and \$0 net to reflect the funds required to conduct the by-election, and to increase the City's 2021 Contribution Rebate budget in Non-Program by \$150,000 gross and \$0 net through the 2021 Budget Process to administer the contribution rebate program related to a by-election to fill the vacancy in Ward 22, both fully funded from the Election Reserve.

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 City Clerk's Office 2020 Operating Budget.

If a by-election is conducted, the total cost including the contribution rebate program and mail-in voting program is estimated to be approximately \$700,000. The estimated costs of a Ward 22 by-election are higher than previous by-elections due to the ward being significantly larger under the 25 ward model, COVID-19 related costs such as personal protective equipment and costs related to a mail-in ballot program. The Municipal Elections Act, 1996 requires the municipality to pay the costs incurred to conduct a by-election for a vacancy on council as soon as possible after the City Clerk has signed a certificate verifying the amount.

The cost for administering the by-election would be approximately \$550,000, requiring an increase to the 2021 Operating Budget of the Office of the City Clerk with funding fully recovered from the Election Reserve, which will be included in the City Clerk's Office 2021 budget submission. The contribution rebate program for candidates of approximately \$150,000 would be submitted for Council approval through the 2021 Budget process as part of the Non-Program Operating Budget submission, to be fully funded from the Election Reserve.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications.

DECISION HISTORY

At its September 30, October 1 and 2 meeting, City Council declared a vacancy in the office of Councillor, Ward 22 - Scarborough Agincourt, and deferred the decision as to whether to fill the vacancy by appointment.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC24.3>

COMMENTS

The City of Toronto Act, 2006 provides that Council, within 60 days after the day the office is declared vacant, either fill the vacancy by appointing a person or pass a by-law requiring that a by-election be held to fill the vacancy.

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. The Supreme Court of Canada decision on September 26, 2020 triggered the 60 day clock to process an appointment, meaning that the last possible date for Council to appoint a member is November 23.

Section 208 of the City of Toronto Act provides that Council may 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; and
- not be prohibited from holding municipal office or from voting under any Act.

However, the legislation does not specify how the appointment process is to occur. If Council chooses to fill the vacancy by appointment, staff recommend that Council adopt the process set out in Recommendation 1a which is the same process Council has followed for the most recent appointments in 2018 for Ward 41, Scarborough Rouge River, and Ward 33, Don Valley East.

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 November 20, 2020.

Option B – Filling the Vacancy by By-Election

Council can also choose to fill the vacancy by by-election. Section 208 of the City of Toronto Act, 2006 provides that Council may pass a by-law requiring a by-election to be held to fill the vacancy.

Under section 65 of the Municipal Elections Act, 1996, if Council determines that a by-election is to be held, the Clerk is responsible for setting the date for the close of nominations (nomination day), which cannot be less than 30 days but not 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 earliest voting day would therefore be Monday, January 11, 2021.

1. Contribution Rebate Program

Section 88.11(1) of the Municipal Elections Act, 1996 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 22 by-election, it is recommended that the program parameters be similar to the provisions that Council passed for the 2018 municipal election, with some minor revisions to the order and structure for ease of reading.

There is a technical amendment to the contribution rebate program provisions to ensure consistency with amendments to the Municipal Elections Act, 1996. The City Clerk is required to provide report(s) identifying each contributor who appears to have contravened any of the contribution limits under section 88.9. These reports must be forwarded to the Compliance Audit Committee for review. The City Clerk determined that, in order to meet these requirements, contribution rebates cannot be paid until after all financial statements—both initial and the supplementary—have been received, reviewed and a decision made by the Compliance Audit Committee.

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 the amount of the contributions. Based on the review of contributions from previous elections and by-elections, the rebate program is likely to cost approximately \$150,000.

2. Compliance Audit Proceedings

Following a by-election, any elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of the Municipal Elections Act, 1996 relating to election campaign finances may apply for a compliance audit of that candidate's election campaign finances.

The application is then considered by a Compliance Audit Committee, which decides whether to grant the application and appoint an auditor to conduct a compliance audit of the candidate's election campaign finances. The cost of this audit is dependent on a number of factors, including the size of the campaign and the complexity of the audit.

The Municipal Elections Act, 1996 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.

3. Over-Contribution Reporting

Section 88.34 of the Municipal Elections Act, 1996 requires the City Clerk to review all contributions reported by candidates on their financial statements to determine whether any contributors appear to have exceeded any of the contribution limits under section 88.9. The over-contribution report(s) are forwarded to the Compliance Audit Committee, who are required to consider each report and decide whether to commence a legal proceeding against the contributor(s). The City Clerk will retain an external auditor to fulfill this requirement and costs have been included in the estimated costs of the by-election.

4. Mail-In Voting Program in the Event of a By-Election

As a result of the COVID-19 pandemic, the City Clerk has been assessing ways that electors can vote that ensures their safety when casting a ballot. Jurisdictions that have run elections in the midst of the pandemic have been examined to identify leading practices for both voting places and alternative voting options. An overwhelming shift to mail-in voting has been observed in jurisdictions administering elections during the pandemic.

The City Clerk has determined that if City Council directs a by-election for Ward 22 in the current context of the pandemic, a mail in voting program, in addition to in-person voting places with public health protocols in place, will be required. The City Clerk will rely on her emergency powers under the Municipal Elections Act, 1996 to implement a mail in voting program as required at the time of the by-election and in consultation with the Medical Officer of Health. Section 53 of the Act provides authority to the City Clerk to declare an emergency if he or she is of the opinion that circumstances have arisen

that prevent the election being conducted in accordance with the Act and authorized the Clerk to make arrangements as he or she considers necessary for the conduct of the election. A mail-in voting program will provide an additional voting option while also reducing the number of electors in voting places and address the needs of electors with disabilities that make it difficult to attend a voting place.

Mail-in voting is new to the City of Toronto and the cost of the mail-in ballot program will be dependent upon many factors, including the number of electors that choose to vote by mail. Based on research from other jurisdictions and consultation with current vendors, a mail-in program for Ward 22 is estimated to cost approximately \$190,000.00. However, \$125,000 of this cost is to purchase, test and install a mail-in voting application that can also be used in the 2022 general election. A mail-in ballot program will likely be an important option in the 2022 general election if COVID-19 continues to be present in the community and a vaccine has not been fully deployed.

CONTACT

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SIGNATURE

John D. Elvidge
Interim City Clerk

ATTACHMENTS

Appendix A – Draft Bill to Require a By-election
Appendix B – Draft Bill for a Contribution rebate program

Appendix A

Draft Bill to Require a By-election

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 22 – Scarborough Agincourt.

Enacted and passed on October, 2020.

Frances Nunziata,
Speaker

(Seal of the City)

John D. Elvidge,
Interim City Clerk

Appendix B

Draft Bill for a Contribution rebate program

Authority: City Council Item XXX, as adopted by City of Toronto Council on XXX.

CITY OF TORONTO

BY-LAW XXX-2020

To authorize the payment of rebates to individuals who contribute to candidates for the Ward 22 office on City Council in the 2020 By-election.

Whereas subsection 88.11(1) of the Municipal Elections Act, 1996, provides that the City may, by by-law, provide for the payment of rebates to individuals who make contributions to candidates; and

Whereas subsection 88.25(1) of the Municipal Elections Act, 1996 provides that City Clerk may establish an electronic filing system for the financial statements of candidates;

The Council of the City of Toronto enacts for its 2020 by-election for the Ward 22 office on City Council:

1. Interpretation

A. In this By-law:

"candidate" means a candidate for an office on City Council;

"contribution" means a contribution of money; and

"Electronic Financial Filing System" means the electronic system for filing the financial statements of candidates established by the City Clerk.

B. Terms used in this By-law have the same meaning as in the Municipal Elections Act, 2006 unless otherwise indicated.

2. Candidate's Obligations

To participate in the contribution rebate program, a candidate must:

A. File an audited initial financial statement and, if applicable, any audited supplementary financial statement and any subsequent financial statement, with the City Clerk;

B. Include with all audited financial statements a copy of the receipt issued for each contribution and a copy of each campaign expense invoice; and

- C. If using the Electronic Financial Filing System:
- (1) Submit all financial data and contribution receipts through the Electronic Financial Filing System within 48 hours of filing any financial statement with the City Clerk; and
 - (2) Issue all contribution receipts electronically to every contributor to their campaign whether or not the contribution, on its own, is more than \$25.

3. Contributor's Obligations

To participate in the contribution rebate program, a contributor must:

- A. Submit a rebate application to the City Clerk, in the form and manner as determined by the City Clerk, that includes the original or electronic signature of the candidate or their designate, on or before 4:30 p.m. of the first day the City is open for business six months after the end of the supplementary reporting period.
- B. If the City Clerk determines that rebate applications may be submitted by mail, then despite subsection 3.A, where the City Clerk has not received a rebate application, but the contributor claims that their application was mailed in time, the contributor may certify this to the City Clerk, in the form established by the City Clerk. On receipt of the certification, the City Clerk is authorized to process that rebate application in accordance with this By-law.

4. Payment of the Rebate

- A. The following formula applies to a rebate:
 - (1) Total contributions of \$25 or less receive no rebate.
 - (2) If the total of the contributor's contributions to all candidates is \$300 or less, the maximum rebate that will be paid to the contributor is 75 per cent of that total.
 - (3) If the total of the contributor's contributions to all candidates is more than \$300 but not more than \$1,000, the maximum rebate that will be paid to the contributor is \$225 plus 50 per cent of the difference between that total and \$300.
 - (4) If the total of the contributor's contributions to all candidates is more than \$1,000, the maximum rebate that will be paid to the contributor is the lesser of:

- (a) \$575 plus 33⅓ per cent of the difference between the total and \$1,000; or
- (b) \$1,000.

B. The City Clerk shall pay a contributor a rebate if:

- (1) The candidate has complied with section 2 and:
 - (a) The time for an application for a compliance audit of the candidate's election campaign finances has expired with no application having been made;
 - (b) The Compliance Audit Committee, having considered an application for a compliance audit of the candidate's election campaign finances, has decided not to appoint an auditor or not to commence a legal proceeding; or
 - (c) Any legal proceeding commenced against the candidate by the Compliance Audit Committee has concluded without a conviction; and
- (2) The contributor has complied with section 3 and:
 - (a) The contributor has not been identified by the City Clerk as appearing to have exceeded any contribution limit;
 - (b) The Compliance Audit Committee, having considered the City Clerk's report identifying the contributor as appearing to have exceeded one or more contribution limits, has decided not to commence any legal proceeding; or
 - (c) Any legal proceeding commenced against the contributor by the Compliance Audit Committee has concluded without a conviction; and
- (3) The City Clerk is satisfied that:
 - (a) The receipt that the contributor filed and the copy or the receipt that the candidate filed are consistent by comparing both copies;
 - (b) The candidate has not incurred expenses exceeding what is permitted; and
 - (c) The candidate has paid any surplus to the City Clerk by the relevant date.

- C. Despite subsection 4.B, the City Clerk may decide to pay or not to pay a contributor a rebate if in their opinion it is reasonable to do so in the circumstances and the City Clerk's decision is final.

Enacted and passed on October, 2020.

Frances Nunziata,
Speaker

John D. Elvidge,
Interim City Clerk

(Seal of the City)