

## **Declaring the Office of Mayor Vacant and Filling the Vacancy**

**Date:** March 17, 2023

**To:** City Council

**From:** City Clerk

**Wards:** All

### **SUMMARY**

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This report outlines for City Council's consideration the requirements for filling the vacancy in the office of the Mayor as a result of John Tory's resignation.

On February 15, 2023, Mayor John Tory provided the City Clerk with a resignation letter which indicated that his resignation from office would take effect as of 5 p.m. on Friday, February 17, 2023.

The City of Toronto Act, 2006 and the Municipal Elections Act, 1996 together prescribe rules and impose deadlines with respect to filling a vacancy. Recent changes made by the Province of Ontario to the City of Toronto Act, 2006 require Council to fill a mayoral vacancy through a by-election, unless the vacancy occurs after March 31 in the year of a general election.

Subject to Council declaring the office vacant and passing a by-law requiring a by-election, the City Clerk has set the following mayoral by-election dates:

- Nominations will open on Monday, April 3 at 8:30 a.m.
- Nominations will close on Friday, May 12 at 2 p.m.
- Advance voting will take place from Thursday, June 8 to Tuesday, June 13
- By-election will be held Monday, June 26

The City Clerk will conduct the by-election in a similar manner to the October 24, 2022 general election.

### **RECOMMENDATIONS**

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The City Clerk recommends that:

1. City Council declare a vacancy in the Office of Mayor;

2. City Council require that a by-election be held to fill the vacancy in the Office of Mayor, as outlined in the draft bill in Appendix "A" and direct that the by-law come into force on April 2, 2023;

3. City Council authorize the City Clerk to amend Purchase Order Number 6044628 with DataFix, Division of Comprint Systems Incorporated, and increase the value of the contract by \$571,615, net of all taxes and applicable charges (\$581,676, net of HST recoveries), increasing the total contract value from \$2,599,235, net of all applicable taxes and charges (\$2,644,982, net of HST recoveries) to \$3,170,850, net of all taxes and applicable charges (\$3,226,657, net of HST recoveries), and to extend the validity date until December 31, 2024, under the same pricing, terms and conditions of the existing agreement and in a form satisfactory to the City Solicitor; and

4. City Council approve the in-year budget adjustment to amend the City Clerk's Office 2023 operating budget to reflect the funds required to conduct the by-election.

## FINANCIAL IMPACT

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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 verified the amount.

From an administrative point of view, a by-election for Mayor of Toronto requires the same efforts as a general election. The City Clerk will conduct the by-election in a similar manner to the October 24, 2022 general election, at an estimated cost of approximately \$13 million, exclusive of the City's contribution rebate program costs. The City Clerk will also implement a contribution rebate program for by-election candidates, for which rebate payments are estimated to cost approximately \$1 million.

The estimate also includes the contract amendment increase in the amount of \$571,615, net of all applicable taxes and charges (\$581,676, net of HST recoveries), and funding is included in the approved City Clerk's Office 2023 Operating Budget, as noted in Table 1. This is required to support the City Clerk in delivering various externally hosted subscription services: Voters' List Management (VLMS), Voting Place Management (VPMS), Election Day Management (EDMS) and MyVote public web application.

Table 1: Contract Amendment Increase for DataFix (net of HST recoveries)

Item	Cost Centre	2023	Total
Computer - Software and Support Services	GV0017	\$581,676	\$581,676

Funding for the 2023 municipal by-election will be fully recovered from the Election Reserve Fund (XR1017) with net zero impact to the City Clerk's 2023 Budget.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information

## **DECISION HISTORY**

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City Council, at its meeting on February 7, 2023, amended Municipal Code Chapter 53, Elections, to re-introduce the requirement that candidates participating in the contribution rebate program submit copies of all campaign invoices with their audited financial statement, to take effect for future by-elections and general elections.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.EX2.5>

City Council, at its meeting on February 2, 2022, authorized the City Clerk to amend Purchase Order Number 6044628 with DataFix, Division of Comprint Systems Incorporated, and increase the value of the contract by \$563,035, net of all taxes and applicable charges (\$572,944, net of Harmonized Sales Tax recoveries), increasing the total contract value from \$2,036,200, net of all applicable taxes and charges (\$2,072,037, net of Harmonized Sales Tax recoveries) to \$2,599,235, net of all taxes and applicable charges (\$2,644,981, net of Harmonized Sales Tax recoveries), and to extend the validity date until June 1, 2023.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.EX29.10>

City Council, at its meeting on October 1, 2021, amended Municipal Code Chapter 53, Elections, to authorize a mail-in voting program for the City's municipal and school board elections and by-elections and to provide for the payment of rebates to individuals who make contributions to candidates for office on City Council in the City's municipal elections and by-elections.

<https://secure.toronto.ca/council/agenda-item.do?item=2021.EX26.1>

## **COMMENTS**

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### **Issue Background**

The City of Toronto Act, 2006 provides that when a vacancy on City Council occurs, Council must declare the seat vacant at its next meeting. Amendments to the City of Toronto Act, 2006 made by the Province of Ontario in the Strong Mayors, Building Homes Act, 2022 no longer allow Council the option of choosing to fill a vacancy by appointment or by-election: under the new rules, a by-election must be held to fill a mayoral vacancy unless the vacancy occurs after March 31 in an election year.

The timing of the by-election is determined by the City Clerk. Under the Municipal Elections Act, 1996, the City Clerk fixes the nomination day (i.e., the close of the nomination period) between 30 and 60 days after the passage of the by-law declaring an office vacant. The by-election occurs 45 days after nomination day.

As a result, the City Clerk has set the following Mayoral by-election dates, subject to Council declaring the office vacant and passing a by-law requiring a by-election:

- Nominations will open Monday, April 3 at 8:30 a.m.
- Nominations will close Friday, May 12 at 2 p.m.
- Advance voting will take place from Thursday, June 8 to Tuesday, June 13
- By-election will be held Monday, June 26

A variety of factors were considered in determining these dates, including holidays and ensuring that timelines could accommodate the level of preparation by Election staff required for a City-wide by-election.

A by-election for Mayor of Toronto operates at the same City-wide scale as a general election, requiring similar efforts and resources but under shorter timelines. To ensure success, the City Clerk will conduct the by-election in a similar manner to the October 24, 2022 general election.

### **Mail-in Voting and Contribution Rebate Program**

In October 2021—following the City's successful mail-in voting pilot in the by-election for the office of Councillor, Ward 22 - Scarborough Agincourt—Council passed a by-law amending Toronto Municipal Code Chapter 53, Elections to authorize a mail-in voting program for subsequent Toronto municipal elections and by-elections. The October 2022 general election saw the first City-wide implementation of mail-in voting, and this program will again be offered to all electors as an alternative voting option in the mayoral by-election.

Council also passed a by-law amending Toronto Municipal Code Chapter 53, Elections to authorize a contribution rebate program that provides for the payment of rebates to individuals who make contributions to candidates for office on City Council for all elections and by-elections. A contribution rebate program will be implemented for the mayoral by-election. Council recently further amended Municipal Code Chapter 53 to reinstate the requirement that candidates participating in the rebate program submit copies of expense invoices with their audited financial statement, and this requirement will be in effect for the by-election.

### **Extension of Voting Technology Services**

Toronto elections are administered through an integrated technology program that involves 14 inter-dependent information applications that support secure, accurate and efficient service delivery for the public, voters, candidates and third party advertisers.

In July 2016, the City issued Request for Proposal No. 3402-16-3059 seeking proponents to provide an externally hosted commercial off-the-shelf solution that was secure, scalable and flexible, and integrated with Toronto Election Technology Program applications. As a result, a five-year agreement was executed with DataFix under Purchase Order Number 6044628 to support the City Clerk in delivering various externally hosted subscription services: Voters' List Management (VLMS), Voting Place Management (VPMS), Election Day Management (EDMS) and MyVote public web

application. The DataFix solution also offered an integrated mail-in voting module that the City Clerk was later able to leverage.

This five year agreement with DataFix was later extended by one year to June 1, 2023 so that the DataFix solution could continue to be used to support the 2022 election, including the implementation of mail-in voting at a City-wide level. The City Clerk now seeks authority to further extend the agreement with DataFix to December 31, 2024 so that the DataFix solution can be used to support the mayoral by-election, as well as possible subsequent by-elections.

Amending the contract in order to extend services will support the City Clerk's objectives of ensuring fair and transparent service delivery to voters. The DataFix platform is a key enabler for meeting the City Clerk's service vision of creating an effective end-to-end online experience for the public during municipal elections.

City staff were in the process of issuing a new request for proposal to replace the existing subscription services and will now be delayed into 2024. Once the Mayoral by-election is concluded, the City Clerk will recommence the competitive procurement process to replace the DataFix services with a new agreement.

Both the Office of the Chief Information Security Officer and Technology Services have reviewed this report and will continue to be tasked with ensuring that City elections are conducted in a secure, protected and fair manner.

The Fair Wage Office reported DataFix has reviewed and understands the Fair Wage Policy and Labour Trades requirements and agreed to comply fully.

## **CONTACT**

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## **SIGNATURE**

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John D. Elvidge  
City Clerk

## **ATTACHMENTS**

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Appendix A – Draft Bill to Require a By-election for the Office of Mayor

## **Appendix A**

### **Draft By-law to require a by-election for the Office of Mayor**

Whereas the Office of Mayor has become vacant; and

Whereas section 226.10(1) of the City of Toronto Act, 2006 provides that, if a vacancy occurs in the office of head of council, the City shall require a by-election to be held, in accordance with the Municipal Elections Act, 1996, to fill the vacancy.

The Council of the City of Toronto enacts:

1. A by-election shall be held to fill the vacant Office of Mayor.
2. This by-law shall come into force on April 2, 2023.

Enacted and passed on

Frances Nunziata,  
Speaker

(Seal of the City)

John D. Elvidge,  
City Clerk