



Staff Report for Council Meeting

Date of Meeting: September 22, 2021

Report Number: SRCFS.21.049

Department: Corporate and Financial Services

Division: Office of the Clerk

Subject: **SRFCS.21.049 – Options to fill the Vacancy in the Office of Mayor**

Purpose:

To seek Council's direction to fill the vacancy in the Office of Mayor as a result of Mayor Dave Barrow's resignation effective September 15, 2021.

Recommendation(s):

- a) That staff report SRCFS.21.049 be received;
- b) That Council provide direction on filling the vacancy in the Office of Mayor.

Contact Person:

Stephen M.A. Huycke, Director, Legislative Services/City Clerk, extension 2529.

Ryan Ban, Manager, Legislative Services/Deputy City Clerk, extension 5547.

Report Approval:

Submitted by: Sherry Adams, Commissioner of Corporate and Financial Services

Approved by: Mary-Anne Dempster, City Manager

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), City Solicitor (as required), Commissioner, and City Manager. Details of the reports approval are attached.

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Background:

Effective September 15, 2021, by signed letter addressed to the Clerk, Mayor Dave Barrow resigned as Mayor of the City of Richmond Hill. Council will comply with the requirement in the *Municipal Act, 2001*, as amended, (the “Act”) to declare to the Office of Mayor vacant when it considers staff report SRCFS.21.048.

Section 263 of the Act requires Council to decide how to fill the vacancy in the Office of Mayor. Section 263 of the Act states:

263(1) If a vacancy occurs in the office of a member of council, the municipality shall, subject to this section,

- (a) fill the vacancy by appointing a person who has consented to accept the office if appointed; or
- (b) require a By-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996*.

Dual vacancies

(2) If the offices of a person who is a member of council of both a local municipality and its upper-tier municipality become vacant, the local municipality and not the upper-tier municipality shall fill the vacancy in accordance with subsection (1).

Rules applying to filling vacancies

(5) The following rules apply to filling vacancies:

1. Within 60 days after the day a declaration of vacancy is made with respect to the vacancy under section 262, the municipality shall,
 - i. appoint a person to fill the vacancy under subsection (1) or (4), or
 - ii. pass a by-law requiring a By-election be held to fill the vacancy under subsection (1).

In other words, within 60 days of Council declaring a vacancy in the Office of Mayor, Council must either:

- appoint a qualified person to fill the vacancy; or
- pass a by-law requiring a By-election to be held to fill the vacancy.

The Act does not have a default option to fill the vacancy. Council is required to choose one option on a majority vote.

To be elected or appointed to fill a vacancy on Council, a person must be qualified to be elected or hold office under Section 256 of the Act, which states:

256. Every person is qualified to be elected or to hold office as a member of a council of a local municipality,

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- (a) who is entitled to be an elector in the local municipality under section 17 of the *Municipal Elections Act, 1996*; and
- (b) who is not disqualified by this or any other Act from holding the office.

Section 17(2) of the *Municipal Elections Act, 1996*, as amended, (the “Municipal Elections Act” or “MEA”) provides that

17(2) A person is entitled to be an elector at an election held in a local municipality if, on voting day, he or she,

- (a) resides in the local municipality or is the owner or tenant of land there, or the spouse of such owner or tenant;
- (b) is a Canadian citizen;
- (c) is at least 18 years old; and
- (d) is not prohibited from voting under subsection (3) or otherwise by law.

Persons prohibited from voting

(3) The following are prohibited from voting:

1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
2. A corporation.
3. A person acting as executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
4. A person who was convicted of the corrupt practice described in subsection 90 (3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.

Council Vacancy Policy

On October 15, 2013, Council adopted a “Council Vacancy Policy” (Attachment “A”). The policy requires Council to adhere to the requirements of Section 263 of the Act as discussed above, and determine whether to hold a By-election or appoint a qualified individual to fill a vacancy. The policy states that, “In making its determination, Council will consider the costs and timelines associated with filling a vacancy by appointment.” The Policy also provides that if Council chooses to fill this vacancy by appointment, it can choose to fill the vacancy by either appointing a current Member of Council or any other qualified individual as outlined in Section 256 of the Act.

Based on the Act and Council Vacancy Policy, Council is required to determine if the vacancy in the Office of Mayor shall be filled by either:

- Option 1 - Holding a By-election;
- Option 2 - Appointing a current Member of Council to fill the vacancy; or

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- Option 3 - Appointing any another qualified individual to fill the vacancy.

Council also has the option to defer any decision on filling the vacancy for a short period of time of between 30 and 45 days (Option 4).

Each of these options, and the resolution to put these options into effect, are discussed further below. Included in the discussion is information on the cost and timelines associated with each option.

Procedure to Appoint an Individual to Fill a Vacancy

In addition to the Council Vacancy Policy, Council at its meeting on October 15, 2013, also approved “Procedures to Appoint an Individual to Fill a Vacancy” (the “Procedures”) (Attachment “B”). These Procedures set out the process to be followed if Council chooses to appoint either a current Member of Council or any other qualified individual to fill a vacancy.

The Procedures include the following requirements:

- The vacancy must be advertised on the City’s website and in the local newspaper for a minimum of four (4) consecutive weeks.
- Any individual, including a current Member of Council will be required to Submit a Council Vacancy Application form, and Declaration of Qualification to the City Clerk.
- A Council meeting will be held where:
 - Each candidate will be permitted to address Council for not more than ten minutes;
 - Each Member of Council will be permitted to ask one (1) question of each candidate;
 - Candidates will be sequestered in an adjacent room until it is their time to answer the questions posed by Council;
 - Once a candidate has answered the questions, they may remain in the Council Chambers.
- The winning nominee will be selected as follows:
 - When called upon by the Clerk, Members of Council will verbally vote for the nominee of their choice. Secret ballots are not permitted under the Municipal Act;
 - The Clerk will tabulate the voting results;
 - If no candidate receives a majority vote, the nominee or nominees receiving the least amount of votes will be excluded from further consideration;
 - Additional rounds of voting, excluding the nominee receiving the least number of votes, will take place until a nominee receives a majority vote;

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- Where the votes cast are equal for all nominees, and there are three or more nominees, the Clerk will by lot select one candidate to be excluded from the subsequent round of voting;
- Where there are only two nominees, and the vote is tied, the Clerk shall break the tie by selecting a nominee by lot (i.e. the Clerk selects the winner by drawing a name).

Staff note that the Procedures includes a rule that is contrary to the *Municipal Conflict of Interest Act*. Section 4(b) of the Procedures says:

Individuals seeking appointment to the position of Mayor and/or Regional and Local Councillor who are also current members of Council (nominees) shall declare a pecuniary interest.

This is contrary to the Section 4(g) of MCIA which states:

4. Sections 5 and 5.2 do not apply to a pecuniary interest in any matter that a member may have,
 - (g) by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general or special Act to fill such vacancy, office or position;

Option 1 –By-election

Under Section 263(5) of the Act, Council could direct that the vacancy be filled by By-election conducted under the *Municipal Elections Act, 1996*. If this option is selected, the Mayor for the remainder of the Term of Council would be elected by all eligible voters who choose to vote in the By-election.

Timing

Choosing to fill the vacancy in the Office of Mayor by By-election means that the Office of Mayor will be vacant for approximately three months from the date that Council passes the By-law to hold a By-election. Under Section 65(4) of the *Municipal Elections Act*, the Clerk is responsible for fixing the date of Nomination Day to be a day not less than 30 days and not more than 60 days after the Clerk receives a copy of a resolution indicating a By-election is required. Voting Day is 45 days after Nomination Day.

The Act purposefully gives the Clerk the authority to set Nomination Day in any By-election to permit the clerk the time required to prepare for and conduct a legislatively compliant election as determined by the Clerk. Because a By-election for the Office of Mayor would be a City-wide election, the preparations will be extensive and similar to a general election. The Clerk estimates that he will need the maximum amount of days (60 days plus 45) available to prepare the By-election.

If Council passes a by-law requiring a By-election at the September 22, 2021 Council meeting, Nomination Day will occur between **Friday October 22, 2021** and **Sunday**

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November 21, 2021. Voting Day would occur between **Monday December 6, 2021** and **Wednesday January 5, 2022.** Due to the Christmas Holiday period, especially from December 17, 2021 to January 5, 2022, the Clerk does not believe it is feasible to pass the required by-law at the September 22, 2022. If Council chooses to hold a By-election to fill the vacancy, it is recommended that the By-law not be passed until the October 13, 2021 Council meeting. If Council were to pass the By-law on October 13, 2021, Nomination Day would occur between Friday November 12, 2021 and Sunday December 12, 2021. Voting Day would be between Monday December 27, 2021 and Wednesday January 26, 2022.

A By-election would impact the 2022 Municipal Elections. The Office of the Clerk begins putting significant resources towards the planning and implementing a general election in October or November of the year prior (i.e. 2021). This will be impacted by any By-election held during this same period. Additionally, post-By-election legislative requirements, such as campaign financial filings and compliance audits, will also occur during key planning months of January to May. As a result, the Clerk will have to examine if it is feasible to implement changes or improvements to the 2018 election processes and procedures.

Additionally, choosing a By-election to fill the vacancy could result in Council having only eight (8) Members for a number of months beyond the actual By-election. For example, if a current Member of Council was elected to fill the vacancy that Member's seat on Council would then become vacant. Council would then have to decide how to fill that vacancy (By-election or appointment). If Council then decides to hold another By-election, that By-election would occur during the latter half of the first quarter of 2022.

By-election Costs

If Council chooses to fill the vacancy by By-election, it is estimated that the costs of conducting the By-election will be between \$575,000 and \$625,000. This estimate is based on the costs of the 2018 City-wide regular election at \$680,000, and the recent three ward 2020 Public School Board By-election cost of \$250,000. Unlike the 2020 Public School Board By-election, the By-election will be conducted using Paper Ballots and optical scan vote tabulators only (unless Council authorizes the use of internet voting as it did for the 2020 School Board By-election).

By-election Procurement

If Council chooses to fill the vacancy by By-election, it is recommended that the Clerk be given the authority to procure any goods, supplies and services needed to conduct the By-election notwithstanding anything in the City's Procurement By-law No. 113-16, as amended, and the Financial Control By-law No. 114-16. Given the tight time frames to administer a By-election, there is not enough time to go through fulsome procurement practices to acquire goods and services. That being said, if Council chooses to fill the vacancy by By-election, the Clerk expects that most goods and services will be supplied

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by vendors already under contract for the 2022 Municipal Elections or who have provided similar services in past elections.

COVID-19 Implications

In choosing to fill the vacancy by By-election, Council should take into consideration any potential COVID-19 impacts on voting. While Ontario has moved into Step 3 of the provincial governments re-opening plan, health and safety restrictions on in-person activities remain. Public Health reports that Ontario is currently in a fourth wave of the pandemic, and it is not possible to know what the public health situation will be in between November 2021 and January 2022.

It is reasonable to assume that some eligible voters such as seniors, the unvaccinated, those with pre-existing medical conditions and others will have concerns about attending an in-person voting location. There also may be challenges with facilitating voting in Seniors Residences and Long Term Care facilities. It is also expected, based on reports from Elections Canada, that the pandemic will significantly impact the Clerk's ability to establish voting locations (such as in schools) and recruit the required temporary Election Officials needed to conduct a By-election.

To mitigate this, Council could authorize the use of internet voting as an additional voting method (i.e. in addition to tabulators). Additional costs may be incurred if Internet Voting is used in addition to optical scan tabulators. The Clerk will minimize any associated costs by strategic decisions related to the procurement and deployment of tabulators and paper ballots. If Council chooses to authorize the use of Internet Voting as it did in 2020 Public School Board By-election it will need to adopt Option 1a in the resolution below.

Council Meetings

The Office of the Clerk is responsible for the delivery of legislatively compliant elections, as well as effective and efficient Council and Committee meetings. Any City-wide By-election will require most, if not all, staff in the Office of the Clerk to be dedicated to the By-election for a three to eight week period.

The effort for a City-wide paper ballot By-election will be exponentially greater than the 2020 Public School Board By-election held in only Wards 1, 2 and 4. To accommodate this, it is recommended that the Clerk be given the authority to cancel or move currently scheduled Council/Committee meetings as needed. The actual dates will be determined once Nomination Day and Voting Day have been set by the Clerk. It is expected that at least four to six weeks of meetings will need to be moved/cancelled to accommodate a By-election. If Voting Day is held in January 2022, there will be minimal changes to the Council/Committee meeting calendar, because there are no meetings normally scheduled for the last two weeks of December or the first two weeks of January

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Delegation of Authority during Council Recess

Council enacted By-law 86-20, a By-law to delegate certain powers and duties during a recess of Council of the Corporation of the City of Richmond Hill, to permit City Staff to continue to administer routine matters during Council recess periods. By-law 86-20 defines Council recess periods to include the summer recess (Mid-July to the end of August); the winter recess (mid-December to mid-January), and the general election recess (mid-September of a general election year to the start of the new Council term). To allow routine City business to continue uninterrupted, it is recommended that Council extend the authority in By-law 86-20 to include the period of time when Council is not meeting as a result of a By-election.

Option 1 – Resolution

- a) That the Clerk be directed to place a By-law requiring a By-election to be held to fill the vacancy in the Office of Mayor on the October 13, 2021 Council agenda for consideration and enactment;
- b) That, if the By-law requiring a By-election referred to in paragraph “a)” is enacted at the October 13, 2021 Council meeting, then:
 - i) The costs incurred by the Clerk to conduct the By-election to fill the vacancy in the Office of Mayor, including any post-election costs, be fully funded from the Tax Rate Stabilization Reserve;
 - ii) Notwithstanding anything in the Procurement By-law No. 113-16, as amended, and the Financial Control By-law No. 114-16, as amended, to the contrary, the Clerk be authorized to acquire any goods or services, and to enter into and execute any contracts which the Clerk deems necessary for the purpose of conducting a By-election to fill the vacancy in the Office of Mayor;
 - iii) Notwithstanding anything in the Procedure By-law No. 74-12, as amended, to the contrary, the Clerk be authorized to amend the 2021 and 2022 Council/Committee Meeting calendar, by cancelling or adding meetings to accommodate the 2021 By-election as determined by the Clerk;
 - iv) If, as a result of the cancellation of meetings by the Clerk in accordance with paragraph “b) iii)” of this resolution, no regular Council meetings shall be held for four or more consecutive weeks, the definition of “Recess Period” in By-law 86-20, a By-law to delegate certain powers and duties during a recess of Council of the Corporation of the City of Richmond Hill, as amended, is deemed to include those days between the last regular Council meeting held prior to the By-election and ending on the day prior to the first regular Council meeting following the By-election.

Option 1a – Authorize Internet Voting

- c) That the Clerk be directed to place a By-law authorizing the use of internet voting as an additional voting method for the By-election to fill the vacancy in the Office of Mayor, on the October 13, 2021 Council agenda for consideration and enactment.

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Option 2 – Appoint a current Member of Council to fill the Vacancy

Council could choose to fill the vacancy by appointing a current Member of Council to fill the vacancy. If this option is selected, the Mayor for the remainder of the current term of Council would be selected from among the current Members of Council. In this option:

- The Clerk would post notice of the vacancy for a four week period.
- Members of Council would be required to submit the application form and declaration required by the Procedures:
 - The Clerk would only accept applications from current Members of Council.
- A Special Council meeting would be held after the close of the four week notice period.
- Each candidate would be permitted to address Council for ten minutes.
- Members of Council would be permitted to ask each candidate one question.
- Candidates who have not been questioned would be sequestered until they had completed their own question and answer period
- Rounds of voting would be held to select the Mayor:
 - The Mayor would be chosen on a majority vote of Members of Council present at the meeting and voting;
 - The vote would be taken verbally;
 - Candidates who received the least amount of votes and ties would be eliminated from subsequent rounds of voting. If there is a tie for the least number of votes, the candidate removed from subsequent round of voting would be selected by the Clerk by lot (e.g. drawing the name of the person to be excluded from a hat);
 - If only two candidates remain and the vote is tied, the Mayor would be selected by the Clerk by lot (e.g. drawing the name of the winning person from a hat).
- Council would pass a by-law to appoint the Mayor, and the Clerk would administer the declaration of office.

Timing

Appointing a current Member of Council to fill the vacancy in the Office of Mayor could occur within four to six weeks. In this option, a Special Council meeting would be held within one week of the closure of the four week notice and application period.

Cost

The cost of filling the vacancy by appointing any qualified individual would be minimal and could be accommodated within the Clerk's operating budget. Any additional costs would generally only include the costs associated with advertising the vacancy.

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Option 2 – Resolution

- a) That the vacancy in the Office of Mayor be filled by appointing a current Member of Council to fill the vacancy.
- b) That the Clerk be directed to schedule a Special Council for the purpose of appointing a current Member of Council to fill the vacancy in the Office of Mayor in accordance with the “Procedures to Appoint an Individual to Fill a Vacancy”.

Option 3 – Appoint a qualified individual to fill the vacancy

Council could choose to fill the vacancy by appointing any qualified individual to the position. In this option any person who is qualified under the Act, including a current Member of Council, would apply to be appointed. In this option, the person appointed Mayor would be selected as follows:

- The Clerk would post notice of the vacancy for a four week period.
- Any qualified individual, including current Members of Council, would be required to submit the application form and declaration required by the Procedures.
- A Special Council meeting would be held after the close of the four week notice period.
- Each candidate would be permitted to address Council for ten minutes.
- Members of Council would be permitted to ask each candidate one question.
- Candidates who have not been questioned would be sequestered until they had completed their own question and answer period.
- Rounds of voting would be held to select the Mayor:
 - The Mayor would be chosen on a majority vote of Members of Council present at the meeting and voting;
 - The vote would be taken verbally;
 - Candidates who received the least amount of votes and ties would be eliminated from subsequent rounds of voting. If there is a tie for the least number of votes, the candidate removed from subsequent round of voting would be selected by the Clerk by lot (e.g. drawing the name of the person to be excluded from a hat);
 - If only two candidates remain and the vote is tied, the Mayor would be selected by the Clerk by lot (e.g. drawing the name of the winning person from a hat).
- Council would pass a by-law to appoint the Mayor, and the Clerk would administer the declaration of office.

Timing

Appointing any qualified individual to fill the vacancy in the Office of Mayor could likely occur within seven to eight weeks after the adoption of a resolution. This would permit the Clerk time to properly advertise the appointment process, receive applications, and

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prepare the applications for consideration at a Special Council meeting. In this option, a Special Council meeting would be held within two to three weeks of the closure of the notice and application period.

Cost

The cost of filling the vacancy by appointing any qualified individual would be minimal and could be accommodated within the Clerk's operating budget. Any additional costs would generally only include the costs associated with advertising the vacancy.

Option 3 – Resolution

- a) That the vacancy in the Office of Mayor be filled by appointing any qualified individual to fill the vacancy;
- b) That the Clerk be directed to schedule a Special Council for the purpose of appointing a current Member of Council to fill the vacancy in the Office of Mayor in accordance with the "Procedures to Appoint an Individual to Fill a Vacancy".

Option 4 – Defer Decision on Filling the Vacancy

Council can choose to defer the decision on filling the Vacancy. However, the decision can only be deferred for one week to October 1, 2021. Because the Procedures to Appoint an Individual to Fill a Vacancy require a minimum four week notice period, with a minimum one additional week needed to prepare for a Special Council meeting, if Council is considering an appointment of either a Member of Council or Qualified Individual to fill the vacancy, the decision must be made no later than October 1, 2021 to permit Council to appoint a qualified individual within 60 days of having declared the Office of Mayor vacant.

Option 4 – Resolution

- a) That Council defer consideration of Staff Report SRCFS.21.049, titled "Options to fill the Vacancy in the Office of Mayor," to a Special Council meeting to be scheduled by the Clerk for the week of September 27 to October 1, 2021.

Additional Council Vacancies may occur

As a result of any By-election or appointment it is possible that up to two additional Council vacancies could occur. If, for example, a current Regional or Local Councillor becomes Mayor by election or appointment then their current seat would become vacant. If a Ward Councillor is subsequently elected or appointed to fill the vacancy in the Office of Regional and Local Councillor, their ward seat would then become vacant. As part of its deliberations, Council should consider the impacts of potential additional vacancies on the operations of Council as well as their impact on the 2022 Municipal Elections.

It should be noted that Section 65(2) of the *Municipal Elections Act, 1996*, provides that "...no By-election shall be held to fill an office that becomes vacant after March 31 in the

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year of a regular election...”. This means that if any other vacancies occur before March 31, 2022, it is still possible for Council to choose to fill such vacancy by By-election or by appointment. Vacancies occurring after March 31 in a regular election year must be filled by appointment. Council is not, however, obligated to fill a vacancy that occurs after 90 days before Voting Day in a regular election year.

Regional Representation during Vacancy

Section 267(2) of the Act states that:

“If the offices of a person who is a member of council of both a local municipality and its upper-tier municipality become vacant and the vacancies will not be filled for a period exceeding one month, the local council may appoint one of its members as an alternate member of the upper-tier council until the vacancies are filled permanently.”

Council can choose to appoint a current Ward Councillor as an alternate Member of Regional Council until such time as the vacancy in the Office of the Mayor is permanently filled.

On February 24, 2021, Council appointed Ward 6 Councillor Chan to represent the City on Regional Council during Mayor Barrow’s leave of absence under the provisions of Section 267(1) of the Act which states that:

If a person who is a member of the councils of a local municipality and its upper-tier municipality is unable to act as a member of those councils for a period exceeding one month, the local council may appoint one of its members as an alternate member of the upper-tier council to act in place of the member until the member is able to resume acting as a member of those councils.

Councillor Chan’s appointment under Section 267(1) expired as a result of Mayor Barrow’s resignation. Section 267(1) is only applicable when a current Member of both Councils is unable to act as a member of both councils for a period exceeding one month” (i.e. during a medical leave). Section 267(2), on the other hand, applies if the office becomes vacant.

Council’s appointment of Ward 1 Councillor Beros as Regional Alternate under Section 268(1) of the Act is different than an appointment under Section 267(2) of the Act. A Regional Alternate appointed under Section 268 of the Act is only permitted to attend Regional Council meetings when a member is not able to attend a particular meeting (i.e. only occasionally). An Alternate Regional Councillor appointed under Section 267(2) assumes all the responsibilities and is permitted to attend all Committee meetings as well as Council meetings until the vacancy is filled.

Resolution to appoint an Alternate Regional Councillor

- a) That Council appoints Ward ____ Councillor _____ as an alternate member of Regional Council pursuant to Subsection 267(2) of the *Municipal Act*,

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2001, to act as an alternative Member of Regional Council until the vacancy in the Office of Mayor of Richmond Hill is filled permanently.

- b) The Clerk be directed to notify the Regional Clerk of the appointment of Ward ____ Councillor _____ as an alternate member of Regional Council pursuant to Subsection 267(2) of the *Municipal Act, 2001*.

Financial/Staffing/Other Implications:

If Council selects to fill the vacancy in the Office of Mayor by By-election (Option 1), it is estimated that the total cost of a By-election would be between \$575,000 and \$625,000. It is recommended that the full cost of a By-election, including any post-election expenses, be funded from the Tax Rate Stabilization Reserve.

Relationship to Council's Strategic Priorities 2020-2022:

The decision for the Council Vacancy Option help fulfill Council's Strategic Priority of a Strong Sense of Belonging and Financial Responsibility by ensuring that the way in which the vacancy of the Office of Mayor is done with consideration for participation and representation of Richmond Hill's residents in a fiscally responsible way.

Climate Change Considerations:

Climate change considerations are not applicable to this staff report.

Conclusion:

As a result of Mayor Barrow's resignation, the Office of Mayor is vacant. Council is required within 60 days of declaring the seat vacant to either appoint a qualified person to fill the vacancy, or pass a by-law requiring a By-election to be held to fill the vacancy.

Council has four options to fill the vacancy:

- Option 1 – Fill the Vacancy by By-election.
- Option 2 – Fill the Vacancy by appointing a current Member of Council.
- Option 3 – Fill the vacancy by appointing any other qualified individual.
- Option 4 – Defer the decision on filling the vacancy to the week of September 27 to October 1, 2021.

Council can also choose to appoint a current Ward Councillor as an Alternate Regional Councillor until the vacancy in the Office of Mayor is permanently filled.

Attachments:

The following attached documents may include scanned images of appendixes, maps and photographs. All attachments have been reviewed and made accessible. If you require an alternative format please call the contact person listed in this document.

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- Attachment “A” - Council Vacancy Policy – approved by Council on October 15, 2013
- Attachment “B” – Procedures to Appoint an Individual To Fill a Vacancy – approved by Council on October 15, 2013

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Report Approval Details

Document Title:	SRFCS.21.049 – Options to fill the Vacancy in the Office of Mayor.docx
Attachments:	- SRCFS.21.049 - Attachment A - Council Vacancy Policy approved 2013-10-15.docx - SRCFS.21.049 - Attachment B - Council Vacancy Procedures_October 15 2013.doc
Final Approval Date:	Sep 20, 2021

This report and all of its attachments were approved and signed as outlined below:

David Dexter - Sep 20, 2021 - 10:52 AM

Sherry Adams - Sep 20, 2021 - 11:59 AM

MaryAnne Dempster - Sep 20, 2021 - 12:58 PM

Policy

Policy Name:	Council Vacancy Policy
Policy Owner:	Director, Legislative Services/City Clerk
Approved by:	Council
Effective Date:	October 15, 2013
Date of Last Revision:	Initial; Policy
Review Date:	Beginning of new term of Council

Purpose:

The purpose of this policy is to provide for an accountable and transparent process for the filling of Council vacancies which occur during a term of office.

Policy Principles:

In accordance with the *Municipal Act, S.O. 2001, c.25*, when the seat of a member of council becomes vacant during the term of office, Council may fill a vacancy by appointing a person who has consented to accept the office if appointed, or requiring that a by-election be held to fill a vacancy in accordance with the *Municipal Elections Act, S.O., 1996, c.32*.

Definitions:

In this Policy, the following terms have the meanings set out below:

“Act”	means the <i>Municipal Act, S.O. 2001, c. 25</i> , as amended.
“Appointment”	means the appointment of a qualified individual, by majority vote of Council, to fill a vacancy on Council for the remainder of the current Council term.
“By-election”	means an election, other than a regular election, held to fill a vacancy on Council and that is conducted in accordance with Section 65 of the <i>Municipal Elections Act, 1996</i> , as amended.
“Candidate”	means any individual qualified to be elected to hold office as a member of Council in accordance with the Act.
“Clerk”	means the Clerk or his/her designate of the City of Richmond Hill as appointed by Council.

“Council”	means the Council of the City of Richmond Hill.
“Municipal Elections Act”	means the <i>Municipal Elections Act</i> , S.O., 1996, c.32, as amended
“Regular Election Year”	means the year established for a regular municipal election in accordance with the <i>Municipal Elections Act</i> , 1996, as amended.
"Term of Office"	means the period of time a Member is elected to hold office for which he/she is elected in accordance with the Municipal Elections Act, 1996, as amended.
“Vacancy”	means when a seat on Council has become vacant in a manner described in section 259 of the Act.

Scope

This policy applies to any vacancy on Council which occurs during the term of office.

Policy

General

The City of Richmond Hill is committed to an open, accountable and transparent government.

Within 60 days after the day a declaration of vacancy is made by Council according to Section 262 of the Act, Council shall determine whether to fill the vacancy by by-election or by appointment in accordance with the Act, subject to:

- (a) the limitation on filling a vacancy only by appointment if the vacancy occurs after March 31 in the year of a regular election set out in Section 65(2) of the Municipal Elections Act; and
- (b) the restriction on filling a vacancy that occurs within 90 days of voting day of a regular election in Section 263(5)(b) of the Act,.

In making its determination, Council will consider the costs and timelines associated with filling a vacancy by appointment or by by-election.

Eligibility Requirements

Any individual filling a vacancy must meet the eligibility requirements of office as outlined in the Act and the Municipal Elections Act, 1996 and as noted below:

- 18 years of age or older;
- a Canadian citizen;
- a resident of the City of Richmond Hill, or an owner or tenant of land in the City or the spouse of such an owner or tenant; and
- not prohibited from voting under any other Act or from holding municipal office.

Filling Vacancies by Appointment

The following processes shall be followed when filling a vacancy by appointment:

1. Vacancy in the Office of the Mayor

If a vacancy in the Office of Mayor is to be filled by appointment, Council may choose to fill the vacancy by appointing:

- a) a current Member of Council; or,
- b) any qualified individual as outlined in Section 256 of the Act.

2. Vacancy in the Office of a Regional/Local Councillor

If a vacancy in the Office of a Regional/Local Councillor is to be filled by appointment, Council may choose to fill the vacancy by appointing:

- a) a current Ward Councillor; or,
- b) any qualified individual as outlined in Section 256 of the Act.

3. Vacancy in the Office of a Ward Councillor

If a vacancy in the Office of a Ward Councillor is to be filled by appointment, Council may choose to fill the vacancy by appointing:

- a) any qualified individual as outlined in Section 256 of the Act.

4. Alternate Appointment to Regional Council

In accordance with Section 267(2) of the Act, if a vacancy occurs in the office of the Mayor or a Regional/Local Councillor and that vacancy will not be filled for a period exceeding one month, Council may appoint a Ward Councillor as an alternate member of the upper-tier Council (Regional Municipality of York) until the vacancy is permanently filled under the provisions of the Act and this policy.

Filling Vacancies by By-election

If a vacancy is to be filled by a by-election it shall be held in accordance with the *Municipal Elections Act, 1996*, as amended.

Roles and Responsibilities

Members of Council

- Council is responsible for the adoption and application of this policy.

Clerk

- The Clerk is responsible for the administration and interpretation of this policy, including advising Council on its application.

Related Documents

Municipal Act, S.O. 2001, c.25

Municipal Elections Act, 1996, c.32

Richmond Hill Council Vacancy Policy – Procedure to Appoint an Individual to Fill a Vacancy

Procedure

Procedure Name:	Procedure to Appoint an Individual to Fill a Vacancy
Parent Policy:	Council Vacancy Policy
Procedure Owner:	Corporate & Financial Services (Director, Legislative Services/City Clerk)
Approved by:	Council
Effective Date:	October 15, 2013
Date of Last Revision:	Initial Procedure
Review Date:	Beginning of new term of Council
Procedure Status:	New

Purpose

The following procedure will be used when appointing an individual to fill a vacancy on Council.

Definitions:

“Act”	means the <i>Municipal Act, 2001</i> , S.O. 2001, c.25, as amended.
“Chair”	means the member of Council presiding at the council appointment meeting.
“Clerk”	means the Clerk or his/her designate of the Town of Richmond Hill as appointed by Council.
“Council”	means the Council of the Town of Richmond Hill.
“Council appointment meeting”	means the regular or special council meeting called to appoint an individual to fill a vacancy.
“Lot”	means a method of determination by placing the names of the nominees on equal size pieces of paper and placed in a container with one name being drawn by the Clerk.
“Member”	means a current and sitting member of Council of the Corporation of the Town of Richmond Hill.
“Nominee”	means those individuals seeking to fill a vacancy on Council who meet the eligibility requirements and who have completed the requisite documentation as outlined in this procedure.

Procedures:

General

1. Council is required to declare a seat vacant in accordance with the Act.
2. Any individual filling a vacancy must meet the eligibility requirements of office as outlined in the Act and the *Municipal Elections Act, 1996* and as noted below:
 - 18 years of age or older;
 - a Canadian citizen;
 - a resident of the Town of Richmond Hill, or an owner or tenant of land in the Town or the spouse of such an owner or tenant; and
 - not prohibited from voting under any other Act or from holding municipal office.
3. If an employee of the Town of Richmond Hill seeks appointment to Council, the employee shall give Council written notice, in advance, of his or her intention to take unpaid leave. If the employee is appointed to office, they will be deemed to have resigned from their position with the Town immediately before making the declaration of office.

Filling a Vacancy by Appointment

1. The Clerk shall post a Council Vacancy notice (Appendix A) on the Town website and in the local newspaper for a minimum of four (4) consecutive weeks following Council's decision to fill a vacancy by appointment. The notice shall indicate Council's intention to appoint an individual to fill a vacancy and shall outline the nomination process.
2. A vote to fill a vacancy on Council by appointment shall occur at an open Special Council Meeting.
3. Any individual wishing to be considered for appointment to the vacancy shall complete and sign a Council Vacancy Application Form (Appendix B) and a Council Vacancy Declaration of Qualification (Appendix C) and submit the forms by the deadline established by the Clerk .
4. At the meeting, the following shall take place:
 - a. The Chair will make a short statement of the purpose of the meeting and the general order of proceedings to be followed.
 - b. Individuals seeking appointment to the position of Mayor and/or Regional and Local Councillor who are also current members of Council (nominees) shall declare a pecuniary interest.
 - c. The Clerk will provide to the Chair a list of the names of those individuals who have indicated, in writing, their interest in being appointed to the vacancy and the Chair will call for a motion from Council in the following form:

“THAT the following individuals, who have signified in writing that they are legally qualified to hold office and consented to accept the office if they are appointed to fill the vacancy, be considered for appointment to fill such vacancy.”

- d. Each of the nominees shall be afforded the opportunity to address Council for a period of not more than ten (10) minutes. The order of speaking will be determined by lot. (The Clerk shall place the names of all nominees in a container and randomly draw the names).
- e. Each member of Council will be permitted one (1) question to each candidate. Candidates will be sequestered in an adjacent room until it is their time to answer the questions posed by Council. Once a candidate has answered the questions, they may remain in the Council Chambers.
- f. Upon hearing all the submissions of the nominees, Council will proceed to vote as follows:
 - i. Members of Council will vote by way of public vote.
 - ii. Nominee names shall be displayed on the monitors in alphabetical order, in the Council Chambers by the Clerk.
 - iii. Members of Council shall vote for one nominee only.
 - iv. The Clerk shall call upon the members of Council in random order.
 - v. Members of Council shall verbally cast their vote.
 - vi. The Clerk shall tabulate the results.
 - vii. If the nominee receiving the greatest number of votes cast does not receive more than one-half the votes of all voting members of Council, the nominee or nominees who received the fewest number of votes shall be excluded from further consideration. The vote will be taken again by the Clerk and, if necessary, more than once, excluding in each successive vote the nominee or nominees who receive the fewest number of votes. This process shall be repeated until the nominee receiving the greatest number of votes has also received more than one-half of the votes of the voting members of Council;
 - viii. Where the votes cast are equal for all the nominees and if:
 - 1. There are three or more nominees remaining, the Clerk shall by lot select one such nominee to be excluded from the subsequent voting;
 - 2. Only two nominees remain, the tie shall be broken by selecting a nominee by lot, as conducted by the Clerk.
- g. Upon conclusion of the voting, the Clerk will note the nominee receiving the votes of more than one-half of the number of the voting members of Council or the nominee selected through section (f)(viii)(2).
- h. The appointment of the nominee shall be made by by-law. A by-law confirming the appointment shall be enacted by Council or Council shall direct the Clerk how to proceed further.

Roles and Responsibilities

Clerk

- The Clerk shall be responsible for interpreting and administering the Council Vacancy Policy and the Procedure to Appoint an Individual to Fill a Vacancy.
- The Clerk shall be responsible for conducting any by-election in accordance with the *Municipal Elections Act* and all applicable policy and procedure.

Related Documents:

Appendix A - Council Vacancy Public Notice Template

Appendix B - Council Vacancy Application Form

Appendix C - Council Vacancy Declaration of Qualification

Richmond Hill Council Vacancy Policy

Municipal Act, S.O. 2001, c.25

Municipal Elections Act, 1996, c. 32