



Staff Report for Council Meeting

Date of Meeting: February 9, 2022

Report Number: SRCFS.22.004

Department: Corporate and Financial Services

Division: Office of the Clerk

Subject: **SRFCS.22.004 - Options to fill the Vacancy in the Office of Ward 4 Councillor**

Purpose:

To seek Council's direction to fill the vacancy in the Office of Ward 4 Councillor as a result of David West's election as Mayor in the By-election held on January 24, 2022.

Recommendation(s):

- a) That staff report SRCFS.22.004 be received.
- b) That Council provide direction on filling the vacancy in the Office of Ward 4 Councillor.

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: Darlene Joslin, Interim 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:

David West was elected Mayor in the By-election held on January 24, 2022. Mayor West subsequently took the Declaration of Office on January 25, 2022. Council will comply with the requirement in the *Municipal Act, 2001*, as amended, (the “Act”) to declare Mayor West’s former Ward 4 Councillor seat vacant when it considers staff report SRCFS.22.003.

Section 263 of the Act requires Council to decide how to fill the vacancy in the Office of Ward 4 Councillor. 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*.

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).
2. Despite paragraph 1, if a court declares an office to be vacant, the council shall act under subsection (1) or (4) within 60 days after the day the court makes its declaration.
3. Despite subsections (1) to (4), if a vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy

Section 65(2) of the *Municipal Elections Act, 1996* states:

No by-election after March 31 in year of regular election

(2) Despite any Act, no by-election shall be held to fill an office that becomes vacant after March 31 in the year of a regular election and no by-election shall be held with respect to a question or by-law after March 31 in the year of a regular election unless it is held in conjunction with a by-election for an office

In other words, because the vacancy occurred prior to March 31, 2022, within 60 days of Council declaring the vacancy, Council must either:

- appoint a qualified person to fill the vacancy; or

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- 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,

- (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.”

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

- Option 1 - Appointing a qualified individual to fill the vacancy;
- Option 2 - Holding a By-election; or
- Option 3 – Defer the decision briefly

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 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;

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- Additional rounds of voting, excluding the nominee receiving the least number of votes, will take place until a nominee receives a majority vote;
- 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 the appointment meeting procedures may have to be adjusted as a result of the COVID-19 protocols, where Council Meetings are being held electronically or as hybrid meetings.

Option 1 – 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 would apply to be appointed. The person appointed Ward 4 Councillor would be selected as follows:

- The Clerk would post notice of the vacancy on the City's Website for a four (4) week period.
- Any qualified individual 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 (4) week notice period.
- The meeting would proceed as discussed above, including rounds to select the Ward 4 Councillor:
- Council would pass a by-law to appoint the Ward 4 Councillor, and the Clerk would administer the declaration of office (if the person appointed was present).

Timing

Appointing any qualified individual to fill the vacancy in the Office of Ward 4 Councillor could likely occur within five to six weeks after the adoption of a resolution. This would permit the Clerk time to advertise for the four weeks required by the Procedures, receive applications, and prepare the applications for consideration at a Special Council meeting. In this option, a Special Council meeting would be held within one to two weeks of the closure of the notice and application period.

Cost

The cost, if any, of filling the vacancy by appointing any qualified individual would be minimal and could be accommodated within the Clerk's operating budget.

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Electronic or Hybrid Council Meeting

It is expected that the appointment meeting will be held as either an electronic meeting or hybrid meeting due to the COVID-19 pandemic. Necessary adjustments to the appointment meeting procedures may be needed as a result. For example, it is anticipated that there will not be any way of sequestering applicants during the meeting. If additional changes to the meeting procedures are required, those would be communicated prior to the meeting.

Option 1 – Resolution

- a) That the vacancy in the Office of Ward 4 Councillor 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 Ward 4 Councillor in accordance with the “Procedures to Appoint an Individual to Fill a Vacancy” (the “Procedures”);
- c) The Clerk be authorized to make any necessary adjustments to the Procedures appointment meetings procedures as a result of the meeting being held as a fully electronic or hybrid in-person/electronic meeting (in accordance with Article 12 of the Procedure By-law 74-12), provided that the Clerk shall communicate any such changes to Council and applicants prior to the meeting.

Option 2 – 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 Ward 4 Councillor seat 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 by By-election means that the Ward 4 Councillor seat 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 in order to provide the Clerk the time required to prepare for and conduct a legislatively compliant election.

If Council passes a by-law requiring a By-election at the February 9, 2022 Council meeting, Nomination Day will occur between **Friday March 11, 2022** and **Sunday April 10, 2022**. Voting Day would occur between **Monday April 25, 2022** and **Wednesday May 25, 2022**.

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A By-election would impact the 2022 Municipal Elections. The Office of the Clerk normally begins putting significant resources towards the planning and implementing a general election in October or November of the year prior (i.e. 2021). The work to prepare for the October 24, 2022 regular municipal elections has already been impacted by the 2022 Mayoral By-election. To mitigate any impact, the Office of the Clerk has reduced its work plan commitments for the remainder of 2022. If a further By-election is held, additional impacts on other projects within the Office of the Clerk are anticipated.

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 \$115,000 and \$145,000. This estimate is based on the costs of the 2020 School Board By-election (\$250,000) and 2022 Mayoral By-election (the final costs of which are still being calculated). The estimate is also based three different possible voting methods, as follows:

- Paper Ballots with Vote Tabulators only (\$125,000 to \$135,000)
- Internet Voting only (\$115,000 to \$125,000)
- Paper Ballot with Vote Tabulators and Internet Voting (\$135,000 to \$145,000)

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 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. Ontario moved back into Step 3 of the provincial governments re-opening plan on January 31, 2022. Health and safety restrictions on in-person activities remain in Step 3.

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. It is also expected, based on experience from the 2022 Mayoral By-election, that there will be challenges with facilitating voting in Seniors Residences and Long Term Care facilities.

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By-election Voting Methods

Council has the option to select the voting methods for any by-election. Currently, the by-election would be conducted using Paper Ballots counted by Vote Tabulators as authorized by By-law 74-21. Council could choose to authorize:

- Internet Voting Only (Option 2a below); or
- Internet Voting with Paper Ballots and Vote Tabulators (Option 2b below)

The 2020 School Board By-election was conducted by Internet Voting only. The 2022 Mayoral By-election was conducted by both Paper Ballots/Vote Tabulators and Internet Voting. In the 2022 By-election, approximately 93% of the ballots cast were cast online.

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.

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 three to five weeks of meetings will need to be moved or cancelled to accommodate a By-election.

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 2 – Resolution

- a) That Council at its meeting on February 9, 2022 pass draft By-law 25-22, attached as Attachment “C” to staff report SRCFS.22.004, requiring the Clerk to conduct a By-election to be held to fill the vacancy in the Office of Ward 4 Councillor, which includes the following provisions:
 - i) The costs incurred by the Clerk to conduct the By-election to fill the vacancy in the Office of Ward 4 Councillor, including any post-election costs, be fully funded from the Tax Rate Stabilization Reserve;

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- 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 Ward 4 Councillor;
- iii) Notwithstanding anything in the Procedure By-law No. 74-12, as amended, to the contrary, the Clerk be authorized to amend the 2022 Council/Committee Meeting calendar, by cancelling or adding meetings to accommodate the 2022 Ward 4 Councillor 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 2a – Authorize Internet Voting Only

- b) That Council at its meeting on February 9, 2022 pass draft By-law 26-22, attached as Attachment “D” to staff report SRCFS.22.004, authorizing the use of Internet Voting as to only voting method for the By-election being held to fill the Vacancy in the Office of Ward 4 Councillor.

Option 2b – Authorize Internet Voting and Vote Tabulators

- b) That Council at its meeting on February 9, 2022 pass draft By-law 27-22, attached as Attachment “E” to staff report SRCFS.22.004, authorizing the use of Internet Voting as an additional voting method, in addition to Vote Tabulators (authorized by By-law 74-21), for the By-election being held to fill the Vacancy in the Office of Ward 4 Councillor.

Option 3 – Defer Decision on Filling the Vacancy

Council can choose to defer the decision on filling the Vacancy. However, the decision can only be deferred until **March 4, 2022** at the latest. Under Section 236(5) of the Municipal Act, Council must pass a by-law requiring a by-election, or complete the appointment of a qualified individual by **April 10, 2022** (60 days after declaring the seat vacant on February 9, 2022). 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 a Qualified Individual to fill the vacancy, that decision must be made no later March 4, 2022.

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Option 3 – Resolution

- a) That Council defer consideration of Staff Report SRCFS.22.0004, titled “Options to fill the Vacancy in the Office of Ward 4 Councillor,” to a Special Council meeting to be scheduled by the Clerk for the week of _____.

Financial/Staffing/Other Implications:

If Council selects to fill the vacancy in the Office of Ward 4 Councillor by By-election (Option 2), it is estimated that the total cost of a By-election would be between \$115,000 and \$145,000. 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 options to fill the Council vacancy 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 Ward 4 Councillor 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 David West winning the 2022 Mayoral By-election, and taking office on January 25, 2022, the Office of Ward 4 Councillor 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 three options at this time:

- Option 1 – Fill the vacancy by appointing any other qualified individual.
- Option 2 – Fill the Vacancy by By-election.
 - Option 2a – Authorize the By-election vote to be conducted by Internet Voting only; or
 - Option 2b – Authorize the By-election vote to be conducted by Internet Voting and paper ballots with vote tabulators.
- Option 3 – Defer the decision on filling the vacancy to a date no later than March 4, 2022

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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.

- 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
- Attachment “C” – Draft By-law 25-22 – A By-law requiring a By-election to fill the vacancy in the Office of Ward 4 Councillor
- Attachment “D” – Draft By-law 26-22 – A By-law Authorizing the use of Internet Voting as the only voting method for the By-election to fill the vacancy in the Office of Ward 4 Councillor
- Attachment “E” – Draft By-law 27-22 – 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 Ward 4 Councillor

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Report Approval Details

Document Title:	SRCFS.22.004 - Options to fill Vacancy in the Office of Ward 4 Councillor.docx
Attachments:	<ul style="list-style-type: none">- SRCFS.22.004 - Attachment A - Council Vacancy Policy approved 2013-10-15.docx- SRCFS.22.004 - Attachment B - Council Vacancy Procedures_October 15 2013_updated.doc- SRCFS.22.004 - Attachment C - By-law 25-22 - By-election to fill vacancy in Ward 4.docx- SRCFS.22.004 - Attachment D - By-law 26-21 - Internet Voting Only By-law.doc- SRCFS.22.004 - Attachment E - By-law 27-21 - Internet Voting additional Voting Method.doc
Final Approval Date:	Jan 31, 2022

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

David Dexter - Jan 31, 2022 - 4:18 PM

Sherry Adams - Jan 31, 2022 - 4:50 PM

Darlene Joslin - Jan 31, 2022 - 5:14 PM