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Communication
COUNCIL: June 5/17
CW Rpt. No. 21 Item 24

Date: June 5, 2017

To: Mayor and Members of Council

From: Barbara A. McEwan, City Clerk

Re: Local and Regional Councillor Vacancy
(Item 24, Report No. 21 of the Committee of the Whole)

Recommendation

The City Clerk, in consultation with the Deputy City Manager, Legal and Human Resources recommends:

1. That the options for filling the Local and Regional Councillor vacancy set out in this communication be brought forward for consideration at the June 20th, 2017 Committee of the Whole meeting;
2. That consideration be given to appointing a Ward Councillor as an alternate member on Regional Council, pursuant to Section 267(2) of the *Municipal Act, 2001* on an interim basis until the Local and Regional Councillor vacancy is permanently filled; and
3. That a copy of this communication be sent to the Clerk of the Regional Municipality of York.

Purpose

The purpose of this communication is to outline options for filling the vacant position of Local and Regional Councillor. This communication also clarifies the provisions of By-law 258-10 respecting the appointment of a Deputy Mayor and outlines an option for Council's consideration regarding the appointment of an alternate member on Regional Council until the vacancy is filled.

Background

Legislative Requirements for Filling a Council Vacancy

The *Municipal Act, 2001* sets out the legislative requirements for declaring and filling a vacancy resulting from the resignation of a Member of Council.

Declaration of Vacancy

Where there is a vacancy in the office of a member of council, Section 262(1) of the *Municipal Act, 2001* requires that the council must declare the vacancy at their next Council meeting. Formal declaration of the vacancy is anticipated at the June 5, 2017 Council meeting through the adoption of the recommendation set out in the Committee of Whole recommendation [Item 24, Report 21 of the Committee of the Whole].

Filling the Vacancy

Given the timing of the current vacancy, Section 263(1) of the *Municipal Act, 2001* requires that a vacancy on Council must be filled either by appointing a person to fill the vacancy, or conducting a by-election to fill the vacancy.

Under Section 263(5) of the *Municipal Act, 2001*, Council must either appoint a person to fill the vacancy, or pass a by-law requiring a by-election to be held to fill the vacancy, within 60 days after the day a declaration of vacancy is made. Accordingly, once the declaration of the vacancy is made at the June 5, 2017 Council meeting, the last day to appoint a person or pass a by-law requiring a by-election to be held is August 4, 2017.

Options for Filling the Vacancy

Option 1: Appointment

Council may choose to appoint an individual to fill the vacancy. The individual must be eligible to hold office in the City of Vaughan as confirmed by the City Clerk as of the date of the appointment and must consent to their appointment by Council. The *Municipal Act, 2001* does not prescribe a process to be followed in filling a vacancy by appointment.

Appointment processes that Council could consider include the following:

- Appointment of a Ward Councillor to the Local and Regional Councillor vacancy (and filling the Ward Councillor vacancy through either appointment or by-election); or
- Open call for individuals for consideration by Council through a public appointment process.

A recommended appointment process, should Council decide to select the appointment option, is set out in Attachment '1'.

The costs of undertaking an appointment process would depend on the process selected but could be up to \$5,000 (to cover advertising).

Option 2 - By-election

The legislative requirements and recommended timeline for conducting a by-election, should Council select this option, are set out in Attachment '2'

By declaring the office vacant on June 5, 2017, the decision to pass a by-law to authorize a by-election must be made no later than August 4, 2017. The City Clerk is responsible for setting the date of nomination day which cannot be less than 30 days and not more than 60 days after the passing of the by-law requiring the by-election. Voting day would then occur 45 days after nomination day. To ensure proper administration and optimal candidate and voter participation, it is recommended that Voting Day be held on October 30, 2017. This would require that the by-law requiring a by-election be passed at a Special Council meeting on July 17, 2017.

The following factors have been considered in setting a by-election date:

- allowing sufficient time to allow eligible persons to consider their candidacy;
- avoiding the summer holidays to maximize voter participation and ensure the availability of election workers;
- avoiding religious holidays for Voting Day and Advance Vote dates;
- ensuring sufficient time for the administration of the election, such as organizing voting locations, securing and testing voting equipment; and hiring and training election workers.

The campaign period would begin as soon as a candidate submits their nomination which can occur the day after the by-law requiring a by-election is passed. Should Council opt to fill the vacancy by way of a by-election, a decision would also be required on whether to authorize a contribution rebate program, similar to the program approved by Council for the 2014 municipal election. Attachment '3' sets out a draft by-law based on the same rebate structure previously approved by Council. Additional costs related to potential compliance audit proceedings are addressed in attachment 4.

The *Municipal Elections Act, 1996* requires that by-elections be conducted as far as possible in the same way as regular elections. The office of Local and Regional Councillor is elected at-large across the entire City, with the same number of eligible electors, voting locations and associated administrative costs as a regular election. The estimated cost of a city-wide by-election is \$1,000,000. A ward by-election is in the range of \$200,000 - \$250,000.

Municipal elections are funded through annual contributions to an election reserve, where funds are set aside to fund the regular municipal elections and any by-elections which may occur in intervening years. If Council chooses to proceed with the city-wide by-election option, this would likely lead to a shortfall in available reserve funding for the 2018 municipal elections, thus requiring an increase in the annual contribution to the election reserve in 2018 and possibly 2019.

Appointment of Deputy Mayor

With declaration of the Local and Regional Councillor vacancy, the office of Deputy Mayor is also vacant. Section 242 of the *Municipal Act, 2001* authorizes the appointment of a member of Council to act in the place of the Head of Council when the Mayor is absent or refuses to act or the office is vacant. City of Vaughan By-law 258-10, being a By-law to Appoint a Deputy Mayor, states that the Local and Regional Councillor who receives the highest number of votes at the last municipal election held in the municipality shall be the Deputy Mayor.

Local and Regional Councillor Mario Ferri is the Local and Regional Councillor who received the highest number of votes in the 2014 municipal election and should therefore assume the Deputy Mayor position in accordance with the By-law upon formal declaration of the vacancy.

Appointment of Alternate Member to Regional Council

Section 267 (2) of the *Municipal Act, 2001* states that where the vacancy is for a member of council for both a local municipality and its upper tier and the vacancy 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 vacancy is filled permanently.

Council may wish to consider appointing a ward Councillor as an alternate member of Regional Council until the Local and Regional Councillor vacancy is filled. Regional Council meetings are scheduled for the months of June, September and October 2017.


Conclusion

To better inform the public on the options for filling the Local and Regional Councillor vacancy, it is recommended that the options set out in this communication be brought forward for consideration at the June 20th, 2017 Committee of the Whole meeting. A final decision on the method of filling the vacancy would occur at the June 27, 2017 Council meeting.

Attachments

- Attachment 1 – Recommended Council Vacancy Appointment Procedure and Timeline
- Attachment 2 – By-election Timeline
- Attachment 3 – Draft Contribution Rebate By-law
- Attachment 4 – Compliance Audit Proceedings

Respectfully submitted,



Barbara A. McEwan
City Clerk

Recommended Council Vacancy Appointment Procedure

Section 263 of the *Municipal Act*, 2001 provides that Council may within 60 days after declaring the seat vacant, fill the vacancy by appointing a person who has consented to accept the appointment.

To be qualified to hold office, a person must be:

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

The *Municipal Act*, 2001 does not prescribe a process to be followed in filling a vacancy by appointment. Appointment options include the following:

- Appointment of a Ward Councillor to the Local and Regional Councillor vacancy (and filling the Ward Councillor vacancy either by appointment or a by-election);
- Open call for individuals for consideration by Council through a public appointment process.

A recommended process and timelines for each of these options is set out below

Procedure for Appointment of Ward Councillor to fill Council Vacancy

1. The Chair will request that any Member of Council interested in being nominated indicate their interest by raising his or her hand.
2. The Chair will call three times for additional expressions of interest. Hearing none, the Chair will request a motion to close the nominations.
3. Once the nominations are closed, the Chair will read aloud all the names of the Members of Council who have indicated their interest. The Chair will request a motion to adopt the names as a Slate of Nominees.
4. Nominee(s) will be offered a maximum of five (5) minutes each, with no extension, to speak prior to the first round of voting. The order of speakers will be drawn randomly by the City Clerk.
5. If the Slate of Nominees includes only one (1) Nominee, the City Clerk will declare that Nominee elected and a resolution will be prepared and submitted to Council for enactment.

Voting Procedure

6. If the Slate of Nominees includes more than one (1) Nominee, rounds of voting will be conducted as follows:
 - a. The City Clerk will provide Members of Council a ballot on which to indicate their choice of their Nominee.
 - b. The City Clerk will read out the names of all the Nominees alphabetically by surname.
 - c. Each Member of Council is entitled to vote for one (1) Nominee in each round of

voting.

- d. Members of Council must sign and print their name on the ballot. Ballots that do not contain both the name and signature of the Member will be rejected.
- e. Once the Member of Council has finished voting, they will fold their ballot in half and place it on the ledge in front of their desk for collection by the City Clerk.
- f. The City Clerk will read the ballots individually, indicating the vote of each Member of Council.
- g. If at the end of any round of voting, a Nominee receives the votes of more than one-half of the Members of Council present, the City Clerk will declare the Nominee to be elected and a resolution will be prepared and submitted to Council for enactment.
- h. 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 will be excluded from further consideration, subject to the following procedures:
 - i. Where a Nominee receives zero votes they will be automatically excluded from any further rounds of voting.
 - ii. Where there is a tie for the fewest number of votes received, the City Clerk will draw, from those Nominees that are tied for the lowest number of votes, all but 1 Nominee's name to continue in the subsequent round of voting. The name of the Nominee not drawn by the City Clerk will be excluded from the next round of voting.
- i. The vote will be taken again by the City Clerk and, if necessary, more than once, excluding in each successive vote the candidate or candidates who receive the fewest number of votes. This process will 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, or until a tie is broken in accordance with the tie-breaking procedures.
- j. In the event that there is a round of voting where all the Nominees receive an equal number of votes the following procedures will be followed:
 - i. Where there are 3 or more Nominees remaining, the City Clerk will draw all but 1 Nominee's name to continue in the subsequent round of voting. The name of the Nominee not drawn by the City Clerk will be excluded from the next round of voting.
 - ii. Where there are only 2 Nominees remaining, and they are tied, the City Clerk will break the tie by drawing the name of the successful Nominee. The City Clerk will declare the Nominee, whose name has been drawn by the City Clerk, to be elected and a resolution will be prepared and submitted to Council for enactment.

Procedure for Public Appointment to fill Council Vacancy

1. The City Clerk shall advertise the vacancy inviting any interested and qualified applicants to seek appointment to Council;
2. An information session will be held in early July to provide information to individuals interested in the appointment process;
3. 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 Vaughan;
4. The deadline for submitting the required forms to the City Clerk shall be July 12, 2017 at 4:30 p.m.;
5. The City Clerk shall review and certify the candidates that are eligible for consideration by Council;
6. The City Clerk shall submit a report with the list of applicants for publication on the agenda of a Special Council meeting to be scheduled for mid-July;

Special Council Meeting to Consider Appointment to Vacancy

7. Nominee(s) will be offered a maximum of five (5) minutes each, with no extension, to speak prior to the first round of voting. The order of speakers will be drawn randomly by the City Clerk.
8. If the Slate of Nominees includes only one (1) Nominee, the City Clerk will declare that Nominee elected and a resolution will be prepared and submitted to Council for enactment.

Voting Procedure

9. If the Slate of Nominees includes more than one (1) Nominee, rounds of voting will be conducted as follows:
 - a. The City Clerk will provide Members of Council a ballot on which to indicate their choice of their Nominee by placing an 'x' next to the nominee's name.
 - b. The City Clerk will read out the names of all the Nominees alphabetically by surname.
 - c. Each Member of Council is entitled to vote for one (1) Nominee in each round of voting.
 - d. Members of Council must sign and print their name on the ballot. Ballots that do not contain both the name and signature of the Member will be rejected.
 - e. Once the Member of Council has finished voting, they will fold their ballot in half and place it on the ledge in front of their desk for collection by the City Clerk.
 - f. The City Clerk will read the ballots individually, indicating the vote of each Member of Council.
 - g. If at the end of any round of voting, a Nominee receives the votes of more than one-half of the Members of Council present, the City Clerk will declare the Nominee to be

elected and a resolution will be prepared and submitted to Council for enactment.

- h. 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 will be excluded from further consideration, subject to the following procedures:
 - i. Where a Nominee receives zero votes they will be automatically excluded from any further rounds of voting.
 - ii. Where there is a tie for the fewest number of votes received, the City Clerk will draw, from those Nominees that are tied for the lowest number of votes, all but 1 Nominee's name to continue in the subsequent round of voting. The name of the Nominee not drawn by the City Clerk will be excluded from the next round of voting.
- i. The vote will be taken again by the City Clerk and, if necessary, more than once, excluding in each successive vote the candidate or candidates who receive the fewest number of votes. This process will be repeated until the candidate receiving the greatest number of votes has also received more than one-half of the votes of the voting Members of Council, or until a tie is broken in accordance with the tie-breaking procedures.
- j. In the event that there is a round of voting where all the Nominees receive an equal number of votes the following procedures will be followed:
 - i. Where there are 3 or more Nominees remaining, the City Clerk will draw all but 1 Nominee's name to continue in the subsequent round of voting. The name of the Nominee not drawn by the City Clerk will be excluded from the next round of voting.
 - ii. Where there are only 2 Nominees remaining, and they are tied, the City Clerk will break the tie by drawing the name of the successful Nominee. The City Clerk will declare the Nominee, whose name has been drawn by the City Clerk, to be elected and a resolution will be prepared and submitted to Council for enactment.

Public Appointment Process - Timelines	
Date	Activity
June 20	Committee of the Whole Committee consideration of options for filling vacancy
June 27	City Council Council decision to fill vacancy by appointment
June 28	Notice of Vacancy – Local Newspapers and Website
First week of July	Information Session for Prospective Applicants
July 12	Due date for applications
July 12 - 14	City Clerk reviews applications, eligible candidates certified for consideration by Council
July 19 to July 26 (TBD)	Special Council Meeting to hear depositions from candidates, appoint and swear in Local and Regional Councillor.

By-election Timeline

Various options for Voting Day have been determined, however staff recommend the following timeline to ensure proper administration and optimal candidate and voter participation:

Voting Day Monday, October 30, 2017

Monday, June 5, 2017 - Declaration of Vacancy

Monday, July 17, 2017 - Council to pass a by-law to conduct a by-election

Tuesday, July 18, 2017 - Nomination Period begins

Friday, September 15, 2017 – Nomination Day

Friday, October 20 – Sunday October 22, 2017 – Advance Vote Dates

Monday, October 30, 2017 – Voting Day

Thursday, December 14, 2017 – Candidate's Financial Statements due

Wednesday, March 14, 2018 – Contribution Rebate Applications due

Considerations:

- A Special Meeting of Council would be required on Monday, July 17, 2017 to pass the by-law requiring a by-election.
- The Advance Vote and By-election dates avoid Thanksgiving Monday and religious holidays.

Draft Contribution Rebate By-law

Section 88(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 a by- election, it is recommended that the program parameters be similar to the provisions that Council passed for the 2014 municipal election. A draft by-law is attached.

As a result of recent amendments to the *Municipal Elections Act, 1996*, candidates may no longer accept contributions from corporations and trade unions. These amendments will have no impact on the contribution rebate by-law as Council had previously only authorized rebates for contributions made by individuals (not corporations or trade unions).

Cost of Rebate Program

It is difficult to accurately estimate the cost of this program as it is dependent upon many factors including the number of candidates, the number of contributors and amount of the contributions. In the 2014 Municipal Election, a total of \$48,615 was paid out in contribution rebates.

The rebate is calculated as follows:

- The minimum contribution qualifying for a rebate is \$50.00;
- The rebate is 75 per cent of the contribution; and
- The maximum rebate is \$150.00, regardless of the number of contributions made by any individual eligible contributor.

THE CITY OF VAUGHAN

BY-LAW NUMBER XX-2017

A By-law to authorize the payment of rebates to persons who make contributions to candidates for the 2017 by-election.

WHEREAS Section 88(11) of the *Municipal Elections Act, 1996*, as amended provides that a municipality may, by by-law, provide for the payment of rebates to individuals who make contributions to candidates for an office on the municipal council;

NOW THEREFORE the Council of The Corporation of the City of Vaughan, pursuant to Section 88(11) of the *Municipal Elections Act, 1996*, enacts as follows:

1. The payment of rebates to eligible voters who are residents in the City of Vaughan who make financial contributions to candidates for an office on the municipal council for the 2017 Municipal By-election is authorized.
2. Notwithstanding Section 88.8 of the *Municipal Elections Act, 1996*, the following are not eligible for a contribution rebate:
 - a) contribution of goods and services;
 - b) contribution of inventory or money from a prior election;
 - c) contributions made by corporations, trade unions and non-resident electors
 - d) proceeds of fund raisers; and,
 - e) contributions made by the candidate and candidate's spouse, siblings, grandparents, parents, children, and grandchildren.
3. The application for rebate shall be in the form established for that purpose by the City Clerk, which shall include a receipt in the form provided by the Clerk that is signed by, or on behalf of, the candidate, subject to the following:
 - a) An individual who, during the 2017 Municipal By-election, makes a contribution to a candidate for an office on the municipal council may, on or after the date of the passing of this by-law, apply to the City Clerk for a rebate; and
 - b) Any application for rebate must be received by the City Clerk within 90 days after the campaign filing date March 14, 2018;
4. A candidate for an office on the municipal council who participates in the rebate program:
 - a) Shall comply with Sections 88.25 of the *Municipal Elections Act, 1996*; and
 - b) Shall include with the documents filed under Sections 88.25 of the *Municipal Elections Act, 1996*, as the case may be:
 - i. A copy of the receipt issued for the contribution

- ii. A list of contributors of \$50.00 or more
 - iii. An auditor's statement that the auditor has verified all contributions
- 5. A candidate who is not participating in the rebate program shall notify their contributors and obtain their consent in writing that their contribution will not be eligible for a rebate.
- 6. The City Clerk shall pay the contributor a rebate in accordance with Paragraph 7 of this by-law, if the following conditions are met:
 - a) the application by the contributor complies with the provisions of this by-law;
 - b) the candidate has complied with provisions of the Municipal Elections Act, 1996, and has filed a financial statement and auditor's report in accordance with Section 88.25 of the Municipal Elections Act 1996;
 - c) the City Clerk shall compare the receipt filed by the applicant and the copy filed by the candidate to ensure consistency, and is satisfied with the receipt filed by the applicant;
 - d) the City Clerk is satisfied that the candidate has filed documents required by Section 88.25 of the Municipal Elections Act, 1996, by the relevant filing date, and that no such document shows on its face that the candidate has incurred expenses exceeding what is permitted under Section 88.20 of the Municipal Elections Act, 1996;
 - e) the City Clerk is satisfied that the candidate has paid any campaign surplus to the Corporation of the City of Vaughan;
 - f) the candidate has agreed to participate in the rebate program established by this By-law; and,
 - g) the contributor is an individual residing in the City of Vaughan who was an eligible elector on the final voters list, as amended.
- 7. The rebate shall be calculated as follows:
 - a) the minimum contribution qualifying for a rebate shall be \$50.00;
 - b) the rebate shall be 75 per cent of contribution;
 - c) the maximum rebate shall be \$150.00, regardless of the number of contributions made by any individual eligible contributor.

Enacted by City of Vaughan Council this xxx day of xxx, 2017.

Hon. Maurizio Bevilacqua, Mayor

Barbara A. McEwan, City Clerk

Compliance Audit Proceedings

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

Cost of Compliance Audit Proceedings

The cost of an audit is dependent on several 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.