
TO: GENERAL COMMITTEE

SUBJECT: DECLARATION OF COUNCILLOR WARD SIX SEAT TO BE VACANT AND FILLING OF VACANCY

WARD: 6

PREPARED BY AND KEY CONTACT: D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES, EXT. 4421

SUBMITTED BY: D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES

GENERAL MANAGER APPROVAL: D. MCALPINE, ACTING GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES

CHIEF ADMINISTRATIVE OFFICER APPROVAL: C. LADD, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That in accordance with Section 262 of the *Municipal Act, 2001*, the office of Councillor - Ward Six, be declared vacant.
2. That an appointment process be utilized to fill the vacancy in the office of Councillor – Ward Six as outlined in Appendix “A” to Staff Report LCS011-17.

PURPOSE AND BACKGROUND

3. Under Section 259 (1) (d) of the *Municipal Act, 2001*, S.O. 2001 (the *Municipal Act*), the office of a member of council of a municipality becomes vacant if the member resigns from his or her office and the resignation is effective under section 260 of the Act.
4. In accordance with Section 260 of the *Municipal Act*, Councillor M. Prowse provided notice to the City Clerk of his resignation from his office as Councillor for Ward Six on Barrie City Council.
5. Section 262 of the *Municipal Act* requires City Council to adopt a resolution to declare the office to be vacant at its next meeting.
3. Under Section 263 of the *Municipal Act*, City Council has two options for filling the vacancy. These options are:
 - a) Appoint a qualified person who has consented to accept the office, if he or she is appointed; or
 - b) Hold a by-election in accordance with Section 65 of the *Municipal Elections Act, 1996*.
4. City Council's discretion is restricted only if the vacancy occurs after March 31st in the year of a regular municipal election, when City Council must fill the vacancy by way of an appointment. The only time a municipality is not required to fill a vacancy, is when the vacancy occurs within 90 days before a regular election.
5. A person appointed or elected to fill a vacancy holds the office for the remainder of the term of Council. There are less than 18 months remaining in the 48 month term of office for the 2014-2018 Council.

ANALYSIS

8. The following section of the report will address the appointment and by-election processes including advantages and disadvantages of each process:

Appointment

9. If the appointment process is chosen, a municipality must appoint an individual to fill the vacancy within 60 days of declaring the vacancy (August 17, 2017).
10. A person may be appointed if the person has consented to accept the office, and is eligible to hold office. Every person is eligible to hold office as a member of the Municipal Council if he/she:
- a) is entitled to be an elector in the local municipality under the *Municipal Elections Act*; and
 - b) is not disqualified by this or any other Act from holding office.
11. To be qualified to hold office, a person must meet the following qualifications:
- a) resides in the City of Barrie or is the owner or tenant of land in Barrie, 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 the *Municipal Elections Act* or disqualified from holding municipal office or otherwise by law.

Appointment Process

12. Council may approve an appointment process that permits any interested and qualified person to submit an application for appointment to Council in accordance with the Council Vacancy Appointment Procedure outlined in Appendix "A" to Staff Report LCS011-17.
13. An open call for applications from qualified candidates would be placed in the local newspapers and on the City's website for a minimum of ten (10) business days. During this time, interested and qualified candidates would be required to file applications with the City Clerk. In order to ensure that the process is open and transparent when Council is exercising its obligation to appoint a person to an otherwise elected office, a meeting to allow a short presentation from each of the candidates would be held. This process is based on best practices adopted by other municipalities to fill their vacancies through an appointment process.
14. If Council chooses to fill the vacancy by this appointment method, the following are the estimated timelines and related matters that would be carried out:

<u>Date</u>	<u>Action</u>
June 19, 2017	Council declares seat vacant and selects Option 1 – Appointment process
June 20, 2017 to July 4, 2017	City Clerk advertises for interested candidates to submit an application for appointment to Council (minimum of 10 business days)
Week of July 3 or 10, 2017	Open/Public Special Council meeting to allow presentations from the candidates; Council appoints a new Councillor and New Councillor takes Oath of Office

Advantages of Appointment

15. Some of the advantages of filling a seat through appointment are:
- Process can be completed very quickly thereby avoiding a prolonged period of time without ward representation;
 - It may be possible to appoint an individual with experience or skills that would permit them to “get up to speed” more quickly;
 - Less labour intensive and costly procedure than conducting a by-election (estimated \$2,000 in advertising related costs to seek persons interested in being appointed); and
 - Less likely to disrupt/jeopardize preparations for the 2018 Municipal Election.

Disadvantages of Appointment

16. Some of the disadvantages of filling a seat through appointment are:
- It is generally viewed as a less democratic process; and
 - It could be perceived that Council was affording an advantage to the individual appointed, if the individual decided to run in the next municipal election.

By-Election

17. Section 263 of the *Municipal Act* permits City Council to pass a by-law to provide that a vacancy on City Council be filled by way of a by-election. The by-election shall be held in accordance with Section 65 of the *Municipal Elections Act*.
18. Under Section 65 of the *Municipal Elections Act*, if City Council determines that a by-election is to be held, the City Clerk is responsible for setting the date of Nomination Day, which is to be a day not less than 30 days and not more than 60 days after the passing of the by-law indicating a by-election is required. Voting day is required to be held forty-five days after Nomination Day. Subject to specific provisions to address timing of legislative requirements for by-elections, by-elections are required to be conducted as far as possible in the same way as regular elections. As a result, the same general requirements and steps are required for a by-election as a regular Municipal Election.
19. If Council chooses to fill the vacancy by by-election, the following are the estimated timelines and associated matters that would be carried out:

<u>Date</u>	<u>Action</u>
June 19, 2017	Council declares seat vacant and selects Option 2 – By-election process
June 26, 2017	Council passes by-law requiring a by-election
June 27, 2017	City Clerk establishes procedures, applications, etc. and advises MPAC that a Preliminary List of Electors is required for a by-election. Notice of nomination period advertised.
Aug.18, 2017	Nomination Day (final day for submission of nominations). Nomination period closes at 2:00 p.m.
Week of Sept. 18, 2017	Voter notification packages mailed out
Sept. 23 to Sept. 30, 2017	Early voting opportunities
Oct. 2, 2017	By-election Voting Day (City Council meeting cancelled)

Oct. 23, 2017

New Councillor takes Oath of Office

21. The estimated cost of running a by-election is over \$50,000, which is based on the equipment, supplies, staffing, and other costs associated with conducting the by-election for Ward Seven in 2016.
22. It should be noted that voter turnout for by-elections can be much lower than voter turnout for a municipal election. The following outlines voter turnout for the last several Barrie by-elections and municipal elections:

Municipal Election Voter Turn Out

2003 - 30.05%

2006 - 30.35%

2010 - 40.01%

2014 – 31.24%

By-election Voter Turn Out

1995 (Ward 2) – 1,351 votes cast or 17.14%

Feb. 2001 (Ward 2) – 1,730 votes cast or 28.71%

Oct. 2001 (Ward 3) – 868 votes cast or 19.38%

Dec. 2012 (Ward 8) – 1,620 votes cast or 27.15%

Feb. 2016 (Ward 7) – 1,611 votes cast or 17.48%

Advantages of By-election

23. The advantage of filling a seat through a by-election is that it ensures a democratic process for constituents.

Disadvantages of By-election

24. Some of the disadvantages of filling a seat through a by-election are:
- It is substantially more costly than appointment, as a by-election for Ward Six is estimated to cost in excess of \$50,000;
 - A by-election is a longer process than filling the vacancy through appointment resulting in a prolonged period of time without ward representation (anticipated to be at least two to three months longer than an appointment);
 - It is substantially more labour intensive and costly from a staffing perspective, impacting the timing of other planned work in the Legislative and Court Services Department and other departments including Access Barrie and the Information Technology Department; and
 - Due to the considerable recent legislative amendments to the *Municipal Elections Act*, the successful planning and implementation of the changes will be impacted if staff resources are diverted to planning and executing the by-election to fill this vacancy.

Past Practices

25. Since 1995, there have been a number of resignations from Barrie City Council. The appointment process has been utilized when there are relatively few months remaining in the term of office.

26. The table below provides details regarding the filling of those vacancies:

Office	Declared Vacant	Process Used To Fill Vacancy	# of Months Remaining
Alderman J.N. Tascona resigned as Alderman for Ward 2	July 1995	By-election was held and A.E. Carroll was elected to City Council as Alderman for Ward 2.	28
Alderman A.E. Carroll resigned as Alderman for Ward 2	July 1997	S. G. Mayes was appointed as Alderman for Ward 2 for the period July 14, 1997 to Nov. 30, 1997.	5
Alderman Elect, A.E. Black	Dec. 2000	By-election was held and D. Aspden was elected to City Council as Alderman for Ward 2.	34
Alderman B. Norton resigned as Alderman for Ward 3	Aug. 2001	By-election was held and R. Warman was elected to City Council as Alderman for Ward 3.	28
Councillor P.W. Brown resigned as Councillor for Ward 3	Feb. 2006	A. Eadie was appointed as Councillor for Ward 3 for the period Apr. 3, 2006 until Nov. 30, 2006	9
Councillor J. Robinson resigned as Councillor for Ward 8	Aug. 2012	By-election was held and A. Khan was elected to City Council as Councillor for Ward 8.	28
Councillor J. Brassard resigned as Councillor for Ward 7	Oct 2016	By-election was held and A. Prince was elected to City Council as Councillor for Ward 7.	37

Other Municipalities' Practices

27. The appointment option has been used across other municipalities for filling vacancies, particularly vacancies occurring after the half way point in the term. Vacancies in Vaughan, Toronto, Oshawa, Timmins and Tay Township have been or are in the process of being filled by appointment.
28. A few municipalities have a practice of filling a vacancy by appointing the candidate from the most recent municipal election with the next highest number of votes in the race. Appointing the candidate from the 2014 Municipal Election who received the second highest number of votes is not an option as Councillor Prowse was acclaimed.

ENVIRONMENTAL MATTERS

28. There are no environmental matters related to the recommendation.

ALTERNATIVES

29. The following alternative(s) are available to the General Committee in regard to this report:

Alternative #1

General Committee could recommend that the vacancy in Ward Six be filled through a by-election process.

This alternative is available but it is not recommended. A by-election results in a prolonged period of time without ward representation. It is substantially more costly than appointment (estimated in excess of \$50,000). By-elections traditionally have a low voter turnout. The appointment process is used by many municipalities, when more than half of the term has passed as a by-election would cause a significant disruption to preparations for the general election.

Alternative #2

General Committee could recommend that the vacancy in Ward Six be filled through an appointment process that does not allow for candidates to address City Council by removing the references in paragraphs 8 and 10 of Appendix "A".

This alternative is available to General Committee and is similar to the consideration of applications for appointments to Committees of Council.

FINANCIAL

30. It is estimated that the cost associated with appointing an individual would be approximately \$2,000. The amount is required to complete any advertising for interested individuals for the position of Ward Six Councillor. The costs associated with appointing an individual would be funded from the savings resulting from the temporary vacancy in Ward Six.
31. It is estimated that the cost of conducting a by-election for the position of Councillor for Ward Six would exceed \$50,000, not including the costs associated with City staff resources.
32. At this time, funds have not been included in the 2017 Operating Budget for a by-election. While funds are available in a reserve associated with the 2018 Municipal Election, the fund was negatively impacted by the 2016 Ward Seven By-election. As a result, it is anticipated that additional funds would be required to cover the costs associated with both a by-election and the 2018 Municipal Election.

LINKAGE TO 2014-2018 STRATEGIC PLAN

33. The recommendation(s) included in this Staff Report support the following goal identified in the 2014-2018 Strategic Plan:
- Responsible Spending
34. Given the relative portion of the term of office remaining, the lengthy timeline associated with electing a ward representative through a by-election and the cost both financially and in staff resources, the appointment process supports responsible spending of taxpayer dollars.

Appendix "A"

Council Vacancy Appointment Procedure

Purpose

The following procedure will be used when appointing an Eligible Elector to fill a vacancy in the office Councillor.

Definitions

In these procedures;

"Act" means the *Municipal Elections Act, 1996, S.O., 1996, c.32, Sched.*, as amended.

"Candidate" means an individual seeking to be appointed to fill a vacancy in the office of Councillor, having met the eligibility requirements and who has completed the requisite documentation as required by this procedure.

"Chair" means the Member of Council presiding at the Council meeting to appoint an individual to fill a Council vacancy.

"Council" means the Council of The Corporation of the City of Barrie.

"Eligible Elector" has the same meaning as subsection 17(2) of the Act, namely a person:

- a) who is a resident of the City of Barrie, or an owner or tenant of land in Barrie or the spouse of such an owner or tenant;
- b) who is a Canadian Citizen;
- c) who is at least 18 years old; and,
- d) who is not prohibited from voting under any other Act or from holding municipal office.

"Lot" means a method of determination by placing the names of the Candidates on equal size pieces of paper and placed in a container with one Candidate name being drawn by the City Clerk.

"Procedural By-law" means City of Barrie By-law Number 2013-072, as amended.

"City" means The Corporation of the City of Barrie.

General

1. Any individual filling the vacancy must be an Eligible Elector.
2. Any employee of the City who seeks appointment to Council must be an Eligible Elector. The employee is required to give written notice, prior to submitting any documentation required by the procedure, of his or her intention to take unpaid leave, in accordance with the Act. If the employee is appointed to office, he or she will be deemed to have resigned from their position with the City immediately before making the declaration of office.

Appointment Procedure

Notice

1. The City will post a Council Vacancy notice on the City's website, social media and in the local newspaper. The notice will outline the requirements to be considered for an appointment and the application process.

Application

2. Any individual wishing to be considered for appointment to fill the Council vacancy will complete and sign the Council Appointment Consent of Nominee Form and a Council Vacancy Declaration of Qualifications Form approved by the City Clerk. Applications for the vacant seat may be filed with the City Clerk beginning at 8:30 a.m. on the day following City Council's decision to adopt an appointment process. Candidates shall submit the forms to the City Clerk in-person by the deadline established by the City Clerk, such deadline to provide a minimum of 10 business days for the submission of applications.
3. Any individual wishing to be considered for appointment to fill the Council vacancy will be required to provide identification to prove his or her identity and qualifying address to the satisfaction of the City Clerk.
4. Candidates may submit a personal statement of qualification with their application, for consideration of Council.
5. It is the Candidate's sole responsibility to meet any deadline, complete a bone fide application or otherwise comply with any requirement of this procedure.
6. The City Clerk will create a list of all eligible Candidates that have complied with the application process. All applications shall be considered public documents and will be made available for public viewing in the Legislative and Court Services Department on the first floor of City Hall, 70 Collier Street, Barrie, Ontario.
7. A Candidate who wishes to withdraw his/her application may do so in person and in writing to the City Clerk. The deadline for any withdrawal shall be any time up to noon of the date of the special City Council meeting to fill the vacancy.

Council Meeting

8. A vote to fill a vacancy on Council by appointment will occur at an open Council meeting. The meeting shall be a special City Council meeting called for that purpose. All qualified candidates who have submitted an application for the vacant seat will be notified by the City Clerk of the date and time of the special meeting of Council, at which time they may address Council. Candidates are required to notify the City Clerk no later than 24 hours before the start of the special meeting of Council of their intention to address Council at the meeting.
9. Notwithstanding the requirements of the Procedural By-law, the agenda for the meeting shall be set by the City Clerk to allow for the orderly proceedings of selecting a Candidate.
10. At the meeting, the following will 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) Each of the Candidates will be afforded the opportunity to address Council for a period of not more than five (5) minutes. The order of speaking will be determined by Lot. The City Clerk will place the names of all Candidates in a container and randomly draw the names.

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- c) Upon hearing all the submissions of the Candidates, Council will proceed to vote as follows:
 - i. Members of Council will vote by way of ballot.
 - ii. Candidate names will be displayed on the monitors in alphabetical order, in the Council Chamber by the City Clerk.
 - iii. Members of Council will vote for one Candidate only.
 - iv. The City Clerk will provide each Member of Council with a voting card, with the Member's name pre-printed on the voting card.
 - v. The City Clerk will ask the Members of Council to cast his or her vote by writing the full name of one (1) Candidate on the voting card. The Member of Council shall then sign the voting card.
 - vi. The City Clerk will collect all marked and signed voting cards, and will tabulate the results on the tally sheet to be used for this purpose.
 - d) The following procedure shall be used for counting the votes
 - i. The Candidate who receives the votes of more than one-half of the number of members of Council present and voting shall fill the vacancy.
 - ii. A spoiled or incomplete ballot will be rejected by the City Clerk and the vote taken on the remaining ballots.
 - iii. If the Candidate receiving the greatest number of votes cast does not receive more than one-half the votes of all voting members of Council, the Candidate or Candidates who received the fewest number of votes will be excluded from further consideration. The name of a Candidate or Candidates excluded shall be removed from the monitors. 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.
 - iv. Where the votes cast are equal for all the Candidates and if:
 - a) There are three or more Candidates remaining, the City Clerk will by Lot select one such Candidate to be excluded from the subsequent voting;
 - b) If only two (2) Candidates remain, the tie will be broken by selecting a Candidate by Lot to fill the vacancy, as conducted by the City Clerk.
 - e) Upon conclusion of the voting, the City Clerk will declare the Candidate receiving the votes of more than one-half of the number of the voting members of Council or the Candidate selected through section (d)(iv) b).
 - g) The appointment of the Candidate will be made by by-law. A by-law confirming the appointment will be enacted by Council.
 - h) The City Clerk will administer the Declaration of Office required by subsection 232(1) of the *Municipal Act, 2001*, at the meeting where the by-law referred to in subsection 10 (g) of these procedures is enacted by Council, or as directed by Council.
11. Where a situation occurs that is not otherwise accounted for in these procedures, the City Clerk shall recommend an alternate process to Council, which Council may adopt with a simple majority vote.