
TO: GENERAL COMMITTEE

SUBJECT: FILLING OF WARD THREE COUNCILLOR VACANCY

WARD: 3

PREPARED BY AND KEY CONTACT: W. COOKE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES, EXT. 4560

SUBMITTED BY: W. COOKE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES

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

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That a by-election be held to fill the vacancy in the office of Councillor – Ward Three.

PURPOSE AND BACKGROUND

2. Under Section 259 (1)(d) of the *Municipal Act, 2001*, S.O. 2001 (“*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 *Municipal Act*.
3. In accordance with Section 260 of the *Municipal Act*, Councillor, D. Shipley provided notice to the Clerk of his resignation from his office as Councillor for Ward Three on Barrie City Council, as he has been elected as the Member of Parliament for the federal electoral district of Barrie-Springwater -Oro Medonte.
4. The Ward Three seat was declared vacant by City Council on October 28, 2019.
5. 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*.
6. City Council’s discretion is restricted only if the vacancy occurs after March 31st in the year of a regular municipal election, and City Council must fill the vacancy by way of an appointment within forty-five days of the vacancy occurring. The only time a municipality is not required to fill a vacancy, is when the vacancy occurs within 90 days before a regular election.
7. A person appointed or elected to fill a vacancy holds the office for the remainder of the term of Council. There are approximately 36 months remaining in the 48 month term of office for the 2018-2022 Council.

ANALYSIS

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

By-Election

9. 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*.
10. 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 45 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 much 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.
11. As a result of legislated timelines within the *Municipal Elections Act*, and in consideration of the timing, the importance of providing adequate opportunities for eligible electors to file nomination papers, staff resources, facility and equipment availability, and other election management preparation requirements, the Clerk is responsible for establishing Nomination Day and the resulting Voting Day.
12. Subject to Council's approval of a by-election process, the following are the estimated timelines and associated matters that would be carried out:

<u>Date</u>	<u>Action</u>
October 28, 2019	Council declares Ward Three seat vacant
November 18, 2019	Report to General Committee, recommending by-election
November 25, 2019	Council ratifies decision of General Committee, by-law is passed if by-election is approved.
November 26, 2019	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.
January 10, 2020	Nomination Day (final day for submission of nominations). Nomination period closes at 2:00 p.m.
Week of February 3, 2020	Voter notification packages mailed out
February 10-24, 2020	Early voting opportunities
February 24, 2020	By-election Voting Day (General Committee meeting cancelled)
March 2, 2020	City Council Meeting - New Councillor takes Oath of Office

13. 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 four Barrie by-elections and municipal elections:

<u>Municipal Election Voter Turn Out</u>	<u>By-election Voter Turn Out</u>
2003 - 30.05%	1995 (Ward 2) - 17.14%
2006 - 30.35%	Feb. 2001 (Ward 2) - 28.71%
2010 - 40.01%	Oct. 2001 (Ward 3) - 19.38%
2014 – 31.24%	Dec. 2012 (Ward 8) – 27.15%
2018 - 30%	Feb. 2016 (Ward 7) – 17.48%

Advantages of By-election

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

Disadvantages of By-election

15. 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 Three 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); and
 - 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.

Appointment

16. If the appointment process is chosen, a municipality must appoint an individual to fill the vacancy within 60 days of declaring the vacancy.
17. 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.

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18. 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

19. If the appointment process is selected, 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 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. Individuals would be requested to provide the following information:
- a) Consent to Nominee form;
 - b) Declaration of qualification;
 - c) Proof of name and qualifying address within the City of Barrie; and
 - d) Applicants would also be encouraged to submit a resume with details regarding their qualifications.
20. The Legislative and Court Services Department would prepare a report for General Committee's consideration regarding the list of applicants and the information provided in support of their selection as Councillor – Ward Three.
21. It is estimated that an individual could be sworn into office under the appointment process no later than December 16, 2019 subject to Council approval of the appointment process and the calling of any special meetings required concerning the appointment to achieve the 60 day timeline.
22. Should City Council select an appointment process, the following are the estimated timelines and related matters that would be carried out:

<u>Date</u>	<u>Action</u>
October 28, 2019	Council declares Ward Three seat vacant
November 25, 2019	Council selects appointment process
November 26, 2019 to December 10, 2019	City Clerk advertises for interested candidates to submit an application for appointment to Council (minimum of 10 business days)

Week of December 16, 2020

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

23. 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; and
 - 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).

Disadvantages of Appointment

24. 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.

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. 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



Office	Declared Vacant	Process Used To Fill Vacancy	# of Months Remaining
Councillor M. Prowse resigned as Councillor for Ward 6	June, 2017	S. Trotter was appointed as Councillor for Ward 6 for the period July 10, 2107 until November 30, 2018	17

Other Municipalities' Practices

26. Staff is aware that 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. The “runner up” for the 2018 Municipal Election received 18% of the votes cast for Councillor – Ward Three.

ENVIRONMENTAL AND CLIMATE CHANGE IMPACT MATTERS

27. There are no environmental and climate change impact matters related to the recommendation.

ALTERNATIVES

28. The following alternative is available to General Committee in regard to this report:

Alternative #1

General Committee could recommend that the vacancy in Ward Three be filled through an appointment process.

Appointing an eligible individual to fill this vacancy is permitted under the legislation. The appointment process, particularly at this time in the term of office is generally viewed as a less democratic process.

FINANCIAL

29. It is estimated that the cost of conducting a by-election for the position of Councillor for Ward Three will exceed \$50,000, not including the costs associated with City staff resources.
30. At this time, funds have not been included in the 2019/2020 Operating Budget for a by-election. However, funds are available in a reserve associated with the 2022 Municipal Election. Subject to the approval of future transfers to the election reserve as part of the 2020 and 2021 Business Plans, it is anticipated that there will be sufficient funds to cover the costs associated with both a by-election and the 2022 Municipal Election.
31. 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 Three Councillor. The costs associated with appointing an individual would be funded from the savings resulting from the temporary vacancy in Ward Three.

LINKAGE TO 2018-2022 STRATEGIC PLAN

32. The recommendation(s) included in this Staff Report are not specifically related to the goals identified in the 2018-2022 Strategic Plan.