

Vacancy for Office of Ward Councillor – Wards 2 and 3

Presented To: Special City Council

Meeting Date: March 8, 2024

Type: Managers' Reports

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Recommended by: General Manager of
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Report Summary

This report describes the legislative requirements and options to fill the vacant seats for the office of Councillor in Wards 2 and 3.

Resolution

THAT Council for the City of Greater Sudbury selects option _____ as outlined in the report entitled “Vacancy for Office of Ward Councillor – Wards 2 and 3”, from the General Manager of Corporate Services, presented at the Special City Council meeting on March 8, 2024.

Relationship to the Strategic Plan, Health Impact Assessment and Climate Action Plans

This report refers to operational matters and has no direct connection to the Strategic Plan, Health Impact Assessment and Climate Action Plans.

Financial Implications

There are no financial implications associated with this report. Once a direction is established, all governance and election related activities carried out in relation to the filling of a vacant council seat will be funded through the Election Reserve Fund.

Background

The *Municipal Act, 2001*, (the “Act”) provides alternatives to a municipality under a variety of scenarios when the office of a member of Council becomes vacant. Paragraph 259(1)h) of the *Municipal Act, 2001*, provides:

259 (1) *The office of a member of council of a municipality becomes vacant if the member,*

(h) dies, whether before or after accepting office and making the prescribed declarations.

With the exception of where a vacancy occurs within 90 days before voting day of a regular election, the municipality is required to fill the vacancy on council.

Where an office on a municipal council becomes vacant, subsection 262(1) of the Act requires that the council, at its next meeting declare the office to be vacant, except if a vacancy occurs as a result of the death of a member, the declaration may be made at either of its next two meetings. Council passed a resolution declaring the offices of Ward Councillor for Wards 2 and 3 vacant at its most recent meeting on February 27, 2024.

In addition to the requirement to declare the office vacant, the Act requires that such office be filled within very brief timelines. Council may fill the vacancy by appointing a person who has consented to accept the office if appointed or it may require that a by-election be held under the *Municipal Elections Act, 1996*, (the "MEA"). The selection and appointment of a person or the decision to proceed with a by-election must be made within 60 days of council passing the declaration that the office is vacant. Based on the declaration passed on February 27, 2024, Council has until April 26, 2024 to make its choice.

If Council wishes to proceed with the appointment of a person, the Act does not specify any methodology for the selection process. A person appointed must, however, be qualified to be elected or to hold office as a member of Council and cannot otherwise be disqualified under the Act or the MEA. The criteria to be a candidate and hold office on a municipal council is found in section 17 of the MEA and generally requires that the person:

- resides in the local municipality or is the owner or tenant of land there, or the spouse of such owner or tenant;
- is a Canadian citizen;
- is at least 18 years old; and,
- is not otherwise prohibited from voting.

Approximately two and a half years remain in the term of office and the person appointed or elected, as the case may be, would be expected to hold office for the remainder of the term of council until November 14, 2026.

Options for Filling a Ward Councillor Vacancy

Option One: Appointment of a Candidate from the 2022 Municipal and School Board Election

When filling vacancies for Ward Councillor municipalities often consider the option of appointing a candidate from the most recently held municipal election. This option could include any candidate but most often involves the other person(s) that presented their candidacy in the Ward in question.

Should Council wish to proceed with this option, appropriate direction should be provided to staff. Some preliminary steps would need to occur, such as ascertaining the person(s)' interest in serving and verifying their eligibility under the Act.

Option Two: Application Process

This option consists of direction to staff to advertise and receive applications from interested persons for the position of Councillor for the applicable Ward.

Applicants would be required to attend Tom Davies Square in person to complete a form similar to that used to file nominations for municipal elections to verify their identity and eligibility for the office.

Applicants would be required to provide the following information:

- (a) Application Form;
- (b) Declaration of Qualification;
- (c) Proof of name and qualifying address within the City of Greater Sudbury; and,
- (d) MFIPPA consent allowing all the documentation associated with their application to be a matter of public record.

Applicants would also be encouraged to submit a resume or similar document, of no more than two pages in length, detailing their qualifications and/or related experience.

In 2014, two vacancies for the office of Ward Councillor occurred in the City of Greater Sudbury and in both cases City Council directed the process contemplated in this option. For clarity, Council is not required to select this option even though it was used in 2014.

In this option, applications would be considered at a meeting of the City's Nominating Committee. In 2014, each applicant was provided five minutes to address the Nominating Committee related to their interest and qualifications for the role. The selection of the successful applicant would be made at the Committee meeting by way of a vote pursuant to the City's Procedure By-law.

Under this option, the entire process and appointment would have to be completed prior to April 26, 2024.

Option Three: By-Election

This Option involves direction to staff to present a by-law that a by-election be held for the office of Councillor.

A by-election consists of an election process under the MEA that is not part of the regular four year election process. By-elections require significant staff and financial resources and include all the same processes of a regular election on a condensed timeline. Section 65 of the MEA describes the process for the conduct of by-elections. In general by-elections are to be conducted as similarly as possible to the regular election which means that the voting methods used in 2022 would be mirrored for a by-election.

A by-election would therefore include the following:

- Online voting period extending to the close of voting on Voting Day;
- Paper ballot voting on one advance day in one location and on Voting Day at approximately four (4) regular voting locations;
- Attendance at long term care and retirement facilities that meet the criteria in the MEA, to facilitate paper ballot voting.

With respect to the timing of the main by-election processes, the by-law directing the holding of the by-election would be presented as close as possible to the expiry of the 60 day period from the date of the declaration of vacancy to permit additional time for the Clerk to plan and organize the election. Nomination Day (the last date for filing of candidate nominations) would be set by the Clerk on a date between 30 and 60 days from the date of the by-law directing the holding of the by-election. Voting Day would be 45 days after Nomination Day. Assuming a by-law as described here passes April 16, 2024, Voting Day for the by-election would be on July 29, 2024.

Total cost for a by-election involving a single Councillor vacancy is approximately \$388,000. The following table provides a breakdown of the estimated equipment and technical implementation costs for holding a by-election to fill the vacancy in one Ward:

	RRC	BCS	BOD	T	VLR	OVM	VIL	SPI	RRS
Total required	26	26	26	2	1	10,344	10,344	1	1
Cost per unit	\$159	\$27	\$1,168	\$21,400	\$700	\$0.95/voter	\$1.40/voter	\$18,800	\$7,900
Total Costs	\$4,134	\$702	\$30,368	\$42,800	\$700	\$9,826	\$14,481	\$18,800	\$7,900
Total Cost: \$129,711									

RRC = Registration and Revisions Computers, BCS = Bar Code Scanners, BOD = Ballot on Demand Printer, T = Tabulator, VLR = Voting Location Rentals, OVM = Online Voting Module, VIL = Voter Information Letter, SPI = Service Provider Implementation, RRS = Results Reporting Site.

***Note:** One piece of backup equipment for each location is included in the totals in the table above.

In addition to the equipment and implementation costs, further costs will be incurred for:

- Staffing for the management, planning and delivery of the by-election estimated at \$185,000 (Clerks, IT, Communications, Facilities Maintenance and various CGS staff required for in-person voting locations).
- Advertising, translation, supplies, vehicle rentals and other miscellaneous costs estimated at \$54,000.
- Postage Costs estimated at \$9,500.
- Voters' List Management Software estimated at \$10,000.

Resources Cited

Municipal Act, 2001: <https://www.ontario.ca/laws/statute/01m25#BK329>

Municipal Elections Act, 1996: <https://www.ontario.ca/laws/statute/96m32#BK85>

City of Greater Sudbury Procedure By-law 2019-50: <https://www.greatersudbury.ca/city-hall/by-laws/>