

To: COUNCIL

Meeting Date: 8/29/2023

Subject: 23-134-CRS Methods to Fill a Vacancy for Office of Councillor, Ward 1

Submitted By: Danielle Manton, City Clerk

Prepared By: Danielle Manton, City Clerk

Report No.: 23-134-CRS

File No.: C1101

Wards Affected: Ward 1

RECOMMENDATION(S):

THAT Report 23-134-CRS Method to Fill a Vacancy for Office of Councillor, Ward 1 be received;

AND FURTHER THAT Council select option# _____ as presented in report 23-134-CRS Method to Fill a Vacancy for Office of Councillor, Ward 1;

AND FURTHER THAT Council approve a transfer of \$50,000 from the tax supported Rate Stabilization Reserve to support the method selected by Council to fill the vacancy for Office of Councillor, Ward 1.

EXECUTIVE SUMMARY:

Purpose

- The purpose of this report is to provide Council with options to fill the vacancy declared on August 15, 2023 for the Office of Councillor, Ward 1.
- To set the direction for the City Clerk to ensure a transparent method is prepared to fill the vacancy for Office of Councillor, Ward 1.
- To approve any necessary funding and by-laws dependent on the method selected by Council to provide for next steps to be carried out by the Clerk.

Key Findings

- Section 263 (1) of the Municipal Act, 2001 (Act) authorizes a municipality to fill a vacancy either by by-election or appointment.
- Section 263 (5) (1) notes that a municipality must select the method to fill the vacancy within 60 days after declaration of vacancy has been made.
- Council declared a vacancy for Office of Councillor, Ward 1 on August 15, 2023; therefore, Council must decide how to fill the vacancy.
- Should Council wish to conduct a by-election to fill the vacancy, a by-law indicating that a by-election is required must be passed. This by-law must be passed within 60 days of declaring the vacancy. Staff have attached a draft by-law as Appendix B to this report 23-134-CRS.
- There is no prescribed minimum time for the nomination period and Nomination Day is to be set not less than 30 days and no more than 60 days from the date Council passes the by-law to hold a by-election. Voting Day must be 45 days after Nomination Day.
- Should Council wish to fill the vacancy via appointment, the appointment process must be completed within the 60 days (on or before October 13, 2023).

Financial Implications

This report provides options for Council's consideration to fill the vacancy. The option to enact a by-law calling for a by-election for Ward 1 will have a larger financial impact than the option for appointment. The analysis section of this report provides an overview and estimated costs for all options to assist Council in making a selection for the option they wish to direct staff to pursue.

STRATEGIC ALIGNMENT:

☐ Strategic Action

Objective(s): Not Applicable

Strategic Action: Not Applicable

OR

☒ Core Service

Program: Governance

Core Service: Council and Citizen Committees

As per the Act and the Municipal Election Act, 1996 (MEA) following the declaration of a vacancy on Council, there is a minimum number of days provided to Council to determine if they wish to fill the vacancy by by-election or Appointment. This report ensures that Council is in compliance with legislation and sets a timeline for staff to deliver whichever process Council selects.

BACKGROUND:

Council Vacancy Policy

On November 19, 2019, Council adopted a “Council Vacancy Policy-A09-Gov-006” (Attachment “A”).

The policy requires Council to adhere to the requirements of Section 263 of the Act 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.”

The Policy also provides that if Council chooses to fill this vacancy by appointment, it can choose to fill the vacancy by either appointing a current Member of Council (in case of a vacancy in Office of Mayor) or any other qualified individual as outlined in Section 256 of the Act.

Section 263(5) establishes the rules applying to filling vacancies. Rules applying to filling vacancies 263 (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).

Section 264 of the Act, provides that a person appointed or elected to fill a vacancy shall hold the office for the remainder of the term of the person he or she replaced.

Section 256 of the Act sets out the eligibility requirements for persons qualified to be elected or to hold office as a member of a Council of a local municipality.

To be an elector, the person under consideration must, on voting day,

- (a) reside in the municipality or be the owner or tenant of land there, or the spouse of such owner or tenant,
- (b) be a Canadian Citizen
- (c) be at least 18 years old and
- (d) not be prohibited from voting.

Under section 258 (1) of the Act, the following are not eligible to be elected as a member of a council or to hold office as a member of a council:

- a) an employee of the municipality;
- b) a person who is not an employee of the municipality but who is the clerk, treasurer, Integrity Commissioner, Auditor General, Ombudsman, registrar or an investigator of the municipality;
- c) a person who is not an employee of the municipality but who holds any administrative position of the municipality;
- d) a judge of any court;
- e) a member of the Legislative Assembly or of the Senate or House of Commons of Canada;
- f) and a public servant.

Despite section 258(1) of the Act, under Section 30(1) of the MEA, an employee of the municipality or a local board may take an unpaid leave of absence to run for office.

The Role of the City Clerk in Elections

The MEA in Section 11(1), identifies that the clerk of the municipality is responsible for conducting elections within the municipality. The MEA further identifies the powers of the clerk in Section 12, including the authority to provide for any matter or procedure not already provided for in the MEA, or in their opinion, is necessary for conducting the election. This authority must be carried out in an independent manner that reflects the principles of the MEA.

ANALYSIS:

The Act and the Council Vacancy Policy require Council to determine which method they wish to fill the vacancy of Office of Councillor, Ward 1.

Council may fill the vacancy by one of two options, pass a by-law to hold a by-election or through an appointment process as outlined in the Council Vacancy Policy.

All methods available for both options are outlined below for Council's consideration.

Within 60 days of declaring a seat vacant, Council is required to pass a by-law to fill the vacancy or fulfill the requirements of the selected appointment process. If the preferred method is to pass a by-law for a by-election to be held, there are additional timelines that apply.

Ward 1

Ward 1 is made up of approximately 13,369 electors. In the 2022 Municipal Election, Ward 1 had 3,158 voters cast ballots for the role of Councillor. 2076 votes were cast via internet voting and 1082 votes were cast in person.

The following provides further details on the options for Council to consider in filling the vacancy of Office of Councillor, Ward 1.

Option #1 Pass a By-law Requiring a By-Election be Held to Fill the Council Vacancy

The Clerk shall be responsible for conducting the by-election in accordance with the MEA and all applicable policies and procedures. Council is required to pass a by-law to ensure the Clerk can carry out the by-election, a draft by-law is attached to this report as Appendix B. Further, pursuant to Section 42 of the MEA, should Council select an option that includes internet voting or the use of tabulators, Council must pass a by-law to authorize vote counting equipment or alternative voting. A draft by-law to permit the use of alternative voting is attached as Appendix C. This by-law would only be enacted should Council select a method that included either internet voting or the use of tabulators, or a combination of both.

The MEA states that if Council selected to pass a by-law to proceed with a by-election, that the nomination day would occur a maximum of sixty (60) days from the passing of the by-law, with voting day occurring within forty-five (45) days after nomination day.

A proposed timeline and options for methods of delivery of a by-election are outlined below, and should Council wish to select Option #1 for a by-election, they are requested to determine which method they wish for staff to move forward with.

Choosing to fill the vacancy for Office of Councillor, Ward 1 by by-election means that the Office of Councillor, Ward 1 will be vacant for approximately three months from the date that Council declared the vacancy (August 15, 2023). Under Section 65(4) of the MEA, 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 Council passes a by-law to hold the by-election.

The Act purposefully gives the Clerk the authority to set Nomination Day in any by-election to permit the Clerk the time required to prepare for and conduct a legislatively compliant election as determined by the Clerk.

Because a by-election for the Office of Councillor would be for one single Ward preparations will still be extensive but not as wide-ranging as a City-Wide election.

All election planning should ensure the principles of the MEA are what leads planning decisions, as these principles serve as a benchmark and guide for the conduct of municipal elections:

- secrecy and confidentiality of the voting process;
- fair and non-biased;
- accessible to voters;
- integrity of the voting process;
- results of the election reflect votes cast;
- voters and candidates shall be treated fairly and consistently.

The following provides an overview of timeline and options for methods to deliver a by-election should Council pass a by-law to hold a by-election:

Proposed By-Election Timeline:

Regardless of the method, staff propose that every effort be made to follow the proposed timeline. This ensures that Ward 1 residents have representation on Council as soon as possible, provides an adequate campaign period, time for voters to vote via the method selected by Council and ensures that all legislated timelines are met.

August 15, 2023 – Declaration of Vacancy, Office of Councillor Ward 1

August 29, 2023 – Council considers methods to fill vacancy

September 5, 2023 – Nomination Period Begins

September 29, 2023 – Nomination Day (2 pm)

November 1-13, 2023 – At Home Voting Program

November 1, 2023 – Advance Voting Day

November 4, 2023 – Advance Voting Day

November 13, 2023 – Voting Day (4 Locations)

November 14, 2023 – Official Results

November 28, 2023 – New Ward 1 Elected Official Sworn in At Council Meeting

January 2, 2024 – Financial Filing Deadline

Options for Methods to Deliver By-Election (1A-1D)

Option #1A - Internet Voting Only

Internet voting has proven to be easy, simple, straight forward, convenient, and private. The primary benefits offered by internet voting are convenience and accessibility, with the potential for minimal to moderate increase in voter turnout.

The Voter Information Notice will include each voters unique Voter Identification Number (VIN) which will allow the voter to access to the ballot. Voters will be asked to make a Declaration that they are entitled to vote in the 2023 by-election for Ward 1 and confirm they are a Canadian citizen. Voters will then be able to access their ballot to vote for the candidates of their choice.

Internet voting offers benefits such as the integration of accessible technology and enables the voter to identify errors in the ballot selections prior to casting a ballot. This voting method also allows for automated election processes like ballot processing, striking names off the voters list, and an effective and rapid count of the votes at the close of voting.

Technological advances in protective measures such as firewalling and user authentication techniques all decrease the likelihood and effectiveness of these threats. Proper testing and auditing throughout the various implementation phases also serve to protect the voting system from external threats. As part of the testing phases, Municipal Clerks, in addition to the vendors, conduct thorough logic and accuracy testing prior to the election to test the system. During the logic and accuracy testing phase, the Clerk can test the system by running a mock election and may investigate the feasibility of including candidates and scrutineers in this process to help electors gain confidence in a new voting method.

Potential barriers to participation by internet voting related to internet access and requirements for assistance will be negated through the implementation of a At Home Voting Program, where staff will visit personal homes upon request to provide access to Election Tablets and provide any required assistance to ensure voters can cast an online ballot. Voter assistance would also be provided at all polling locations, which provide computers and support staff to help guide electors through the process.

Internet voting provides additional accessibility options to electors, including the ability to vote away from home for students studying outside the geographic area, and for electors working or vacationing away from home. Internet voting also provides a more convenient voting option for electors that are caught up in the increasingly busy balancing work and family life – negating the need to attend a physical voting place. The internet voting option also negates ballot waste and the potential for an elector to incorrectly mark a ballot, with a virtual ballot and defined fields to mark the ballot, including ensuring electors cannot place an incorrect mark on the ballot or unintentionally overvoting a ballot.

Option #1A is estimated to cost approximately \$30,000 with additional costs for poll location rentals, advertising, equipment rentals, advertising etc.

Option #1B - Paper Ballot with Tabulator

A vote tabulator (optical scan unit) reads and records how ballots are marked. A ballot is marked by indicating the voter's choice(s). The ballot is then inserted into the vote tabulating unit. The tabulator reads and stores the information in the unit. At the close of voting on Election Day, the vote tabulator will produce cumulative totals of all votes cast and the totals will be compiled to produce the final election results.

The use of vote tabulators has become a generally accepted vote counting method in Ontario municipal elections over the last several years and has been used at the provincial level of government. Cambridge has used vote tabulators for a number of Elections and most recently at the 2020 Ward 7 By-election and 2022 Municipal Election.

As a result, there are established and recognized best practices for municipalities to use for effective implementation, including those already created at the City of Cambridge in previous elections.

The use of vote-counting equipment, such as vote tabulators, allows for: efficient vote counting - making it possible to report unofficial election results on election night.

- secret and confidential voting process - ballots and voters cannot be connected.
- accurate and non-biased vote count - automated counting processes ensure that determination of voter intent and what is counted is consistent.
- the integration of accessible technology, which allows for independent marking of a ballot which is indistinguishable from any other ballot once cast in the tabulator.
- certainty and integrity of the process - results reflect votes cast.

The system is precise, easy to use for voters, and capable of generating final election results very quickly following the close of voting. Moreover, manual counting of ballots is not required.

Paper Ballots are required with any tabulator option and make up approximately \$10,000 of the budget for the number of electors in Ward 1.

Option #1B is estimated to cost approximately \$30,000 with additional costs for printing, mailing, additional equipment rental, poll location rentals, advertising etc.

Option #1C- Internet Voting and Paper Ballot with Tabulator

This option is the same method used to deliver the 2022 Municipal Election and is a combination of Internet Voting and paper ballot with Tabulator processes as outlined above.

The benefits of this option is that this option is the most like the 2022 Municipal Election and is familiar to voters.

This option is the option with the largest financial implications and may also require revised timelines as staff will be required to meet procurement policies and will likely be required to report back with a further report following a procurement process for vendors.

Should Council wish to select this method staff recommend they be directed to report back on financial impacts and that Council proceed with passing a by-law to hold a by-election and defer any transfer of funds until staff report back.

Option #1C is estimated to cost approximately \$100,000 for the combination of internet voting and paper ballots with tabulators. This would include the cost of equipment rental, polling locations, advertising etc.

Option #1D- Paper Ballot with Manual Count

Voters will attend a polling location as outlined on their voter information notice where they will be required to provide identification to verify who they are and that they are eligible to vote in the by-election. A paper ballot would be provided to the voter where they will privately select the candidate of their choice and then proceed to the ballot box and drop the completed ballot into a ballot box. The completed ballots in ballot boxes would be kept in a secure location until election day. After voting has concluded, the ballots would be removed with scrutineers and candidate present and counted by hand twice by two different teams of staff delegated by the City Clerk.

This option would take longer to produce results due to the hand counting but is also considered to have the lowest financial impact of all by-election methods.

Option #1D is estimated to cost approximately \$20,000 with additional costs for rentals of polling locations and advertising.

Accessible By-Election Provisions

Under both the Accessibility for Ontarians with Disabilities Act, 2005 and the MEA, the City Clerk is required to ensure that municipal elections are accessible to people with disabilities, including both electors and candidates.

Staff will prepare a plan regarding the identification, removal and prevention of barriers that affect electors and candidates with disabilities and would make the plan available to the public before voting day. This plan will highlight accessibility features available at the polling locations and other available voting options available to electors such as voting with assistance, accessible vote tabulators, at home voting, and accessible voting tools including magnifying sheets, table heights and other considerations.

Option #2 Appointment Process

The Act does not set out requirements relating to the process for appointment of an individual to fill a Council vacancy, other than those relating to qualifications. In November 2019 Council passed a Council Vacancy Policy A09 GOV 006 that ensures a transparent process for filling a vacancy on Council.

The Council Vacancy Policy provides options for Council as it relates to appointment of a candidate as follows:

Option #2A Appointment of a Ward 1 Candidate from the 2022 Municipal Election

Option #2A provides Council with the option of filling the vacancy through appointment to the Council Candidate who received the most number of Votes in the previous Municipal Election.

Should Council wish to pursue this option, the City Clerk would seek written confirmation and qualifications and determine if the individual is interested in accepting the appointment.

This option does not include financial implications other than staff time.

Option #2A could result in an Oath of Office being administered to the new Councillor by the end of September 2023.

Option #2B Appointment of an Eligible Elector without a Formal Selection Process

Option #2B provides Council with the option to fill the vacancy without a formal selection process. Council may choose to fill the vacancy by appointing any qualified individual as outlined in Section 256 of the Act.

The City Clerk would seek written confirmation and qualifications and determine if the individual is interested in accepting the appointment.

This option does not include financial implications other than staff time.

Option #2B could result in an Oath of Office being administered to the new Councillor by the end of September 2023.

Option #2C Appointment of an Eligible Elector through an established formal selection process

Option #2C requires that Council follow the approved appointment process (outlined in the Council Vacancy Policy – Attachment A) which would permit interested, eligible persons to submit an application for appointment to Council.

This open call for applications would be advertised, and would include a process through an application, declaration of qualifications and a recommended procedure to include an interview/presentation to Council in an open Council Meeting.

The open Council Meeting would provide each eligible candidate to provide a presentation, be asked questions by Council and allow for public delegations in support of candidates. This process also includes a voting procedure to ensure fair and transparent voting occurs to select a final candidate.

This option does have financial implications of approximately \$2,500 for advertising costs and staff time.

Option #2C could result in an Oath of Office being administered to the selected new Councillor by the end of October 2023.

EXISTING POLICY / BY-LAW(S):

Council is required to determine next steps for filling the vacancy for Office of Councillor, Ward 1 within 60 days of declaring the vacancy. This requirement is set by the Municipal Act, 2001, the Council approved the Council Vacancy Policy-A09-Gov-006 and the Municipal Election Act, 1996.

FINANCIAL IMPACT:

To mitigate the impact of the municipal election that occurs every four years, the City's operating budget includes a contribution annually to the Election Reserve Fund to cover costs associated with regular municipal elections rather than expensing the entire amount in the year of the election. After the recent 2020 By-election for Ward 7, the 2022 Municipal Election and the resumption of the Catholic District School Board Election, the balance in the Election Reserve is currently \$61,970. If a by-election is selected by Council, staff recommend funding the additional costs from the Rate Stabilization Reserve Fund which is intended to be used to offset extraordinary one-time pressures, as approved by Council through the Reserve and Reserve Fund By-law 23-024. This will ensure sufficient funding remains in the Election Reserve to be used towards the next municipal election in 2026 and reduces the impact to the tax levy in the 2024 – 2026 operating budgets.

If Council chooses to fill the vacancy by by-election, it is estimated that the costs of conducting the by-election will be between \$20,000 and \$50,000. This estimate is based on cost estimates the City Clerk has obtained and on the number of eligible electors in Ward 1.

Should Council wish to direct the Clerk to proceed with Option #1C, Internet Voting and Paper Ballot with Tabulator, staff recommend Council approve the by-law to call for a by-election but direct the City Clerk to report back following a procurement process for vendors who can provide internet voting and paper ballot with tabulators.

If Council wishes for staff to pursue a by-election option other than Option #1C, Internet Voting and Paper Ballot with Tabulator, given the tight time frames to administer a by-election, a fulsome procurement practice will be challenging 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.

PUBLIC VALUE:

Should Council pass a by-law to hold a by-election in Ward 1, staff will work with Corporate Communications to build a comprehensive communication plan to ensure that a Ward 1 by-election is advertised to potential candidates and to voters.

Should Council choose to proceed with one of the Appointment options outlined in the Council Vacancy Policy, staff will ensure additional communication and advertising is provided related to the option selected.

Staff have provided cost estimates with financial resource management in mind and will make every effort to keep costs at a minimum.

ADVISORY COMMITTEE INPUT:

The Accessibility Advisory Committee will be consulted on the method of delivery should Council choose to hold a by-election. The MEA requires the Clerk to complete an Accessibility Plan prior to any election and to produce a report following the election regardless of the method of delivery for any election.

The focus will be on ensuring that all electors in Ward 1 have equal opportunity to vote as undependably as possible by identifying and removing barriers that would limit the independence and dignity of electors.

PUBLIC INPUT:

Following Council's selection of the preferred method to fill the vacancy for Office of Councillor, Ward 1, staff will ensure that the City's website is updated to provide further information related to the method, that constituents of Ward 1 are notified should there be a by-election and that advertising is done to ensure any next steps are communicated in a manner that is inclusive of all and that processes are clear and transparent to Cambridge residents.

INTERNAL / EXTERNAL CONSULTATION:

Consultation with Finance is required based on the method selected to fill the vacancy of Office of Councillor, Ward 1. Staff have consulted with multiple vendors to understand financial impacts in providing the options for Council's consideration.

CONCLUSION:

As a result of Council declaring a vacancy for the Office of Councillor, Ward 1 on August 15, 2023, Council must select a method to fill the vacancy. Details for a by-election and appointment processes are outlined in Report 23-134-CRS and staff seek direction from Council on how to proceed.

REPORT IMPACTS:

Agreement: **No**

By-law: **Yes**

Budget Amendment: **Yes**

Policy: **No**

APPROVALS:

This report has gone through the appropriate workflow and has been reviewed and or approved by the following as required:

Director

Chief Financial Officer

City Solicitor

City Manager

ATTACHMENTS:

1. 23-134-CRS Methods to Fill Vacancy for Office of Councillor, Ward 1 Appendix A – Council Vacancy Policy-A09-Gov-006
2. 23-134-CRS Methods to Fill Vacancy for Office of Councillor, Ward 1 Appendix B – Proposed By-law to Call for By-Election
3. 23-134-CRS Methods to Fill Vacancy for Office of Councillor, Ward 1 Appendix C – Proposed By-law – Alternative Voting Methods
4. 23-134-CRS Methods to Fill Vacancy for Office of Councillor, Ward 1 Appendix D – Election Method Comparison