



CORPORATE SERVICES – LEGISLATIVE SERVICES
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July 7, 2016

CORPORATE SERVICES REPORT – LEGISLATIVE SERVICES 2016-14

TO: Committee of the Whole
SUBJECT: Ward 5 Council Vacancy
ORIGIN: Legislative Services Department

RECOMMENDATIONS

THAT Corporate Services Report – Legislative Services 2016-14 dated July 7, 2016 regarding the Ward 5 Council Vacancy be received and the following recommendations be adopted:

- 1. THAT Council enact a by-law to declare the Ward 5 Council seat vacant;**
- 2. AND THAT Council enact a by-law to fill the Ward 5 vacancy by means of a by-election in accordance with the *Municipal Act*, to be held Monday, October 17, 2016;**
- 3. AND THAT the October 17, 2016 Committee of the Whole meeting be re-scheduled to Tuesday, October 18, 2016.**

COMMENTS

Background

On June 27, 2016 Ward 5 Councillor Joe Sponga publicly resigned from his seat on Council. Section 262 (1) of the *Municipal Act, 2001* requires that when a seat on Council becomes vacant, Council must declare the office to be vacant at the next Council meeting through adoption of a by-law. Attached as Appendix "A", is a draft 'By-Law to Declare the Office of Councillor - Ward 5 to Be Vacant'.

Options for Filling the Vacancy

Section 263 (1) of the *Municipal Act, 2001* requires that a vacancy on Council be filled either by by-election or appointment. Under section 263 (5) Council must within 60 days after a declaration of vacancy is made appoint an eligible person to fill the vacancy or enact a by-law requiring a by-election, being September 23, 2016.

Option 1 – By-election (Recommended)

Council may choose to call a by-election to fill the vacancy in Ward 5. Section 263 of the *Municipal Act, 2001* prescribes that a by-law be enacted requiring a by-election. Appendix "B" attached is a draft 'By-law to require a By-election in Ward 5'.

Under Section 65 of the *Municipal Elections Act, 1996*, the Clerk is responsible for setting nomination day, which must be set between 30 to 60 days after the by-law requiring a by-election is adopted. Voting Day is to be set 45 days following nomination day. Appendix "C" shows a proposed timeframe for a by-election. Timeframes have been established based on sufficient time to allow eligible persons to consider their candidacy; allow sufficient time to organize voting locations; secure and test voting equipment; and establish timeframes which best accommodate voters. Extending the nomination period also extends the campaign period, which may be a consideration given recent amendments to the *Municipal Elections Act, 1996* which prohibit candidates to receive contributions from corporations. The campaign period would begin as soon as a candidate submits their nomination which can occur July 26, should the recommendations in this report be adopted. A fall voting period will also allow candidates sufficient time to campaign, and voters to be engaged in September, once residents have returned from summer holidays. The proposed advance vote date of October 8, 2016 falls on the Saturday of the Thanksgiving weekend and is scheduled to be open at the same time as the farmer's market which may increase accessibility for voters.

Should Council choose to hold a by-election the approximate cost would be \$80,000 to \$100,000 based on a model of in-person use of vote tabulators and costs associated with ballots, temporary election official costs, voter list management, voter notification cards, supplies, communication and outreach. Please see the Budget Impact section of this report for further detail.

Recent amendments to the *Municipal Elections Act, 1996* allow for the use of ranked ballots. Should Council decide to include ranked ballots, there would be additional costs incurred to support community education. A report will be brought forward at the August 29, 2016 Committee of the Whole meeting to address ranked ballots, should Council move forward with a by-election in Ward 5.

Staff recommends that Council use the by-election process to fill the vacancy in Ward 5 as it represents the most democratic means of voter expression where Council is only two years in its four year term. Other municipalities such as Whitby, Pickering, Uxbridge, Oakville, Toronto and others have already conducted by-elections this year.

Option 2 – Appointment of Eligible Person (Not Recommended)

Council may choose to fill the vacancy in Ward 5 through an appointment process. Should Council choose this option it is recommended best practice to hold an open call for qualified Council vacancy applicants and to hold at least one public meeting to allow deputations from applicants.

Like an election, procedures, including notices, information about the vacancy, coordination of applications, procedures for hearing deputations and voting are recommended by the Clerk. Appendix "D" outlines draft procedures recommended by the Clerk for adoption by Council. Appendix "E" is a proposed timeframe for the appointment process. The application process would be administered by the Clerk in a similar fashion to the nomination process required by candidates for municipal office in an election.

Amendments to the *Municipal Elections Act, 1996*

Bill 181 or An Act to Amend the *Municipal Elections Act, 1996* (the Act) received Royal Assent on June 9, 2016. Should Council choose to call a by-election, the by-election would be administered under the amended legislation.

Bill 181 amended the Act in various ways including new provisions regarding ranked ballots and campaign financing. Many of the amendments to the Act will not come into effect until April 1, 2018 and so will not impact a by-election. There are some amendments that did come into effect immediately on Royal Assent. The significant amendments are summarized below.

MEA Section	Summary	Impact on By-election Process
s.24	Previously, applications to add, delete or change a person's own information on the voters' list had to be done in person or in writing and required a signature. Municipal clerks are now able to determine other formats that people could use to make these applications and signatures are no longer required.	This will make it easier and more efficient for voters' to request amendments to the voters' list.
s. 34	Every candidate will be entitled to a refund of the nomination fee if they file their campaign financial statement and the auditor's report by the deadline.	No significant impact. Previously candidates would receive a refund even if they did not file their financial statements.
41.1, 41.2	All municipal councils in Ontario now have the option to enact a by-law to use ranked ballot elections. The details setting out how the ranked ballot system will work in practice are to be contained in the regulations which are still being drafted.	Council may enact a by-law authorizing the use of ranked ballots for the Ward 5 by-election. A report will be brought forward to the August 29, 2016 Committee of the Whole meeting which will address the vote method and the ranked ballot option should a by-election be called.
43 (2)	Clerks, rather than Councils, will determine the dates and times for advance voting. They can also establish reduced voting hours in certain institutions and determine whether voting places will open early on voting day.	No significant impact. This makes the scheduling of voting hours an administrative matter.

MEA Section	Summary	Impact on By-election Process
s.49 (3)	Voters are prohibited from taking photographs or videos of their marked ballots.	No significant impact. Previously the Act stated that voters could not reveal their marked ballots. This simply updates the rules and makes it an offence to electronically record their marked ballot as well.
88.1 and 88.2	Campaign provisions have been clarified to allow candidates to access apartment buildings, condominiums, non-profit housing co-ops or gated communities from 9 a.m. until 9 p.m. in order to campaign. Landlords and condominium corporations will not be allowed to prohibit tenants or owners from displaying campaign signs in their windows.	Candidate access to Condominiums is currently legislated under the <i>Condominium Act</i> , whereas the new amendment prevents anyone from prohibiting access to candidates for campaign purposes. This will make it easier for candidates to campaign at these locations.
88.8 (3), (4)	Candidates may not accept contributions from corporations and trade unions.	Previously candidates could not accept contributions from government agencies, and political parties. This has now been expanded to include corporations and trade unions as well. This may impact how candidates raise money to finance their campaigns. There has been increasing concerns about how much influence corporations and unions have over politicians. This amendment is intended to make election finance practices transparent, accountable, fair and modern.
88.22	A candidate who does not accept any contributions of money, or incur any expenses, is not required to open a bank account.	This section has been amended to clarify that candidates only need to open an account if they incur expenses or accept contributions. This may make the process easier for candidates who choose not to incur expenses for their campaign.
88.23 (9)	There is a 30-day grace period for candidates who miss the deadline to file a financial statement and auditor's report, provided that the candidate pays a \$500 late filing fee to the municipality.	This grace period will make it easier for candidates to file their financial statements.

The following provisions do not come into effect until April 1, 2018 and therefore have no effect on a Ward 5 by-election:

- Requirement for nomination of a person for an office on a council to be endorsed by at least 25 persons (s.33);
- Requirement for candidates to identify themselves on campaign advertisements and signs, so that it is clear who is responsible for each sign and advertisement that appears or is broadcast. (s.88.3);
- Requirements regarding the content of third party advertisements (s.88.4, 88.5) and requirements for the registration of third party advertisers (s.88.6);
- New requirements regarding contributions to registered third parties, (s.88.12) expenses incurred by registered third parties, (s.88.21) and filing requirements for financial statements for third parties (s.88.26); and
- Requirement for the Clerk to review the contributions that are reported on the financial statements and if a contributor appears to have given more than the contribution limits allow, the Clerk will report this to the Compliance Audit Committee. (s.88.34)

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

Consideration of options for the Ward 5 Council vacancy supports the Town's strategic directions of a well-equipped, managed and respected municipality by ensuring service excellence and promoting engagement in civic affairs.

CONSULTATION

This report was prepared with input from the Director of Financial Services/ Treasurer

HUMAN RESOURCE CONSIDERATIONS

Should Council choose to call a by-election to fill the Ward 5 vacancy there may be potential staffing impacts as the Clerk will need to reallocate staff resources to administer the by-election and possibly hire external staff for administering the election on Voting Day.

BUDGET IMPACT

The cost of the by-election could be funded from the Election Reserve Fund. The intention for this reserve is to cover the cyclical cost of quadrennial municipal elections but it would also be the appropriate source for by-elections. To ensure there would be a sufficient allowance for the 2018 expenses, additional provisions of \$40-50,000 would be required in each of 2017 and 2018.

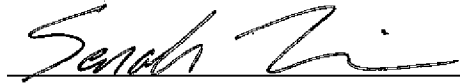
See the table below for an estimated breakdown of budget costs for a by-election. This is based on an election using vote tabulators.

Minimum By-election costs		Comments
Tabulator equipment and related services, and ballots	\$30,000	Based on recent quote
Communications	\$6,000	Advertising, promotions and materials
Voter notification & postage	\$6,000	
Staff support	\$31,000	Represents staff overtime an Election Assistant wage based on: <ul style="list-style-type: none">- 2 voting locations on voting day- 1 advance vote location each advance vote day- 3 multi-res advance vote- 1 roving vote team on voting day- Additional staff support as needed
Stationery, supplies & miscellaneous	\$5,400	
Voter's list management	\$1,600	Based on recent quote
Approximate Total	\$80,000	
Ranked ballot community education program (optional)	\$15,000- \$20,000	

Coordination of the appointment process is accommodated within the approved budget of the Legislative Services Department. There would be some expenses incurred for communications which would need to be re-allocated from within the current budget.

CONTACT

For more information on this report, contact Sarah Niezen, Record and Projects Coordinator (Ext. 2213, or sniezen@newmarket.ca), or Lisa Lyons, Deputy Clerk (llyons@newmarket.ca).



Records and Projects Coordinator



Director of Legislative Services/Town Clerk



Commissioner of Corporate Services



CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2016-37

A BY-LAW TO DECLARE THE OFFICE OF COUNCILLOR - WARD 5 TO BE VACANT ON THE COUNCIL OF THE CORPORATION OF THE TOWN OF NEWMARKET.

WHEREAS Ward 5 Councillor Joe Sponga provided the Clerk written notice of his resignation effective June 27, 2016;

AND WHEREAS Section 262 (1) of the *Municipal Act, 2001* requires that where an office of a member becomes vacant the Council shall at its next meeting declare the office to be vacant;

THEREFORE BE IT ENACTED by the Council of the Corporation of the Town of Newmarket as follows:

1. That the Office of Councillor - Ward 5 on the Council of the Corporation of the Town of Newmarket, formerly held by Joe Sponga, be declared vacant.

ENACTED THIS 25TH DAY OF JULY, 2016.

Tony Van Bynen, Mayor

Lisa Lyons, Deputy Clerk



CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2016-38

A BY-LAW TO REQUIRE A BY-ELECTION IN WARD 5.

WHEREAS the Office of Councillor – Ward 5 has become vacant;

AND WHEREAS Section 263 (1) of the *Municipal Act, 2001* requires a municipality to fill a vacancy in the office of a member of Council by appointment or by by-election in accordance with the provisions of the *Municipal Elections Act, 1996*;

THEREFORE BE IT ENACTED by the Council of the Corporation of the Town of Newmarket as follows:

1. That the Clerk conduct a by-election to be held on October 17, 2016 to fill the vacancy in the Office of Councillor – Ward 5 on the Council of the Corporation of the Town of Newmarket in accordance with the *Municipal Elections Act, 1996*.

ENACTED THIS 25TH DAY OF JULY, 2016.

Tony Van Bynen, Mayor

Lisa Lyons, Deputy Clerk

Appendix C – Proposed Timeframe for By-election

Date (2016)	Activity	Description / Explanation
June 27	Council Meeting	Formal submission of written resignation to Clerk.
July 25	Special Council Meeting	Consideration of report regarding appointment process vs. by-election Adoption of By-law to declare vacancy in ward 5 Adoption of By-law to call for by-election
July 26	Nomination Period begins	First day candidates may submit nominations for a by-election.
September 12	Regular Council Meeting	Consideration of By-laws to establish alternative voting method, alternative languages and ranked ballots, as directed by Council.
Friday, September 2 2 p.m.	Nomination Day	Last day nominations may be submitted. Must be set not less than 30 days and not more than 60 days after bylaw to call for by-election passed (Clerk to fix date of nomination day s.65 (4) (1))
October 8, 8 a.m. – 1 p.m. October 15, 12 – 4 p.m. multi-res October 12, 4 – 8 p.m.	Advance Vote	To be held on one or more dates prior to voting day (not more than 30 days before voting day)
Monday, October 17, 10 a.m. to 8 p.m.	Voting Day	45 days after Nomination Day
October 24	Regular Council meeting	Regular Council meeting to swear in Ward 5 Councillor.

**Does not include timeframe for candidates financial statement filing deadlines.

Appendix D – Draft Ward 5 Council Vacancy Appointment Procedure

Draft Ward 5 Council Vacancy Appointment Procedure

Purpose

The following procedure will be used when appointing an individual to fill the Ward 5 Council vacancy.

Definitions

“Act” means *Municipal Elections Act, 1996, S.O., 1996, c.32*, as amended.

“Candidate” means an individual seeking to fill the Ward 5 Council vacancy 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 the Ward 5 Council vacancy.

“Clerk” means the Clerk or his designate.

“Council” means the Council of the Corporation of the Town of Newmarket.

“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 Clerk.

General

1. Any individual filling the Ward 5 Council vacancy must meet the eligibility requirements of office as outlined in the Act as noted below:
 - 18 years of age or older;
 - a Canadian citizen;
 - a resident of the Town of Newmarket, or an owner or tenant of land in the Town or the spouse of such an owner or tenant; and
 - not prohibited from voting under any other Act or from holding municipal office.
2. If an employee of the Town of Newmarket seeks appointment to Council, the employee is required to give Council written notice, in advance, 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 Town immediately before making the declaration of office.

Appendix D – Draft Ward 5 Council Vacancy Appointment Procedure

Appointment Procedure

1. The Clerk will post a Ward 5 Council Vacancy notice on the Town website and in the local newspaper for four consecutive weeks after the vacancy occurs. The notice will outline the application process.
2. Any individual wishing to be considered for appointment to the Ward 5 Council vacancy will complete and sign the Ward 5 Council Vacancy Application Form and a Ward 5 Council Vacancy Declaration of Qualification and will submit the forms to the Clerk by Friday, August 26, 2016.
3. A vote to fill a vacancy on Council by appointment will occur at an open Council Meeting.
4. At the meeting, the following will take place:

- a. The Chair will make a short statement for the purpose of the meeting and the general order of proceedings to be followed.
- b. The Clerk will provide to the Chair a list of the names of qualified applicants and the Chair will call for a motion from Council in the following form:

“THAT the following individuals, who have signified in writing that they are legally qualified to hold office and consented to accept the office if they are appointed to fill the Ward 5 Council vacancy, be considered for appointment to fill such vacancy.”

- c. Each of the candidates will be afforded the opportunity to address Council for a period of not more than ten (10) minutes. The order of speaking will be determined by lot. The Clerk will place the names of all candidates in a container and randomly draw the names.
- d. Upon hearing all the submissions of the candidates, Council will proceed to vote as follows:
 - i. Members of Council will vote by way of public vote as required by the *Municipal Act*.
 - ii. Candidate names will be displayed on the monitors in alphabetical order, in the Council Chamber by the Clerk.
 - iii. The Clerk will place the names of all Members of Council in a container and randomly draw their names to determine the order of the vote.
 - iv. Members of Council will vote for one (1) candidate only and votes will be cast verbally.
 - v. The Clerk will tabulate the results.
 - vi. 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

Appendix D – Draft Ward 5 Council Vacancy Appointment Procedure

candidate or candidates who received the fewest number of votes will be excluded from further consideration. The vote will be taken again by the 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.

- vii. Where the votes cast are equal for all the candidates and if:
 - 1. There are three or more candidates remaining, the Clerk will by lot select one such candidate to be excluded from the subsequent voting;
 - 2. Only two candidates remain, the tie will be broken by selecting a candidate by lot, as conducted by the Clerk.
- e. Upon conclusion of the voting, the Clerk will note 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 (e)(vii)(2).
- f. The appointment of the candidate will be made by by-law.

Appendix E – Proposed Timeframe for Appointment Process

<u>Date (2016)</u>	<u>Activity</u>
June 27	Formal Submission of written resignation to Clerk
July 25	By-law to declare vacancy in Ward 5
Weeks of July 25 – August 26	Notice of vacancy – local newspaper & Town website
August 26	Due date for application
Week of August 29 – September 2	Applications reviewed by Clerk, eligible candidates certified for consideration by Council by Clerk
	Certified candidate materials distributed to Council for review
	Certified candidate materials posted on Town's website
September 8	Council meeting agenda published
September 12	Council meeting to hear depositions from candidates for appointment
October 3	Regular Council meeting to appoint Ward 5 Councillor
October 24	Regular Council meeting to swear in Ward 5 Councillor.