


TO: GENERAL COMMITTEE


SUBJECT: BY-ELECTION TO FILL WARD 7 VACANCY

WARD: 7

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: P. ELLIOTT-SPENCER, MBA, CPA, CMA, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES 

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

RECOMMENDED MOTION

1. That a by-election be held to fill the vacancy in the office of Councillor – Ward 7.

PURPOSE AND BACKGROUND

2. 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.
3. In accordance with Section 260 of the *Municipal Act*, Councillor J. Brassard provided notice to the Clerk of his resignation from his office as Councillor for Ward 7 on Barrie City Council as he has been elected as the Member of Parliament for the federal electoral district of Barrie-Innisfil. On October 26, 2015, City Council adopted a resolution to declare the office to be vacant in accordance with Section 262 of the *Municipal Act*.
3. Under Section 263 of the *Municipal Act, 2001*, 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. The *Municipal Elections Act* states that “Despite any Act, no by-election shall be held to fill an office that becomes vacant after March 31 in the year of a regular election and no by-election shall be held with respect to a question or by-law after March 31 in the year of a regular election unless it is held in conjunction with a by-election for an office.”
5. 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 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.

6. A person appointed or elected to fill a vacancy holds the office for the remainder of the term of Council. There are approximately 37 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 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 more than sixty 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.
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 details and dates associated with a by-election will be finalized by the City Clerk. A memorandum will be provided to City Council concerning the dates associated with major election events such as the opening and closing of nominations, early voting opportunities, Voting Day, and the Councillor-elect taking the oath of office. It is anticipated that the final date for voting in a Ward 7 By-election would be held in February of 2016.
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%

Advantages of By-election

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

Disadvantages of By-election

15. Some of the disadvantages of filling a seat through a by-election are:
- more costly than appointment, a by-election for Ward 7 is estimated to cost in excess of \$40,000;
 - a by-election is a longer process than filling the vacancy through appointment resulting in a prolonged period of time without ward representation (approximately 1 month longer than an appointment);
 - 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.
18. Section 17 of the *Municipal Elections Act* states that a person is entitled to be an elector at an election held in a local municipality if, on voting day, he or she,
- a) resides in the local municipality or is the owner or tenant of land there, 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 otherwise by law.

Advantages of Appointment

19. Some of the advantages of filling a seat through appointment are:
- Less costly procedure than conducting a by-election (estimated \$2,000 in advertising related costs to seeks persons interested in being appointed);
 - 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 less costly process from a staffing perspective.

Disadvantages of Appointment

20. 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.
21. If the appointment process is selected, the Legislative and Court Services Department would advertise for interested applicants for the position of Councillor – Ward 7. 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
 - d) Applicants would also be encouraged to submit a resume with details regarding their qualifications.
22. 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 7.
23. It is estimated that an individual could be sworn into office under the appointment process no later than January 11, 2016 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. Should City Council select an appointment process, the details and dates associated with the process will be finalized. A memorandum would be provided to City Council concerning the dates associated with deadline for interested electors to submit an application, General Committee and Council consideration of applications and the Councillor-elect taking the oath of office.

Past Practices

24. 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

Other Municipalities' Practices

25. 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 2014 Municipal Election received 11% of the votes cast for Councillor – Ward 7. At this time, filling the vacancy through the selection of the "runner up" from the previous election is not a possibility for the position of Councillor – Ward 7, given the legislative requirements.

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 7 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

30. It is estimated that the cost of conducting a by-election for the position of Councillor for Ward 7 will exceed \$40,000, not including the costs associated with City staff resources.
31. At this time, funds have not been included in the 2016 Operating Budget for a by-election. However, funds are available in a reserve associated with the 2018 Municipal Election. Subject to the approval of future transfers to the election reserve as part of the 2016 and 2017 Business Plans, it is anticipated that there will be sufficient funds to cover the costs associated with both a by-election and the 2018 Municipal Election.
32. 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 7 Councillor. The costs associated with appointing an individual would be funded from the savings resulting from the temporary vacancy in Ward 7.

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:
- Inclusive Community
34. The proposed by-election would ensure that the individual filling the vacancy for Councillor, Ward 7 would be selected by the eligible electors.