



Report to: General Committee

Date Report Authored: October 1, 2012

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**SUBJECT:** Council Vacancy Policy  
**PREPARED BY:** S. Huycke, Acting Deputy Clerk (x 4290)

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**RECOMMENDATION:**

- 1) THAT the report entitled “Council Vacancy Policy” be received; and,
- 2) THAT Council approve the proposed “Council Vacancy Policy” (Attachment “A”); and further,
- 3) THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE:**

The purpose of this report is to seek approval for a ‘Council Vacancy Policy’ developed as directed by General Committee on June 11, 2012.

**BACKGROUND:**

On June 11, 2012 staff provided General Committee with a presentation on options for a City policy pertaining to vacancies that can occur on City Council. This presentation reviewed the legislative provisions in the *Municipal Act, 2001* (“MA”), including:

1. How a seat on municipal councils becomes vacant (e.g. Death of Councilor);
2. The requirement to declare a seat vacant [MA, sec. 262(1)], and,
3. The requirement to select a method to fill a vacancy, either by by-election or appointment [MA, sec. 263(3)].

Additionally, staff reviewed Markham’s past practices in respect to vacancies on Council. At that meeting Committee passed a motion: “that staff be directed to prepare a report outlining a proposed policy that would permit a by-election to fill a Council vacancy that occurs within the first three years of term and that appointment be used for any other vacancies occurring during the last year of term.”

**OPTIONS/ DISCUSSION:**

Based on direction from General Committee, staff have developed the attached Council Vacancy Policy. This policy requires Council to choose to fill a vacancy by by-election in the first three years of a Council term, and by appointment in an election year.

Highlights of the proposed policy are as follows:

**A. Principle of the Policy**

The principles of the policy, which are used to interpret the whole of the policy, are:

1. Council will elect to fill a vacancy by By-election when that By-election can be held prior to December 31 in the year immediately preceding a regular election year; or,
2. Council will elect to fill a Vacancy by Appointment, when a By-election to fill a Vacancy cannot be held prior to December 31 in the year immediately preceding a Regular Election Year.

**B. By-election Rules**

The policy establishes rules and guidelines for determining when a by-election can be held in an efficient manner before December 31 in the third year of a Council Term. The policy proposes that to hold a by-election prior to December 31 a vacancy must occur:

1. In the case of the office of the Mayor or Regional Councillor, on or before March 31 in the year immediately prior to a Regular Election Year; or,
2. In the case of the office of a local Ward Councillor, on or before June 30 in the year immediately prior to a Regular Election Year.

This proposal is in view of the fact that a City wide by-election for the Office of Mayor or Regional Councillor requires significantly more preparation time than one for a local Ward Councillor.

To ensure an efficient and effective by-election, this policy proposes a process for triggering the by-election voting day. Section 263(5) of the *Municipal Act* requires Council to pass a by-law calling for a by-election within 60 days of declaring a seat vacant. Under the *Municipal Elections Act, 1996*, the City Clerk is required to fix "Nomination Day" to be a day not more than 60 days after the by-law is passed, with voting day 45 days later. These legislated rules permit a maximum of 165 days to elapse between declaring a seat vacant and holding the by-election. To allow the Clerk sufficient time to prepare for an election, staff proposes that a by-election by-law be placed on a Council Agenda:

1. No earlier than the 50th day after a vacancy is declared in the case of the Office of the Mayor or Regional Councillor; or,
2. No earlier than the 30th day after a vacancy is declared in the case of the Office of Ward Councillor.

Section 4.2 of the proposed policy recognizes that the time between a seat becoming vacant and the holding of a by-election may be reduced when a vacancy occurs during

Council's summer recess. Such an occasion would occur in the first or second year of a Council term only.

### **C. Vacancies on Regional Council**

In respect to vacancies in the Office of Mayor and Regional Councillor, section 3 of the policy reiterates Council's authority under section 267(2) of the *Municipal Act* to appoint a Ward Councillor as an 'alternate member' of Regional Council until the seat is permanently filled. Use of this legislative authority would ensure that the City is properly represented on Regional Council during the period between a seat becoming vacant and a by-election being completed.

### **D. Appointment Process & Procedures**

When a by-election cannot be held prior to December 31 in the third year of a Council term, the policy establishes a process to fill a vacancy by appointment. As discussed at the General Committee meeting on June 11, 2012, the Act is not prescriptive on the appointment process. The only requirement is that the person appointed to fill a vacant seat be eligible to hold that seat. The Act also requires that any such appointment be made within 60 days of declaring a seat vacant. The proposed policy provides Council options for determining how an appointment should be filled. It is recommended that any preferred selection method be approved by Council at the meeting where a seat is declared vacant.

Appendices A, B & C of the proposed policy establish procedures for the appointment of, respectively, a current Member of Council, a former Candidate, and any Eligible Voter. These procedures are based on Markham's past practices when filling a Council Vacancy by appointment.

### **FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)**

Costs are dependent on the method adopted by Council for filling the vacancy. The estimated cost of having a by-election is up to \$100,000 for a Ward election; and up to \$500,000 for a City wide election, exclusive of Contribution Rebate Program costs. The cost of a by-election can be funded from the Corporate Rate Stabilization Fund.

### **HUMAN RESOURCES CONSIDERATIONS**

None

### **ALIGNMENT WITH STRATEGIC PRIORITIES:**

None

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**BUSINESS UNITS CONSULTED AND AFFECTED:**

None

**RECOMMENDED BY:**

10/12/2012

05/10/2012

X 

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Martha Pettit  
Acting City Clerk

X 

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Trinela Cane  
Commissioner of Corporate Services

**ATTACHMENTS:**

[Attachment "A" – Council Vacancy Policy](#)