

**Report to
Rapport au:**

**Council /Conseil
15 July 2020 / 15 juillet 2020**

**Submitted on July 10, 2020
Soumis le 10 juillet 2020**

**Submitted by
Soumis par:
M. Rick O'Connor, City Clerk / Greffier municipal**

**Contact Person
Personne ressource:
Michèle Rochette, Manager, Municipal Elections and French Language Services,
Office of the City Clerk / Gestionnaire, Élections municipales et Services en
français, Bureau du greffier municipal
613-580-2424 ext. / poste 21453, Michele.Rochette@ottawa.ca**

Ward: CUMBERLAND (19)

File Number: ACS2020-OCC-GEN-0021

SUBJECT: Ward 19 (Cumberland) – Vacancy Options (July 15)

**OBJET: Quartier 19 (Cumberland) – Options pour pourvoir la charge vacante
(15 juillet)**

REPORT RECOMMENDATIONS

- 1. That Council approve and enact a *By-law to Require a By-Election*, attached as Document 1, to hold a by-election to fill the vacancy in the Office of Councillor, Ward 19 (Cumberland) in accordance with the *Municipal Elections Act, 1996*, as described in this report.**

2. That Council approve and enact a *By-Law to Authorize the Use of an Alternative Voting Method*, attached as Document 2, to permit the use of a special mail-in ballot that does not require electors to attend at a voting place in order to vote in accordance with Subsection 42(1)(b) of the *Municipal Election Act, 1996*, for the Ward 19 (Cumberland) by-election, as described in this report.

RECOMMANDATIONS DU RAPPORT

1. Que le Conseil approuve et promulgue le *Règlement pour exiger une élection partielle*, annexé au titre de document 1, afin de tenir une élection partielle pour pourvoir la charge vacante de conseiller du quartier 19 (Cumberland), conformément à la *Loi de 1996 sur les élections municipales*, comme décrit dans le présent rapport.
2. Que le Conseil approuve et promulgue le *Règlement permettant d'utiliser une autre méthode de vote*, annexé au titre de document 2, afin d'autoriser l'utilisation d'une procédure de vote spécial qui n'oblige pas les électeurs à se rendre en personne dans un bureau de scrutin pour exercer leur droit de vote, conformément au paragraphe 42(1)(b) de la *Loi de 1996 sur les élections municipales* pour l'élection partielle dans le quartier 19 (Cumberland), comme décrit dans le présent rapport.

EXECUTIVE SUMMARY

On Thursday, February 27, 2020, Stephen Blais was elected to be the Member of Provincial Parliament for Orléans. On Thursday, March 5, 2020, he provided the City Clerk with written notice of his resignation as City Councillor of Ward 19 (Cumberland), effective immediately, pursuant to Subsection 260(1) of the *Municipal Act, 2001*.

As required by Section 262 of the *Municipal Act, 2001*, Council declared the Ward 19 (Cumberland) Councillor's Office to be vacant at the Special Council meeting of Wednesday, March 25, 2020. At that time, Council also delegated the authority for specific ward-related matters to neighbouring Ward Councillors Luloff, Dudas and Darouze for ward councillor concurrence on planning and related matters and Councillor comments on reports, and to the City Clerk and the Manager of Committee and Council Services for payments of expenses from the Ward 19 (Cumberland) Office budget arising from routine matters, and human resources matters relating to the Ward 19 (Cumberland) Office. The Ward 19 (Cumberland) Office remains open (virtually due to the pandemic) and staffed to continue to address day-to-day constituency needs.

Section 263 of the *Municipal Act, 2001* provides Council with two options to fill a vacancy, specifically appointing a new Member or holding a by-election – “select or elect”. More specifically, in accordance with Subsection 263(5), Council must either appoint a new Member or pass a by-law requiring a by-election to be held within 60 days of declaring the office vacant.

Following the provincial by-election, the City Clerk issued a memorandum to Council on Friday, February 28, 2020 entitled “[Filling a Council Vacancy \(Ward 19 – Cumberland\)](#)”, attached as Document 3, providing information that a by-election held on the shortest possible calendar permitted under the MEA would see Friday, April 24, 2020 at 2:00 p.m. be Nomination Day, with Monday, June 8, 2020 being Voting Day.

In the intervening weeks since the Ward 19 (Cumberland) Office was vacated, the environment was materially changed due to the rapidly evolving COVID-19 pandemic and the subsequent and ongoing actions of the federal, provincial and municipal governments, including provincial and municipal declarations of emergency and the requirements for physical distancing.

As it was clear that conducting a by-election was not feasible under these circumstances, at the Wednesday, March 25, 2020 Special Council meeting, Council approved a motion which declared the seat vacant in accordance with Section 262 of the *Municipal Act, 2001* and further directed the Office of the City Clerk to report back to Council within the 60-day statutory timeline with a detailed report on the options to appoint or hold a by-election in Ward 19 (Cumberland), including staff’s “operational readiness” to deliver on any presented option.

On Wednesday, April 22, 2020, Council received the report titled “[Ward 19 \(Cumberland\) – Vacancy Options](#)”, attached as Document 4. By way of a brief summary, the report outlined three options for Council’s consideration: (1) deferring the decision on whether to appoint or elect a new Member until such time as more certainty is established with respect to when the state of emergency is likely to wind down and gradually return to regular operations; (2) appointing someone to fill the vacancy by vote at Council; or (3) passing a by-law to conduct a by-election.

While the COVID-19 pandemic made the decision regarding how to fill the Ward 19 (Cumberland) vacancy challenging, the provincial mitigation measures provided Council with some flexibility with respect to the statutory deadline to make a decision on whether to appoint or pass a by-law to run a by-election within 60 days of the vacancy declaration. Specifically, the Provincial Order declaring the state of emergency, issued on Tuesday, March 17, 2020, indicated the suspension of “any limitation period” in any

statute, and also the suspension of “any period of time within which a step must be taken in any proceeding” in any statute for the duration of the emergency “subject to the discretion of the decision-maker responsible for the proceeding”, which, in this case, would be Council.

Therefore, staff was of the opinion that Council had the authority to defer the decision with respect to how they will fill the Ward 19 (Cumberland) vacancy for the duration of the state of emergency. At its meeting of Wednesday, April 22, 2020, Council deferred the decision on how to fill the Council vacancy by way of motion and directed staff to report back to Council no later than 30 days after the provincial emergency order is lifted.

On Monday, June 8, 2020, the Ontario provincial government announced that it was moving forward with a regional approach to Stage 2 of reopening the province. Effective Friday, June 12, 2020 at 12:01 a.m., the province increased the limit on social gatherings from five (5) to 10 people across the province, regardless of whether a region has moved to Stage 2. Stage 2 allowed a number of businesses and services to reopen with proper health and safety measures in place.

On Wednesday, June 10, 2020, the City Manager presented the City’s [Reopening Plan](#) to Council, outlining how the City will cautiously begin to reopen some facilities, programs and services in a gradual, phased approach. The City’s reopening plan is based on guidance from Ottawa Public Health (OPH) and aligns with the Province of Ontario’s plan to gradually relax its emergency orders.

Although the provincial emergency order is still in effect at the writing of this report, staff is of the opinion that, with the relaxing of some of provincial orders and the gradual reopening of the City, it is possible to conduct a safe and democratic by-election in Ward 19 (Cumberland) that complies with the MEA as well as the public health recommendations provided by OPH and the provincial government, as further described in this report.

In response to COVID-19, staff is recommending that the Ward 19 (Cumberland) by-election be conducted in the traditional manner (i.e. in-person voting) with adaptations made to the election process to address OPH and provincial health recommendations, as described in this report. Staff is further recommending that a special mail-in ballot process be implemented to allow electors the opportunity to vote without having to attend a voting place in-person, as described in this report.

Following Council's approval of the by-law to hold a by-election, the by-election schedule, as established by the City Clerk in accordance with the MEA, will include the following milestones:

- **Wednesday, July 15, 2020**
 - Nomination and Registration Period Begins (following Council approving the by-law requiring a by-election)
- **Friday, August 21, 2020 at 2:00 p.m.**
 - Nomination Day (last day to submit or withdraw a nomination)
- **Monday, September 28 and Tuesday, September 29, 2020**
 - Advance Vote Days (from 10:00 a.m. to 8:00 p.m.)
- **Friday, October 2, 2020**
 - Last day to submit a Notice of Registration as a Third Party Advertiser
- **Monday, October 5, 2020**
 - Voting Day (from 10:00 a.m. to 8:00 p.m.)
- **Wednesday, October 7, 2020**
 - Expected Declaration of Results and Declaration of Office

This schedule allows staff to conduct the by-election in 82 days, which is one of the shortest calendars permitted under the MEA, with the shortest permitted calendar being 75 days. This by-election schedule also aligns with the schedule previously communicated to Council in the "[Ward 19 \(Cumberland\) – Vacancy Options](#)" report, dated Wednesday, April 22, 2020, attached as Document 4, and further aligns with elections taking place in other jurisdictions, as described in the Background section of this report.

As described in the Discussion section of this report, changes to the in-person voting process will include:

1. Limiting the number of electors in a voting place to ensure physical distancing;
2. Developing a line management strategy and installing signage at voting places, including floor markers, to notify electors of physical distancing requirements;
3. Installing acrylic barriers in voting places;
4. Requiring electors to wear masks in voting places. Electors will be encouraged to bring their own mask; however, masks will be available at voting places should an elector not have one;

5. Providing appropriate personal protective equipment including masks and gloves for staff who are working and cleaning surfaces in voting places;
6. Installing hand sanitizing stations at voting places;
7. Providing single use stationery at voting places (voting pens, pens, privacy sleeves);
8. Providing face shields (eye protection) for election workers who cannot work behind acrylic barriers;
9. Developing a plan for voting in long term care homes;
10. Allowing the certification of proxy forms at voting places; and
11. Implementing “anywhere voting” at all voting places, meaning that electors can vote at any voting place, regardless of their address.

In response to COVID-19, staff has reviewed the possibility of implementing an alternative voting method during the Ward 19 (Cumberland) by-election and are recommending that a special mail-in ballot process be piloted. This process would allow eligible electors, particularly those from high-risk groups, including older adults and electors with disabilities who are more susceptible to the effects of COVID-19, to submit an application to the Elections Office to receive a special ballot by mail. This process will allow electors to mark their ballot at home and mail, or deliver, their ballot to the Elections Office (1221 B Cyrville Road), or electors can also deliver their special ballot to the Orleans Client Service Centre (255 Centrum Boulevard), as further described below.

It is important to note that this hybrid by-election approach does not replace traditional in-person voting. Electors in Ward 19 (Cumberland) will still have the opportunity to vote in-person or by proxy should they choose to do so.

In order to implement this alternative voting method by special mail-in ballot for the Ward 19 (Cumberland) by-election, as described in this report, Council is required to approve and enact a *By-Law to Authorize the Use of an Alternative Voting Method*, attached as Document 2, in accordance with Subsection 42(1)(b) of the MEA.

Should Council choose to fill the seat through a by-election, the MEA, while generally prescriptive, includes provisions that would allow the City Clerk to amend the statutory timelines in the case of an emergency. This includes preparing for the election and maintaining peace and order in connection with the election, in accordance with Section 11 of the MEA.

Section 12 of the MEA allows the City Clerk to provide for any matter or procedure that is not otherwise provided for in an Act or regulation, and that is, in the City Clerk's opinion, "necessary or desirable" for conducting the election.

Additionally, Section 53 of the MEA authorizes the City Clerk to declare an emergency when circumstances have arisen that are likely to prevent the election from being conducted in accordance with the MEA, and further allows the City Clerk to make arrangements that he considers advisable for the conduct of the election. As such, following Council's approval of this report, the City Clerk will declare an emergency, as outlined in Document 5, in order to conduct the by-election as described in this report and make all necessary arrangements.

As outlined in the Discussion section of this report, the City Clerk will exercise his statutory authority under Sections 12 and 53 of the MEA in order to provide for the following changes to the elections process in response to COVID-19:

1. The City Clerk is waiving the requirements of Subsection 33(1.1) of the MEA and a completed Form 2, which includes 25 signatures from eligible electors endorsing the nomination, will not be required in order to become a candidate in the Ward 19 (Cumberland) by-election.
2. The City Clerk is restricting access to long term care centres in response to COVID-19 and candidates and scrutineers will not be permitted to observe the vote. However, candidates and scrutineers will be permitted to observe the counting of the vote.
3. As proxy forms can be certified at voting places from 10:00 a.m. to 8:00 p.m. on all voting days, the City Clerk is waiving the requirements of Subsection 44(6) of the MEA which requires that the City Clerk's office and any other place designated by the City Clerk shall be open for the purpose of certifying proxies from noon to 5:00 p.m. on Advance Vote Days. As such, Client Service Centres and the Elections Office will not be required to be open from noon to 5:00 p.m. on Advance Voting Days.

Staff is of the opinion that the adaptations as described in this report allow a by-election to proceed in a manner that is consistent with the MEA and public health guidelines and recommendations. However, should COVID-19 resurge or if provincial or OPH health guidelines change, the City Clerk can use the emergency powers under Section 53 of the MEA, as required, to protect the integrity of the election as well as ensure public safety. The City Clerk will notify Council and the public should any significant changes to the election process be required.

As noted in the "[Ward 19 \(Cumberland\) – Vacancy Options](#)" Council report, attached as Document 4, a traditional by-election conducted under "normal circumstances" was expected to cost approximately \$375,000. Due to the COVID-19 pandemic, the cost of the Ward 19 (Cumberland) by-election is expected to increase by approximately \$148,835 for a total expected cost of \$523,835. This increase in cost relates specifically to various COVID-19-related items such as the special mail-in ballot process; an additional advance vote day; increased communications efforts; PPE requirements; as well as additional cleaning and staffing requirements, as described in this report. These supplementary costs are necessary to adhere to both the MEA requirements and the recommendations by OPH to ensure the health and safety of candidates, voters, third party advertisers and staff as a result of the COVID-19 pandemic.

If Council were to choose to fill the vacancy by appointment, Subsection 263(5) of the *Municipal Act, 2001* provides that Council shall fill the vacancy by appointing a person who has consented to accept the appointment within 60 days of declaring the Office vacant.

To be eligible to hold office, a person must be:

1. 18 years of age or older;
2. a Canadian citizen;
3. a resident of the City of Ottawa, or an owner or tenant of land in the City or the spouse of such an owner or tenant; and
4. not be prohibited from holding municipal office or from voting under the *Municipal Elections Act, 1996* or otherwise by law.

Should Council choose to fill the vacancy by appointment, staff is proposing an appointment process attached as Document 6. This appointment process has been developed to address the COVID-19 pandemic and the current provincial and OPH guidelines.

Given the current circumstances surrounding the COVID-19 pandemic, OPH is of the view that the appointment process, as outlined in Document 6, is the safest option to fill the Council vacancy as interactions between staff, candidates and electors are significantly reduced, thereby limiting any potential exposure to COVID-19.

If Council chooses to fill the vacancy by appointment, the following timelines would apply:

- **Monday, July 20, 2020**

- The City Clerk will provide public notice of the vacancy and advertise Council's intention to appoint a person to fill the vacancy.
 - The notice will invite interested and qualified individuals to seek appointment for the Ward 19 (Cumberland) Office and outline the process for filing an application.
 - Advertisements would be placed in newspapers for a two-week period (the week before and after the application period begins).
 - Information will also be available on the City of Ottawa website and social media accounts during the application period.
- **Monday, July 27, 2020 at 8:30 a.m.**
 - The application period begins.
 - **Friday, July 31, 2020 at 4:00 p.m.**
 - The application period closes at 4:00 p.m.
 - **Friday, August 7, 2020**
 - The City Clerk will issue a report to Council that includes a list of certified applicants.
 - The report to Council will also outline the appointment process to fill the Ward 19 (Cumberland) vacancy, in accordance with Document 6 attached to this report.
 - **Friday, August 14, 2020**
 - Special Council meeting to appoint an applicant to fill the Ward 19 (Cumberland) vacancy.

Staff anticipate that there would be some modest costs for advertising, which could be absorbed within the operating budget of the Office of the City Clerk.

If Council decides to fill the vacancy by appointment, in accordance with the process outlined in Document 6, a motion would be required to that effect.

BACKGROUND

On Thursday, February 27, 2020, Stephen Blais was elected to be the Member of Provincial Parliament for Orléans. On Thursday, March 5, 2020, he provided the City Clerk with written notice of his resignation as City Councillor of Ward 19 (Cumberland), effective immediately, pursuant to Subsection 260(1) of the *Municipal Act, 2001*.

As required by Section 262 of the *Municipal Act, 2001*, Council declared the Ward 19 (Cumberland) Councillor's Office to be vacant at the Special Council meeting of Wednesday, March 25, 2020. At that time, Council also delegated the authority for specific ward-related matters to neighbouring Ward Councillors Luloff, Dudas and Darouze (for ward councillor concurrence on planning and related matters and Councillor comments on reports) and to the City Clerk and the Manager of Committee and Council Services for payments of expenses from the Ward 19 (Cumberland) Office budget arising from routine matters, and human resources matters relating to the Ward 19 (Cumberland) Office. The Ward 19 (Cumberland) Office remains open (virtually due to the pandemic) and staffed to continue to address day-to-day constituency needs.

Process to fill Council vacancies defined by *Municipal Act, 2001, Municipal Elections Act, 1996, "Select or Elect"*

Section 263 of the *Municipal Act, 2001* provides Council with two options to fill a vacancy, namely by appointing a new Member or by holding a by-election, as follows:

263 (1) *If a vacancy occurs in the office of a member of council, the municipality shall, subject to this section,*

(a) fill the vacancy by appointing a person who has consented to accept the office if appointed; or

(b) require a by-election to be held to fill the vacancy in accordance with the Municipal Elections Act, 1996.

More specifically, Subsection 263(5) of the *Municipal Act, 2001*, requires Council to choose one of these options and either appoint a replacement or pass a by-law requiring a by-election to be held within 60 days of declaring the office vacant, as follows:

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.

In his Friday, February 28, 2020 memorandum to Council entitled "[Filling a Council Vacancy \(Ward 19 – Cumberland\)](#)", attached as Document 3, the City Clerk provided information that a by-election held on the shortest possible calendar permitted under the MEA would see Friday, April 24, 2020 at 2:00 p.m. be Nomination Day, with Monday, June 8, 2020 being Voting Day. Although not stated in the memorandum, the longest possible calendar permitted under the MEA would see Friday, July 17, 2020 at 2:00 p.m. be Nomination Day, with Monday, August 31, 2020 being Voting Day.

Given that the vacancy was declared with two years and eight months left in the 2018-2022 term, staff was expecting to recommend that Council proceed with a by-election to fill the vacancy on the shortest possible timeline permitted under the *Municipal Elections Act, 1996* (MEA). However, in the intervening weeks since the Ward 19 (Cumberland) Office was vacated and the Special Council meeting of Wednesday, March 25, 2020, the environment was materially changed due to the rapidly evolving COVID-19 global pandemic and the subsequent and ongoing actions of the federal, provincial and municipal governments, including provincial and municipal declarations of emergency and the requirements for physical distancing.

As it was clear that conducting a by-election was not feasible under these circumstances, at the Wednesday, March 25, 2020 Special Council meeting, Council approved a motion which directed the Office of the City Clerk to report back to Council within the 60-day statutory timeline with a detailed report on the options to appoint or hold a by-election in Ward 19 (Cumberland), including staff's "operational readiness" to deliver on any presented option.

On Wednesday, April 22, 2020, Council received the report titled "[Ward 19 \(Cumberland\) – Vacancy Options](#)", attached as Document 4. By way of a brief summary, the report outlined three options for Council's consideration: (1) deferring the decision on whether to appoint or elect a new Member until such time as more certainty is established with respect to when the state of emergency is likely to wind down and gradually return to regular operations; (2) appointing someone to fill the vacancy by vote at Council; or (3) passing a by-law to conduct a by-election.

While the COVID-19 pandemic made the decision regarding how to fill the Ward 19 (Cumberland) vacancy challenging, the provincial mitigation measures, in staff's opinion, provided Council with some flexibility with respect to the statutory deadline to make a decision on whether to appoint or pass a by-law to run a by-election within 60 days of the vacancy declaration. Specifically, the Provincial Order declaring the state of emergency, issued on Tuesday, March 17, 2020 and retroactive to Monday, March 16,

2020, indicated the suspension of “any limitation period” in any statute, and also the suspension of “any period of time within which a step must be taken in any proceeding” in any statute for the duration of the emergency “subject to the discretion of the decision-maker responsible for the proceeding”, which, in this case, would be Council.

The relevant portions of the Order read as follows (emphasis added):

Whereas an emergency has been declared pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020 at 7:30 a.m. Toronto time pursuant to section 7.0.1 of the Emergency Management and Civil Protection Act (the “Act”);

And Whereas the criteria set out in subsection 7.1 (2) of the Act have been satisfied;

Now Therefore, an Order is made pursuant to subsection 7.1 (2) of the Act, the terms of which Order are the following:

1. ***Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period shall be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020.***
2. ***Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020.***

The duration of this Order is subject to any renewal required under subsection 7.1 (4) and, if applicable, subsection 7.1 (5) of the Act.

Therefore, staff was of the opinion that Council had the authority to defer the decision with respect to how they will fill the Ward 19 (Cumberland) vacancy for the duration of the state of emergency. At its meeting of Wednesday, April 22, 2020, Council deferred the decision on how to fill the Council vacancy by way of motion and directed staff to report back to Council no later than 30 days after the provincial emergency order is lifted.

On Monday, June 8, 2020, the Ontario provincial government announced that it was moving forward with a regional approach to Stage 2 of reopening the province. Effective Friday, June 12, 2020 at 12:01 a.m., the province increased the limit on social gatherings from five (5) to 10 people across the province, regardless of whether a region has moved to Stage 2. Stage 2 allowed a number of businesses and services to reopen with proper health and safety measures in place.

On Wednesday, June 10, 2020, the City Manager presented the City's [Reopening Plan](#) to Council, outlining how the City will cautiously begin to reopen some facilities, programs and services in a gradual, phased approach. The City's reopening plan is based on guidance from Ottawa Public Health (OPH) and aligns with the Province of Ontario's plan to gradually relax its emergency orders.

In order to begin planning for the potential Ward 19 (Cumberland) by-election, the City's Elections Office reopened on Tuesday, June 30, 2020, during the Pre-Recovery Phase of the City's reopening plan. Health and safety measures have been implemented in accordance with provincial directives, including physical distancing requirements, the installation of acrylic barriers, and enhanced cleaning procedures and protocols.

Although the provincial emergency order is still in effect at the writing of this report, staff is of the opinion that, with the relaxing of some provincial orders and the gradual reopening of the City, it is possible to conduct a safe and democratic by-election in Ward 19 (Cumberland) that complies with the MEA as well as the public health recommendations provided by OPH and the provincial government, as further described in this report.

As such, this report recommends that Council approve and enact the *By-law to Require a By-election*, attached as Document 1, to hold a by-election to fill the vacancy in the Office of Councillor, Ward 19 (Cumberland) in accordance with the MEA, as described in this report. This report further recommends that Council approve and enact a *By-Law to Authorize the Use of an Alternative Voting Method*, attached as Document 2, to permit a special mail-in ballot process that does not require electors to attend at a voting place in order to vote, in accordance with Subsection 42(1)(b) of the MEA for the Ward 19 (Cumberland) by-election, as described in this report.

Election Preparations in Other Jurisdictions

Staff have been in contact with election officials from the City of Windsor, the City of Cambridge and the Town of Pelham who are preparing for and/or conducting by-elections during the COVID-19 pandemic. Staff have participated in weekly meetings to

discuss best practices relating to election preparations in response to COVID-19. These jurisdictions are subject to the same legislation as the City of Ottawa, being the MEA and the Ontario provincial emergency orders. Election officials in these jurisdictions are moving forward with their respective by-election plans in a similar manner to those presented in this report. More specifically, staff is adapting their “traditional” in-person voting processes to align with public health guidelines and protocols surrounding COVID-19.

On Monday, June 15, 2020, Pelham’s Council approved holding a by-election with similar timelines to those proposed in this report. Their nomination period began on Tuesday, June 16, 2020 and will end on Friday, July 31, 2020 at 2:00 p.m. Advance voting will take place on Thursday, September 3 and Saturday, September 12, 2020, with Voting Day taking place on September 15, 2020. Due to the ongoing pandemic, staff is developing a hybrid special ballot process, On Demand Special Ballot, for individuals who find themselves in a situation where they are not permitted to personally attend a voting place.

At the writing of this report, the cities of Windsor and Cambridge continue to explore options for their respective by-elections, their by-election schedules are yet to be determined.

In Nova Scotia, in a letter to the Mayor of the Town of Yarmouth and the President of the Nova Scotia Federation of Municipalities, the Minister of Municipal Affairs and Housing confirmed that municipal elections will be held in October 2020. Due to the unpredictable situation, the Minister encouraged municipalities to continue with their election preparations with current public health protocols in mind, specifically the requirements surrounding physical distancing.

In Saskatchewan, the general provincial election will take place on Monday, October 26, 2020. The province’s Chief Elector Officer, Michael Boda, addressed four recommendations to the government and the legislative assembly as he planned for an election during the COVID-19 pandemic. Boda asked the province for (1) expanded emergency powers to adjust election rules; (2) exclusive access to school gymnasiums; (3) help acquiring personal protective equipment; and (4) an advisory panel on elections that would include the province’s Chief Medical Health Officer. Boda also stated that there was not sufficient time or capacity as an institution to implement measures that would completely eliminate the need for in-person voting, such as a fully mail-in balloting system, in time for the October election. He further noted that they would need to use vendors in order to assist with the transition to a mail-in voting system, and that

they would be competing with all of those jurisdictions in the United States that are transitioning to postal ballot in time for the November 2020 presidential, congressional and Senate elections.

On Wednesday, May 13, 2020, the Saskatchewan Government announced that it had changed regulations to give the Chief Electoral Officer, the power “to take any necessary action to ensure the October 26 provincial election is conducted safely, in light of the COVID-19 pandemic.” Boda said that the changes announced mean he can safely plan for and hold an election this fall.

Two weeks after the provincial election, municipal elections in Saskatchewan are scheduled to take place on Monday, November 9, 2020. The City of Regina says it anticipates "the ability to vote in person in the fall, as usual," and that it will undertake cleaning and physical distancing measures to ensure the safety of electors. Advance voting is scheduled to take place over two (2) days on Monday, November 2 and Wednesday, November 4, 2020.

City of Ottawa Elections Working Group

The Elections Office established an internal Elections Working Group to review the strategic and operational implications of COVID-19 on the election process. The working group provides advice to the City Clerk on how to implement changes to the voting process to ensure the health and safety of electors, candidates, third party advertisers and staff, all while maintaining the integrity and accuracy of the election process. The working group includes staff from the Elections Office, OPH, Legal, the Emergency Operations Centre (EOC) and Information Technology Services (ITS).

When reviewing the election process, the working group identified a number of challenges that needed to be addressed in order to mitigate the risks of COVID-19. Some of these challenges included making changes to the nomination and registration processes to ensure physical distancing; developing plans to minimize the risks of large crowds and/or lineups forming at voting places; adapting voting place layouts and processes to ensure physical distancing; developing a plan to ensure that electors who reside in long term care facilities can vote safely; and establishing cleaning procedures and personal protective equipment (PPE) requirements for electors and staff.

As is past practice, staff is also in consultation with the City’s Accessibility Advisory Committee (AAC) and Accessibility Office to ensure that the election process, including the changes required to address COVID-19, as described in this report, remain accessible to electors and candidates as required by Section 12.1(1) of the MEA.

In accordance with Section 12.1(2) of the MEA, staff will prepare a plan regarding the identification, removal and prevention of barriers that affect electors and candidates with disabilities and make the plan available to the public before Voting Day. This plan highlights accessibility features available at voting places such as accessible vote tabulators, curbside voting, and accessible voting tools including large print ballots, braille listing of candidates and ballot templates and magnifying sheets.

The City Clerk and the Elections Office will continue to consult with the Elections Working Group, the AAC and the Accessibility Office as required throughout the election process and will implement the health and safety protocols required in order to keep electors, candidates, third party advertisers and staff safe.

Ward 19 (Cumberland) Statistics and Previous Voter Turnout

Ward 19 (Cumberland) has approximately 33,518 eligible electors. In the 2018 Municipal Elections, voter turnout in Ward 19 (Cumberland) was 38 per cent with 12,193 electors casting their ballot.

Typically, by-elections have a lower voter turnout than regular municipal elections. For example, in the 2019 Rideau-Rockcliffe By-election (Ward 13), there were 27,246 eligible electors and voter turnout was 31 per cent with 8,341 electors casting their ballot. Whereas in the 2018 Municipal Elections, there were 25,460 electors in Ward 13 (Rideau-Rockcliffe) with a voter turnout of 37.15 per cent with 9,458 electors casting their vote.

DISCUSSION

The decision on how to fill the Council vacancy in Ward 19 (Cumberland) is made by Council, within the statutory framework provided by the *Municipal Act, 2001* and the MEA. Section 263 of the *Municipal Act, 2001* provides Council with two options to fill a vacancy, namely by appointing a new Member or by holding a by-election.

Option No. 1: “Elect” - Hold a By-election to Fill the Ward 19 (Cumberland) Vacancy

Subsection 263(5) of the *Municipal Act, 2001* provides that, within 60 days of Council declaring an Office to be vacant, Council shall pass a by-law requiring a by-election to be held to fill that vacancy.

At that point, as is the case with a regular municipal election, the City Clerk is responsible for the preparation and conduct of a by-election. He has a duty to adhere to

provisions of the MEA and administer the by-election in a manner consistent with the principles of the statute as determined by the courts. These principles include but are not limited to the secrecy and confidentiality of the voting process; to be accessible to all voters; to be undertaken in a fair and non-biased fashion; as well as maintaining integrity of the process throughout the by-election.

Under Section 65 of the MEA, if Council determines that a by-election is to be held, the City Clerk is responsible for setting the date of Nomination Day, which cannot be less than 30 days and no more than 60 days after the passing of the by-law requiring the by-election. Thereafter, Voting Day is 45 days after Nomination Day and is, therefore, dependent on the date the City Clerk establishes for Nomination Day. Subsection 65(3) of the MEA also mandates that “by-elections shall be conducted as far as possible in the same way as regular elections.”

Should Council choose to fill the seat through a by-election, the MEA, while generally prescriptive, includes provisions that would allow the City Clerk to amend the statutory timelines in the case of an emergency. This includes preparing for the election and maintaining peace and order in connection with the election, in accordance with Section 11 of the MEA. More specifically, Subsection 11(2) of the MEA provides that the Clerk’s responsibility for conducting an election includes the following:

Duties of Clerk

- (a) preparing for the election;*
- (b) preparing for and conducting a recount in the election;*
- (c) maintaining peace and order in connection with the election; and*
- (d) in a regular election, preparing and submitting the report described in subsection 12.1(2) [relating to the identification, removal and prevention of barriers that affect electors and candidates with disabilities].*

Section 12 of the MEA allows the City Clerk to provide for any matter or procedure that is not otherwise provided for in an Act or regulation, and that is, in the Clerk’s opinion, “necessary or desirable” for conducting the election, as follows:

Powers of Clerk

- 12(1) A Clerk who is responsible for conducting an election may provide for any matter or procedure that,*

(a) is not otherwise provided for in an Act or regulation; and

(b) in the Clerk's opinion, is necessary or desirable for conducting the election.

Additionally, Section 53 of the MEA authorizes the City Clerk to declare an emergency when circumstances have arisen that are likely to prevent the election from being conducted in accordance with the MEA, and further allows the City Clerk to make arrangements that he considers advisable for conduct of the election, as follows:

Emergency

53(1) The Clerk may declare an emergency if he or she is of the opinion that circumstances have arisen that are likely to prevent the election being conducted in accordance with this Act.

Arrangements

(2) On declaring an emergency, the Clerk shall make such arrangements as he or she considers advisable for the conduct of the election.

Conflict

(3) The arrangements made by the Clerk, if they are consistent with the principles of this Act, prevail over anything in this Act and the regulations made under it.

Time

(4) The emergency continues until the Clerk declares that it has ended.

No review or setting aside

(5) If made in good faith, the Clerk's declaration of emergency and arrangements shall not be reviewed or set aside on account of unreasonableness or supposed unreasonableness.

Staff is recommending that Council fill the Ward 19 (Cumberland) vacancy by holding a by-election conducted "as far as possible in the same way as regular elections", pursuant to Subsection 65(3) of the MEA (i.e. in-person voting). That said, there would be necessary adaptations made to the election process to address provincial health guidelines as well as the advice of OPH surrounding COVID-19 through both Section 12 and Section 53 of the MEA. As such, following Council's approval of this report, the City

Clerk will declare an emergency, as outlined in Document 5, in order to conduct the by-election as described in this report and make all necessary arrangements.

Staff is further recommending that, in response to COVID-19, a special mail-in ballot process be implemented to allow electors the opportunity to vote without having to attend a voting place in-person, as described in this report. This approach, in staff's opinion, allows the Elections Office to safely plan for and hold the Ward 19 (Cumberland) by-election this fall, as further described in this report.

Ward 19 (Cumberland) By-election Timelines

Should Council choose to fill the vacancy by holding a by-election, staff is recommending that Council enact the *By-law to Require a By-Election*, attached as Document 1, on Wednesday, July 15, 2020. Following Council's approval of the by-law, the by-election schedule, as established by the City Clerk in accordance with the MEA, will see the Nomination period begin on Wednesday, July 15, 2020 and end on Friday, August 21, 2020 at 2:00 p.m. Advance Vote Day would take place over two (2) days on Monday, September 28 and Tuesday, September 29, 2020, with Voting Day on Monday, October 5, 2020.

This schedule allows staff to conduct the by-election in 82 days, which is one of the shortest calendars permitted under the MEA, with the shortest permitted calendar being 75 days. This by-election schedule also aligns with the schedule previously communicated to Council in the "[Ward 19 \(Cumberland\) – Vacancy Options](#)" report, dated Wednesday, April 22, 2020, attached as Document 4, and further aligns with elections taking place in other jurisdictions, as described in the Background section of this report.

Based on advice from the working group, voting days have been scheduled as close as possible to each other in order to limit the risk of having to delay the election should COVID-19 resurge between voting events.

Following Council's approval of the by-law, the following by-election schedule will be established:

- **Wednesday, July 15, 2020**
 - Nomination and Registration Period Begins (following Council approving the by-law requiring a by-election)

- **Friday, August 21, 2020 at 2:00 p.m.**

- Nomination Day (last day to submit or withdraw a nomination)
- **Monday, September 28 and Tuesday, September 29, 2020**
 - Advance Vote Days (from 10:00 a.m. to 8:00 p.m.)
- **Friday, October 2, 2020**
 - Last day to submit a Notice of Registration as a Third Party Advertiser
- **Monday, October 5, 2020**
 - Voting Day (from 10:00 a.m. to 8:00 p.m.)
- **Wednesday, October 7, 2020**
 - Expected Declaration of Results and Declaration of Office

Although this option means that the residents of Ward 19 (Cumberland) will go an additional 82 days without a Ward Councillor, the City Clerk is of the opinion that this approach allows staff the time required to prepare for a by-election that upholds the principles of the MEA, while also adhering to the requirements of the provincial emergency order and the health and safety protocols and guidelines as recommended by OPH, as described in this report.

A detailed by-election calendar is attached as Document 7.

Voting in the Ward 19 (Cumberland) By-election

As previously noted, Subsection 65(3) of the MEA mandates that “by-elections shall be conducted as far as possible in the same way as regular elections”, and for the reasons described in the [“Ward 19 \(Cumberland\) – Vacancy Options”](#) Council report, attached as Document 4, a full change to the voting method is not possible for this by-election.

However, in response to COVID-19, staff is recommending that the Ward 19 (Cumberland) by-election be conducted in the traditional manner (i.e. in-person voting) with adaptations made to the election process to address OPH and provincial health recommendations, and that a special mail-in ballot process be implemented to allow electors the opportunity to vote without having to attend a voting place in-person.

Should Council approve the report recommendations, electors will have three (3) options to cast their ballot during the Ward 19 (Cumberland) by-election: (1) in-person voting; (2) voting by special mail-in ballot; and (3) voting by proxy, as described in this report.

1. In-person Voting

In response to COVID-19, and to ensure the safety of electors and staff, a number of changes and adaptations to the voting process are required in order to comply with public health guidelines and recommendations.

Section 43 of the MEA requires that a by-election be conducted with at least one Advance Vote Day. In response to COVID-19, OPH has recommended that the City Clerk increase the number of in-person voting opportunities in an attempt to spread out voter turnout to help minimize the risks of large crowds and long line-ups at voting places.

As such, the City Clerk, in accordance with the MEA, has established a by-election schedule that provides electors with three (3) opportunities to vote in-person. This schedule includes two (2) Advance Vote Days taking place on Monday, September 28 and Tuesday, September 29, 2020, at six (6) voting places. Voting Day will take place on Monday, October 5, 2020, at eight (8) voting places. Voting places will be open from 10:00 a.m. to 8:00 p.m. on all voting days.

In order to expedite the voting process, voting places will offer “anywhere voting” on all voting days. Anywhere voting uses an electronic Voters’ List and allows electors to attend any voting place, regardless of their address, to cast their ballot. Anywhere voting was successfully introduced as a pilot project during Special Advance Voting in the 2014 municipal elections and was expanded during the 2018 municipal elections. Offering anywhere voting during the Ward 19 (Cumberland) by-election also allows for contingency plans should a voting place become unavailable due to COVID-19, and further allows staff to certify proxy forms at voting places, as later described in this report.

Furthermore, to limit interactions with the public, voting places will be staffed by City staff only. This provides the Elections Office with some flexibility when providing training options to election workers. Hiring City staff also ensures that each voting place has bilingual staff as well as staff who have completed the City’s *Accessibility for Ontarians with Disabilities Act* (AODA) training.

Additional COVID-19-related changes and adaptations to the voting process will include:

1. Limiting the number of electors in a voting place to ensure physical distancing;
2. Developing a line management strategy and installing signage at voting places, including floor markers, to notify electors of physical distancing requirements;
3. Installing acrylic barriers in voting places;

4. Requiring electors to wear masks in voting places. Electors will be encouraged to bring their own mask; however, masks will be available at voting places should an elector not have one;
5. Providing appropriate personal protective equipment including masks and gloves for staff who are working and cleaning surfaces in voting places;
6. Installing hand sanitizing stations at voting places;
7. Providing single use stationery at voting places (voting pens, pens, privacy sleeves);
8. Providing face shields (eye protection) for election workers who cannot work behind acrylic barriers;
9. Developing a plan for voting in long term care homes;
10. Allowing the certification of proxy forms at voting places; and
11. Implementing “anywhere voting” at all voting places, meaning that electors can vote at any voting place, regardless of their address.

Given the above-noted requirements, it is expected that wait times may be longer than in previous elections and by-elections. Staff will endeavour to keep up-to-date information regarding wait times available on the City’s social media accounts on voting days.

It is important to note that the COVID-19 pandemic is rapidly evolving, and additional voting process changes may be required should public health recommendations change. The Elections Office will keep up-to-date voting information available on ottawa.ca/vote and the City Clerk will inform Council and the public should any significant changes to the voting process be required.

2. Alternative Voting Method - Special Mail-in Ballot Process

Due to the COVID-19 pandemic, the Elections working Group has recommended that the City Clerk implement an alternative voting method that does not require an elector to attend a voting place in-person to cast their vote.

Staff has reviewed the possibility of implementing an alternative voting method during the Ward 19 (Cumberland) by-election and are recommending that a special mail-in ballot process be piloted. More specifically, this process would allow eligible electors, particularly those from high-risk groups, including older adults and electors with disabilities who are more susceptible to the effects of COVID-19, to submit an application to the Elections Office to receive a special ballot by mail. This process will allow electors to mark their ballot at home and mail, or deliver, their ballot to the

Elections Office (1221 B Cyrville Road), or electors can also deliver their special ballot to the Orleans Client Service Centre (255 Centrum Boulevard), as further described below. Staff note that, in 2018, approximately one third of eligible electors in Ward 19 (Cumberland) were over the age of 60. The Elections Office will staff a call centre to administer the ballot process and to assist electors during the application and voting periods.

It is important to note that this hybrid by-election approach does not replace traditional in-person voting. Electors in Ward 19 (Cumberland) will still have the opportunity to vote in-person or by proxy should they choose to do so.

The City's external election software provider, Dominion Voting, can provide a hybrid voting system that includes an alternative voting method by special mail-in ballot that functions with the City's current vote tabulation system used for in-person voting. The special ballot process is expected to cost approximately \$120,000.

As in previous elections, the City's election processes and vote tabulation system, including the new special mail-in ballot process, for the Ward 19 (Cumberland) by-election will be audited by an external auditor to ensure the accuracy, security and validity of the election results.

In addition, staff note that this will be the first time that the City of Ottawa conducts an election with an alternative voting method and staff will require support from internal stakeholders, such as ITS and Public Information and Media Relations (PIMR).

In order to implement an alternative voting method, Subsection 42(2) of the MEA requires a by-law authorizing electors to use alternative voting methods that do not require electors to attend at a voting place in order to vote. In the case of a by-election, the by-law must be passed more than 60 days before Voting Day (i.e. before Thursday, August 6, 2020).

To implement this alternative voting method by special ballot for the Ward 19 (Cumberland) by-election, as described in this report, Council is required to approve and enact a *By-Law to Authorize the Use of an Alternative Voting Method*, attached as Document 2, in accordance with Subsection 42(1)(b) of the MEA.

Applying for a Special Mail-in Ballot

Any eligible elector may request to vote by special ballot by submitting an application to the Elections Office. The application period will begin on Saturday, September 5 and

end on Sunday, September 13, 2020. Application forms can be submitted by mail, email or by the online application tool on ottawa.ca/vote.

Once an application is reviewed and accepted, the Elections Office will send a Special Ballot Voter Kit, which will include instructions on how to vote, a voter declaration form, a ballot, a ballot secrecy envelope, and a prepaid return envelope to the applicant by mail following the close of the application period. An elector's name must appear on or be added to the Voters' List in order to receive a Special Ballot Voter Kit.

Completed special ballots must be received at the Elections Office (1221 B Cyrville Road) or the Orleans Client Service Centre (255 Centrum Boulevard) by 4:30 p.m. on October 5, 2020 in order to be counted in accordance with the Vote Counting Procedures, attached as Document 8.

3. Voting by Proxy

If an elector is unable to get to a voting place on voting days, or if an elector feels uncomfortable going to a voting place to cast their ballot, they may wish to appoint a proxy, in accordance with Section 44 of the MEA. A proxy is someone that can go to the voting place and cast a ballot on someone else's behalf. A proxy must be an eligible elector and can still cast their own ballot. A proxy can vote for only one other person, unless they are representing members of their own family.

In previous elections and by-elections, individuals appointed as a proxy were required to bring their completed proxy forms to the Elections Office or to a Client Service Centre (excluding Walter Baker Sports Centre) to have them certified. In response to COVID-19 and in order to reduce the need for proxies to visit and interact with staff at multiple locations, election workers will be trained to process and certify Appointment for Voting Proxy (Form 3) forms at all voting places in the Ward 19 (Cumberland) by-election. This process is possible during the Ward 19 (Cumberland) by-election due to the use of an electronic Voters' List required for "anywhere voting".

To appoint a proxy, the elector and the person they want to appoint must fill out two (2) copies of an Appointment for Voting Proxy (Form 3). A link to this form is available on ottawa.ca/vote. The individual that has been appointed must take the completed forms to the City's Elections Office, City Hall or any Client Service Centre (excluding Walter Baker Sports Centre) from Tuesday, September 8, 2020, until Monday, October 5, 2020, during regular business hours, and have it certified by City staff. As previously noted, a proxy can also bring the completed forms to a voting place and have it certified on voting days during voting hours.

As proxy forms can be certified at voting places from 10:00 a.m. to 8:00 p.m. on all voting days, in accordance with Sections 12 and 53 of the MEA, the City Clerk will be waiving the requirements of Subsection 44(6) of the MEA which requires that the City Clerk's office and any other place designated by the City Clerk shall be open for the purpose of certifying proxies from noon to 5:00 p.m. on Advance Vote Days. As such, Client Service Centres and the Elections Office will not be required to be open from noon to 5:00 p.m. on Advance Vote Days.

To raise awareness about voting options during the by-election, and in addition to statutory advertisement requirements, the Elections Office will mail a generic bilingual notice to every household in Ward 19 (Cumberland) in early September. The notice will include information relating to voting in-person, voting by special ballot and voting by proxy. The notice will also include information about how electors can conveniently add or amend their information to the Voters' List during the online Revision Period in order to limit interactions at the voting place. The estimated cost to mail this notice is approximately \$13,000.

Voting at Long Term Care Facilities

Subsection 45(7) of the MEA states that, on voting day, a voting place shall be provided in the premises of institutions in which 20 or more beds are occupied by persons who are disabled, chronically ill or infirm and a retirement home in which 50 or more beds are occupied. Staff have identified five (5) long term care centres in Ward 19 (Cumberland).

In order to provide these residents the opportunity to vote, and to address the challenges surrounding COVID-19, the Elections Office, in partnership with the Paramedic Service, will develop a plan that will see approximately five (5) teams of two (2) paramedics conduct the vote in these long term care centres. The voting process will be developed to address health and safety protocols in long term care centres and the paramedic teams will be trained at the Elections Office.

Following the close of voting in long term care centers, the sealed ballot boxes will be returned to the Elections Office by the paramedic teams. These ballots will be counted in accordance with the Vote Counting Procedures for the Ward 19 (Cumberland) by-election, attached as Document 8.

Subsection 45(10) of the MEA allows candidates or one scrutineer per candidate to accompany the DRO (i.e. paramedic teams) who attends on an elector in a retirement home. In response to COVID-19, the City Clerk, in accordance with Section 12 and 53

of the MEA, is restricting access to long term care centres and candidates and scrutineers will not be permitted to observe the vote. However, candidates and scrutineers may be present when the counting of the vote occurs, as authorized under Section 16 of the MEA.

Changes to the Candidate Nomination Process

To become a candidate for Council, the MEA includes the requirement to complete an Endorsement of Nomination (Form 2) which includes 25 signatures from eligible electors endorsing the nomination. Practically speaking, this would be challenging in a period of physical distancing. As such, the City Clerk, in accordance with Section 12 and Section 53 of the MEA, is waiving the requirements of Subsection 33(1.1) of the MEA and a completed Form 2 will not be required in order to become a candidate in the Ward 19 (Cumberland) by-election. Waiving this requirement aligns with provincial and OPH recommendations surrounding physical distancing.

The nomination period for candidates will begin on Wednesday, July 15, 2020, following Council approving and enacting the by-law requiring a by-election, and will end on Friday, August 21, 2020 at 2:00 p.m. Nomination papers must be filed in person at the Elections Office by the candidate or an authorized agent acting on the candidates' behalf. In order to reduce the number of people present at the Elections Office and to ensure physical distancing, the nomination process for candidates will be conducted by appointment only. Candidates or their agents may contact the Elections Office to book an appointment following Council approving and enacting the by-law requiring a by-election. The Elections Office will be open by appointment only from Monday to Friday from 8:30 a.m. to 4:30 p.m.

Changes to the Registration Process for Third Party Advertisers

The registration period for third party advertisers will begin on Wednesday, July 15, 2020, following Council approving and enacting the by-law requiring a by-election, and will end on Friday, October 2, 2020 at 4:30 p.m. Notice of registration forms must be filed in person by the individual, corporation or trade union. In order to reduce the number of people present at the Elections Office and to ensure physical distancing, third party registrations will take place by appointment only at the Elections Office. As noted above, appointments will be available following Council approving and enacting the by-law requiring a by-election.

Campaigning During a Pandemic

While the City Clerk is not responsible for administering, providing guidance or overseeing campaign activities, the City Clerk has requested that OPH provide guidance to candidates and third party advertisers regarding campaign activities during the COVID-19 pandemic. This information will be available on the Elections website ottawa.ca/vote. This information will also be included in nomination packages, and candidate and third party updates. As the pandemic is rapidly evolving, OPH expects that this information may need to be updated regularly. Candidates and third party advertisers are encouraged to consult the Elections website regularly.

Additionally, on Friday, June 19, 2020, the City Clerks from the City of Ottawa, the Town of Pelham, the City of Cambridge and the City of Windsor, sent a joint-letter, attached as Document 9, to the Ministry of Municipal Affairs and Housing to inquire whether revised versions of the Ministry's elections guides will be prepared to assist voters, candidates and third party advertisers given the new reality municipalities are facing when conducting by-elections during the COVID-19 pandemic and the 2018-2022 Term of Council. At the writing of this report, staff had not yet received a response from the Ministry.

The Voters' List and Revision Period

In accordance with the MEA, the Municipal Property Assessment Corporation (MPAC) is required to provide the City Clerk with a preliminary list of electors, which the City Clerk uses to create the Voters' List. Under the legislation, the City Clerk is also permitted to make revisions to this list based on information in the City's custody or control. As such, staff is operating on the assumption that they would receive the preliminary list of electors from MPAC in accordance with the legislation.

The MEA requires the City Clerk to make the Voters' List available to the public for a "Revision Period." The Revision Period provides electors with the opportunity to add, amend or remove their name from the Voters' List by submitting applications online or by submitting a paper application form at the Elections Office and Client Service Centres. Electors may also make these changes at the voting place on voting days. The Revision Period for the Ward 19 (Cumberland) by-election will take place from Saturday, September 5, 2020, to Sunday, September 13, 2020 at 5:00 p.m.

As previously noted, and in order to reduce the number of interactions required at the voting place, a generic notice will be mailed to residents in the ward encouraging eligible electors to check the Voters' List and make any necessary changes or additions during the online Revision Period.

Staff is of the opinion that the adaptations as described in this report allow a by-election to proceed in a manner that is consistent with the MEA and public health guidelines and recommendations. However, should COVID-19 resurge or if provincial or OPH health guidelines change, the City Clerk can use the emergency powers under Section 53 of the MEA, as required, to protect the integrity of the election as well as ensure public safety. The City Clerk will notify Council and the public should any significant changes to the election process be required.

Cost of the Ward 19 (Cumberland) By-election

As noted in the "[Ward 19 \(Cumberland\) – Vacancy Options](#)" Council report, attached as Document 4, a traditional by-election conducted under "normal circumstances" with only one advance vote day was expected to cost approximately \$375,000. Due to the COVID-19 pandemic, the cost of the Ward 19 (Cumberland) by-election is expected to increase by approximately \$148,835 for a total expected cost of \$523,835. This increase in cost relates specifically to various COVID-19-related items such as the special mail-in ballot process; an additional Advance Vote Day; increased communications efforts; PPE requirements; as well as additional cleaning and staffing requirements. These supplementary costs are necessary to adhere to both the MEA requirements and the recommendations by OPH to ensure the health and safety of candidates, voters, third party advertisers and staff as a result of the COVID-19 pandemic.

Staff have completed a comparative review of the Ward 19 (Cumberland) by-election budget conducted under routine circumstances and the budget as described in this report, which includes all COVID-19-related considerations. Staff note that the price per elector for a by-election conducted under normal circumstances was expected to be \$11.19, and the price per elector for a by-election conducted with considerations for COVID-19 is expected to be approximately \$15.63. Staff have determined that the increase in cost relates specifically to conducting a safe and democratic by-election during the COVID-19 pandemic, in accordance with provincial emergency orders and OPH recommendations.

As the COVID-19 pandemic continues to evolve, the estimated budget provided may fluctuate based on an increased or decreased need for COVID-19-related adaptations to the election process.

Funding for the by-election would come from the Tax Stabilization Reserve, which is the primary fund for elections. A breakdown of the expected costs for the Ward 19 (Cumberland) by-election is attached as Document 10.

Additional Information Regarding the Ward 19 (Cumberland) By-election

Additional details regarding the Ward 19 (Cumberland) by-election including information related to the Contribution Rebate Program, the use of vote tabulators and voting places is attached as Document 11.

Option No. 2: “Select” - Appoint a New Member to Fill the Ward 19 (Cumberland) Vacancy

Subsection 263(5) of the *Municipal Act, 2001* sets out the rules to fill a vacancy on Council. In short, the Act provides that Council shall, within 60 days after declaring the Office vacant, fill the vacancy by appointing a person who has consented to accept the appointment.

To be eligible to hold office, a person must be:

5. 18 years of age or older;
6. a Canadian citizen;
7. a resident of the City of Ottawa, or an owner or tenant of land in the City or the spouse of such an owner or tenant; and
8. not be prohibited from holding municipal office or from voting under the *Municipal Elections Act, 1996* or otherwise by law.

Council has the statutory authority to appoint any person who meets the above-noted requirements, including candidates from a previous election. For the 2018 municipal election, Stephen Blais won the Ward 19 (Cumberland) seat with 89.08 per cent of the vote (11,230 votes), with the second and third place candidates garnering 5.88 per cent (741 votes) and 5.04 per cent (636 votes) of the votes cast.

It should be noted that Council cannot appoint someone on the condition that they not run in the next election. This has been a question in the past as well as in other jurisdictions. Such a condition is not enforceable in law, as the MEA defines the eligibility of candidates and prescribes limited instances where individuals are prohibited from running in the next election.

In general, in Ontario, an appointment process has been used where a vacancy has occurred during the final months of a term of Council and an appointment to fill the seat is required. In this respect, Subsection 65(2) of the MEA mandates that, “no by-election shall be held to fill an office that becomes vacant after March 31 in the year of a regular election”. Furthermore, Subsection 263(5)3 of the *Municipal Act, 2001*, states that a

Council is only permitted to leave a seat open if the vacancy occurs within 90 days of a regular municipal election. Therefore, the legislative timeframe established by the MEA and the *Municipal Act, 2001*, obligates a Council to appoint a candidate to fill a vacancy between March 31, 2022, and July 26, 2022 during the 2018-2022 Term of Council.

However, neither the *Municipal Act, 2001* nor the MEA provide a specific appointment procedure should Council choose to fill the vacancy in Ward 19 (Cumberland) by appointment. That said, and as noted in the "[Ward 19 \(Cumberland\) – Vacancy Options](#)" Council report, attached as Document 4, there have been Council appointments in the pre-amalgamation municipalities in the past, as well as in other municipalities in Ontario, and they all follow the same general process.

Generally speaking, an appointment process often includes advertisements, application forms, and interviews of candidates at a separate meeting of a Committee or Council itself, where candidates have five minutes to make a presentation and Members can ask questions of each candidate. Thereafter, a voting process for Members in accordance with their Council procedures leads to the successful appointment of a candidate.

If required, staff is proposing an appointment process attached as Document 6. This appointment process has been developed to address the COVID-19 pandemic and the current provincial and OPH guidelines.

Given the current circumstances surrounding the COVID-19 pandemic, OPH is of the view that the appointment process, as outlined in Document 6, is the safest option to fill the Council vacancy as interactions between staff, candidates and residents are significantly reduced, thereby limiting any potential exposure to COVID-19.

Appointment Timelines

If Council chooses to fill the vacancy by appointment, the following timelines would apply:

- **Monday, July 20, 2020**
 - The City Clerk will provide public notice of the vacancy and advertise Council's intention to appoint a person to fill the vacancy.
 - The notice will invite interested and qualified individuals to seek appointment for the Ward 19 (Cumberland) Office and outline the process for filing an application.

- Advertisements would be placed in newspapers for a two-week period (the week before and after the application period begins).
- Information will also be available on the City of Ottawa website and social media accounts during the application period.
- **Monday, July 27, 2020 at 8:30 a.m.**
 - The application period begins.
- **Friday, July 31, 2020 at 4:00 p.m.**
 - The application period closes at 4:00 p.m.
- **Friday, August 7, 2020**
 - The City Clerk will issue a report to Council that includes a list of certified applicants.
 - The report to Council will also outline the appointment process to fill the Ward 19 (Cumberland) vacancy, in accordance with Document 6 attached to this report.
- **Friday, August 14, 2020**
 - Special Council meeting to appoint an applicant to fill the Ward 19 (Cumberland) vacancy.

Staff anticipate that there would be some modest costs for advertising, which could be absorbed within the operating budget of the Office of the City Clerk.

If Council decides to fill the vacancy by appointment, in accordance with the process outlined in Document 6, a motion would be required to that effect.

RURAL IMPLICATIONS

Geographically, Ward 19 is comprised of both rural and suburban areas. As of December 31, 2019, approximately 26 per cent of Cumberland residents live in the ward's rural communities.

CONSULTATION

N/A

COMMENTS BY THE WARD COUNCILLOR(S)

N/A

ADVISORY COMMITTEE(S) COMMENTS

N/A

LEGAL IMPLICATIONS

There are no legal impediments to approving the recommendations in this report. As further described in the report, Section 53 of the *Municipal Elections Act* allows the Clerk to declare an emergency, if he is of the opinion that circumstances have arisen that are likely to prevent the election being conducted in accordance with the Act. On declaring such emergency, Subsection 53(2) of the Act provides broad authority for the Clerk may make such arrangements as he considers advisable for the conduct of the election. Legal Services will continue to monitor the Provincial orders as they evolve and provide advice to City Clerk and Elections Office as required with regards to ongoing municipal election matters and in consultation with OPH.

RISK MANAGEMENT IMPLICATIONS

N/A

ASSET MANAGEMENT IMPLICATIONS

N/A

FINANCIAL IMPLICATIONS

Funding for the by-election would come from the Tax Stabilization Reserve.

ACCESSIBILITY IMPACTS

Under both the *Accessibility for Ontarians with Disabilities Act, 2005* and the *Municipal Elections Act, 1996*, the City Clerk is required to ensure that municipal elections are accessible to people with disabilities, including both electors and candidates.

ENVIRONMENTAL IMPLICATIONS

N/A

TECHNOLOGY IMPLICATIONS

N/A

TERM OF COUNCIL PRIORITIES

N/A

SUPPORTING DOCUMENTATION

Document 1 - *By-law to Require a By-Election*

Document 2 - *By-Law to Authorize the Use of an Alternate Voting Method*

Document 3 – Clerk’s Memorandum - Filling a Council Vacancy (Ward 19 – Cumberland)

Document 4 – Council Report - Ward 19 (Cumberland) – Vacancy Options (April 22)

Document 5 – City Clerk’s Declaration of Emergency pursuant to Section 53 of the *Municipal Elections Act, 1996*

Document 6 - Appointment Process

Document 7 - Detailed Ward 19 (Cumberland) By-election Calendar

Document 8 - Vote Counting Procedures for the Ward 19 (Cumberland) By-election

Document 9 – Clerks Letter to the Ministry of Municipal Affairs and Housing

Document 10 - Detailed Budget Table for the Ward 19 (Cumberland) By-election

Document 11 - Additional Information Regarding the Ward 19 (Cumberland) By-election

DISPOSITION

The Office of the City Clerk will implement the direction of City Council.