

SUBJECT: Ward 4 (Kanata North) Vacancy Options

File Number ACS2021-OCC-GEN-0026

Report to Council on 13 October 2021

Submitted on October 8, 2021 by M. Rick O'Connor, City Clerk

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Ward: KANATA NORTH (4) / KANATA NORD (4)

**OBJET : Déclaration d'une charge vacante au Conseil municipal –
quartier 4 (Kanata-Nord)**

Dossier : ACS2021-OCC-GEN-0026

Rapport au Conseil le 13 octobre 2021

Soumis le 8 octobre 2021 par M. Rick O'Connor, Greffier municipal

**Personne ressource : Michèle Rochette, Gestionnaire, Élections municipales et
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Quartier : KANATA NORTH (4) / KANATA-NORD (4)

REPORT RECOMMENDATIONS

- 1. That City Council declare the Office of Councillor, Ward 4 (Kanata North) to be vacant, as required in accordance with Section 262 of the *Municipal Act, 2001*, and approve the following interim delegations of authority with respect to Ward 4 (Kanata North) matters until such time that a new Councillor is sworn in and takes Office:
 - a) That concurrence under the *Delegation of Authority By-law for Ward 4 (Kanata North) matters*, and the provision of Councillor Comments on staff reports related to Ward 4 (Kanata North), may be provided by Councillors Kavanagh and Hubley; and****

- b) That the City Clerk and the Manager of Council and Committee Services be delegated the interim authority to approve the payment of expenses from the Ward 4 (Kanata North) Office Budget arising from routine matters, and to address human resources matters relating to the Ward Office.

2. That City Council approve and enact:

- a. *A By-law to Require a By-Election*, attached as Document 1, which requires that a by-election be held to fill the vacancy in the Office of Councillor, Ward 4 (Kanata North) on January 24, 2022 in accordance with the *Municipal Elections Act, 1996*, as described in this report.
- b. *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 4 (Kanata North) by-election, as described in this report.

RECOMMANDATIONS DU RAPPORT

1. Que le Conseil municipal déclare vacante la charge du conseiller du quartier 4 (Kanata-Nord), conformément à l'article 262 de la Loi de 2001 sur les municipalités, et approuve les délégations de pouvoirs par intérim suivantes pour les questions liées au quartier 4 (Kanata-Nord) jusqu'à l'assermentation et l'entrée en fonction d'un nouveau conseiller :
 - a) Que le consentement en vertu du Règlement sur la délégation de pouvoirs entourant les questions liées au quartier 4 (Kanata-Nord) et la formulation des commentaires du conseiller dans les rapports du personnel liés au quartier 4 (Kanata-Nord) puissent être fournis par les conseillers Kavanagh et Hubley; et
 - b) Que soit délégué par intérim au greffier municipal et au gestionnaire des Services au Conseil municipal et aux comités le pouvoir d'approuver le paiement à même le budget du bureau du quartier 4 (Kanata-Nord) des dépenses ordinaires et de régler les questions de ressources humaines liées au bureau du quartier.

2. Que le Conseil municipal approuve et adopte :

- a) Un Règlement pour exiger la tenue d'une élection partielle, annexé en tant que Document 1, lequel exige qu'une élection partielle soit tenue pour pourvoir la charge vacante de conseiller du quartier 4 (Kanata-Nord) le 24 janvier 2022 conformément à la Loi de 1996 sur les élections municipales, comme décrit dans le présent rapport;**
- b) Un Règlement autorisant un mode de scrutin de remplacement, annexé en tant que 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 à l'alinéa 42(1)(b) de la Loi de 1996 sur les élections municipales, pour l'élection partielle dans le quartier 4 (Kanata-Nord), comme décrit dans le présent rapport.**

EXECUTIVE SUMMARY

On September 20, 2021, Jenna Sudds was elected to be the Member of Parliament for the riding of Kanata-Carleton. On September 23, 2021, she provided the City Clerk with written notice of her resignation as City Councillor of Ward 4 (Kanata North), effective immediately, pursuant to Subsection 260(1) of the *Municipal Act, 2001*.

As required by Section 262 of the *Municipal Act, 2001*, when the Office of a Member of Council becomes vacant, City Council must declare the Councillor's Office to be vacant at its next meeting. Accordingly, the City Clerk has prepared this report for City Council's consideration at its October 13, 2021 meeting, and approval of Recommendation 1 will satisfy City Council's statutory obligation to declare the seat vacant in accordance with the *Municipal Act, 2001*.

Following the resignation of a City Councillor, there are a number of legislative and administrative matters to address with respect to delegation of authority while the Office remains vacant.

As is past practice, to assist residents with the transition, this report sets out recommendations to delegate the authority for the above-noted matters to neighbouring Ward Councillors Kavanagh and Hubley (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 4 (Kanata North) Office budget arising from routine matters, and human resources

matters relating to the Ward 4 (Kanata North) Office, as further described in the Discussion section of this report.

The Ward 4 (Kanata North) Office remains open (virtually due to the pandemic) and staffed to continue to address day-to-day constituency needs.

Following the declaration of vacancy, Section 263 of the *Municipal Act, 2001* provides City Council with two options to fill the vacancy, namely by appointing a new Member (“select”) or by holding a by-election (“elect”).

More specifically, Subsection 263(5) of the *Municipal Act, 2001*, requires City 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.

At the writing of this report, Ontario is in [Step 3 of its Roadmap to Reopen](#). The Roadmap to Reopen is a three-step plan to safely and cautiously reopen the province and gradually lift public health measures. The plan is based on the province-wide vaccination rate and improvements in key public health and health care indicators. Step 3 permits a maximum of 100 people for outdoor gatherings and a maximum of 25 people for indoor gatherings, and businesses are permitted to be open with public health restrictions in place.

On July 22, 2021, the City lifted its State of Emergency and moved one level down in its emergency management to ‘Activated Operations’. At the time of writing, approximately 89 per cent of adults in Ottawa have received at least one dose of the vaccine, and 84 per cent have received two doses.

Due to the ongoing COVID-19 pandemic, staff has been in contact with Ottawa Public Health (OPH) to review the implications that the pandemic has on both options that City Council has to fill the Ward 4 (Kanata North) vacancy (i.e., Option No. 1 to hold a by-election, or Option No. 2 to appoint).

Staff, in consultation with OPH, is of the opinion that both the by-election and appointment process can be conducted in accordance with provincial legislation (i.e., the *Municipal Act, 2001* and the MEA) as well as the public health recommendations, as further described in this report.

Given that the vacancy has occurred with approximately 13 months left in the 2018-2022 Term of Council, the City Clerk is recommending a by-election be held to fill the vacancy in order to provide residents with the opportunity to elect the Member that will represent them for the remainder of the term. As the decision on how to fill the vacancy

remains with City Council, this report provides City Council with two options to fill the Council vacancy in Ward 4 (Kanata North), either by approving Option No. 1 to hold a by-election, or by approving Option No. 2 to appoint.

The City's Deputy Medical Officer of Health, Dr. Moloughney, is of the view that, "while caution is still required considering the transmissibility of the Delta variant, the majority of adults in Ottawa are fully vaccinated and the number of reported cases of COVID-19 are currently stable. In addition, there is experience in successfully conducting a previous by-election during the pandemic, as well as the recent federal election. Ottawa Public Health is of the view that a by-election can be conducted in a manner that is as safe as possible with the implementation of a range of protective measures for candidates, staff, and residents."

Subsection 65(3) of the MEA mandates that "by-elections shall be conducted as far as possible in the same way as regular elections". Should City Council approve Option No. 1 to hold a by-election, in response to COVID-19, staff is recommending that the Ward 4 (Kanata North) 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.

Staff is further recommending that a special mail-in ballot process be implemented to provide electors with 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 4 (Kanata North) by-election.

It is important to note that this hybrid by-election approach does not replace traditional in-person voting. Electors in Ward 4 (Kanata North) will still have the opportunity to vote in-person or by proxy should they choose to do so.

Should City Council approve Option No. 1 to hold a by-election, it would be conducted under the requirements of the MEA which has its own statutory timelines. Subsection 65(4) of the MEA states that Nomination Day must be no less than 30 days and not more than 60 days after the passing of the by-law requiring a 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.

In evaluating the potential timelines for the Ward 4 (Kanata North) by-election, staff has determined that proceeding with the shortest timelines prescribed by the MEA would place significant risks on the administration and integrity of the by-election due to their proximity of the holiday season. More specifically, the shortest permitted calendar under

the MEA would see the Nomination period begin on October 13, 2021 and end on November 12, 2021, with Advance Vote Day on December 17, 2021 and Voting Day on December 27, 2021.

Staff has also identified significant risks to the by-election with respect to the special mail-in ballot process, which is recommended in order to comply with public health recommendations and to provide electors with the opportunity to vote without having to attend a voting place in-person. The holiday season is an extremely busy time for mail delivery services and the volume of mail during this period could prevent the timely delivery and return of the Special Ballot Voter Kits and completed ballots, as well as other necessary election materials such as voter notification letters.

Staffing for this by-election, which will already be impacted by COVID-19 implications, could become increasingly difficult should voting days occur in December due to annual leave, holiday commitments, and travel schedules. Additionally, in response to COVID-19, only City staff will be hired as election workers in voting places in the Ward 4 (Kanata North) by-election. Given December's heavy legislative agenda, it is likely that there could be further difficulties in securing City staff as many will be fulfilling other work commitments.

Given the above-noted risks and concerns and to ensure the integrity of the by-election, should City Council choose to fill the Ward 4 (Kanata North) vacancy by approving Option No.1 to hold a by-election, the by-election schedule, as established by the City Clerk in accordance with the MEA, will see the Nomination period begin on October 13, 2021 and end on December 10, 2021 at 2:00 p.m. Advance Vote Day would take place on January 14, 2022, with Voting Day on January 24, 2022 as further described below:

- **Wednesday, October 13, 2021**
 - Nomination and Registration periods begin (following City Council's approval the by-law requiring a by-election).
- **Friday, December 10, 2021 at 2:00 p.m.**
 - Nomination Day (last day to submit or withdraw a nomination).
- **Friday, January 14, 2022**
 - Advance Vote Day (from 10:00 a.m. to 8:00 p.m.).

- **Friday, January 21, 2022 at 4:30 p.m.**
 - Last day to submit a Notice of Registration as a Third Party Advertiser.
- **Monday, January 24, 2022**
 - Voting Day (from 10:00 a.m. to 8:00 p.m.).
- **Tuesday, January 25, 2022**
 - Expected Declaration of Results and Declaration of Office.

As further described in the Discussion section of this report, changes and adaptations 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. Requiring electors to wear masks in voting places, in accordance with Ontario regulation [O. Reg. 364/20: Rules for Areas at Step 3 and at the Roadmap Exit Step](#). Electors will be encouraged to bring their own mask; however, masks will be available at voting places should an elector not have one;
4. Providing appropriate personal protective equipment to staff including masks and face shields;
5. Installing hand sanitizing stations at voting places; and
6. Providing single use stationery at voting places (voting pens, pens, privacy sleeves).

Should City 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 conduct of the election.

Should City Council choose to fill the Ward 4 (Kanata North) vacancy by approving Option No. 1 to hold a by-election, Legal Services has recommended that the City Clerk's existing Declaration of Emergency for the 2020 Cumberland By-election, declared in accordance with Section 53 of the MEA, be amended and extended to allow for any necessary adaptations to the prescribed election processes that the City Clerk deems necessary to conduct the Ward 4 (Kanata North) by-election. The amended Declaration of Emergency, attached as Document 3, would be declared immediately after City Council approves and enacts a by-law requiring a by-election to fill the vacancy.

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 4 (Kanata North) by-election.
2. The City Clerk is restricting access to long term care centres and retirement homes in response to COVID-19 and candidates and scrutineers will not be permitted to observe the vote in these facilities. In addition, the City Clerk will use his statutory authority to permit voting to take place in long term care centres and retirement homes on Advance Vote Day, rather than Voting Day as required by Subsection 45(7) of the MEA. This change helps alleviate operational pressures on Voting Day which typically sees a higher voter turnout than Advance Vote Day.
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 Day. 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 Day.

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, including postponing the by-election. The City Clerk will notify City Council and the public should any significant changes to the election process be required.

Staff estimate that a traditional by-election for Ward 4 (Kanata North) conducted under “normal circumstances” with one Advance Vote Day would cost approximately \$349,263. Due to the COVID-19 pandemic and the ward specific service delivery model as described in this report, the cost of the Ward 4 (Kanata North) by-election is expected to increase by approximately \$217,413 for a total expected cost of \$566,676.

This increase in cost relates specifically to various COVID-19-related items such as hiring only City staff for voting places; the implementation of special mail-in ballot process; increased communications efforts; voting place setup; 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, electors, third party advertisers and staff as a result of the COVID-19 pandemic.

Funding for the by-election would come from the Tax Stabilization Reserve, which is the primary fund for elections.

Should City Council choose to fill the vacancy by approving Option No. 2 to appoint, Subsection 263(5) of the *Municipal Act, 2001* provides that City 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.

City Council has the statutory authority to appoint any person who meets the above-noted requirements, including candidates from a previous election. In the 2018 Municipal Elections, Jenna Sudds won the Ward 4 (Kanata North) seat with 46.68 per cent of the vote (5,298 votes), with the second and third place candidates garnering 32.02 per cent (3,634 votes) and 20.57 per cent (2,335 votes) of the ballots cast.

It should be noted that City 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.

Staff note that neither the *Municipal Act, 2001* nor the MEA provide a specific appointment procedure should City Council choose to fill the vacancy in Ward 4 (Kanata North) by appointment. Generally speaking, an appointment process often includes advertisements, application forms, and interviews of candidates at a separate meeting of a Committee or City 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 City Council procedures leads to the successful appointment of a candidate.

Should City Council choose to fill the vacancy by approving Option No. 2 to appoint, staff is proposing the appointment process attached as Document 4. This appointment process is similar to appointment processes in other municipalities in Ontario and it has been developed to address the COVID-19 pandemic and the current provincial and OPH guidelines.

The recommended appointment process as outlined in Document 4, will take 28 days to complete and would allow City Council to appoint a new City Councillor on November 10, 2021. In doing so, the residents of Ward 4 (Kanata North) will have a new City Councillor to represent them at Committee and City Council meetings during this fall's heavy legislative agenda. In addition, the new City Councillor would be able to formally participate when City Council considers the 2022 Budget report on December 8, 2021.

If City Council chooses to fill the vacancy by appointment, in accordance with the process outlined in Document 4, the following timelines would apply:

- **Monday, October 18, 2021**
 - The City Clerk will provide public notice of the vacancy and advertise City 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 4 (Kanata North) Office and outline the process for filing an application.
 - Advertisements would be placed in newspapers for a two-week period (the week before the application period begins, and throughout the application period).
 - Information will also be available on the City of Ottawa's website and social media accounts during the application period.
- **Monday, October 25, 2021 at 8:30 a.m.**
 - The application period begins.
- **Friday, October 29, 2021 at 4:00 p.m.**
 - The application period closes at 4:00 p.m.
- **Friday, November 5, 2021**
 - The City Clerk will issue a report to City Council that includes a list of certified applicants.
 - The report to City Council will also outline the appointment process to fill the Ward 4 (Kanata North) vacancy, in accordance with Document 4 attached to this report.
- **Wednesday, November 10, 2021**
 - Special City Council meeting to appoint an applicant to fill the Ward 4 (Kanata North) vacancy, which will take place 15 minutes after the end of the regular City Council meeting scheduled on this date.

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 City Council decides to fill the vacancy by approving Option No. 2 to appoint, in accordance with the process outlined in Document 4, a motion would be required to that effect.

RÉSUMÉ

Le 20 septembre 2021, Jenna Sudds a été élue au Parlement canadien comme députée de la circonscription de Kanata-Carleton. Le 23 septembre 2021, elle a transmis au greffier municipal un avis de démission en tant que conseillère du quartier 4 (Kanata-Nord), sa démission prenant effet immédiatement, aux termes du paragraphe 260(1) de la Loi de 2001 sur les municipalités.

Comme l'exige l'article 262 de la Loi de 2001 sur les municipalités, lorsque la charge d'un membre du Conseil devient vacante, le Conseil est tenu de déclarer vacante sa charge à sa prochaine réunion. En conséquence, le greffier municipal a préparé le présent rapport aux fins d'examen par le Conseil municipal à sa séance du 13 octobre 2021. En adoptant la recommandation 1, le Conseil répondra à l'obligation que lui prescrit la Loi de 2001 sur les municipalités de déclarer vacante la charge de la conseillère.

Suivant la démission d'un conseiller municipal, un certain nombre de questions légales et administratives doivent être réglées eu égard aux délégations de pouvoirs pendant que demeure vacante la charge.

À l'instar de pratiques antérieures, pour faciliter la transition des résidents, le présent rapport formule des recommandations concernant la délégation de pouvoirs pour les questions mentionnées ci-dessus aux conseillers des quartiers voisins, soit la conseillère Kavanagh et le conseiller Hubley (pour l'accord du conseiller en matière d'aménagement du territoire et de questions connexes et les commentaires du conseiller reliés à des rapports) et au greffier municipal et au gestionnaire des Services au Conseil municipal et aux comités relatifs à l'approbation du paiement à même le budget du bureau du quartier 4 (Kanata-Nord) des dépenses ordinaires et au règlement des questions de ressources humaines liées au bureau du quartier 4 (Kanata-Nord), le tout décrit en détail dans la section Analyse du présent rapport.

Le bureau du quartier 4 (Kanata-Nord) demeure ouvert (virtuellement en raison de la pandémie), et les employés continuent de s'occuper des affaires courantes du quartier.

Une fois la charge déclarée vacante, l'article 263 de la Loi de 2001 sur les municipalités offre deux options au Conseil municipal pour combler la charge vacante, soit la nomination d'un nouveau membre (choisir) soit la tenue d'une élection partielle (élire).

Plus précisément, le paragraphe 263(5) de la Loi de 2001 sur les municipalités, stipule que le Conseil doit choisir une de ces deux options. Il doit ou bien procéder à la nomination d'un remplaçant ou bien adopter un règlement exigeant la tenue d'une élection partielle dans les soixante (60) jours de la déclaration de la charge vacante.

Au moment de la rédaction du présent rapport, l'Ontario est dans la [troisième étape de son plan d'action pour le déconfinement](#). Le plan d'action pour le déconfinement est un plan en trois étapes visant à lever graduellement et en toute sécurité les mesures de santé publique. Il est fondé sur la progression des taux de vaccination dans l'ensemble de la province et sur l'amélioration des principaux indicateurs de santé publique et de soins de santé. À l'étape 3, les rassemblements en plein air de 100 personnes au maximum sont permis ainsi que les rassemblements de 25 personnes au maximum à l'intérieur. Les commerces peuvent ouvrir leurs portes tout en appliquant des restrictions en matière de santé publique.

Le 22 juillet 2021, la Ville a levé l'état d'urgence et est passée à un niveau inférieur de son plan de gestion des mesures d'urgence, soit au niveau d'alerte. À la rédaction du présent rapport, environ 89 % des adultes à Ottawa avaient reçu au moins une première dose du vaccin et 84 % avaient reçu deux doses.

En raison de la pandémie de COVID-19, le personnel se concerta avec les responsables de SPO afin d'examiner les répercussions de la pandémie sur les deux options dont dispose le Conseil municipal pour pourvoir la charge vacante dans le quartier 4 (Kanata-Nord) (c.-à-d. l'option 1 – tenir une élection partielle ou l'option 2 – procéder à une nomination).

Le personnel, en consultation avec SPO, est d'avis que la tenue d'une élection partielle tout comme une nomination peut se faire conformément aux dispositions des lois provinciales (c.-à-d. la Loi de 2001 sur les municipalités et la LEM) ainsi que dans le respect des recommandations de santé publique, comme il est décrit en détail dans le présent rapport.

Étant donné qu'il reste environ 13 mois dans le mandat 2018-2022, le greffier municipal recommande la tenue d'une élection partielle afin que les résidents puissent élire le membre du Conseil qui les représentera pour le reste du mandat. Étant donné que la décision quant à la façon de procéder pour pourvoir la charge vacante revient au

Conseil municipal, le présent rapport fournit au Conseil municipal deux options pour pourvoir la charge vacante dans le quartier 4 (Kanata-Nord), soit l'option 1 – tenir une élection partielle, soit l'option 2 – procéder à une nomination.

Le Dr Moloughney, médecin chef adjoint en santé publique de la Ville d'Ottawa, est d'avis que bien que la prudence soit toujours de mise en raison de la transmissibilité du variant Delta, la majorité des adultes à Ottawa sont entièrement vaccinés et le nombre de cas de COVID-19 signalé est actuellement stable. De plus, nous disposons de l'expérience acquise grâce à la tenue réussie d'une élection partielle pendant la pandémie et d'une élection fédérale récemment. Santé publique Ottawa estime qu'une élection partielle peut être organisée de manière sûre en mettant en place diverses mesures de protection pour les candidats, le personnel et le public.

Le paragraphe 65 (3) de la LEM stipule qu'« une élection partielle est tenue le plus possible de la même manière qu'une élection ordinaire ». Si le Conseil retient l'option 1, à savoir la tenue d'une élection partielle, afin de faire face à la COVID-19, le personnel recommande que l'élection partielle dans le quartier 4 (Kanata-Nord) se déroule selon la méthode classique (c'est-à-dire par vote en personne), tout en adaptant la procédure du vote de manière à se conformer aux recommandations en matière de santé de SPO et du gouvernement provincial.

Le personnel recommande de plus de mettre en œuvre une méthode de vote spéciale par la poste afin de permettre aux électeurs d'exercer leur droit de vote sans avoir à se présenter en personne dans un bureau de vote, comme il est décrit dans le présent rapport. Le personnel est d'avis que cette approche permettra au Bureau des élections de planifier et de tenir de façon sécuritaire l'élection partielle dans le quartier 4 (Kanata-Nord).

Il est important de souligner que cette procédure hybride pour l'élection partielle ne remplace pas le vote en personne classique. Les électeurs du quartier 4 (Kanata-Nord), s'ils le souhaitent, pourront encore exercer leur droit de vote en personne ou par procuration.

Si le Conseil adopte l'option 1 et choisit la tenue d'une élection partielle, elle le sera en vertu des dispositions de la LEM, qui comporte ses propres échéanciers. Le paragraphe 65 (4) de la LEM stipule que le jour de la déclaration des candidatures doit être au plus tôt 30 jours et au plus tard 60 jours après l'adoption d'un règlement municipal exigeant la tenue d'une élection partielle. Le jour du scrutin a lieu 45 jours après le jour de la

déclaration des candidatures et dépend donc de la date de déclaration des candidatures établie par le greffier municipal.

En évaluant les délais possibles pour l'élection partielle dans le quartier 4 (Kanata-Nord), le personnel a déterminé que la tenue de l'élection partielle en respectant les délais les plus courts prescrits par la LEM entraînerait des risques importants pour l'administration et l'intégrité de l'élection partielle en raison de la proximité de la saison des Fêtes. Plus précisément, le calendrier le plus court consenti par la LEM permettrait que la période de mise en candidature commence le 13 octobre 2021 et se termine le 12 novembre 2021, le jour du vote par anticipation serait le 17 décembre 2021 et le jour du scrutin aurait lieu le 27 décembre 2021.

Le personnel a également déterminé des risques importants dans la tenue d'une l'élection partielle en ce qui a trait au vote spécial par la poste qui est recommandé afin de se conformer aux recommandations de santé publique et de donner aux électeurs la possibilité de voter sans avoir à se rendre en personne dans un bureau de vote. Les Fêtes sont une période extrêmement occupée pour les services de poste, et le volume de courrier durant cette période pourrait empêcher la livraison et le retour en temps opportun des trousseaux de vote spécial et des bulletins de vote dûment remplis, ainsi que d'autres documents électoraux nécessaires comme les avis de scrutin de l'électeur.

La dotation en personnel pour cette élection partielle, qui sera déjà touchée par les répercussions de la COVID-19, pourrait devenir de plus en plus difficile si les jours de vote ont lieu en décembre en raison des congés annuels, des engagements des Fêtes et des horaires de voyage. De plus, à cause de la COVID-19, seul les membres du personnel de la Ville seront embauchés comme travailleurs électoraux dans les bureaux de vote de l'élection partielle du quartier 4 (Kanata-Nord). Compte tenu du programme législatif chargé de décembre, il est probable qu'il pourrait être encore plus difficile de trouver du personnel municipal pour faire le travail étant donné que plusieurs d'entre eux pourraient avoir d'autres obligations professionnelles.

Compte tenu des risques et des préoccupations susmentionnées et pour assurer l'intégrité de l'élection partielle, si le Conseil municipal décide de pourvoir le poste vacant dans le quartier 4 (Kanata-Nord) en approuvant l'option 1, c'est-à-dire, la tenue d'une élection partielle, le calendrier de l'élection partielle, comme établi par le greffier municipal conformément à la LEM, permettra que la période de mise en candidature commence le 13 octobre 2021 et se termine le 10 décembre 2021 à 14 h 00. Le jour du vote par anticipation aura lieu le 14 janvier 2022, et le jour du scrutin aura lieu le 24 janvier 2022, comme décrit ci-dessous :

- **Le mercredi 13 octobre 2021**
 - Début de la période de déclaration des candidatures et d'inscription (suivant l'approbation par le Conseil du règlement exigeant la tenue d'une élection partielle)

- **Le vendredi 10 décembre 2021 à 14 heures**
 - Jour de la déclaration des candidatures (dernier jour pour soumettre ou retirer une candidature)

- **Le vendredi 14 janvier 2022**
 - Jour de vote par anticipation (de 10 h à 20 h)

- **Le vendredi 21 janvier 2022 à 16 h 30**
 - Dernier jour pour soumettre un Avis d'inscription en tant que tiers annonceur

- **Le lundi 24 janvier 2022**
 - Jour du scrutin (de 10 h à 20 h)

- **Le mardi 25 janvier 2022**
 - Proclamation attendue des résultats et déclaration d'entrée en fonction

Comme il est décrit en détail dans la section Analyse du présent rapport, les modifications et les mesures d'adaptation apportées à la procédure de vote en personne comprendront celles-ci :

1. Limiter le nombre d'électeurs dans un bureau de vote afin de pouvoir appliquer les règles de distanciation physique
2. Se doter d'une stratégie pour gérer la file d'attente d'électeurs et installer une signalisation dans les bureaux de vote, dont des marques sur le plancher, afin de rappeler aux électeurs les consignes de distanciation physique
3. Exiger que les électeurs portent un masque dans les bureaux de vote, conformément au [Règlement de l'Ontario 364/20 : Règles pour les régions à l'étape 3 et à l'étape postérieure au plan d'action](#). On invitera les électeurs à fournir leurs propres masques; toutefois, il y aura des masques dans les bureaux de vote pour les personnes qui n'en ont pas.

4. Fournir l'équipement de protection individuel approprié au personnel, y compris des masques et des visières
5. Installer des postes de désinfection des mains dans les bureaux de vote
6. Distribuer des fournitures à usage unique dans les bureaux de vote (stylos, crayons, pochettes de vote secret)

Si le Conseil choisit de tenir une élection partielle pour pourvoir la charge vacante, la LEM, quoique généralement prescriptive, contient des dispositions qui permettent au greffier municipal de modifier les délais prescrits dans le cas d'une situation d'urgence. Le mandat comprend la préparation de l'élection et le maintien de la paix et de l'ordre pendant l'élection, comme le précise l'article 11 de la LEM.

Aux termes de l'article 12 de la LEM, le greffier municipal peut prévoir des questions ou modalités qui ne sont pas autrement prévues par une loi ou un règlement et qui sont, à son avis, « nécessaires ou souhaitables » pour la tenue de l'élection.

En outre, en vertu de l'article 53 de la LEM, le greffier municipal peut déclarer une situation d'urgence lorsque des circonstances surviennent qui sont susceptibles d'empêcher la tenue de l'élection conformément à la LEM. La loi lui permet aussi de prendre les mesures qu'il juge appropriées pour la tenue de l'élection.

Si le Conseil municipal choisit l'option 1 pour pourvoir la charge vacante dans le quartier 4 (Kanata-Nord), à savoir la tenue d'une élection partielle, les Services juridiques ont recommandé de modifier et de prolonger l'actuelle déclaration de situation d'urgence décrétée par le greffier municipal pour l'élection partielle dans Cumberland en 2020, conformément aux pouvoirs qui lui sont conférés dans l'article 53 de la LEM, afin d'apporter les modifications requises au processus électoral jugées nécessaires par le greffier municipal pour tenir l'élection partielle dans le quartier 4 (Kanata-Nord). La déclaration de situation d'urgence modifiée, annexée en tant que Document 3, serait décrétée immédiatement après l'approbation et l'adoption par le Conseil municipal d'un règlement exigeant la tenue d'une élection partielle pour pourvoir la charge vacante.

Comme décrit dans la section Analyse du présent rapport, le greffier municipal utilisera les pouvoirs que lui confèrent les articles 12 et 53 de la LEM pour apporter les modifications suivantes au processus électoral afin de faire face à la pandémie de COVID-19 :

1. Le greffier municipal supprimera les exigences en vertu du paragraphe 33(1.1) de la LEM et l'obligation pour se porter candidat ou candidate à l'élection partielle du quartier 4 (Kanata-Nord) de remplir le formulaire 2, lequel doit compter vingt-cinq (25) signatures d'électeurs admissibles appuyant ladite candidature.
2. Le greffier restreindra l'accès aux établissements de soins de longue durée en réponse à la COVID-19, et les candidats et candidates ainsi que leurs représentants n'y auront pas accès pour observer le déroulement du vote. En outre, le greffier municipal utilisera les pouvoirs que lui confère la loi pour permettre le vote dans les établissements de soins de longue durée et dans les maisons de retraite le jour du vote par anticipation plutôt que le jour du scrutin, comme l'exige le paragraphe 45(7) de la LEM. Ce changement aura pour effet de réduire quelque peu les pressions opérationnelles le jour du scrutin qui normalement compte un taux de participation plus élevé que le jour du vote par anticipation.
3. Puisque la validation des formulaires de procuration peut se faire dans les bureaux de scrutin de 10 h à 20 h tous les jours de vote, le greffier municipal supprimera les dispositions du paragraphe 44(6) de la LEM en vertu desquelles le Bureau du greffier municipal et tout autre endroit désigné par le greffier municipal doivent être ouverts pour la validation des formulaires de procuration de midi à 17 h les jours de vote par anticipation. Cela étant, les centres du service à la clientèle et le Bureau des élections n'auront pas à être ouverts de midi à 17 h le jour du vote par anticipation.

Le personnel est d'avis que les mesures d'adaptation décrites dans le présent rapport font en sorte que l'élection partielle peut se dérouler dans le respect des dispositions de la LEM et des directives et recommandations de santé publique. Cependant, s'il y avait résurgence de la COVID-19 ou si les directives sanitaires du gouvernement provincial ou de SPO devaient changer, le greffier municipal pourra avoir recours au besoin aux pouvoirs en situation d'urgence que lui confère l'article 53 de la LEM afin de protéger l'intégrité de l'élection et d'assurer la sécurité du public, notamment en reportant l'élection partielle. Le greffier municipal informera le Conseil et le public advenant qu'il faille modifier de façon importante le processus électoral.

Le personnel estime qu'une élection partielle classique dans le quartier 4 (Kanata-Nord), tenue dans des « circonstances normales » et comportant un seul jour de vote par anticipation coûterait environ 349 263 dollars. En raison de la pandémie de COVID-19 et du modèle de prestation de services propre au quartier, décrit dans le présent

rapport, le coût de l'élection partielle dans le quartier 4 (Kanata-Nord) devrait coûter environ 217 413 dollars de plus qu'une élection partielle dite « normale », pour un total prévu de 566 676 dollars.

Cette augmentation du coût est expressément attribuable à divers facteurs directement liés à la COVID-19, comme le recours uniquement à des employés municipaux dans les bureaux de vote; la mise en œuvre du vote spécial par la poste; des efforts de communication accrus; l'aménagement des bureaux de vote; l'équipement de protection individuel requis; ainsi que les besoins accrus de nettoyage et en personnel. Ces frais additionnels sont nécessaires afin de respecter les exigences de la LEM ainsi que les directives de SPO pour protéger la santé et assurer la sécurité des candidats, des électeurs, des tiers annonceurs et du personnel en raison de la pandémie de COVID-19.

Le financement de cette élection partielle proviendrait du Fonds de réserve de stabilisation des taxes, lequel est la principale source de financement des élections.

Si le Conseil adopte l'option 2 et choisit de pourvoir la charge vacante par nomination, le paragraphe 263(5) de la Loi de 2001 sur les municipalités stipule que le Conseil procédera à la nomination, dans les soixante (60) jours suivant la déclaration de la charge vacante, d'une personne qui a accepté d'être nommée.

Pour être admissible à occuper une charge, une personne doit :

1. avoir 18 ans ou plus;
2. être citoyenne canadienne;
3. résider à Ottawa ou être propriétaire ou locataire d'un bien-fonds situé sur le territoire d'Ottawa ou être le conjoint ou la conjointe d'une telle personne;
4. ne pas faire l'objet d'une interdiction d'occuper une charge ou de voter aux termes de la Loi de 1996 sur les élections municipales ou d'une autre loi.

La loi confère au Conseil le pouvoir de procéder à la nomination de quiconque satisfait aux critères susmentionnés, y compris un candidat d'une élection précédente. Aux élections municipales de 2018, Jenna Sudds a remporté le siège du quartier 4 (Kanata-Nord) avec 46,68 % des voix (5 298 voix), les candidats arrivés en deuxième et troisième place ayant recueilli respectivement 32,02 % (3 634 voix) et 20,57 % (2 335 voix) des voix.

Il est à noter que le Conseil ne peut pas nommer une personne sous condition que celle-ci ne se présente pas à la prochaine élection. Cette question a été soulevée dans le passé et dans d'autres municipalités. Une telle condition n'a pas force exécutoire, car la LEM définit l'admissibilité des candidats et précise les rares circonstances en vertu desquelles une personne ne peut pas se présenter à une prochaine élection.

Le personnel souligne que ni la Loi de 2001 sur les municipalités ni la LEM ne prévoient une procédure de nomination précise si le Conseil municipal choisit de pourvoir le siège vacant dans le quartier 4 (Kanata-Nord) par nomination. Généralement, une procédure de nomination comporte des annonces, des mises en candidature, des entrevues avec les candidats au cours de réunions distinctes d'un comité ou du Conseil au cours desquelles les candidats ont cinq minutes pour faire une présentation et les membres peuvent poser des questions aux candidats. Après coup, un vote des membres du Conseil conformément à ses procédures mène à la nomination d'un candidat.

Tel que noté précédemment, compte tenu des circonstances actuelles entourant la quatrième vague de la COVID-19 et la possibilité d'une résurgence de la maladie à l'automne, le médecin chef adjoint en santé publique, le Dr Moloughney, est d'avis que procéder par nomination est la solution la plus sécuritaire pour pourvoir le siège vacant au Conseil étant donné que les interactions entre le personnel, les candidats et les résidents seraient ainsi considérablement réduites, limitant les risques d'exposition à la COVID-19.

Si le Conseil municipal choisit de pourvoir le siège vacant en approuvant l'option 2, soit la nomination, le personnel propose le processus de nomination annexé en tant que Document 4. Ce processus de nomination, semblable à celui d'autres municipalités de l'Ontario, a été élaboré à cause de la situation de pandémie de COVID-19 et dans le respect des lignes directrices provinciales et de SPO actuelles.

La procédure de nomination recommandée comme indiquée dans le Document 4 durera 28 jours et permettrait au Conseil municipal de nommer un nouveau conseiller ou une nouvelle conseillère le 10 novembre 2021. Ce faisant, les résidents du quartier 4 (Kanata-Nord) auront un nouveau conseiller ou une nouvelle conseillère pour les représenter aux réunions des comités et du Conseil à l'automne quand le programme législatif sera chargé. Le nouveau membre du Conseil pourra aussi prendre officiellement part à l'examen du rapport sur le budget de 2022 qui aura lieu le 8 décembre 2021.

Si le Conseil choisit de pourvoir la charge vacante par nomination, conformément à la procédure décrite dans le Document 4, les délais suivants s'appliqueront :

- **Le lundi 18 octobre 2021**

- Le greffier municipal diffusera un avis public concernant la charge vacante et annoncera l'intention du Conseil de procéder par nomination pour la pourvoir.
- L'avis invitera toute personne intéressée et possédant les qualités requises à solliciter la nomination pour le quartier 4 (Kanata-Nord) et décrira la procédure pour poser sa candidature.
- Des annonces seront publiées dans les journaux pendant deux semaines (la semaine précédant et la semaine suivant le début de la période de déclaration des candidatures).
- L'information sera également publiée sur le site Web et dans les réseaux sociaux de la Ville d'Ottawa pendant la période de déclaration des candidatures.

- **Le lundi 25 octobre 2021 à 8 h 30**

- La période de déclaration des candidatures commence.

- **Le vendredi 29 octobre 2021 à 16 h**

- La période de déclaration des candidatures prend fin à 16 h.

- **Le vendredi 5 novembre 2021**

- Le greffier municipal présentera un rapport au Conseil qui comprendra la liste des candidats et des candidates validés.
- Le rapport au Conseil décrira aussi la procédure de nomination afin de pourvoir la charge vacante du quartier 4 (Kanata-Nord), conformément au Document 4 annexé au présent rapport.

- **Le mercredi 10 novembre 2021**

- Séance extraordinaire du Conseil afin de procéder à la nomination de la personne qui pourvoira la charge vacante de conseiller du quartier 4

(Kanata-Nord). Elle se tiendra 15 minutes après la fin de la réunion ordinaire du Conseil municipal prévue à cette date.

Le personnel s'attend à des coûts minimes pour les annonces, lesquels pourront être absorbés à même le budget de fonctionnement du Bureau du greffier municipal.

Si le Conseil décide de pourvoir la charge vacante par nomination en adoptant l'option 2, conformément à la procédure décrite dans le Document 4, une motion sera requise à cet effet.

BACKGROUND

Declaring a Council vacancy in accordance with the *Municipal Act, 2001*

On September 20, 2021, Jenna Sudds was elected to be the Member of Parliament for the riding of Kanata-Carleton. On September 23, 2021, she provided the City Clerk with written notice of her resignation as City Councillor of Ward 4 (Kanata North), effective immediately, pursuant to Subsection 260(1) of the *Municipal Act, 2001*.

As required by Section 262 of the *Municipal Act, 2001*, when the Office of a Member of Council becomes vacant, City Council must declare the Councillor's Office to be vacant at its next meeting. Accordingly, the City Clerk has prepared this report for City Council's consideration at its October 13, 2021 meeting, and approval of Recommendation 1 will satisfy City Council's statutory obligation to declare the seat vacant in accordance with the *Municipal Act, 2001*.

Delegation of authority matters relating to a Member's resignation

Following the resignation of a City Councillor, there are a number of legislative and administrative matters to address with respect to delegation of authority while the Office remains vacant. In particular, the *Delegation of Authority By-law* requires the concurrence of the Ward Councillor on a variety of matters prior to any approvals being given by staff. These include, but are not limited to, Site Plan Control applications and other planning applications under the delegated authority of the Planning, Infrastructure and Economic Development Department. Similarly, the City's internal controls also require approval by the Ward 4 Councillor for financial and human resource matters in the Ward 4 Office.

As is past practice, to assist residents with the transition, this report sets out recommendations to delegate the authority for the above-noted matters to neighbouring Ward Councillors Kavanagh and Hubleby (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 4 (Kanata North) Office budget arising from routine matters, and human resources matters relating to the Ward 4 (Kanata North) Office, as further described in the Discussion section of this report.

The Ward 4 (Kanata North) Office remains open (virtually due to the pandemic) and staffed to continue to address day-to-day constituency needs.

Process to fill Council vacancies as defined by *Municipal Act, 2001* and the *Municipal Elections Act, 1996*, “Select or Elect”

Section 263 of the *Municipal Act, 2001* provides City Council with two options to fill a vacancy, namely by appointing a new Member (“select”) or by holding a by-election (“elect”), 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 City 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 (1).

Previous vacant Offices in the City of Ottawa

Since amalgamation, five City Councillors have resigned from Office, causing City Council to declare their Offices to be vacant. On October 16, 2003, Councillor Madeleine Meilleur (Ward 12 – Rideau-Vanier) and Councillor Phil McNeely (Ward 19 – Cumberland) submitted their resignation following their election to the Legislative Assembly of Ontario in the 2003 Provincial Election. Since City Council declared the Offices of Councillor Meilleur and Councillor McNeely vacant within 90 days before Voting Day of the next regular municipal election – the 2003 Municipal Election occurred on November 10, 2003 – legislative provisions provided that City Council was not required to fill these two vacancies.

The third vacancy occurred in September 2005 when Councillor Herb Kreling (Ward 1-Orléans) resigned from City Council to become a Justice of the Peace. Councillor Kreling's resignation took effect on September 13, 2005. In turn, at its meeting of September 14, 2005, City Council passed a number of related motions, including motions to declare the Ward 1 Office vacant and to direct the City Clerk to conduct a by-election. Pursuant to this direction, the City Clerk conducted a by-election on January 9, 2006, which was preceded by an Advance Vote Day on December 17, 2005. The total cost of the 2006 By-Election in Ward 1 was approximately \$277,000.

The fourth vacancy occurred in January 2019, when Councillor Tobi Nussbaum (Ward 13 – Rideau Rockcliffe) resigned from City Council to accept the role of Chief Operating Officer for the National Capital Commission. Councillor Nussbaum provided written notice of his resignation on January 25, 2019. At its meeting of January 30, 2019, City Council approved the staff report entitled [Declaration of Vacant Office on Council - Ward 13 \(Rideau-Rockcliffe\) and Related Matters](#) to declare the Ward 13 (Rideau-Rockcliffe) seat vacant and pass a by-law requiring that the vacancy be filled by way of a by-election. The Ward 13 (Rideau-Rockcliffe) by-election occurred on April 15, 2019, with an Advance Vote Day taking place on April 5, 2019. The cost of this by-election was \$339,000.

The fifth vacancy occurred in March 2020, after Councillor Stephen Blais was elected to be the Member of Provincial Parliament for Orléans. On March 5, 2020, he provided the City Clerk with written notice of his resignation as City Councillor of Ward 19 (Cumberland), effective immediately. Around this time, the environment was materially changed due to the COVID-19 pandemic, and it became clear that conducting a by-election was not possible at that time. At the Special City Council Meeting of March 25,

2020, City Council approved a motion that, in part, declared the Ward 19 (Cumberland) seat vacant.

Given that the vacancy was declared with two years and eight months left in the 2018-2022 Term of Council, staff expected to recommend that City Council proceed with a by-election to fill the vacancy on the shortest possible timeline permitted under the MEA. However, in the intervening weeks since the Ward 19 (Cumberland) Office was vacated and the Special Council meeting of 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 immediately feasible under these circumstances, at the Special Council meeting on March 25, 2020, City Council approved a motion that directed the Office of the City Clerk to report back to City 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 April 22, 2020, City Council received the report titled, "[Ward 19 \(Cumberland\) – Vacancy Options](#)." The report outlined three options for City Council's consideration:

1. Deferring the decision on whether to appoint or elect a new Member until such time as more certainty was established with respect to when the state of emergency was likely to wind down and gradually return to regular operations;
2. Appointing someone to fill the vacancy by vote at City 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 City 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 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, was City Council.

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

Although the provincial emergency order was still in effect in July 2020, staff were of the opinion that, with the relaxing of some provincial orders and the gradual reopening of the City, it was possible to conduct a safe and democratic by-election in Ward 19 (Cumberland) that complied with the MEA as well as the public health recommendations provided by Ottawa Public Health (OPH) and the provincial government.

On July 15, 2020, City Council approved the staff report titled, “[Ward 19 \(Cumberland\) – Vacancy Options \(July 15\)](#),” which recommended that the 2020 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. The report further recommended 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.

The Ward 19 (Cumberland) by-election took place on October 5, 2020, with two Advance Vote Days occurring on September 28 and 29, 2020. As noted in the report titled, “Ward 19 (Cumberland) – Vacancy Options (July 15),” a traditional Ward 19 by-election conducted under “normal circumstances” would have cost approximately \$375,000, and due to the COVID-19 pandemic, staff originally estimated a total by-election cost of \$523,835.

As indicated in the [Office of the City Clerk 2020 Annual Report](#), the total cost of the 2020 Cumberland By-election was \$550,560. Staff reviewed the increase in cost and determined that the additional \$26,725 incurred was directly related to last-minute adaptations due to the COVID-19 pandemic and the need to ensure the integrity of the election process. More specifically, this included:

- An increase in overtime costs as additional staff were required to set up voting places on the days before voting took place;
- Additional IT specialists were hired to support voting place staff with “anywhere voting” and the electronic Voters’ List;

- Additional security staff were hired to ensure the integrity of the election process; and
- Based on the advice of the Elections Working Group, COVID-19 Voting Place managers were hired to assist voting place staff with implementing all COVID-19-related election processes and policies, while also ensuring that both staff and electors were adhering to all safety protocols at all times.

2021 Council vacancies in other municipalities in Ontario

Staff has completed a review of Council vacancies that have occurred in 2021 in other municipalities in Ontario, and at the writing of this report, 41 Council vacancies have occurred. These vacancies have been filled, or are in the process of being filled, as follows:

- 30 vacancies were filled by an appointment process; and
- Two vacancies were filled by holding by-elections.

Staff note that, at the writing of this report, nine of the 41 vacancies remain as follows:

- Appointment processes have been approved to fill seven of these vacancies and these Councils have yet to appoint a candidate.
- A report outlining the options to fill a vacancy in the City of London will go before the City's Corporate Services Committee at its meeting of October 12, 2021, as further described below.
- Richmond Hill's Council has chosen to fill the vacant Office of Mayor by way of a by-election. The by-law to require a by-election will be placed on the October 13, 2021 Council agenda for enactment, as further described below.

Although it is difficult to compare these municipalities to the City of Ottawa due to Ottawa's geographic size and population, these jurisdictions are subject to the same legislation as the City of Ottawa, (i.e., the *Municipal Act, 2001* and the MEA) when dealing with a Council vacancy. The largest municipalities with vacancies that occurred in 2021 are highlighted below:

- **City of London (248,212 eligible electors):** On September 29, 2021, the Ward 13 Councillor resigned after being elected as a Member of Parliament during the 2021 Federal Election. London City Council declared the seat vacant at its meeting of October 5, 2021. A report outlining the options to fill the vacancy will

be considered by the City's Corporate Services Committee at its meeting of October 12, 2021.

- **City of Hamilton (363,434 eligible electors):** On September 24, 2021, the Ward 5 Councillor resigned after being elected as a Member of Parliament during the 2021 Federal Election. Hamilton City Council declared the seat vacant and approved an appointment process to fill the vacancy at its meeting on September 29, 2021. The deadline to apply as an applicant for the vacant Office of Councillor is October 29, 2021. Hamilton City Council is expected to select the appointee at a Special Meeting of Council on November 12, 2021.

As noted in the staff report entitled [Declaration and Method to Fill the Vacancy for the Office of Councillor in Ward 5 \(FCS21093\) \(Ward 5\)](#), the City Clerk's timelines for a by-election would have seen Voting Day take place on March 7, 2022. These extended timelines were required to ensure a vendor could be sought to meet the technology, election supplies, and materials required to deliver the election within the statutory timelines.

The report further noted that since the Province is currently preparing for the Provincial election in the spring of 2022, the City would be unable to leverage the Provincial Voting Technology Leasing Program. The extended timelines were also required in order to ensure staffing levels could be met to maintain planning for the 2022 Municipal Elections, and to ensure all health and safety protocols were followed to ensure the safety of staff and electors.

- **City of Richmond Hill (114,000 eligible electors):** On September 15, 2021, the Mayor of the City of Richmond Hill resigned. The Office of Mayor was declared vacant at the City Council meeting of September 22, 2021. At a Special Council Meeting on September 29, 2021, Council voted to fill the vacancy by way of a by-election. The by-law to require a by-election will be placed on the agenda for the October 13, 2021 Council meeting for enactment.
- **Township of Tiny (18,496 eligible electors):** On Wednesday, September 15, 2021, a City Councillor for the Township of Tiny resigned. At a Special Council Meeting on September 20, 2021, Council declared the Office to be vacant. At its meeting of September 22, 2021, Council approved an appointment process to fill the vacancy. The application deadline is Friday, October 22, 2021, and Council is expected to appoint the successful candidate on November 2, 2021.

- **City of Clarence-Rockland (17,600 eligible electors):** Following the death of the Mayor of Clarence-Rockland on July 3, 2021, the Office was declared vacant on August 3, 2021. On August 27, 2021, the existing Ward 2 Councillor was appointed to fill the vacancy until the end of the 2018-2022 Term of Council. Subsequently, the Office of Ward 2 was declared vacant. On September 8, City Council approved an appointment process that required qualified candidates to submit a letter of interest for the position of City Councillor. Applicants have until October 8, 2021 to submit their letter of interest, after which City Council will appoint a candidate from the pool of applicants.
- **City of Cornwall (32,794 eligible electors):** On June 22, 2021, the Mayor resigned after being appointed to the Senate of Canada. The Office of Mayor was subsequently declared vacant on June 28, 2021, and an existing Member of Council was appointed on July 8, 2021, causing a vacancy for the Office of City Councillor. At its meeting on August 9, 2021, City Council approved a motion recommending that the vacancy be filled by appointing the runner up in the 2018 Municipal Elections, who had also been a City Councillor during the previous Term of Council.
- **City of Belleville (34,592 eligible electors):** City Council declared the Ward 1 Office vacant on April 12, 2021, following the resignation of the City Councillor on March 31, 2021. At that same meeting, City Council unanimously voted to fill the vacancy by appointing a runner up from the 2018 Municipal Elections.
- **City of Welland (38,362 eligible electors):** On February 16, 2021, the Councillor for Ward 3 resigned, and the seat was declared vacant by City Council on March 2, 2021. At a Special Council meeting on March 9, 2021, City Council approved an appointment process. However, on April 29, 2021, City Council remained deadlocked between two applicants, and ultimately voted to enact a by-law requiring a by-election to be held with Voting Day taking place on August 9, 2021. This by-election was held using a vote by mail process only, and a total of 2,018 ballots were cast.
- **Norfolk County (48,696 eligible electors):** On December 31, 2020, the Councillor for Ward 2 resigned, and on January 19, 2021, Norfolk County Council declared the seat vacant. At their meeting of February 16, 2021, Council approved a by-law to hold a by-election. On June 3, 2021 the Ward 2 by-election was held using a vote by mail process only, and a total of 1,812 ballots were cast.

Current environmental scan and the COVID-19 pandemic

At the writing of this report, Ontario is in [Step 3 of its Roadmap to Reopen](#). The Roadmap to Reopen is a three-step plan to safely and cautiously reopen the province and gradually lift public health measures. The plan is based on the province-wide vaccination rate and improvements in key public health and health care indicators. Step 3 permits a maximum of 100 people for outdoor gatherings and a maximum of 25 people for indoor gatherings, and businesses are permitted to be open with public health restrictions in place.

On July 22, 2021, the City lifted its State of Emergency and moved one level down in its emergency management to 'Activated Operations'. At the time of writing, approximately 89 per cent of adults in Ottawa have received at least one dose of the vaccine, and 84 per cent have received two doses.

Due to the ongoing COVID-19 pandemic, staff has been in contact with OPH to review the implications that the pandemic has on both options that City Council has to fill the Ward 4 (Kanata North) vacancy (i.e., Option No. 1 to hold a by-election, or Option No. 2 to appoint).

Staff, in consultation with OPH, is of the opinion that both the by-election and appointment process can be conducted in accordance with provincial legislation (i.e., the *Municipal Act, 2001* and the MEA) as well as the public health recommendations, as further described in this report.

Given that the vacancy has occurred with approximately 13 months left in the 2018-2022 Term of Council, the City Clerk is recommending that a by-election be held to fill the vacancy in order to provide residents with the opportunity to elect the Member that will represent them for the remainder of the term. As the decision on how to fill the vacancy remains with City Council, this report provides City Council with two options to fill the Council vacancy in Ward 4 (Kanata North), either by approving Option No. 1 to hold a by-election, or by approving Option No. 2 to appoint.

The City's Deputy Medical Officer of Health, Dr. Moloughney, is of the view that, "while caution is still required considering the transmissibility of the Delta variant, the majority of adults in Ottawa are fully vaccinated and the number of reported cases of COVID-19 are currently stable. In addition, there is experience in successfully conducting a previous by-election during the pandemic, as well as the recent federal election. Ottawa Public Health is of the view that a by-election can be conducted in a manner that is as

safe as possible with the implementation of a range of protective measures for candidates, staff, and residents.”

Review of the election processes in the 2020 Cumberland By-election

As previously noted, on July 15, 2020, City Council approved the staff report titled, [“Ward 19 \(Cumberland\) – Vacancy Options \(July 15\)”](#) and enacted the *By-law to Require a By-Election* in order to hold a by-election to fill the vacancy in the Office of Councillor, Ward 19 (Cumberland) in accordance with the MEA. Staff recommended that the by-election be conducted in the traditional manner (i.e., in-person voting) with adaptations made to the by-election process to address OPH and provincial health recommendations related to COVID-19.

Following City Council’s approval of the report, and in order to conduct and make all necessary arrangements for the 2020 Cumberland By-election, the City Clerk immediately declared an emergency in accordance with Section 53 of the MEA.

The City Clerk further exercised his statutory authority under Sections 12 and 53 of the MEA in order to implement a number of changes to the by-election processes in response to COVID-19, including:

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 and hand sanitizing stations in voting places;
4. Requiring electors to wear masks in voting places. Electors were encouraged to bring their own mask. However, masks were available at voting places if an elector did not have one;
5. Providing appropriate personal protective equipment including masks, face shields (eye protection) and gloves for staff who were working and/or cleaning surfaces in voting places;
6. Providing single use stationery at voting places (voting pens, pens, privacy sleeves);
7. Waiving the requirements of Subsection 33(1.1) of the MEA. A completed Form 2, with 25 signatures from eligible electors endorsing the nomination, was not required in order to become a candidate in the 2020 Cumberland By-election;

8. Restricting the number of candidates and scrutineers permitted inside a voting place in order to reduce the risk of the transmission of COVID-19 during voting days;
9. Developing a plan for voting in long-term care homes, and restricting access to long-term care centres in response to COVID-19 and candidates and scrutineers were not permitted to observe the vote; and
10. As proxy forms could be certified at voting places on all voting days, the City Clerk waived 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 were not required to be open from noon to 5:00 p.m. on Advance Voting Days.

Due to the COVID-19 pandemic, City Council approved and enacted a *By-Law to Authorize the Use of an Alternative Voting Method* for the 2020 Cumberland By-election to permit the use of a special mail-in ballot that did not require electors to attend a voting place in order to vote, in accordance with Subsection 42(1)(b) of the MEA. This process allowed eligible electors to submit an application to receive a special ballot by mail which they could mark at home, and mail or deliver their ballot to the Elections Office, or the Orléans Client Service Centre.

In addition, and as is the case for a general election, the MEA requires that a by-election be conducted with at least one Advance Vote Day. In response to COVID-19, OPH 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 lineups at voting places. As such, the City Clerk, in accordance with the MEA, established a by-election schedule that provided electors with three opportunities to vote in-person at eight voting places. This schedule included two Advance Vote Days and Voting Day.

Ward 4 (Kanata North) statistics and previous voter turnout

Ward 4 (Kanata North) has approximately 23,666 eligible electors. In the 2018 Municipal Elections, voter turnout in Ward 4 (Kanata North) was 48 per cent with 11,410 electors casting their ballot.

Typically, by-elections have a lower voter turnout than regular municipal elections. Voter turnout for the two most recent by-elections in Ward 13 (Rideau-Rockcliffe) and Ward

19 (Cumberland), as well as the voter turnout data for the 2018 Municipal Elections in these wards, is as follows:

- **2020 Cumberland By-election (Ward 19):** There were 36,323 eligible electors with 8,708 electors casting their ballot, for a voter turnout of 24 per cent. Comparatively, in the 2018 Municipal Elections, 12,736 of 33,518 eligible electors in Ward 19 (Cumberland) cast their ballot, for a voter turnout of 38 per cent.
- **2019 Rideau-Rockcliffe By-election (Ward 13):** There were 27,246 eligible electors with 8,341 electors casting their ballot, for a voter turnout of 31 per cent. Comparatively, in the 2018 Municipal Elections, 9,458 of 25,460 eligible electors in Ward 13 (Rideau-Rockcliffe) cast their ballot, for a voter turnout of 37 per cent.

DISCUSSION

Recommendation 1: That City Council declare the Office of Councillor, Ward 4 (Kanata North) to be vacant, as required in accordance with Section 262 of the *Municipal Act, 2001*, and approve the following interim delegations of authority with respect to Ward 4 (Kanata North) matters until such time that a new Councillor is sworn in and takes Office:

- a) That concurrence under the *Delegation of Authority By-law for Ward 4 (Kanata North) matters, and the provision of Councillor Comments on staff reports related to Ward 4 (Kanata North), may be provided by Councillors Kavanagh and Hubley; and***
- b) That the City Clerk and the Manager of Council and Committee Services be delegated the interim authority to approve the payment of expenses from the Ward 4 (Kanata North) Office Budget arising from routine matters, and to address human resources matters relating to the Ward Office.**

As noted above, on September 23, 2021, Councillor Jenna Sudds provided the City Clerk with written notice of her resignation as City Councillor for Ward 4 (Kanata North). Under Section 262 of the *Municipal Act, 2001*, when a Member resigns, City Council is mandated to declare the Office to be vacant at its next meeting. Therefore, formal City Council approval of Recommendation 1 declaring the Ward 4 Office vacant is required to meet Council's statutory obligations under Section 262 of the *Municipal Act, 2001*.

With the resignation of the Ward 4 Councillor, there are a number of legislative and administrative matters to address with respect to delegation of authority while the Office remains vacant.

The *Delegation of Authority By-law* requires the concurrence of the Ward Councillor prior to various planning approvals being given under staff's delegated authority. These include, but are not limited to, Site Plan Control applications and other Delegated Authority planning applications. For this reason, and consistent with past practice, staff recommends that the concurrence routinely required by the Ward 4 Councillor be temporarily delegated to Councillors Kavanagh and Hubley, who both represent neighbouring wards, until a new City Councillor takes Office. This interim delegation of authority would be in addition to that provided to the Mayor under the *Delegation of Authority By-law*. Further, it is recommended that during this period, Councillors Kavanagh and Hubley have the option to provide comment in the "Ward Councillor Comment" section of staff reports pertaining to Ward 4 matters.

With respect to the Ward 4 (Kanata North) Office, there will be routine expenses that are either of an administrative nature or for expenditures that have been previously authorized for regular constituency matters. To ensure that such routine invoices continue to be paid, staff recommend that City Council delegate oversight of certain matters within the Ward 4 (Kanata North) Office to the City Clerk and the Manager of Council and Committee Services until the new Councillor takes Office. This would include addressing some human resources matters as well as and the authority to pay routine expenses.

The Ward 4 (Kanata North) Office remains open (virtually due to the pandemic) and staffed to continue to address day-to-day constituency needs.

Recommendation 2: That City Council approve and enact:

- a) ***A By-law to Require a By-Election***, attached as Document 1, which requires that a by-election be held to fill the vacancy in the Office of Councillor, Ward 4 (Kanata North) on January 24, 2022 in accordance with the *Municipal Elections Act, 1996*, as described in this report.
- b) ***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 4 (Kanata North) by-election, as described in this report.

The decision on how to fill the Council vacancy in Ward 4 (Kanata North) is made by City Council, within the statutory framework provided by the *Municipal Act, 2001* and the MEA. Section 263 of the *Municipal Act, 2001* provides City Council with two options to fill a vacancy, namely by appointing a new Member (“select”) or by holding a by-election (“elect”).

Option No. 1: “Elect” - Hold a by-election to fill the Ward 4 (Kanata North) vacancy

Subsection 263(5) of the *Municipal Act, 2001* provides that, within 60 days of City Council declaring an Office to be vacant, City Council shall pass a by-law requiring a by-election to be held to fill that vacancy. Should City Council choose to fill the vacancy by holding a by-election, staff is recommending that City Council approve and enact the *By-law to Require a By-Election*, attached as Document 1, on October 13, 2021.

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 City 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 City 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 City 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 City 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.

As noted in the Background section of this report, following City Council approval of the report titled, "Ward 19 (Cumberland) – Vacancy Options (July 15)", and, in order to conduct and make all necessary arrangements for the 2020 Cumberland By-election, the City Clerk immediately declared an emergency in accordance with Section 53 of the MEA. As described in the [Office of the City Clerk 2020 Annual Report](#), Legal Services advised that the Declaration of Emergency should continue until all by-election related timelines, including any potential election compliance audits and/or appeals have passed.

As of September 17, 2021, all 2020 by-election timelines have passed; however, the Declaration of Emergency remains in place. Should City Council choose to fill the Ward 4 (Kanata North) vacancy by approving Option No. 1 to hold a by-election, Legal Services has recommended that the existing Declaration of Emergency be amended and extended to allow for any necessary adaptations to the prescribed election processes that the City Clerk deems necessary to conduct the Ward 4 (Kanata North) by-election. The amended Declaration of Emergency, attached as Document 3, would be declared immediately after City Council approves and enacts a by-law requiring a by-election to fill the vacancy.

Should City Council choose to fill the Ward 4 (Kanata North) vacancy by approving Option No.1 to hold a by-election, staff is recommending that the by-election be 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 maintain the integrity of the by-election, and to address the current provincial health guidelines and the advice of OPH through both Section 12 and Section 53 of the MEA. As such, should City Council choose to fill the Ward 4 (Kanata North) vacancy by holding a by-election, the City Clerk will extend the existing Declaration of Emergency in

order to make all necessary arrangements and conduct the Ward 4 (Kanata North) by-election as further described in this report.

Should City Council choose to fill the Ward 4 (Kanata North) vacancy by holding a by-election, 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. This approach, in staff's opinion, allows the Elections Office to safely plan for and hold the Ward 4 (Kanata North) by-election, as further described in this report.

Ward 4 (Kanata North) by-election timelines

Should City Council approve Option No. 1 to hold a by-election, it would be conducted under the requirements of the MEA which has its own statutory timelines. As previously noted, Subsection 65(4) of the MEA states that Nomination Day must be no less than 30 days and not more than 60 days after the passing of the by-law requiring a 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.

In evaluating the potential timelines for the Ward 4 (Kanata North) by-election, staff has determined that proceeding with the shortest timelines prescribed by the MEA would place significant risks on the administration and integrity of the by-election due to their proximity of the holiday season. More specifically, the shortest permitted calendar under the MEA would see the Nomination period begin on October 13, 2021 and end on November 12, 2021, with Advance Vote Day on December 17, 2021 and Voting Day on December 27, 2021.

Staff has also identified significant risks to the by-election with respect to the special mail-in ballot process, which is recommended in order to comply with public health recommendations and to provide electors with the opportunity to vote without having to attend a voting place in-person. The holiday season is an extremely busy time for mail delivery services and the volume of mail during this period could prevent the timely delivery and return of the Special Ballot Voter Kits and completed ballots, as well as other necessary election materials such as voter notification letters.

Staffing for this by-election, which will already be impacted by COVID-19 implications, could become increasingly difficult should voting days occur in December due to annual leave, holiday commitments, and travel schedules. Additionally, in response to COVID-19, only City staff will be hired as election workers in voting places in the Ward 4 (Kanata North) by-election. Given December's heavy legislative agenda, it is likely that

there could be further difficulties in securing City staff as many will be fulfilling other work commitments.

Given the above-noted risks and concerns and to ensure the integrity of the by-election, should City Council choose to fill the Ward 4 (Kanata North) vacancy by approving Option No.1 to hold a by-election, the by-election schedule, as established by the City Clerk in accordance with the MEA, will see the Nomination period begin on October 13, 2021 and end on December 10, 2021 at 2:00 p.m. Advance Vote Day would take place on January 14, 2022, with Voting Day on January 24, 2022 as further described below:

- **Wednesday, October 13, 2021**
 - Nomination and Registration periods begin (following City Council's approval the by-law requiring a by-election).
- **Friday, December 10, 2021 at 2:00 p.m.**
 - Nomination Day (last day to submit or withdraw a nomination).
- **Friday, January 14, 2022**
 - Advance Vote Day (from 10:00 a.m. to 8:00 p.m.).
- **Friday, January 21, 2022 at 4:30 p.m.**
 - Last day to submit a Notice of Registration as a Third Party Advertiser.
- **Monday, January 24, 2022**
 - Voting Day (from 10:00 a.m. to 8:00 p.m.).
- **Tuesday, January 25, 2022**
 - Expected Declaration of Results and Declaration of Office.

The City Clerk is of the opinion that this approach addresses the above-noted risks, and it allows staff the time required to prepare for a by-election that upholds the principles of the MEA while also adhering to the health and safety protocols and guidelines as recommended by OPH, as further described in this report.

A detailed by-election calendar is attached as Document 5.

Voting in the Ward 4 (Kanata North) 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, a full change to the voting method (i.e., internet voting) is not possible for the Ward 4 (Kanata North) by-election.

As such, staff is recommending that the Ward 4 (Kanata North) 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 City Council approve Option No. 1 to hold a by-election, electors will have three options to cast their ballot during the Ward 4 (Kanata North) by-election: (1) in-person voting; (2) voting by special mail-in ballot; and (3) voting by proxy, as further described in this report.

1. In-person voting

Following the review of the election processes that were successfully implemented in the 2020 Cumberland By-election, in response to COVID-19, and to ensure the safety of electors and staff, a number of changes and adaptations to the standard in-person voting process are required in order to comply with public health guidelines and recommendations, as further described in this report.

Section 43 of the MEA requires that a by-election be conducted with at least one Advance Vote Day. As such, should City Council approve Option No. 1 to hold a by-election, the City Clerk, in accordance with the MEA, will establish a by-election schedule that provides electors with two opportunities to vote in-person. This schedule includes one Advance Vote Day taking place on January 14, 2022. Voting Day will take place on January 24, 2022. Voting places will be open from 10:00 a.m. to 8:00 p.m. on both voting days.

Under “normal circumstances” the Elections Office would typically utilize several schools located throughout the ward as voting places. Given the uncertainty surrounding the use of schools, the COVID-19 pandemic, and a possible resurgence in the fall and winter, staff is currently reviewing which schools may be used as voting places to determine if they adhere to the advice provided by OPH and the province’s

Chief Medical Officer of Health's recommendations regarding the use of schools in Ontario for election purposes.

The memorandum regarding the use of schools in the 2021 federal election issued by the province's Chief Medical Officer of Health is attached as Document 6 and includes the following criteria:

- A direct path to location of the voting place;
- There must be separate entrance(s) and exit(s); and
- The voting place must be able to keep students and staff separate from the public.

Given the above-noted circumstances, staff is in the process of reviewing voting places that may be used should City Council approve Option No. 1 to hold a by-election to fill the vacancy in the Ward 4 (Kanata North) and the list of voting places in the Ward 4 (Kanata North) by-election will be available after Nomination Day (December 10, 2021).

That being said, and in order to expedite the in-person voting process, staff anticipates that 4 voting places will be available to electors on both Advance Vote Day (January 14, 2022) and Voting Day (January 24, 2022), and these voting places will offer "anywhere voting" on both 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. It was also successfully implemented on all voting days during the Ward 19 (Cumberland) by-election as previously described in the Background section of this report.

Implementing anywhere voting in the potential Ward 4 (Kanata North) by-election also allows for contingency plans should a voting place become unavailable due to COVID-19, and allows staff to certify proxy forms at voting places as later described in this report.

Voting at long term care centres and multi-residential 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 six long term care centres in Ward 4 (Kanata North).

The Elections Office is currently reviewing voting processes with OPH and will establish a plan that provides these electors with the opportunity to vote that addresses and adheres to public health regulations surrounding COVID-19. In addition, the City Clerk will use his statutory authority under Sections 12 and 53 of the MEA in order to permit voting to take place in long term care centres on Advance Vote Day (January 14, 2022), rather than Voting Day (January 24, 2022). This change helps alleviate operational pressures on Voting Day which typically sees a higher voter turnout than Advance Vote Day.

Staff is also reviewing multi-residential facilities located in the ward and, in addition to the “anywhere voting” places that will be available to electors on Advance Vote Day and Voting Day, voting places may be located in multi-residential facilities on Advance Vote Day.

As previously noted, a full list of voting places will be available after Nomination Day (December 10, 2021) and this information will be communicated to electors in a variety of communications products including but not limited to voter notification letters, website and social media content, public service announcements and newspaper advertisements.

Additionally, Subsection 45(10) of the MEA allows candidates, or one scrutineer per candidate, to accompany the DRO who attends on an elector in a long term care centre or 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 retirement homes, and candidates and scrutineers will not be permitted to observe the vote in these facilities.

Once the Elections Office has established a plan for voting in long term care centers and retirement homes, staff will provide this information to candidates in their Candidate Updates and any other relevant communications products for electors.

Hiring City staff at voting places

To limit interactions with the public, voting places will be staffed by City staff only, and in accordance with the City’s [Vaccination Policy](#), all election workers will be required to be fully vaccinated.

Hiring City staff also provides the Elections Office with some flexibility when providing training options to election workers and 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 changes to in-person voting

Additional COVID-19-related changes and adaptations 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. Requiring electors to wear masks in voting places, in accordance with Ontario regulation [O. Reg. 364/20: Rules for Areas at Step 3 and at the Roadmap Exit Step](#). Electors will be encouraged to bring their own mask; however, masks will be available at voting places should an elector not have one;
4. Providing appropriate personal protective equipment to staff including masks and face shields;
5. Installing hand sanitizing stations at voting places; and
6. Providing single use stationery at voting places (voting pens, pens, privacy sleeves).

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.

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, 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.

It is important to note that the COVID-19 pandemic is continuously evolving, and with the uncertainty surrounding the fourth wave and a possible resurgence in fall and winter, additional voting process changes may be required should public health recommendations change. The Elections Office will keep up-to-date voting information available on the City's Elections website on ottawa.ca/vote and the City Clerk will inform City Council and the public should any significant changes to the voting process be required.

2. Alternative voting method - special mail-in ballot process

In response to the ongoing COVID-19 pandemic, should City Council approve Option No. 1 to hold a by-election, the City Clerk is once again recommending the use of an alternative voting method that does not require an elector to attend a voting place in-person to cast their vote. Specifically, this report recommends that City Council approve and enact a by-law to permit the use of a special mail-in ballot for the Ward 4 (Kanata North) by-election. This alternative voting method was piloted in the 2020 Cumberland By-election and a total of 1,234 special mail-in ballots were cast (14 per cent of total ballots cast).

The implementation of a special mail-in ballot process in the Ward 4 (Kanata North) by-election 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). Electors can also deliver their special ballot to the Kanata Client Service Centre (580 Terry Fox Drive), as further described below. The Elections Office will also staff a call centre to administer the special mail-in 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 4 (Kanata North) 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 \$82,500.

As in previous elections, the City's election processes and vote tabulation system, including the special mail-in ballot process, for the Ward 4 (Kanata North) 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 only be the second time that the City conducts an election with an alternative voting method, and it will be a first for the residents of Ward 4 (Kanata North). 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 November 25, 2021).

To implement this alternative voting method by special mail-in ballot for the Ward 4 (Kanata North) by-election as described in this report, City 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 City Council approve Option No.1 to hold a by-election, staff is recommending that City Council approve this by-law on October 13, 2021.

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 December 11, 2021 until December 19, 2021 at 5 p.m. 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 Kanata Client Service Centre, 580 Terry Fox Drive, by 4:30 p.m. on Voting Day, January 24, 2022, in order to be counted in accordance with the Vote Counting Procedures, attached as Document 7.

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 4 (Kanata North) by-election. This process is possible during the Ward 4 (Kanata North) by-election due to the use of an electronic Voters' List.

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 open Client Service Centre from December 11, 2021 until January 24, 2022, during regular business hours, and have them 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 both voting days, in accordance with Sections 12 and 53 of the MEA, the City Clerk will waive 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 to be open for the purpose of certifying proxies from noon to 5:00 p.m. on Advance Vote Day. 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 Day.

To raise awareness about voting options during the potential by-election, and in addition to statutory advertisement requirements, the Elections Office will ensure that a thorough communications plan is implemented.

Changes to the candidate nomination process

On April 19, 2021, [Bill 254, *Protecting Ontario Elections Act, 2021*](#) received Royal Assent and, among other changes, this bill now allows a City Clerk to put conditions in place that would allow candidates and third party advertisers to submit their nomination and registration forms electronically.

Staff, in consultation with ITS, has reviewed the feasibility of implementing an electronic filing system and has determined that this is not operationally feasible for the potential Ward 4 (Kanata North) by-election.

In addition to the increased demands that this would place on resources in ITS, who have been heavily involved in the COVID-19 pandemic and who are focused on delivering other election-related systems required to administer the Ward 4 (Kanata North) by-election and the 2022 Municipal Elections, staff has identified a number of issues with respect to moving this process online, including:

1. Concerns with submitting and validating identification in order to verify the identity of a candidate or third party advertiser;
2. The privacy requirements to intake and store personal information of the candidate and their endorsers;
3. Staff's ability to determine if a candidate or third party advertiser is qualified to become a candidate or third party advertiser in accordance with the requirements of the MEA;
4. A significant amount of effort to integrate an electronic filing system with the current payment processing infrastructure and Election Management System (EMS); and
5. A lack of clarity on "when" a candidate or third party advertiser becomes "nominated" or "registered" when filing online. This causes concerns related to when a campaign actually begins (i.e., at the time the documents are submitted

online, or when they are reviewed by the City Clerk or his designates), and this could have significant ramifications for possible election compliance audits on a candidate or third party advertiser's campaign.

Staff has also determined that continuing with an in-person nomination and registration process allows staff the opportunity to explain the process in detail, to answer any questions that may arise, and to provide candidates and third party advertisers with important information related to the election process.

Staff will continue to monitor electronic filing systems and strategies in other jurisdictions in Ontario to determine if such a system could be introduced in future municipal elections in the City of Ottawa.

To become a candidate for City Council, the MEA includes the requirement to complete an Endorsement of Nomination (Form 2) which includes 25 signatures from eligible electors endorsing the nomination. In accordance with Sections 12 and 53 of the MEA, this requirement was waived by the City Clerk for the Ward 19 (Cumberland) by-election in 2020 in order to align with provincial and OPH recommendations surrounding physical distancing at that time.

In order to adhere with ongoing public health recommendations for physical distancing, in accordance with Sections 12 and 53 of the MEA, the City Clerk will once again waive the requirements of Subsection 33(1.1) of the MEA. As such, should City Council approve Option No. 1 to hold a by-election, a completed Endorsement of Nomination (Form 2) will not be required in order to become a candidate in the Ward 4 (Kanata North) by-election.

The Nomination Period for candidates will begin on October 13, 2021, following City Council approving and enacting the by-law requiring a by-election, and will end on December 10, 2021 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 and the safety of staff, 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 City 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.

Candidates are not subject to the City's Vaccination Policy and it is not prescribed in the eligibility requirements for candidates in provincial legislation. In accordance with [Motion 59/12](#), which was approved by City Council on September 8, 2021, the City's Vaccination Policy only applies to Members of Council.

Changes to the Registration Process for third party advertisers

The registration period for third party advertisers will begin on October 13, 2021, following City Council approving and enacting the by-law requiring a by-election, and will end on January 21, 2022 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 and the safety of staff, third party registrations will take place by appointment only at the Elections Office. As noted above, appointments will be available following City 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 continuously evolving, OPH expects that this information may need to be updated regularly. Candidates and third party advertisers are encouraged to consult the Elections website (ottawa.ca/vote) regularly.

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 or a Client Service Centre during regular business hours. Electors may also make these changes at the voting place on voting days. The Revision Period for the Ward 4 (Kanata North) by-election will take place from December 11, 2021 until December 19, 2021 at 5:00 p.m.

Should City Council approve Option No. 1 to hold a by-election, 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 in order to protect the integrity of the election as well as ensure public safety, including postponing the by-election should it be required in accordance with public health guidelines. The City Clerk will notify City Council and the public should any significant changes to the election process be required.

Cost of the Ward 4 (Kanata North) By-election

Staff estimate that a traditional by-election for Ward 4 (Kanata North) conducted under “normal circumstances” with one Advance Vote Day would cost approximately \$349,263. Due to the COVID-19 pandemic and the ward specific service delivery model as described in this report, the cost of the Ward 4 (Kanata North) by-election is expected to increase by approximately \$217,413 for a total expected cost of \$566,676.

This increase in cost relates specifically to various COVID-19-related items such as hiring only City staff at voting places; the implementation of special mail-in ballot process; increased communications efforts; voting place setup; 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, electors, third party advertisers, and staff as a result of the COVID-19 pandemic.

It is important to note that each ward presents a unique set of geographic and ward specific challenges that need to be addressed. As such, the cost of a by-election differs from ward to ward due to the size and nature of wards and the requirements of the MEA. Factors that impact the cost of a by-election include the number of electors in each ward; the number of voting places required, including those mandated by the MEA such as long term care centres; and accessibility requirements. These factors directly

influence the cost of a by-election as they impact the number of tabulators and voting place supplies that are required, in addition to printing and staffing requirements.

Staff have completed a comparative review of a Ward 4 (Kanata North) by-election budget conducted under “normal 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 \$14.76, and the price per elector for a by-election conducted with considerations for COVID-19 is expected to be approximately \$23.94. Staff has determined that the increase in cost relates specifically to conducting a safe and democratic by-election in Ward 4 (Kanata North) during the COVID-19 pandemic, in accordance with provincial guidelines 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. At the writing of this report there is a level of uncertainty surrounding the availability of voting places, particularly in schools, and the impacts of a possible resurgence of COVID-19 in the fall and winter that staff is currently monitoring and assessing in accordance with public health recommendations.

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 4 (Kanata North) by-election is attached as Document 8.

Additional information regarding the Ward 4 (Kanata North) by-election

Additional details regarding the Ward 4 (Kanata North) by-election including information related to the Contribution Rebate Program and the use of vote tabulators is attached as Document 9.

Option No. 2: “Select” - Appoint a New Member to Fill the Ward 4 (Kanata North) Vacancy

Subsection 263(5) of the *Municipal Act, 2001* sets out the rules to fill a vacancy on City Council. In short, the *Municipal Act, 2001* provides that City 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:

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.

City Council has the statutory authority to appoint any person who meets the above-noted requirements, including candidates from a previous election. In the 2018 Municipal Elections, Jenna Sudds won the Ward 4 (Kanata North) seat with 46.68 per cent of the vote (5,298 votes), with the second and third place candidates garnering 32.02 per cent (3,634 votes) and 20.57 per cent (2,335 votes) of the ballots cast.

It should be noted that City 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 and *Municipal Act, 2001* defines the eligibility of candidates and prescribes limited instances where individuals are prohibited from running in the next election.

As previously noted, candidates (and applicants for an appointment) are not subject to the City's Vaccination Policy and it is not prescribed in the eligibility requirements for candidates in provincial legislation. In accordance with Motion 59/12, which was approved by City Council on September 8, 2021, the City's Vaccination Policy only applies to Members of Council.

Staff note that neither the *Municipal Act, 2001* nor the MEA provide a specific appointment procedure should City Council choose to fill the vacancy in Ward 4 (Kanata North) by appointment. Generally speaking, an appointment process often includes advertisements, application forms, and interviews of candidates at a separate meeting of a Committee or City 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 City Council procedures leads to the successful appointment of a candidate.

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. As such, City Council does not currently have any legislated obligation to appoint a candidate to fill the Ward 4 (Kanata North) vacancy.

That said, and as noted in the Background section of this report, at the writing of this report there have been approximately 30 appointments in other municipalities in Ontario in 2021.

Should City Council choose to fill the vacancy by approving Option No. 2 to appoint, staff is proposing the appointment process attached as Document 4. This appointment process is similar to appointment processes in other municipalities in Ontario and it has been developed to address the COVID-19 pandemic and the current provincial and OPH guidelines.

The recommended appointment process as outlined in Document 4, will take 28 days to complete and would allow City Council to appoint a new City Councillor on November 10, 2021. In doing so, the residents of Ward 4 (Kanata North) will have a new City Councillor to represent them at Committee and City Council meetings during this fall's heavy legislative agenda. In addition, the new City Councillor would be able to formally participate when City Council considers the 2022 Budget report on December 8, 2021.

Appointment timelines

If City Council chooses to fill the vacancy by appointment, in accordance with the process outlined in Document 4, the following timelines would apply:

- **Monday, October 18, 2021**
 - The City Clerk will provide public notice of the vacancy and advertise City 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 4 (Kanata North) Office and outline the process for filing an application.

- Advertisements would be placed in newspapers for a two-week period (the week before the application period begins, and throughout the application period).
- Information will also be available on the City of Ottawa website and social media accounts during the application period.
- **Monday, October 25, 2021 at 8:30 a.m.**
 - The application period begins.
- **Friday, October 29, 2021 at 4:00 p.m.**
 - The application period closes at 4:00 p.m.
- **Friday, November 5, 2021**
 - The City Clerk will issue a report to City Council that includes a list of certified applicants.
 - The report to City Council will also outline the appointment process to fill the Ward 4 (Kanata North) vacancy, in accordance with Document 4 attached to this report.
- **Wednesday, November 10, 2021**
 - Special City Council meeting to appoint an applicant to fill the Ward 4 (Kanata North) vacancy, which will take place 15 minutes after the end of the regular City Council meeting scheduled on this date.

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 City Council decides to fill the vacancy by approving Option No. 2 to appoint, in accordance with the process outlined in Document 4, a motion would be required to that effect.

FINANCIAL IMPLICATIONS

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

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, 1996 (MEA)* allows the City 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 MEA. On declaring such emergency, Subsection 53(2) of the MEA provides broad authority for the City Clerk to make such arrangements as he considers advisable for the conduct of the election. The City Clerk declared an emergency pursuant to section 53 of the MEA for the Ward 19 by-election on July 19, 2020 which continues to be in place and may be extended by the Clerk for the purposes of a Ward 4 by-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.

COMMENTS BY THE WARD COUNCILLOR(S)

N/A

CONSULTATION

N/A

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.

RISK MANAGEMENT IMPLICATIONS

There are no risk implications associated with this report.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

TERM OF COUNCIL PRIORITIES

There are no impacts related to the Term of Council Priorities.

SUPPORTING DOCUMENTATION

Document 1 - By-law to require a by-election

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

Document 3 - Declaration of Emergency

Document 4 - Appointment Process

Document 5 - Detailed By-election Calendar for a Ward 4 (Kanata North) By-election

Document 6 - Memorandum from the CMOH regarding the use of schools in the 2021 federal election

Document 7 - Vote Counting Procedures

Document 8 - Detailed Budget Table for the Ward 4 (Kanata North) By-election

Document 9 - Additional Information Related to the Ward 4 (Kanata North) By-election

DISPOSITION

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