

**Report to
Rapport au:**

**Council
Conseil**

22 April 2020 / 22 avril 2020

**Submitted on April 17, 2020
Soumis le 17 avril 2020**

**Submitted by
Soumis par:**

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Ward: CUMBERLAND (19)

File Number: ACS2020-OCC-GEN-0019

SUBJECT: Ward 19 (Cumberland) – Vacancy Options

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

REPORT RECOMMENDATION

**That City Council receive the information related to the options for filling the
Ward 19 (Cumberland) vacancy, as outlined in this report.**

RECOMMANDATION DU RAPPORT

**Que le Conseil municipal reçoive l'information concernant les options visant à
pourvoir le siège vacant de conseiller du quartier 19 (Cumberland), comme
présenté dans le présent rapport.**

EXECUTIVE SUMMARY

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

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

Section 263 of the *Municipal Act, 2001* provides Council with two options to fill a vacancy, namely by appointing a new Member or by holding a by-election - "select or elect". There are explicit timelines associated with this first decision. As Council declared the seat vacant at its meeting of March 25, 2020, as required, the statutory deadline in the *Municipal Act, 2001* to either appoint a replacement (meaning that the person is in the seat by the end of the 60 days) or pass a by-law to hold a by-election is Sunday, May 24, 2020.

Given that the vacancy was declared with two years and eight months left in the 2018-2022 Term of Council, the City Clerk was expecting to recommend that Council, at their Wednesday, March 25, 2020 meeting, adopt a by-law to proceed with a by-election to fill the vacancy on the shortest possible timeline permitted under the *Municipal Elections Act, 1996* (the MEA).

However, in the weeks between the creation of the vacancy on Thursday, March 5, 2020 and the Special Council Meeting of Wednesday, March 25, 2020 that declared the vacancy, the environment was materially changed by 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 of the entire population to maintain physical distance from one another and to remain isolated, at home, as much as possible. The declarations of

emergency are still active as of the drafting of this report, and they are expected to be in place for an indeterminate period of time.

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

At the Council meeting on Wednesday, March 25, 2020, the Mayor declared a state of emergency in the City of Ottawa, and staff provided Council with an update on all of its activities related both to the COVID-19 pandemic and flood preparations for the spring freshet. As this pandemic is affecting all of the City's service lines, efforts are focused on the delivery of essential services to the public and supporting Ottawa Public Health and community partners. All non-statutory legislative business has been put on hold, meaning that major public policy initiatives and public consultations have also been put on hold until such time as physical distancing measures are relaxed, and the City is no longer in enhanced emergency operations.

At the media availability on Monday, April 6, 2020, the Mayor and the City of Ottawa's Medical Officer of Health, announced that the City is extending the closure of all City-managed facilities and the suspension of in-person services until Tuesday, June 30, 2020. This decision will be reviewed on a regular basis by the Emergency Operations Control Group, in consultation with Ottawa Public Health officials and the federal and provincial governments.

These measures have a material impact on Council's decisions with respect to how (and when) to fill the Ward 19 (Cumberland) vacancy. Elections are, by their very nature, exercises in direct public engagement. Candidates need to get signatures in order to file a nomination; they go door-to-door to speak to residents and local businesses and agencies, they recruit volunteers for their campaigns, they walk and drive and take transit to get to know the parts of the ward with which they are less familiar. While some of that work can move online, not every voter is "connected" (and moving online would further disadvantage any candidate without personal internet), and there are no places with public wi-fi that are open. Even public libraries and city facilities are closed until Tuesday, June 30, 2020.

From a City operations perspective, running a by-election is a major undertaking that is led by the Office of the City Clerk, but supported by all City departments,

particularly Information Technology Services (ITS), Legal Services, Procurement, and Public Information and Media Relations (PIMR). At this point in time, and for the foreseeable future, the majority of these staff are focused on the COVID-19 emergency and/or working remotely under unusual circumstances due to physical distancing, self-isolation and/or the closure of most daycares and schools. At present, it is unlikely that staff could run a by-election even within the longer of the statutory timeframes. Further, the cost of a by-election is estimated to be approximately \$375,000, and the City Manager and Chief Financial Officer have cautioned Council that the impacts of the COVID-19 emergency on the City's 2020 budget are already significant. At the Council meeting on Wednesday, April 8, 2020, the City forecasted a \$102-million reduction in revenue if the pandemic ends in June 2020, a \$186-million reduction if in September 2020, and a \$273-million reduction if in December 2020. To mitigate the potential shortfall, the City declared emergency leave for part-time and casual staff, and staff will continue to explore additional measures, such as reducing discretionary spending and pausing non-essential hiring for vacant positions and staff will report back to Council on further mitigation strategies as the situation evolves.

With respect to appointing someone to fill the vacancy by Sunday, May 24, 2020, there are minor financial impacts, but there is no guidance in the legislation describing how an appointment process should be conducted, and there is no City of Ottawa precedent that staff could find where a Council chose to fill a vacancy by appointment with more than half of the term remaining. Further, any new Councillor appointed during this time would be unable to do more than connect electronically with new constituents for some time to come. Orientation with City staff and meeting with new colleagues would also be limited. That said, an appointment process can be accomplished in a manner that respects physical distancing guidelines established by Ottawa Public Health.

The COVID-19 pandemic makes Council's decision regarding how and when to fill the Ward 19 (Cumberland) vacancy challenging, however, the provincial mitigation measures, in staff's opinion, provides Council with some relief with respect to the statutory deadline to make a decision on whether to appoint or pass a by-law to run a by-election within 60 days of the vacancy declaration. Specifically, the Provincial Order declaring the state of emergency, issued on Tuesday, March 17, 2020 and retroactive to Monday, March 16, 2020, indicates the suspension of "any limitation period" in any statute, and also the suspension of "any period of time within which a step must be taken in any proceeding" in any statute for the duration of the emergency "subject to the discretion of the decision-maker responsible for the proceeding", which, in this case, would be Council.

Given the wording of the Provincial Orders, staff is of the opinion that Council has the authority to defer the decision with respect to how they will fill the Ward 19 (Cumberland) vacancy for the duration of the state of emergency. Should they choose to appoint, staff is of the opinion that Council could also undertake an appointment process that goes beyond the 60-day requirement in the *Municipal Act, 2001*.

Should Council choose to fill the seat through a by-election, the MEA, while generally prescriptive, does include provisions (specifically Sections 12 and 53) that would allow the City Clerk to amend the statutory timelines in the case of this (or any) emergency.

The decision on how to fill the Council vacancy in Ward 19 (Cumberland) is made by Council, within the statutory framework provided by the *Municipal Act, 2001* and the MEA. The “select or elect” binary choice, as well as the timelines in both Acts, are set out for “business-as-usual” circumstances, and the COVID-19 pandemic and the responses to it are described by most as unprecedented. Given how quickly the environment has been changing, staff are unable to make a recommendation with respect to the options to fill the vacancy. Any assumptions staff make with respect to either an appointment process or a by-election could materially change at any point in time over the course of that process.

In making the decision to “select or elect”, Council will have to balance a number of considerations – allowing candidates enough time and predictability to make their own personal arrangements to allow them to stand (in some cases, official leave, etc.), how to engage the public in a time of physical distancing, the challenges facing an appointed candidate with more than half of the term left versus the length of time Ward 19 (Cumberland) residents will go without a full-time representative on City Council, how long it might take before it is feasible for the City to conduct a by-election, and the cost of a by-election while the City’s financial situation is strained and unpredictable, and has limited resources, among others.

Staff has incorporated the flexibility in statutory timelines in outlining three options for filling the Ward 19 (Cumberland) vacancy: (1) deferring the decision on whether to appoint or elect a Member until such time as more certainty is established with respect to when the state of emergency is likely to wind down and gradually return to regular operations; (2) appointing someone to fill the vacancy by vote at Council; or (3) passing a by-law to conduct a by-election.

Details surrounding these three options, including the projected cost and staff’s “operational readiness” to deliver on any presented option, are provided in the discussion section of this report.

BACKGROUND

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

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

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

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

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

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

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

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

263 (5) *The following rules apply to filling vacancies:*

1. Within 60 days after the day a declaration of vacancy is made with respect to the vacancy under section 262, the municipality shall,

- i. appoint a person to fill the vacancy under subsection (1) or (4), or*
- ii. pass a by-law requiring a by-election be held to fill the vacancy under subsection.*

Put more simply, given that Council declared the seat vacant at its meeting on Wednesday, March 25, 2020, as required, the statutory deadline in the *Municipal Act, 2001* to either appoint a replacement (meaning that the person is in the seat by the end of the 60 days) or pass a by-law to hold a by-election is Sunday, May 24, 2020.

A by-election would be conducted under the requirements of the MEA which has its own statutory timelines. Section 65 of the MEA provides that Nomination Day (the last day to submit or withdraw a nomination) shall be held no earlier than 30 days and no later than 60 days following Council's passing of the by-law for the by-election, and that Voting Day shall be 45 days after Nomination Day (with at least one Advance Vote Day).

In his Friday, February 28, 2020 memorandum to Council entitled "Filling a Council Vacancy (Ward 19 – Cumberland)", attached as Document 1, the City Clerk provided information that a by-election held on the shortest possible calendar permitted under the MEA would see Friday, April 24, 2020 at 2:00 p.m. be Nomination Day, with Monday, June 8, 2020 being Voting Day. Although not stated in the memorandum, the longest possible calendar permitted under the MEA would see Friday, July 17, 2020 at 2:00 p.m. be Nomination Day, with Monday, August 31, 2020 being Voting Day.

Given that the vacancy was declared with two years and eight months left in the 2018-2022 term, staff was expecting to recommend that Council proceed with a by-election to fill the vacancy on the shortest possible timeline.

However, in the weeks between the creation of the vacancy on Thursday, March 5, 2020 and the Special Council Meeting of Wednesday, March 25, 2020 declaring the vacancy, the environment was materially changed by 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 emergencies and the requirements of the entire population to maintain physical distance and remain isolated, at home, as much as possible. The declarations of emergencies are anticipated to be in place for an indeterminate period of time.

It was clear that conducting a by-election as contemplated was not feasible under these circumstances, leading Council, at the Wednesday, March 25, 2020 Special Council meeting, to direct the Office of the City Clerk to report back to Council within the 60-day

statutory timeline with a detailed report on the options to appoint or hold a by-election in Ward 19 (Cumberland), including the projected cost and staff's "operational readiness" to deliver on any presented option.

Environmental Scan: Declarations of Emergency and the Impact of Mitigation Measures related to the COVID-19 Pandemic on Municipal Operations, Conditions for a By-election

When Councillor Blais submitted his resignation on Thursday, March 5, 2020, COVID-19 was only just starting to be seen in Toronto. The City of Ottawa had its first confirmed case of COVID-19 on Wednesday, March 11, 2020. On Thursday, March 12, 2020, the Province of Ontario announced the closure of all publicly funded schools until at least Monday, April 6, 2020. On Friday, March 13, 2020, the City of Ottawa announced the pending closure of recreation centres, cultural facilities, community centres, libraries and prohibited events with more than 250 people, and on Tuesday, March 17, 2020, the Province of Ontario declared a state of emergency and announced the closure of child care facilities, theatres, dine-in restaurants and prohibited events over 50 people, while the City announced further closures to its counter services and restricted access to essential visitors at long-term care centres. On Monday, March 23, 2020, the Premier of Ontario announced the closure of all non-essential services. On Saturday, March 28, 2020, the Province amended its previous Order to prohibit organized gatherings of more than five (5) people, with very few exceptions. On Tuesday, March 31, 2020, the province announced that schools will remain closed to teachers until Friday, May 1, 2020, and to students until Monday, May 4, 2020. As these dates come closer, this decision will be re-evaluated based on advice provided by public health officials. Additionally, on Friday, April 3, 2020, the Ontario government further reduced its list of businesses classified as essential ordering more workplaces to close. Further, on Saturday, April 11, 2020, the Ontario government extended all emergency orders that had been put in place to-date under s.7.0.2 (4) of the *Emergency Management and Civil Protection Act* until April 23, 2020, including the closure of outdoor amenities in parks and recreational areas, non-essential workplaces, public places and bars and restaurants, along with restrictions on social gatherings. And, on Tuesday, April 14, 2020, on the advice of the Chief Medical Officer of Health and with the approval of the Ontario legislature, the Ontario government extended the Declaration of Emergency under the *Emergency Management and Civil Protection Act* for a further 28 days. It is expected that new Orders will be forthcoming as the situation changes over time.

At the Special Council meeting on Wednesday, March 25, 2020, the Mayor declared a state of emergency in the City of Ottawa, and staff provided Council with an update on all of its activities related both to the COVID-19 pandemic and flood preparations for the spring freshet. As this pandemic is affecting all of the City's service lines, efforts are focused on the delivery of essential services to the public and supporting Ottawa Public Health and community partners. All non-statutory legislative business has been put on hold, meaning that major public policy initiatives and public consultations have also been put on hold until such time as physical distancing measures are relaxed, and the City is no longer in enhanced emergency operations.

At the media availability on Monday, April 6, 2020, the Mayor and the City of Ottawa's Medical Officer of Health, announced that the City is extending the closure of all City-managed facilities and the suspension of in-person services until Tuesday, June 30, 2020. This decision will be reviewed on a regular basis by the Emergency Operations Control Group, in consultation with Ottawa Public Health officials and the federal and provincial governments.

This has a material impact on Council's decisions with respect to how (and when) to fill the Ward 19 (Cumberland) vacancy. The 2018-2022 term of Council is scheduled to complete a number of significant master plans, including the Official Plan, the Transportation Master Plan, the Solid Waste Master Plan and the Climate Change Master Plan, as well as undertake a Ward Boundary Review, the results of which are expected to be in effect for the 2022 Municipal Elections. At the time of Councillor Blais' election to the office of Member of Provincial Parliament, with the vacancy occurring with 32 months remaining in the term, the City Clerk was intending to recommend that Council fill the seat through a by-election.

However, elections are, by their very nature, exercises in direct public engagement. Candidates need to get signatures in order to file a nomination; they go door-to-door to speak to residents and local businesses and agencies, they recruit volunteers for their campaigns, they walk and drive and take transit to get to know the parts of the ward with which they are less familiar. While some of that work can move online, not every voter is "connected" (and moving online would further disadvantage any candidate without personal internet), and there are no places with public wi-fi that are open. Even public libraries and city facilities are closed.

From a City operations perspective, running a by-election is a major undertaking that is led by the Office of the City Clerk, but supported by all City departments, particularly ITS, Legal Services, Procurement and PIMR. At this point in time, and for

the foreseeable future, the majority of these staff are presently focused on the COVID-19 emergency and/or working remotely under unusual circumstances due to physical distancing, self-isolation and/or the closure of most daycares and schools. At present, it is unlikely that staff could run a by-election even within the longer of the statutory timeframes presented earlier in this report. Further, the cost of a by-election is estimated to be approximately \$375,000, and the City Manager and Chief Financial Officer have cautioned Council that the impacts of the COVID-19 emergency on the City's 2020 budget are already significant. At the Council meeting on Wednesday, April 8, 2020, the City forecasted a \$102-million reduction in revenue if the pandemic ends in June 2020, a \$186-million reduction if in September 2020, and a \$273-million reduction if in December 2020. To mitigate the potential shortfall, the City declared emergency leave for part-time and casual staff, and staff will continue to explore additional measures, such as reducing discretionary spending and pausing non-essential hiring for vacant positions and staff will report back to Council on further mitigation strategies as the situation evolves.

With respect to appointing someone to fill the vacancy by Sunday, May 24, 2020, there are minor financial impacts, but there is no guidance in the legislation describing how an appointment process should be conducted and there is no City of Ottawa precedent that staff could find where a Council chose to fill a vacancy by appointment with more than half of the term remaining. Further, any new Councillor appointed during this time would be unable to do more than connect electronically with new constituents for some time to come. Orientation with City staff and meeting with new colleagues would also be limited. That said, an appointment process can be accomplished in a manner that respects physical distancing guidelines established by Ottawa Public Health.

The COVID-19 pandemic makes the decision regarding how to fill the Ward 19 (Cumberland) vacancy challenging, but the provincial mitigation measures also, in staff's opinion, provides Council with some relief with respect to the statutory deadline to make a decision on whether to appoint or pass a by-law to run a by-election within 60 days of the vacancy declaration. Specifically, the Provincial Order declaring the state of emergency, issued on Tuesday, March 17, 2020 and retroactive to Monday, March 16, 2020, indicates the suspension of "any limitation period" in any statute, and also the suspension of "any period of time within which a step must be taken in any proceeding" in any statute for the duration of the emergency "subject to the discretion of the decision-maker responsible for the proceeding", which, in this case, would be Council.

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

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

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

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

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

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

Therefore, staff is of the opinion that Council has the authority to defer the decision with respect to how they will fill the Ward 19 (Cumberland) vacancy for the duration of the state of emergency. In the event that Council defers its decision to appoint or elect, the City Clerk would bring back a report to Council for such a decision no later than 30 days after the Provincial emergency declaration Order is lifted.

Should Council choose to appoint, staff is of the opinion that they could undertake an appointment process that goes beyond the 60-day requirement in the *Municipal Act, 2001*, as further described in Document 2.

Should Council choose to fill the seat through a by-election, the MEA, while generally prescriptive, does include provisions that would allow the City Clerk to amend the statutory timelines in the case of this (or any) emergency.

Specifically, the MEA provides that the City Clerk is responsible for the preparation and conduct of municipal elections. This includes preparing for the election and maintaining peace and order in connection with the election, in accordance with Section 11 of the MEA. More specifically, Subsection 11(2) of the MEA provides that the Clerk's responsibility for conducting an election includes the following:

Duties of Clerk

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

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

Powers of Clerk

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

- (a) is not otherwise provided for in an Act or regulation; and*
- (b) in the Clerk's opinion, is necessary or desirable for conducting the election.*

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

Emergency

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

Arrangements

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

Conflict

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

Time

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

No review or setting aside

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

DISCUSSION

The decision on how and when to fill the Council vacancy in Ward 19 (Cumberland) is made by City Council, within the statutory framework provided by the *Municipal Act, 2001* and the MEA. The “select or elect” binary choice, as well as the timelines in both Acts, are set out for “business-as-usual” circumstances. However, the COVID-19 pandemic and response are described by most as unprecedented. As noted in the previous section, the period of time between the creation of the vacancy, the declaration of the vacancy and the drafting of this report saw rapidly-changing circumstances and nearly daily developments with respect to public guidelines as governments and public health officials respond to the evolving requirements of this emergency.

At the time of this writing, there is still no common understanding of how long this state of emergency will last. Given how quickly the environment has been changing, staff are unable to make a recommendation with respect to the options to fill the vacancy. Any assumptions staff make with respect to either an appointment process or a by-election could materially change at any point in time over the course of that process.

Council has ensured that Ward 19 (Cumberland) residents and businesses will continue to be served by the Ward 19 (Cumberland) office staff, and by neighbouring Councillors Luloff, Dudas and Darouze. As only statutory and time-sensitive matters are being brought to City Council, and the majority of routine City business is being slowed down or suspended as City staff time and resources are directed to the COVID-19

emergency, the demands on Members' time for policy work and public consultations related to the City's legislative agenda will be reduced until such time as there is a return to normal business.

In making the decision to "select or elect", Council will have to balance a number of considerations – allowing candidates enough time and predictability to make their own personal arrangements to allow them to stand (in some cases, official leave, etc.), how to engage the public in a time of physical distancing and limited resources, the challenges facing an appointed candidate with more than half of the term left versus the length of time Ward 19 (Cumberland) residents will go without a full-time representative on City Council, how long it might take before it is feasible for the City to conduct a by-election, the cost of a by-election while the City's financial situation is strained and unpredictable, among others.

As noted, the Provincial Order with respect to the state of emergency and the City Clerk's powers under the MEA do provide Council with some flexibility with respect to statutory timelines. As such, staff has incorporated the flexibility in statutory timelines in outlining three options for filling the Ward 19 (Cumberland) vacancy: (1) deferring the decision on whether to appoint or elect a Member until such time as more certainty is established with respect to when the state of emergency is likely to wind down and gradually return to regular operations; (2) appointing someone to fill the vacancy by vote at Council; or (3) passing a by-law to conduct a by-election.

Option No. 1: Defer the decision until there is more information about when the state of emergency will end

While there is an understandable desire to provide certainty to residents, businesses and potential candidates with respect to how and when the vacancy for the Ward 19 (Cumberland) Council seat will be filled, that is not possible at the time of the writing of this report. The nature of the response to the pandemic is changing quickly, and there is no clear path forward, likely for some weeks and perhaps months to come. At some point, it is reasonable to assume that the federal, provincial and municipal Medical Officers of Health will announce a path forward and a plan to begin relaxing current restrictions. That path is likely to occur incrementally over a period of time. How long that will take is uncertain. How long the return to normalcy will take is uncertain, but will likely depend on the availability of an effective vaccine.

Council may wish to defer consideration of how to fill the Ward 19 (Cumberland) seat until such time as public health officials have determined a path back to the gradual reinstatement of operations. That would allow Council to give potential candidates and

residents reasonably certain timelines and opportunities for engagement. A draft motion for such a deferral could be prepared, such that this report would be brought back by the City Clerk to Council for such a decision no later than 30 days after the Provincial emergency declaration Order is lifted.

While the decision on how and when to fill the vacancy is made by Council, Dr. Brent Moloughney, Associate Medical Officer of Health has advised the City Clerk that the deferral of the decision would be the preferable option, stating that “we are in unprecedented territory with the pandemic and it is extremely difficult to predict when we will be returning to a semblance of normality.”

Option No. 2: Appointment to Fill the Ward 19 (Cumberland) Vacancy

If Council were to choose the appointment option, Subsection 263(5) of the *Municipal Act, 2001* provides that Council shall fill the vacancy by appointing a person who has consented to accept the appointment within 60 days of declaring the Office vacant. As the Ward 19 (Cumberland) office was declared vacant at the Council meeting of Wednesday, March 25, 2020, the last possible day for an appointment by Council would, in non-emergency circumstances, be Sunday, May 24, 2020, pursuant to the *Municipal Act, 2001*. However, as stated earlier, staff is of the opinion that these timelines are flexible during the period of the COVID-19 emergency.

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.

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

In general, in Ontario, the appointment process has been used where a vacancy has occurred during the final months of a term of Council, and an appointment is required. In accordance with Subsection 263(5)3 of the *Municipal Act, 2001*, Council is only

permitted to leave the seat open if the vacancy occurs within 90 days of a regular municipal election. Neither the *Municipal Act, 2001* nor the MEA provide a specific appointment procedure should Council choose to fill the vacancy by appointment. That said, there have been Council appointments in the pre-amalgamation municipalities in the past, as well as in other municipalities in Ontario, and they all follow the same general process, which is understandable, given the 60-day timeline to complete.

Generally speaking, an appointment process often includes advertisements, application forms, interviews of candidates at a separate meeting of a Committee or Council, where candidates have five minutes to make a presentation and Members can ask questions, and a voting process for Members in accordance with their Council procedures. These processes do have some variations on a theme. For instance, in 1997, Regional Council struck a Nominating Committee to address a vacancy in Ward R3, which then made a recommendation to Council, rather than hearing from candidates at Council. That process also saw the Committee hearing from candidates for five minutes each and then Members of the Committee nominated from those candidates. Of note is the fact that Nominating Committee nominated three of the 13 candidates after all 13 had spoken, and selected one for recommendation following two ballots. When considering the Nominating Committee report, the same three individuals were nominated by various Regional Councillors, with Regional Council ultimately selecting a different candidate to be the ward councillor than the candidate recommended by the Nominating Committee.

Most recently, the City of Toronto undertook an appointment process in the spring of 2018, following the resignation of the Ward 33 Councillor. Council declared the seat vacant at its meeting of April 24-27, 2018, and completed the process at a Special Meeting of Council on Tuesday, May 22, 2018, one day ahead of the regularly scheduled meeting, to appoint a candidate to fill the vacancy. There were 18 candidates that received five minutes each to speak to Council. After 4 hours and 24 minutes, the appointment was made after 3 rounds of voting based on the City of Toronto's balloting procedures, which were as follows:

If the candidate who receives the greatest number of votes cast receives the votes of more than one-half of the number of the Members of Council present and voting, the City Clerk will declare the candidate to be appointed. If the nominee with the most votes does not receive the votes of a majority of the members present, Council will conduct another round of voting. The next ballot will exclude the nominees with the fewest votes and any nominee with no votes. Balloting will continue in this way until the candidate receiving the most votes also receives the majority of votes. If

only two nominees remain and the votes for the two remaining nominees are tied, the City Clerk will select the appointee by the following method:

- The names of each of the two remaining nominees will be placed on two sheets of paper of equal size, folded in half and placed in a box; and
- The City Clerk will draw the name of one nominee from the box, and declare that nominee to be the appointee.

The entire appointment process in Toronto was completed within a month.

Given that the major advantage, in staff's opinion, of using an appointment process at this point in the term is to ensure that Ward 19 (Cumberland) residents do not have to wait a long time until they have direct representation around the Council table, staff are proposing a similar approach to that of Toronto. However, the proposed appointment process, attached as Document 2, has been developed to address the current COVID-19 emergency and the current Provincial Emergency Orders and OPH guidelines.

Should Council choose to proceed with an appointment, staff will require approximately one month to prepare for and administer the appointment process virtually. This period will allow staff to set up the required technology and services required to support the virtual application process. For example, as the Elections Office is currently closed to the public, staff will need to set up a phone queue to answer candidate questions remotely. Staff will be required to prepare electronic application forms, advertisements and an information webpage on ottawa.ca, while ensuring these items are bilingual and accessible.

Although this virtual appointment process aligns with the current Provincial Emergency Orders and OPH guidelines, this will be the first time staff undertake such a process. The Elections Office will need to rely to a great degree on internal partners, including ITS, PIMR and translation services, who at this time are heavily involved in supporting the City's response to COVID-19.

If Council fills the vacancy by appointment, the following timelines would apply:

- **Tuesday, May 18, 2020**
 - The City Clerk will provide public notice of the vacancy and advertise Council's intention to appoint a person to fill the vacancy.

- The notice will invite interested and qualified individuals to seek appointment for the Ward 19 (Cumberland) Office and outline the process for filing an application.
 - Advertisements would be placed in daily newspapers for a two-week period (the week before and after the application period begins).
 - Information will also be available on the City of Ottawa website and social media accounts during the application period.
- **Monday, May 25, 2020 at 8:30 a.m.**
 - The application period begins.
 - **Friday, May 29, 2020 at 4:00 p.m.**
 - The application period closes at 4:00 p.m.
 - **Friday, June 5, 2020**
 - The City Clerk will issue a report to Council that includes a list of certified applicants.
 - The report to Council will also outline the appointment process to fill the Ward 19 (Cumberland) vacancy, in accordance with Document 2 attached to this report.
 - **Friday, June 12, 2020**
 - Special Council meeting to appoint an applicant to fill the Ward 19 (Cumberland) vacancy.

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

If Council decides to fill the vacancy by appointment, in accordance with the process outlined in Document 2, a motion would be required to that effect. It should be noted that Council cannot appoint someone on the condition that they not run in the next election. This has been a question in the past and 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.

The City Clerk notes that, should Council choose to fill the vacancy by appointment, the new Member would have a number of challenges getting to know their residents and

community priorities while the Province's emergency order regarding gatherings of five (5) persons or less and the OPH recommendation of physical distancing are in effect. While the proposed appointment process is a more timely and cost effective option than a by-election, staff again notes that Council's legislative agenda has practically been put on hold until such a time as the City can anticipate returning to normal operations, which may mitigate the immediate urgency in having a Member appointed on or before the above-noted timelines.

As stated earlier, staff is of the opinion that these timelines are flexible during the period of the COVID-19 emergency, and this allows the Clerk to address the logistical challenges associated with the appointment process during the COVID-19 emergency. Staff are of the opinion that the proposed virtual process is required to adhere to the Provincial Emergency Orders and OPH guidelines and meet the above-mentioned timelines. It is important to note that an electronic application process (without in-person, post, or fax submissions being utilized) creates a barrier for potential candidates that do not have access to a computer and/or internet. At this time, community public spaces that offer access to a computer and internet services are closed. In the 2018 Election, 29 of the 199 campaigns, about 15%, requested "post" as their preferred method of contact.

Option No. 3: Schedule a By-election to Fill the Ward 19 (Cumberland) Vacancy in the Fall, subject to change based on the state of emergency

Subsection 263(5) of the *Municipal Act, 2001* provides that, within 60 days of Council declaring an Office to be vacant, Council shall pass a by-law requiring a by-election to be held to fill that vacancy. As is the case with a regular municipal election, the City Clerk is responsible for the preparation and conduct of a by-election and has a duty to adhere to provisions of the MEA and administer the by-election in a manner consistent with the principles of the statute as determined by the courts. These principles include, but are not limited to: the secrecy and confidentiality of the voting process; to be accessible to all voters; to be undertaken in a fair and non-biased fashion; as well as maintaining integrity of the process throughout the by-election.

Under Section 65 of the MEA, if Council determines that a by-election is to be held, the City Clerk is responsible for setting the date of Nomination Day, which cannot be less than 30 days and no more than 60 days after the passing of the by-law requiring the by-election. Thereafter, Voting Day is 45 days after Nomination Day and is, therefore, dependent on the date the City Clerk establishes for Nomination Day. Subsection 65(3)

also mandates that “by-elections shall be conducted as far as possible in the same way as regular elections.”

Should Council choose to fill the vacancy through a by-election, it is required to pass a by-law requiring a by-election to be held to fill the vacancy, in accordance with the MEA. Pursuant to provisions of the *Municipal Act, 2001*, the last possible day for Council to pass the required by-law, in the normal course of business, would be Sunday, May 24, 2020.

As noted in his Friday, February 28, 2020 memorandum to Council entitled “Filling a Council Vacancy (Ward 19 – Cumberland)”, attached as Document 1, the City Clerk provided information that a by-election held on the shortest possible calendar permitted under the MEA would see Friday, April 24, 2020 at 2:00 p.m. be Nomination Day, with Monday, June 8, 2020 being Voting Day. Although not stated in the memorandum, the longest possible calendar permitted under the MEA would see Friday, July 17, 2020 at 2:00 p.m. be Nomination Day, with Monday, August 31, 2020 being Voting Day.

However, the specific public-facing and internal requirements of the federal, provincial and municipal declarations of emergency mean that, in the City Clerk’s view, it is not feasible to conduct a by-election while the COVID-19 pandemic emergency is still active.

Again, as stated earlier, staff is of the opinion that these timelines are flexible during the period of the COVID-19 emergency, if the City Clerk uses his powers under Sections 12 and 53 of the MEA.

The 2018-2022 Term of Council Strategic Plan has established an aggressive legislative agenda, including the completion of a number of significant master plans, including the Official Plan, the Transportation Master Plan, the Solid Waste Master Plan and the Climate Change Master Plan, as well as undertake a Ward Boundary Review, the results of which are expected to be in effect for the 2022 municipal election. At the time of Councillor Blais’ election to the office of Member of Provincial Parliament, with the vacancy occurring with 32 months remaining in the term, the City Clerk was intending to recommend that Council fill the seat through a by-election. While a by-election would be more expensive and take longer to complete than appointing a new Councillor to fill the vacancy, it would provide residents with an opportunity to have direct input into selecting the person who will serve as their elected representative for more than half of the 2018-2022 Term of Council.

From a City operations perspective, running a by-election is major undertaking that is led by the Office of the City Clerk, but supported by all City departments, particularly ITS, Legal Services, Procurement, PIMR. At this point in time, and for the foreseeable future, the majority of these staff are presently focused on the COVID-19 emergency response and/or working remotely under unusual circumstances due to physical distancing, self-isolation and/or the closure of most daycares and schools. It is unlikely that staff could run a by-election even within the longer of the statutory timeframes. Further, the cost of a by-election is estimated to be \$375,000, and the City Manager and Chief Financial Officer have cautioned Council that the impacts of the COVID-19 emergency on the City's 2020 budget are already significant. At the Council meeting on Wednesday, April 8, 2020, the City forecasted a \$102-million reduction in revenue if the pandemic ends in June 2020, a \$186-million reduction if in September 2020, and a \$273-million reduction if in December 2020. To mitigate the potential shortfall, the City declared emergency leave for part-time and casual staff, and staff will continue to explore additional measures, such as reducing discretionary spending and pausing non-essential hiring for vacant positions and staff will report back to Council on further mitigation strategies as the situation evolves.

Elections are, by their very nature, exercises in direct public engagement. Candidates need to get signatures in order to file a nomination; they go door-to-door to speak to residents and local businesses and agencies, they recruit volunteers for their campaigns, they walk and drive and take transit to get to know the parts of the ward with which they are less familiar and they solicit financial contributions from residents in support of their campaign. While some of that work can move online, not every voter is "connected" (and moving online would further disadvantage any candidate without personal internet), and there are no places with public wi-fi that are open. Public libraries, schools and city facilities are closed.

Some specific examples of why the City Clerk believes a by-election during the COVID-19 emergency is not feasible include:

- To become a candidate for Council, the MEA includes the requirement to complete an Endorsement of Nomination (Form 2) which includes 25 signatures from eligible electors endorsing the nomination. Practically speaking, this would be challenging in a period of physical distancing.
- The Province has banned gatherings of more than five (5) people. Elections worker recruitment and traditional classroom training cannot take place while OPH recommends physical distancing and while the provincial ban on gatherings

over five (5) people is in place.

- Schools, recreation centres, retirement homes and long-term care facilities, which are often used as voting places, are closed in accordance with the Provincial declaration of emergency.
- Site visits, which ensure the accessibility of the voting place, cannot take place while voting places are closed, and while OPH recommends physical distancing in order to decrease transmission of COVID-19 in Ottawa.
- The physical layout of a voting place is a matter of concern – voting places are typically small locations where line-ups form.
- The traditional act of voting requires several human-to-human interactions in close proximity (passing forms, identification and ballots back and forth between poll workers and voters, etc.).
- Voter turnout could be low due to physical distancing, self-isolation practices and community preoccupation with the COVID-19 pandemic issues over municipal issues.
- Key internal departments that support the by-election projects are currently supporting the City's response efforts relating to COVID-19.

The City of Ottawa is not the only jurisdiction dealing with the issue of a by-election/election in the midst of COVID-19. On Tuesday, March 17, 2020, the City Clerk for the City of Cambridge, Ontario announced the postponement of the by-election taking place in Ward 7 to a future date to be set by Council. The decision to postpone the by-election was made in accordance with the Clerk's power to declare an emergency pursuant to Section 53 of the MEA, and in consideration of the Province's declaration of emergency. As Advance Vote Day had already taken place on Saturday, March 7, 2020, the Clerk's Office advised that they will implement arrangements that seek to maintain the integrity of the election process and, as soon as practicable following the end of precautionary measures, report back to Council and seek instructions as to a new Voting Day for the by-election. All ballots cast on Saturday, March 7, 2020 at the advance poll will count towards the final ballot count. Cambridge City Council declared the Ward 7 Office vacant on Tuesday, November 5, 2019.

Also on March 17, 2020, the City Clerk in Windsor, Ontario confirmed that the Ward 7 by-election set to take place on Monday, April 27, 2020 is being postponed due to circumstances caused by COVID-19, using the Clerk's authority under Section 53 of the MEA to declare an emergency. The City Clerk has advised that new dates for voting events are yet to be determined. The uncertain availability of polling locations (e.g. community centres, churches, long-term care homes), election supplies, other resources, and the overall movement towards physical distancing all contributed to the decision to postpone the by-election. The City Clerk announced that campaign period will remain open during the emergency period and additional campaign time will be allotted once the emergency is over. As the nomination period ended on Friday, March 13, 2020, the City Clerk also said there will be no consideration for new candidates. Windsor City Council declared the Ward 7 Office vacant on Monday, November 18, 2019.

On Tuesday, March 17, 2020, New Brunswick passed legislation that indefinitely postponed the province-wide municipal elections that were scheduled to occur on May 11, 2020. In direct response to the current pandemic, the provincial legislation carried in a single day the First, Second and Third Readings as well as the Royal Assent of Bill 38, being an *Act Respecting Elections* in 2020, after receiving cross-party support. In the media release concerning the passage of Bill 38, New Brunswick's Chief Electoral Officer, Kim Poffenroth, stated that with "the large numbers of electors, polling stations and poll workers, there was no safe way to undertake the municipal election at this time. Elections are contact-heavy events and with the guidance of the Office of the Chief Medical Officer of Health's directive on public gatherings and physical distancing, it was felt to be the only option at this time." The announcement went on to note that municipal "elections are expected to be held in May 2021, or sooner depending upon how quickly the outbreak subsides." Further, Bill 38 postponed two provincial by-elections previously scheduled to occur on June 15, 2020. Those two by-elections are now expected to take place "no later than 30 days prior to the day that the legislature begins a new session in the fall [of 2020] as long as it is safe to do so."

Staff conducted a preliminary review of the potential to implement an internet-based by-election and there are a number of reasons that moving to internet voting for the Ward 19 (Cumberland) by-election is not feasible, especially during the COVID-19 emergency.

Firstly, as noted earlier, Subsection 65(3) of the MEA mandates that a by-election "shall be conducted as far as possible in the same way as regular elections." As the City of

Ottawa has never used internet voting, such an approach now for a by-election in Ward 19 would be contrary to this statutory requirement.

Given the requirements of physical distancing, internet voting during the emergency automatically disenfranchises any elector without home internet. There are 33,518 eligible electors in Cumberland Ward. If the City were to move to an internet only vote while all public internet sites were closed, those electors without internet at home could be effectively disenfranchised. While it's difficult to say with certainty how many voters might be affected, a 2018 Statistics Canada study indicated that 96.5% of Ottawa-Gatineau census metropolitan area (CMA) residents had internet at home. If those numbers are reflective of Cumberland voters, that would mean that nearly 1200 voters in Cumberland might not be able to vote if an internet-only by-election were held during the emergency. It's important to note that the study indicates that, among households that earn less than \$40,000 a year, only 86.3% of Ottawa-Gatineau CMA households have internet at home, as opposed to 100% of those who earn over \$125,000. As well, that same study indicates that just under 80% of Ottawa-Gatineau CMA residents over the age of 65 have home internet. This means that the potential 1200 affected individuals could be weighted more towards low-income and/or seniors.

In order to conduct an internet-based by-election that is fair and accessible, internet voting is typically complemented by an in-person voting option, a voting by telephone option, or by a vote-by-mail ballot option. Municipalities that currently use the internet voting method almost all offer opportunities for electors to vote at Voter Assistance Centres. Voter Assistance Centres allow individuals without internet access and/or a computer device to vote and obtain assistance from a trained Election Official.

Election workers in these municipalities have used touch screen tablets with internet access into retirement residences, long-term care facilities, and hospitals, thereby accommodating electors residing at those locations to cast their ballot from their room/bed. Current Provincial Emergency Orders and OPH guidelines would prevent the City Clerk from offering such services and other in person voting alternatives, creating barriers that affect electors with disabilities and those residing in institutions ability to participate in the election process.

According to recent research about online voting in Ontario¹, there were 177 municipalities in Ontario that offered an online voting option that included internet and

¹ Cardillo, A, Akinyokun, N, and Essex, A. (2019) Online Voting in Ontario Municipal Elections: A Conflict of Legal Principles and Technology? Retrieved from <https://whisperlab.org/ontario-online-E-Vote-ID.pdf>

telephone voting in 2018. 131 of those municipalities did not provide a “traditional” paper ballot voting option, but rather offered internet or phone voting instead. However, most of the municipalities that offered online voting only had less than 30,000 eligible electors in 2018. The number of eligible electors in Ward 19 (Cumberland) is 33,518.

The five largest municipalities to use internet voting during the 2018 Municipal Elections were:

1. The City of Markham (196,689 eligible electors);
2. The City of Burlington (128,238 eligible electors);
3. The City of Greater Sudbury (115,784 eligible electors);
4. The City of Cambridge (87,750 eligible electors); and
5. The City of Kingston (83,608 eligible electors).

Of these municipalities, the City of Greater Sudbury was the only one that implemented an internet voting system in 2018 without offering an opportunity for electors to vote using traditional paper ballots in polling stations. The City of Greater Sudbury was also one of the many municipalities affected by the technical glitches that occurred on Voting Day in 2018 and had to extend their voting hours by a full day.

In April 2019, City Council determined it would be returning to a hybrid voting system in 2022, where electors will be able to vote online throughout the entire voting period combined with the option to cast a paper ballot on Voting Day. The Mayor of Sudbury stated that “there were some complaints about the cost of a mixed paper and electronic option – but in my opinion there is no way we can afford to have another election system that's not trusted, reliable or beyond failure. We cannot and will not allow what happened last October to happen again”.

In February 2014, Toronto’s City Council authorized the use of internet and telephone voting as alternative voting methods for persons with disabilities during the advance vote period in the 2014 Municipal Election. City Council authorized the City Clerk to negotiate and execute an agreement with the recommended proponent, Scytl Canada Inc. (Scytl). On Monday, March 31, 2014 the City Clerk and Scytl entered into an agreement for the provision of an accessible and secure internet and telephone voting service for persons with disabilities. The agreement stated that Scytl was to provide an internet and telephone voting service that was fully tested, secure and accessible for the start of internet and telephone voting registration on Monday, September 8, 2014. In July 2014, the City Clerk advised Toronto City Council that this system could not be implemented in time for the 2014 Municipal Election. In summary, the City Clerk noted

that there was insufficient time to build all of the internet and telephone voting service components to the necessary accessibility and security standards, nor was there enough time to complete a full assessment of the system before the start of internet and telephone voting registration on September 8, 2014. In 2016, Toronto City Council received a report on changes to the MEA resulting from Bill 181, *Municipal Elections Modernization Act, 2016* and Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2016*. In it, the City Clerk writes:

“This report also advises that there have been insufficient advances in Internet security to accept the risks of implementing Internet voting for the 2018 general election. The challenges identified both by City staff and security experts in 2015 remain unresolved. Internet voting continues to be vulnerable to security threats and attacks while raising concerns about secrecy of the vote, verifiability and overall election integrity.”

At the federal level, Nicole Goodman, Director of the Centre for e-democracy, prepared a report on internet voting for the Privy Council Office in January 2017². The report combines the latest research on internet voting, interviews with Canadian and international experts and a number of case studies, including the US. The report is written to establish the feasibility of internet voting in Canadian federal elections.

The report makes 11 short-term and four (4) longer-term recommendations (the short-term is defined as “1 to 2 elections in the next 5 to 10 years” and long-term is defined as 50 years).

Short term recommendations are:

1. Define the objectives of introducing online voting and the goals of a pilot or trial.
2. Based upon a review of the findings in 1 above, have Elections Canada proceed with a binding trial of remote online voting.
3. Seek parliamentary approval to proceed with trials.
4. Elections Canada should consider the establishment of an expert advisory group to ensure that the necessary technical, legal and policy expertise is on hand to support online voting efforts.
5. Work with a technology vendor for initial pilots.
6. Increase the technical knowledge of Elections Canada by engaging with experts and developing an in-house technical unit.

² Online Voting: A Path Forward for Federal Elections, January 2017 <https://www.canada.ca/en/democratic-institutions/services/reports/online-voting-path-forward-federal-elections.html#toc0>

7. Engage stakeholders as part of the adoption process.
8. Education of electors and candidates.
9. Establish a security framework that includes end-to-end verifiability, regular security audits carried out by independent experts, and appropriate authentication measures.
10. Develop an evaluation framework for online voting prior to a trial.
11. Consider other changes to improve voter access and convenience.

The long-term recommendations are:

1. In consultation with experts, develop a national framework for online voting which include standards that could be voluntarily followed by lower levels of government.
2. Continuous technical updating is necessary.
3. Foster a security-conscious culture.
4. Develop a legislative framework for federal elections.

The report concludes that “many agree that the process needed to explore or pursue such policy change is an iterative one – a slow process based on a test-and-learn culture. This type of approach would allow authorities to make adjustments and determine whether online voting works in Canada, and if so, what policy design and approach is the best fit for federal elections. Since the Privy Council has made their report public, Elections Canada has had one general election and seven by-elections that had no internet voting pilot projects. Additionally, the Privy Council made no mentions of online voting in its 2017, 2018 and 2019 editions of the *Annual report to the Prime Minister on the public service of Canada*. At the time of the writing of this report, Elections Canada has no planned pilot project for internet voting.

Lastly and as referenced earlier, 51 Ontario municipalities that offered internet voting as an option in October 2018 were affected by a “system load issue” where the provider Dominion Voting Systems (Dominion) subsequently stated that a Toronto internet service provider had stalled online voting traffic. This caused many cities and towns to extend their voting periods later into the evening and even into the next day.

While the City’s external election software provider, Dominion is prepared to provide an internet voting solution in Ottawa, there are multiple factors that must be considered:

1. Internet voting has never been used or tested in Ottawa, and the City’s current technology infrastructure is not set-up to support online voting implementation. Additional costs would be required to upgrade the City’s infrastructure.

2. At this time, Dominion only offers hosting as a service, meaning they would not use the City's servers for their internet voting solution. Should Council direct the City Clerk to conduct a by-election, it is imperative that the City remain in custody of all the data related to internet voting, as the City Clerk must maintain the integrity of the election. The City Clerk will not be able to guarantee the security and privacy of the data hosted on external servers. As such, a new election system would need to be developed with Dominion that meets the City's requirements. This would likely require significant IT resources that are currently deployed to support the COVID-19 pandemic.
3. The City's ITS are fully engaged in supporting the requirements of the COVID-19 emergency and the City Clerk cannot run a by-election (whether by traditional voting method, or by internet voting) without their support. Implementing this new voting system would require significant time and resources. In comparison the most recent upgrade (required due to the required lifecycle of technology infrastructure and the migration from Windows 7 to Windows 10 operating systems) to the City's current system took over a year to develop, operationalize, test and audit.
4. Following the 2018 municipal elections, Dominion moved to upgrade their telephone voting component. As such, the telephone voting component is not currently available. However, Dominion indicates that a vote-by-mail option is available as a complement to their internet voting system. It is important to note that a vote-by-mail is an alternative voting method in and of itself, for which procedures and forms would need to be developed. The City should expect additional costs for postage. Vote-counting procedures would be a challenge to develop when considering the need for physical distancing and the provincial orders limiting gatherings to five (5) people. Additionally, processes would need to ensure the health and safety of staff handling the ballots. More importantly, however, it would be similarly challenging to accommodate the presence of candidates and/or scrutineers during the counting of votes as outlined in Subsection 47(1) of the MEA where the City Clerk, the deputy returning officer and any other official appointed for the voting place, the candidate or a scrutineer appointed by the candidate can be present when the votes are being counted.
5. Introducing an alternative voting method such as internet and vote-by-mail would also be a change for electors and a public education campaign would be

required. While it is possible for such information to be prepared and presented to electors during the COVID-19 emergency, this education process would mean extra additional costs and would require additional resources at a time when the PIMR staff is currently focused on the City's COVID-19 response.

6. The City's current Voting Tabulation System is audited by an external auditor during each election and by-election to ensure the accuracy and validity of the election process and the election results. Should Council direct the City Clerk to proceed with an internet voting solution, an audit of the new system would be required. The City Clerk would also need to conduct a Privacy Impact Assessment on the internet voting solution to ensure that private information/ data is protected. Similarly, the City Clerk would need to conduct an Accessibility Review to ensure that the online voting tool is compliant with the World Web Consortium Web Content Accessibility Guidelines 2.0 (WCAG) standard as mandated by the *Accessibility for Ontarians with Disabilities Act, 2005*. These three undertakings require time even when in a "normal" state: time that a by-election can not currently afford.
7. The quality of the Voters' List has to be high in order to run a high-quality internet voting system. Accuracy of the Voters' List may become a barrier to some, as electors are mailed Voter Notification Letter with their Personal Identification Numbers (PIN). Out-dated, incorrect and/or missing data on the Voters' List could lead to the Voter Notification Letters not being delivered, delivered with errors or even delivered to the wrong address. The latter could lead to fraud. The Municipal Property Assessment Corporation (MPAC) is an independent, not-for-profit corporation that is statutorily mandated by the Province to produce the City's Voters' List. Despite some modest improvements such as the introduction of MPAC's voter lookup tool (voterlookup.ca), there have been problems with the list every election. For example, in 2018, 79,879 local changes were made to the list after it was made official by the City Clerk. Promised fixes have not yet materialized and staff do not anticipate a change in the quality of the Voters' List in time for this potential by-election.
8. Further, the City's Election Management System (EMS), which houses the City's Voters' List during the election period, needs to be programmed to be loaded into Dominion software. Dominion currently recommends the use of DataFix's VoterView software (Voters' List Management software) for the Voter's list. The City has never used VoterView and uses a thoroughly developed in-house

database solution instead. This would require the procurement of VoterView, establishing a new vendor relationship with DataFix and new IT programming, all with additional costs as the City's Procurement staff is currently focused on the City's COVID-19 response.

9. Internet voting systems often rely on a one-step verification process, using a PIN, or two-step verification process for electors to register for online voting. To ensure each vote is secure, a two-step verification process requires eligible electors to use their PIN and another unique identifier, such as their date of birth to access their ballot. Inaccuracies in the Voters' List, such as a date of birth, can mean electors are denied access to their ballot. It should also be noted that, in municipalities that currently use an internet voting solution, electors that do not receive or lose their Voter Notification often have to visit a location in-person, such City Hall or a Municipal Service Centre, with a piece of permitted ID to confirm their registration status. As City facilities are closed, staff would have to investigate other ways of providing PINs to electors that do not receive or lose their letters during this emergency. Furthermore, date of birth is not a secure method to validate someone's identity as someone's date of birth is often commonly available on social media such as Facebook.
10. 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 order to apply to this potential by-election, the by-law must be passed more than 60 days before Voting Day. Staff would need to establish procedures and forms for the use of this alternative voting method and provide a copy of the procedures and forms to each candidate when they file their nomination papers. Developing such procedures and forms is time consuming and would be dependent on the online voting system being properly tested by ITS and audited by an external auditor, to ensure the security and integrity of the voting system.
11. The Elections Office, in collaboration with the Chief Information Security and Digital Risk Officer, would need to ensure a security audit is carried out by independent experts once the system was developed and implemented. This would be in line with the recommendations approach to internet voting by Elections Canada and the City of Toronto.

12. Given that internet voting would constitute a significant change in voting practices in the City of Ottawa, Council may wish to consider a public consultation on any proposed changes to the voting system. Once again, this consultation would likely have to occur at a time when the various COVID-19 restrictions are still in place. It is worth noting that the City Clerk has confidence in the current paper ballot and optical scanning tabulators used since 1997 with no controversial elections or court-ordered recounts.

In summary, based on the above-noted information and factoring the lessons learned in other municipalities, staff has determined that implementing an internet voting solution for this potential Ward 19 (Cumberland) by-election during a regular (not in a pandemic) state would require time to negotiate new contracts for the new voting methods with the costs associated, upgrade the City's current IT infrastructure which will incur additional costs, develop a public education campaign and develop procedures to support the new voting method. Developing and implementing appropriate testing and auditing to be conducted by an external auditor to ensure the security and integrity of the voting system would also be needed. As such, if Council chooses to fill the Ward 19 (Cumberland) vacancy by by-election, the City Clerk recommends that it be conducted in the traditional manner that has been verified and tested and on which the estimated costs are reflected in this report of \$375,000.

Council has several options with respect to the timing of a by-election to fill the vacancy for Ward 19 (Cumberland) if it uses the provisions of the Provincial Order and if the City Clerk uses his emergency powers under Sections 12 and 53 of the MEA.

Specifically, Council could adopt a by-law at its Wednesday, April 22, 2020 meeting and the City Clerk would use Sections 12 and 53 of the MEA to provide a timeline for a by-election that would not start until the end of July, and provide for a Voting Day in October, on the understanding that the dates and approach could change should emergency measures and physical distancing requirements remain in place through the summer. A draft by-law is attached as Document 3.

If Council chose this approach, the City Clerk would immediately declare an "emergency" under Section 53 of the MEA. Following the emergency declaration, the City Clerk will exercise Subsection 53(2) and Section 12 of the MEA, which respectively require and empower the City Clerk to, "make such arrangements as he or she considers advisable for the conduct of the election" and "provide for any matter or procedure that, in the City Clerk's opinion, is necessary or desirable for conducting the

election." In doing so, the City Clerk will postpone the Nomination and Registration period until Thursday, July 23, 2020, and establish a new schedule for the by-election based on the following milestones:

- **Wednesday, April 22, 2020:**
 - Council passes a by-law requiring a by-election.
 - The City Clerk will declare an emergency pursuant to Section 53 of the MEA in response to the COVID-19 pandemic.
 - Under Subsection 53(2) and Section 12 of the MEA, the City Clerk will postpone the start of the Nomination and Registration Period from Wednesday, April 22, 2020 until Thursday, July 23, 2020.

- **Thursday, July 23, 2020**
 - Nomination and Registration Period Begins.

- **Friday, August 21, 2020 at 2:00 p.m.**
 - Nomination Day (last day to submit or withdraw a nomination).

- **Friday, September 25, 2020**
 - Advance Vote Day.

- **Friday, October 2, 2020 at 4:30 p.m.**
 - Last day to submit a Notice of Registration as a Third Party Advertiser.

- **Monday, October 5, 2020**
 - Voting Day.

- **Tuesday, October 6, 2020**
 - Declaration of Results and Declaration of Office.

Dr. Brent Moloughney, City of Ottawa's Associate Medical Officer of Health has advised the City Clerk that "due to the extent of uncertainty, one option, at least from my perspective, would be to tentatively schedule this, but with the provision that further deferral may be required if the current restrictions will need to be extended and/or re-implemented later this year. Prior to a 'drop dead' decision date to proceed, we could provide public health guidance on the planned timetable based on more up-to-date information." Due to the extent of uncertainty surrounding the COVID-19 emergency, the City Clerk and the City of Ottawa's Medical Officer of Health will review this

approach, as required, and advise Council and the public should any changes be necessary if Council chooses to proceed with this option.

Although this option means that the residents of Ward 19 (Cumberland) will go an additional 90 to 120 days without a Ward Councillor, the City Clerk is of the opinion that this approach strikes a balance between holding a democratic election while adhering to the requirements of the Provincial Emergency Order and the OPH-recommended health and safety protocols and guidelines. In comparison, the suspended municipal by-elections in Cambridge and Windsor have already resulted in those residents being without a ward councillor for in excess of six months and with no certainty as to when those two by-elections will actually occur.

Additional information regarding the Ward 19 (Cumberland) by-election, including information related to the nomination and registration process for candidate and third party advertisers, the contribution rebate program, and the use of vote tabulators is attached as Document 4.

As previously mentioned, the total cost of a by-election in Ward 19 (Cumberland) is estimated to be approximately \$375,000. The estimated budget includes such costs as paying poll workers, printing ballots, renting vote tabulators, and expected overtime associated with meeting rigid statutory deadlines. Funding for the by-election would come from the Tax Stabilization Reserve, which is the primary fund for municipal elections. The proposed timeline and the use of Sections 12 and 53 of the MEA allow the City Clerk to keep the costs within the originally estimated budget.

A breakdown of the expected costs is found in Document 5.

Council could choose to defer the decision to “select or elect”, until such time as more certainty is established with respect to when the state of emergency is likely to wind down and gradually return to regular operations, and further direct the City Clerk to recommend a by-election schedule at that time, based on the best available information. The recommended approach for a by-election would be similar to what is presented in this report.

Council will have to balance a number of considerations when making the decision about the timing of a by-election, as it would be best to provide potential candidates with enough time and certainty to make their own personal arrangements to allow them to stand (in some cases, official leave if required etc.), and best to provide the residents and businesses of Ward 19 (Cumberland) with some sense as to when they can expect to have a dedicated ward councillor in place.

RURAL IMPLICATIONS

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

CONSULTATION

N/A

COMMENTS BY THE WARD COUNCILLOR(S)

N/A

ADVISORY COMMITTEE(S) COMMENTS

N/A

LEGAL IMPLICATIONS

There are no legal impediments to receiving the information in this report.

RISK MANAGEMENT IMPLICATIONS

N/A

ASSET MANAGEMENT IMPLICATIONS

N/A

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

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

ENVIRONMENTAL IMPLICATIONS

N/A

TECHNOLOGY IMPLICATIONS

ITS would be able to support an appointment process within existing resources. Given the requirements for a virtual appointment process as outlined in this report such as setting up call centre queues, web forms and dedicated ottawa.ca web pages, ITS can support the development and implementation of such requirements in the timelines proposed. ITS confirms that staff would be able to complete the scope of work in accordance with IT security policies, procedures and standards.

In the event Council choose option 3 to enact a by-law requiring a by-election under the timelines outlined in this report be it Fall 2020 or later, ITS will need to identify resources to work with the Elections Office and given the current pandemic situation may further require adjusting existing projects while continuing to provide support to OPH and the broader COVID-19 response, including the work-from-home workforce and evolving service delivery needs.

As it relates to implementing alternative voting methods, ITS notes that technology security implications of adopting any new or modified solutions are significant. Given the nature, scope and complexity of moving to an online or hybrid voting approach, the technology security assessments and testing required to ensure the confidentiality, integrity and availability of the voting solution(s) would take much longer to complete than the timelines a by-election would allow.

TERM OF COUNCIL PRIORITIES

N/A

SUPPORTING DOCUMENTATION

Document 1 – Memorandum to Council Filling a Council Vacancy (Ward 19 – Cumberland)

Document 2 – Appointment Process

Document 3 – Draft By-law to Require a By-election

Document 4 – Additional Information Relating to the Ward 19 By-election

Document 5 – Estimated Cost of the Ward 19 By-election

DISPOSITION

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

Note: A minor correction has been made to the Rural Implications Section of this report to Council (the corrected figure is) following publication of the Draft Agenda in accordance the City Clerk's Delegated Authority, as set out in Schedule C, Subsection 7 of Delegation of Authority By-Law 2019-280, which provides as follows: "The City Clerk is authorized to correct clerical, spelling, or minor errors of an administrative nature in by-laws of the City by placing the appropriate amending by-law directly on the Agenda of Council for enactment, and in reports to standing committees of Council and Council by placing the corrected report on the appropriate agenda with a notation made in the disposition that the report has been amended pursuant to this provision."