

**CITY OF HAMILTON**

**CORPORATE SERVICES DEPARTMENT**  
*Treasury Services Division*

<b>TO:</b> Mayor and Members General Issues Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> November 14, 2011	
<b>SUBJECT/REPORT NO:</b> Councillors' Remuneration - Continuation of One-Third Tax Allowance (FCS11054) (City Wide)	
<b>SUBMITTED BY:</b> Antonio D. Tollis Treasurer Corporate Services Department	<b>PREPARED BY:</b> Barb Howe, x5599
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the one-third tax free portion of the remuneration for Members of Council be maintained for the current Council term.

**EXECUTIVE SUMMARY**

In 2001, the Province of Ontario amended the *Municipal Act* allowing municipalities to remove the one-third tax free portion included in the remuneration paid to Members of Council. Each term, Council must review By-Law 02-354 (Appendix 'C' to report FCS11054) respecting the continuation of the one-third tax free provision and decide whether to maintain the tax free status or convert their remuneration to 100% taxable. Once Council elects to eliminate this provision, it becomes effective in the subsequent year, and future Councils cannot revert back to the tax free allowance.

It is recommended that the one-third tax free portion be maintained as there are no additional costs associated with this option. Repealing the by-law to convert to a fully

**SUBJECT: Councillors' Remuneration - Continuation of One-Third Tax Allowance  
(FCS11054) (City Wide) - Page 2 of 5**

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taxable remuneration would cost an estimated \$49,000 or \$345,800 depending on whether Option 2 or 3 is chosen as per Appendix 'B' of report FCS11054.

***Alternatives for Consideration – See Page 4***

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial:**

None. There are no costs associated with maintaining the status quo.

**Staffing:**

None.

**Legal:**

None.

**HISTORICAL BACKGROUND** (Chronology of events)

Under current tax legislation, one-third of a Councillor's total remuneration can be excluded from income (tax free). Total remuneration consists of:

- (a) salaries and honorariums;
- (b) general expense allowance; and
- (c) mileage or other travel allowance.

Provided that reimbursement for (b) and (c) are not of a non-accountable nature, then these reimbursements can be excluded in determining the maximum one-third expense allowance.

Currently, the Mayor and Council Members are receiving one-third of their remuneration as non-taxable and non-pensionable for the purpose of OMERS benefits. On December 11, 2001, the new *Municipal Act*, which was passed by the Ontario Legislature, provides flexibility for municipalities to eliminate the one-third tax free provision. The purpose was to provide greater accountability and to create full transparency as it relates to total remuneration for elected officials. The intent of the changes in the legislation is to eliminate the tax free allowance which was also eliminated by a number of provinces including Ontario.

Therefore, as of January 1, 2003, the one-third exemption no longer applies unless Council passes a resolution in each term of Council to maintain it. If a resolution is not enacted, then the one-third portion would become taxable and pensionable for OMERS.

**SUBJECT: Councillors' Remuneration - Continuation of One-Third Tax Allowance  
(FCS11054) (City Wide) - Page 3 of 5**

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There are no provisions in the Act to provide elected officials, on an individual basis, the choice of fully taxable or one-third exempt remuneration. Nor are there provisions for subsequent Councils to reinstate the one-third tax free provision. However, if a resolution is passed to continue the one-third tax free provision, then subsection 283 (7) requires that each subsequent Council review the by-law at a public meeting at least once in its' four-year term.

Since the change in legislation, each term, previous Councils have passed a resolution to maintain the one-third tax free portion of their remuneration. The current Council is now required to review By-Law 02-354 and determine whether or not to retain the tax free provision.

As set out in Appendix 'A' to report FCS11054 (2011 Survey of Tax Treatment of Remuneration for Elected Officials), the majority (2/3) of the municipalities in our comparator group have opted for fully taxable remuneration. The number of municipalities that provide a fully taxable remuneration has remained unchanged since the last survey conducted in 2007. For those that opted to gross up the one-third tax free component, the salary was increased so that the net pay was the same as previously provided.

**POLICY IMPLICATIONS**

None.

**RELEVANT CONSULTATION**

Comparator municipalities were surveyed and the tax treatment of remuneration for their respective elected officials is attached as Appendix 'A' to report FCS11054. Human Resources was consulted on the benefit costs provided in Appendix 'B' to report FCS11054.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

It is recommended that the one-third tax free portion of the remuneration be maintained as per Option 1 of Appendix 'B' to report FCS11054. This option would have no effect on the Councillors' net after tax remuneration and no effect on the base budget.

**SUBJECT: Councillors' Remuneration - Continuation of One-Third Tax Allowance (FCS11054) (City Wide) - Page 4 of 5**

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Although, the alternative of providing a fully taxable remuneration would provide greater accountability and create more transparency to our community, it would increase the total remuneration provided to Councillors' and consequently increase the base budget. This would require a tax increase to fund the increased salary and benefits unless off-setting reduction could be found.

To address the transparency issue, the City has optionally chosen to include both the actual remuneration and the equivalent fully taxable remuneration when the annual statement on remuneration and expenses is presented to Council.

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

There are two alternatives for consideration:

**Option 2: Current Remuneration - Fully Taxable**

This option would require that By-law 02-354 be repealed, thereby converting the former one-third exempt portion as taxable under federal tax legislation and pensionable under the OMERS Act. This alternative would result in an annual net after tax reduction in remuneration for a councillor (mayor) of \$8,888 (\$18,843) due to the increase in taxes withheld and required OMERS contribution on the previously one-third tax free component. For a newly appointed councillor (mayor), upon retirement, the gain in annual pension per year of credited service would be \$429 (\$790) and therefore the payback would occur after 20.7 (23.85) years of pension benefits.

For all 16 elected officials, this option would also increase the base budget by \$48,573 (as per Appendix 'B' to report FCS11054) due to the increase in employer health tax and required employer contribution to OMERS.

**Option 3: Gross up Current Remuneration to Provide Same Net Pay – Fully Taxable**

This option would also require that By-law 02-354 be repealed and thereby make the former one-third portion taxable and pensionable. However, to maintain the same level of net after-tax remuneration, Council would have to approve an increase in remuneration of 22% for councillors and 32% for the mayor. Upon retirement, this would result in a gain in annual pension, for each year of credited service for councillors (mayor) of \$728 (\$1,551). For all 16 elected officials, this option would increase the base budget by \$345,754 (as per Appendix 'B' to report FCS11054). Since there is no net after-tax reduction of income, the payback would be immediate.

**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability,  
3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development,  
6. Environmental Stewardship, 7. Healthy Community

***Skilled, Innovative & Respectful Organization***

- ◆ Council and SMT are recognized for their leadership and integrity

***Financial Sustainability***

- ◆ Financially Sustainable City by 2020

**APPENDICES / SCHEDULES**

Appendix 'A' - 2011 Survey of Tax Treatment of Remuneration for Elected Officials

Appendix 'B' - Comparison of Various Remuneration Methods

Appendix 'C' - By-law 02-354

**2011 Survey of Tax Treatment of Remuneration for Elected  
Officials**

<b>Municipality</b>	<b>Tax Treatment</b>
City of Burlington	100% Taxable
City of Windsor	1/3 non-taxable
Regional Municipality of Halton	100% Taxable
City of Brampton	1/3 non-taxable
City of Mississauga	100% Taxable
City of London	1/3 non-taxable
Regional Municipality of Waterloo	100% Taxable
Regional Municipality of Niagara	1/3 non-taxable
Regional Municipality of Durham	100% Taxable
City of Ottawa	100% Taxable
Regional Municipality of Peel	100% Taxable
Regional Municipality of York	100% Taxable

**COMPARISON OF VARIOUS REMUNERATION METHODS**

Chart 1: Effect of Net Pay and Pension

	Option 1		Option 2		Option 3	
	Current Remuneration (2011 dollars)		Current Remuneration fully taxable (2011 dollars)		Current Remuneration fully taxable and grossed up (2011 dollars)	
Total Remuneration	\$ 67,635.88	\$ 118,517.62	\$ 67,635.88	\$ 118,517.62	\$ 82,561.41	\$ 156,552.61
	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor
	1/3 Tax Exempt		Fully Taxable		Fully Taxable - Grossed Up	
Taxable Earnings	\$ 45,090.50	\$ 79,011.66	\$ 67,635.88	\$ 118,517.62	\$ 82,561.41	\$ 156,552.61
Non Taxable Earnings	22,545.25	39,505.83	-	-	-	-
Income Tax	(6,389.73)	(16,095.44)	(12,812.30)	(30,711.75)	-17,253.05	(45,833.68)
CPP	(2,058.73)	(2,217.60)	(2,217.60)	(2,217.60)	(2,217.60)	(2,217.60)
OMERS	(3,336.70)	(6,860.35)	(5,643.14)	(11,087.49)	(7,240.17)	(15,157.23)
<b>Net Pay</b>	<b>\$ 55,850.59</b>	<b>\$ 93,344.10</b>	<b>\$ 46,962.84</b>	<b>\$ 74,500.78</b>	<b>\$ 55,850.59</b>	<b>\$ 93,344.10</b>
<b>Loss of Net Pay Compared to Status Quo - Option 1</b>			\$ (8,887.75)	\$ (18,843.32)	\$ -	\$ -
Annual Pension commencing age 65 for each yr of credited service	\$ 597.45	\$ 1,254.21	\$ 1,026.69	\$ 2,044.33	\$ 1,325.20	\$ 2,805.03
Increase in Annual Pension for each yr of additional credited service as compared to status quo - Option 1	NA	NA	\$ 429.24	\$ 790.12	\$ 727.75	\$ 1,550.82

Chart 2: Comparison of Costs

	Option 1		Option 2		Option 3	
	Current Remuneration (2011 dollars)		Current Remuneration fully taxable (2011 dollars)		Current Remuneration fully taxable and grossed up (2011 dollars)	
Total Remuneration	\$ 67,635.75	\$ 118,517.49	\$ 67,635.88	\$ 118,517.62	\$ 82,561.41	\$ 156,552.61
	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor
	1/3 Tax Exempt		Fully Taxable		Fully Taxable - Grossed Up	
Taxable Earnings	\$ 45,090.50	\$ 79,011.66	\$ 67,635.88	\$ 118,517.62	\$ 82,561.41	\$ 156,552.61
Non Taxable Earnings	22,545.25	39,505.83	-	-	-	-
Income Tax	N/A	N/A	N/A	N/A	N/A	N/A
CPP	2,058.73	2,217.60	2,217.60	2,217.60	2,217.60	2,217.60
OMERS	3,336.70	6,860.35	5,643.14	11,087.49	7,240.17	15,157.23
EHT	879.26	1,540.73	1,318.90	2,311.09	1,609.95	3,052.78
Benefits	5,049.75	5,462.82	5,049.72	5,462.82	5,171.22	5,770.62
	78,960.19	134,598.99	81,865.24	139,596.62	98,800.35	182,750.84
# of Elected Officials	15.00	1.00	15.00	1.00	15.00	1.00
Total Annual Cost	\$ 1,184,402.85	\$ 134,598.99	\$ 1,227,978.60	\$ 139,596.62	\$ 1,482,005.25	\$ 182,750.84
<b>Additional Annual Cost - Compared to Option 1</b>			<b>\$48,573.38</b>		<b>\$345,754.25</b>	

Assumptions:

- assumes basic tax exemption and 2011 rates

Authority: Item 23, Committee of the Whole  
Report 02-042 (FCS02 139)  
CM: December 11, 2002

BILL NO. 354

CITY OF HAMILTON

BY-LAW NO. 02-354

BEING A BY-LAW UNDER SUBSECTION 255(2) OF THE MUNICIPAL ACT  
RESPECTING CONTINUATION OF ONE-THIRD TAX FREE BENEFIT

**WHEREAS** subsection 255 (1) of the Municipal Act, R.S.O. 1990, c. M.45, as amended, provides that one-third of the remuneration paid to the elected members of councils and their local boards shall be considered as expenses incident to the discharge of their duties as members of council or local board; and

**WHEREAS** subsection 255 (2) of the Municipal Act, R.S.O. 1990, c. M.45, as amended, provides that the provisions of subsection 255 (1) shall only continue to apply to members of council or its local boards after January 1, 2003 if the municipality passes a resolution before January 1, 2003 stating its intention that the provisions of subsection 255 (1) shall continue to apply to elected members of council and its local board; and


**WHEREAS** the Council of the City of Hamilton hereby deems it desirable to continue the provisions of subsection 255 (1) of the Municipal Act beyond January 1, 2003


NOW THEREFORE be it resolved that:

It is the intention of the Council of the City of Hamilton that the provision of subsection 255(1) continue to apply to the elected members of this council and its local boards on and after January 1, 2003.

This resolution shall come into force and take effect as of January 1, 2003.

PASSED and ENACTED this 1<sup>st</sup> day of December, 2002.

  
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Mayor

  
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Acting City Clerk