CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Services Division

TO:	Chair and Members Non-Union Compensation Sub-Committee
COMMITTEE DATE:	August 6, 2015
SUBJECT/REPORT NO:	Councillors' Remuneration - Continuation of One-Third Tax Allowance (FSC15001) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Barb Howe 905-546-2424 Ext. 5599
SUBMITTED BY: **SIGNATURE:**	Mike Zegarac General Manager Finance & Corporate Services Department

RECOMMENDATION

(a) That By-Law 02-354 *Respecting Continuation of One-Third Tax Free Benefit*, be repealed;

(b) That, effective January 1, 2016, the one-third tax free portion of the remuneration for Members of Council be fully taxable;

(c) That, effective January 1, 2016, the remuneration for Councillors be adjusted to maintain the net after tax remuneration;

(d) That the 2016 current budget be increased by $434,245 to fund the cost to convert to a fully taxable remuneration for Members of Council;

(e) That the matter respecting “One-Third Expense Allowance for Council” be considered complete and removed from the General Issue Committee’s Outstanding Business List.

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 FCS15001) 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It is recommended that By-Law 02-354 be repealed resulting in the one-third tax free portion becoming fully taxable. To provide a fully taxable remuneration, while maintaining the same net pay, will require an increase in the current remuneration of Members of Council resulting in an annual cost of $434,245. This amount must be incorporated into the 2016 current budget.

The survey of comparator municipalities (Appendix ‘A’ to Report FCS15001) shows that more than 50% provide a fully taxable remuneration and it is even more common in municipalities outside the City of Hamilton’s comparator group. There is considerable criticism associated with the current tax-free remuneration because it does not give taxpayers a true picture of what their elected officials earn. Providing a fully taxable remuneration would provide greater accountability and create more transparency to our community.

Alternatives for Consideration – See Page See Page 3.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial:

The cost of converting the one-third tax free remuneration to a fully taxable remuneration will cost $434,245 per year, as per Option 3 of Appendix ‘B’ to Report FCS15001. Most of the cost is the result of increasing the remuneration of the Councillor and Mayor by 24.43% and 34.69% respectively, to maintain the same level of net after-tax remuneration.

This change will require that By-law 02-354 be repealed and thereby make the former one-third portion taxable, as well as, pensionable for OMERS purposes. Upon retirement, this would result in a gain in annual pension, for each year of credited service for Councillors (Mayor) of $1,453 ($3,074), based on a best five year average pensionable earnings of $90,385 (Councillor) and $171,441 (Mayor). Since the fully taxable remuneration is effective January 1, 2016, this best five year average earnings would only be realized for retirements occurring after December 31, 2020. Retirements occurring prior to this date would realize a smaller gain in their annual pension since their best five year average will include the pre-January 1, 2016, remuneration rates.

Staffing: None.

Legal: None.

HISTORICAL BACKGROUND (Chronology of events)

Under current tax legislation (IT-292), 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. *The Municipal Act (2001),* which took effect January 1, 2003, provided 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, effective 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.

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. There are also no 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.

Each term, since the change in legislation, 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 FCS15001 (2014 Survey of Tax Treatment of Remuneration for Elected Officials), the majority of the municipalities surveyed have opted for fully taxable remuneration. For those that opted to eliminate the one-third tax free component, the salary was increased so that the net pay was the same as previously provided.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

None.

RELEVANT CONSULTATION

Municipalities were surveyed and the tax treatment of remuneration for their respective elected officials is attached as Appendix ‘A’ to Report FCS15001. Human Resources were consulted on the benefit costs provided in Appendix ‘B’ to Report FCS15001.

ANALYSIS AND RATIONAL FOR RECOMMENDATION
(Include Performance Measurement/Benchmarking Data if applicable)

The survey of comparator municipalities (Appendix ‘A’ to Report FCS15001) shows that more than 50% provide a fully taxable remuneration and it is even more common in municipalities outside the City of Hamilton’s comparator group. There is considerable

criticism associated with the current tax-free remuneration because it does not give taxpayers a true picture of what their elected officials earn. Providing a fully taxable remuneration would provide greater accountability and create more transparency to our community.

Municipalities that converted to a fully taxable remuneration also grossed up the remuneration paid to their Elected Officials so that their net pay remained unchanged. To maintain the same net pay, will require a remuneration increase of 24.43% (Councillor) and 34.69% (Mayor) and will consequently increase the 2016 base budget to fund the increased salary and benefits.

ALTERNATIVES FOR CONSIDERATION

(Include Financial, Staffing, Legal and Policy Implications and Pros and Cons for each alternative)

There are two alternatives for consideration:

Option 1: Current Remuneration (One–Third Tax Free)

This option is the status quo and therefore would have no effect on the Councillors’ net after-tax remuneration and no effect on the base budget. However, by selecting this option, Council must pass a resolution to maintain the one-third tax free status.

Option 2: Savings Plan

Over and beyond a resolution to maintain the one-third tax free portion, Council may choose to introduce a savings plan. If Council was supportive of a savings plan, effective January 1, 2016, a plan would be introduced consisting of contributions funded by both the City and the Elected Officials. The contribution rates would be equal to the employee and employer rates currently required for Employment Insurance (EI) taxes, for which the Elected Officials are exempt. Based on the EI rates, each Elected Official

would contribute 1.88% of their remuneration to the maximum annual EI contribution ($913.68 – 2014 max) and the City would contribute 1.4 times their contribution ($1,279.15 – 2014 max). Each year, the contribution rates will be adjusted based on the changes in the EI contribution rate and subject to the annual maximum limits. These contributions would be maintained in an interest bearing trust account.

The City's contribution would be a taxable benefit and pensionable for OMERS purposes. In addition, the interest earned each year would also be taxable. Consequently, the annual net pay of each Elected Official would decrease by $1,436.88 (Councillor) and $1,455.41 (Mayor). However, upon termination, the Elected Official would receive a tax-free payment equal to both their share and the City's share of the accumulated contributions and interest. Based on the 2014 contribution rates and excluding the interest component, this would equal $2,185.03 (Councillor) and $2,192.83 (Mayor) for each year of service after 2015. In addition, for retirement occurring on or after December 31, 2015, the annual pension would increase by $16.89 (Councillor) and $25.58 (Mayor) for each year of credited service. This increase in annual pension would be slightly lower for retirements occurring prior to December 31, 2020, since the best five year average pensionable earnings would not include the taxable employer's share of contributions in each of those years.

Council has the option to limit the term of the savings plan to a maximum number of weeks.

The cost of providing this option would be $23,650 per year.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

APPENDICES AND SCHEDULES ATTACHED

Appendix ‘A’ - 2014 Survey of Tax Treatment of Remuneration for Elected Officials.
Appendix ‘B’ - Comparison of Various Remuneration Options.
Appendix ‘C’ - By-Law 02-354.