



Hamilton

## INFORMATION REPORT

<b>TO:</b>	Governance Review Sub Committee
<b>COMMITTEE DATE:</b>	June 26, 2018
<b>SUBJECT/REPORT NO:</b>	Council Vacancy - Office of Councillor Ward 7 (CL18008) (Ward 7)
<b>WARD(S) AFFECTED:</b>	Ward 7
<b>PREPARED BY:</b>	Janet Pilon Ext. 4304
<b>SUBMITTED BY:</b>	Janet Pilon Acting City Clerk Office of the City Clerk
<b>SIGNATURE:</b>	

### Council Direction:

At the June 13, 2018 Council referred the motion respecting a Future Council Vacancy – Office of Councillor Ward 7 (Item 10.1) to the Governance Review Sub Committee for consideration.

In light, of the time constraints, the Acting City Clerk was requested to prepare an information report to accompany the motion respecting a Future Council Vacancy – Office of Councillor Ward 7 (Item 10.1).

### Information:

Subsection 263(1), of the *Municipal Act, 2001*, requires that after a vacancy is declared, it be filled either by Council appointing a qualified person to hold the office, or by holding a by-election to elect a qualified person.

A by-election is not an alternative available to Council at this time, as per subsection 65(2) of the *Municipal Election Act, 1996*, which states “no by-election shall be held to fill an office that becomes vacant after March 31 in the year of a regular election”.

The process for making an appointment is not prescribed, typically, one of two processes has been followed in Ontario:

- (i) Council appoints a qualified person who has consented to fill the office; or
- (ii) Council invites applications and appoints in accordance with a process as set out in Appendix “A” to this report. The process involves having all interested qualified persons submit an application and address Council. After hearing the addresses, Council makes the appointment.

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As per subsection 262(1), of the *Municipal Act, 2001*, Council will declared the office of the Councillor of Ward 7 as vacant on June 27, 2018.

The appointment of a qualified person to hold the office of Councillor, Ward 7, for the remainder of the 2014-2018 term of office, must take place within 60 days of the vacancy being declared, in this case, no later than August 25, 2018.

A legally qualified person to be appointed and to hold the office of Councillor Ward 7, pursuant to the *Municipal Elections Act, 1996 (MEA)*, *Municipal Conflict of Interest Act*, and as applicable, the *Municipal Act, 2001* or the *Education Act*, must be:

- a Canadian citizen; and
- at least 18 years of age; and
- reside in the City of Hamilton or the owner or tenant of land in the City of Hamilton or the spouse or such owner or tenant.

A person is not qualified to hold the office of Councillor Ward 7 pursuant to the *Municipal Elections Act, 1996 (MEA)*, *Municipal Conflict of Interest Act*, and as applicable, the *Municipal Act, 2001* or the *Education Act*, if they are:

- an employee of the municipality who has not taken an unpaid leave of absence and resigned;
- a person who is not an employee of the municipality but who is the clerk, treasurer, Integrity Commissioner, Auditor General, Ombudsman or registrar referred to in section 223.11 of the *Municipal Act 2001* or an investigator referred to in subsection 239.2 (1) of the municipality or a person who is not an employee of the municipality but who holds any administrative position of the municipality;
- a judge of any court;
- an MP, MPP or Senator who has not resigned as a member of any of those bodies;
- a person who is serving a sentence of imprisonment in a penal or correctional institution
- a corporation
- a person acting as executor or trustee in any other representative capacity
- a person disqualified for violations of financial requirements or violations of requirements for filing financial information

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There is no alternative for leaving the office of Councillor Ward 7 vacant until the October 22, 2018 Municipal Election because the vacancy does not meet the prescribed timing of subsection 263(5)3, of the *Municipal Act, 2001*, which states “if a vacancy occurs within 90 days before voting day of a regular election (*in this case July 24, 2018*), the municipality is not required to fill the vacancy”.

Appointing another member of Council to hold both their own office and the office of Councillor Ward 7 is also not an alternative as their own office would be vacated under subsection 259(1)(e) of the *Municipal Act, 2001*.

**Vacant seat**

259. (1) The office of a member of council of a municipality becomes vacant if the member,

...

(e) is appointed or elected to fill any vacancy in any other office on the same council;

In addition, every member of this Council is entitled to only one vote as prescribed in subsection 243 of the *Municipal Act, 2001*.

**Appendices and Schedules Attached**

Appendix “A” – Appointment Process for Filling Vacancy on Council