



Hamilton

Office of the City Clerk

5.10

Memorandum

Date: June 27, 2018

To: Mayor and members of City Council

From: Janet Pilon, Acting City Clerk and Nicole Auty, City Solicitor

Subject: Council Vacancy – Office of Councillor Ward 7

The Governance Review Sub Committee at their meeting of June 26, 2018, considered the two processes available for making an appointment to fill the vacancy of the Office of Councillor, Ward 7 (below).

The Committee referred their decision, to have the Mayor, on behalf of Council, send a letter to the Minister of Municipal Affairs to request an exemption from having to fill the Ward 7 vacancy for the remainder of the 2014 – 2018 term, as the short time frame makes it impractical to do so, to Council on June 27, 2018.

Staff have been in contact with the Ministry of Municipal Affairs and have been advised that there is no provision within the legislation to provide a municipality with the ability to request an exemption from the rules respecting a Council vacancy.

Staff have also inquired as to the process and the timing of an exemption to the rules, which would require the Minister of Municipal Affairs introducing a Bill in the Cabinet and once passed by Cabinet it would then be presented to the Legislature for approval. The process could take a minimum of 2-3 weeks and would only be available if the Premier-designate calls the Legislature to sit before September and for a long enough period of time to pass the bill.

In light of this information, and as per subsection 263(5) of the *Municipal Act, 2001*, 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

June 27, 2018

person to fill the vacancy or (ii) pass a by-law requiring a by-election be held to fill the vacancy.

As per subsection 65(2) of the *Municipal Elections Act, 1996*, no by-election shall be held to fill an office that becomes vacant after March 31 in the year of a regular election, therefore, Hamilton City Council is required to appoint a person to fill the vacancy by August 25, 2018 (60 days following the declaration of the vacancy).

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 memorandum. The process has involved having all interested qualified persons submit an application and address Council. After hearing the addresses, Council makes the appointment.

There is no alternative for leaving the office of Councillor Ward 7 vacant until the October 22, 2018 Municipal Election as 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, 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*.

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