

# CITY OF HAMILTON

## NOTICE OF MOTION

Council: August 17, 2018

**MOVED BY COUNCILLOR WHITEHEAD.....**

### **Ward 7 Appointment**

WHEREAS, Council declared the Ward 7 seat vacant on June 27, 2018;

WHEREAS, sub-section 263(5) of the *Municipal Act, 2001*, requires that Council fill the vacancy by August 25, 2018, (60 days after declaring the seat vacant); and

WHEREAS, sub-section 263(1) of the *Municipal Act, 2001*, requires that the vacancy be filled by appointing a qualified person to hold the office of Councillor, Ward 7, for the remainder of the 2014-2018 term of office by appointing a person who has consented to fill the office.

THEREFORE, BE IT RESOLVED:

- (a) That Terry Anderson be appointed to hold the office of Councillor, Ward 7, for the remainder of the 2014-2018 term;
- (b) That a by-law be enacted confirming the appointment of Terry Anderson to the Office of Councillor, Ward 7, for the remainder of the 2014-2018 term; and
- (c) That the Acting City Clerk administer the Declaration of Office at her earliest opportunity.

Appendix A – Information Report CL18008(a) for reference purposes

## Appendix A to CL18008(a)



Hamilton

# INFORMATION REPORT

<b>TO:</b>	Mayor and Members of Council
<b>COMMITTEE DATE:</b>	August 17, 2018
<b>SUBJECT/REPORT NO:</b>	Council Vacancy - Office of Councillor Ward 7 (CL18008(a)) (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:

On July 19, 2018 Council received the Minister's response attached as Appendix "A" to the Mayor's letter requesting an exemption to having to fill the Ward 7 vacancy for the remainder of the 2014 – 2018 term. The response advises Council that there is no provision in the legislation for the Minister to grant an exemption to the rules set out in the legislation that require municipalities to fill council vacancies and such an exemption would require an amendment to the Act.

### Information:

Subsection 263(1), of the *Municipal Act, 2001*, requires that the Ward 7 seat, which was declared vacant on June 27, 2018, be filled by Council appointing a qualified person to hold the office, or by holding a by-election to elect a qualified person.

Council was advised that a by-election was 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 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.

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*OUR Vision: To be the best place to raise a child and age successfully.*

*OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.*

*OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.*

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

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*.

Ministry of  
Municipal Affairs  
and Housing

Office of the Minister

777 Bay Street, 17<sup>th</sup> Floor  
Toronto ON M5G 2E5  
Tel.: 416 585-7000  
Fax: 416 585-6470

Ministère des  
Affaires municipales  
et du Logement

Bureau du ministre

777, rue Bay, 17<sup>e</sup> étage  
Toronto ON M5G 2E5  
Tél. : 416 585-7000  
Télééc. : 416 585-6470



**JUL 19 2018**

MMA18-000008

Your Worship  
Mayor Fred Eisenberger  
City of Hamilton  
71 Main Street West  
Hamilton, ON L8P 4Y5

Dear Mayor Eisenberger:

Thank you for your recent letter of June 27, 2018. I appreciate your kind words regarding my re-election and appointment as the Minister of Municipal Affairs and Housing.

Under the Municipal Act, the appointment of a qualified person to hold office for the remainder of the council term must take place within 60 days of the declaration of the vacancy.

I have reviewed the request from Hamilton City Council for an exemption from the requirement under the Municipal Act regarding your vacancy on council for Ward 7. I understand the situation in which council has been placed. However, there is no provision in the legislation for me to grant an exemption from the rules set out in the legislation that require municipalities to fill council vacancies. Providing an exemption to the requirement in the Municipal Act to fill the vacancy would require a change to the Act.

Thank you again for your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Clark".

Steve Clark  
Minister