

# CITY OF HAMILTON

## MOTION

Council: February 9, 2022

**MOVED BY MAYOR F. EISENBERGER .....**

**SECONDED BY COUNCILLOR.....**

**Motion to Amend By-law No. 16-290, the Council Code of Conduct to provide for the Transparency Disclosure of Non-Disqualifying Interests**

WHEREAS, pursuant to the *Municipal Act, 2001*, it is the duty of the City Clerk to record, without note or comment, all resolutions, decisions and other proceedings of the Council;

WHEREAS, the Council Code of Conduct provides that Members shall avoid “conflicts of interest, both apparent and real”;

WHEREAS when a Member is disqualified from participating in the discussion of, or voting on any question in respect of a matter due to a pecuniary interest, direct or indirect, under the *Municipal Conflict of Interest Act*, their disclosure of that interest is recorded in Council and Committee minutes, and a written statement of the interest and its general nature must be filed with the Clerk and included in a registry required to be made available to the public, which is posted on the City’s website;

WHEREAS, there are occasions when Members of Council have an interest in a matter, but such an interest does not disqualify them from participating; and

WHEREAS, the public interest is best served by disclosing both disqualifying and non-disqualifying interests of Members of Council;

THEREFORE, BE IT RESOLVED:

- (a) That section 8 of By-Law 16-290 - Council Code of Conduct be amended as per Appendix “A” of this motion to enable the recording of all disqualifying interests, and to provide for the recording of disclosures where non-disqualifying interests exist; and
- (b) That the City Clerk prepare a Transparency Disclosure of Non-Disqualifying Interest form for use by Members of Council and for posting on the City’s website for viewing.

**Authority:** Item  
Date:  
Ward: City Wide

**Bill No.** \_\_\_\_\_

## **CITY OF HAMILTON**

### **BY-LAW NO. 22-**

#### **To Amend By-law No. 16-290, Council Code of Conduct**

**WHEREAS** Section 223.2(1) of the *Municipal Act, 2001* requires the City of Hamilton to establish By-law No.16-290 - Council Code of Conduct;

**WHEREAS**, the Council Code of Conduct provides that Members shall avoid “conflicts of interest, both apparent and real”;

**WHEREAS** when a Member is disqualified from participating in the discussion of, or voting on any question in respect of a matter due to a pecuniary interest, direct or indirect, under the *Municipal Conflict of Interest Act*, their disclosure of that interest is recorded in Council and Committee minutes, and a written statement of the interest and its general nature must be filed with the Clerk and included in a registry required to be made available to the public, which is posted on the City’s website;

**WHEREAS**, there are occasions when Members of Council have an interest in a matter, but such an interest does not disqualify them from participating; and

**WHEREAS**, the public interest is best served by disclosing both disqualifying and non-disqualifying interests of Members of Council;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. The amendments in this By-law include any necessary indexing, grammatical, numbering and lettering changes.
2. That By-law No. 16-290 be amended by adding the following provisions under Section 8 “Conduct in Office, Including at Council and Committees”:

8.(2) In this Section:

- (a) A “disqualifying interest” is an interest in a matter regarding which a reasonable person fully informed of the facts and circumstances would conclude that the Member could not participate impartially in the decision-making process related to the matter either because to do so would not be in compliance with the *Municipal Conflict of Interest Act*, or, because the Member’s relationship to persons or bodies involved in the matter or affected by the decision is so close, a

Appendix A to Item 6.4  
reasonable person would conclude that the Member could not effectively carry out their public duty with impartiality.

(b) A “non-disqualifying interest” is an interest in a matter that, by virtue of the relationship between the Member and other persons or bodies associated with the matter, is of such a nature that a reasonable person fully informed of the facts and circumstances would conclude that the Member could still participate impartially in the decision-making processes related to the matter only so long as:

(i) the Member fully discloses the interest so as to provide transparency about the relationship; and

(ii) the Member states why the interest does not prevent the Member from making an impartial decision on the matter.

8.(3) Members shall not participate in the decision-making processes associated with their role or position when they have a disqualifying interest in a matter. Participation includes attempting to influence an outcome, whether the decision to be made is to be made by Council or a member of staff with delegated authority or operational responsibility.

8.(4) Members may participate in the decision-making process related to a matter in which they have a non-disqualifying interest provided they file at their earliest opportunity a Transparency Disclosure in a form and manner established by the City Clerk acting in consultation with the Integrity Commissioner.

(i) Transparency Disclosures are public documents and shall be available for public viewing on the City of Hamilton’s website.

(ii) On receipt of a proper request, the Integrity Commissioner shall determine whether an interest is a disqualifying interest or a non-disqualifying interest.

3. This By-law comes into force on the day it is passed.

**PASSED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

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F. Eisenberger  
Mayor

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A. Holland  
City Clerk