



CITY OF HAMILTON
CITY MANAGER'S OFFICE
City Clerk's Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	February 5, 2014
SUBJECT/REPORT NO:	Declaring the Office of Councillor, Ward 3, Vacant and Deciding the Method to Fill the Vacancy (CL14001) (City Wide)
WARD(S) AFFECTED:	Ward 3
PREPARED BY:	Rose Caterini 905 546-2424 x5409
SUBMITTED BY:	Rose Caterini, City Clerk City Manager's Office
SIGNATURE:	

RECOMMENDATION

- (a) That Council, as required by subsection 262(1) of the *Municipal Act, 2001* declare the office of Councillor, Ward 3, to be vacant.
- (b) That Council, as required by subsection 263(1) of the *Municipal Act, 2001*, decide on one of the following two options to fill the vacancy, and authorize the City Clerk to take the steps necessary to carry out the option:

Option 1 – Appointment

Fill the vacancy by appointing a qualified person to hold the office of Councillor, Ward 3, for the remainder of the 2010-2014 term of office, by:

- (i) appointing a person who has consented to fill the office; or
- (ii) inviting applications and appointing in accordance with a process as set in Appendix "A" attached to this report, CL14001.

OR

Option 2 – By-Election

Fill the vacancy by holding a by-election to elect a qualified person to hold the office of Councillor Ward 3, for the remainder of the 2010-2014 term of office.

EXECUTIVE SUMMARY

Unfortunately, a vacancy for the office of Councillor Ward 3, has occurred under subsection 259(1)(h) of the *Municipal Act, 2001*:

Vacant seat

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

...

- (h) dies, whether before or after accepting office and making the prescribed declarations;

Subsection 262(1) of the *Municipal Act, 2001* requires when there is such a vacancy that the office of the member, be declared vacant no later than the second meeting of Council after the vacancy occurred (February 12th, 2014). This subsection also requires that, after the vacancy is declared, it be filled either by Council appointing a qualified person to hold the office, or holding a by-election to elect a qualified person.

A qualified person is a qualified elector under the *Municipal Elections Act, 1996*, namely a person who:

- Resides in the City of Hamilton;
- Is the owner or tenant of land in the City of Hamilton or the spouse of such owner or tenant;
- Is a Canadian citizen;
- Is at least 18 years old; and
- Is not prohibited from voting under the *Municipal Elections Act, 1996* or otherwise by law.

Option 1 – Appointment

Fill the vacancy by appointing a qualified person to hold the office of Councillor, Ward 3. This must take place within 60 days of the vacancy being declared. (no later than April 14, 2014).

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

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

Option 2 – By-Election

Fill the vacancy by holding a by-election to elect a qualified person to hold the office of Councillor, Ward 3. The by-law to hold the by-election must be passed within 60 days of the vacancy being declared. (no later than April 14, 2014).

Section 65 of the *Municipal Elections Act, 1996* requires the Clerk to establish Nomination Day not more than 60 days from the day Council passes a by-law to hold a by-election, and voting day shall be 45 days after Nomination Day.

The estimated cost of running a by-election in 2014 is approximately \$85,000. This cost estimate is based on updated costs from the 2010 municipal elections and using the same number of voting locations, staffing of the polls and electronic voting equipment. This is in compliance with the *Municipal Elections Act, 1996* requiring by-elections to be conducted, as far as possible, in the same manner as regular elections.

There is no alternative for leaving the office of Councillor Ward 3 vacant until the October 27th, 2014 Municipal Elections because the vacancy does not meet the prescribed timing of subsection 263(5)3., of the *Municipal Act, 2001*, which states – “if the 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 office of Councillor Ward 3 is not an alternative as their own office would be vacated under paragraph 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*.

Alternatives for Consideration – Not Applicable

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

Option 1 – Appointment

Financial: Advertisement cost for notice; printing of forms
Staffing: Absorbed by existing Clerk’s staff
Legal: The recommendations have no legal implications

Option 2 – By-Election

Financial: \$85,000
Staffing: Over 100 additional election positions
Legal: The recommendations have no legal implications

HISTORICAL BACKGROUND (Chronology of events)

In the 2003 – 2006 term of Council, the City of Hamilton had 2 vacancies within the first year of the term, resulting from 2 Members of Council being elected to Provincial and Federal parliament. Council chose to fill the remaining 2 years of this office created by these vacancies by by-election.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Municipal Act, 2001
Municipal Elections Act, 1996

RELEVANT CONSULTATION

The Clerk consulted with Legal Services.

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

Council must meet its legislative requirements by declaring the Office of the Councillor Ward 3 vacant and making a decision on whether to fill the vacancy through an appointment process or through a by-election.

ALTERNATIVES FOR CONSIDERATION

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

Not Applicable

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

3.4 Enhance opportunities for administrative and operational efficiencies.

APPENDICES AND SCHEDULES ATTACHED

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

**APPOINTMENT PROCEDURE
FOR FILLING VACANCY ON COUNCIL**

- An Advertisement is placed in the Hamilton Spectator and in a local newspaper serving Ward 3 if applicable. The advertisement includes Council's intention to appoint a qualified person to fill the vacancy and the process to be followed. Communication using the city website and or other communications methods may also be used where appropriate.
- All applicants must, on or before 2:00 p.m., March 17, 2014, complete and submit, in person to the Clerk's Office, a Council Vacancy Application and a Declaration of Qualification and provide personal identification showing his or her name and an address within the City of Hamilton.
- Applicants who have met the application submission deadline, and requirements set out in the Declaration of Qualification, may address Council for no more than five minutes each at a General Issues Committee meeting. The order of the addresses is determined by lot.
- After hearing all of the applicants, Council appoints an applicant to fill the office of Councillor by way of a run-off ballot. In the case of a tie, the successful candidate is chosen by lot.
- The appointee is responsible for attending Council, Board of Health, General Issues Committee and 2 Standing Committees (section 5.3(4) of the City's Procedural By-law 10-053, as amended) to represent Ward 3.
- He or she is not obligated to serve on agencies, boards or committees unless appointed by Council.