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<b>TO:</b>	<b>MEMBERS OF COUNCIL MEETING ON JUNE 23, 2014</b>
<b>FROM:</b>	<b>CATHY SAUNDERS CITY CLERK</b>
<b>SUBJECT:</b>	<b>PROVINCIAL LEGISLATION ELIGIBILITY TO HOLD OFFICE AND FILLING OF VACANCIES ON MUNICIPAL COUNCIL</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the City Clerk, the following actions BE CONSIDERED with respect to the filling of a vacancy (vacancies) on Municipal Council:

- a) excerpts from the *Municipal Act*, 2001, c.25 and the *Municipal Elections Act*, 1996 with respect to the eligibility to hold office and the filling of vacancies on Municipal Council be received for information;
- b) the vacancy in the office of Mayor be filled through the appointment of a current Member of Municipal Council to the office of Mayor, at the Municipal Council meeting to be held on June 24, 2014, in accordance with the procedure outlined in the attached Appendix "A";
- c) subject to the selection of an individual to fill the vacancy in the office of Mayor, the City Clerk be directed to prepare the appropriate by-law for introduction and enactment at the June 24, 2014 Municipal Council meeting to appoint the selected Member of Municipal Council to the office of Mayor;
- d) upon the appointment of a Member of Municipal Council to the office of Mayor, as outlined in part b) above, the City Clerk be directed to take the necessary action to include on the Agenda of the next meeting of Municipal Council, in accordance with section 262(1) of the *Municipal Act*, 2001, c.25, consideration of the declaration of the resulting Ward seat vacancy; and,
- e) upon the declaration of the vacancy of a Ward seat noted in part d) above, the vacancy of the Ward seat be filled at the next meeting of the Municipal Council following the Municipal Council meeting at which the Ward seat was declared vacant in accordance with an appropriate process to be established by the Municipal Council.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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None.

<b>BACKGROUND</b>
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As a result of the recent resignation of J.F. Fontana from the office of Mayor, Municipal Council must undertake the following actions:

- i) declare the office vacant in accordance with section 260(1) of the *Municipal Act*, 2001, c.25 (MA);

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- ii) within 60 days after the day a declaration of a vacancy of office is made, fill the vacancy by appointing a person qualified to hold the municipal office in the City of London to the office in accordance with section 263(5)1.i. of the *Municipal Act*.

The *Municipal Act* (MA) sets out the following requirements with respect to the filling of a vacancy of the office of a Member of Council:

**Vacant seat**

259. (1) *The office of a member of council of a municipality becomes vacant if the member, (d) resigns from his or her office and the resignation is effective under section 260; (e) is appointed or elected to fill any vacancy in any other office on the same council;.....*

**Resignation as member**

260. (1) *A member of council of a municipality may resign from office by notice in writing filed with the clerk of the municipality.*

**Declaration**

262. (1) *If the office of a member of a council becomes vacant under section 259, the council shall at its next meeting declare the office to be vacant, except if a vacancy occurs as a result of the death of a member, the declaration may be made at either of its next two meetings. 2001, c. 25, s. 262 (1).*

The *Municipal Elections Act, 1996* (MEA) sets out the following requirements with respect to a vacancy that occurs in a year when a regular election is to be held:

**No by-election after March 31 in year of regular election**

65. (2) *Despite any Act, no by-election shall be held to fill an office that becomes vacant after March 31 in the year of a regular election and no by-election shall be held with respect to a question or by-law after March 31 in the year of a regular election unless it is held in conjunction with a by-election for an office. 1996, c. 32, Sched., s. 65 (2); 2002, c. 17, Sched. D, s. 24 (1).*

As a result, the only option available to Municipal Council to fill the vacancy is by appointment. The municipal election will be held on October 27, 2014. Section 65(2) of the *Municipal Elections Act, 1996* (MEA) does not permit a by-election to be held after March 31<sup>st</sup>, 2014.

In accordance with section 263(5)3. of the MA, a vacancy of an office of a member of council must be filled, unless a vacancy occurs within 90 days before voting day (July 29, 2014).

The MA set out the following provisions for the filling of vacancies of offices of a member of council:

**Filling vacancies**

263. (1) *If a vacancy occurs in the office of a member of council, the municipality shall, subject to this section, (a) fill the vacancy by appointing a person who has consented to accept the office if appointed; ....*

**Rules applying to filling vacancies**

(5) *The following rules apply to filling vacancies:*

- 1. *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 person to fill the vacancy under subsection (1) or (4), ....*
- 3. *Despite subsections (1) to (4), if a vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy. 2001, c. 25, s. 263 (5).*

Within 60 days after the day a declaration of vacancy has been made by council, council shall fill the vacancy by appointing a person to fill the vacancy.

Should the vacancy be filled by a sitting Member of Council, the resulting Ward vacancy would need to be filled in accordance with the legislation.

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**Term**

264. A person appointed or elected to fill a vacancy under section 263 shall hold office for the remainder of the term of the person he or she replaced. 2001, c. 25, s. 264.

**Summary of Provincial Timelines – Appointment of Mayor or Councillor**

Timing	Step	Authority
At the next meeting of Municipal Council	Declare an office vacant	s. 262(1) MA
Within 60 days after the day a declaration of a vacancy has been made	Select a method of filling the vacancy; by appointment or by-election	s.263(5) MA
<b>Options</b>		
Up to March 31 in election year	Must fill by by-election or appointment	s.263(5) MA
Between March 31 and 90 days before voting day (July 29, 2014)	Must fill by appointment only; by-election is prohibited	s. 65(1) MEA
Within 90 days of election day	May fill by appointment or may leave the office vacant; by-election is prohibited	s.263(5)3. MA

**Provincial Legislation – Qualifications and Eligibility to hold Office**

Section 17 of the MEA states as follows with respect to qualifications to hold office:

**Qualifications**

- (2) A person is entitled to be an elector at an election held in a local municipality if, on voting day, he or she,
  - (a) resides in the local municipality or is the owner or tenant of land there, or the spouse of such owner or tenant;
  - (b) is a Canadian citizen;
  - (c) is at least 18 years old; and
  - (d) is not prohibited from voting under subsection (3) or otherwise by law. 2002,

The MA sets out the following requirements to be held with respect to the eligibility to hold office:

**Eligibility, local municipality**

- 256. Every person is qualified to be elected or to hold office as a member of a council of a local municipality,
  - (a) who is entitled to be an elector in the local municipality under section 17 of the Municipal Elections Act, 1996; and
  - (b) who is not disqualified by this or any other Act from holding the office.

**How to fill a vacancy for a Head of Council**

Provincial legislation does not prescribe the process that is to be undertaken to make appointments to fill vacancies of offices on Municipal Council. The City of London does not have a policy regarding the filling of vacancies on Municipal Council. This is prudent because each circumstance is unique. It is within the purview of Municipal Council to determine the process that best fits the circumstances surrounding the vacancy. (e.g. position, timing, etc.).

The City Clerk has canvassed a number of municipalities and has found that the appointment of a current Member of Council to fill the vacancy for the Head of Council is the usual practice.

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**Appointment of a current Member of Council to fill a vacancy in the Office of Mayor**

Section 225 of the *Municipal Act*, 2001 sets out the role of the head of council as follows:

- to act as chief executive officer of the municipality;
- to preside over council meetings so that its business can be carried out efficiently and effectively;
- to provide leadership to council
- to provide information and recommendations to the council with respect to the role of council
- to represent the municipality at official functions
- to carry out the duties of the head of council under this or any other Act.

Given the importance of the role of the Mayor, it is imperative that this vacancy be filled as quickly as possible. Also, given the closeness to the municipal election (October 27, 2014), the position should ideally be filled by an individual who has municipal council experience and is familiar with the current policies and procedures of the City of London. The City Clerk recommends that under these circumstances, the office of Mayor be filled by a current Member of Council. The City Clerk also recommends that the process provided for in the attached Appendix "A" be considered to fill the vacancy of the office of Mayor.

**Possible Ward Seat Vacancy**

Should Municipal Council appoint a current Member of Council to the office of Mayor, a vacancy will occur in a Ward seat. In accordance with provincial legislation, Municipal Council will need to appoint a qualified individual to fill the vacant Ward seat. Similar to that of the office of the Mayor vacancy, Municipal Council would need to declare the seat vacant at its next Council Meeting and then fill the position, by appointment within 60 days after the day the declaration of the vacancy is made.

The following table sets out the vacancy appointment timelines based on the Council Meeting schedule. It is noted however, that Special Meetings of Council can be called, subject to providing a minimum of 24 hours notice of the meeting, in accordance with the Council Procedure By-law. Provincial legislation requires that the vacancy be filled within 60 days after the day Council declares the office vacant.

<b>FILLING OF VACANCY TIMELINES</b>	
June 23, 2014	<ul style="list-style-type: none"> <li>• Council declares the office of Mayor vacant</li> <li>• Council approves the process to fill the vacancy</li> </ul>
June 24, 2014	<ul style="list-style-type: none"> <li>• Council appoints a current Member of Municipal Council to the office of Mayor</li> </ul>
July 29, 2014 (or earlier if a Special Council Meeting is called)	<ul style="list-style-type: none"> <li>• Council declares the resulting Ward seat vacant</li> </ul>
September 2, 2014 (or earlier if a Special Council Meeting is called)	<ul style="list-style-type: none"> <li>• Council appoints an qualified individual to fill the vacant Ward seat</li> </ul>

The City Clerk's Office has canvassed a number of municipalities' processes and has found the following options have been used to fill vacancies on council other than the Head of Council:

1. Invite applications from any interested qualified elector to be considered for the vacancy and provide the applicant with an opportunity to address Municipal Council and respond to questions before a vote is taken.
2. Appoint an unsuccessful candidate from the most recent municipal election who ran for the same office or another office.
3. Appoint any other qualified individual who consents to the appointment.

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With respect to the Ward seat vacancy, the City Clerk's Office recommends, given the closeness to the municipal election (October 27, 2014), that the Municipal Council consider the appointment of a qualified individual who consents to the appointment, by means of nomination by members of Municipal Council, and that a selection process be developed to fill the Ward vacancy.

<b>PREPARED AND RECOMMENDED BY:</b>
<b>CATHY SAUNDERS CITY CLERK</b>

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## **Appendix "A"**

### **Procedure to Appoint a Member of Council to Fill the Vacancy in the Office of Mayor**

#### **1.0 Definitions**

"Appointment" shall mean an appointment by Council to fill the vacancy in the office of Mayor, in accordance with the *Municipal Act, 2001, c.25*.

"Chair" shall mean the member of Council presiding at the Council meeting at which an appointment to fill the vacancy in the office of Mayor is being considered.

"Council" shall mean the Council of The Corporation of the City of London.

"Council Appointment Meeting" means the regular or special council meeting where Council may appoint a member to fill the vacancy in the office of Mayor.

"member" shall mean a member of the Council.

"motion" shall mean a proposal by a member for the consideration of Council that is moved by a member and seconded by another member.

"slate of nominees" shall mean a list of all individuals who have been nominated, and have consented to that nomination, for appointment to fill the vacancy in the office of Mayor.

"vacancy" shall mean the vacancy in the office of Mayor arising from the resignation of J.F. Fontana..

#### **2.0 General**

2.1 The appointment to fill the vacancy in the office of Mayor shall be made in accordance with all applicable legislation.

2.2 Only a current member of Council shall be considered for appointment to fill the vacancy in the office of Mayor.

#### **3.0 Nomination and Voting Process**

3.1 At the Council Appointment Meeting, the Chair shall invite all members, in Ward order, to nominate, verbally, a member to fill the vacancy. Only one nomination is required for each nominee.

3.2 The Chair shall verbally confirm, as each nomination comes forward, that the nominee consents to having their name included on the slate of nominees. Only those members who consent to their nomination shall be included on a preliminary slate of nominees.

3.3 The City Clerk, or designate, shall compile a list of all nominees who have consented to nomination, which shall constitute a preliminary slate of nominees.

3.4 The Chair will invite separate motions for each name on the slate of nominees. For each name on the slate of nominees, the name receiving the least amount of "yes" votes will be removed from the slate of nominees until a majority of Council supports a nomination. Any names receiving no "yes" votes will automatically be removed from the slate of nominees.

3.5 The actions set out in section 3.4 will continue until such time as the members in attendance achieve a majority vote in support of a singular nominee.

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3.6 At any time the slate of nominees contains only one nominee, the Chair will immediately call for a motion to appoint that individual to fill the vacancy in the office of Mayor.