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| TO: | CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING OF OCTOBER 20, 2015 |
| FROM: | CATHY SAUNDERS CITY CLERK |
| SUBJECT: | PROVINCIAL REVIEW OF THE MUNICIPAL ACT, 2001 AND THE MUNICIPAL CONFLICT OF INTEREST ACT, 2009 |

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| RECOMMENDATION |
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That, on the recommendation of the City Clerk, this report BE RECEIVED for information.

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| PREVIOUS REPORTS |
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Item #3 – Corporate Services Committee – October 6, 2015

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| BACKGROUND |
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Municipal Council, at its meeting held on October 13, 2015 resolved:

That the following clause BE APPROVED in principle and be referred it to the October 20, 2015 meeting of the Corporate Services Committee for the purpose of giving consideration as to whether or not to also request the Province to consider potential sanctions that could restrict Council Members and/or Heads of Council under particular circumstances:

“That, on the recommendation of the Director of Community and Economic Innovation, the following actions be taken with respect to the provincial review of the Municipal Act, 2001 and the Municipal Conflict of Interest Act:

- a) the submission from the Association of Municipalities of Ontario (AMO), appended to the staff report dated October 6, 2015 as Appendix 1, BE ENDORSED;
- b) the additional comments by the City of London, appended to the staff report dated October 6, 2015 as Appendix 2, BE APPROVED for submission to the Province of Ontario subject to the following amendments:
 - i) exclusion of the section on community councils;
 - ii) inclusion of the previous position of Council regarding the regulations pertaining to local improvements;
 - iii) inclusion of clarification that notice provisions should have greater flexibility in order to enable a municipality to determine the most effective means of reaching out to engage and inform the community; and
- c) the City of London comments BE FORWARDED to local Members of the Legislative Assembly of Ontario.” (3/23/CSC) (AS AMENDED)”

In response to the referral, the following provides a summary of the pertinent legislation regarding this matter.

The Municipal Elections Act

The following excerpts from the Municipal Elections Act, 1996 sets out the qualifications to vote in a municipal elections and offences under the Act:

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, c. 17, Sched. D, s. 5 (2); 2005, c. 5, s. 46 (1).

Persons prohibited from voting

(3) The following are prohibited from voting:

1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
2. A corporation.
3. A person acting as executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
4. A person who was convicted of the corrupt practice described in subsection 90 (3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted. 1996, c. 32, Sched., s. 17 (3); 2006, c. 9, Sched. H, s. 4.

Who may be nominated

29. (1) A person may be nominated for an office only if, as of the day the person is nominated,

- (a) he or she is qualified to hold that office under the Act that creates it; and
- (b) he or she is not ineligible under this or any other Act or otherwise prohibited by law to be nominated for or to hold the office. 1996, c. 32, Sched., s. 29 (1); 2002, c. 17, Sched. D, s. 8 (1).

Certain persons eligible to be nominated

(1.1) Despite subsection (1) and despite section 258 of the *Municipal Act, 2001*, section 203 of the *City of Toronto Act, 2006*, section 9 of the *Legislative Assembly Act* and section 219 of the *Education Act*, a member of the Legislative Assembly of Ontario or the Senate or House of Commons of Canada is not ineligible to be nominated for an office in an election by virtue of being a member of any of those bodies but, if the person is a member of any of those bodies as of the close of nominations on nomination day of the election, the nomination shall be rejected by the clerk under section 35. 2002, c. 17, Sched. D, s. 8 (2); 2006, c. 32, Sched. C, s. 34 (1).

Offences

90. (1) If, when a person is convicted of an offence under section 89, the presiding judge finds that the offence was committed knowingly, the offence also constitutes a corrupt practice. 1996, c. 32, Sched., s. 90 (1); 2009, c. 33, Sched. 21, s. 8 (56).

Corrupt practices: bribery

(2) An offence described in subsection (3) constitutes a corrupt practice and a person who commits it is, on conviction, disqualified from voting at an election until the next regular election has taken place after the election to which the offence relates, in addition to being liable to any other penalty provided for in this Act. 2009, c. 33, Sched. 21, s. 8 (57).

Same

(3) No person shall, directly or indirectly,

- (a) offer, give, lend, or promise or agree to give or lend any valuable consideration, in connection with the exercise or non-exercise of an elector's vote;
- (b) advance, pay or cause to be paid money intending that it be used to commit an offence referred to in clause (a), or knowing that it will be used to repay money used in that way;
- (c) give, procure or promise or agree to procure an office or employment in connection with the exercise or non-exercise of an elector's vote;
- (d) apply for, accept or agree to accept any valuable consideration or office or employment in connection with the exercise or non-exercise of an elector's vote;
- (e) give, procure or promise or agree to procure an office or employment to induce a person to become a candidate, refrain from becoming a candidate or withdraw his or her candidacy.

Municipal Act

The following excerpts from the Municipal Act, 2001 sets out eligibility to hold office and current sanctions with respect to violations under a council's code of conduct where an integrity commissioner has been appointed by municipal council.

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. 2001, c. 25, s. 256.

Ineligible

[258. \(1\)](#) The following are not eligible to be elected as a member of a council or to hold office as a member of a council:

1. Except in accordance with section 30 of the *Municipal Elections Act, 1996*,
 - i. an employee of the municipality,
 - ii. 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 or an investigator referred to in subsection 239.2 (1) of the municipality, or
 - iii. a person who is not an employee of the municipality but who holds any administrative position of the municipality.
2. A judge of any court.
3. A member of the Assembly as provided in the *Legislative Assembly Act* or of the Senate or House of Commons of Canada.
4. Except in accordance with Part V of the *Public Service of Ontario Act, 2006* and any regulations made under that Part, a public servant within the meaning of that Act. 2001, c. 25, s. 258 (1); 2006, c. 32, Sched. A, s. 110; 2006, c. 35, Sched. C, s. 86.

Disqualification

[\(2\)](#) A member of council of a municipality is disqualified from holding office if, at any time during the term of office of that member, he or she,

- (a) ceases to be a Canadian citizen;
- (b) is not a resident, the owner or tenant of land or the spouse of an owner or tenant of land in the municipality, in the case of a member of council of a local municipality, or in a lower-tier municipality within the upper-tier municipality, in the case of a member of council of an upper-tier municipality; or
- (c) would be prohibited under this or any other Act from voting in an election for the office of member of council of the municipality if an election was held at that time. 2001, c. 25, s. 258 (2); 2005, c. 5, s. 44 (3).

Integrity Commissioner

[223.3 \(1\)](#) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
- (b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or
- (c) both of clauses (a) and (b). 2006, c. 32, Sched. A, s. 98.

Powers and duties

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 98.

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006, c. 32, Sched. A, s. 98.

Municipal Conflict of Interest Act

The following excerpts from the Municipal Conflict of Interest Act, 1990 provides information relevant to contraventions under the Act and resulting penalties.

Who may try alleged contravention of s. 5 (1-3)

8. The question of whether or not a member has contravened subsection 5 (1), (2) or (3) may be tried and determined by a judge. R.S.O. 1990, c. M.50, s. 8.

Who may apply to judge

9. (1) Subject to subsection (3), an elector may, within six weeks after the fact comes to his or her knowledge that a member may have contravened subsection 5 (1), (2) or (3), apply to the judge for a determination of the question of whether the member has contravened subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (1).

Contents of notice of application

(2) The elector in his or her notice of application shall state the grounds for finding a contravention by the member of subsection 5 (1), (2) or (3). R.S.O. 1990, c. M.50, s. 9 (2).

Time for bringing application limited

(3) No application shall be brought under subsection (1) after the expiration of six years from the time at which the contravention is alleged to have occurred. R.S.O. 1990, c. M.50, s. 9 (3).

Power of judge to declare seat vacant, disqualify member and require restitution

10. (1) Subject to subsection (2), where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), the judge,

- (a) shall, in the case of a member, declare the seat of the member vacant; and
- (b) may disqualify the member or former member from being a member during a period thereafter of not more than seven years; and
- (c) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member. R.S.O. 1990, c. M.50, s. 10 (1).

Saving by reason of inadvertence or error

(2) Where the judge determines that a member or a former member while he or she was a member has contravened subsection 5 (1), (2) or (3), if the judge finds that the contravention was committed through inadvertence or by reason of an error in judgment, the member is not subject to having his or her seat declared vacant and the member or former member is not subject to being disqualified as a member, as provided by subsection (1). R.S.O. 1990, c. M.50, s. 10 (2).

Member not to be suspended

(3) The authority to disqualify a member in subsection (1) does not include the right to suspend a member. R.S.O. 1990, c. M.50, s. 10 (3).

Transition: disqualification

(4) A disqualification of a member of a school board under this section that would have continued after December 31, 1997 but for the dissolution of the school board continues for its duration with respect to membership on any board whose members are elected by members of the electoral group who elected the member. 1997, c. 31, s. 156 (2).

Summary

The Municipal Elections Act, 1996 and the Municipal Act, 2001 establish the qualifications and eligibility of an individual to be elected to hold municipal office.

The Municipal Conflict of Interest Act, 1990 sets out circumstances where a member of council may become disqualified from holding office.

The Municipal Act, 2001 sets out the role of the Integrity Commissioner as it relates a council's code of conduct and establishes penalties for those members who are found to be in contravention of the council's code of conduct.

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| RECOMMENDED BY: |
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