

Date: 2022-06-08

Subject: **Declaration of Vacant Council Office under Section 262(1) of the Municipal Act, 2001**

Contact: Shawnica Hans, Program Manager, Elections, City Clerk's Office, 905.874.3481, shawnica.hans@brampton.ca

Report Number: Legislative Services-2022-620

Recommendations:

1. That the report re: **Declaration of Vacant Council Office under Section 262(1) of the *Municipal Act, 2001***, to the City Council Meeting of June 15, 2022, be received;
2. That as a result of City Councillor Charmaine Williams being elected to the provincial assembly as a Member of Provincial Parliament on June 2, 2022, and her resignation filed with the Clerk (effective June 8, 2022, at 11:59 pm), Brampton City Council, in accordance with Section 262(1) of the *Municipal Act, 2001*, declare the office of City Councillor, Wards 7 and 8, to be vacant.

Overview:

- **Section 258(3) of the *Municipal Act, 2001*, states that a Member of Council is not eligible to hold office if that Member is or becomes a member of the Assembly as provided in the *Legislative Assembly Act*, or of the Senate or House of Commons of Canada.**
- **In accordance with Section 259(1) of the *Municipal Act, 2001*, the office of a Member of Council becomes vacant if the Member becomes disqualified under Section 258 of the Act.**
- **Section 262 of the Act states that if the office of a Member of Council becomes vacant, the Council shall at its next meeting declare the office to be vacant.**

- **At its Special Meeting on May 31, 2022, Council passed a Resolution to appoint former City and Regional Councillor Elaine Moore to fill the office of City Councillor, Wards 7 and 8, in the event that the office became vacant and upon the declaration of vacancy (Resolution C168-2022).**
- **On June 2, 2022, City Councillor for Wards 7 and 8, Charmaine Williams, was elected to the Legislative Assembly of Ontario as a Member of Provincial Parliament, representing the Brampton Centre riding.**
- **On June 7, 2022, Councillor Williams issued her resignation, as City Councillor for Wards 7 and 8, to the Clerk, to be effective as of June 8, 2022, at 11:59 pm.**

Background:

In accordance with the *Municipal Act, 2001*, when the office of a Member of Council becomes vacant, Council is required to declare the office vacant.

Vacancy

A vacancy can occur in several ways, including the resignation or death of a Member, or when a Member becomes disqualified or ineligible from holding office.

Section 258(1)(3) of the *Municipal Act, 2001*, states that a Member is ineligible to be elected as a member of a council or to hold office as a member of council, if the member is a member of the provincial Assembly, or a member of the Senate or House of Commons of Canada. Section 259 (1)(a) states that the office of a member of council becomes vacant if the member becomes disqualified from holding office if they are deemed ineligible under Section 258.

On June 2, 2022, City Councillor for Wards 7 and 8, Charmaine Williams, was elected to the provincial Assembly.

In accordance with Section 9(2) of the *Legislative Assembly Act*, a member of municipal office is deemed to have resigned when their election to the provincial Assembly is published in The Ontario Gazette.

A member may also resign from office under Section 260 of the *Municipal Act, 2001*, by filing a written notice of resignation with the Clerk of the municipality. On June 7, 2022, Councillor Williams issued her resignation as City Councillor for Wards 7 and 8, to the Clerk, to be effective as of June 8, 2022, at 11:59 pm. A copy of Councillor Williams' resignation letter is attached as Appendix 1 to this report.

Declaring a Vacancy

If the office of a Member of Council becomes vacant under Section 259 of the *Municipal Act, 2001*, Council shall declare a vacancy at its next meeting. 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:

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.

Filling a Vacancy via Appointment

To be appointed to fill a vacancy, a person must be:

- A Canadian citizen
- At least 18 years of age
- A resident of the City of Brampton, or the owner or tenant of land in Brampton, or the spouse of such owner or tenant
- Not prohibited from voting in a municipal election
- Not prohibited from holding office under any applicable legislation

Following an appointment by Council, a new Councillor will serve from the time their oath of office is taken to the end of the current term of council (the 2018-2022 term ends on November 14, 2022).

Filling a Vacancy via By-Election

Although the *Municipal Act* provides that a Council may choose to fill a vacancy by directing the Clerk to hold a by-election, in accordance with Section 65(2) of the *Municipal Elections Act, 1996*, no by-election shall be held to fill an office that becomes vacant after March 31 in the year of a regular election. The next regular municipal and school board election will take place on October 24, 2022. As such, a by-election cannot occur to fill the subject vacancy.

Current Situation:

In accordance with the *Municipal Act, 2001*, and the *Legislative Assembly Act*, as City Councillor for Wards 7 and 8, Charmaine Williams, was elected to the legislative assembly on June 2, 2022, and has issued her resignation from municipal office to the Clerk, Brampton City Council must declare the office of City Councillor, Wards 7 and 8 to be vacant.

Next Steps

To meet the requirements of the *Municipal Act, 2001*, Council must declare the office of City Councillor, Wards 7 and 8 vacant, given the resignation of the Councillor.

In anticipation of the provincial election results, at its Special Meeting of May 31, 2022, Council appointed former City and Regional Councillor Elaine Moore to fill the office of City Councillor, Wards 7 and 8, should it become vacant, in accordance with Resolution C168-2022, as follows:

Whereas Brampton taxpayers elect a city and a regional councillor in their Wards;

Whereas representative continuity is important and expected to ensure responsible oversight and stewardship from the beginning to the end of the elected term of office;

Whereas there exists the potential for a city councillor seat vacancy prior to the end of the 2018-2022 term of office for Wards 7&8;

Therefore be it resolved that, in the event the Wards 7&8 City Councillor position becomes vacant, that former City and Regional Councillor Elaine Moore, subject to her declaration of consent being provided to the City Clerk, be appointed to fill the position until the end of the term of office, and that such appointment be effective upon the declaration of vacancy of the said seat.

Based on Council's Resolution, Elaine Moore signed a Consent of Appointee form to consent to an appointment (in accordance with section 263 (1) (a) of the *Municipal Act, 2001*) and provided an acknowledgement of qualifications to hold office in accordance with the *Municipal Elections Act*.

Vacancies in Committee and Board Appointments

The vacancy in the office of City Councillor, Wards 7 and 8, will result in several vacancies to committee and board appointments, including:

- Committee of Council – Community Services Section (Vice-Chair)
- Governance and Council Operations Committee (Member)
- Brampton School Traffic Safety Council (Member)
- Age-Friendly Brampton Advisory Committee (Member)
- Brampton Library Board (Member)
- Brampton Senior Citizens Council (Member)
- Brampton Community Safety Advisory Committee (Chair)

A practice in place in other municipalities, when vacancies occur, is the municipal council customarily appoints the incoming Councillor to the resulting committee and board vacancies. If Council decides, the person who fills the vacancy may automatically assume the seats and role appointments on the committees and boards for the remainder of the current term of council. Alternatively, Council may either direct the Clerk to canvass Members for their interest in appointment to the other vacancies and report the results to a future meeting, or given the lateness in the term, Council may wish to consider making appointments to fill some of these vacancies at this meeting.

Corporate Implications:

Financial Implications:

There are no financial implications from declaring the office of City Councillor, Wards 7 and 8, vacant.

The person appointed to fill the vacancy of City Councillor, Wards 7 and 8, will receive the balance of the budgeted 2022 remuneration beginning on the day they are sworn into office, until the end of the current term of council, on November 14, 2022.

Other Implications:

There are no other implications resulting from this report.

Term of Council Priorities:

This report achieves the priority of a Well-Run City by complying with the prevailing legislation to facilitate the legislated requirements of declaring a vacant office, and appointing an eligible person to fill the vacancy. The appointed person ensures equitable distribution of constituent representation at City of Brampton Council.

Conclusion:

To meet the requirements of the *Municipal Act, 2001*, Council must declare the office of City Councillor, Wards 7 and 8, vacant, after a vacancy occurs. A vacancy has occurred as a result of the provincial election and resignation from municipal office by Charmaine Williams.

Authored by:

Reviewed by:

Shauna Danton, Coordinator, Elections
and Special Projects

Shawnica Hans, Program Manager,
Elections, and Peter Fay, City Clerk

Approved by:

Diana Soos, Commissioner, Legislative
Services

Attachments:

Appendix 1 – Letter of resignation (dated June 7, 2022), from Charmaine Williams, City Councillor, Wards 7 and 8.