

CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Financial Services Division

Report to: Mayor and Members Committee of the Whole	Submitted by: Joseph L. Rinaldo General Manager Finance and Corporate Services
Date: June 28, 2007	Prepared by: Joseph Rinaldo ext. 6150

**SUBJECT: Councillor Remuneration - One-Third Tax Free Provision (FCS07026)
(City Wide) - Audit and Administration Committee: Outstanding
Business Item G**

RECOMMENDATION:

- a) That report FCS07026 "Councillor Remuneration - One-Third Tax Free Provision" be received for information; and
- b) That Item G be removed from the Outstanding Business List of the Audit and Administration Committee.

Joseph L. Rinaldo
General Manager
Finance & Corporate Services

EXECUTIVE SUMMARY:

In 2001, the Province of Ontario amended the Municipal Act permitting municipalities to remove the one-third tax free provision which is included in the remuneration and/or honorariums of Members of Council. The Province had also removed the same tax free provision for Members of the Legislature. The purpose of these changes was to provide greater accountability and to create full transparency as it relates to total remuneration for elected officials. Clearly, the intent of the changes in the legislation is to eliminate the tax free allowance which was also eliminated by a number of other provinces.

Each term of Council must review By-Law 02-354 (refer to Appendix 'C' to report FCS07026) respecting the continuation of the one-third tax free provision and decide whether to maintain the tax free status or convert their remuneration to 100% taxable.

Once Council elects to eliminate this provision, future Councils cannot revert back to the tax free allowance and it becomes effective in the subsequent year.

As set out in Appendix 'A' to report FCS07026 (Survey of Tax Treatment of Remuneration for Elected Officials), the majority (2/3) of the municipalities in our comparator group have opted for a fully taxable remuneration. For those municipalities who opted to gross up the one-third tax-free component, the salary was increased so that the net pay was the same as previously provided. This is consistent with the recommendation of the Transition Board which was charged with the responsibility of establishing the remuneration for the Mayor and Members of Council of the newly amalgamated city.

Should Council elect to eliminate the tax free provision to provide greater accountability and create more transparency to our community, it is recommended to maintain a similar remuneration structure as our comparator municipalities and to repeal the previous by-law providing for a one-third tax free provision. For example, the current annual remuneration for Members of Council of \$56,358 would have to increase on January 1, 2008, to \$68,177 in order to provide the same net remuneration (refer to Appendix 'B' to report FCS07026, Options 1a & 1b). For the Mayor, the remuneration would increase from \$111,713 to \$147,335.

Consultant's Recommendations

The report which is being submitted by Gazda, Houlne & Associates Inc. (*refer to report CM06016(a)*) is recommending that the remuneration for elected officials should be adjusted to reflect the 50th percentile of the comparator group (\$63,750 in 2006 dollars for Members of Council and \$111,713 in 2006 dollars for the Mayor). The consultant is also recommending that remuneration be adjusted by the same increase as the Non-Union Employees (2.5% in 2007). Should Council elect to implement the consultant's recommendations which also proposes to retain the one-third tax free provision, the 2007 remuneration for the Mayor would increase to \$114,506 and \$65,344 for Members of Council.

While the consultant is recommending maintaining the one-third tax free provision, Council can elect to eliminate the tax free provision. The annual remuneration for the Mayor would increase on January 1, 2008, from \$114,506 to \$151,585 (2007 dollars) and from \$65,344 to \$79,401 (2007 dollars).

BACKGROUND:

Under current tax legislation, one-third of a Councillor's total remuneration can be excluded from income (tax free). Total remuneration consists of:

- a) salaries and honorariums;
- b) general expense allowance; and
- c) mileage or other travel allowance

Provided that reimbursement for (b) and (c) are not of a non-accountable nature, then these reimbursements can be excluded in determining the maximum one-third expense allowance.

Currently, the Mayor and Council Members are receiving one-third of their remuneration as non-taxable and non-pensionable for the purpose of OMERS benefits. On December 11, 2001, the new Municipal Act, which was passed by the Ontario Legislature, provides flexibility for municipalities to eliminate the one-third tax free provision. The purpose was to provide greater accountability and to create full transparency as it relates to total remuneration for elected officials. Clearly, the intent of the changes in the legislation is to eliminate the tax free allowance which was also eliminated by a number of provinces including Ontario.

Therefore, as of January 1, 2003, the one-third exemption no longer applies unless Council passes a resolution in each term of Council to maintain it. If a resolution is not enacted, then the one-third portion would become taxable and pensionable for OMERS.

There are no provisions in the Act to provide elected officials, on an individual basis, the choice of fully taxable or one-third exempt remuneration. Nor are there provisions for subsequent Councils to reinstate the one-third tax free provision. However, if a resolution is passed to continue the one-third tax free provision, then subsection 283 (7) requires that each subsequent Council review the by-law at a public meeting at least once in its' four-year term.

For the past two terms, the previous Councils passed a resolution to maintain the one-third tax free portion of their remuneration. The current Council is now required to review By-Law 02-354 and determine whether or not to retain the tax free provision.

ANALYSIS/RATIONALE:

Consultant's Recommendations

A review conducted by Gazda, Houlne & Associates Inc. is recommending that the elected officials' remuneration be adjusted to reflect the 50th percentile of the comparator group. This would require an adjustment in 2006 dollars to \$63,750 (from \$55,856) for Councillors and no change to the Mayor's remuneration of \$111,713, since this remuneration is currently close to the median. Further, by increasing the Councillors' remuneration to the 50th percentile, the differential rate between the Mayor and Councillor remunerations would align with the market average of 57%. Currently, Councillors' remuneration is 50% of the Mayor's. The Consultant is also recommending that the annual increase for Members of Council be adjusted by the same increase as the non-union employees. Therefore, for 2007, a further adjustment of 2.5% would be required which would bring the 2007 remuneration for the Mayor to \$114,506 and \$65,344. The consultant is also recommending retaining the one-third tax free provision.

At the time that Council last reviewed the taxability of their one-third allowance, 9 out of the 12 municipalities in the comparator group were maintaining the one third tax free exemption. As set out in Appendix 'A' to report FCS07026, this position has shifted with only 4 out of 12 municipalities maintaining the one-third tax free provision. All municipalities that provide fully taxable remunerations grossed up the remuneration, in some manner, to off-set the tax impact.

As required under subsection 283(7), Council must review the by-law and, if desired, must repeal the previous by-law should it wish to abolish the one-third tax free exemption. Council would have to repeal the by-law previously enacted to maintain the one-third tax free component of their remuneration. The advantage of the elimination of the tax free provision is to provide greater transparency and a better understanding of the total compensation of its' Members of Council and provide better comparable information on the remuneration of other elected officials or positions within other employment sectors. However, it will require an increase between \$280,000 and \$324,000 to the 2008 budget which will have a direct impact on the municipal tax levy.

In accordance with the Municipal Act, the repealing by-law would become effective the first day of the calendar year following the enactment. Consequently, the conversion to 100% taxable can occur no earlier than January 1st, 2008.

ALTERNATIVES FOR CONSIDERATION:

The costing (refer to Appendix 'B' of report FCS07026) and the required resolutions for the various alternative options are being provided for Council's consideration:

Option 1a: Current Remuneration (2007) – Maintain 1/3 Tax Free Provision

This option is the status quo and would require that Council pass the following resolutions confirming that it wishes to retain the 1/3 non-taxable provision:

That City Council confirm its' intention to retain, for this term of Council, one-third of the remuneration paid to the elected Members of Council and its' Local Boards as expenses incident to the discharge of their duties as Members of Council and its' Local Boards; and

That the continuation of the One-Third Tax Free Provision be reconsidered during the next Term of Council (2011-2014).

Option 1b: Current Remuneration (2007) - Eliminate Tax Free Provision

This option would require that Council repeal By-Law 02-354 thereby converting the former one-third exempt portion as fully taxable under federal tax legislation and pensionable under the OMERS Act. In order to maintain the same current net pay as that provided under the one-third tax method, the remuneration for the Mayor would have to increase on January 1, 2008, from \$111,713 to \$147,335 and from \$56,358 to

\$68,177 for Members of Council. In addition, each Councillor (Mayor) would receive an increase in annual pension, per year of credited service, of \$571 (\$1,474), as well as, an increase in life insurance and LTD benefits.

Since the Municipal Act requires that the repealing by-law becomes effective in the subsequent year, this option would increase the 2008 base budget by \$280,000.

The following resolution would require Council approval:

That the One-Third Tax Free Provision included in the remuneration for Members of Council be eliminated and a by-law repealing the continuation of this provision be submitted to Council for approval.

Option 2a/3a: Implementation of Consultant's Recommendations: Proposed Increase in Remuneration – Maintain 1/3 Tax Free Provision

This option would require that Council adopt the recommendations contained in the Gazda, Houlne & Associates Inc. report (*refer to report CM06016(a)*). The recommendation is to increase total remuneration for elected officials to the 50th percentile of the comparator group. This change would result in an increase for Members of Council in their remuneration to \$63,750 in 2006 dollars (currently \$56,358). The report recommends that the 2006 remuneration for the Mayor would be unchanged since it is currently at the 50th percentile. The consultant is also recommending that the remuneration for Members of Council be indexed by the same increase as non-union employees starting in 2007 (2.5%) and that the one-third tax free provision is maintained. Therefore, he is recommending the 2007 remuneration be \$114,506 for the Mayor and \$65,344 for Councillors (Option 3A).

The cost to provide this option is \$151,000 and sufficient funds have been provided in the 2007 budget.

The following resolutions would require Council approval:

That the recommendations included in the Gazda, Houlne & Associates Inc. report, attached to report CM06016(a), be approved;

That effective January 1, 2007, By-Law 01-023, respecting the annual CPI indexation for Members of Council be amended, to provide annual increases effective each January 1st, equivalent to that provided to Non-Union Supervisory employees and a By-Law amending this provision be submitted to Council for approval;

That City Council confirm its' intention to retain, for this term of Council, the one-third of the remuneration paid to the elected Members of Council and its' Local Boards as expenses incident to the discharge of their duties as Members of Council and its' Local Boards; and

That the continuation of the One-Third Tax Free Provision be reconsidered during the next Term of Council (2011-2014).

Option 3b: Implement Consultant's Recommendations - Eliminate Tax Free Provision

Option 3b, implements the consultant's recommendations and eliminates the one-third tax free provision. In order to maintain the same current net pay as that provided under the one-third tax free method, the remuneration for the Mayor would have to increase on January 1, 2008, from \$114,506 to \$151,585 (2007 dollars) and from \$65,344 to \$79,401 for Members of Council. In addition, each Councillor (Mayor) would receive an increase in annual pension per year of credited service of \$795 (\$1,529), as well as, an increase in life insurance and LTD benefits.

The Municipal Act requires that the repealing by-law becomes effective in the subsequent year. Therefore, the cost of this option is \$151,000 in 2007 which has been provided in the 2007 budget and would increase the 2008 base budget by \$324,000.

The following resolutions would require Council approval:

That the recommendations included in the Gazda, Houlne & Associates Inc. report, attached to report CM06016(a), be approved;

That effective January 1, 2007, By-Law 01-023, respecting the annual CPI indexation for Members of Council be amended, to provide annual increases effective each January 1st, equivalent to that provided to Non-Union Supervisory employees and a By-Law amending this provision be submitted to Council for approval; and

That the One-Third Tax Free Provision, included in the remuneration for Members of Council, be eliminated and a by-law repealing the continuation of this provision be submitted to Council for approval.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

The financial implications and related resolutions have been set out with each option.

Legal Implications

In accordance with the Municipal Act, Council is required to review at a public meeting, at least once during the four-year term, By-Law 02-354 being the By-Law under subsection 283(5) of the Municipal Act, R.S.O 2001 respecting the continuation of the one-third tax free provision.

POLICIES AFFECTING PROPOSAL:

A decision to eliminate the one-third tax free provision will bind subsequent Councils to maintain the remuneration for elected officials fully taxable. There is no provision in the Municipal Act to reinstate the one-third tax free provision.

RELEVANT CONSULTATION:

Information in Appendix 'A' to report FCS07026 was provided by Gazda, Houle & Associates Inc.

CITY STRATEGIC COMMITMENT:

By evaluating the “**Triple Bottom Line**”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. Yes No

N/A

The recommendation will better attract local business people to public office who would bring useful skills/experience to the decision-making role of Council.

Environmental Well-Being is enhanced. Yes No

N/A

Economic Well-Being is enhanced. Yes No

N/A

Does the option you are recommending create value across all three bottom lines?

Yes No

N/A

Do the options you are recommending make Hamilton a City of choice for high performance public servants? Yes No

The recommendation will better attract local business people to public office who would bring useful skills/experience to the decision-making role of Council.

APPENDIX 'A' to FCS07026

Survey of Tax Treatment of Remuneration for Elected Officials

Municipality	Tax Treatment
City of Burlington	100% Taxable
City of Windsor	1/3 non-taxable
Regional Municipality of Halton	100% Taxable
City of Brampton	1/3 non-taxable
City of Mississauga	100% Taxable
City of London	1/3 non-taxable
Regional Municipality of Waterloo	100% Taxable
Regional Municipality of Niagara	1/3 non-taxable
Regional Municipality of Durham	100% Taxable
City of Ottawa	100% Taxable
Regional Municipality of Peel	100% Taxable
Regional Municipality of York	100% Taxable

COMPARISON OF VARIOUS REMUNERATION METHODS

Chart 1: Effect of Net Pay and Pension

	Option 1		Option 1a		Option 1b		Option 2a		Option 2b		Option 3a		Option 3b	
	Current Remuneration (2006 dollars)		Current Remuneration (2007 dollars)		Current Remuneration fully taxable and grossed up (2007 dollars)		Consultant's recommendation (2006 dollars)		Consultant's recommendation converted to a fully taxable grossed up remuneration (2006 dollars)		Consultant's recommendation (2007 dollars)		Consultant's recommendation converted to a fully taxable grossed up remuneration (2007 dollars)	
Total Remuneration	\$ 55,856.00	\$ 111,713.00	\$ 56,358.00	\$ 112,719.76	\$ 68,177.07	\$ 148,867.36	\$ 63,750.00	\$ 111,713.00	\$ 77,134.07	\$ 147,335.24	\$ 65,344.00	\$ 114,506.00	\$ 79,401.25	\$ 151,585.62
	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor
	1/3 Tax Exempt		1/3 Tax Exempt		Fully Taxable - Grossed Up		1/3 Tax Exempt		Fully Taxable - Grossed Up		1/3 Tax Exempt		Fully Taxable - Grossed Up	
Taxable Earnings	\$ 37,237.33	\$ 74,475.33	\$ 37,572.08	\$ 75,146.51	\$ 68,177.07	\$ 148,867.36	\$ 42,500.00	\$ 74,475.33	\$ 77,134.07	\$ 147,335.24	\$ 43,562.67	\$ 76,337.33	\$ 79,401.25	\$ 151,585.62
Non Taxable Earnings	18,618.67	37,237.67	18,786.04	37,573.25	-	-	21,250.00	37,237.67	-	-	21,781.33	38,168.67	-	-
Income Tax	(5,386.70)	(16,080.95)	(5,450.59)	(16,281.04)	(14,218.10)	(45,351.43)	(6,838.76)	(16,080.95)	(16,875.76)	(44,708.64)	(7,136.93)	(16,636.07)	(17,751.13)	(46,491.85)
CPP	(1,670.00)	(1,989.90)	(1,686.57)	(1,989.90)	(1,989.90)	(1,989.90)	(1,930.50)	(1,989.90)	(1,989.90)	(1,989.90)	(1,983.10)	(1,989.90)	(1,989.90)	(1,989.90)
OMERS	(2,420.43)	(5,794.93)	(2,442.19)	(5,859.36)	(5,190.30)	(12,936.57)	(2,762.50)	(5,794.93)	(6,050.17)	(12,789.48)	(2,831.57)	(5,973.68)	(6,267.82)	(13,197.52)
Net Pay	\$ 46,378.87	\$ 87,847.22	\$ 46,778.77	\$ 88,589.46	\$ 46,778.77	\$ 88,589.46	\$ 52,218.24	\$ 87,847.22	\$ 52,218.24	\$ 87,847.22	\$ 53,392.40	\$ 89,906.35	\$ 53,392.40	\$ 89,906.35
Loss of Net Pay Compared to Status Quo - Option 1a					\$ -	\$ 0.00	\$ 5,439.47	\$ (742.24)	\$ 5,439.47	\$ (742.24)	\$ 6,613.63	\$ 1,316.89	\$ 6,613.63	\$ 1,316.89
Annual Pension commencing age 65 for each yr of credited service	\$ 493.39	\$ 1,194.53	\$ 497.83	\$ 1,207.96	\$ 1,068.57	\$ 2,682.37	\$ 563.13	\$ 1,194.53	\$ 1,247.71	\$ 2,651.73	\$ 577.21	\$ 1,231.77	\$ 1,293.05	\$ 2,736.74
Increase in Annual Pension for each yr of additional credited service as compared to status quo - Option 1a	NA	NA	NA	NA	\$ 570.74	\$ 1,474.42	\$ 65.29	\$ (13.42)	\$ 749.88	\$ 1,443.77	\$ 79.38	\$ 23.82	\$ 795.22	\$ 1,528.78

Chart 2: Comparison of Costs

	Option 1		Option 1a		Option 1b		Option 2a		Option 2b		Option 3a		Option 3b	
	Current Remuneration (2006 dollars)		Current Remuneration (2007 dollars)		Current Remuneration fully taxable and grossed up (2007 dollars)		Consultant's recommendation (2006 dollars)		Consultant's recommendation converted to a fully taxable grossed up remuneration (2006 dollars)		Consultant's recommendation (2007 dollars)		Consultant's recommendation converted to a fully taxable grossed up remuneration (2007 dollars)	
Total Remuneration	\$ 55,856.00	\$ 111,713.00	\$ 56,358.12	\$ 112,719.76	\$ 68,177.07	\$ 148,867.36	\$ 63,750.00	\$ 111,713.00	\$ 77,134.07	\$ 147,335.24	\$ 65,344.00	\$ 114,506.00	\$ 79,401.25	\$ 151,585.62
	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor	Councillor	Mayor
	1/3 Tax Exempt		1/3 Tax Exempt		Fully Taxable - Grossed Up		1/3 Tax Exempt		Fully Taxable - Grossed Up		1/3 Tax Exempt		Fully Taxable - Grossed Up	
Taxable Earnings	\$ 37,237.33	\$ 74,475.33	\$ 37,572.08	\$ 75,146.51	\$ 68,177.07	\$ 148,867.36	\$ 42,500.00	\$ 74,475.33	\$ 77,134.07	\$ 147,335.24	\$ 43,562.67	\$ 76,337.33	\$ 79,401.25	\$ 151,585.62
Non Taxable Earnings	18,618.67	37,237.67	18,786.04	37,573.25	-	-	21,250.00	37,237.67	-	-	21,781.33	38,168.67	-	-
Income Tax	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CPP	1,670.00	1,989.90	1,686.57	1,989.90	1,989.90	1,989.90	1,930.50	1,989.90	1,989.90	1,989.90	1,983.10	1,989.90	1,989.90	1,989.90
OMERS	2,420.43	5,794.93	2,442.19	5,859.36	5,190.30	12,936.57	2,762.50	5,794.93	6,050.17	12,789.48	2,831.57	5,973.68	6,267.82	13,197.52
EHT	726.13	1,452.27	732.66	1,465.36	1,329.45	2,902.91	828.75	1,452.27	1,504.11	2,873.04	849.47	1,488.58	1,548.32	2,955.92
Benefits	4,522.73	5,501.13	4,530.75	5,517.19	4,738.91	6,151.56	4,661.66	5,501.13	4,894.45	6,124.24	4,689.58	5,550.05	4,982.61	6,126.49
# of Elected Officials	65,195.29	126,451.23	65,750.29	127,551.57	81,425.63	172,848.30	73,933.41	126,451.23	91,572.70	171,111.90	75,697.72	129,508.21	94,189.90	175,855.45
	15.00	1.00	15.00	1.00	15.00	1.00	15.00	1.00	15.00	1.00	15.00	1.00	15.00	1.00
Total Annual Cost	\$ 977,929.38	\$ 126,451.23	\$ 986,254.38	\$ 127,551.57	\$ 1,221,384.48	\$ 172,848.30	\$ 1,109,001.18	\$ 126,451.23	\$ 1,373,590.53	\$ 171,111.90	\$ 1,135,465.83	\$ 129,508.21	\$ 1,412,848.53	\$ 175,855.45
Additional Annual Cost - Compared to Option 1a					\$280,426.83		\$121,646.46		\$430,896.48		\$151,168.09		\$474,898.03	

Assumptions:
- assumes basic tax exemption and 2007 rates

Authority: Item 23, Committee of the Whole
Report 02-042 (FCS02 139)
CM: December 11, 2002

BILL NO. 354

CITY OF HAMILTON

BY-LAW NO. 02-354

**BEING A BY-LAW UNDER SUBSECTION 255(2) OF THE MUNICIPAL ACT
RESPECTING CONTINUATION OF ONE-THIRD TAX FREE BENEFIT**

WHEREAS subsection 255 (1) of the Municipal Act, R.S.O. 1990, c. M.45, as amended, provides that one-third of the remuneration paid to the elected members of councils and their local boards shall be considered as expenses incident to the discharge of their duties as members of council or local board; and

WHEREAS subsection 255 (2) of the Municipal Act, R.S.O. 1990, c. M.45, as amended, provides that the provisions of subsection 255 (1) shall only continue to apply to members of council or its local boards after January 1, 2003 if the municipality passes a resolution before January 1, 2003 stating its intention that the provisions of subsection 255 (1) shall continue to apply to elected members of council and its local board; and

WHEREAS the Council of the City of Hamilton hereby deems it desirable to continue the provisions of subsection 255 (1) of the Municipal Act beyond January 1, 2003

NOW THEREFORE be it resolved that:


It is the intention of the Council of the City of Hamilton that the provision of subsection 255(1) continue to apply to the elected members of this council and its local boards on and after January 1, 2003.

This resolution shall come into force and take effect as of January 1, 2003.

PASSED and **ENACTED** this 1 1th day of December, 2002.



Mayor



Acting City Clerk