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Memorandum

To: City Council
Date: July 17, 2018
From: Joel Watts, Deputy Clerk
Subject: Fence-Viewer Resignation

Recommendation

That the July 17, 2018 memorandum from Joel Watts, Deputy Clerk, regarding Fence-Viewer Resignation, be received;

That the notice of resignation, dated June 29, 2018, of Fence-Viewer Charles Clarke, be received; and

That a by-law to amend by-law 2015-024 be presented to Council for adoption to reflect the resignation, effective the date of the by-law adoption.

Background

A letter of resignation was received from Fence-Viewer Charles Clarke on June 29, 2018, (attached as Schedule A) with the expressed intention of allowing him to run for City Council. Fence-Viewers may be perceived as 'employees' of the municipality as they are appointed specifically by name with a by-law.

The Municipal Act states the following:

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.

The Municipal Elections Act states the following regarding employees running for Council:

Employee of municipality or local board

30 (1) An employee of a municipality or local board is eligible to be a candidate for and to be elected as a member of the council or local board that is the employer if he or she takes an unpaid leave of absence beginning as of the day the employee is nominated and ending on voting day. 1996, c. 32, Sched., s. 30 (1); 2002, c. 17, Sched. D, s. 9 (1).

Notice of leave

(2) The employee shall give the council or local board written notice, in advance, of his or her intention to take unpaid leave under subsection (1). 1996, c. 32, Sched., s. 30 (2).

Right to unpaid leave

(3) The employee is entitled, as of right, to take unpaid leave under subsection (1). 2002, c. 17, Sched. D, s. 9 (2).

The Clerk's Office has spoken with Mr. Clarke and confirmed his intentions to run for City Council, and has advised him of this memo and by-law amendment being presented to Council.

Considerations

Mr. Clarke has opted to resign rather than take a leave of absence as Fence-Viewer. This provides clarity regarding his intentions, and no leave-of-absence will need to be authorized by Council. However, as a by-law was adopted to appoint him as a Fence-Viewer, Council is required to amend the by-law to clearly identify that Mr. Clarke is not perceived as an 'employee' of the municipality.

Conclusion

The full resignation of Charles Clarke will become effective upon the successful adoption of an amending by-law to remove Mr. Clarke's name from by-law 2015-024. This will allow him to submit nomination papers for the 2018 Municipal Election with the Office of the City Clerk.

