



August 20, 2021

**BY EMAIL**

Andrea Holland  
City Clerk, City of Hamilton  
71 Main Street West  
Hamilton, ON L8P 4Y5

Dear Ms. Holland:

**Re: Hamilton's process for assessing tax adjustment applications**

This letter is further to the recent conversation between Ombudsman staff and staff for the City of Hamilton regarding the City's process for assessing tax adjustment applications. As discussed, my Office received a complaint that staff acting under delegated authority held an improper closed meeting contrary to the *Municipal Act* (the Act) on April 27, 2021. The meeting was not live-streamed and the public was not able to attend in person due to the pandemic. The complaint also alleged that the City's council did not have the legal authority to delegate these tax adjustment powers to staff.

My Office has completed our review and will not be taking further steps regarding these concerns.

**Ombudsman jurisdiction**

The Ontario Ombudsman is appointed under the *Ombudsman Act* as an independent and impartial Officer of the Ontario Legislature. My Office's role is to review and investigate complaints about public sector administration, including whether decision-makers complied with relevant policies and procedures. The Ombudsman has authority to address complaints about the administrative conduct of over a thousand public sector bodies, including municipalities and their committees and local boards. When problems are identified, the Ombudsman may make recommendations to improve processes and strengthen governance and accountability.

The *Municipal Act* gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.<sup>1</sup> Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the City of Hamilton.

My Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: [www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

## Review

Ombudsman staff made enquiries with the City Clerk, Tax Manager, and Legal Counsel in our review of the complaint. We reviewed information supplied by the City, relevant sections of the *Municipal Act*, and the practices of other municipalities.

### *Delegation of authority for Municipal Act tax adjustments*

According to information supplied by the City and our review of the *Municipal Act*, the Act establishes numerous instances in which people are entitled to apply for a tax adjustment.<sup>2</sup> The Act requires that council hold a meeting at which the applicant may make representations to council.<sup>3</sup> We understand that the City has severally delegated to staff the authority to hold meetings, hear representations from applicants, and make decisions about certain types of tax adjustments.

This delegated authority is set out in by-law no. 19-098. The preamble to the by-law provides that the delegation is in accordance with sections 23.1 and 23.2 of the *Municipal Act*, which allow municipalities to delegate powers and duties subject to various restrictions. Although not cited in the preamble, section 23.5 of the Act also applies "when a municipality is required by law to hold a hearing or provide an opportunity to be heard before making a decision or taking a step...." This section

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<sup>1</sup> *Municipal Act*, s. 239.1.

<sup>2</sup> See, for example, *Municipal Act*, ss. 334, 357, 357.1, 358, 359 and 359.1.

<sup>3</sup> *Municipal Act*, ss. 334(2), 357(5), 357.1(3), 358(9), 359(3), and 359.1(2).

provides that municipalities are specifically authorized to delegate this power to municipal staff, among others.

Regarding the City's authority to delegate these powers to staff, our review indicates that the *Municipal Act* specifically contemplates that municipalities can delegate quasi-judicial powers, as well as the power to hold a hearing or provide an opportunity to be heard. Our review indicates that the City of Hamilton, like other large Ontario municipalities, has chosen to delegate this power to staff through by-law.

#### *Meeting practices of staff with delegated authority*

We were told that prior to the pandemic, staff with delegated authority to consider *Municipal Act* tax adjustments met at City Hall in a public meeting room. Property owners whose matters were being considered were provided notice of the meeting and allowed to attend. Notice of these meetings was not otherwise provided to the public, although members of the public would have been able to attend if they were interested in doing so. During the pandemic, we were told the meetings have instead occurred virtually and the City posts a public notice and agenda in advance of each meeting. Minutes are also posted afterwards.

However, we understand that the meetings are not livestreamed and members of the public need to make special arrangements to register to attend the virtual meetings. The City's website states: "Meet(s) as per their delegated authority – Meetings are not livestreamed." Information about registering to attend the meetings is in the individual meeting agendas along with specific contact details. We were told that the City started posting notice/agendas of the meetings during the pandemic after a review the City conducted of its meeting practices, and that the City will continue posting these notices once in-person meetings resume.

Regarding the specific meeting on April 27, 2021, the City confirmed that notice and an agenda were posted online, but that the meeting was not livestreamed. Staff indicated that the agenda told members of the public they could contact City staff if they wished to register to attend the meeting.

#### *Open meeting complaint*

The *Municipal Act's* open meeting rules apply to municipal councils, local boards, and their committees. Under the Act, committees are defined as consisting of 50% or more

members of one or more councils or local boards.<sup>4</sup> A municipality's procedure by-law may also specify that a body is a committee of council and subject to the open meeting requirements under the by-law. The Act defines a local board as, among other things, "any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities," subject to various exceptions.<sup>5</sup>

In this case, a few members of City staff have been severally delegated authority to exercise the City's power and authority regarding tax adjustments. While these staff members meet as a group when exercising their delegated authority, they are not a board, commission, committee, body or local authority as required by the definition of "local board" under the *Municipal Act*. Further, this group is not considered to be a committee under the City's procedure by-law, and none of its members are members of a council or local board, as required by the definition of "committee" under the Act.

Accordingly, the meetings of staff considering *Municipal Act* tax appeals are not subject to the open meeting rules.

During this review, Ombudsman staff noted that the City includes information related to these *Municipal Act* appeal meetings on an alphabetical list of "committees" it maintains online. In the interest of further clarity, the City may wish to specifically indicate on its website that these are not meetings of a committee or local board, and thus not subject to the *Municipal Act*'s open meeting requirements.

## Conclusion

For these reasons, my Office will not be taking further steps regarding these concerns. I would like to thank the City for its co-operation during our review.

Sincerely,



Paul Dubé  
Ombudsman of Ontario

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<sup>4</sup> *Municipal Act*, s. 238(1).

<sup>5</sup> *Municipal Act*, ss. 1(1) and 238(1).