



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	February 16, 2022
SUBJECT/REPORT NO:	Delegation of Authority to Hold Education Development Charge Complaint Hearings (LS22012) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Michael G. Kovacevic (905) 546-2424 Ext. 4641
SUBMITTED BY:	Stephen Spracklin City Solicitor Legal and Risk Management Services Division
SIGNATURE:	

RECOMMENDATION

- (a) That Council delegates its authority to hold Education Development Charge complaint hearings made pursuant to section 257.85 of the *Education Act*, R.S.O. 1990, c. E.2; to the Audit, Finance & Administration Committee.
- (b) That Council Procedure By-law 21-012, A By-law to Govern the Proceedings of Council and Committees of Council be amended as follows:
 - (i) deleting Appendix “J” and replacing it with Appendix “J” attached to Report LS22012 as Appendix “A”; and
 - (ii) such further grammatical and reference amendments determined as necessary by the City Clerk as a result of deleting Appendix “J” and replacing it with the version of Appendix “J” attached to Report LS22012 as Appendix “A”.

EXECUTIVE SUMMARY

This report results from the need to hold an Education Development Charge (“EDC”) complaint hearing filed by Redeemer University pursuant to section 257.85 of the

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Education Act, R.S.O. 1990, c. E.2 (“Education Act”). This report is being made to the General Issues Committee because it involves a delegation of power of Council to a Committee.

Pursuant to the Education Act, Council is required to hold a hearing into Redeemer’s EDC complaint. Council delegated its authority to hold Development Charge (“DC”) complaint hearings to the Audit, Finance & Administration Committee (“AF&A”) on October 23, 2019 as a result of DC complaint made on October 11, 2019. However, at the time it delegated the authority for DC complaint hearings to be held by AF&A it did not delegate to AF&A the authority to hold EDC complaint hearings to AF&A. Based on Council’s delegation of DC complaint hearings to AF&A, staff are recommending that EDC complaint hearings also be delegated and that By-law 21-012, A By-law To Govern The Proceedings of Council and Committees of Council (“the Procedure By-law”) be amended to provide that the same procedure that applies to DC complaints therein apply to EDC complaints.

Alternatives for Consideration – See Page 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: None

Staffing: None

Legal: See content Analysis and Recommendation

HISTORICAL BACKGROUND

Pursuant to the *Development Charges Act, 1997*, S.O. 1997, c. 27 (“DC Act”) and the Education Act, Council is responsible for holding hearings of complaints made in respect of the payment of DCs and EDCs payable pursuant to the respective Acts. As a result of a DC complaint made on October 11, 2019, Council, on October 23, 2019 delegated authority to hold DC complaints made pursuant to section 20 of the DC Act to AF&A. Subsequently, Council amended the Procedure By-law to provide for the procedure of DC complaint hearings. However, at the time it delegated the authority for DC complaint hearings to be held by AF&A it did not delegate to AF&A the authority to hold EDC complaint hearings to AF&A. Further the Procedure By-law does not contain any procedure for EDC complaints.

An EDC complaint has been made by Redeemer University, and pursuant to the Education Act, Council is required to hold a hearing into the complaint.

On November 21, 2019 Information Report LS19043 was considered by Council. It contained an orientation package for how DC complaint hearings would be conducted by AF&A. The orientation package therein would apply to EDC complaint hearings also.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Subsection 257.85(1) of the Education Act allows an owner of land or the school board to file a complaint to the council of a municipality to which the EDC is payable on the grounds that:

- (a) the amount of the EDC was incorrectly determined;
- (b) a credit is or is not available to be used against the EDC, or that the amount of a credit was incorrectly determined; or
- (c) there was an error in the application of the EDC By-law.

Pursuant to subsection 257.85(2) of the Education Act, an EDC complaint must be filed within 90 days after the EDC is payable. Subsection 257.85(3) of the Education Act provides that the parties to a complaint are the applicable school board and the owner of the lands to which the EDC applies. The municipality that collects the EDCs on behalf of the school board is not a party to the complaint. Subsection 257.85(5) of the Education Act requires a municipal council to hold a hearing into the complaint and give the parties an opportunity to make representations at the hearing.

How AF&A conducts an EDC complaint hearing is governed by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("SPPA"). For DC complaint hearings the procedure is also governed by Appendix "J" of the Procedure By-law. Currently it has no content in regard to EDC complaint hearings.

There is no time limit within which Council must hold a hearing of an EDC complaint. However, pursuant to subsection 257.87(2) of the Education Act, if Council does not deal with an EDC complaint within 60 days after it has been made either of the parties may appeal the complaint to the Ontario Land Tribunal ("OLT").

Pursuant to subsection 257.85(7) of the Education Act, after hearing the evidence and submissions of the parties, Council may dismiss an EDC complaint or rectify any incorrect determination or error that was the subject of the EDC complaint.

In addition to the right of appeal for failing to deal with an EDC complaint within 60 days of it being made, the parties can also appeal Council's decision in respect of an EDC complaint to the OLT.

RELEVANT CONSULTATION

City Clerk's staff were consulted in the preparation of this report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Based on Council's delegation of DC complaint hearings to AF&A, staff are recommending that EDC complaint hearings also be delegated to AF&A. This report also recommends amendments to Appendix "J" of the Procedure By-law so as to include EDC complaints along with DC complaints in Appendix "J" so that the hearing procedures for both DC and EDC complaint hearings are the same. Both DC and EDC complaint hearings are also governed by the SPPA. The recommended amendments to Appendix "J" also provide for external legal counsel to be retained as legal counsel for AF&A in its capacity as a tribunal hearing DC and EDC complaints in order to avoid any conflicts of interest.

Given the meeting schedule for Standing Committees and Sub-Committees of Council, the City Clerk is recommending that EDC complaint hearings be heard in the same manner as DC complaint hearings. AF&A currently conducts DC complaint hearings and is best equipped to deal with EDC complaint hearings as the DC Act and Education Act mirror each other in respect of complaint content. The only difference is the DC Act applies to municipal DCs while the Education Act applies to EDCs.

ALTERNATIVES FOR CONSIDERATION

The alternative to delegating the authority to AF&A to hold EDC complaint hearings, is for Council to hold the hearings.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report LS22012 – Amended Appendix "J" to By-law 21-012