

**CORPORATE SERVICES DEPARTMENT**  
**Legal and Risk Management Services Division**  
**and**  
**City Clerk's Office**

<b>TO:</b>	Governance Review Sub-Committee
<b>COMMITTEE DATE:</b>	March 31, 2022
<b>SUBJECT/REPORT NO:</b>	Review of City of Hamilton's Agencies, Boards, Committees and other Affiliated Entities (LS22016/FCS22025) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Stacey Applebee (905) 546-2424 Ext. 4660 Andrea Holland (905) 546-2424 Ext. 5409
<b>SUBMITTED BY:</b> <b>SIGNATURE:</b>	Ron Sabo, Acting City Solicitor Legal and Risk Management Services
<b>SUBMITTED BY:</b> <b>SIGNATURE:</b>	Andrea Holland City Clerk

Discussion of Confidential Appendix "A", "B" and "C" to report LS22016/ FCS22025 in Closed Session is subject to the following requirement(s) of the City of Hamilton's Procedural By-law and the Ontario *Municipal Act, 2001*:

- Advice that is subject to solicitor-client privilege, including communications necessary for that purpose.
- A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board

**RATIONALE FOR CONFIDENTIALITY**

Appendix "A", "B" and "C" to Report LS22016/ FCS22025 is being considered in Closed Session as it contains advice that is subject to solicitor-client privilege and is pertinent to negotiation positions to be advanced by the City.

**RATIONALE FOR MAINTAINING CONFIDENTIALITY**

Staff are recommending that Appendix "A", "B" and "C" to Report LS22016/ FCS22025 remain confidential as it contains advice that is subject to solicitor-client privilege and is pertinent to negotiation positions to be advanced by the City.

**RECOMMENDATION (OPEN SESSION)**

- (a) That Appendix "B" and Appendix "C" attached to Report LS22016/FCS22025 respecting the Review of City of Hamilton's Agencies, Boards, Committees and other Affiliated Entities be approved;
- (b) That Appendix "A", "B" and "C" to Report LS22016/FCS22025 respecting the Review of City of Hamilton's Agencies, Boards, Committees and other Affiliated Entities, remain confidential; and
- (c) That subject to the approval of recommendation (a), the City Clerk be directed to respond to the Ombudsman on behalf of the City with a list of those entities that the City of Hamilton considers to be 'council', 'committee' or a 'local board' with information contained in Appendix "B".

### **EXECUTIVE SUMMARY**

On March 10, 2021, the Ombudsman's legal representative requested that the City Clerk provide a list of those entities that the City considers to be 'committees' or 'local boards' for the purpose of the open meeting rules found in the *Municipal Act, 2001* (the "Act") and/or the City's Procedural By-law (the "Procedure By-law").

Further to this request, the City Clerk and Legal Services have conducted a review of the City of Hamilton's Agencies, Boards, Committees and other Affiliated Entities to classify each entity and determine which would be subject to the open meeting rules found in the Act and/or the Procedure By-law when they hold a 'meeting'.

### **Alternatives for Consideration –Not Applicable**

### **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: No immediate implications.

Staffing: Clerks staff will be providing additional training to committees and local boards to ensure compliance with the open meeting requirements under the Act prior to the end of Q3 2022.

Legal: As outlined in this report.

### **HISTORICAL BACKGROUND**

On March 10, 2021, the Ombudsman's legal representative requested that the City Clerk provide a list of those entities that the City considers to be 'committees' or 'local boards' for the purpose of the open meeting rules found in the Act and/or the Procedure By-law.

The Ombudsman's office permitted the City to postpone its response pending receipt of the decision on the application for Judicial Review relating to the decision of the *Integrity Commissioner of the City of Hamilton*, dated September 24, 2020 and the decision of City

Council of the City of Hamilton, dated September 30, 2020, so that any further analysis and guidance relating to the classification of an entity as a 'local board' could be considered.

On December 15, 2021 the decision on the Judicial Review was released. The Court held that the decision of the Integrity Commissioner to classify the Lesbian, Gay, Bisexual, Transgender and Queer Advisory Committee as a 'local board' pursuant to Section 223.1 of the Act was reasonable. Staff have advised the Ombudsman's Office that a response to their March 10, 2021 inquiry would be provided following a report to Council.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

As outlined in this report.

## **RELEVANT CONSULTATION**

Relevant consultation included.

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

### ***Legislative Background***

Section 14.1(3) of the *Ombudsman Act* states that 'if a person makes a request under clause 239.1(b) of the *Municipal Act, 2001*...the Ombudsman may...investigate... whether a municipality or local board of a municipality has complied with section 239 of the *Municipal Act, 2001* or a procedure by-law under subsection 238(2) of that Act in respect of a meeting or part of a meeting that was closed to the public'.

Section 239(1) of the Act requires 'meetings' to be open to the public except where the subject matter of the meeting falls into the named exceptions set out in Section 239(2), (3) or (3.1).

For the purposes of Section 239(1) of the Act, the following definitions apply:

- (a) a 'meeting' means 'any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,
  - a. a quorum of members is present, and
  - b. members discuss or otherwise deal with any matter in a way that materially advances the business or decision making of the council, local board or committee'
- (b) 'committee' means 'any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards'
- (c) 'local board' means 'a municipal service board, transportation commission, board of health, planning board, or 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, excluding a school board and a conservation authority'. Notably, this definition does not include 'police services boards or public library boards'

Pursuant to the Procedure By-law:

- (a) 'Committee' means a 'Standing Committee, Sub-Committee, Selection Committee or an Advisory Committee or Task Force established by Council from time to time'
- (b) 'Meeting' means 'any scheduled, special or other meeting of a Council, local board or of a committee of either of them, where, a quorum of members is present, and members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the Council, local board or committee'
- (c) Section 9- Meetings Closed to the Public- defines "committee" as 'any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of Council'
- (d) Section 9.1 states that 'No meeting of Council or a Committee...shall be closed to the public unless in accordance with the Municipal Act'

### **Staff Analysis**

Staff have reviewed the list of entities compiled by the Clerks department from the City's website, together with the constituting documentation for such entities, provisions in various statutes, relevant case law and prior Ombudsman decisions in order to determine which entities would be classified as 'committees' under the Act or the Procedure By-law or as 'local boards' such that when they hold a 'meeting' they would be subject to the open meeting requirements of the Act and/or the Procedural By-law.

Attached as Appendix "A" to this Report is a Confidential Appendix outlining the legal considerations which inform this analysis. Attached as Appendix "B" is a list of entities staff have determined to be 'committees' pursuant to the Act or the Procedure By-law or 'local boards' pursuant to the Act. Attached as Appendix "C" is a list of entities staff have determined are none of a 'committee' pursuant to the Act or the Procedure By-law nor a 'local board' pursuant to the Act.

Throughout this analysis, Legal Services and Office of the City Clerk staff identified areas of the current Governance Structure where improvements can be made. Staff are developing a work plan to address these and will be returning with recommendations to

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Governance Review Sub-Committee with these recommendations for discussion and decision. Ongoing training of committees and local boards on open meetings protocol will be occurring prior to the end of Q3 2022. The City's Committee Listing website will also be updated to ensure alignment with the City's response to the Ombudsman's office.

**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 LS22016/FCS22025 – Confidential Appendix outlining the legal considerations and summary of the analysis.

Appendix "B" - to Report LS22016/FCS22025 – Confidential Appendix with a list of 'Committees' and 'Local Boards'.

Appendix "C" –to Report LS22016/FCS22025 – Confidential Appendix with a list of those entities that are neither 'Committees' nor 'Local Boards'.