

Authority: Item 1, Audit, Finance & Administration
Committee Report 23-003 (AUD23005)
CM: March 29, 2023
Ward: City Wide

Bill No. 067

CITY OF HAMILTON

BY-LAW NO. 23-

A By-law to Amend the Procedural By-law No. 21-021

WHEREAS Council enacted the Procedural By-law being City of Hamilton By-law 21-021;

AND WHEREAS it is necessary to amend By-law 21-021.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Appendix F of By-law No. 21-021 be amended by repealing the reference to “Office of the City Auditor” and replacing it with “Office of the Auditor General”.
2. That Appendix F of By-law No. 21-021 be amended by repealing the reference to “City Auditor” and replacing it with “Auditor General”.
3. That By-law 21-021 be amended by repealing Schedule F1 of Appendix F and replacing it with Schedule F1 to Appendix F attached as Schedule 1 to this By-law.
4. This By-law comes into force on the day it is passed.

PASSED this 26th day of April, 2023.

B. Clark
Acting Mayor

A. Holland
City Clerk

Schedule 1

Schedule F1 to Appendix F

CITY OF HAMILTON OFFICE OF THE AUDITOR GENERAL CHARTER

INTRODUCTION

The Office of the Auditor General provides independent, objective audit, assurance and special investigative services designed to add value and improve the City of Hamilton's operations. The Office of the Auditor General (OAG) brings a systematic, disciplined approach to evaluating and improving the effectiveness of the City's risk management, control and governance processes.

The OAG assists City Council in holding itself and its administrators accountable for the quality of stewardship over public funds and for the achievement of value for money in City operations.

SCOPE

The Office of the Auditor General completes the following types of work:

- Compliance Auditing
- Value for Money Auditing
- Special Investigations (Fraud and Waste, Whistleblower)

Audit, Assurance and Special Investigations

Audit and Assurance work includes the examination and evaluation of the adequacy and effectiveness of the City's governance, risk management process, systems of internal control and the quality of performance in carrying out assigned responsibilities to achieve the organization's goals and objectives. This includes both compliance and value for money audits. The City's processes should function in a manner that ensures:

- Risks are appropriately identified and managed.
- Significant financial, managerial, and operating information is accurate, reliable and timely.
- Actions are in compliance with policies, standards, procedures, and applicable laws and regulations.
- Resources are acquired economically, used efficiently and are adequately protected.
- Programs, plans and objectives are achieved.
- Significant legislative and regulatory issues impacting the City are recognized and addressed properly.

- Quality and continuous improvement are fostered in the organization's internal control processes.

In addition to audits, special investigations may be undertaken by the OAG pursuant to Council having given that authority under the Whistleblower By-law (19-181) and the City of Hamilton's Fraud Policy and Protocol. These include reviews or investigations of matters of alleged or suspected wrongdoing, per the Whistleblower By-law or fraud, waste or other similar activities reported by employees or residents through the Fraud and Waste Hotline or other mechanisms.

The Auditor General has been appointed by By-law 19-180 (Auditor General By-law) as an Auditor General under Section 223.19 of the *Municipal Act, 2001*, with the responsibilities, including the powers, duties and protections, under Sections 223.19 to 223.23 of the *Municipal Act, 2001*. These responsibilities apply to the extent authorized by these sections of the *Municipal Act, 2001*. The powers and protections provided to the Auditor General (by appointment as an Auditor General) strengthens the position of independence and institutional authority of the Auditor General while providing information to Council for its oversight role.

AUTHORITY

The Office of the Auditor General is granted full, free and unrestricted access to any and all records, property and personnel relevant to any function under review. Access to personal information is provided for under the *Municipal Freedom of Information and Protection of Privacy Act* (in particular, Subsections 31(c) and 32(d)).

The OAG has the authority to conduct audits and reviews of all City departments, Members of Council, agencies, boards and commissions, as well as other entities the City is related to or has an interest in.

All employees will assist the OAG in fulfilling its objectives, in a timely manner.

As an Auditor General, the OAG has the responsibilities, including the powers, duties and protections, under Sections 223.19 to 223.23 of the *Municipal Act, 2001* for:

- City Departments;
- Members of Council;
- Local boards (not including the Board of Health, the Hamilton Public Library Board, the Police Services Board or other local boards in accordance with the current definition of "local board" under Section 223.1 of the *Municipal Act, 2001*);
- Municipally-controlled corporations (a corporation that has 50 per cent or more of its issued and outstanding shares vested in the City or that has the appointment of a majority of its board of directors made or approved by the City, not including a corporation established in accordance with Section 203 of the *Municipal Act, 2001*); and

- Grant recipients (as currently defined under Section 223.1 of the *Municipal Act, 2001* as “a person or entity that receives a grant directly or indirectly from the municipality, a local board or a municipally-controlled corporation”);

These responsibilities under Section 223.19 to 223.23 of the *Municipal Act, 2001* include the powers to access information and to examine persons under Section 33 of the *Public Inquiries Act, 2009*; the duty to preserve secrecy with respect to all matters that come to its knowledge in the course of performing its functions; and the protection of not being a competent or compellable witness in a civil proceeding.

The relevant excerpts from the *Municipal Act* (accessed on March 1, 2023 at <https://www.ontario.ca/laws/statute/01m25#BK272>) are included below for reference:

Auditor General

223.19 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Auditor General who reports to council and is responsible for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations. 2006, c. 32, Sched. A, s. 98.

Same

(1.1) The Auditor General shall perform his or her responsibilities under this Part in an independent manner. 2009, c. 33, Sched. 21, s. 6 (11).

Exceptions

(2) Despite subsection (1), the responsibilities of the Auditor General shall not include the matters described in clauses 296 (1) (a) and (b) for which the municipal auditor is responsible. 2006, c. 32, Sched. A, s. 98.

Powers and duties

(3) Subject to this Part, in carrying out his or her responsibilities, the Auditor General may exercise the powers and shall perform the duties as may be assigned to him or her by the municipality in respect of the municipality, its local boards and such municipally-controlled corporations and grant recipients as the municipality may specify. 2006, c. 32, Sched. A, s. 98.

Grant recipients

(4) The authority of the Auditor General to exercise powers and perform duties under this Part in relation to a grant recipient applies only in respect of grants received by the grant recipient directly or indirectly from the municipality, a local board or a municipally-controlled corporation after the date on which this section comes into force. 2006, c. 32, Sched. A, s. 98.

Delegation

(5) The Auditor General may delegate in writing to any person, other than a member of council, any of the Auditor General’s powers and duties under this Part. 2006, c. 32, Sched. A, s. 98.

Same

(6) The Auditor General may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 98.

Status

(7) The Auditor General is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 98.

Duty to furnish information

223.20 (1) The municipality, its local boards and the municipally-controlled corporations and grant recipients referred to in subsection 223.19 (3) shall give the Auditor General such information regarding their powers, duties, activities, organization, financial transactions and methods of business as the Auditor General believes to be necessary to perform his or her duties under this Part. 2006, c. 32, Sched. A, s. 98.

Access to records

(2) The Auditor General is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality, the local board, the municipally-controlled corporation or the grant recipient, as the case may be, that the Auditor General believes to be necessary to perform his or her duties under this Part. 2006, c. 32, Sched. A, s. 98.

No waiver of privilege

(3) A disclosure to the Auditor General under subsection (1) or (2) does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege. 2006, c. 32, Sched. A, s. 98.

Powers re examination

223.21 (1) The Auditor General may examine any person on oath on any matter pertinent to an audit or examination under this Part. 2006, c. 32, Sched. A, s. 98.

Application of Public Inquiries Act, 2009

(2) Section 33 of the *Public Inquiries Act, 2009* applies to an examination by the Auditor General. 2009, c. 33, Sched. 6, s. 72 (3).

Duty of confidentiality

223.22 (1) The Auditor General and every person acting under the instructions of the Auditor General shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part. 2006, c. 32, Sched. A, s. 98.

Same

(2) Subject to subsection (3), the persons required to preserve secrecy under subsection (1) shall not communicate information to another person in respect of any matter described in subsection (1) except as may be required,

- (a) in connection with the administration of this Part, including reports made by the Auditor General, or with any proceedings under this Part; or
- (b) under the *Criminal Code* (Canada). 2006, c. 32, Sched. A, s. 98.

Same

(3) A person required to preserve secrecy under subsection (1) shall not disclose any information or document disclosed to the Auditor General under section 223.20 that is subject to solicitor-client privilege, litigation privilege or settlement privilege unless the person has the consent of each holder of the privilege. 2006, c. 32, Sched. A, s. 98.

Section prevails

(4) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. 2006, c. 32, Sched. A, s. 98.

Testimony

223.23 Neither the Auditor General nor any person acting under the instructions of the Auditor General is a competent or compellable witness in a civil proceeding in connection with anything done under this Part. 2006, c. 32, Sched. A, s. 98.

INDEPENDENCE

Independence is an essential component to maintaining public trust and preserving objectivity and integrity associated with the audit function.

To provide for the independence of Office of the Auditor General, its personnel report to the Auditor General, who reports functionally to the Audit, Finance and Administration Committee of Council and administratively to the City Manager. Audit and other reports (such as the Fraud and Waste Annual Report and Serious Matter Reporting) are sent directly to the Audit, Finance and Administration Committee for discussion and approval and then to Council. These reporting relationships help ensure independence, promote comprehensive audit objectivity and coverage, and assure adequate consideration of audit recommendations.

All OAG activities shall remain free of influence by any element in the organization, including matters of audit selection, scope, procedures, frequency, timing or report content to permit maintenance of an independent and objective attitude necessary in rendering reports. The Auditor General has the authority to revise and extend the scope of any audit or investigation in the course of their examination.

The OAG shall have no direct operational responsibility or authority over any of the activities it reviews. Accordingly, it shall not develop nor install systems or procedures, prepare records or engage in any other activity which would normally be audited or investigated.

RESPONSIBILITIES

The Auditor General and the staff of the OAG have the responsibility to:

- Review operations within the City at appropriate intervals to determine whether planning, organizing, directing and controlling are in accordance with management instructions, policies and procedures and in a manner that is consistent with both City objectives and high standards of administrative practice.

- Determine the adequacy and effectiveness of the systems of internal accounting, financial and operating controls.
- Review the reliability, utility and integrity of financial information and the means used to identify, measure, classify and report such information.
- Review the established systems to ensure compliance with those policies, plans, procedures, laws and regulations which would have a significant impact on operations and reports and determine whether the organization is in compliance.
- Review the means of safeguarding assets and, as appropriate, verify the existence of such assets.
- Carry out value for money (VFM) / performance audits to determine the efficiency and effectiveness of services and evaluate attainment of corporate objectives and value to residents.
- Report to those members of management who should be informed or who should take corrective action, the results of audit examinations, the audit opinions formed, and the recommendations made.
- Evaluate any plans or actions taken to correct reported conditions and provide timely follow-up to ensure satisfactory disposition of audit findings in the manner and timeframe committed to by management in the original audit report. If the corrective action is considered unsatisfactory, hold further discussions to achieve acceptable disposition.
- Develop a flexible multi-year work plan, including any risks or control concerns identified by management or other audits as well as appropriate special tasks or projects requested by management.
- Undertake assessments, investigations, or refer issues to other appropriate parties as a result of disclosures under a Whistleblower By-law or the Fraud and Waste Hotline.

Maintain a professional audit staff with sufficient knowledge, skills and experience and engage external subject matter experts as required for audits and investigations.

AUDIT PLANNING

Each term of Council, the Auditor General shall prepare a multi-year work plan, setting out the proposed work for the term.

For the projects, the following sources are considered:

- Prioritization of the audit universe using a risk-based methodology;
- Requests from Members of Council, senior management and staff;
- Any audits planned for the past term but delayed or not completed;

- Any conditions, concerns, or risks discovered or communicated throughout past years; and
- Input from members of the public, via the Fraud and Waste Hotline and resident complaints or suggestions.
- Areas likely to provide significant payback in terms of increased revenues, reduced costs, operational efficiencies and quality of services.

The multi-year work plan will be presented to the Audit, Finance and Administration Committee for approval. Any changes to the work plan requested by Council or individual Members of Council will require a majority of at least two-thirds the total members of Council present and not prohibited by statute from voting for the Auditor General to consider.

REPORTING

A written report is prepared and issued by the Auditor General following the conclusion of each audit or assurance project. The report will include management's responses to the report findings and recommendations. Management's response will include a statement of general agreement or disagreement with the stated findings and recommendations as well as a timeframe for anticipated completion of action to be taken and an explanation for any recommendation not addressed.

The OAG is responsible for appropriate follow up on audit findings and recommendations. All significant findings will remain open until the Auditor General has determined management has appropriately taken action to resolve the finding. Follow up audits will be completed as OAG capacity permits.

By-law 19-181 (Whistleblower By-law), Section 19 – Responsibility of the Auditor General requires a semi-annual report for, in the aggregate, on the number, nature and outcome of disclosures of serious wrongdoing made under this By-law. A Fraud, Waste, and Whistleblower Semi-Annual Update report is submitted to the Audit, Finance and Administration Committee and captures at a high level the special investigations activity undertaken by the OAG. This is in addition to the Fraud and Waste Annual Report.

The OAG does not perform consulting and risk assessment work, as this would compromise the independence of the OAG.

All reports are generally presented to the Audit, Finance and Administration Committee. Reports may be presented to the General Issues Committee, if appropriate.

PROFESSIONAL STANDARDS

Under the Auditor General's authority granted in this Office of the Auditor General Charter, all OAG activity will be guided by the following professional standards and/or legislative requirements:

- Municipal Act, Sections 223.19-223.23 (Auditor General), as applicable.
- City of Hamilton Whistleblower By-law (19-181).

- Government Auditing Standards (commonly referred to as generally accepted government auditing standards or GAGAS, or the “Yellow Book”), issued by the U.S. Government Accountability Office for audit and assurance work.
- Certified Fraud Examiners Code of Professional Standards issued by the Association of Certified Fraud Examiners for Fraud, Waste and Whistleblower assessments and investigations.

OAG professional staff are also bound by the standards and ethics of their respective professional organizations, which include the Chartered Professional Accountants of Canada (CPA), Institute of Internal Auditors (IIA), and Association of Certified Fraud Examiners (ACFE).