

Date: September 23, 2013

File: G26

Subject: Appointment of Investigator re. Open Meeting Provisions of the
Municipal Act, 2001

Contact: Peter Fay, City Clerk, Corporate Services, 905.874.2172

Overview:

- Amendments to the *Municipal Act, 2001* (the "Act"), effective January 1, 2008, allows a person to request an investigation of whether a municipality has complied with the open meeting provisions of the Act.
- The municipality may appoint an investigator; however, if no appointment is made, it falls to the provincial ombudsman to carry out the investigation. No requests for an investigation have been filed with the City to-date.
- Since 2007, Dr. Andrew Sancton, Professor of Political Science, University of Western Ontario, has been appointed the Investigator for the City.
- On September 18, 2013, Dr. Sancton issued his resignation as the City's Investigator, effective immediately, necessitating the need to appoint a new Investigator for the City.
- This report recommends the appointment of Local Authority Services Ltd. (LAS) as the City's Investigator in this regard.

Recommendations:

1. That the report from Peter Fay, City Clerk, Corporate Services, dated September 23, 2013, to the Council Meeting of September 25, 2013, re: **Appointment of Investigator re. Open Meeting Provisions of the *Municipal Act, 2001*** (File G26) be received;
2. That a By-law be passed to:
 - a. appoint Local Authority Services Ltd. (LAS) as the Investigator for the City pursuant to the *Municipal Act, 2001*, and

- b. authorize the Mayor and Clerk to execute a Service Agreement with LAS, for a term of two years, based on content acceptable to the Chief Corporate Services Officer and in a form acceptable to the City Solicitor, and
- c. repeal By-law 406-2007, being a by-law to appoint Dr. Andrew Sancton as the Investigator for the City.

Background:

In 2007, in accordance with the provisions of Sections 239.1 of the *Municipal Act, 2001*, as amended, City Council appointed Dr. Andrew Sancton of the University of Western Ontario as the City's Closed Meeting Investigator. In 2011, Council re-appointed Dr. Sancton for the remainder of the current term of Council.

To date, the City has not received a request for an investigation under Section 239.1 of the Act. Province-wide, there have been a number of requests for investigation into closed meetings of municipal councils.

On September 18, 2013, Dr. Sancton advised the City in writing of his resignation as the City's Investigator, effective immediately. Dr. Sancton has been involved in a public debate in the media regarding his public expression of views on matters related to open municipal meetings. In order to avoid any possible question of independence and impartiality should a person request an investigation into the City's compliance with the open meeting provisions of the Act, Dr. Sancton has resigned as the Investigator. Dr. Sancton has expressed his thanks to the City for its trust in him as the City's Investigator and credits the City for not having to conduct an investigation under the Act.

The City may appoint an investigator; however, if no appointment is made, it falls to the provincial ombudsman to carry out an investigation if a complaint is received. This report recommends the appointment of a replacement for Dr. Sancton as the Investigator for the City.

Current Situation:

Closed Meeting Investigator:

Local Authority Services Ltd. (LAS), a subsidiary of the Association of Municipalities of Ontario (AMO), is a preferred provider of competitively-priced and sustainable business services for Ontario municipalities and the broader public sector. Since 2007, LAS has established a new Closed Meeting Investigator Program through a contracted third party, Amberley Gavel Ltd. Amberley Gavel maintains a roster of experienced and trained individuals to provide required investigative services.

In 2007, the City considered LAS as the Investigator, but retained Dr. Sancton, since the LAS program was relatively new and still evolving. The LAS program has since matured and is capable of providing this service to the City. Currently, over 130

municipalities across the province use LAS for their Investigator services. Both the Region of Peel and City of Mississauga use LAS as their respective Investigators.

Current LAS fees for the Closed Meeting Investigator Program include:

- annual retainer of \$300
- hourly investigation fee of \$156.25 for any investigations (LAS experience to-date suggests the average length of an investigation has been 17 hours)

LAS have advised they expect a modest fee structure increase within the coming year.

This fee structure is less than the current annual retainer of \$600 for Dr. Sancton (returned for 2013 by Dr. Sancton) and equivalent to the \$1,250 per diem investigation fee (but not charged to-date since no investigation requests have been received).

Closed Meeting Investigation Process:

The investigation process currently in place for the City will be almost identical under the LAS investigation program. Public requests for an investigation must be submitted to the Clerk, in writing, who will transmit the request, with appropriate documentation to LAS. The City has established a \$250 filing fee for an investigation request, which will continue to be in effect.

In accordance with the Act, an investigation will be undertaken and any report will be provided publicly to Council for its consideration.

Subject to Council appointing a new Investigator, the City Clerk's Office will update the current public information available regarding the Closed Meeting Investigator and investigation process.

The Brampton Downtown Development Corporation (as a local board of the municipality) and the Committee of Adjustment, the Property Standards Committee and the Brampton Appeal Tribunal (as autonomous committees established by Council) would continue to be covered under this program.

It is recommended that a by-law be passed to:

- appoint LAS as the Investigator for the City,
- authorize the Mayor and Clerk to execute a services agreement with LAS for the Closed Meeting Investigator Program, and
- repeal By-law 406-2007, being a by-law to appoint Dr. Sancton as the Investigator for the City.

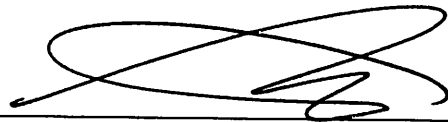
Corporate Implications:

The required funding is provided in the City Clerk's Office annual current budget request.

Legal Services has reviewed this report.

Conclusion:

Dr. Sancton, the Council-appointed Closed Meeting Investigator for the City, has resigned from the position. Local Authority Services Ltd. (LAS) is recommended as the replacement for Investigator services for the City, should an investigation be required.



Peter Fay,
City Clerk



Peter Simmons,
Chief Corporate Services Officer

Appendices:

Appendix 1 – Draft By-law for Appointment of LAS as the Investigator

Report authored by: Peter Fay, City Clerk, Corporate Services



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number _____ - 2013

A by-law to appoint Local Authority Services Ltd. as the Investigator Pursuant to Sections 8, 9, 10 and 239.1 of the *Municipal Act 2001*, as amended, and Repeal By-law 406-2007

WHEREAS effective January 1, 2008, Section 239.1 of the *Municipal Act, 2001* as amended permits a person to request an investigation of whether a municipality or local board has complied with section 239 of the *Municipal Act, 2001* as amended or a procedure by-law; and

AND WHEREAS Council passed By-law 406-2007 to appoint Andrew Sancton as the Investigator to investigate all requests on behalf of the Municipality and its Local Boards for a one year term commencing January 1, 2008;

AND WHEREAS Andrew Sancton has resigned as the Investigator, effective September 18, 2013, and Council deems it desirable to appoint Local Authority Services Ltd. as the Investigator to investigate all requests on behalf of the Municipality and its Local Boards for a two year term;

NOW THEREFORE the Council of The Corporation of the City of Brampton ENACTS as follows:

1. That pursuant to sections 9, 10 and 11 and 239.2 of the *Municipal Act, 2001*, as amended, (the "Act") Council hereby appoints Local Authority Services Ltd. (LAS) as the independent Investigator to investigate in accordance with the legislation all requests for an investigation of the Council and Committees of the Municipality and the Local Boards and their Committees of the Municipality. For the purposes of this By-Law "committee" and "local board" shall have the meaning as defined in section 238 of the *Act*.
2. The appointment shall be for an initial two year term commencing on September 25, 2013, and may be renewed for subsequent terms.
3. LAS and its delegate shall, in carrying out the functions of Investigator, have regard to, among other matters, the importance of the Investigator's credibility, the independence, impartiality and confidentiality with respect to the investigative process.
4. The Investigator or the delegate may hear or obtain information from such persons as the Investigator or the delegate thinks fit, and may make such inquiries as Investigator or the delegate thinks fit and it is not necessary for the Investigator or the delegate to hold any hearing.


5. Subject to section 6, no person is entitled as of right to be heard by the Investigator or the delegate.
6. If at any time during the course of an investigation it appears to the Investigator or the delegate that there may be sufficient grounds for a report or recommendation that may adversely affect the municipality, a local board or any other person, the Investigator or the delegate shall give him, her or it an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.
7. After conducting an investigation, the Investigator or the delegate shall report to the municipality or in the case of a local board, to the local board and the Municipality. The report shall include an opinion and the reasons for it and may make such recommendations as the Investigator or the delegate thinks fit. The report shall be included on the next agenda of the Council or in the case of a Local Board, the Council and the Local Board agendas, immediately following receipt of the report.
8. Every request for an investigation by a person shall include all of the following:
 - a) be directed to the Clerk,
 - b) be in writing,
 - c) include reasons for the request,
 - d) be signed, and
 - e) include an address and telephone number of the person making the request.
9. The Mayor and Clerk are hereby authorized to execute an Agreement between The Corporation of the City of Brampton and Local Authority Services Ltd. for investigative services as described herein
10. This By-law shall come into force and take effect immediately upon the final passing thereof.
11. By-law 406-2007 is hereby repealed.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 25th DAY OF September, 2013.

Approved as to form.
_____/_____/_____

[Type Name]

Susan Fennell, Mayor

Approved as to content.
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[Type Name]

Peter Fay, City Clerk