

TOWN OF AJAX REPORT



Report To: General Government Committee

Submitted By: Martin de Rond
Director of Legislative and Information Services / Town Clerk

Prepared By: Blair Labelle
Manager of Legislative Services / Deputy Clerk

Subject: ***Municipal Act, 2001 Discretionary Appointments***

Ward(s): All

Date of Meeting: November 22, 2007

Reference: GGC Report - February 21, 2007

Recommendation:

WHEREAS effective January 1, 2008, Section 239.1 of the *Municipal Act, 2001*, as amended, will permit a person to request an investigation of whether a municipality or local board has complied with Section 239 of the Act and/or a procedure By-Law enacted pursuant to Subsection 238 (2) of the Act in respect of a meeting or part of a meeting that was closed to the public;

AND WHEREAS the investigation of the relevant municipality may be undertaken by an Investigator appointed by the municipality pursuant to Sections 9, 10, 11, and 239.2 of the Act;

BE IT RESOLVED THAT the Town of Ajax implement by way of By-law a Closed Meeting Investigation Request Process (attached as Appendix A of this report);

THAT the Town implement by way of By-law (attached as Appendix B of this report) the appointment of Local Authority Services Ltd. (LAS) as its independent Closed Meeting Investigator and enter into a contract service agreement with LAS (attached as Schedule 1, Appendix B of this report) for a Two year term effective January 1, 2008 for investigation services as it relates to any 'closed meetings' of the Town of Ajax Council and/or standing committee; and,

THAT staff report to the General Government Committee in the Fall of 2008 with an update on the actions taken in other Ontario municipalities with respect to the potential appointment of additional integrity officers in the Town of Ajax.

Background:

As reported at the February 21, 2007 meeting of the General Government Committee, *The Municipal Act 2001* (the "Act") has been amended by *The Municipal Statute Law Amendment Act, 2006* (Bill 130) in an attempt to provide municipalities with greater flexibility to fulfill their responsibilities as well as to place a greater emphasis on the transparency and accountability of local governance.

Along with several statutory policy initiatives in which options will be reported to at a forthcoming meeting of the General Government Committee, the Act provides municipalities with the option of appointing several positions to reinforce the recent amendments to the Act by Bill 130. Part V.1 of the Act authorizes municipalities to appoint the following integrity officers at their discretion:

1. Closed Meeting Investigator
2. Integrity Commissioner
3. Auditor General
4. Lobbyist Registrar
5. Ombudsman

Discussion:

Closed Meeting Investigator

As of January 1, 2008 any person will have the ability to request a review of the procedures of any closed meeting of Council or committee. The Town is required to have a mechanism in place by this deadline for the purpose of investigating whether the meeting was in compliance with Section 239 of the Act as well as the Town's Procedure By-law. The Town has the option to appoint an impartial investigator of their preference or to contract Local Authority Services Ltd. (LAS), a wholly-owned subsidiary of the Association of Municipalities of Ontario, to provide an investigator on an as needed basis. If a decision is not made by January 1, 2008 the Provincial Ombudsman will be deemed to have jurisdiction in the matter of closed meeting investigation requests until such time that an appointment is made.

Several municipalities of interest including Durham Region, Markham, Whitby, Clarington, Sarnia, Oakville, Caledon and Whitchurch Stouffville have contracted, or are in the process of recommending a contract, to retain the services of LAS. Conversely, smaller municipalities such as Muskoka, Peterborough, and Killaloe have appointed one individual to serve as an investigator for all adjacent municipalities. At the time of this report, very few municipalities are planning to utilize the office of the Provincial Ombudsman for closed meeting investigations.

If the Town decides to appoint an individual of their preference to conduct closed meeting investigations, Council must have regard to the investigator's independence and impartiality, confidentiality with respect to investigator's activities, and credibility relating to the investigative process. Outside of these legislative requirements, the preferred candidate should also possess an extensive knowledge of municipal government, Council policies and related procedures, and an in-depth comprehension of the Municipal Act and related statutes. To ensure impartiality, it is recommended that this individual not have any past or present affiliation with the Corporation or individual Councillors.

If an appointment of a closed meeting Investigator is not made by January 1, 2008, the Provincial Ombudsman is appointed by default. The investigation service led by the Provincial Ombudsman's office would be carried out at no cost to the municipality and would follow a well defined complaints investigation process. Although a designated officer from the Province would be guided by a comprehensive investigation process, many suggest that it may not be relevant when applied to the 'municipal context'. Provincial appointees may not have an appreciation for the degree in which municipalities conduct their affairs in the full view of the public.

The City of Pickering and the City of Oshawa have both decided to utilize the services of the Provincial Ombudsman. Oshawa established a Sub-Committee of Council to investigate the options of appointing a closed meeting investigator and Pickering convened a Task Force on Accountability comprised of Councillors, staff and community leaders. Both advisory groups indicated that the Ombudsman was the preferred option because it would be at 'arms length' from the municipality and would have no associated costs. Both recommendations are still yet to be ratified by Council. Although the Provincial Ombudsman would provide its services at no cost, there are still too many outstanding questions with respect to the manner in which it will undertake its investigation process when engaged.

Staff recommends that LAS be retained to provide a closed meeting investigation services for the Town of Ajax. It is the intent of LAS to delegate its authority to a third party company, Amberley Gavel Ltd. Proprietors (owned by Nigel Bellchamber and Fred Dean), established solely to assist municipalities in fulfilling the requirements of the Act related to 'closed meetings'. All review officers made available through LAS will have the necessary understanding of the municipal environment to conduct their investigation in an accurate and expeditious manner with very little disruption to the ongoing operations of the municipality.

LAS Review Officers are required to participate in training regarding municipal meeting and investigative process. Although the Review Officers are located geographically around the Province, a comprehensive list will be made available to program members. LAS will also provide the Town with ongoing educational information related to 'closed meeting' provisions of the Act and direct access to all completed reports via a password protected website.

Integrity Commissioner

As part of the discretionary accountability and transparency tools provided in Bill 130, Section 223.3 (1) of the Act makes provisions for a municipality to appoint an independent Integrity Commissioner to oversee the application of a code of conduct or other policies and procedures governing the ethical behaviour of members of Council and/or local boards. The Town of Ajax Council Member Code of Conduct, proclaimed through By-Law 89-2004 and followed in conjunction with Procedure By-Law 101-2003 currently serves as a guide to govern the ethical behaviour of members of Council. An Integrity Commissioner would have recourse (if delegated by Council through Sections 23.1, 23.2, 23.3 and 23.4) to issue an official reprimand or a suspension of the Councillor's pay for up to ninety (90) days in the event that a member of Council was found to be in contravention to the Code of Conduct. Since potential Code of Conduct issues have been raised only rarely, staff do not recommend the appointment of an Integrity Commissioner at this time but will continue to monitor the actions undertaken by other municipalities in Ontario in this regard. A recent report from the Region of Durham considers the potential appointment of a central Integrity Commissioner that could be utilized by all respective lower tier municipalities. There are several logistical challenges in such a proposal, but staff will continue to closely monitor the situation for developments.

Auditor General

Section 223.19 of the Act provides Council the opportunity to appoint an individual to assist with monitoring the quality and value with respect to the usage of public funds. The Auditor General would also uphold accountability with respect to Council's fiscal stewardship and the direction undertaken regarding its financial commitments. It is well defined that the statutory duties of an Auditor General would not conflict with those provided for in Subsection 296 (1) of the Act, including annual audits of the accounts and transactions of the municipality. Due to the existing quality system internal audits and corrective/preventative action system, internal financial audits and the semi-annual external audits, staff do not recommend the appointment of an auditor general at this time, but will continue to monitor the actions undertaken by other municipalities in Ontario in this regard.

Lobbyist Registrar

Section 223.11 (1) of the Act authorizes Council to create a lobbyist registry and to track and control efforts by registered lobbyists in terms of interaction with Council and staff. The Act provides the option to appoint a Lobbyist Registrar to monitor lobbyist activity and conduct inquiries where there is activity by an unregistered lobbyist or there appears to have been a breach of the Code of Conduct with respect to lobbyist restrictions. The Registrar is provided authority under the *Public Inquiries Act* and any reports made by the Registrar must be open to the public. The City of Toronto appears to be the only Ontario municipality that currently has a lobbyist registry. Toronto's system was established in 2003 and is voluntary in nature. Although staff do not recommend the creation of a lobbyist registry or the appointment of a Lobbyist Registrar at this time, they will continue to monitor the direction taken by other municipalities.

Ombudsman

Under Section 223.13 (1) municipalities may now appoint an independent Ombudsman who would (upon complaint) investigate any decision, recommendation or act established in the course of the administration of the municipality. The Ombudsman is given broad investigative powers which are similar to those found in the *Public Inquiries Act* and include the right to access any documentation. Upon completion of the investigation, the Ombudsman would prepare a public report containing such recommendations as deemed necessary. There is no review by the courts of the proceedings or decisions of the Ombudsman, except on the grounds of jurisdiction. To date, the City of Toronto appears to be the only municipality with an Ombudsman and although staff does not recommend the appointment of such a position at this time, they will continue to monitor the direction taken in other Ontario municipalities.

Financial Implications:

The By-law attached as Appendix A sets out a process for dealing with requests for closed meeting investigations. In addition to the format and process established for the application and receipt of these requests, the process also establishes a \$25 fee for the processing of a request. Other municipalities are reviewing the potential to implement fees ranging from \$25 to \$125 in order to persuade against the application of frivolous or vexatious requests.

The By-law attached to this report as Appendix B provides for the contract details with respect to the proposed service agreement with LAS. A two year service agreement with LAS commencing January 1, 2007 and ending December 31, 2009 at a total retainer cost of \$600. A daily investigation fee of \$1,250, plus all applicable taxes, will be charged to the municipality plus all legal fees and reasonable expenses incurred during the course of an investigation.

Communication Issues:

Notice of the meeting in which the investigator process will be discussed will be posted to the Town's website.

Conclusion:

Staff recommends the approval of Appendix A as attached to this report, a By-law providing for a process to deal with requests for closed meeting investigations. Staff also recommends the approval of Appendix B as attached to this report, a By-law to enter into a two year service agreement with LAS as the independent closed meeting Investigator for the Town of Ajax. It is difficult to estimate the number of requests that the Town will receive, however, the approval of a process and the appointment of an independent investigator service will appropriately prepare this municipality if and when they occur.

Blair Labelle, Manager of Legislative Services, Deputy Clerk

Martin de Rond, Director of Legislative and Information Services, Town Clerk

APPENDIX A

THE CORPORATION OF THE TOWN OF AJAX

BY-LAW NUMBER XX-2007

Being a By-Law to authorize an official Closed Meeting
Investigation Request Process for the Town of Ajax

WHEREAS effective January 1, 2008, Section 239.1 of the *Municipal Act, 2001*, as amended, will permit a person to request an investigation of whether a municipality or local board has complied with Section 239 of the Act and/or a procedure By-Law enacted pursuant to Subsection 238 (2) of the Act in respect of a meeting or part of a meeting that was closed to the public;

NOW THEREFORE the Council of the Corporation of the Town of Ajax enacts as follows:

THAT clauses One (1) through Seventeen (17) of the Town of Ajax Closed Meeting Investigation Request Process be deemed the official Town process with respect to handling requests to investigate 'closed meeting' portions of Council of the Town of Ajax, General Government Committee or Community Affairs and Planning Committee:

TOWN OF AJAX CLOSED MEETING INVESTIGATION REQUEST PROCESS

1. A person (the "Complainant") may request an investigation of any closed meeting of the Council of the Town of Ajax or one of its standing committees.
2. The investigation request ("the request") must be made in writing, dated and properly identify the Complainant including a full name, address, telephone number, fax number and email address and accompanied by a \$25 application fee.
3. All such requests shall be directed to the Town Clerk who will document each Investigation Request and maintain a record of all complaints submitted to the Town.
4. The request must be received by the Town of Ajax within 60 days of the date that the meeting being investigated took place.
5. The Complainant will be provided with an Investigated Request form which must be completed in writing. The Complainant will receive a copy of the Investigation Request together with a copy of the By-law detailing the procedures for submitting a complaint.
6. In the Investigation Request form, the Complainant must provide in writing:
 - a) reason(s) for the request;
 - c) address, telephone number and name/signature of the requester;
 - d) identification of the closed meeting in question; and
 - e) rationale for the investigation (ie. details of the violation).
7. Upon receipt of a completed Investigation Request and appropriate background material, the Town of Ajax will review the materials to verify that:
 - a) the name, address and identity of the Complainant are valid;
 - b) the complaint is complete; and
 - c) the complaint is the first and only complaint by that Complainant in respect of the meeting in question.

8. The Town of Ajax will as soon as reasonably practicable appoint an investigator and forward the completed investigation Request and supporting materials to the Investigator.
9. In the event that an Investigation Request is incomplete the complaint will be returned to the Complainant with a precise description of the reason(s) for the return of the Investigation Request and specific instructions as to how to complete the request so to be in compliance with this process.
10. The Complainant must return the completed Investigation Request or a new Investigation Request within the time limit outlined in clause 4, or 30 days from the date that the original Investigation request was returned, whichever is later.
11. In the event that the Complainant fails to return the completed Investigation Request or a new Investigation Request, the Town of Ajax shall record the name of the Complainant and the meeting in question and close the file. No further notice will be provided.
12. In the event that the Complainant returns the completed Investigation Request or a new Investigation Request, the Town of Ajax will as soon as reasonably practicable appoint an Investigator and forward the completed Investigation Request and supporting materials to the Investigator.
13. The Town of Ajax shall forward to the Investigator in relation to the meeting under investigation:
 - a) the completed Investigation Request;
 - b) a certified copy of the procedural By-law for the Town of Ajax;
 - c) a certified copy of the agenda and all relevant attachments;
 - d) a certified copy of the minutes of the meeting;
 - e) a contact list for all members of Council, the local board or committee and for all other persons present at the meeting if available;
 - f) any other information that the Town Clerk deems relevant; and
 - g) such other information as may be requested by the Investigator.
14. The Investigator shall have all power, rights and duties as set out in Subsections 223.13 (6) and Sections 223.14 to 223.18 of the *Municipal Act, 2001* as amended.
15. Contingent upon the nature of the complaint, the Investigator will issue his/her report directly to the next available Council meeting.
16. The powers of the Investigator are paramount in accordance with Subsection 223.13 (6) of the *Municipal Act, 2001* as amended.
17. This By-law shall come into force and take effect January 1, 2008.

READ a first and second time this Tenth day
of December, 2007

READ a third time and passed this Tenth day
of December, 2008

_____ Mayor

_____ Clerk

INVESTIGATOR SERVICES AGREEMENT

This Agreement made this _____ day of _____, 2007

BETWEEN

**The Corporation of the Town of Ajax
(the “Municipality”)**

-and-

**Local Authority Services Limited
 (“LAS”)**

(each a “Party” and together the “Parties”)

RECITALS

WHEREAS effective January 1, 2008, Section 239.1 of the *Municipal Act, 2001*, as amended (the “Act”), will permit a person to request an investigation of whether a municipality or local board has complied with Section 239 of the Act and/or a procedure by-law enacted pursuant to Subsection 238 (2) of the Act in respect of a meeting or part of a meeting that was closed to the public;

AND WHEREAS the investigation of the relevant municipality or local board must be undertaken by an Investigator appointed by the municipality pursuant to Sections 9, 10, 11, and 239.2 of the Act or by an Ombudsman appointed pursuant to the *Ombudsman Act* if the municipality has not appointed an Investigator under the Act;

AND WHEREAS the Municipality deems it desirable that all requests for an investigation be undertaken in the public interest by an appointed independent and impartial investigator (the “Investigator”);

AND WHEREAS the Municipality deems it desirable to appoint LAS as the Investigator to investigate all requests received by the Municipality after January 1, 2008 pursuant to the Act respecting any meeting of the Municipality’s council, a local board, or a committee of either of them;

AND WHEREAS LAS is dedicated to providing services to Ontario municipalities, and is interested in acting as the Investigator for the Municipality on the terms and conditions set out in this Agreement;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

Appointment

1. Pursuant to the Act, the Municipality hereby appoints LAS to provide the Investigator Services in accordance with the Act, for all requests for an investigation of the Council and Committees of the Municipality and, the Local Boards, and/or their Committees. For the purposes of this Agreement, “committee” and “local board” shall have the meaning as defined in Section 238 of the Act.
2. Within thirty (30) days of the execution of this Agreement, the Municipality hereby agrees to provide to LAS or its delegate a list of all of the Local Boards and Committees to whom this Agreement applies. The Municipality further agrees to give notice in writing of this Agreement and the appointing by-law to each of the Local Boards and/or Committees affected by this Agreement

Powers

3. The Municipality hereby grants to LAS those powers and duties outlined in Section 239.2 of the Act, and as set out in Schedule “A” to this Agreement.
4. LAS agrees to undertake timely, impartial, and independent investigations and they shall be confidential as required by Section 239.2(5)(b) of the Act.
5. The Parties agree not to disclose any confidential information related to the Services to any party (other than a Party’s legal counsel, accountants or other advisors who have a need to know such information and have agreed to keep such terms confidential) except information as agreed to by the parties or to comply with any applicable law. Either Party shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this confidentiality obligation.

Delegation

6. The Parties acknowledge and agree that LAS, pursuant to Section 239.2(6) of the Act, may delegate all of its powers and duties as Investigator to a third party (the “Delegate”). Any and all rights and obligations of LAS under this Agreement shall also be assigned to the Delegate accordingly. LAS agrees to promptly notify the Municipality of the name of the Delegate.

7. The Parties agree to indemnify and save harmless each other from and against all liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature whatsoever arising out of or in connection with any breach of any representation, warranty, covenant or any provision under this Agreement, provided that the Party not at fault gives prompt written notice of any such losses or claims to the other Party.
8. Notwithstanding Section 7, no Party shall be responsible for any liability in respect of a third-party claim arising under this Agreement due to the wilful misconduct, gross negligence, or bad faith of the other Party.
9. LAS shall not be liable under this Agreement for any consequential, special, or indirect damages whatsoever and the maximum aggregate amount of indemnification payable by LAS under this Agreement for any reason whatsoever shall not exceed the Fees.

Process

10. Upon receipt of a request for an investigation regarding the Meeting, it is agreed that the Clerk of the Municipality shall forthwith forward the following documents to LAS or the Delegate, as appropriate:
 - 1) The original request for an investigation;
 - 2) A certified copy of the municipal procedure by-law and, if applicable, the procedure by-law for the Local Board;
 - 3) A certified copy of the municipal notice by-law and, if applicable, the notice by-law for the Local Board;
 - 4) A certified copy of the agenda with all relevant attachments relating to the Meeting;
 - 5) A certified copy of the notice given for the Meeting;
 - 6) A certified copy of the minutes of the Meeting;
 - 7) A contact list for all members of the Council, Local Board or Committee for which the request is made and for all persons present at the Meeting;
 - 8) Such other information or documentation that the Clerk of the Municipality deems relevant; and
 - 9) Such other information or documentation that LAS or the Delegate may from time to time deem relevant to the investigation.

Fees

11. The Municipality agrees to pay fees and expenses of LAS or the Delegate for the Services (the "Fees"):
 - 1) A retainer fee of Six Hundred Dollars (\$600) per term plus applicable taxes, payable upon execution of this Agreement;
 - 2) A daily investigation fee of One Thousand Two Hundred Fifty Dollars (\$1,250.00) plus all applicable taxes;

- i) A day consists of eight (8) working hours;
 - ii) Daily investigation fees will be billed in hourly increments where appropriate
 - 3) All legal fees incurred by LAS or the Delegate arising out of a claim made by a third-party regarding this Agreement; and
 - 4) All reasonable expenses incurred during the course of providing the Services, including but not limited to any costs associated with transportation expenses, meals, report preparation including translation costs where appropriate, and out-of-pocket administrative costs.
12. The investigation fee shall be billed by LAS or its Delegate, as appropriate.
13. The retainer fee shall be billed by LAS.
14. Any investigation fee submitted by the Delegate shall be deemed to be a debt owed to both LAS and the Delegate until paid in full.

Additional Services Provided by LAS or the Delegate

15. LAS agrees to create and maintain, or cause the Delegate to create and maintain, a password protected website to which the Municipality shall have access during the Term. The website will include the following features:
- a. Information and updates on closed meeting procedures;
 - b. The panel of personnel hired by LAS or the Delegate to fulfill the Services, including experience; and
 - c. Access to all reports made by LAS or the Delegate.
16. Upon execution of this Agreement by the Parties, LAS agrees to provide the Municipality with an information package including but not limited to: an appointing by-law, educational materials, etc.

Term

17. The term of this Agreement shall be two (2) years commencing on the first day of January 2008, or any later day as agreed upon by the Parties, and ending on December 31, 2009 (the "Term").

Renewal

18. Subject to Section 17 herein, this Agreement shall automatically renew from year to year unless and until terminated by either Party upon ninety (90) days prior written notice on the same terms and conditions contained herein except that the retainer fee and investigation fee may be adjusted by LAS, in its sole discretion, acting reasonably. LAS agrees to invoice the Municipality for the retainer fee related to the renewal period at least one hundred and twenty (120) days prior to

the commencement of the renewal term and the Municipality agrees to pay such invoice at least thirty (30) days prior to the commencement of the renewal term.

Termination

19. This Agreement may be terminated by either Party on ninety (90) days written notice to the other Party provided that any investigations commenced prior to the termination date shall be completed pursuant to this Agreement and the appointing by-law, and all related Fees shall be paid as set out herein.

Dispute Resolution

20. Any controversy, dispute, difference, question or claim arising between the Parties in connection with this Agreement that cannot be resolved by a manager from each Party (collectively, the "Dispute") shall be settled in accordance with this Article.
21. The aggrieved Party shall send the other Party written notice identifying the Dispute, its position on the Dispute and the remedy sought. Upon receipt of such written notice, a senior officer of the other Party shall enter into good faith negotiations with a senior officer of the aggrieved Party to resolve the Dispute.
22. If the Dispute has not been resolved within thirty (30) days after such written notice has been given, either Party may avail itself of any process or means legally available to resolve the Dispute.

Miscellaneous

23. All provisions herein shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
24. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In respect of any provision so determined to be unenforceable or invalid, the Parties agree to negotiate in good faith to replace the unenforceable or invalid provision with a new provision that is enforceable and valid in order to give effect to the business intent of the original provision to the extent permitted by law and in accordance with the intent of this Agreement.
25. This Agreement, including any Schedule attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof. This Agreement shall be read with all changes of gender or number required by the context.

26. No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the Parties and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.
27. Each of the Municipality and LAS shall from time to time execute any and all documents and perform such other acts as may be necessary or expedient to further the purposes of this Agreement and the transactions contemplated hereby.
28. Time shall be of the essence of this Agreement.
29. The Municipality and LAS are not and shall not be deemed to be partners or joint venturers with one another and nothing herein shall be construed so as to impose any liability as such on any of them. The Municipality agrees that LAS shall perform its obligations under this Agreement as an independent contractor, and shall not be deemed to be a trustee for any person, whether or not a party to this Agreement, in connection with the discharge by LAS of such obligations.
30. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable herein.
31. All notices which may be necessary or proper for either Party to serve upon the other shall be served by delivery to the Party to whom the notice is to be given or sent postage pre-paid to the following addresses or by facsimile transmission to the facsimile number set out below.:

To Municipality:
65 Harwood Ave. S.
Ajax, ON L1S 2H9

Facsimile Number: (905) 683-1061

To LAS:
200 University Avenue, Suite 801
Toronto, Ontario M5H 3C6

Facsimile Number: (416) 971-6191

All such notices shall be conclusively deemed to have been given and received upon the day the same is personally delivered or, if mailed or sent by facsimile as aforesaid, three (3) business days after the same is mailed as aforesaid. Either

Party may at any time by notice in writing to the other change its address for service of notice.

32. This Agreement may be executed in several counterparts, each of which so executed being deemed to be an original, and such counterparts together shall constitute but one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

The Corporation of the Town of Ajax and LAS have respectively executed and delivered this Agreement as of the date first set out above.

The Corporation of the Town of Ajax

Mayor

Clerk

I have authority to bind the corporation

Local Authority Services Limited

Nancy Plumridge
President & Secretary Treasurer

I have authority to bind the corporation

SCHEDULE “A”

The following are the relevant statutory authorities enacted at the time of execution of this Agreement:

The Municipal Act, 2001, as amended

Investigator

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation. 2006, c. 32, Sched. A, s. 104.

Powers and duties

(2) Subject to this section, in carrying out his or her functions under subsection (1), the investigator may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 104.

Matters to which municipality is to have regard

(3) In appointing an investigator and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 104.

Same, investigator

(4) In carrying out his or her functions under subsection (1), the investigator shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 104.

Same

(5) The matters referred to in subsections (3) and (4) are,

- (a) the investigator’s independence and impartiality;
- (b) confidentiality with respect to the investigator’s activities; and
- (c) the credibility of the investigator’s investigative process. 2006, c. 32, Sched. A, s. 104.

Delegation

(6) An investigator may delegate in writing to any person, other than a member of council, any of the investigator’s powers and duties under this Part. 2006, c. 32, Sched. A, s. 104.

Same

(7) An investigator may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 104.

Status

[\(8\)](#) An investigator is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 104.

Application

[\(9\)](#) Subsection 223.13 (6) and sections 223.14 to 223.18 apply with necessary modifications with respect to the exercise of functions described in this section. 2006, c. 32, Sched. A, s. 104.

Report and recommendations

[\(10\)](#) If, after making an investigation, the investigator is of the opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit. 2006, c. 32, Sched. A, s. 104.

Publication of reports

[\(11\)](#) The municipality or local board shall ensure that reports received under subsection (10) by the municipality or local board, as the case may be, are made available to the public. 2006, c. 32, Sched. A, s. 104.

Ombudsman

223.13

Powers paramount

[\(6\)](#) The powers conferred on the Ombudsman under this Part may be exercised despite any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect of them, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question. 2006, c. 32, Sched. A, s. 98

Investigation

[223.14 \(1\)](#) Every investigation by the Ombudsman shall be conducted in private. 2006, c. 32, Sched. A, s. 98.

Opportunity to make representations

[\(2\)](#) The Ombudsman may hear or obtain information from such persons as he or she thinks fit, and may make such inquiries as he or she thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for him or her to make any report or recommendation that may adversely affect the municipality, a local board, a municipally-controlled corporation or any other person, the Ombudsman shall give him, her or it an

opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel. 2006, c. 32, Sched. A, s. 98.

Application of *Ombudsman Act*

(3) Section 19 of the *Ombudsman Act* applies to the exercise of powers and the performance of duties by the Ombudsman under this Part. 2006, c. 32, Sched. A, s. 98.

Same

(4) For the purposes of subsection (3), references in section 19 of the *Ombudsman Act* to “any governmental organization”, “the *Freedom of Information and Protection of Privacy Act*” and “the *Public Service Act*” are deemed to be references to “the municipality, a local board or a municipally-controlled corporation”, “the *Municipal Freedom of Information and Protection of Privacy Act*” and “this Act”, respectively. 2006, c. 32, Sched. A, s. 98.

Note: On the day the Statutes of Ontario, 2006, chapter 35, Schedule C, section 134 comes into force, subsection (4) is amended by the Statutes of Ontario, 2006, chapter 35, Schedule C, subsection 134 (3) by striking out “the *Public Service Act*” and substituting “the *Public Service of Ontario Act, 2006*”. See: 2006, c. 35, Sched. C, ss. 134 (3), 137 (1).

Duty of confidentiality

223.15 (1) Subject to subsection (2), the Ombudsman and every person acting under the instructions of the Ombudsman 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.

Disclosure

(2) The Ombudsman may disclose in any report made by him or her under this Part such matters as in the Ombudsman’s opinion ought to be disclosed in order to establish grounds for his or her conclusions and recommendations. 2006, c. 32, Sched. A, s. 98.

Section prevails

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

D

No review, etc.

223.16 No proceeding of the Ombudsman under this Part shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman is liable to be challenged, reviewed, quashed or called in question in any court. 2006, c. 32, Sched. A, s. 98.

Testimony

223.17 (1) The Ombudsman and any person acting under the instructions of the Ombudsman shall not be called to give evidence in any court, or in any proceedings of a

judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Part. 2006, c. 32, Sched. A, s. 98.

Same

[\(2\)](#) Anything said or any information supplied or any document or thing produced by any person in the course of any investigation by or proceedings before the Ombudsman under this Part is privileged in the same manner as if the inquiry or proceedings were proceedings in a court. 2006, c. 32, Sched. A, s. 98.

Effect on other rights, etc.

[223.18](#) The rights, remedies, powers, duties and procedures established under sections 223.13 to 223.17 are in addition to the provisions of any other Act or rule of law under which any remedy or right of appeal or objection is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Part limits or affects any such remedy or right of appeal or objection or procedure. 2006, c. 32, Sched. A, s. 98.

Ombudsman Act, R.S.O. 1990, CHAPTER 0.6

Evidence

[19. \(1\)](#) The Ombudsman may from time to time require any officer, employee or member of any governmental organization who in his or her opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him or her any such information, and to produce any documents or things which in the Ombudsman's opinion relate to any such matter and which may be in the possession or under the control of that person. R.S.O. 1990, c. O.6, s. 19 (1).

Examination under oath

- [\(2\)](#) The Ombudsman may summon before him or her and examine on oath,
- (a) any complainant;
 - (b) any person who is an officer or employee or member of any governmental organization and who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1); or
 - (c) any other person who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1),

and for that purpose may administer an oath. R.S.O. 1990, c. O.6, s. 19 (2).

Secrecy

[\(3\)](#) Subject to subsection (4), no person who is bound by the provisions of any Act, other than the *Public Service Act*, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure. R.S.O. 1990, c. O.6, s. 19 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by the Statutes of Ontario, 2006, chapter 35, Schedule C, subsection 94 (3) by striking out “the *Public Service Act*” and substituting “the *Public Service of Ontario Act, 2006*”. See: 2006, c. 35, Sched. C, ss. 94 (3), 137 (1).

Providing personal information despite privacy Acts

(3.1) A person who is subject to the *Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act, 2004* is not prevented by any provisions in those Acts from providing personal information to the Ombudsman, when the Ombudsman requires the person to provide the information under subsection (1) or (2). 2004, c. 3, Sched. A, s. 94.

Idem

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply information or answer any question or produce any document or thing relating only to the complainant, and it is the duty of the person to comply with that requirement. R.S.O. 1990, c. O.6, s. 19 (4).

Privileges

(5) Every person has the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things as witnesses have in any court. R.S.O. 1990, c. O.6, s. 19 (5).

Protection

(6) Except on the trial of any person for perjury in respect of the person’s sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person. R.S.O. 1990, c. O.6, s. 19 (6).

Right to object to answer

(7) A person giving a statement or answer in the course of any inquiry or proceeding before the Ombudsman shall be informed by the Ombudsman of the right to object to answer any question under section 5 of the *Canada Evidence Act*. R.S.O. 1990, c. O.6, s. 19 (7).

Prosecution

(8) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with any requirement of the Ombudsman under this section. R.S.O. 1990, c. O.6, s. 19 (8).

Fees

(9) Where any person is required by the Ombudsman to attend before him or her for the purposes of this section, the person is entitled to the same fees, allowances, and expenses as if he or she were a witness in the Superior Court of Justice, and the provisions of any Act, regulation or rule in that behalf apply accordingly. R.S.O. 1990, c. O.6, s. 19 (9); 2006, c. 19, Sched. C, s. 1 (1).