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The following Terms of Reference outline key considerations and guiding principles that Regional Council shall consider when appointing a Municipal Ombudsman to conduct an investigation on behalf of the municipality.

The Regional Clerk, in consultation with the Director, Legal and Court Services, will initiate the engagement of a Municipal Ombudsman as directed by Regional Council in accordance with these Terms of Reference.

Appointment of Municipal Ombudsman Terms of Reference

Mandate / Scope

Regional Council is committed to accountability and transparency in its decision making processes. The core mandate of any appointed Municipal Ombudsman will be to investigate, in an independent and impartial fashion, any decision, recommendation, act or omission in the course of the administration of the Region as Council may specify in accordance with the provisions related to the appointment and powers of Municipal Ombudsman in the Municipal Act, 2001, as may be amended from time to time, and these Terms of Reference.

Goals/Purpose

Regional Council has the authority to appoint a Municipal Ombudsman in accordance with Section 223.13 of the Municipal Act, 2001, which provides that a municipality may appoint a municipal ombudsman who reports to Council and whose function is to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the municipality and affecting any person or body of persons in his, her or its personal capacity. Regional Council may wish to appoint a Municipal Ombudsman on its own initiative, or as a result of a complaint or staff recommendation. In order to ensure that the Municipal Ombudsman is qualified and able to fulfill the mandate established by Council in a manner that promotes accountability and transparency, Council shall have regard to the importance of (a) the Ombudsman's independence and impartiality; (b) confidentiality with respect to the Ombudsman's activities; and (c) the credibility of the

Ombudsman's investigative process as outlined herein in the selection and appointment of a Municipal Ombudsman.

Selection/Appointment

The Regional Clerk, in consultation with the Director, Legal and Court Services, will initiate the engagement of a Municipal Ombudsman in accordance with the direction of Regional Council and these Terms of Reference, and in compliance with the Procurement By-law.

The selection a Municipal Ombudsman shall be based on their suitability for appointment having regard to their:

- i. investigative experience and qualifications;
- ii. understanding and familiarity with the legal authority and powers of a Municipal Ombudsman in accordance with the applicable provisions of the Municipal Act, the Ombudsman Act, and any other applicable law;
- iii. technical and/or subject matter expertise given the nature and scope of the specific matter to be investigated as directed by Regional Council; and,
- iv. commitment and capacity to adhere to these Terms of Reference, including but not limited to ensuring independence, impartiality and confidentiality of the investigation as outlined herein.

The engagement of a Municipal Ombudsman shall be by written agreement prepared pursuant to these Terms of Reference and in a form satisfactory to the Director, Legal and Court Services. The retainer shall include confirmation that the Municipal Ombudsman does not have a conflict of interest of any kind with respect to the matter to be investigated.

1. Statement of Principles

a. Independence

The Municipal Ombudsman will act in an independent manner and shall carry out any investigation independently of Regional Council and Niagara Region staff without control, limitation or interference imposed by any Staff or Council member. The Municipal Ombudsman shall report directly to Regional Council through the Regional Clerk.

b. Neutrality and Impartiality

The Municipal Ombudsman will conduct any investigation striving for impartiality, fairness and objectivity. A Municipal Ombudsman shall not be selected for appointment if there is an actual or perceived conflict of interest with regard to the matter to be investigated.

c. Confidentiality

The Municipal Ombudsman and every person acting under the instructions of the Ombudsman shall preserve secrecy with respect to all matters that come to their knowledge in the course of their duties under any investigation. Every Municipal Ombudsman investigation is to be conducted in private in accordance with the Municipal

Act, 2001 and all reasonable steps shall be taken to safeguard confidentiality, including with respect to witnesses.

2. Scope of Issues

Regional Council shall determine the scope of the issues to be investigated by the Municipal Ombudsman. As a best practice Regional Council should, when identifying the need for an investigation, direct staff to first provide a report for Council's consideration that clearly articulates the proposed scope of the issues to be investigated; the Municipal Ombudsman's mandate, authority and responsibilities; and provides recommendations for Council's consideration regarding particular qualifications, technical expertise or any other relevant requirements or implications that should be considered in the selection of a Municipal Ombudsman based on the proposed nature and scope of the investigation. Regional Council shall be as specific as possible in setting the terms of the appointment in order to ensure the Municipal Ombudsman's mandate, authority and the investigative process are clearly established and understood.

A Municipal Ombudsman may be appointed to investigate the following:

- Decisions made by Regional Council that are not within their legal power to make
- Where appropriate procedures have not been followed in reaching a decision
- Where Regional Council has acted in a way that is contrary to the Region's Rules, Procedures, or By-Laws
- Where Regional Council has failed to take a certain action that it is required to take under its Rules, Procedures or By-Laws
- Any decision or recommendation made, or act done or omitted, in the course of the administration of the Region, provided that it does not fall under the list of matters that are out of scope as specified below.

A Municipal Ombudsman investigation is not intended to replace existing formal channels or recourse available to address specific matters under applicable laws, agreements (including collective bargaining agreements) or existing Regional policies and procedures; and should not be appointed to investigate the following:

- Any Regional Council decision, recommendation, act or omission, in respect of which there is a right of appeal or objection to any court or tribunal, until that right of appeal or objection has been exercised, or the time for exercise of that right has expired
- Decisions, recommendations, acts or omissions of a legal advisor or counsel to the Niagara Region
- Complaints regarding policing, the conduct of Councillors, and closed meetings of Council.

3. Evidence Collection

The Municipal Ombudsman shall take all reasonable steps to the extent permitted by law to obtain all available evidence relevant to any investigation and ensure a thorough and credible investigative process. The Municipal Ombudsman shall have access to all relevant Regional records as permitted by law.

The Municipal Ombudsman shall assess the credibility and reliability of evidence provided by witnesses and ensure that there is sufficient evidence to support all conclusions in their report.

4. Reporting Process

Despite the duty of confidentiality, the Municipal Ombudsman may disclose in any report such matters as in their opinion ought to be disclosed in order to establish grounds for his or her conclusions or recommendations.

In accordance with the Municipal Act, 2001, the Municipal Ombudsman is required to give the affected municipality or person the opportunity to make representations respecting the adverse report or recommendation prior to finalizing their report.

Any preliminary Municipal Ombudsman report shall be considered by Regional Council in closed session.