SUBJECT: Delegation of power to the Assessment Review Board under Section 357 of the Municipal Act, 2001 (FCS07018) (City Wide)

RECOMMENDATION:
That By-Law 87-191 be repealed and that a new By-law to Authorize the Assessment Review Board to exercise certain powers and functions of Council with respect to Compassionate Tax Appeals due to Sickness or Extreme Poverty (refer to Appendix “A” to report FCS07018) be forwarded to Council for approval.

Joseph L. Rinaldo
General Manager
Finance and Corporate Services

EXECUTIVE SUMMARY:
By-Law 87-191 granted the Assessment Review Board (ARB) authority to approve the cancellation, reduction or refund of taxes as defined under Section 496 of the Municipal Act, 1980. As a result of the recent decision by the ARB to charge a $25 administration fee for each and every appeal filed by the municipality on a taxpayers behalf, it is recommended to only delegate authority to the ARB for Section 357 (1) (d1) for compassionate tax appeals due to sickness or extreme poverty. There is no administration fee from the ARB on these appeals.
BACKGROUND:

Section 357 tax appeals filed with the municipality are for the cancellation, reduction or refund of taxes for various reasons, for example:

- there was a tax class change (i.e. commercial portion converted to residential use);
- there was a fire or demolition during the year;
- there were repairs or renovations that made part of the property unusable;
- there was a gross or manifest clerical error in returning the assessment roll.

These types of appeals are filed with the municipality who then forward the appeals onto the local assessment office for clarification and adjustments to value (if any).

Once approved or rejected by the local Municipal Property Assessment Corporation Office (MPAC), the appeals were forwarded onto the ARB for official approval. Once notice was given to the taxpayer of the decision rendered, the taxpayer had 35 days’ to challenge the decision through the Assessment Review Board. On average, there are 400 to 450 appeals filed per year with one to two disputes yearly, which are usually rectified by a meeting between MPAC and the taxpayer.

As the ARB have now advised that there will be a $25 filing fee for each appeal filed, and that such errors are easily rectified between MPAC and the taxpayer, it is recommended that City Council repeal the authority delegated to the ARB under By-Law 87-191 and that such appeal approvals be presented in regular reports to the Audit and Administration Committee, as warranted.

Section 357 (1) (d1) allows the municipality to cancel, reduce or refund taxes due to sickness or extreme poverty. These types of appeals are not administrative in nature and therefore tend to be more complex and lengthy. They also do not require the local assessment office to participate, as they are given for compassionate reasons. It is recommended that these appeals be heard by the Assessment Review Board as an independent third party from the municipality. On average, there are 25 to 30 such appeals per year. Approval of the By-Law attached as Appendix “A” to report FCS07018 will authorize the ARB to continue providing this service at no cost to the applicants.

ANALYSIS/RATIONALE:

A $25 administrative fee collected by the City for the benefit of the ARB would place extra administrative duties onto staff that perform the appeal process. The work being done in preparation of such appeals is handled by the Tax Department Appeals Section, in co-ordination with the Municipal Property Assessment Corporation. As the appeals are administrative in nature and rarely challenged, it is recommended that final approval of such appeals, with the exception of compassionate appeals, now be sent to the Audit
and Administration Committee for approval rather than the ARB. The taxpayer will still have the ability to have any dispute of a decision from MPAC arbitrated through the Assessment Review Board.

**ALTERNATIVES FOR CONSIDERATION:**

Advise each taxpayer that files a Section 357 appeal that a $25 fee will be required, per application, payable to the Attorney General's Office.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

There are no Financial, Staffing or Legal implications by now handling the full process in-house.

**POLICIES AFFECTING PROPOSAL:**


**RELEVANT CONSULTATION:**

Legal Services Department.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “**Triple Bottom Line**”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

- Community Well-Being is enhanced. ☑ Yes ☐ No
- Taxpayers submitting appeals will save unnecessary administration expenses payable to the ARB

- Environmental Well-Being is enhanced. ☐ Yes ☑ No

- Economic Well-Being is enhanced. ☐ Yes ☑ No

- Does the option you are recommending create value across all three bottom lines? ☐ Yes ☑ No

- Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No
CITY OF HAMILTON

BY-LAW NO. 07-

To Authorize the Assessment Review Board to exercise certain powers and functions of Council with respect to Compassionate Tax Appeals due to Sickness or Extreme Poverty

WHEREAS on June 23, 1987, the Council of the City of Hamilton passed and enacted By-law 87-191, being a By-law to Provide for exercise by the Assessment Review Board of the functions of Council in respect of applications made under section 496(1), subsections (7), (12) and (22) of the Municipal Act, 1980 for the cancellation, reduction or refund of taxes;

AND WHEREAS Section 496, subsections (1), (7), (12) and (22) of the Municipal Act, 1980 became Subsection 357 (1), paragraphs (a) to (g) inclusive of the Municipal Act, 2001;

AND WHEREAS Council is authorized to delegate the exercise of powers and functions set out in the said subsection 357(1) to the Assessment Review Board;

AND WHEREAS the Council of the City of Hamilton wishes to restrict the scope of the delegation of authority set out in the said By-law 87 – 191:

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

1. The Assessment review Board shall only exercise the power and function of Council under section 357 (1) (d1) of the Municipal Act, 2001 in respect of an application for the cancellation, reduction or refund of taxes where the applicant is unable to pay taxes because of sickness or extreme poverty.

2. By-law 87 – 191 is hereby repealed.

This By-law shall come into force and take effect as of January 1, 2007

PASSED and ENACTED this day of , 2007.