



City of Hamilton

BUSINESS IMPROVEMENT AREA ADVISORY SUB-COMMITTEE AGENDA

Meeting #: 22-003
Date: March 22, 2022
Time: 8:00 a.m.
Location: Due to the COVID-19 and the Closure of City Hall
All electronic meetings can be viewed at:
City's YouTube Channel:
<https://www.youtube.com/user/InsideCityofHamilton>

Angela McRae, Legislative Coordinator (905) 546-2424 ext. 5987

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1. CEREMONIAL ACTIVITIES	
2. APPROVAL OF AGENDA (Added Items, if applicable, will be noted with *)	
3. DECLARATIONS OF INTEREST	
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9. PUBLIC HEARINGS / DELEGATIONS

10. DISCUSSION ITEMS

10.1. Meetings of the BIA Boards of Management

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11. MOTIONS

12. NOTICES OF MOTION

13. GENERAL INFORMATION / OTHER BUSINESS

13.1. Commercial Districts and Small Business Verbal Update

13.2. Statements by Members

14. PRIVATE AND CONFIDENTIAL

15. ADJOURNMENT



Hamilton

BUSINESS IMPROVEMENT AREA ADVISORY COMMITTEE

MINUTES 22-002

8:00 a.m.

Tuesday, February 8, 2022

Virtual Meeting

Hamilton City Hall

71 Main Street West

- Present:** Councillor Esther Pauls (Chair)
Susie Braithwaite – International Village BIA
Tracy MacKinnon – Westdale Village BIA and Stoney Creek BIA
Cristina Geissler – Concession Street BIA
Kerry Jarvi – Downtown Hamilton BIA
Katie Poissant-Paul – Ancaster BIA
Bettina Schormann – Locke Street BIA
Susan Pennie – Waterdown BIA
Jessica Myers – Barton Village BIA
Maggie Burns – Ottawa Street BIA
Lisa Anderson – Dundas BIA
- Absent:** Michal Cybin – King West BIA
Bender Chug – Main West Esplanade BIA
-

FOR INFORMATION:

(a) CHANGES TO THE AGENDA (Item 2)

The Committee Clerk advised there were no changes to the agenda.

(Jarvi/Poissant-Paul)

That the agenda for the February 8, 2022 Business Improvement Area Advisory Committee meeting be approved, as presented.

CARRIED

(b) DECLARATIONS OF INTEREST (Item 3)

There were no declarations of interest.

(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 4)

(i) January 11, 2022 (Item 4.1)

(Geissler/Braithwaite)

That the January 11, 2022 Minutes of the Business Improvement Area Advisory Committee be approved, as presented.

CARRIED

(d) STAFF PRESENTATIONS (Item 8)

(i) Triaging of Business Improvement Area Requests (Item 8.1)

Anita Vidovic, Business Initiatives Coordinator addressed the Committee with information on Triaging of Business Improvement Area Requests.

(Jarvi/Braithwaite)

That the staff presentation respecting Triaging of Business Improvement Area Requests, be received.

CARRIED

(e) DISCUSSION ITEMS (Item 10)

(i) Local Commercial Areas Economic Recovery Program (Item 10.1)

Judy Lam, Manager of Commercial Districts and Small Business and Julia Davis, Business Development and BIA Officer addressed the Committee respecting the Local Commercial Areas Economic Recovery Program.

(Braithwaite/Geissler)

That the discussion respecting the Local Commercial Areas Economic Recovery Program, be received.

CARRIED

(ii) Business Improvement Area Policy Templates (Item 10.2)

Susan Pennie, Waterdown BIA, addressed the Committee respecting Business Improvement Area Policy Templates.

(Anderson/Pennie)

That the discussion respecting Business Improvement Area Policy Templates, be received.

CARRIED

(f) MOTIONS (Item 11)

(i) Parking Meters Located in Business Improvement Areas During the Free Christmas Parking Program (Item 11.1)

(Braithwaite/Giessler)

WHEREAS, the holiday shopping season is an important season for businesses located in Business Improvement Areas;

WHEREAS, Business Improvement Areas that take part in the Free Christmas Parking Program rely on this benefit for their businesses to attract customers during the holiday shopping season; and,

WHEREAS, parking meters located in the Free Christmas Parking Program areas were not clearly identified for the 2021 Free Christmas Parking Program;

THEREFORE IT BE RESOLVED:

That Parking Staff be directed to investigate ways to clearly mark all parking meters in Business Improvement Areas that take part in the Free Christmas Parking Program during the holiday shopping season (November 24 – December 24) and attend the March 22, 2022 Business Improvement Area Advisory Sub-Committee meeting with an update.

CARRIED

(g) GENERAL INFORMATION/OTHER BUSINESS (Item 13)

(i) Verbal Update from Julia Davis, Business Development and BIA Officer (Item 13.1)

Julia Davis thanked the Committee for sharing the link to the Business Needs and Workforce Survey. The survey will be open until Friday, February 11, 2022, so if Committee members would like to share it one more time, that would be appreciated. The results of the survey will be shared with the BIA's once it is complete.

Julia advised the Committee that at upcoming meetings there will be agenda items touching on governance expectations for this year as it is an election year for both Council and the BIA Boards.

Julia reminded the Committee that the Audit information was sent to the BIA's via email with the two options for submission dates (June or September). Each BIA should have received an email with their key dates. Julia also reminded Committee that the 2021 BIA Board Meeting minutes from each BIA should be sent to her as well.

Julia advised the Committee that there will be a report coming to the Planning Committee respecting the temporary outdoor patio program, with recommendations for it to be made a permanent program. Julia advised that Council has already waived the fees for 2022.

(Anderson/MacKinnon)

That the verbal update from Julia Davis, Business Development and BIA Officer, be received.

CARRIED

(ii) Statements by Members (Item 13.2)

BIA Members used this opportunity to discuss matters of general interest.

(Pennie/Braithwaite)

That the updates from Committee Members, be received.

CARRIED

(h) ADJOURNMENT (Item 15)

(Geissler/Anderson)

That there being no further business, the Business Improvement Area Advisory Committee be adjourned at 9:11 a.m.

CARRIED

Respectfully submitted,

Councillor E. Pauls
Chair Business Improvement Area
Advisory Committee

Angela McRae
Legislative Coordinator
Office of the City Clerk



STARTER COMPANY PLUS



WHAT IS STARTER COMPANY PLUS?

- Starter Company Plus is a training and mentorship program
- FREE training opportunities
- FREE ongoing mentorship (for businesses that are approved into the program)
- Funding up to \$5,000



STARTER COMPANY PLUS ELIGIBILITY

Business Activity Eligibility

- Business is a new start up OR operational and sales ready – operating up to two years (must prove sales and operation)
- Business is an independent business venture
- Business does not rely on commission sales
- Business is not an existing franchise operation
- Business operates at arm's length from family business ventures
- Business operates full-time as defined in the business plan (35+ hours per week)
- Business maintains it's own books and records
- Business maintains a separate business bank account



HOW DOES SCP WORK?

1. Intake-Based Application

- Complete Application for Program
- 11:59pm on Wednesday, August 11th, 2021

2. Selected for Training

- Complete all required dates

3. Complete Application for Funding

- Completed Business Plan, Start-Up Budget, Cash Flow
- Meet Grant Committee

4. If Approved for Funding:

- 30 days to spend grant monies
- Attend monthly mentoring sessions
- Schedule monthly business consultations

- Full program is approximately 7 months in length
- Months 1, 2, and 3 are training and applying for funding
- Months 4, 5, 6, and 7 are spending the funds, providing updates and completing mentorship



STARTER COMPANY PLUS ELIGIBILITY

3. Specific Guidelines For Funding:

- Business Reviewed by Grant Committee
 - Completed business plan and financials
 - Recommended by HBC
 - Personal contribution of at least 25%

- Business Viability is the Grant Committee's Key Consideration:
 - Well-developed idea
 - Credible business model
 - Strong applicant (experience, ability to accept feedback, etc.)
 - Strong market opportunity
 - Good growth potential



STARTER COMPANY PLUS STEPS

Eligible Clients Approved for Grant:

- Provide Receipts for all Grant Expenditures (30 day period)
- Monthly Mentoring (2 hours/month for Months 4, 5, 6)

Monthly Reports:

- Provide financial reports
- Provide activity reports



QUESTIONS FOR BIA BOARD

1. What Business sectors have really struggled in your area?
2. Who would you say is currently having the hardest time?
3. Who do you think could benefit most in your area?

(These could be specific age/race/gender groups, specific industries or types of businesses, specific locations, newer business vs established, etc.)

Additional thoughts or comments can be emailed:

luisa.cicconi@hamilton.ca

Thank you for your time and feedback. Your community insights are invaluable to these programs.



CHRISTMAS FREE PARKING PROGRAM

Presentation to the BIA Advisory Committee

March 22, 2022

Outline of Presentation

- Christmas Free Parking Program History
- Program Benchmarking
- 2021 Program Challenges
- Feedback and Discussion

Christmas Free Parking Program History

- Program began in 2003 by providing two hour limited free parking from Nov. 24 – Dec. 24 in all BIA areas except Concession, Westdale, Ottawa and Dundas (on-street).
- Westdale had free parking only on the six Saturdays before Christmas due to McMaster student parking issues, which was eventually extended to eight Saturdays. This was further amended to four Saturdays and the five week days before Christmas in 2009. This was further amended to the month-free parking program to align with all other BIAs in 2015.

Christmas Free Parking Program History

- Ottawa BIA entered into the program in 2005
- Concession BIA entered into the program in 2012 on a trial basis which was made permanent in 2015

Christmas Free Parking Notification

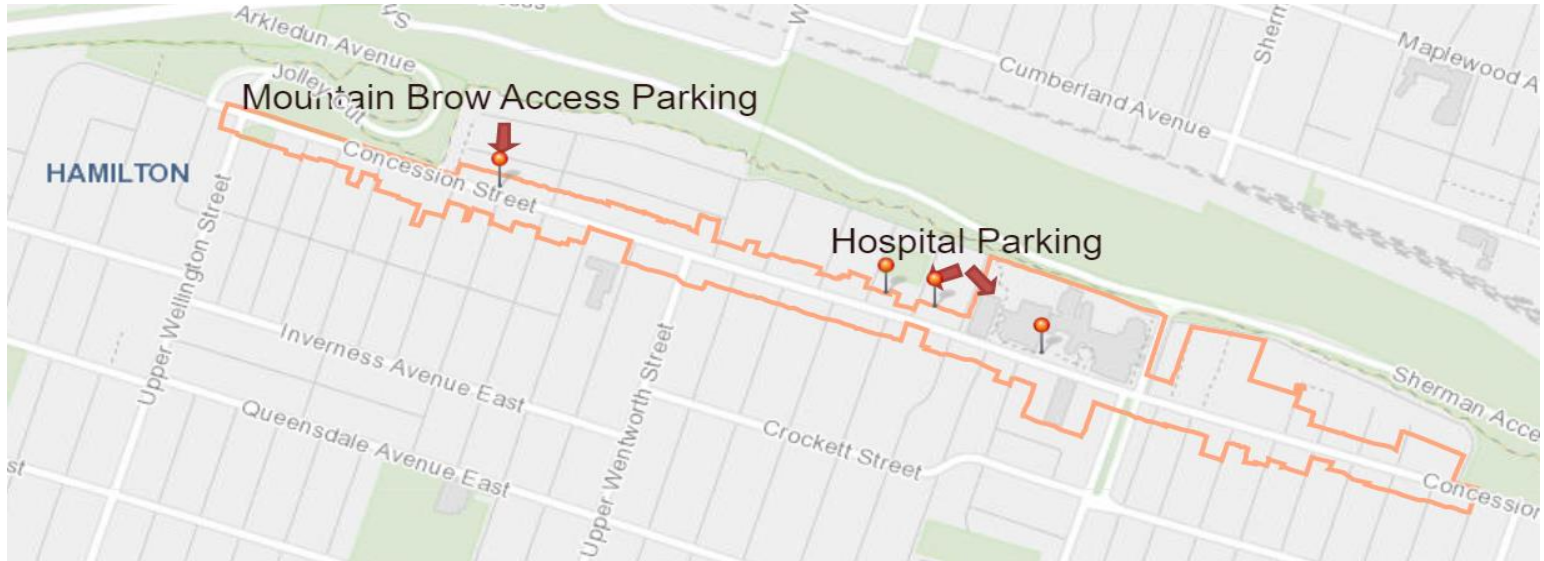
- Program notifications include all City social media channels, city website, flyers available for circulation through local businesses, bagging of machines where available, Passport Parking App
- Prior to 2021, HMPS meter technician staff opened up approximately 1700 single-space meters to insert “Free Parking” insert



Program Benchmarking

City	Free Parking?	If yes, Duration	Time limit	Method of Notification	Modifications to the Meters	Comments
St. Catharines	Y	Dec. 13 - Dec. 31	3 hrs	Social media, website, flyers to businesses	Stickers on machines	Stickers being torn off machines. Residents cancel permits early to save on monthly parking so had to move date to mid-december. Staff of businesses park in the free parking areas.
Burlington	N	NA	NA	NA	NA	Discontinued in 2020. City says since introducing the program it's made positive changes to downtown parking, including mobile payment options and real-time parking availability signs.
Toronto	N	NA	NA	NA	NA	
Thunder Bay	Y	Dec 17 - Dec 24	2 hours	Social media, website, communication to the BIAs	None	
Winnipeg	N	NA	NA	NA	NA	In December 2021, the City was offering one hour of free on-street parking in order to support businesses struggling with the impacts of COVID-19, but that program had been in place for several months. We also offer two hours of complimentary on-street parking on Saturdays in all paid parking areas but, again, this program is not limited to the month of December.
Windsor	N	COVID Parking since : Dec 14, 2020	15 Mins	Social Media and local press release	None use by APP only	The City of Windsor instituted a 15 minute free parking for curbside parking to assist restaurants for pickup.
Guelph	Y	December 23 to December 27 and again from December 31 to January 2.	24 Hours	Press release, social media and a long standing practice.	We did not make any adjustment to our equipment other than setting our gates to complimentary access	Other than goodwill during the holidays it has not seen an increase in usage.

Concession St. Data Example



2019 On-Street Utilization
(Parking Master Plan)

89%

2021 On-Street Utilization
(Free Christmas Parking)

61.5%

Benefits of Free Christmas Parking Program

- Can be leveraged by businesses in combination with other marketing programs
- Good will gesture that may be appreciated by some shoppers

Challenges of Free Christmas Parking Program

- Potential for non-retail users and employees to take up free parking
- Enforcement of time restrictions necessary and labour intensive
- Increasingly people are using Mobile Payment App and pay before leaving car
- Customers who receive tickets for exceeding time limits surprised and upset
- Branding of program does not reflect an increasingly diverse population

Motion on Parking Meter Inserts

(f) MOTIONS (Item 11)

(i) Parking Meters Located in Business Improvement Areas During the Free Christmas Parking Program (Item 11.1)

(Braithwaite/Giessler)

WHEREAS, the holiday shopping season is an important season for businesses located in Business Improvement Areas;

WHEREAS, Business Improvement Areas that take part in the Free Christmas Parking Program rely on this benefit for their businesses to attract customers during the holiday shopping season; and,

WHEREAS, parking meters located in the Free Christmas Parking Program areas were not clearly identified for the 2021 Free Christmas Parking Program;

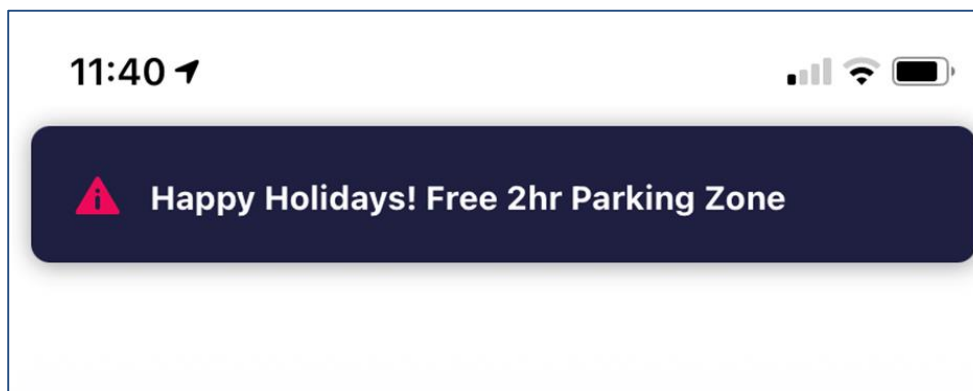
THEREFORE IT BE RESOLVED:

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Operational Challenges of Meter Inserts

- Meter insert effort takes 4-5 staff members to complete over 4-5 days, and another 4-5 to remove, resulting up to 10 additional days of free parking in certain areas
- These staff are responsible for responding to technical equipment issues city-wide, meter collection and winter operations which they can't complete during those 8-10 days

Uptake of Passport Mobile Pay



- Almost half of all transactions now processed electronically by credit card or through the app
- Over \$500k of transactions passed through app in 2021
- A great tool to provide communication and messaging

Program Notification

- HMPS can distribute more flyers to BIA areas endorsing the program to hand out to individual businesses, display in shop windows and provide to customers
- Sandwich boards can be placed outside businesses with program messaging to increase reach
- Meter bags can be provided to BIA areas to bag and unbag meters during the appropriate time frame of the program



Feedback and Discussion Period

THANK YOU

From: Kolar, Loren
Sent: Tuesday, March 8, 2022 12:57 PM
To:
Cc: Lam, Judy <Judy.Lam@hamilton.ca>; Murillo, Karol <Karol.Murillo@hamilton.ca>
Subject: BIA Board of Directors meetings: changes in process

During the City of Hamilton's review of all local boards, the Clerk of the City of Hamilton determined that the BIA Boards of Management are considered local boards under the Municipal Act, 2001, S.O. 2001, c. 25:

(<https://www.ontario.ca/laws/statute/01m25>).

As per the Municipal Act, , 2001, S.O. 2001, c. 25, all local board (BIA Boards of Management, included) meetings are to be held publicly when meeting virtually or in-person or hybrid.

In addition to holding the BIA Boards of Management meetings in public, each BIA Board of Management is to provide proper notice of upcoming meetings, publish their agendas with accompanying documentation and their minutes on their websites.

In order to bring the BIA Boards of Management into compliance with provincial legislation, each BIA Board of Management, will be required to:

- stream their meetings to their website via ZOOM or WebEx (the format you are currently using), in order to allow the public the opportunity to view the meetings held by the BIA Boards of Management; and
- Post their agendas with accompanying documentation and their minutes to their websites

The City's website will be updated to include a page for each of the BIA Boards of Management, with contact information, the names of the members, a brief description of the BIA, and a link to the BIA's website where the public can view meetings being livestreamed.

All of the BIA Boards of Management meeting dates are to appear on the City's Council/Committee meeting calendar (<https://www.hamilton.ca/council-committee/council-committee-meetings/meetings-and-agendas>), therefore, please send me by return email:

- **the dates/times of your Board of Management meetings for 2022 (to be added to the City's web calendar; and**
- **a brief mandate/description of your BIA Board of Management to be added to the BIA Board of Management's page on the City's website.**

I will work to have the meetings dates put into the City's web calendar, and have the pages for each BIA Board of Management created on the City's website.

What's next?

A virtual training session (or sessions) will be set up for members of each BIA Board of Management, to go through the process of holding an open and transparent Board of Management meeting.

Please include a list of the preferred day of the week and whether morning, afternoon or evening would be the most convenient time to conduct these training sessions when forwarding your 2022 meetings dates. Please note that at least one member from each BIA Board of Management is required to attend the training.

Attached to this email are some documents for you to refer to:

- Advisory Committee Handbook produced by the Clerk's Office (to use as a guide for conducting your meetings)
- Procedural by-law (the rules of procedure that are to be observed in all in-person / virtual / hybrid meetings)

Loren Kolar
Legislative Coordinator
Office of the City Clerk
(905) 546-2424 Ext.2604



Vision: The Legislative Division is Dedicated to Excellence in the Provision of Service to the Community, Corporation & Council with Integrity, Accuracy and Transparency.

Mission: The Legislative Division aims to strengthen and promote local government by facilitating the proceedings of City Council and its Committees, fulfilling the requirements of various Provincial statutes and educating the public to make it understandable and accessible.



Open Meetings

Guide for Municipalities

INFORMATION AND BEST PRACTICES

FOURTH EDITION

Independent Impartial Confidential Free

www.ombudsman.on.ca

1-800-263-1830

Top 10 tips for municipal officials

1. Know and follow the *Municipal Act, 2001* and your procedure by-law's open meeting requirements.
2. Make sure you have a procedure by-law that complies with the *Municipal Act* – every municipality and local board is required to have one.
3. Give adequate advance public notice of all meetings, including the time and location of all meetings.
4. Keep meetings open to the public unless closure is specifically authorized under the *Municipal Act* and there is a real need to exclude the public.
5. Pick the right s. 239 exception before closing a meeting.
6. Pass a resolution in public that includes meaningful information about the issue to be considered (not just the exception) – *before* closing the doors.
7. Record the meeting, including all decisions, by taking minutes, and preferably also by recording audio or video.
8. Stay on topic – don't stray from the subject stated in the resolution.
9. Do not hold a vote in closed session unless it is for a procedural matter or to give directions to staff or officials.
10. To the extent possible, report back publicly in open session about what occurred in closed session.

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Copyright 2019, Ombudsman of Ontario (previously published as *The Sunshine Law Handbook*, editions in 2008, 2009 and 2014).

This guide, along with the Ombudsman's open meeting reports and letters, can be downloaded and printed from the Ombudsman's website, www.ombudsman.on.ca. To request hard copies, email thewatchdog@ombudsman.on.ca.

See also the regularly updated digital **digest of open meeting cases** on the Ombudsman's website to search cases by subject, municipality or keyword.

Please note that this guide is provided for information purposes only and should not be considered or relied upon as legal advice.

Message from the Ombudsman

This guide is intended as a quick reference to Ontario's open meeting rules, as set out in legislation. The guiding principle has always been that municipal councils must meet in public, except in certain specific circumstances. The spirit of the law can be summed up in six words:

When in doubt, open the meeting.

Municipalities have been required to hold open meetings throughout Ontario's history – and rightly so, given the importance of local governments to our everyday lives. But the average person had little recourse to question meetings that were closed to the public until a complaints system was established in 2008.

Since then, all municipalities have been required to have an investigator to deal with complaints about closed meetings and determine whether or not the open meeting rules were violated. The Ombudsman is the investigator for all municipalities that have not appointed their own.

Over the years, this Office's hundreds of investigations and reports have made a significant contribution to the field of what many jurisdictions call "sunshine law."

We publish this guide after every municipal election and provide it to all municipal clerks and council members, whether they use the Ombudsman as their investigator or not.

We have also created a searchable, regularly updated digital digest of our open meeting cases, to assist municipal officials and anyone else who has an interest in this fascinating area of law. Our **digital digest of open meeting cases**, available on our website, can be searched by topic, keyword and municipality, and is the first such resource of its kind in Ontario.

Both of these tools are intended to ensure consistent standards of transparency in communities across the province.

On that note, I want to remind all Ontarians that our Office can also help them with general complaints about municipalities, school boards or any of the more than 1,000 provincial government and broader public sector bodies that we oversee. Please feel free to consult our website or call our staff at 1-800-263-1830 to find out how we can help.



Paul Dubé
Ombudsman of Ontario



Ontario's open meeting requirements

GENERAL QUESTIONS

Why are open meetings important?

The Supreme Court of Canada answered this question in its decision in the 2007 case, *London (City) v. RSJ Holdings Inc.* The judges noted “the public’s demand for more accountable municipal government” and stated that open meetings are essential to “robust democratic legitimacy” of local administrations. They also observed that section 239 of the *Municipal Act, 2001* “was intended to increase public confidence in the integrity of local government by **ensuring the open and transparent exercise of municipal power.**”

Must all municipal meetings be open to the public?

Yes, **with some limited exceptions.** The Act recognizes that there may be situations in which the privacy of an individual should be respected, or where open meetings would not serve the public interest or the interests of the municipality.

If a subject fits within one of the exceptions, it can be discussed in a closed meeting, provided that the municipality follows all the procedural rules, including giving notice of the meeting, passing a resolution to close the meeting, and keeping closed session minutes. During the closed meeting, the discussion should stay on topic and be limited to the subject area stated in the resolution.

What are the exceptions?

A municipal or local board meeting, or part of a meeting, **may be closed** to the public if the subject of the meeting

falls within one of the **14** exceptions set out in s. 239 of the Act. In brief, these include matters that relate to:

- The security of the property of the municipality
- Personal matters about an identifiable individual
- Acquisition or disposition of land
- Labour relations
- Litigation
- Advice subject to solicitor-client privilege
- Education or training
- Information explicitly supplied in confidence to the municipality
- A trade secret or certain specific information supplied in confidence to the municipality, or that belongs to the municipality and has monetary value
- A plan or instruction to be applied to negotiations

For more on the exceptions, see pages 17-29.

Must meetings be closed if they fall within those exceptions?

Not always. In fact, 12 of the 14 exceptions are **discretionary**, meaning that whenever possible, municipalities should opt to discuss these subjects in public, in the interest of transparency. The legislation leaves them the flexibility to **keep the doors open**.

The two exceptions that state meetings **must** be closed relate to:

- Requests under the *Municipal Freedom of Information and Protection of Privacy Act*
- An ongoing investigation by the Ontario Ombudsman or the municipality's closed meeting investigator or ombudsman

TERMS AND DEFINITIONS

What is a “meeting”?

The *Municipal Act, 2001*, s.238(1) defines “meeting” as any regular, special or other meeting of a council, of a local board or of a committee of either of them, where:

- a) A quorum of members is present, and
- b) Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board, or committee.

To determine whether a discussion “materially advances” council business or decision-making, the Ombudsman considers the extent to which the discussions moved forward the business of the municipality. Discussions, debates or decisions that are intended to lead to specific outcomes are likely to materially advance business or decision-making, whereas mere receipt or exchange of information is unlikely to do so.

What is a “quorum”?

A quorum is the minimum number of members of a body **required to be present** at a meeting in order for a body to exercise its power or authority. Often, this number is 50% plus one, but quorum may be defined differently by legislation or by-law.

Does the term “meeting” include informal gatherings outside of council chambers?

Informal gatherings for social purposes are **not** considered to be “meetings.” However, if the purpose of the gathering is to **discuss business** of the council, local board or committee and/or to make decisions, it is more likely to be deemed a “meeting” that is subject to the open meeting requirements.

The purpose of the open meeting rules is not to discourage council members from informal or social interactions, but to ensure such gatherings are not used as a pretext for conducting council business away from public view.

What about “meetings” conducted over the phone or by email?

As the definition of meeting requires a quorum of members to be present, a meeting cannot occur over email or other remote forms of communication.

Although emails and other remote forms of communication are not subject to the open meeting rules, municipalities should endeavour to apply consistent standards of transparency and openness, regardless of the means of communication. The open meeting rules call for discussions that advance council business or decision-making to take place in public. Any exchange wherein council votes, reaches consensus, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy should be reserved for official meetings of a council, local board, or committee.

What is a “committee”?

For the purposes of the open meeting provisions, a committee is defined as **any advisory or other committee**, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards. A procedure by-law can also designate certain bodies to be committees.

Committees must follow the open meeting rules, including providing public meeting notice, recording minutes, passing a resolution before closing a meeting, and restricting the discussion during the closed meeting to matters that fit within the exceptions.

What are “local boards”?

Local boards subject to the open meeting requirements include municipal service boards, transportation commissions, boards of health, planning boards, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities. For instance, the board of management for a business improvement area (BIA) is a “local board.”

Bodies that are **not** considered “local boards” under the *Municipal Act* and/or that are not subject to the open meeting requirements include:

- School boards
- Conservation authorities
- Police services boards
- Public library boards
- Hydro companies incorporated by municipalities under s. 142 of the *Electricity Act*
- Certain municipal corporations

In 2018, the Ontario Court of Appeal found that the City of Hamilton’s Property Standards Committee and Election Compliance Audit Committee are not “local boards” for the purposes of the open meeting rules, because neither body provided “services which are integral to the day-to-day operation of the business” of the city.

PROCEDURE BY-LAWS AND PUBLIC NOTICE

What is a municipality required to address in its procedure by-law?

Every municipality and local board is required to **pass a procedure by-law** governing the calling, place and proceedings of meetings. The procedure by-law must also provide for **public notice** of meetings. This should set out the method of giving notice and how far in advance the notice will be given. For example, it might specify that

notice of a meeting shall be provided 72 hours in advance by posting the agenda on the municipality's website.

When a municipality decides to close a meeting or part of a meeting, it has to comply not only with the requirements of the *Municipal Act, 2001*, but **also with any additional requirements of its procedure by-law.**

What specific procedure must be followed to close a meeting?

The municipality, local board, or committee must state **by resolution in open session** that a closed meeting will be held and state the general nature of each matter to be considered at the closed meeting. The resolution authorizing a closed meeting must be made in advance and cannot be retroactively amended.

The resolution to go into a closed meeting should provide a **general description of the issue** to be discussed in a way that maximizes the information available to the public **while not undermining the reason for excluding the public.** When meetings are closed for the purpose of **educating or training** members, the relevant subsection of the Act must also be cited. However, as a best practice, the relevant exceptions **should always be indicated in the resolution**, in addition to each subject for discussion. The resolution should clearly identify which exception pertains to which subject.

What information should be included in a public notice of a meeting?

The *Municipal Act, 2001* requires municipalities to establish a procedure by-law that provides for public notice of meetings, but the Act **does not specify the notice content.** This should be set out in the municipality's procedure by-law.

For example, many procedure by-laws require that an agenda be publicly posted in advance of a meeting, listing the matters to be discussed. **Adequate notice should include the date, time and place of the meeting**, to facilitate the public's right to attend and observe.

It is the Ombudsman's view that, wherever possible, advance public notice should include information about all open and closed portions of a meeting, and meaningful information about **all items to be considered**. The Ombudsman discourages the practice of having "standing" closed sessions and recommends that notices and agendas accurately reflect the specific matters intended to be discussed at a particular meeting.

VOTING AND RECORDS

Can votes be taken during a closed meeting?

Generally, meetings cannot be closed to the public during the taking of a vote. Voting in a closed meeting is only permitted if the closed meeting **is otherwise authorized and** the vote is for a **procedural matter** or for **giving directions or instructions** to officers, employees, agents of the municipality, or persons under contract. All votes should be taken formally, in accordance with the procedure by-law, and recorded in the closed meeting minutes. Decisions should **not** be made by straw poll, show of hands or general consensus.

Are members of the public entitled to participate in a meeting?

There is **no automatic right to speak or participate** in a meeting. There is a distinction between a citizen's right to participate and his or her right to observe municipal government in progress. The open meeting requirements set out in section 239 of the *Municipal Act* permit the public to **observe the political process**.

Each municipality is required to have a procedure by-law, which may set out a process for members of the public to address council. Questions about the process should be referred to the municipal Clerk.

Must a record be kept of the closed meeting?

All resolutions, decisions and other proceedings that take place must be recorded, **whether the meeting is open or closed.**

The Act does not require municipalities to create verbatim transcripts of meetings, but minutes should be more detailed than just a list of resolutions. The record of a closed meeting should include reference to the location, time of commencing and adjourning the meeting, and the names of attendees. There should also be a detailed description of the substantive and procedural matters discussed, including reference to any specific documents considered, motions (including names of the movers and seconders), and all votes taken or direction given.

The Ombudsman recommends that all municipalities also make audio or video recordings of all meetings – open and closed – to ensure the most thorough record possible. After meeting behind closed doors, they should report in the open session on what transpired in the closed session, providing as much detail as the subject matter permits.

The Ombudsman and closed meeting investigations

Who is the Ombudsman?

The Ombudsman is an impartial officer of the Ontario Legislature, independent of the government and all political parties, who resolves and investigates complaints from the public about administrative problems in more than 1,000 provincial public sector bodies. The Ombudsman's role and powers are set out in the *Ombudsman Act*.

What does the Ombudsman do?

The role of the Ombudsman is to enhance governance by promoting transparency, accountability and fairness in government and the public sector.

Most of the Ombudsman's work involves receiving and assessing complaints in an impartial manner and resolving them informally wherever possible. The Ombudsman does not advocate for complainants and investigations are undertaken only when matters cannot be otherwise resolved. Investigations – including those that may involve broad systemic issues – are evidence-based and objective. When appropriate, the Ombudsman makes recommendations for constructive change.

Although the Ombudsman's recommendations are not binding, they have been overwhelmingly accepted and implemented, prompting significant bureaucratic reforms.

In the field of open meetings, the Ombudsman makes findings on whether or not municipal meetings complied with the open meeting rules, and may make recommendations or suggest best practices for improvement. Ombudsman staff who specialize in open meetings can also provide guidance and education to municipalities

and members of the public on the open meeting requirements and best practices.

Who can complain about a closed meeting?

Anyone can file a complaint; it is not necessary to be a resident of the municipality in question.

Section 239.1 of the *Municipal Act, 2001* provides that a person may request an investigation into whether a municipality or local board has:

- i. complied with section 239 of the Act (which sets out the open meeting requirements); or,
- ii. complied with the municipality's procedure by-law in respect of a meeting or a part of a meeting that was closed to the public.

What does it cost?

The Ombudsman does not charge fees to complainants, or to any organization that is the subject of a complaint. Fees are discouraged by ombudsmen around the world because they can act as a barrier to legitimate complaints.

Are complainants identified?

No. Complaints to the Ombudsman are confidential, and **the identity of complainants is not released** in any of our cases without consent. The complainant's identity is not usually relevant to a closed meeting investigation, which focuses only on whether or not the meeting was closed according to the law.

Does the Ombudsman investigate closed meetings in all municipalities?

No. All municipalities must have a closed meeting investigator – either the Ombudsman or another investigator of their choice. If another investigator is appointed, the Ombudsman cannot review complaints about closed meetings in that municipality.

Anyone can find out who the investigator is for a particular municipality by consulting the database in our website's **Municipal Closed Meetings** section, or by calling the municipality in question.

How are complaints about closed meetings different from complaints to the Ombudsman about other municipal issues?

The Ombudsman's role is to resolve and investigate complaints about public sector bodies within his jurisdiction, and as an office of last resort. Complaints about municipalities can result in informal resolutions, referrals, best practice suggestions, or formal investigations and recommendations to improve and strengthen local governance and accountability.

This role is distinct from the Ombudsman's function as a closed meeting investigator, which focuses narrowly on whether or not the open meeting rules were followed. More information about our work on general municipal issues is available on our website and in the Ombudsman's reports (Annual Reports and reports on specific municipal investigations).

What happens in a closed meeting investigation?

Our first step is to determine whether or not the Ombudsman is the closed meeting investigator for the municipality in question. If the municipality has appointed its own investigator, the complaint is referred accordingly.

If the Ombudsman is the investigator, our staff review the complaint, contact the municipality's clerk and obtain meeting documents and other relevant information for the Ombudsman to determine whether an investigation is warranted.

The Ombudsman's usual steps in such an investigation are as follows:

- The municipality is notified in writing.
- Ombudsman staff gather relevant information, including interviewing witnesses and reviewing documents as warranted. (The *Ombudsman Act* requires that our investigations be conducted in private.)
- Based on the evidence gathered, the Ombudsman makes findings that are shared with the municipality before any report is made public.
- The Ombudsman's report is finalized and sent to the municipality, which is expected to make it public as soon as possible. It is then also published on the Ombudsman's website, and complainants are informed of the outcome of the case.

If the investigation finds that the municipality violated the open meeting rules, the *Municipal Act* requires council to pass a resolution stating how it intends to respond to the report.

What are the consequences for the municipality?

Unlike in some U.S. jurisdictions, where breaking the open meeting laws can result in a fine or even jail time, there are no penalties in Ontario for holding an illegal closed meeting.

If the Ombudsman finds a municipality violated the open meeting rules, the municipality must make the Ombudsman's report public, and it must pass a resolution setting out how it intends to address the report. Ombudsman recommendations are not binding; it is up to the municipality to decide whether or not to accept and implement them.

Exceptions to the open meeting rules

GENERAL INFORMATION

All meetings of a council, local board, or committee of either must be open to the public, unless the subject matter fits within one of the 14 exceptions to that rule, identified in s. 239 of the *Municipal Act, 2001*. The exceptions should be interpreted narrowly.

Discretionary exceptions:

Twelve of the exceptions are discretionary, meaning it is not mandatory to close meetings to deal with these subjects. **When in doubt, open the meeting.**

Meetings may be closed if they are about:

1. The security of the property of the municipality [s. 239(2)(a)]
2. Personal matters about an identifiable individual, including municipal employees [s. 239(2)(b)]
3. A proposed or pending acquisition or disposition of land by the municipality [s. 239(2)(c)]
4. Labour relations or employee negotiations [s. 239(2)(d)]
5. Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality [s. 239(2)(e)]
6. Advice that is subject to solicitor-client privilege, including communications necessary for that purpose [s. 239(2)(f)]
7. A matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act [s. 239(2)(g)]
8. Information supplied in confidence to the municipality by another level of government [s. 239(2)(h)]

9. Third-party information supplied in confidence to the municipality (e.g., a trade secret or scientific, technical, commercial, financial or labour relations information) [s. 239(2)(i)]
10. Information (e.g., a trade secret or scientific, technical, commercial, or financial information) that belongs to the municipality and has monetary value [s. 239(2)(j)]
11. A position, plan, procedure, criteria, or instruction to be applied to negotiations [s. 239(2)(k)]
12. Educating or training members of the council, local board or committee [s. 239(3.1)]

Mandatory exceptions:

The other two exceptions are mandatory. Meetings **must be closed** if they are about:

13. The consideration of a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or body is the head of an institution for the purposes of that Act [s. 239(3)(a)]
14. An ongoing investigation respecting the municipality by the Ontario Ombudsman, an appointed municipal ombudsman, or an appointed closed meeting investigator [s. 239(3)(b)]

GUIDE TO THE DISCRETIONARY EXCEPTIONS

Although every case is assessed on its own merits, here are some guidelines to the exceptions and examples of how the Ombudsman has interpreted them in investigations. For the latest case examples and full reports, please see the digital **digest of open meeting cases** on our website, which can be searched by keyword, topic and municipality.

Note: Each exception is discussed in brief in this section; for the full text of the exceptions as they appear in the legislation, see pages 31-33.

Security of municipal property – s. 239(2)(a)

Includes discussions about:

- Protection of municipally-owned property from physical loss or damage
- Loss or damage can be corporeal (like vandalism) or incorporeal (like fraud)

Does not include discussions about:

- The financial interests of the municipality
- Strategy with respect to municipal infrastructure or growth
- Strategy with regard to municipal property, including its purchase or sale

Case examples:

- **Town of Deep River (October 2017):** Discussion about a police service consultation plan did not fit within the exception, as it did not deal with potential threats, loss, or damage to municipal property.
- **Town of Grimsby (November 2016):** Discussion about obtaining a valuation of a municipally-owned corporation did not fit within the exception, since there was no apparent threat of loss or damage.
- **City of Port Colborne (November 2015):** Discussion about the potential sale of municipally-owned shares did not fit within the exception. Even if a public discussion could have affected the value of shares, it was not about the security of municipal property.
- **Village of Burk's Falls and Armour Township (October 2015):** A closed meeting to discuss a potential amalgamation did not fit within the exception, despite a potential depreciation of municipal assets, because it did not relate to any specific property owned by the municipalities, and the protection of that property.

- **City of Welland (November 2014):** Discussions of a marketing plan did not fit within this exception, despite the city wanting to protect its competitive position relative to other municipalities; discussion was not about protecting the marketing plan from loss or damage.

Personal matters about an identifiable individual – s. 239(2)(b)

Includes discussions about:

- Scrutiny of an individual's performance or conduct, including municipal staff
- Candidates for a job or committee, including education and employment history
- Investigation of an individual's possible violation of law

Does not include discussions about:

- An individual in their professional or official capacity
- Council members' remuneration or expenses and related policy
- General working relations between council and staff
- Salary bands, a hiring process, or staff reorganization
- Information already in the public realm

Case examples:

- **Township of Lanark Highlands (January 2018):** Scrutiny of a council member's conduct and behaviour went beyond professional information and fit within the exception for personal matters.
- **Town of Georgina (November 2017):** Discussion of an organizational review as part of a service delivery review would not have fit in the exception, except that council discussed the performance of specific employees (i.e., personal matters) in relation to restructuring options.

- **City of Welland (November 2017):** Discussion about the process to be used to appoint a new member of council did not fit in the exception, as no personal information was discussed.
- **City of London (February 2017):** Discussion about the education, employment history, and qualifications of candidates for Integrity Commissioner fit within the personal matters exception.
- **Municipality of Temagami (February 2017):** Discussion about unproven allegations against a member of council fit within the exception.

Acquisition or disposition of land – s.239(2)(c)

Includes discussions about:

- Buying or selling municipal land, when the bargaining position of the municipality could be impacted by a public discussion of the matter
- Leased property, easements, or subdivision agreements relating to the municipality's property interests

Does not include discussions about:

- Speculation regarding prospective acquisition or disposition of land, where no bargaining position yet exists
- Real estate market volatility and its impact on land values in general
- Discussions when the other party to a transaction is present

Case examples

- **Town of Fort Erie (April 2018):** Discussion about a potential property-related partnership with a post-secondary institution did not fit in the exception, because council was in the early stages of decision-making and had not taken any practical steps towards acquiring land.

- **City of Timmins (April 2017):** Discussion about a proposed land transaction did not fit in the exception, because the other party to the transaction was present at the meeting.
- **City of Port Colborne (November 2015):** Discussion about a non-profit organization buying a house from a private individual did not fit within the exception, because the municipality was not party to the transaction and therefore had no bargaining position to protect.

Labour relations or employee negotiations - s.239(2)(d)

Includes discussions about:

- Unionized and non-unionized employees
- Compensation, benefits, or vacation for specific employees
- Staff performance, conduct, discipline, hiring, and firing
- Changes to workload or roles of specific employees
- Grievances under a collective agreement

Does not include discussions about:

- Council members, including their remuneration
- Organizational reviews
- Discussions of litigation against employees

Case examples:

- **Township of Pelham (April 2018):** Discussion about the conduct and performance of a town employee fit within the exception.
- **Township of North Huron (January 2018):** When dozens of firefighters attended a closed meeting to talk to council about their working conditions, the discussion fit in the exception, as it occurred during an ongoing labour dispute.
- **Town of Georgina (November 2017):** Discussion about the performance of particular employees in the context of organizational restructuring fit in the exception.

- **Township of Baldwin (December 2014):** Discussion about the qualifications of candidates for a staff position fit within the exception.

Litigation or potential litigation – s.239(2)(e)

Includes discussions about:

- Ongoing litigation involving the municipality, including proceedings before administrative tribunals
- Litigation that is a real prospect, against or by the municipality
- Deciding whether or not to litigate in a specific case

Does not include discussions about:

- Speculation that litigation may arise in future, or where there is no evidence of any current or future legal proceedings
- Litigation that has concluded

Case examples:

- **Town of Carleton Place (October 2017):** Discussion about a contentious public statement by the Mayor did not fit in the exception, as there was no evidence of any reasonable prospect of litigation.
- **Municipal of St.-Charles (June 2017):** Discussion of written legal advice pertaining to ongoing legal proceedings fit within the exception.
- **City of Timmins (May 2017):** Discussion of council's concerns about an unsuccessful bidder in a procurement process did not fit in the exception, as it was mere speculation that litigation might occur.
- **County of Norfolk (November 2016):** Discussion about the development of a site-specific zoning by-law fit in the exception, because an identifiable individual planned to file an appeal of the by-law to the Ontario Municipal Board.

Advice subject to solicitor-client privilege – s. 239(2)(f)

Includes discussions about:

- Communication between the municipality and its solicitor, to seek or receive legal advice intended to be confidential (to ensure municipal officials can speak freely with their lawyer without fear of disclosure)
- Legal advice where the lawyer is not present, such as where advice was provided in writing

Does not include discussions about:

- A topic where the privilege has been waived, such as where a third party is present
- A topic other than the legal advice itself
- Whether or not to seek legal advice

Case examples:

- **Town of Pelham (April 2018):** Discussion of a report by an external consultant on the town's financial information fit in the exception, because the consultant acted as an interpreter to allow the lawyers to provide legal advice.
- **Township of Lanark Highlands (January 2018):** Discussion of written advice from the township's solicitor fit in the exception, but at several points went beyond the legal advice; those portions of the meeting did not fit in the exception.
- **Town of Deep River (October 2017):** Discussion about a police service consultation plan did not fit in the exception; council had received legal advice on the plan in past, but it was not discussed during the meeting.
- **Township of Adelaide-Metcalfe (June 2012):** By inviting a developer into the closed meeting to discuss a proposal, the township waived privilege and the discussion did not fit in the exception.

Matters that can be discussed in camera under another Act – s. 239(2)(g)

Includes discussions:

- That are explicitly permitted to be discussed in a closed meeting by an Act other than the *Municipal Act, 2001*

Does not include discussions:

- Where another Act might imply that a matter is sensitive, but does not explicitly state that the matter can be discussed in a closed meeting

Case examples:

- **Municipality of Brockton (February 2017):** A closed information session attended by a quorum of council under the *Drainage Act* did not fit in the exception, as that Act does not provide for holding a closed meeting.
- **Town of Grimsby (May 2017):** A meeting council attended of shareholders for a municipally-owned hydro company did not fit in the exception, because the *Business Corporations Act* does not permit a closed meeting.
- **City of Hamilton (April 2015):** Discussion by council of a matter that the *Police Services Act* permits a police services board to discuss in camera fit the exception.

Information supplied in confidence by another level of government – s. 239(2)(h)

Includes discussion about information:

- Provided to the municipality by another level of government (Canada, a province or territory, or a crown agency), and
- Explicitly supplied to the municipality or local board in confidence, i.e., marked confidential by the other level of government

Does not include discussions:

- Where the municipality determines the matter should be confidential, rather than the other level of government

Information supplied in confidence by a third party – s. 239(2)(i)**Includes discussions about information that:**

- Falls into one of the listed types: trade secret, scientific, technical, commercial, financial, or labour relations information;
- Was supplied confidentially, whether explicitly or implicitly, to the municipality by a third party; and
- If disclosed, could reasonably be expected to cause harm, either by prejudicing significantly the competitive position or interfering significantly with the contractual or other negotiations of a person, group of persons or organization

Does not include discussions:

- Where the information did not come from a third party
- Where there is only a merely possible or speculative risk of harm if the information were to be disclosed

Information belonging to the municipality – s. 239(2)(j)**Includes discussions about information that:**

- Falls into one of the listed types: trade secret, scientific, technical, commercial, or financial information
- Belongs to the municipality or local board; and
- Has monetary value or potential monetary value

Does not include discussions where:

- The municipality or local board has no proprietary or ownership interest in the information
- There is no evidence that the municipality or local board could sell the information for money

Plans and instructions for negotiations – s. 239(2)(k)**Includes discussions:**

- About a position, plan, procedure, criteria, or instruction;
- Where the information is intended to be applied to negotiations carried on by the municipality or local board; and
- The negotiations are ongoing or will be carried out in the future

Does not include discussions:

- In the absence of related negotiations
- Where negotiations are concluded

Education or training – s. 239(3.1)**Includes discussions:**

- Held solely for the purpose of educating and/or training council members; presenters and trainers should be advised in advance of the permissible scope of the meeting, and their materials vetted to ensure they do not materially advance decision-making

Does not include discussions:

- That materially advance council business or decision-making
- About subjects that are not for the purpose of educating or training

Case examples:

- **City of Oshawa (July 2016):** A meeting with representatives of a local utilities company to discuss a potential merger did not fit in the exception, because the information presented and questions asked materially advanced council's business and decision-making.
- **Township of Russell (January 2016):** A closed session to train council on the principles of strategic planning fit in the exception, as there was no decision-making or discussion of specific municipal priorities or plans.
- **Village of Casselman (April 2015):** When council met with local developers, it did not fit in the exception as it was not general in nature and was related to council business.

Excerpts of relevant legislation

MUNICIPAL ACT, 2001

The open meeting provisions apply to municipal councils, local boards, and committees of either.

Interpretation

s. 1(1) “local board” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority; (“conseil local”)

Municipalities and local boards are required to have a procedural by-law relating to meetings. These by-laws must make provision for public notice of meetings.

Procedure by-law

Definitions

238 (1) In this section and in sections 239 to 239.2,

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards; (“comité”)

“local board” does not include police services boards or public library boards; (“conseil local”)

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board or committee. (“réunion”) 2001, c. 25, s. 238 (1); 2006, c. 32, Sched. A, s. 102 (1, 2); 2017, c. 10, Sched. 1, s. 25 (1).

Procedure by-laws respecting meetings

(2) Every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of meetings. 2001, c. 25, s. 238 (2).

Notice

(2.1) The procedure by-law shall provide for public notice of meetings. 2006, c. 32, Sched. A, s. 102 (3).

Outside municipality

(3) The procedure by-law may provide that meetings be held and public offices be kept at a place outside the municipality within an adjacent municipality. 2001, c. 25, s. 238 (3).

Electronic participation

(3.1) The applicable procedure by-law may provide that a member of council, of a local board or of a committee of either of them, can participate electronically in a meeting which is open to the public to the extent and in the manner set out in the by-law provided that any such member shall not be counted in determining whether or not a quorum of members is present at any point in time. 2017, c. 10, Sched. 1, s. 25 (2).

Same

(3.2) The applicable procedure by-law shall not provide that a member of council, of a local board or of a com-

mittee of either of them, can participate electronically in a meeting which is closed to the public. 2017, c. 10, Sched. 1, s. 25 (3).

Presiding officer

(4) The procedure by-law may, with the consent of the head of council, designate a member of council, other than the head of council, to preside at meetings of council. 2006, c. 32, Sched. A, s. 102 (4).

Secret ballot

(5) A presiding officer may be designated by secret ballot. 2006, c. 32, Sched. A, s. 102 (4).

The open meeting provisions set up the general obligations and exceptions.

Meetings open to public

239 (1) Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1).

Exceptions

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;

- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board. 2001, c. 25, s. 239 (2); 2017, c. 10, Sched. 1, s. 26.

Other criteria

- (3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,
- (a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or

- (b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1). 2014, c. 13, Sched. 9, s. 22.

Educational or training sessions

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee. 2006, c. 32, Sched. A, s. 103 (1).

Resolution

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
- (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection. 2001, c. 25, s. 239 (4); 2006, c. 32, Sched. A, s. 103 (2).

Voting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote. 2001, c. 25, s. 239 (5).

Exception

(6) Despite section 244, a meeting may be closed to the public during a vote if,

- (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
- (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board. 2001, c. 25, s. 239 (6).

Record of meeting

(7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not. 2006, c. 32, Sched. A, s. 103 (3).

Same

(8) The record required by subsection (7) shall be made by,

- (a) the clerk, in the case of a meeting of council; or
- (b) the appropriate officer, in the case of a meeting of a local board or committee. 2006, c. 32, Sched. A, s. 103 (3).

Record may be disclosed

(9) Clause 6 (1) (b) of the *Municipal Freedom of Information and Protection of Privacy Act* does not apply to a

record of a meeting closed under subsection (3.1). 2006, c. 32, Sched. A, s. 103 (3).

The following sections relate to closed meeting complaint investigations.

Investigation

239.1 A person may request that an investigation of whether a municipality or 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 be undertaken,

- (a) by an investigator referred to in subsection 239.2 (1); or
- (b) by the Ombudsman appointed under the *Ombudsman Act*, if the municipality has not appointed an investigator referred to in subsection 239.2 (1). 2006, c. 32, Sched. A, s. 104.

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.

...

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.

Requirement to pass resolution re report

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report. 2017, c. 10, Sched. 1, s. 27.

OMBUDSMAN ACT

Specific powers of investigation re municipalities, local boards

14.1 (3) If a person makes a request under clause 239.1 (b) of the *Municipal Act, 2001* or clause 190.1 (1) (b) of the *City of Toronto Act, 2006*, the Ombudsman may, as the case may be, investigate,

- (a) whether a municipality or local board of a municipality has complied with section 239 of the *Municipal Act, 2001* or a procedure by-law under subsection 238 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public; or

- (b) whether the City of Toronto or a local board of the City has complied with section 190 of the *City of Toronto Act, 2006* or a procedure by-law under subsection 189 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public. 2014, c. 13, Sched. 9, s. 7 (1).

...

Report and recommendations

(7) If, after completing an investigation under subsection (3), the Ombudsman is of 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 of the *Municipal Act, 2001* or to a procedure by-law under subsection 238 (2) of that Act or contrary to section 190 of the *City of Toronto Act, 2006* or to a procedure by-law under subsection 189 (2) of that Act, as the case may be, the Ombudsman 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. 2014, c. 13, Sched. 9, s. 7 (1).

Reports to be public

(8) The municipality or local board shall ensure that reports received under subsection (7) by the municipality or local board, as the case may be, are made available to the public. 2014, c. 13, Sched. 9, s. 7 (1).

Ombudsman may publish report

(9) The Ombudsman may, after making a report under subsection (7), publish the report or otherwise make it available to the public. 2014, c. 13, Sched. 9, s. 7 (1).

Making a complaint

Anyone can complain about a closed municipal meeting. Here's how:

Find out who the investigator is for the municipality by:

- Calling the municipality
- Checking the “**Municipal Closed Meetings**” database on the Ombudsman’s website, or
- Calling our Office at 1-800-263-1830

If the municipality has appointed its own investigator, the Ombudsman does not have jurisdiction to handle the complaint. Our Office will refer such complaints to the municipality or the relevant investigator.

If the Ombudsman is the investigator for the municipality, our Office can take the complaint via:

- Our complaint intake telephone line: 1-800-263-1830, Monday to Friday, 9 a.m. to 4:30 p.m. (or TTY: 1-866-411-4211)
- The confidential complaint form on our website: www.ombudsman.on.ca
- E-mail: info@ombudsman.on.ca
- Fax:(416) 586-3485
- Mail:
Office of the Ontario Ombudsman
483 Bay Street
10th Floor, South Tower
Toronto, Ontario M5G 2C9
- In person: By appointment, 1-800-263-1830

General questions about our process or the open meeting rules are also welcome, via our website, email or 1-800 line.



“The democratic legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public, and mandated by law.”

*Hon. Madam Justice Louise Charron,
Supreme Court of Canada*

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