

J. Paul Dubé, Ombudsman

May 17, 2018

Mayor Fred Eisenberger

City of Hamilton
Hamilton City Hall
2nd floor - 71 Main Street West
Hamilton, ON L8P 4Y5

Via email

Dear Mayor Eisenberger:

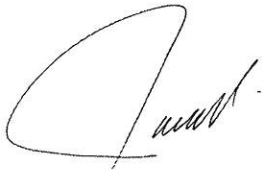
Re: Report – Office of the Ontario Ombudsman

I have completed my investigation into whether the Waste Management Advisory Committee of City of Hamilton held improper closed meetings on September 27, 2017 and January 31, 2018. Please find my final report enclosed. We ask that you distribute the enclosed report to council.

In accordance with section 14.1 (8) of the *Ombudsman Act*, the municipality should make my report available to the public, and we ask that this be done no later than the next council meeting. Section 239.2 (12) of the *Municipal Act, 2001* requires that council pass a resolution setting out how it intends to address this report.

Pursuant to section 14.1 (9) of the *Ombudsman Act*, I will also post a copy of the report on my website at www.ombudsman.on.ca.

Yours truly,



Paul Dubé
Ombudsman of Ontario

cc: Janet Pilon, Acting Clerk

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Ombudsman Report

**Investigation into a complaint about
meetings held by the City of Hamilton's
Waste Management Advisory Committee on
September 27, 2017 and January 31, 2018**

**Paul Dubé
Ombudsman of Ontario
May 2018**

Complaint

- 1 My Office received a complaint that the City of Hamilton's Waste Management Advisory Committee held two meetings that did not comply with the open meeting rules in the *Municipal Act, 2001* (the "Act").
- 2 Under the Act, all meetings of council, local boards, and committees of each of them must be open to the public, unless they fall within prescribed exceptions.
- 3 The complaint alleged that the Waste Management Advisory Committee held meetings on September 27, 2017 and January 31, 2018 that amounted to illegal closed meetings because there was no public notice of the meetings.

Ombudsman jurisdiction

- 4 As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.
- 5 Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 6 The Ombudsman is the closed meeting investigator for the City of Hamilton.

Investigative process

- 7 On February 2, 2018, my Office notified the City of Hamilton that we would be investigating this complaint.
- 8 Members of my Office's staff reviewed information about the membership of the advisory committee and the City of Hamilton's by-law governing the proceedings of council and committees of council. They also interviewed members of Hamilton city staff with knowledge of the composition of the committee, its usual practices in respect of public notice of its meetings, and the actual practices relating to the two meetings in question.

- 9 My Office received full co-operation in this matter.

The facts

- 10 The Waste Management Advisory Committee is composed of three members of council and two community members. The committee usually meets every two months. In addition to the members of the committee, a complement of city staff attend the meetings.
- 11 Until receipt of this complaint, the only meetings listed on the city's meetings calendar were those held by council and standing committees. Although the city website has an alphabetical listing of advisory committees, including the Waste Management Advisory Committee, the city's calendar usually did not include complete information about dates, times and locations of the meetings of advisory committees.
- 12 The Waste Management Advisory Committee held meetings on September 27, 2017 and January 31, 2018. Although the city posted a regular meeting time for this advisory committee on the city website, it did not include a location for the meetings and, in any event, the two meetings in question did not take place at the posted date or time. The Clerk confirmed that there was no public notice of the two meetings in question on the city's meeting calendar or any other website.
- 13 The staff members interviewed by my Office confirmed that members of the public did not attend the meetings to observe the proceedings and acknowledged that may have been because they did not know when and where the meetings were taking place. The complainant became aware a meeting of the Waste Management Advisory Committee had been held because the minutes from the meeting appeared on the meeting agenda of the Public Works Committee.
- 14 The municipality, through the Clerk, has acknowledged that the city ought to have provided notice of the two meetings in question and has already taken steps to rectify the problem. Specifically, the city has started to post notice of meetings of this advisory committee and others like it on its web calendar and has provided confirmation of the instructions from the Clerk to the staff working with the advisory committees to take this step.

- 15 In addition, my Office was told that the city's governance committee is in the process of reviewing its procedure by-law. As the city's procedure bylaw does not specifically state that the public should be given notice of meetings of advisory committees, the Clerk has agreed to raise the issue with the city's governance committee during that review.

Analysis

The Act

- 16 Section 238(2.1) of the *Municipal Act* requires that every municipality pass a procedure by-law that "shall provide for public notice of meetings."
- 17 The Act 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 quorum of members is present, and 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.
- 18 Section 238(1) defines "committee" as any advisory or other committee, subcommittee or similar entity of which at least 50 percent of the members are also members of one or more councils or local boards.

The by-law

- 19 The City of Hamilton's procedure by-law, By-Law 14-300 (the "by-law"), states that it applies to council and its committees. It provides for notice of council meetings to members of the public under section 3.2(2), which reads as follows:

Advance notice of meetings for the public's information may be found by accessing the City's website at www.hamilton.ca (select public meetings and consultations)

- 20 Section 5.12 of the by-law sets out the requirement for public hearings and notification of "interested persons" and reads as follows:

(1) Public hearings shall be held at Standing Committee meetings, as required by applicable legislation, or by Council.

(2) Appropriate advertising shall be undertaken as required by applicable legislation, by-law, or according to City policy, to advise interested persons.

21 Section 8 of that by-law, which governs the holding of closed meetings, indicates that:

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of Council.

22 While the by-law provides for notice of council and standing committee meetings, it is silent on the issue of notice of advisory committee meetings.

Meetings held on September 27, 2017 and January 31, 2018

23 The Waste Management Advisory Committee is a committee of council, given its composition. More than 50 percent of its membership are council members (three out of five). Accordingly, it is subject to the open meeting requirements under the provisions of the *Municipal Act* and the city’s procedure by-law.

24 Although the city’s website listed meeting times for Waste Management Advisory Committee meetings without providing a location, meetings were not held when listed.

25 All staff interviewed agreed that there was no notice of the meetings held on September 27, 2017 and January 31, 2018 on the city’s meeting calendar or anywhere else on the city’s website.

26 In failing to provide notice of its meetings to the public, the city is in contravention of its obligations under the Act. A member of the public would not have known when and where these meetings were to be held. In order for a meeting to be open to the public, the public must be able to attend to observe local government decision-making in process. Accordingly, the meetings of Hamilton’s Waste Management Advisory Committee were, in effect, closed to the public in contravention of the *Municipal Act*.

- 27 This analysis is in keeping with previous investigations conducted and reports issued by this Office.
- 28 For example, the Nuclear Waste Community Liaison Committee for the Township of Hornepayne held a special meeting. Its terms of reference required that notice of special meetings be posted on the committee's website prior to each meeting. The Ombudsman found that the committee failed to provide notice to the public prior to the special meeting, such that the meeting was illegally closed to the public. The Ombudsman also recommended that the municipality update its procedure by-law to provide for notice of committee meetings.¹
- 29 Similarly, the Recreation Committee for the Town of Kirkland Lake met on several occasions without providing public notice. The Ombudsman determined that the committee was a committee of council and, therefore, subject to the open meeting requirements of the *Municipal Act*. The Ombudsman found that the committee failed to provide notice of its meetings and the meetings were not open to the public.²

Opinion

- 30 The City of Hamilton's Waste Management Advisory Committee is a committee of council subject to the *Municipal Act's* open meeting requirements. The committee contravened the open meeting requirements under the Act on September 27, 2017 and January 31, 2018 when it held meetings without providing any notice to the public.
- 31 I commend the city for taking immediate steps, through the Clerk, to address the issues raised by my Office during the course of the investigation.

¹ Ombudsman of Ontario, *Investigation into a complaint about a meeting held by the Nuclear Waste Community Liaison Committee for the Township of Hornepayne on January 12, 2016*, (December, 2016), online: <<https://www.ombudsman.on.ca/resources/reports-and-casesummaries/municipal-meetings/2016/township-of-hornepayne>>

² Ombudsman of Ontario, *Investigation into whether the Recreation Committee for the Town of Kirkland Lake violated the Municipal Act's open meeting requirements*, (November 2017), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipalmeetings/2017/town-of-kirkland-lake>>

Recommendations

- 32** I am making the following recommendations to assist the City of Hamilton in adhering to the open meeting requirements of the Act and to improve its procedures and practices related to meetings of council and committees.

Recommendation 1

All members of council and committees for the City of Hamilton should be vigilant in adhering to their individual and collective obligation to ensure that the municipality complies with its responsibilities under the *Municipal Act, 2001* and its procedure by-law.

Recommendation 2

The City of Hamilton should ensure that it provides public notice for all meetings in accordance with the *Municipal Act*.

Recommendation 3

The City of Hamilton should amend its procedure by-law to clearly provide for notice of all committee meetings, including advisory committee meetings.

Report

- 33** The City of Hamilton was given the opportunity to review a preliminary version of this report and provide comments. No comments were received.
- 34** My report should be shared with council for the City of Hamilton. My report should be made available to the public as soon as possible, and no later than the next council meeting.



Paul Dubé
Ombudsman of Ontario