

**BY EMAIL**

September 7, 2022

Mayor Fred Eisenberger  
City of Hamilton  
71 Main Street West  
Hamilton, Ontario  
L8P 4Y5

Dear Mayor Eisenberger,

**Re: Closed meeting complaint**

My Office received a complaint about two meetings in the City of Hamilton (the “City”). Specifically, the complaint alleged that a meeting of the Heritage Permit Review Sub-Committee on March 15, 2022, and a meeting of the Agriculture and Rural Affairs Advisory Committee on March 29, 2022, violated the open meeting rules found in the *Municipal Act, 2001*<sup>1</sup> (the “Act”) because they were not fully livestreamed and were therefore improperly closed to the public.

I have found that there was a technical issue during the meeting held on March 15, 2022, causing the livestream to go down despite the City’s commendable measures to prevent this from occurring. I am unable to conclude whether or not the meeting on March 29, 2022 was closed to the public contrary to the Act.

**Ombudsman’s role and authority**

As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.<sup>2</sup> Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the City of Hamilton.

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<sup>1</sup> SO 2001, c 25.

<sup>2</sup> *Ibid* at s 239.1.

My Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of closed meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: [www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

## Review

My Office reviewed the City's procedural by-law and its YouTube page, where meetings are livestreamed for the public. We also reviewed the agenda, minutes, and video recording for the March 15, 2022 meeting of the Heritage Permit Review Sub-Committee and the agenda for the March 29, 2022 Agriculture and Rural Affairs Advisory Committee meeting.

We spoke with the Deputy Clerk, two Legislative Coordinators, the Manager of Heritage and Urban Design, and the staff liaison to the Heritage Permit Review Sub-Committee.

### The Heritage Permit Review Sub-Committee meeting on March 15, 2022

We received a complaint that the March 15, 2022 meeting of the Heritage Permit Review Sub-Committee had a brief technical glitch with the livestream, which excluded the public from a portion of the meeting.

According to our review, the group met shortly after 5:00 p.m. and the meeting was livestreamed on YouTube. The public was not able to attend the meeting in person due to pandemic-related protocols. There was only one substantive item on the agenda, which was the consideration of a heritage permit application. However, the applicant was not present. The Chair asked the group whether consideration of the application should be adjourned to another day. According to the meeting recording, the staff liaison began to speak, but the livestream abruptly ended.

We were told that after that point, the group decided it needed to hear from the applicant or their agent so it moved to defer consideration of the application to April 19, 2022. According to the minutes, the meeting adjourned at 5:15 p.m.

Following previous investigations by my Office,<sup>3</sup> the City has adopted a robust procedure to address technical issues with a livestream. A designated staff person is responsible for periodically checking the livestream, and their contact information is included on the agenda

<sup>3</sup> Letter from the Ontario Ombudsman to the City of Hamilton (2 February 2022), online: <<https://www.ombudsman.on.ca/Media/ombudsman/ombudsman/resources/Municipal-Meetings/Ombudsman-Ontario-Hamilton-Board-of-Health-February-2022-accessible.pdf>>.



so the public can contact them in case there is an issue. As soon as staff becomes aware of a problem with the stream, the meeting is to be recessed so the issue can be addressed. If the issue cannot be fixed within fifteen minutes, the meeting is adjourned.

In this case, the staff liaison who was responsible for periodically checking the livestream feed did not notice the stream go down as she herself was speaking when this occurred. The meeting was adjourned shortly thereafter. No member of the public contacted the staff liaison during or after the meeting to indicate that there were issues with the stream.

### *Analysis*

Our review found no evidence that the committee intentionally closed any part of the meeting to the public. The City did follow its procedure by assigning a staff person to monitor the livestream of its meetings. The procedure to recess the meeting was not activated in this case because the staff liaison responsible for periodically checking the livestream was actively participating in the conversation when the stream went down and was therefore not aware of the issue. The public also did not contact her about the problem, the meeting ended within minutes of the issue occurring, and the only matter discussed was adjourning the discussion to a specific later date. We encourage the City to continue with this practice of having a staff member monitor the livestream and to activate their procedure if technical problems should occur.

### **The Agriculture and Rural Affairs Advisory Committee meeting on March 29, 2022**

We also received a complaint alleging that the March 29, 2022 meeting of the Agriculture and Rural Affairs Advisory Committee was improperly closed to the public. The complainant indicated that they attempted to watch the meeting, but were not able to access the livestream. The complainant did not contact the City to inform them of the issue, assuming the meeting had been cancelled for lack of quorum, but later learned that the meeting had gone ahead.

According to our review, the committee met virtually on March 29, 2022 at 7:00 p.m. The meeting was livestreamed on YouTube. The staff person responsible for setting up and monitoring the livestream informed us that she checked the public-facing livestream before the meeting and periodically throughout the meeting, and that she did not notice any issues. She also told us that she was not contacted by any member of the public about issues with the livestream, and that her contact information is available on the group's webpage and in each agenda package.

### *Analysis*

We received conflicting information about whether the March 29 meeting of the Agriculture and Rural Affairs Advisory Committee was livestreamed. The Agriculture and Rural Affairs Advisory Committee does not archive their meetings, so my Office was unable to confirm

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whether this meeting was livestreamed. In light of this, we are unable to reach a conclusion as to whether there were any technical issues with the feed. To increase the accountability and transparency of its meeting practices, we were told that the Clerk's office will recommend that all committee meeting recordings be archived on the City's YouTube page starting with the next term of council.

## Conclusion

I would like to thank the City of Hamilton for its co-operation during my review, and I commend it for putting in place a robust procedure to address technical issues with public meetings. The Clerk has confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé  
Ombudsman of Ontario

Cc. Andrea Holland, Clerk

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