

BY EMAIL

Hamilton Board of Health
c/o Mayor Fred Eisenberger
Hamilton City Hall
71 Main Street West
Hamilton, ON L8P 4Y5

February 2, 2022

Dear Members of the City of Hamilton Board of Health:

Re: City of Hamilton's Board of Health meeting on August 11, 2021

My Office received a complaint regarding a meeting held electronically by the City of Hamilton's Board of Health (the "Board") on August 11, 2021. The complaint alleged that during this meeting the votes of individual Board members were not visible in real time, purportedly in contravention of the open meeting rules in the *Municipal Act, 2001* (the "Act").¹

I am writing to share the outcome of my review. For the reasons set out below, I have concluded that the Board did not contravene the open meeting rules. At no time was the meeting closed to the public on August 11, 2021. All meeting proceedings were streamed live online. The results of each vote were also announced verbally.

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.² 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.

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 open meeting

¹ *Municipal Act, 2001*, SO 2001, c 25.

² *Ibid* at s 239.1.



cases. This searchable repository was created to provide easy access to 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 these previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

Review

We spoke with the City of Hamilton's Clerk and the Legislative Coordinator for the City's Board of Health. We also reviewed meeting materials, relevant sections of the Act and associated regulations, as well as the City's procedure by-law, which has been adopted by the Board.

Further, we watched the livestream recording for the meeting on August 11, 2021 as well as recordings from four previous Board meetings.

The open meeting rules state that a meeting shall not be closed to the public during the taking of a vote unless the subject matter discussed fits into one of the exceptions and the vote pertains to procedural matters or is required to give direction to staff or officers. Sections 238 and 239 of the Act do not speak to voting by secret ballot, which is addressed elsewhere in the legislation.

Board's use of eSCRIBE software to livestream and conduct electronic voting

During the COVID-19 pandemic, the Board has been meeting electronically. The Board relies on eSCRIBE software for livestreaming and conducting electronic voting. We spoke with staff and reviewed meeting recordings to observe the Board's normal practice when voting.

During a livestreamed Board meeting, an eSCRIBE voting display window indicates that a vote is in progress, identifies the nature of the motion being voted on, and shows the mover and seconder of the motion. Once a vote has been taken, eSCRIBE displays the nature of the motion and whether it was carried. The eSCRIBE vote display window lists the names of all the Board members who voted "yes" on the motion, followed by those who voted "no." If there are any members absent from the vote, their names are listed below the names of members who voted "no."

To validate the regular practices of the Board, our Office reviewed additional livestream recordings from prior Board meetings, specifically those held on April 18, May 17, June 14, and July 7, 2021. In each case, the eSCRIBE voting box was displayed to the public and consistently showed how each Board member voted and whether any members were absent. The Legislative Coordinator also announced the result of each vote by

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stating verbally how many voted in favour and how many voted against a given motion.

August 11, 2021 Board meeting held electronically using eSCRIBE

On August 11, 2021, the Board held an open meeting electronically at 9:30 a.m., with 14 of 16 Board members in attendance.

City staff confirmed that the eSCRIBE voting window was not publicly displayed during any of the votes due to a technical malfunction. Staff told us they were not aware that the results were not being displayed until after the meeting had ended. Staff also told us that had it not been for the inadvertent malfunction, the results of each vote would have been displayed in real time, as is the Board's usual practice.

Despite the technical malfunction, the public was made aware of the overall vote results following each vote. The Legislative Coordinator announced at the close of each vote how many Board members voted in favour, how many voted against, and whether or not the motion was carried. While the individual votes of Board members were not displayed, this information was subsequently included in the minutes and published in the following month's agenda package.

At no time was the Board's meeting closed to the public, as all meeting proceedings were streamed live online.

Our Office recommends that municipalities have a staff member log in to the livestream of electronic meetings to monitor quality and clarity.

Conclusion

Under the circumstances, we will not be taking any further steps to review this complaint. I would like to thank the Board for its co-operation during my review.

Sincerely,



Paul Dubé
Ombudsman of Ontario

cc: Andrea Holland, Clerk
Loren Kolar, Legislative Coordinator

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