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# ADVISORY BULLETIN

## REGARDING MEETINGS

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Integrity Commissioner  
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### PURPOSE OF THE BULLETIN

- [1] This Bulletin is intended to assist Council Members and Members of Committees and Local Boards appointed by Council (hereinafter all referred to as “Members”), in understanding their obligations regarding the holding of Meetings of Council as well as Meetings of Committees and Local Boards appointed by Council.
- [2] The Municipal Clerk is the primary confidential resource available for clarification and advice on the rules surrounding the holding of Meetings of Council as well as Meetings of Committees and Local Boards appointed by Council. You may also refer question for the advice of the Integrity Commissioner.
- [3] The Closed Meeting Investigator for the Town of Amherstburg is the Ombudsman for the Province of Ontario. Members seeking further information may wish to refer to the “Municipalities” section of the Office of the Ombudsman website which can be found here: <https://www.ombudsman.on.ca/what-we-do/topics/municipalities-en>.

### RELEVANT LEGISLATION & POLICIES

- [4] The relevant legislation regarding Meetings can be found in the *Municipal Act, 2001* (the “Act”), as amended by subsequent legislation. The most up-to-date version of the Act may be found at this link: <https://www.ontario.ca/laws/statute/01m25>. Further, it is important for Members to familiarize themselves with the provisions of Amherstburg’s *Procedural By-law 2014-91* (as amended) which can be found at this link: <https://www.amherstburg.ca/en/resources/2014-91-Procedural-By-law-as-amended.pdf>.
- [5] **Note:** The only references to “Meetings” in the **Code of Conduct** concern “Confidentiality” as it pertains to Closed or *In-camera* Meetings. The relevant provisions may be found in section 7.6 of the **Code** and, more specifically, at sections 7.6.5 and

7.6.6. The **Code of Conduct** may be found at: <https://www.amherstburg.ca/en/town-hall/resources/policies/Code-of-Conduct---Council-Committees-and-Local-Boards.pdf>.

An *Advisory Bulletin Regarding Confidential Information* (15 June 2018) may be found here: <https://www.amherstburg.ca/en/resources/Advisory-Bulletin-Amherstburg---Confidential-Information.pdf>. Although this Bulletin was based upon the previous version of the **Code of Conduct**, the principles remain applicable today.

- [6] As a general rule, s. 239(1) of the *Municipal Act, 2001* requires that **all Meetings be open to the public**. The exceptions to this rule are enumerated in the various subsections of s. 239 of the *Act*. If any of these exceptions apply, s. 239(4) requires that a resolution be stated that outlines the general nature of the Closed Meeting to be held. This ensures that when a Meeting is closed, the public is made aware of the general nature of the Meeting.
- [7] What constitutes a “Meeting” within the definition of the *Municipal Act, 2001*? Answering this question will give guidance to Members of Council, Committees, and Local Boards as to what types of “private discussions” could constitute a “Meeting” and would, thus, not be permitted under the *Municipal Act, 2001* unless open to the public.

## WHAT IS A “MEETING” AS DEFINED BY THE *MUNICIPAL ACT, 2001*?

- [8] Section 238(1) of the *Municipal Act, 2001* states that a “Meeting” is defined as any regular, special or other meeting of a Council, of a Local Board, Agency, or of a Committee appointed by Council, where: (1) A quorum of members is present; and (2) the Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the Council, Local Board, Agency, or Committee as the case may be.
- [9] In order for a gathering to be defined as a “Meeting” within the definition of the *Act*, both of the above criteria must be satisfied. A quorum must be present, **and** the Members must discuss a matter that materially advances the business or decision-making of the particular body. These two criteria will be looked at in turn.
- [10] **Please Note:** If the above noted requirements for a “Meeting” are satisfied, it must be open to the public unless it meets the stipulations for a Closed Meeting set out in s. 239 of the *Act*.

## WHAT IS A “QUORUM”?

- [11] The term “Quorum” is not defined by the *Act* but has been interpreted by the Ontario Ombudsman through Investigative Reports. Prior to July 21, 2020, Members were

required to be “physically present” in order for a Meeting to occur. This interpretation prompted the Ombudsman, **at the time**, to conclude, for instance, that an exchange of emails could not be considered a Meeting subject to the open meeting rules.

(<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2019/city-of-hamilton> at para 26-27 and at para 45.)

- [12] Further, “quorum” is defined in the Amherstburg *Procedural By-law 2014-91*. Section 1(x) of the By-law stipulates that a “quorum” means “a majority of the Members who comprise the Council or Committee (the quorum for the purpose of Town of Amherstburg Council Meetings will be 4 members). For Committees, quorum shall mean the majority of the whole number of appointed Members eligible to vote”.
  
- [13] Section 238(3.1) of the *Act* provides that a Municipality’s applicable Procedural By-law may provide that a Member of Council, of a Local Board, of an Agency, or of a Committee can participate electronically in a Meeting to the extent, and in the manner, set out in the By-law. Subsequent amendments to the *Act* allowed for the Procedural By-law to include those participating in a Meeting electronically to be counted as Members of a quorum **if** the Municipality has declared a “state of emergency” under the *Emergency Management and Civil Protection Act*. This statute may be found here: <https://www.ontario.ca/laws/statute/90e09>.
  
- [14] In March of 2020, Amherstburg Council passed *By-law 2020-029* amending the *Procedural By-law 2014-91*. The *Procedural By-law* now provides that, during a “Declared Emergency”, Regular and Special Meetings of Council, Local Boards, Agencies, and Committees may be held electronically. Further, the By-law provides that “Members attending and present during an Electronic Meeting shall be counted for the purpose of quorum and shall be entitled to vote through a recorded vote by the Clerk as if they were attending the meeting in person, or taken electronically if the means of access allow for it.” **Note: A Declared State of Emergency currently exists in the Town of Amherstburg.**
  
- [15] A further set of amendments to the *Act* can be found in Bill 197, Schedule 12. Bill 197 was given Royal Assent on July 21<sup>st</sup>, 2020. These amendments to section 238 (3.3) of the *Municipal Act 2001* permit the Municipality to amend its Procedural By-law to provide that, **even in the absence of a Declared Emergency**, (a) a Member of a Council, of a Local Board or Committee of either of them who is participating electronically in a meeting may be counted in determining whether or not a quorum of Members is present at any point in time; and (b) a Member of a Council, of a Local Board or of a

Committee can participate electronically in a regular or special meeting that is open or closed to the public.

- [16] When read together, the *Act* (including the most recent amendments) and the Amherstburg *Procedural By-law 2014-91* indicate that a “quorum” exists if a majority of voting members that comprise the Council, Committee, or Local Board are either (1) physically present, or (2) during a Declared Emergency, are participating electronically, or (3) if and when the *Procedural By-law 2014-91* has been appropriately amended in conformity to Bill 197, are participating electronically, even in the absence of a Declared State of Emergency.
- [17] Thus, if a number of Members sufficient to form a quorum are participating in a discussion via Zoom, WhatsApp Video, Microsoft Teams, and the like, or are participating via a Listserve, group email or even by sequential emails, this may well constitute a quorum and mean that a Meeting is taking place. In other words, it would appear that Members no longer need to be physically present for a Meeting to take place. If it also advances the business of the Municipality, it will be a Meeting in the context of the *Municipal Act 2001* and must be open to the public unless it is covered by the rules pertaining to Closed Meetings. **The best advice here is to avoid these situations altogether.**

## WHAT DOES “MATERIALLY ADVANCES THE BUSINESS OR DECISION-MAKING” MEAN?

- [18] The *Act* does not explicitly define what is meant by “materially advances the business or decision-making of the council, local board or committee”, but it has been interpreted subsequently in the Ombudsman’s Investigative Reports. The interpretation of “materially advances” involves considering the extent to which the discussions at issue moved forward the business of the Municipality, based on factual indicators.
- [19] For example, discussions, debates or decisions that are intended to lead to specific outcomes or to persuade decision-makers one way or another on a particular issue are likely to materially advance the business or decision-making of a Council, Committee or Local Board. Mere receipt or exchange of information, on the other hand, is unlikely to materially advance business or decision-making, as long as there is no attempt to discuss or debate that information in relation to a specific matter that is, or may be, before a Council, Committee or Local Board.
- <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2018/village-of-casselman-en> at para 30-31.

- [20] A Council, Committee or Local Board is likely to be materially advancing its business or decision-making – and therefore be subject to the open meeting requirements of the *Municipal Act, 2001* – when, for example, it votes, reaches an agreement, provides direction or input to staff, or discusses or debates a proposal, course of action, or strategy. A gathering that is informative in nature **ONLY** and does not involve discussion or debate will not be considered a “Meeting”, even if the numbers are sufficient to constitute a quorum. (<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2020/town-of-pelham> at para 20.)
- [21] Members who discuss or provide input on a proposal, course of action or strategy outside of a public meeting may still be in contravention of the law even if a quorum is not present. In one incident, a Mayor requested the opinion of several Councillors about a potential donation to be made to the Municipality. Because this request was done via email no “quorum” was present and, thus, there was no Meeting within the meaning of s. 238(1) the *Act*. However, this solicitation was found to contravene s. 5(3) of the *Act*, which requires that a Municipality’s powers be exercised through By-laws. This provision ensures that Council decision making is subject to public scrutiny.

## CONCLUSION

- [22] Meetings of Council, Committees or Local Boards must be open to the public subject to an enumerated list of exceptions found in s. 239 of the *Municipal Act, 2001*. A discussion will be considered a “Meeting” within the definition of the *Act* based on two criteria: First, if a majority of the decision-making body’s Members, who are eligible to vote, are physically present. This means “in-person” **unless** electronic attendance is provided for by the Municipality’s Procedural By-law. And second, if the Members are materially advancing the business or decision-making of the Council, Committee or Local Board, as the case may be. That is, are the Members discussing a proposal, course of action or strategy and does this activity include voting, reaching an agreement or otherwise debating the proposal, course of action or strategy.
- [23] Members of Council should reserve their opinion on a proposal, course of action or strategy for the public setting, even in situations where a quorum is not present. This will ensure that that they do not contravene s. 5(3) of the *Act*.
- [24] Finally, it should be noted that the Mayor is the official spokesperson for Council and the Mayor is responsible for communicating the Town’s position on all municipal matters and decisions of Council. See the **Code of Conduct**, sections 7.3.1 and 7.3.3 for provisions dealing concerning contact with the Media.
- [25] This Advisory Bulletin is intended to provide general information. For more specific information, you should contact the Municipal Clerk.

## FURTHER INFORMATION

If you have any questions regarding this Advisory Bulletin, please contact the Municipal Clerk or:

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