

The Corporation of the Town of Niagara-on-the-Lake Information Report to Council

SUBJECT: Informal Site Visits by Members of Council – Open Meeting Requirements of the Municipal Act, 2001

DATE: 2023-03-21

REPORT #: CAO-23-040

PREPARED BY: Marnie Cluckie, Chief Administrative Officer

DEPARTMENT: CAO/Administration

BACKGROUND INFORMATION

At its Council meeting on December 20, 2022, Councillor Vizzari raised an item of new business regarding Town Council's approach to invitations to Council for "off the record" meetings and attendance at external organization's facilities or sites.

Local businesses and organizations occasionally invite all members of Council to their premises to provide information to the members about their business, development, or some issue related.

While Councillor Vizzari noted she supported meeting with organizations to gather information and build and strengthen relationships, she raised a concern about such visits being held in the absence of the public. She suggested that instead of such visits, the Town of Niagara-on-the-Lake should adopt a practice of inviting organizations to present at a regular meeting of Council where the public could attend and observe and obtain the same information that would be provided to members of Council.

Given the orientation training Town Council and Staff received on December 6, 8, and 13, 2022, about good governance and open/closed meetings of Council, Staff also had concerns about the legality of conducting site visits or facility tours with members of Council. In particular, Staff was concerned about whether such gatherings would contravene the open meeting requirements of the Municipal Act, 2001, and wanted to investigate further. Staff is conscious of the crucial public purpose served by the open meeting rule and believes it should be considered in determining the Town of Niagara-on-the-Lake (the "Town") policy concerning informal site visits by members of Council.

At the December 20 Council meeting, Council deferred this matter to Staff to provide a report to Council for consideration.

Following the December 20 meeting, Staff reviewed the orientation training materials and applicable legislation. The Chief Administrative Officer (CAO) also engaged John Mascarin of Aird Berlis to provide a legal opinion to the Town concerning informal site visits attended by members of Council related to the open meeting requirements of the *Municipal Act, 2001*. The legal opinion is attached as **Appendix I** to this report.

NEXT STEP / CONCLUSION

After careful review, legal counsel determined that a site visit or attendance at a property by all the members of Council can constitute a “meeting” under the *Municipal Act, 2001*.

Also, to the extent a site visit “materially advances” Council business or decision-making in any way, it may constitute a “meeting.” There is, unfortunately, no general standard that could guide members as to what would cross the line in any given instance. However, if such site visits are not observable by the general public as they are in process, this can constitute a contravention of the *Municipal Act, 2001*.

The members do not intend to convene a formal meeting, nor would any disclaimer of the meeting being “off the record” be relevant.

The goal of the open meeting rule is to enhance transparency and openness of local government and inform the electorate about how decisions are made and on what basis. Even if members of Council do their best to refrain from discussing Town business at a site visit, the surrounding context and the mere fact of attending a site may lead to public speculation about what actually transpired; this can risk the loss of public confidence in local government which the open meeting rule seeks to enhance.

Therefore, the Town’s legal counsel supports the recommendation that Council invite any persons, parties or organizations wishing to inform members of their businesses, plans or proposals to present such information to Council. Questions that members may have can then be answered at an open meeting. This is a preferred approach to having Council attend individual site visits.

ATTACHMENTS

- **Appendix I** - Legal Opinion re Informal Council Site Visits and Open Meeting Rule