

March 15, 2024

TO THE MAYOR AND MEMBERS OF COUNCIL:

The regular meeting of Council will be held on **Monday, March 18, 2024 at 10:00 o'clock a.m., in the Council Chambers, 350 City Hall Square.**

A special meeting of Council will be held on **Monday, March 18, 2024, immediately following the regular meeting of Council, in Room 139, 350 City Hall Square.** Council will at the special meeting adopt a resolution to authorize Council to meet in closed session, and the resolution shall contain the general nature of the matters to be considered in the closed session. The resolution must be adopted by a majority of Council present during the open special meeting before the meeting may be closed. An agenda for this meeting is enclosed under separate cover.

BY ORDER OF THE MAYOR.

Yours very truly,



Steve Vlachodimos

City Clerk

/bm

c.c. Chief Administrative Officer

Consolidated City Council Meeting Agenda

Date: Monday, March 18, 2024

Time: 10:00 o'clock a.m.

Location: Council Chambers, 1st Floor, Windsor City Hall

All members will have the option of participating in person in Council Chambers or electronically and will be counted towards quorum in accordance with Procedure By-law 98-2011 as amended, which allows for electronic meetings. The minutes will reflect this accordingly. Any delegations have the option to participate in person or electronically.

MEMBERS:

Mayor Drew Dilkens

Ward 1 – Councillor Fred Francis

Ward 2 – Councillor Fabio Costante

Ward 3 – Councillor Renaldo Agostino

Ward 4 – Councillor Mark McKenzie

Ward 5 – Councillor Ed Sleiman

Ward 6 – Councillor Jo-Anne Gignac

Ward 7 – Councillor Angelo Marignani

Ward 8 – Councillor Gary Kaschak

Ward 9 – Councillor Kieran McKenzie

Ward 10 – Councillor Jim Morrison

ORDER OF BUSINESS

Item # Item Description
1. ORDER OF BUSINESS

2. CALL TO ORDER - Playing of the National Anthem

READING OF LAND ACKNOWLEDGEMENT

We [I] would like to begin by acknowledging that the land on which we gather is the traditional territory of the Three Fires Confederacy of First Nations, which includes the Ojibwa, the Odawa, and the Potawatomi. The City of Windsor honours all First Nations, Inuit and Métis peoples and their valuable past and present contributions to this land.

3. DISCLOSURE OF PECUNIARY INTEREST AND THE GENERAL NATURE THEREOF

4. ADOPTION OF THE MINUTES (*previously distributed*)

4.1. Adoption of the Windsor City Council minutes of its meeting held February 26, 2024
(SCM 58/2024)

5. NOTICE OF PROCLAMATIONS

Proclamations

“Transit Operator and Worker Appreciation Day” – March 18, 2024

“World Tuberculosis (TB) Day” – March 24, 2024

“Happy Akitu Chaldean Babylonian 7324 New Year” – April 1, 2024

“Royal Canadian Air Force Centennial Week” – April 1 - 5, 2024

“Sikh Heritage Month” – April 2024

“Be a Donor Month” – April 2024

Flag Raising Ceremony

“Commonwealth Day” – March 11, 2024

“Happy Akitu Chaldean Babylonian 7324 New Year” – April 1, 2024

“Royal Canadian Air Force 2024 Centennial” – April 2–3, 2024

“Sikh Heritage Month” – April 3–5, 2024

Illumination

“World Down Syndrome Day” – March 21, 2024

“Epilepsy Awareness Month – International Purple Day” – March 26 – 31, 2024

“Happy Akitu Chaldean Babylonian 7324 New Year” – April 1, 2024

“Royal Canadian Air Force 2024 Centennial” – April 2 – 7, 2024

6. COMMITTEE OF THE WHOLE

7. COMMUNICATIONS INFORMATION PACKAGE (This includes both Correspondence and Communication Reports) (previously distributed)

7.1. Correspondence 7.1.1 through 7.1.8 (CMC 5/2024)

Clerk’s Note: A letter from the Ontario Land Tribunal (OLT) dated March 6, 2024 is being **attached** as additional information to Correspondence Item 7.1.1.

Also **attached** is Correspondence Item 7.1.9.

7.1.9	City Clerk	Memo regarding Reports on Closed Meeting Investigations 2023-01 and 2023-02
	and	and
	Aird & Berlis LLP	Report on Closed Meeting Investigation 2023-01
		and
		Report on Closed Meeting Investigation 2023-02

7.2. Your Quick Gateway (Windsor) Inc. (YQG) - 2023 Financial Statements (Q3) - City Wide (C 24/2024)

7.3. Mayor, Councillors and Appointees Statement of Remuneration and Expenses for 2023 (C 23/2024)

7.4. 2023 Status Report regarding City’s response to Cannabis Retail Store Applications provided to AGCO – City Wide (C 13/2024)

7.5. Sewer Master Plan Implementation Update - City Wide **(C 17/2024)**

8. CONSENT AGENDA (previously distributed)

8.1. Energy Service Agreement at the Windsor Justice Facility with ENWAVE Windsor Holdings LP - City Wide **(C 25/2024)**

8.2. Working at Heights Training Program Agreements – City Wide **(C 26/2024)**

8.3. Update of Round 1 of the Arts, Culture and Heritage Fund 2024 – City Wide **(C 27/2024)**

8.4. Exemption to Noise By-law 6716 for Nighttime Construction Work – EC Row Expressway from Banwell Road to Lauzon Parkway – Wards: 7, 8 and 9 **(C 22/2024)**

8.5. Downtown CIP Grant Application - Property Address, Roll Number, and Legal Description Update - 570 Church Street and 576 Church Street **(C 30/2024)**

8.6. Global Policy Update - City Wide **(C 15/2024)**
Clerk's Note: Appendix A is **attached** for clarity.

CONSENT COMMITTEE REPORTS

8.8. Pathway to Potential: Windsor-Essex County Poverty Reduction Strategy 2024 – 2028 – City Wide **(SCM 62/2024) & (S 29/2024)**

8.9. Zoning By-law Amendment Application for 3445 Church Street, Z-002/24 [ZNG-7165], Ward 1 **(SCM 60/2024) & (S 17/2024)**

9. REQUEST FOR DEFERRALS, REFERRALS AND/OR WITHDRAWALS

10. PRESENTATIONS AND DELEGATIONS

11.1. Stormwater Financing Project Update - City Wide **(C 29/2024)**

a) Elizabeth Treadway, Senior Vice President Water Resources, WSP, David Bulova, Senior Stormwater Planner, WSP, Peter Simcisko, Managing Partner, WSP and Nadya Mrochkovskaia, Environmental Planner are available for questions (via Zoom)

8.7. Temporary Exhibition Look Again! Outside! Extension and Expansion - City Wide **(SCM 59/2024) & (S 27/2024)**

a) Jennifer Matotek, Executive Director, Art Windsor Essex (in person) and Alex Baker, Chair, Art Windsor Essex (in person)

b) Terrance Kennedy, area resident (in person)

11. REGULAR BUSINESS ITEMS (Non-Consent Items) (previously distributed)

- 11.2. Capital Variance Report - September 30, 2023 - City Wide **(C 167/2023)**
- 11.3. Disaster Mitigation & Adaptation Fund Program - City Wide **(C 28/2024)**
- 11.4. Housing Enabling Water Systems Fund Application – Citywide **(C 33/2024) (attached)**
- 11.5. 2024 Municipally Significant Event Status, Wards 2, 3, 4, 9 **(SCM 69/2024)**
& **(S 26/2024) (attached)**

12. CONSIDERATION OF COMMITTEE REPORTS

- 12.1. (i) Report of the Special In-Camera meeting or other Committee as may be held prior to Council (if scheduled)
- 12.2. Report of the Special meeting of Council – In-camera of its meeting held Monday, February 26, 2024 **(SCM 65/2024) (previously distributed)**

13. BY-LAWS (First and Second Reading) (previously distributed)

- 13.1 **By-law 45-2024** A BY-LAW TO ASSUME FOR SUBSEQUENT CLOSURE THE 4.57 METRE NORTH/SOUTH ALLEY AND THE 6.10 METRE EAST/WEST ALLEY LOCATED NORTH OF UNIVERSITY STREET EAST, WEST OF PARENT AVENUE AND SOUTH OF CHATHAM STREET EAST, CITY OF WINDSOR. Authorized by CR225/2023 dated May 29, 2023.
- 13.2 **By-law 46-2024** A BY-LAW TO CLOSE, STOP UP AND CONVEY THE 4.57 METRE NORTH/SOUTH ALLEY AND THE 6.10 METRE EAST/WEST ALLEY LOCATED NORTH OF UNIVERSITY STREET EAST, WEST OF PARENT AVENUE AND SOUTH OF CHATHAM STREET EAST, CITY OF WINDSOR. Authorized by CR225/2023 dated May 29, 2023.
- 13.3 **By-law 47-2024** A BY-LAW TO PROVIDE FOR THE ABANDONMENT OF THE ENTIRE GRAVEL ROAD DRAIN. Authorized by CR19/2024 dated January 15, 2024.
- 13.4 **By-law 48-2024** A BY-LAW TO FURTHER AMEND BY-LAW NUMBER 8600 CITED AS THE "CITY OF WINDSOR ZONING BY-LAW". Authorized by Section 5.4 in Zoning By-law 8600.
- 13.5 **By-law 49-2024** A BY-LAW TO ADOPT AMENDMENT NO. 169 TO THE OFFICIAL PLAN OF THE CITY OF WINDSOR. Authorized by CR88/2024 dated February 26, 2024.

13.6 **By-law 50-2024** A BY-LAW TO FURTHER AMEND BY-LAW NUMBER 8600 CITED AS THE "CITY OF WINDSOR ZONING BY-LAW". Authorized by CR88/2024 dated February 26, 2024.

13.7 **By-law 51-2024** A BY-LAW TO CONFIRM PROCEEDINGS OF THE COUNCIL OF THE CORPORATION OF THE CITY OF WINDSOR AT ITS MEETING HELD ON THE 18TH DAY OF MARCH, 2024.

14. **MOVE BACK INTO FORMAL SESSION**

15. **NOTICES OF MOTION**

16. **THIRD AND FINAL READING OF THE BY-LAWS**

By-law 45-2024 and 51-2024 inclusive

17. **PETITIONS**

18. **QUESTION PERIOD** (*previously distributed*)

18.1. Summary of Outstanding Council Questions as of March 6, 2024 (**SCM 63/2024**)

18.2. Outstanding Council Directives List as of March 6, 2024 (**SCM 64/2024**)

19. **STATEMENTS BY MEMBERS**

20. **UPCOMING MEETINGS**

Orientation Session and first meeting of the
Environment & Climate Change Advisory Committee
Tuesday, March 19, 2024
5:00 p.m., Room 140, 350 City Hall Square West

Orientation Session and first meeting of the
Transit Windsor Working Group
Wednesday, March 20, 2024
2:30 p.m., Room 140, 350 City Hall Square West

Environment, Transportation & Public Safety Standing Committee
Wednesday, March 27, 2024
4:30 p.m., Council Chambers

Environment, Transportation & Public Safety Standing Committee Sitting as the Transit
Windsor Board of Directors
Wednesday, March 27, 2024
Immediately following the 4:30 p.m. meeting of the Environment, Transportation &
Public Safety Standing Committee, Council Chambers

Development & Heritage Standing Committee
Tuesday, April 2, 2024
4:30 p.m., Council Chambers

Community Services Standing Committee
Wednesday, April 3, 2024
9:00 a.m., Council Chambers

Orientation Session and first meeting of the
Community Public Art Working Group
Wednesday, April 3, 2024
5:00 p.m., Room 140, 350 City Hall Square West

City Council Meeting
Monday, April 8, 2024
10:00 a.m., Council Chambers

Orientation Session and first meeting of the
Age Friendly Windsor Working Group
Thursday, April 11, 2024
9:30 a.m., Room 140, 350 City Hall Square West

21. ADJOURNMENT



Subject: Housing Enabling Water Systems Fund Application - Citywide

Reference:

Date to Council: March 18, 2024

Author: Averil Parent

Asset Coordinator

519-253-7111 ext. 6126

aparent@citywindsor.ca

Asset Planning

Report Date: 3/8/2024

Clerk's File #: SW/14743

To: Mayor and Members of City Council

Recommendation:

- I. **THAT** City council **SUPPORT** an application to the Housing-Enabling Water Systems Fund (HEWSF) for the project identified in this report; and,
- II. **THAT** City Council **APPROVE** the signing and submission of the HEWSF application by the Chief Administrative Officer subject to all documentation being satisfactory in form to the City Solicitor, in technical content to the City Engineer, and in financial content to the City Treasurer, or designates; and,
- III. **THAT** subject to written confirmation from the grant provider that the City's application has been successful, Administration **REPORT BACK** to Council regarding the proposed financing strategy required to carry out this project and execute the Agreement.

Executive Summary:

N/A

Background:

In the fall of 2023, the Province announced a new funding opportunity called the Housing-Enabling Water Systems Fund (HEWSF). The HEWSF is an application-based program totalling \$200 million and is aimed at supporting the repair, rehabilitation and expansion of core water (drinking, storm and waste) infrastructure to protect communities and enable new housing development. All municipalities that own water infrastructure will be able to submit only one project. The program provides for a total provincial contribution maximum of \$35 million or 73% of eligible project costs.

Applications to the fund are now open and the deadline to apply is April 19th, 2024. All projects must be complete before March 2027.

The goal of the fund is to:

- enable growth and housing development;
- increase access to clean drinking water;
- increase treatment and/or management of wastewater and stormwater.

Discussion:

The HEWSF is intended to provide targeted funding for critical infrastructure projects that will help unlock more housing opportunities, protect public health and safety, and lay the foundation for economic growth in local communities. Administration reviewed the funding criteria and compiled a list of potential projects that would be eligible under the program criteria. Potential projects were vetted against each other and the project that has been selected to be brought forward for application to the HEWSF is the Sandwich South Servicing Project.

This project includes the following infrastructure improvements, as shown in Appendix A – Project Map:

- County Road 42 Road and Servicing Improvements including Storm, Sanitary and Watermain infrastructure;
- Realignment of the Lauzon Parkway/County Road 42 intersection, including Storm infrastructure
- 9th Concession Infrastructure Servicing, including Watermain, Storm and Sanitary infrastructure;
- Stormwater Management Ponds on airport lands at the corner of County Road 42 & Lauzon Parkway; and
- Improvements to the Sixth Concession Municipal Drain.

It is anticipated that construction of the noted infrastructure will serve as a catalyst to unlocking growth within the Sandwich South Lands. Preliminary estimates suggest the project will have the potential to support nearly 15,000 housing units in Sandwich South.

Risk Analysis:

There is a risk that if this report is not approved by Council in a timely manner, administration will not be able to submit application to the HEWSF program by the deadline of April 19th 2024.

Additionally, if the City is awarded funding under the HEWSF and a financial strategy is not approved and in place for the City's portion of ineligible costs and costs above the grant funded amount, the City will have to forfeit any funding awarded under the HEWSF.

Climate Change Risks

Climate Change Mitigation:

Submitting an application to the HEWSF does not pose a climate change mitigation risk.

Climate Change Adaptation:

Submitting an application to the HEWSF does not pose any climate change adaptation risk. If awarded, stormwater design guidelines will be followed when investing in this infrastructure to ensure that flooding risks are mitigated. This area was further considered and modeled as part of the Upper Little River Master Plan Environmental Assessment and Sandwich South Master Servicing Plan.

Financial Matters:

The HEWSF will fund up to 73% of eligible project expenses to a maximum of \$35 million. The high-level project budget is as follows and outlines potential eligible and ineligible contributions. These numbers represent preliminary, high level estimates at this time. These estimates will be refined for the grant application and, if successful, updated estimates and a proposed funding strategy will be reported to Council.

Sandwich South Servicing Project

Item	Eligible Cost	Ineligible Cost	Total Cost
Storm & Sanitary Sewers (Lauzon Pkwy, CR42 and 9 th Concession)	\$24,500,000		\$24,500,000
Watermain (CR42 and 9 th Concession)	\$15,500,000		\$15,500,000
Stormwater Ponds	\$35,100,000		\$35,100,000
Roadway Widening, Intersection Improvements, Lauzon Realignment (including active transportation)		\$45,900,000	\$45,900,000
Municipal Drain Reconstruction (7 th concession to Little River)	\$7,500,000		\$7,500,000
Project Management Costs		\$600,000	\$600,000
Contract Administration and Material Testing	\$2,100,000		\$2,100,000
Land Acquisition		\$4,000,000	\$4,000,000
SUB-TOTAL	\$84,700,000	\$50,500,000	\$135,200,000
Non-Recoverable HST (1.7602% of eligible and ineligible costs)		\$2,380,000	\$2,380,000
TOTAL	\$84,700,00	\$52,880,000	\$137,580,000
HEWSF Funding Contribution (estimated)			\$35,000,000
City of Windsor Funding Contribution (estimated)			\$102,580,000

It should be noted that the costs presented above represent the total cost of the noted project works. For purposes of the grant, only the portion of the project work that can be completed by the funding deadline of March 2027 will be submitted under the application. The balance of the work, along with the cost of other servicing and infrastructure improvements, will form part of the larger development and servicing of the area encompassed by Walker Road to the west, County Road 42 to the south, City municipal boundary to the east and EC Row to the north.

It should be noted that while a portion of this work has been funded in the current 10-year capital plan, given the magnitude of the proposed works, along with other servicing needs required in the area, a comprehensive funding strategy will need to be developed to fully support the required infrastructure development. This strategy will look at all available options for funding including current and existing sources of capital funding as well as future revenues (property taxes, sewer/stormwater surcharges, development fees etc.) which will incrementally realized as a result of the area being developed. There could be a potential for some level of borrowing required to ensure that sufficient financial resources are available to support the project expenditures. As a result, in addition to the above-noted preliminary budget estimates, financing charges may apply. Financing charges represent the cost of borrowing and will fluctuate based on a number of factors such as project schedule, timing of cash flows, future interest rates, and the total amount of borrowing if required.

At the time of writing this report, a financial strategy for servicing of the area is being developed and is expected to be presented to Council in the near future. As this project forms part of the work contemplated in the upcoming financing report, it is the intention to include the HEWSF contributions, if successful, within this financial strategy. Upon the City receiving written confirmation from the grant provider that the City's application has been awarded the requested funding, administration will report back to Council outlining a strategy to fund the grant matching and ineligible City contributions required to execute the project, including an estimate of any additional financing charges associated with the strategy.

Consultations:

Ryan Langlois, Water & Wastewater Engineer
Pat Winters, Manager, Development
Stacey McGuire, Executive Director of Engineering
Mike Dennis, Manager, Strategic Capital Budget Development & Control
Mark Spizzirri, Manager, Performance Measurement & Financial Administration

Conclusion:

In conclusion administration recommends proceeding with application to the HEWSF for the Sandwich South Servicing Project.

Approvals:

Name	Title
Natasha Gabbana	Senior Manager, Asset Planning
Wira Vendrasco	City Solicitor
Wira Vendrasco acting for Dana Paladino	Commissioner, Corporate Services (A)
Mark Winterton	Commissioner, Infrastructure (A)
Janice Guthrie	Commissioner, Finance/City Treasurer
Joe Mancina	Chief Administrative Officer

Notifications:

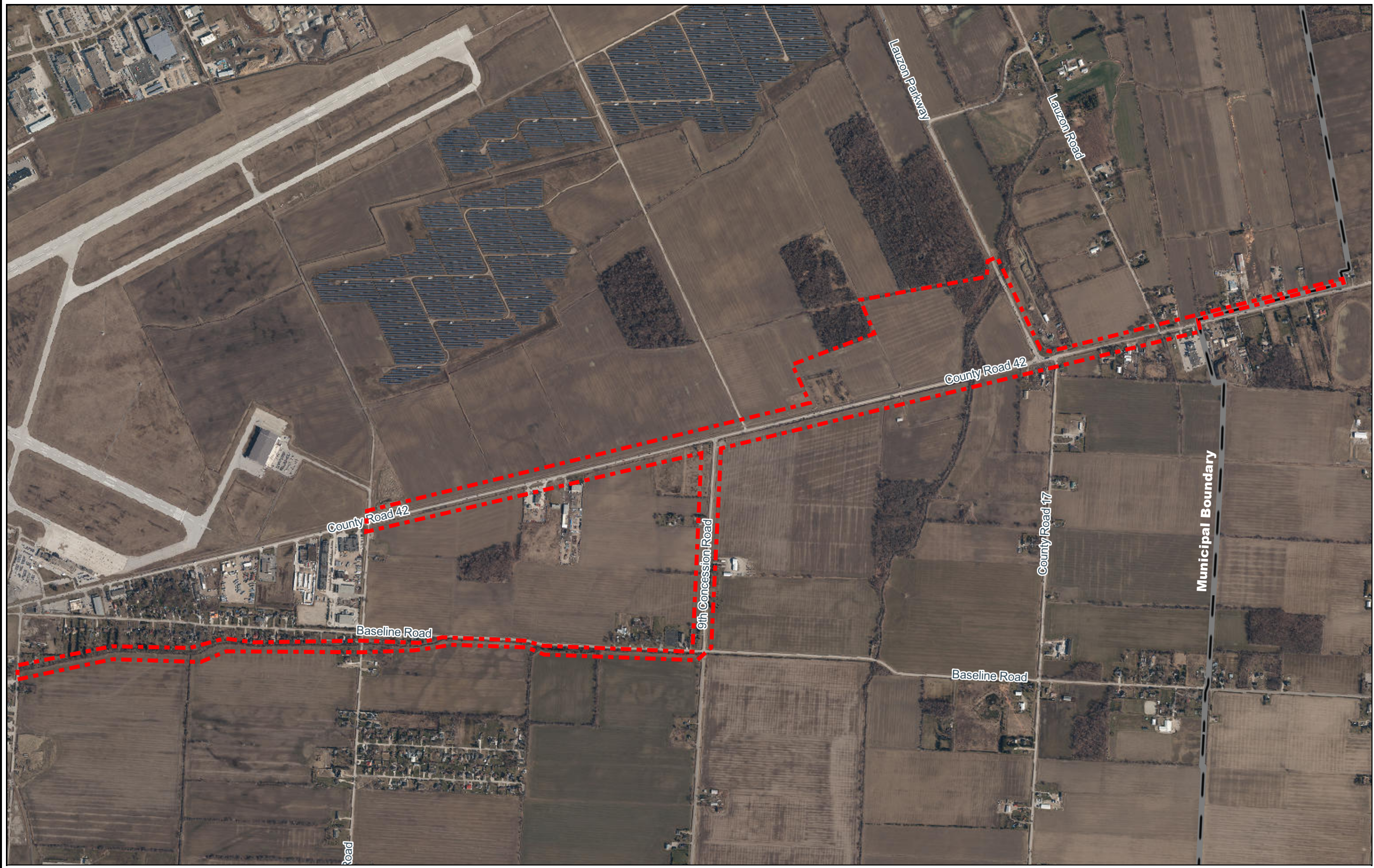
Name	Address	Email

Appendices:

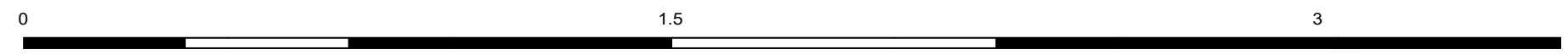
Appendix A – Project Map



 Project Area Boundary



Notes



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION



Committee Matters: SCM 69/2024

Subject: 2024 Municipally Significant Event Status, Wards 2,3,4,9

Moved by: Councillor Jo-Anne Gignac
Seconded by: Councillor Mark McKenzie

Decision Number: **CSSC 236**

THAT the request from; Northern Heat Rib Series; Rotary Club of Windsor (1918); Poutine Feast Ontario Inc.; Windsor-Essex Pride Fest; SOTC Productions; Zalent Creatives; and Hotel-Dieu Grace Healthcare Foundation for approval of designation as 'municipally significant' for the purpose of applying for their Special Occasions Permit – Public Event **BE APPROVED** by City Council subject to the terms and conditions of the Special Event Agreement with the City; and further,

THAT City Council **APPROVE** the following proposed significant event dates for 2024:
Thursday May 23, 2024 through Sunday May 26, 2024

- Windsor Rib Fest (Riverfront Festival Plaza and Riverfront Civic Terrace) hosted by Northern Heat Rib Series

Friday May 31, 2024 through Sunday June 2, 2024

- Art in the Park (Willistead Park) hosted by Rotary Club of Windsor (1918)

Thursday June 6, 2024 through Sunday June 9, 2024

- Poutine Feast (Riverfront Festival Plaza and Riverfront Civic Terrace) hosted by Poutine Feast Ontario Inc.

Saturday June 8, 2024

- The Pier (Assumption Park- Pier) hosted by SOTC Productions

Saturday July 27, 2024 or Saturday August 24, 2024

- The Hangar (Canadian Aviation Museum) hosted by SOTC Productions
- This event takes place on private property that does not hold a liquor license
- The event will only take place on one of the dates, not both

Friday August 9, 2024 through Sunday August 11, 2024

- Pride Fest (Lanspeary Park and Outdoor Rink) hosted by Windsor-Essex Pride Fest

Friday August 16, 2024 through Sunday August 18, 2024

- Windsor International Diaspora African Festival (Lanspeary Park) hosted by Zalent Creatives

Saturday September 14, 2024

- Survivor Challenge (Malden Park) hosted by Hotel-Dieu Grace Healthcare Foundation

Carried.

Report Number: S 26/2024

Clerk's File: SR2024

Clerk's Note:

1. The recommendation of the Community Services Standing Committee and Administration are the same.
1. Please refer to Item 8.1 from the Community Services Standing Committee held on March 6, 2024.
2. To view the stream of this Standing Committee meeting, please refer to:
<https://csg001-harmony.sliq.net/00310/Harmony/en/PowerBrowser/PowerBrowserV2/20240306/-1/9472>

Subject: 2024 Municipally Significant Event Status, Wards 2,3,4,9

Reference:

Date to Council: March 6, 2024
Author: Michelle Staadegaard
Manager of Culture & Events
519-253-2300 ext. 2726
mstaadegaard@citywindsor.ca

Will Alexander
Special Events Supervisor
519-253-2300 ext. 2724
walexander@citywindsor.ca

Recreation and Culture
Report Date: February 13, 2024
File # SR2024

To: Mayor and Members of City Council

Recommendation:

THAT the request from; Northern Heat Rib Series; Rotary Club of Windsor (1918); Poutine Feast Ontario Inc.; Windsor-Essex Pride Fest; SOTC Productions; Zalent Creatives; and Hotel-Dieu Grace Healthcare Foundation for approval of designation as 'municipally significant' for the purpose of applying for their Special Occasions Permit – Public Event **BE APPROVED** by City Council subject to the terms and conditions of the Special Event Agreement with the City; and further,

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Saturday September 14, 2024

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Executive Summary:

N/A

Background:

The Alcohol and Gaming Commission of Ontario (AGCO) administers the Special Occasion Permit (SOP) program, which allows for the sale, service and in most cases consumption of liquor on special occasions, such as cash bars at weddings or private receptions, as well as larger scale events that are open to the public, such as charity fundraisers.

A Special Occasion Permit (SOP) is required any time liquor is sold or served anywhere other than in a licensed establishment or a private place. SOPs are for occasional, special events only, and not for personal profit or running an ongoing business.

AGCO defines a Public Event as an event that is advertised to the public to attend. These events can be advertised and fundraising and/or profit from the sale of liquor at the event is permitted.

Public Event permits can be issued for events of “municipal significance”.

An event of municipal significance requires a designation by the municipality in which the event will take place. SOP applications for a municipally significant public event must be accompanied by either a municipal resolution or a letter from a delegated municipal official designating the event as municipally significant. Requests for municipal significance must be requested on an annual basis.

Discussion:

Previously, Council approved seven events as “municipally significant” at its meeting of March 30, 2023 as per CR 145/2023 CSPA 205. Administration has received a request for eight (8) events for the 2024 season to be designated as “municipally significant”.

All eight (8) events listed have received no objection from either Administration or the Special Events Resources Team (SERT). Administration has consulted with the local AGCO representatives (included as part of SERT), who did not object to any of the events applying for “municipal significance” status noted in this report.

The event organizers will be required to enter into an agreement with the Corporation to the extent similar to the other festivals and events that currently are presented at other City of Windsor municipal locations, including indemnifying the City of Windsor from liability associated with the event.

Risk Analysis:

There is a significant risk that if the eight (8) events noted in this report are not approved for Significant Event Status designation, they will not get approval for an SOP by the AGCO. If Significant Event Status were not approved, these public events would not be able to occur.

The consumption of alcohol within the festival/event site will occur at these events if they are granted an SOP. For events on City owned property, the applicant will be required to provide the required insurance. All liquor services will adhere to the AGCO regulations and the Municipal Alcohol Policy, which provides information that covers requirements for Smart Service staffing resources. These factors will mitigate the risk factor to the Corporation.

For events that are not on City owned property, there is minimal risk to the Corporation.

Climate Change Risks

Climate Change Mitigation:

N/A

Climate Change Adaptation:

N/A

Financial Matters:

The applicants hosting events on City owned public property would be required to rent the respective venue and pay the applicable fees as per the 2024 Schedule of Fees.

Consultations:

SERT (Special Events Resource Team)

AGCO (Alcohol and Gaming Commission of Ontario)

Conclusion:

The City of Windsor recognizes the importance of special events and festivals enhancing the quality of life, tourism, culture, recreation and education, not all of which would be possible without the invaluable services of volunteers, community groups, and sponsors that add their support and skills to enhancing the community events.

Planning Act Matters:

N/A

Approvals:

Name	Title
William Alexander	Supervisor, Special Events
Michelle Staadegaard	Manager, Culture & Events
Jen Knights	Executive Director, Recreation & Culture
Ray Mensour	Commissioner, Community Services
Wira Vendrasco	City Solicitor(A)
Dana Paladino	Commissioner, Corporate Services
Joe Mancina	Chief Administrative Officer

Notifications:

Name	Address	Email

Appendices:

Ontario Land Tribunal

655 Bay Street, Suite 1500
Toronto ON M5G 1E5
Telephone: (416) 212-6349
Toll Free: 1-866-448-2248
Website: olt.gov.on.ca

**Tribunal ontarien de
l'aménagement du territoire**

655 rue Bay, suite 1500
Toronto ON M5G 1E5
Téléphone: (416) 212-6349
Sans Frais: 1-866-448-2248
Site Web: olt.gov.on.ca



Date: March 6, 2024

Aaron Farough
400 City Hall Square E
Windsor, ON N9A 7K8
afarough@citywindsor.ca

Re: OLT Case Number(s): OLT-23-001105
OLT Lead Case Number: OLT-23-001105
Municipality/Upper Tier: City of Windsor
Subject Property: 1982 Norman Road
Address:
Reference Number(s): BL 135-2023

The Ontario Land Tribunal has received a request by City of Windsor to adjourn the Merit Hearing scheduled to commence on March 21, 2024.

The Tribunal has granted the request. The hearing event schedule to commence on March 21, 2024 has been cancelled.

A new date has not been scheduled at this time. The Parties are directed to reach out to the Tribunal once a settlement has been reached at which time the Tribunal will schedule the appropriate event.

No further notice of this adjournment will be issued.

Yours truly;

Hannah Nastic
Case Coordinator/Planner

Encl.

c.c.
Raymond Colautti, ray@clplaw.net

Commissioner of Community Services				
Policy	Authority	Original Approval Date	Comments From Department	Proposed Direction
Adopt a Park Policy	CR127/2013	8-Jul-13	Minor updates - Updated policy name and sections to include trails. Changed training of volunteers responsibility from Parks Development to Parks Operations. Requirement for post report removed.	Approve Updated Policy
Concussion Policy	CR191/2014	5-Aug-14	Minor updates. Updated the name of the ministry and positional titles for City Staff	Approve Updated Policy
Landscaping Policy for Public and Quasi-Public Projects	CR342/1982	22-Mar-82	Should be deleted - will be included in The City of Windsor Landscape Requirements for Development document.	Rescind Policy
Municipal Alcohol Policy	M512-2015	7-Dec-15	This Policy received a major overhaul. The current Policy contains a lot of rules and guidelines which make it quite lengthy and difficult to navigate. The guidelines were moved out of the Policy and will be included in a special event user manual. The policy is now only 6 pages, and references the important legislation that must be followed. Has been reviewed by Legal.	Approve Updated Policy
Riverfront Festival Plaza Booking Policy	M167/2013	6-May-13	Minor Updates to city job titles/departments to remain current	Approve Updated Policy
Ice Allocation Policy	B29-2015	21-Dec-15	Minor update - updated CLT title to Commissioner	Approve Updated Policy
Media Policy	M189/2015	1-Jun-15	Updates include: (1) made corporate communications only point of contact as per Ray's suggestion and added mention of emergencies and elections, (2) removed "spokesperson list" and inserted CLT/CAO and ED's, (3) made corp comm only contact for staff contacted by media at Ray's request, (4) removed bullet about service disruption (it will be handled through regular approval process now)	Approve Updated Policy
Commissioner of Corporate Services				
Policy	Authority	Original Approval Date	Comments From Department	Proposed Direction
Acceptable Use Policy	CR554/2017	18-Sep-17	Policy has been updated	Approve Updated Policy
Information Security Policy	CR 210/2007	25-Sep-14	Policy Reviewed and remains current	Approve Existing Policy
Commissioner of Economic Development				
Policy	Authority	Original Approval Date	Comments From Department	Proposed Direction
Address Assignment and Address Change Policy	CR22/2008	24-Feb-15	Policy is still relevant. Responsibility change from Building department to Planning department.	Approve Policy as Current
Business Improvement Areas Capital Asset Maintenance Funding Policy	CR107/2009	22-Sep-14	Funding remains in the budget but as BIA's frequently advocate for Council to take action outside of the policy, it will be reviewed and alternatives brought to Council in the future.	Approve Policy as Current
Business Improvement Areas-New Capital Asset Funding Allocation Policy	CR107/2009	22-Sep-14	Funding remains in the budget but as BIA's frequently advocate for Council to take action outside of the policy, it will be reviewed and alternatives brought to Council in the future.	Approve Policy as Current
Sidewalk Cafe Policy	CR130/2008	24-Feb-15	Department confirms that this policy is no longer in use and can be rescinded in global report	Rescind Policy

Site Plan Control Application Policy	CR757/1980	9-Jun-80	Recently adopted Provincial legislation – Bills 108 and 109 – significantly impacts the municipal development process. This policy will be reviewed and revised to adhere to the new legislation as details become known.	Approve Existing Policy
Commissioner of Infrastructure Services				
Policy	Authority	Original	Comments From Department	Proposed Direction
Design-Build Contracting Policy	CR 193/2012	27-Aug-12	Policy Reviewed and remains current	Approve Existing Policy
Display of Overstreet Banners Policy	CR811/1997	14-Jul-97	Policy Reviewed and remains current	Approve Existing Policy
Downspout Disconnection Policy	CR50/2008	11-Feb-08	Policy Reviewed and remains current	Approve Existing Policy
Encroachment Policy	M67/2015	17-Feb-15	Encroachment policy goes to Council on January 30th.	Approve Existing Policy
Parking-Control Changes Policy	M10/1987	29-Jan-87	The parking related policies will be combined into one general parking policy and brought to Council in a separate report. The target timeline for completing this is May 2024.	Update in Progress as per Departmental Comments
Parking-Enforcement of By-law 9023 and Cancellation-Reduction of Parking Tickets Policy	CR126/2013	8-Jul-13	The parking related policies will be combined into one general parking policy and brought to Council in a separate report. The target timeline for completing this is May 2024.	Update in Progress as per Departmental Comments
Parking-Parking Permit Policy	CR93/2013	6-May-13	The parking related policies will be combined into one general parking policy and brought to Council in a separate report. The target timeline for completing this is May 2024.	Update in Progress as per Departmental Comments
Parking - On-Street Accessible Parking Spaces - Residential Policy	CR185/2013, M356/2013	23-Sep-13	The parking related policies will be combined into one general parking policy and brought to Council in a separate report. The target timeline for completing this is May 2024.	Update in Progress as per Departmental Comments
Parking-Onstreet Parking Permits for Agencies Policy	CR 418/2004	10-May-04	The parking related policies will be combined into one general parking policy and brought to Council in a separate report. The target timeline for completing this is May 2024.	Update in Progress as per Departmental Comments
School Neighbourhood Policy	CR645/2016	17-Oct-16	Policy Reviewed and remains current	Approve Existing Policy
Cost-Sharing Policy for the Construction of School Bus Bays	CR 383/2009	16-Nov-09	Policy has been updated	Approve Updated Policy
Pedestrian Generator Sidewalk Policy	CR343/2007	10-Sep-07	Policy has been updated	Approve Updated Policy

INTER-OFFICE MEMO

TO: Mayor and Members of Council
FROM: City Clerk
DATE: March 14, 2024
SUBJECT: Reports on Closed Meeting Investigations 2023-01 and 2023-02

Attached please find the reports of Aird and Berlis LLP, the closed meeting investigators appointed by the City, with respect to meetings of Council held on November 28, 2022, December 12, 2022, January 16, 2023 and February 27, 2023.

There are recommendations related to procedure in these reports and a summary response by administration to these recommendations is provided below in terms of what has already been implemented:

Recommendation – That the City provide notice of Striking Committee meetings to the public by posting all striking committee agendas online in accordance with the Procedure By-law. If a portion of the Striking Committee meeting is proposed to be held in closed session, the agenda must state the reason for going into closed session and provide a general description of the general nature of the matter to be discussed.

Clerk’s note: The decades-long practice for both in camera and/or Striking Committee meetings is that a general notice of the meetings is placed on a cover letter to Mayor and Council and posted on the city’s website, as part of the Consolidated Council meeting agenda package. Paper copies of these agendas have always been printed and available on-site upon request by the public and/or the media. However, it should be noted that at the start of this Council term, the City Clerk had undertaken a comprehensive review of all practices and procedures in an effort to provide continuous improvement. One of the first acts was to work with the IT department to revamp the Council agenda page on the city’s website, to make it a one-stop library shop that would list all agendas, minutes, additional information, link to video streams where applicable, as well as minutes of the various meetings. As part of this review, the intent was to post the in camera and/or striking committee agendas on this page according to meeting date. The revamped webpage went live the day before the new Council was sworn in on November 15, 2022. Shortly thereafter, the all-in-one agenda webpage began to include agendas for in camera meetings and/or Striking Committee meetings. Therefore, no further action is necessary.

Recommendation – The City update its website to ensure that agendas and reports for all Striking Committees which have occurred during this Council term are posted online.

Clerk’s note: As mentioned above, the city’s revamped webpage went live the day before the new Council was sworn in on November 15, 2022. Shortly thereafter, the all-in-one agenda webpage began to include agendas for in camera meetings and/or Striking Committee meetings. All meeting agendas to-date are posted online and will continue to be posted online going forward. Therefore, no further action is necessary.

Recommendation – The Committee must also ensure that prior to convening into closed session, it must state, by resolution, the fact of the holding of the closed meeting and the general nature of the matter to be considered.

Clerk’s Note: As part of the City Clerk’s service delivery review which began concurrently with the new term of Council, a review of the agendas for both in camera and/or Striking Committee meetings was undertaken and the first “revamped” agenda for Striking Committee meetings with an in camera component was in fact implemented beginning with the February 27, 2023 Striking Committee meeting. As shown on that agenda, there is a placeholder for approving the agenda and moving in-camera for the purpose of consideration of the items of business, pursuant to the relevant section of the *Municipal Act, 2001, as amended*, and this practice will continue on a go-forward basis.

Recommendation – The City should also ensure these resolutions to go into closed session are recorded in the Striking Committee’s reports. Resolutions must include a description of the general nature of the matter to be discussed “...in a way that maximizes the information available to the public while not undermining the reason for excluding the public”. The City is reminded that straw polls and shows of hands are not permitted.

Clerk’s Note: As part of the review in 2022/2023, formal meeting minutes are now prepared for Striking Committee (including those meetings that are in camera) and accompany the Striking Committee reports for approval on the public agenda and are also posted on the Council agenda webpage. Administration will ensure that this continues and is enforced.

Administrative recommendation to Council:

The actions noted within this memo will satisfy the recommendations put forward by Aird & Berlis LLP in their two reports. Therefore, administration recommends that Council consider the following:

That Council **RECEIVE** the reports of Aird & Berlis LLP regarding “Report on Closed Meeting Investigation 2023-01” and “Report on Closed Meeting Investigation 2023-02”, and that the measures outlined by the City Clerk addressing the recommendations in the subject report **BE NOTED** and that the City Clerk **CONTINUE** to review and provide the necessary continuous improvements that maximizes information available to the public while not undermining the reason for excluding the public.

Approvals:

Name	Title
Steve Vlachodimos	City Clerk
Dana Paladino	Commissioner, Corporate Services (A)
Joe Mancina	Chief Administrative Officer

AIRD BERLIS

Laura Dean
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E-mail: ldean@airdberlis.com

REPORT ON CLOSED MEETING INVESTIGATION 2023-01

THE CORPORATION OF THE CITY OF WINDSOR

Aird & Berlis LLP

Laura Dean

March 11, 2024

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CITY OF WINDSOR REPORT ON CLOSED MEETING INVESTIGATION 2023-01

I. INTRODUCTION

1. Aird & Berlis LLP is the Closed Meeting Investigator (the “**Investigator**”) for The Corporation of the City of Windsor (the “**City**”).
2. In our capacity as Investigator, we received a formal request for a closed meeting investigation, dated March 2, 2023 (the “**Request**”).
3. The Request sought an investigation concerning the closed session portion of a meeting held by Council for the City (“**Council**”), while convened as the Striking Committee for agencies, boards and commissions (the “**Striking Committee**”). The meeting of the Striking Committee in question was held on February 27, 2023 (the “**Meeting**”).
4. The Request alleged that, at the Meeting, the Striking Committee voted to assume authority for all Windsor-based business improvement areas (“**BIAs**”) for a period of 60 days. The Request did not question the lawful authority of the Striking Committee to take this action, but alleged that section 239 of the *Municipal Act, 2001* did not authorize the Striking Committee to convene into a closed session to discuss the matter. The Request also asserted that there was no public notice of the matter being placed on the agenda and no accompanying staff report.
5. This is a report on our closed meeting investigation made in accordance with subsection 239.2(10) of the *Municipal Act, 2001*.¹

II. CLOSED MEETING INVESTIGATOR – AUTHORITY & JURISDICTION

6. The City has appointed Local Authority Services (“**LAS**”) to perform Closed Meeting Investigations pursuant to section 239.1 of the *Municipal Act, 2001*. LAS delegated its authority to investigate to Aird & Berlis LLP.
7. Prior to accepting any investigation mandate, Aird & Berlis LLP conducts a thorough legal conflict search and makes other conflict inquiries to ensure our firm is in a position to conduct an independent and impartial investigation.
8. Our jurisdiction as Investigator is set out in section 239.2 of the *Municipal Act, 2001*. Our function includes the authority to investigate, in an independent manner, a request made by any person to determine whether the City has complied with section 239 of the *Municipal Act, 2001* or a by-law enacted under subsection 238(2) (i.e. a procedure by-law) in respect of a meeting or part of a meeting that was closed to the public.
9. Upon conducting an investigation, we report to Council on the outcome of the investigation, together with any recommendations, as may be applicable. Our role as Investigator does not include engaging with the merits of any particular item of municipal business, or questioning the policies or priorities of the City.

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

III. THE REQUEST

10. The Request was properly filed pursuant to section 239.1 of the *Municipal Act, 2001*.

11. To summarize, the Request raises the following issues:

- Did the Striking Committee fail to comply with section 239 of the *Municipal Act, 2001* with respect to the closed session portion of the Meeting?
- Did the Striking Committee fail to comply with the Procedure By-law 98-2011 (the “**Procedure By-law**”) with respect to the closed portion of the Meeting?

IV. REVIEW OF MATERIALS AND INVESTIGATIVE PROCESS

12. In order to properly consider the Request and make our determinations on the issues, we have reviewed the following materials:

- the Request;
- the Procedure By-law;
- Agenda for the Meeting;
- City Clerk’s notes from the Meeting;
- Report of the Striking Committee from the Meeting;
- The “Council Agendas” page of the City’s website; and
- Agenda, minutes and audiovisual recording of the March 9, 2023 Special Meeting of Council.

13. In addition, we had recourse to the provisions of the *Municipal Act, 2001*, and such secondary sources, case law, and reports of other closed meeting investigators as we deemed necessary in order to make our determinations.

14. We provided the City with the opportunity to review a draft of this report and met with the City Clerk and Commissioner of Corporate Service to discuss our preliminary findings. We have considered that discussion and their subsequent written submissions in preparing this final report.

V. STATUTORY FRAMEWORK

15. Ontario’s “open meeting” rule is enshrined in section 239 of the *Municipal Act, 2001*, which requires that “meetings” be open to the public, unless otherwise excepted.

16. Section 238 defines “meeting” as follows:

“meeting” means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) 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.

17. Section 238 of the *Municipal Act, 2001* defines “committee” as:

“committee” means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards;

18. The Striking Committee is comprised of all members of Council. It is a “committee” as defined above, whose meetings are captured by section 239 of the *Municipal Act, 2001*.

19. Unless they deal with a subject matter falling within a specific enumerated exception in subsection 239(2), all meetings are required to be held in an open forum where the public is entitled to attend and observe local government in process.

20. The purpose of the “open meeting” rule is to foster democratic values, increase transparency, and enhance public confidence in local government.² However, it has been long recognized that there are certain circumstances where open meetings, or full transparency in the immediate term, would not serve the public interest or the interests of the municipal corporation.³ In providing for certain limited exceptions to the general rule, section 239 seeks to balance the need for confidentiality in certain matters with the right of the public to information respecting the decision-making process of local government.⁴

21. Subsection 239(2) lists eleven matters that permit council or a committee to hold a meeting that is closed to the public, including the following:

Exceptions

239 (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

...

- (b) personal matters about an identifiable individual, including municipal or local board employees;

² See *RSJ Holdings Inc. v. London (City)* (2007), 36 M.P.L.R. (4th) 1 (S.C.C.).

³ See Ontario, *Report of the Provincial/Municipal Working Committee on Open Meetings and Access to Information* (Toronto: The Committee, July 1984), at p. 7.

⁴ Stephen Auerback & John Mascarini, *The Annotated Municipal Act*, 2nd ed., (Toronto, ON: Thomson Reuters Canada Limited, 2017) (e-loose leaf updated 2021 – rel 1) annotation to s. 239.

22. The closed meeting exception in clause 239(2)(b) allows a council to close a meeting to the public where it will discuss “personal matters about an identifiable individual, including municipal or local board employees”. The agenda for the meeting which was provided to members of Council relied upon this provision to go into closed session at the Meeting.

23. The Ontario Ombudsman has found that information about the education and employment history of applicants for volunteer committee positions, and discussions of their suitability for a committee, may fit within the exception in clause 239(2)(b).

24. The clear purpose of the exception in clause 239(2)(b) is to protect the privacy of identifiable individuals.⁵

25. Subsections 239(4) and 239(5) of the *Municipal Act, 2001* set out certain requirements for meetings that are closed to the public:

Resolution

239 (4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting;

...

Open meeting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.

VI. PROCEDURE BY-LAW

26. The Striking Committee is made up of all members of Council and is governed by the Procedure By-law.

27. The purpose of the Striking Committee is described in section 22.1 of the Procedure By-law:

All members of Council shall meet as a Striking Committee as soon as convenient after the inaugural meeting of Council to make recommendations on the appointment of members to the various Council Committees, and other Boards, Commissions and Agencies, in accordance with the City of Windsor Council Appointment Policy attached as Appendix "C".

⁵ Ontario Ombudsman, [Town of Bracebridge](#) (March 2015).

28. Appendix "C" of the Procedure By-law contains the City's Council Appointment Policy. Section 5.5 of the policy provides, in part, as follows:

At the appropriate Council Meeting, Council shall consider all circulated applications [for vacancies on City agencies, boards, committees, commissions, panels or corporations] in closed session in accordance with Part II of the *Municipal Freedom of Information and Protection of Privacy Act* and with Section 239 of the *Municipal Act, 2001*...

29. The Striking Committee makes recommendations to Council through Striking Committee reports. The City's process is to attach Striking Committee reports to public agendas of Council meetings. The Striking Committee recommendations which are contained in the reports are then considered and voted on by Council in open session.

30. Section 5.6 of the Council Appointment Policy provides:

After due consideration in closed session, Council shall in open session vote on any recommendation for appointments arising from closed session deliberations.

31. Section 3.4 of the Procedure By-law sets out the rules for closed meetings of Council.

32. Section 3.4(a) of the Procedure By-law provides that "Council meetings, or portions thereof, may be held "In Camera" only in accordance with section 239 of the *Municipal Act, 2001*".

33. Section 3.4(b) further provides:⁶

In the event that the subject matter to be considered at a meeting qualifies to be considered in closed session pursuant to section 239...of the *Municipal Act, 2001*, as amended, the public notice of meeting provided by the Clerk shall contain the general nature of the matter to be considered as required by the Act, and in addition, the Clerk shall provide to all members of Council a further notice which contains specifics of the confidential matters to be considered.

34. Section 3.4(c) further provides:

Prior to moving "In Camera" for one of the reasons listed in section 3.4(a), Committee/Council shall pass a motion in public session stating:

- i) the fact that the Committee/Council is convening into closed session, and
- ii) the general nature of the matter to be considered.

⁶ We note that this provision imposes an additional requirement beyond the *Municipal Act, 2001* and may preclude Council from deciding to go into closed session on an *ad hoc* basis until notice has been given for the next meeting.

35. Section 3.4(d) of the Procedure By-law states:

A meeting may be closed to the public during the taking of a vote if section 3.4(a) permits it, or requires that the meeting be closed to the public; and the vote is for a procedural matter or for giving directions and instructions to officers, employees, or agents of the municipality or local board or committee of either of them, or persons retained by, or under contract to the municipality or local board.

36. Section 3.4(e) of the Procedure By-law further states:

All resolutions, directions and general actions resulting from "In Camera" discussions shall be confirmed/adopted in open or public session.

37. Finally, section 3.4(f) of the Procedure By-law provides:

The rules of Council as outlined in the procedural by-law shall apply during the closed meetings of Council.

VII. THE MEETING

38. The agenda for the Meeting was provided to Council on February 24, 2023. The agenda is labelled "Private & Confidential". It lists one specific agenda item which is identified as "Personal matter – about identifiable individuals – appointment of BIA members" and cites clause 239(2)(b) of the *Municipal Act, 2001*. The agenda also includes, as a standard line item before "Motion to adjourn", "Motion to move back into public session for the purpose of adopting recommendations and providing the clerk with instructions". The agenda also attaches a slate of potential appointees to the various BIAs.

39. The agenda for the Meeting was not posted online or otherwise made available to the public in advance. As part of this investigation, we spoke to the City Clerk who advised that paper copies of the agenda were available at the Meeting in accordance with the practice in place at the time, in case members of the public or the media attended.

40. The Clerk's notes from the Meeting indicate that Council passed a resolution to move *in camera*. The notes do not identify the section of the *Municipal Act, 2001* the Striking Committee was relying on to convene in closed session.

41. As part of this investigation, we spoke with the City Clerk who advised that the process in place at the time of the Meeting provided that the Mayor would verbally state the reason for convening *in camera* by either referencing the meeting agenda or by stating the relevant provision of the *Municipal Act, 2001*. We understand that in this circumstance, the Mayor referenced the agenda.

42. The Clerk's notes contain the Striking Committee's recommendations arising from its discussion at the Meeting. The notes indicate that the Striking Committee voted to move the recommendations forward for Council's consideration. The recommendations were subsequently incorporated into the Striking Committee's report from the Meeting.

43. The Striking Committee report was attached to the public agenda for the Special Council Meeting on March 9, 2023 which is posted on the City's website. The Striking Committee report was ultimately adopted at the open session of the March 9, 2023 Special Meeting of Council.

44. The report from the Meeting does not indicate that any portion of the Meeting was held in closed session.

VIII. FINDINGS

45. Upon concluding our investigation, we have made the following findings regarding compliance with the open meeting provisions of the *Municipal Act, 2001*:

- The Striking Committee's discussion regarding assuming authority for BIAs was not covered by the exemption in clause 239(2)(b) for "personal matter[s] about an identifiable individual including municipal or local board employees". If the discussion at the closed session of the Meeting had in fact dealt with the appointment of BIA members, then the exemption would have properly applied. Our investigation however, finds the appointment of BIA members was not the focus of discussion at the closed session of the Meeting. We find the discussion regarding Council's temporary assumption of the BIAs could have been parsed out of any discussion regarding "personal matter[s] about an identifiable individual" and should have occurred in open session. We therefore find the Striking Committee violated the open meeting rule when it discussed the matter in closed session.
- The closed session of the Meeting did not comply with clause 239(4)(a) of the *Municipal Act, 2001* because the Striking Committee did not state by resolution, prior to going into closed session, the fact of the holding of the closed meeting and the general nature of the matter to be considered. The requirements of clause 239(4) are clear that a resolution is required prior to going into closed session. A reference by the Mayor to the agenda prior to going into closed session does not satisfy the requirement that a resolution be passed stating the fact of the holding of the closed meeting and the general nature of the matter to be considered.
- The closed session of the Meeting contravened subsection 239(5) of the *Municipal Act, 2001*. As we have found above, the vote was with respect to the Striking Committee's recommendations related to Council's temporary assumption of the BIAs. The vote was not for a procedural matter or for giving directions and instructions to officers, employees, or agents of the City or persons retained by, or under contract to the City. Therefore, the vote was not permitted to have taken place in closed session.
- The City asserts that the *in camera* vote was to give directions to the Clerk to prepare and generate a Striking Committee report and, therefore, it did not contravene subsection 239(5) of the *Municipal Act, 2001*. We note that the recommendations make no reference to providing directions to the Clerk. Where council or a committee is instructing or directing an officer, the instructions or directions must be made clear in the resolution itself and cannot be implied or assumed. In addition, it appears obvious that some form of consensus was reached at the closed portion of the

Meeting. While a consensus may be reached without a vote, we note, as observed by the Ontario Ombudsman, the prohibition on voting in closed session extends to informal votes, such as straw polls or “shows of hands.”⁷

- We note that the Striking Committee report incorporating the Striking Committee’s recommendations arising from the Meeting was ultimately adopted in an open session of Council on March 9, 2023. The report was attached to the public agenda for the Special Council Meeting which was posted on the City’s website. The *Municipal Act, 2001* is clear that a vote cannot be taken in closed session except regarding the matters identified in subsection 239(5). The fact that the matter would ultimately be voted on or formalized by Council in open session does not relieve the Striking Committee from the requirement to comply with subsection 239(5).

46. With respect to compliance with the Procedure By-law, we make the following findings:

- the closed session of the Meeting did not comply with the requirements of the Procedure By-law for notice because no public notice of the Meeting or closed session, in the form of a public agenda, was posted online. It is not clear how members of the public would have known about the Meeting if advance notice had not been provided via a publicly-posted agenda.
- the closed session of the Meeting did not comply with subsection 3.4(e) of the Procedure By-law because the Striking Committee did not confirm or adopt in open session the directions resulting from the *in camera* discussions. It is not evident from the materials we reviewed that the Striking Committee formally convened back into open session at the Meeting.

IX. RECOMMENDATIONS

47. As a closed meeting investigator we are entitled to make recommendations in addition to reporting our findings and conclusions.

48. We recommend that the City provide notice of Striking Committee meetings to the public by posting all Striking Committee agendas online in accordance with the Procedure By-law. If a portion of the Striking Committee meeting is proposed to be held in closed session, the agenda must state the reason for going into closed session and provide a description of the general nature of the matter to be discussed.

49. We also recommend the City update its website to ensure that agendas and reports for all Striking Committee meetings which have occurred during this Council term are posted online.

50. The Committee must also ensure that prior to convening into closed session, it must state, by resolution, the fact of the holding of the closed meeting and the general nature of the matter to be considered.

⁷ Ontario Ombudsman, [Re Niagara District Airport Commission](#) (February 2013).

51. The City should also ensure these resolutions to go into closed session are recorded in the Striking Committee's reports. Resolutions must include a description of the general nature of the matter to be discussed "... in a way that maximizes the information available to the public while not undermining the reason for excluding the public."⁸

52. Subsection 239.2(11) of the *Municipal Act, 2001* requires that this Report be made public and subsection 239.2(12) requires Council to pass a resolution stating how it intends to address this Report.

Respectfully submitted,

AIRD & BERLIS LLP



Laura Dean

Closed Meeting Investigator for The Corporation of the City of Windsor

Dated this 11th day of March, 2024

54997044.5

⁸ *Farber v. Kingston (City)*, 2007 ONCA 173, 31 M.P.L.R. (4th) 31 at para. 21.

REPORT ON CLOSED MEETING INVESTIGATION 2023-02

THE CORPORATION OF THE CITY OF WINDSOR

Aird & Berlis LLP

Laura Dean

March 11, 2024

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CITY OF WINDSOR REPORT ON CLOSED MEETING INVESTIGATION 2023-02

I. INTRODUCTION

1. Aird & Berlis LLP is the Closed Meeting Investigator (the “**Investigator**”) for The Corporation of the City of Windsor (the “**City**”).
2. In our capacity as Investigator, we received a formal request for a closed meeting investigation, dated March 8, 2023 (the “**Request**”).
3. The Request seeks an investigation concerning meetings held by Council for the City (“**Council**”), while convened as the Striking Committee for agencies, boards and commissions (the “**Striking Committee**”). The Striking Committee meetings in question were held on November 28, 2022, December 12, 2022 and January 16, 2023 (collectively, the “**Meetings**”).
4. The Request also seeks an investigation regarding whether any closed sessions of the Meetings complied with the City’s Procedure By-law 98-2011 (the “**Procedure By-law**”) with respect to notice, reporting out and voting.
5. This is a report on our closed meeting investigation made in accordance with subsection 239.2(10) of the *Municipal Act, 2001*.¹

II. CLOSED MEETING INVESTIGATOR – AUTHORITY & JURISDICTION

6. The City has appointed Local Authority Services (“**LAS**”) to perform closed meeting investigations pursuant to section 239.1 of the *Municipal Act, 2001*. LAS delegated its authority as investigator to Aird & Berlis LLP.
7. Prior to accepting any investigation mandate, Aird & Berlis LLP conducts a thorough legal conflict search and makes other conflict inquiries to ensure our firm is in a position to conduct an independent and impartial investigation.
8. Our jurisdiction as investigator is set out in section 239.2 of the *Municipal Act, 2001*. Our function includes the authority to investigate, in an independent manner, a request made by any person to determine whether the City has complied with section 239 of the *Municipal Act, 2001* or a by-law enacted under subsection 238(2) (i.e. a procedure by-law) in respect of a meeting or part of a meeting that was closed to the public.
9. Upon conducting an investigation, we report to Council on the outcome of the investigation, together with any recommendations, as may be applicable. Our role as Investigator does not include engaging with the merits of any particular item of municipal business, or questioning the policies or priorities of the City.

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

III. THE REQUEST

10. The Request was properly filed pursuant to section 239.1 of the *Municipal Act, 2001*.

11. To summarize, the Request raises the following issues:

- Did the Striking Committee fail to comply with section 239 of the *Municipal Act, 2001* with respect to any closed portions of the Meetings?
- Did the Striking Committee fail to comply with the Procedure By-law with respect to any closed portions of the Meetings?

IV. REVIEW OF MATERIALS AND INVESTIGATIVE PROCESS

12. In order to properly consider the Request and make our determinations on the issues, we have reviewed the following materials:

- the Request;
- the Procedure By-law;
- Agenda for the meeting on November 28, 2022;
- Report of the Striking Committee from its meeting held November 28, 2022;
- City Clerk's notes from the Striking Committee meeting on November 28, 2022;
- Agenda for the Striking Committee meeting on December 12, 2022;
- Report of the Striking Committee from the meeting on December 12, 2022;
- City Clerk's notes from the Striking Committee meeting on December 12, 2022;
- Agenda for the Striking Committee meeting on January 16, 2023;
- Report of the Striking Committee from the meeting on January 16, 2023;
- City Clerk's notes from the closed session portion of the Striking Committee meeting on January 16, 2023; and
- Meeting minutes from the Council meeting on January 30, 2023.

13. In addition, we have had recourse to the provisions of the *Municipal Act, 2001*, and such secondary sources, case law, and reports of other closed meeting investigators as we deemed necessary in order to make our determinations.

14. We provided the City with the opportunity to review a draft of this report and met with the City Clerk and Commissioner of Corporate Service to discuss our preliminary findings. We have considered that discussion and their subsequent written submissions in preparing this final report.

V. STATUTORY FRAMEWORK

15. Ontario's "open meeting" rule is enshrined in section 239 of the *Municipal Act, 2001*, which requires that "meetings" be open to the public, unless otherwise excepted.

16. Section 238 of the *Municipal Act, 2001* defines "meeting" broadly as:

"meeting" means any regular, special or other meeting of a council, of a local board or of a committee of either of them, where,

- (a) a quorum of members is present, and
- (b) 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.

17. Section 238 defines "committee" as:

"committee" means any advisory or other committee, subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards;

18. It is clear that the Striking Committee is a "committee" whose meetings are captured by section 239 of the *Municipal Act, 2001*.

19. Unless they deal with a subject matter falling within a specific enumerated exception in subsection 239(2), all meetings are required to be held in an open forum where the public is entitled to attend and observe local government in process.

20. The purpose of the "open meeting" rule is to foster democratic values, increase transparency, and enhance public confidence in local government.²

21. However, it has been long recognized that there are certain situations where open meetings, or full transparency in the immediate term, would not serve the public interest or the interests of the municipal corporation.³ In providing for certain limited exceptions to the general rule, section 239 seeks to balance the need for confidentiality in certain matters with the public's right to information about the decision-making process of local government.⁴

22. To that end, subsection 239(2) sets out certain subject matter exceptions that permit Council to hold a meeting that is closed to the public, including the following:

² See *RSJ Holdings Inc. v. London (City)* (2007), 36 M.P.L.R. (4th) 1 (S.C.C.).

³ See Ontario, *Report of the Provincial/Municipal Working Committee on Open Meetings and Access to Information* (Toronto: The Committee, July 1984), at p. 7.

⁴ Stephen Auerback & John Mascarin, *The Annotated Municipal Act*, 2nd ed., (Toronto, ON: Thomson Reuters Canada Limited, 2017) (e-loose leaf updated 2021 – rel 1) annotation to s. 239.

Exceptions

239 (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

...

- (b) personal matters about an identifiable individual, including municipal or local board employees;

23. Subsections 239(4) and 239(5) of the *Municipal Act, 2001* set out certain requirements for meetings that are closed to the public:

Resolution

239 (4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or

...

Open meeting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote.

VI. PROCEDURE BY-LAW

24. The Striking Committee is made up of all members of Council and is governed by the Procedure By-law.

25. The purpose of the Striking Committee is described in section 22.1 of the Procedure By-law:

All members of Council shall meet as a Striking Committee as soon as convenient after the inaugural meeting of Council to make recommendations on the appointment of members to the various Council Committees, and other Boards, Commissions and Agencies, in accordance with the City of Windsor Council Appointment Policy attached as Appendix "C".

26. Appendix "C" of the Procedure By-law contains the City's Council Appointment Policy. Section 5.5 of this policy provides, in part, as follows:

At the appropriate Council Meeting, Council shall consider all circulated applications [for vacancies on City agencies, boards, committees, commissions, panels or corporations] in closed session in accordance with Part II of the *Municipal Freedom of Information and Protection of Privacy Act* and with Section 239 of the *Municipal Act, 2001*...

27. The Striking Committee makes recommendations to Council through Striking Committee reports. The City attaches these reports to public agendas of Council meetings.

28. Section 5.6 of the Council Appointment Policy provides:

After due consideration in closed session, Council shall in open session vote on any recommendation for appointments arising from closed session deliberations.

29. Section 3.4 of the Procedure By-law sets out the rules for closed meetings of Council.

30. Section 3.4(a) of the Procedure By-law provides that "Council meetings, or portions thereof, may be held "In Camera" only in accordance with section 239 of the *Municipal Act, 2001*".

31. Section 3.4(b) of the Procedure By-law further provides:

In the event that the subject matter to be considered at a meeting qualifies to be considered in closed session pursuant to section 239 ...of the *Municipal Act, 2001*, as amended, the public notice of meeting provided by the Clerk shall contain the general nature of the matter to be considered as required by the Act, and in addition, the Clerk shall provide to all members of Council a further notice which contains specifics of the confidential matters to be considered.

32. Section 3.4(c) further provides:

Prior to moving "In Camera" for one of the reasons listed in section 3.4(a), Committee/Council shall pass a motion in public session stating:

- i) the fact that the Committee/Council is convening into closed session, and
- ii) the general nature of the matter to be considered.

33. Section 3.4(d) of the Procedure By-law states:

A meeting may be closed to the public during the taking of a vote if section 3.4(a) permits it, or requires that the meeting be closed to the public; and the vote is for a procedural matter or for giving directions and instructions to officers, employees, or agents of the municipality or local board or committee of either of them, or persons retained by, or under contract to the municipality or local board.

34. Section 3.4(e) of the Procedure By-law further provides:

All resolutions, directions and general actions resulting from "In Camera" discussions shall be confirmed/adopted in open or public session.

35. Finally, section 3.4(f) of the Procedure By-law states:

The rules of Council as outlined in the procedural by-law shall apply during the closed meetings of Council.

VII. THE MEETINGS

A. November 28, 2022 Striking Committee Meeting

36. The Striking Committee did not go into closed session at its meeting held on November 28, 2022. According to the City Clerk's notes, the Committee determined it was unnecessary to proceed into closed session at this Meeting because it was deferring citizen appointments to the various boards, agencies and commissions until to its meeting on January 16, 2023. We have confirmed through our investigation that the agenda for this meeting was not posted online or otherwise provided to the public. The Striking Committee's report from this meeting containing its recommendations to Council was considered by Council at its meeting on December 12, 2022 and was attached to the public agenda for that meeting.

B. December 12, 2022 Striking Committee Meeting

37. The Striking Committee met again on December 12, 2022. It was confirmed to us through our investigation that the Striking Committee did not go into closed session at this meeting. As above, we have confirmed that the agenda for this meeting was not posted online or otherwise provided to the public. The Striking Committee's report from this meeting was considered by Council at its meeting on January 16, 2023 and is attached to the public agenda for that meeting.

C. January 16, 2023 Striking Committee Meeting

38. The Striking Committee met again on January 16, 2023. The agenda, which was provided to members of the Striking Committee in advance of the meeting, does not identify that a portion of the meeting would be held in closed session and, therefore, does not contain a description of the matter to be considered, contrary to section 3.4(b) of the Procedure By-law. The agenda for this meeting was not posted online or otherwise provided to the public.

39. The Clerk's notes from the meeting on January 16, 2023 identify that a resolution was passed to convene *in camera*, however, the resolution identifying the fact of the closed meeting and the general nature of the matter to be considered is not recorded in the Striking Committee report. In the absence of the recorded resolution, we conclude that the Striking Committee did not comply with section 3.4(c) of the Procedure By-law and subsection 239(4) of the *Municipal Act, 2001* at this meeting.

40. It is clear from the Clerk's notes from the meeting on January 16, 2023 that the Striking Committee discussed matters about identifiable individuals, being those individuals who had applied for a citizen appointment. During the closed session, the Striking Committee discussed a slate of appointees for the relevant agencies, boards and commissions to be brought forward at a future meeting of Council for consideration and approval. There is no indication that the Striking Committee formally voted on any matters at this meeting. The Striking Committee moved back into open session following the closed session.

41. There is no indication that once back in open session, the Striking Committee confirmed or adopted the general actions resulting from its *in camera* session, as required by section 3.4(e) of the Procedure By-law.

42. The report from the January 16, 2022 meeting of the Striking Committee attaches a list of appointees selected by the Striking Committee and contains the following recommendation:

That the list of citizen and Council appointments (copy attached) to various Agencies, Boards and Commissions BE APPROVED, for the term commencing January 17, 2023 and ending November 14, 2026, except the Windsor Utilities Commission whose terms are staggered as indicated, or until their successors are appointed.

43. At its meeting on January 30, 2023, Council adopted the Striking Committee's January 16, 2023 report, thereby confirming the list of appointees attached to that public report.

VIII. FINDINGS

44. The closed meeting exception in clause 239(2)(b) allows a council to close a meeting to the public where it will discuss "personal matters about an identifiable individual, including municipal or local board employees".

45. The Ontario Ombudsman has found that information about the education and employment history of applicants for volunteer committee positions, and discussions of their suitability for a committee, may fit within the exception in clause 239(2)(b).

46. The clear purpose of the exception in clause 239(2)(b) is to protect the privacy of identifiable individuals.⁵

47. We find the Striking Committee did not contravene the closed meeting requirements at its meetings on November 28, 2022 or December 12, 2022 because it did not go into closed session at either of these meetings.

48. With respect to whether the closed session portion of the meeting on January 16, 2023 complied with the requirements of the *Municipal Act, 2001*, we have determined that:

- the subject matter fell squarely within the exemption to the open meeting rule contained in clause 239(2)(b) of the *Municipal Act, 2001* as relating to "personal matter[s] about an identifiable individual including municipal or local board employees". As such, we find that the Striking Committee was authorized to go into closed session to discuss citizen appointments at the meeting on January 16, 2023. Section 5.5 of the City's Council Appointment Policy contemplates that the deliberations of the Striking Committee regarding citizen appointments would take place in closed session;
- the closed session of the meeting on January 16, 2023 did not comply with clause 239(4)(a) of the *Municipal Act, 2001* because there is no record of the Striking Committee having stated by resolution, prior to convening *in camera*, the fact that it was holding the closed meeting and the general nature of the matter to be considered at the closed meeting; and

⁵ Ombudsman of Ontario, [Town of Bracebridge](#) (March 2015).

- the closed session of the meeting on January 16, 2023 did not contravene subsection 294(5) of the *Municipal Act, 2001* because no vote was taken at this meeting. The Clerk's notes show that the Striking Committee reached agreements regarding the various slates of candidates but there is no indication that any votes were taken. Despite our finding, we caution the Striking Committee that "informal" votes such as straw votes and a show of hands are not permitted by subsection 294(5).

49. With respect to compliance with the Procedure By-law, we make the following findings with respect to the closed session of the meeting held on January 16, 2023:

- it did not comply with the requirements of the Procedural By-law for notice because no public notice of the meeting or closed session thereof was provided;
and
- it did not technically comply with subsection 3.4(e) of the Procedure By-law because the Striking Committee did not confirm or adopt any of its general actions resulting from the *in camera* discussions when it returned to open session. We note that the report of the Striking Committee setting out its directions and general actions was ultimately confirmed/adopted in an open session of Council on January 20, 2023. We find, however, that confirmation/adoption of such actions should have taken place once the Striking Committee rose from its closed session on January 16, 2023, and not at a subsequent Council meeting.

IX. RECOMMENDATIONS

50. While the public may wish to understand why the Striking Committee made certain public appointments, this is a matter that the Striking Committee is authorized to discuss in the absence of the public. Nevertheless, notice is a fundamental element of transparency. While members of the public may not have been able to participate in the closed session on January 16, 2023, notice of the meeting would have alerted members of the public to the meeting and to Council's future consideration of the Striking Committee's recommended list of appointments.

51. We note that agendas for Striking Committee meetings held on May 29, 2023, July 10, 2023 and November 27, 2023 have been posted online. We are aware of at least two other Striking Committee meetings which took place between January 16, 2023 and May 29, 2023. Agendas for these meetings have not been posted online.

52. We recommend the City maintain a consistent practice of posting the meeting agendas for the Striking Committee on its website, where the public would find notice of other Council and committee meetings. If a portion of a Striking Committee meeting is proposed to be held in closed session, the agenda must state the reason for going into closed session and provide a description of the general nature of the matter to be discussed.

53. We are encouraged to see that those Striking Committee agendas which have been posted online contain a description of the general nature of the matter to be considered where a closed session is proposed.

54. We also recommend that the City update its website to ensure that agendas and reports for all meetings of the Striking Committee which have occurred during this term of Council are posted online.

55. For the purposes of transparency, the City should also ensure that resolutions to convene into closed session are recorded in reports of the Striking Committee. Such resolutions must include a description of the general nature of the matter that will be discussed in accordance with the requirements of clause 239(4)(a) of the *Municipal Act, 2001*.

56. Finally, despite our finding that the closed session of the January 16, 2023 meeting did not contravene the prohibition against voting therein in the *Municipal Act, 2001*, we remind the City that straw polls and shows of hand are not permitted by subsection 294(5).⁶

57. Subsection 239.2(11) of the *Municipal Act, 2001* provides that this Report is to be made public and that subsection 239.2(12) requires Council to pass a resolution stating how it intends to address this Report.

Respectfully submitted,

AIRD & BERLIS LLP



Laura Dean

Closed Meeting Investigator for The Corporation of the City of Windsor

Dated this 11th day of March, 2024

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⁶ Ontario Ombudsman, [Niagara District Airport Commission](#) (February 2013).