

City Clerk's Office Closed Session Meeting Protocol

Introduction:

This protocol is established to guide preparation, publication and distribution of closed meeting materials, in accordance with the *Municipal Act, 2001*, Council's Procedure By-law 160-2004, as amended, and applicable City policy, directives and Council resolutions.

The agenda –

The Clerk will prepare, and have approved by the City Solicitor or designate, an agenda for the closed session which shall include a list of items to be considered and shall identify the subsection of the *Municipal Act, 2001*, or other applicable legislation, which authorizes each item to be considered at the closed session.

No item may be added to an agenda for a closed session without the prior approval of the City Solicitor or designate pursuant to Procedure By-law 160-2004, s. 2.9 (5).

The Clerk shall distribute the closed session agenda to all Members of the Council and to such staff as directed by the Chief Administrative Officer. Unless decided otherwise by Council, the closed session agenda will be either:

1. Printed on confidential paper (salmon colour) and individually watermarked for each recipient. Closed session agenda material will be distributed in sealed envelopes, as appropriate, to be opened only by Members of Council.
2. Digitally watermarked and distributed to each recipient with separate password security to open the digital file. Members of Council are permitted access to print digital Closed Session materials (Recommendation GC023-2019).

If deemed appropriate, given the nature of the closed session business, as determined by the CAO, in consultation with the City Solicitor and City Clerk, closed session information (i.e., reports, presentations, etc.) will be distributed by the Clerk within closed session only. Otherwise, closed session information (e.g., agenda, minutes, other business) will be distributed to Members and authorized staff prior to the closed session.

Rule 3 of The Councillor Code of Conduct includes the following provisions relating to Confidential Information:

1. No Member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

2. No Member shall use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.
3. No Member shall directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.
4. No Member shall disclose the content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.
5. No Member shall permit any persons other than those who are entitled thereto to have access to information that is confidential.
6. No Member shall access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

Accordingly, no member of the Council shall distribute any reports or items, or disclose the nature or content of discussions regarding any matters that are part of a closed session agenda without the prior approval of the Council or committee.

The meeting –

Unless otherwise directed by Council/committee, in addition to the Members of Council/committee, closed session is limited only to the Members of Council/committee, CAO, City Solicitor, Department Heads, Clerk and/or their designates. Only elected officials are permitted in closed session, with the exception of the Mayor's Chief of Staff (Council Resolution C038-2019, February 6, 2019). Member staff are not permitted in closed session meeting, unless specifically authorized by Council Resolution.

For certain closed session items, subject matter staff or external experts (e.g., external legal counsel, consultants retained by the City) may be asked to attend by the CAO, City Solicitor or Department Head. Staff are to remain outside the closed session meeting area until called to speak to their specific agenda item. Staff will leave the meeting once the matter has been dealt with by Council/committee.

For closed session business regarding personal matters about an identifiable individual, the Chief Administrative Officer will designate which staff members may be present, in accordance with the Procedure By-law. The Chief Administrative Officer may, if appropriate, or such other person, serve as the designate of the City Clerk for that portion of closed session, subject to a public resolution of Council.

Before a meeting is closed, a motion shall be carried as to:

- a) the fact of the holding the closed meeting; and
- b) the subsection(s) of the *Municipal Act*, which authorizes each item to be considered at the closed session, and the general nature of business to be considered

Once in a closed session, no item may be added to the agenda for that closed session.

Closed session meetings will be audio recorded in accordance with Council's policy.

Member and staff phone use (for limited communications only) within Closed Session is permitted (*Recommendation GC025-2019*).

A meeting shall not be closed to the public during the taking of a vote; however, during a closed session, a vote may be taken for a procedural matter or for giving directions or instructions to the officers, employees or agents of the City or persons retained by or under contract with the City.

Minutes shall be kept of all closed sessions, identifying the Members present and absent, and the senior staff present, in the same fashion as those kept for open sessions and shall correspond directly to the prepared closed session agenda and shall identify any added items and shall note any direction given.

The Council or a committee, rather than moving into a closed session, may simply acknowledge the items, without full discussion, on a closed session agenda, and may give direction in accordance with a recommendation included in a report on a closed session agenda, without moving into closed session. In this case, the minutes will include a "Note to File" that will indicate the steps taken.

The City Clerk shall require that all closed session agendas and copies of any reports or documents circulated at a closed session regarding confidential matters be returned by Members and staff at the end of the closed session, and will be reconciled by the Clerk before securely shredded. Digital access to Closed Session materials distributed before the meeting will be removed at the end of the business day for that meeting, or other such time as determined by the City Clerk.

Any request from a person for an investigation, under the *Municipal Act, 2001*, of whether a Council or committee meeting or part of a meeting, that was closed to the public, has complied with the relevant provisions of the Act, shall be referred by the Clerk to the Closed Meeting Investigator appointed by Council for that purpose.

Records storage and maintenance –

Electronic copies of closed session agendas, audio recordings and minutes are securely stored in a City electronic records management system (BRIMS) folder accessible by the Clerk and his/her delegates only.

Hard copy documentation for all closed session meetings is stored in the Clerk's Office, for the current term and one previous Council term. Archived files/terms of Council are securely stored in the Records section of the West Tower. Both areas are accessible by the Clerk and his/her delegates only. If Members or appropriate staff request to review closed session information from previous meetings, such requests will be accommodated by the City Clerk, and if appropriate, Council.

For hard copy closed session materials only, monthly file folders are created each year. Each file folder contains hard-copy documentation for each closed meeting that took place in that month. Documents are compiled and filed after the minutes of a closed meeting have been received and approved by Council. Each meeting section will include the original signed agenda, any reports or documents that were circulated at the meeting, any added items, and the minutes of the meeting.

Once the month is complete, a summary sheet documenting the closed meetings for that month is attached to the front of the file. Files are completed monthly and are available for audit review when required.

Attachments:

Extract from Procedure By-law 160-2004, as amended

Extract from *Municipal Act, 2001*

Extract from Procedure By-law 160-2004, as amended

2.7 Closed Sessions (By-law 195-2007)

- (1) A part of a meeting may be closed to the public if the subject being considered is so authorized to be considered in a closed session pursuant to the provisions of the *Municipal Act*, or any other applicable statute, and such meeting shall be called a “closed session” meeting.
- (2) For any meeting at which there are items to be considered in a closed session, the agenda for that meeting shall identify the subsection(s) of the *Municipal Act*, or other applicable legislation, which authorizes each item to be considered at the closed session.
- (3) The Clerk shall prepare, and have approved by the City Solicitor or designate, an agenda for the closed session which shall include a list of items to be considered and shall identify the subsection of the *Municipal Act*, or other applicable legislation, which authorizes each item to be considered at the closed session. **(By-law 132-2011)**
- (1) The Clerk shall circulate the closed session agenda to all members of the Council and to such staff as directed by the Chief Administrative Officer. **(By-law 376-2014)**
- (2) No item may be added to an agenda for a closed session without the prior approval of the City Solicitor or designate. **(By-law 132-2011)**
- (3) Before a meeting is closed, a motion shall be carried as to:
 - (a) the fact of the holding the closed meeting; and
 - (b) the subsection(s) of the *Municipal Act*, which authorizes each item to be considered at the closed session.
- (4) Once in a closed session, no item may be added to the agenda for that closed session.
- (5) Subject to subsection (9) below, a meeting shall not be closed to the public during the taking of a vote.
- (6) Despite subsection (8) above, during a closed session, a vote may be taken for a procedural matter or for giving directions or instructions to the council or a committee, officers, employees or agents of the City or persons retained by or under contract with the City.
- (7) Minutes shall be kept of all closed sessions, identifying the members present and absent, and the senior staff present, in the same fashion as those kept for open sessions and shall correspond directly to the prepared closed session agenda and shall identify any added items and shall note any direction given pursuant to subsection (9) above.
- (8) No member of the council shall distribute any reports or items, or disclose the nature or content of discussions regarding any matters that are part of

a closed session agenda without the prior approval of the council or committee.

- (12) (a) The council or a committee, rather than moving into a closed session, may simply acknowledge the items, without full discussion, on a closed session agenda, and may give direction in accordance with a recommendation included in a report on a closed session agenda, without moving into closed session.
- (b) When the option in subsection (a) above has been exercised, the record will include a “Note to File” that will indicate the steps taken.
- (13) For discussion of items regarding confidential matters related to an individual employee during a closed session, the Chief Administrative Officer will designate which staff members may be present and the Chief Administrative Officer may, if appropriate, be the designate of the Clerk for that portion of the closed session.
- (14) The Clerk may require that copies of any reports or documents circulated at a closed session regarding confidential matters related to an individual employee shall be collected by the Clerk and destroyed.
- (15) The Clerk shall be responsible to maintain a confidential copy of all agendas and minutes of closed sessions.
- (16) (a) Any request from a person for an investigation into whether a Council or Committee meeting or part of a meeting, was closed to the public contrary to the *Municipal Act, 2001*, shall be referred by the Clerk to the Investigator appointed by Council for that purpose;
- (b) Should the Investigator report a meeting, or part thereof, has been, in their opinion, closed to the public contrary to the *Municipal Act, 2001*, the Council shall pass a resolution stating how the report shall be addressed.

Extract from Municipal Act, 2001

MEETINGS

Meetings open to public

239 (1) Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1).

Exceptions

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

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (g) a matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act;
- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board. 2001, c. 25, s. 239 (2); 2017, c. 10, Sched. 1, s. 26.

Other criteria

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

- (a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or
- (b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1). 2014, c. 13, Sched. 9, s. 22.

Educational or training sessions

(3.1) A meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

- 1. The meeting is held for the purpose of educating or training the members.
- 2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee. 2006, c. 32, Sched. A, s. 103 (1).

Resolution

(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
- (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection. 2001, c. 25, s. 239 (4); 2006, c. 32, Sched. A, s. 103 (2).

Open meeting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote. 2001, c. 25, s. 239 (5).

Exception

(6) Despite section 244, a meeting may be closed to the public during a vote if,

- (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and

- (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board. 2001, c. 25, s. 239 (6).

Record of meeting

(7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not. 2006, c. 32, Sched. A, s. 103 (3).

Same

(8) The record required by subsection (7) shall be made by,

- (a) the clerk, in the case of a meeting of council; or
- (b) the appropriate officer, in the case of a meeting of a local board or committee. 2006, c. 32, Sched. A, s. 103 (3).

Record may be disclosed

(9) Clause 6 (1) (b) of the *Municipal Freedom of Information and Protection of Privacy Act* does not apply to a record of a meeting closed under subsection (3.1). 2006, c. 32, Sched. A, s. 103 (3).

Section Amendments with date in force (d/m/y)

Investigation

239.1 A person may request that an investigation of whether a municipality or local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public be undertaken,

- (a) by an investigator referred to in subsection 239.2 (1); or
- (b) by the Ombudsman appointed under the *Ombudsman Act*, if the municipality has not appointed an investigator referred to in subsection 239.2 (1). 2006, c. 32, Sched. A, s. 104.

Section Amendments with date in force (d/m/y)

Investigator

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under

subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation. 2006, c. 32, Sched. A, s. 104.

Powers and duties

(2) Subject to this section, in carrying out his or her functions under subsection (1), the investigator may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 104.

Matters to which municipality is to have regard

(3) In appointing an investigator and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 104.

Same, investigator

(4) In carrying out his or her functions under subsection (1), the investigator shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 104.

Same

(5) The matters referred to in subsections (3) and (4) are,

- (a) the investigator's independence and impartiality;
- (b) confidentiality with respect to the investigator's activities; and
- (c) the credibility of the investigator's investigative process. 2006, c. 32, Sched. A, s. 104.

Delegation

(6) An investigator may delegate in writing to any person, other than a member of council, any of the investigator's powers and duties under this Part. 2006, c. 32, Sched. A, s. 104.

Same

(7) An investigator may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 104.

Status

(8) An investigator is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 104.

Application

(9) Subsection 223.13 (6) and sections 223.14 to 223.18 apply with necessary modifications with respect to the exercise of functions described in this section. 2006, c. 32, Sched. A, s. 104.

Report and recommendations

(10) If, after making an investigation, the investigator is of the opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the investigator shall report his or her opinion and the reasons for it to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit. 2006, c. 32, Sched. A, s. 104.

Publication of reports

(11) The municipality or local board shall ensure that reports received under subsection (10) by the municipality or local board, as the case may be, are made available to the public. 2006, c. 32, Sched. A, s. 104.

Requirement to pass resolution re report

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report. 2017, c. 10, Sched. 1, s. 27.