



**The Corporation of the  
Town of Cobourg**

# Resolution

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**Moved By** \_\_\_\_\_

**Last Name Printed** \_\_\_\_\_

**Resolution No.:**

**Seconded By** \_\_\_\_\_

**Last Name Printed** \_\_\_\_\_

**Council Date:**

November 23, 2020

**WHEREAS** at the Committee of the Whole Meeting on Monday November 16, 2020, Council considered a memo from the Municipal Clerk/Manager of Legislative Services, regarding the Closed Session Meeting Protocol Guidelines and the Closed Meeting Investigation Policy and Procedures for the Town of Cobourg;

**NOW THEREFORE BE IT RESOLVED THAT** Council approve the Town of Cobourg Municipal Council Closed Session Meeting Protocol and Guidelines attached to the motion as Appendix "A" in order to ensure that Town of Cobourg business is conducted in the most open and transparent manner as possible; and

**FURTHER THAT** Council approve the Closed Meeting Investigation Policy and Procedures attached to the motion as Appendix "B" which sets out the process and procedure when a request for an investigation is made pursuant to Section 239.1 of the *Municipal Act, 2001* to be performed by the Town of Cobourg appointed Closed Meeting Investigator.

# Appendix "A"



## TOWN OF COBOURG'S CLOSED SESSION MEETING PROTOCOL GUIDE

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RESOLUTION #

## **Purpose**

The purpose of this policy is to ensure compliance with Section 239 (2) and (3) of the *Municipal Act, 2001* as well as to provide guidance to the Town of Cobourg Municipal Council and Municipal Staff as it relates to Closed Meetings.

## **Policy**

### **1.0 Policy Statement**

The Town of Cobourg acknowledges that all meetings of Council shall be open to the public except as related to the exceptions included in Section 239 (2) and (3) of the *Municipal Act, 2001, as amended*.

### **2.0 Should a Meeting be Closed?**

In the interest of accountability and transparency Municipal Council shall endeavor to conduct its decision making in public. It is recognized, however, that there are items which should be considered by Council in a Closed Meeting in accordance with the *Municipal Act, 2001*. When determining whether a matter should be considered in a Closed Meeting, staff should consider the following:

**Question #1 - Does the matter meet one or more of the open meeting exceptions noted in Section 239 the *Municipal Act, 2001*?**

**Question #2 – If the answer to question #1 is Yes, and recognizing that the matter can be discussed in a Closed Meeting, is there a compelling reason that it should be?**

The determination of whether a matter should be dealt with in a Closed Meeting is the responsibility of the Chief Administrative Officer in consultation with the Mayor and/or the Presiding Officer with the Municipal Clerk.

### **3.0 Municipal Act Rules for Closed Session Meetings:**

TOPIC/MUNICIPAL ACT EXCEPTION	DISCUSSION CAN INCLUDE	VOTING PERMISSIONS
Security of Municipal Property [S. 239 (a)]	<ul style="list-style-type: none"><li>• Town Property</li><li>• Town Facilities</li><li>• Town Assets</li></ul>	<ul style="list-style-type: none"><li>• Procedural matters</li><li>• Giving directions or instructions to Staff.</li></ul>
Personal Matters about Identifiable Individuals [S. 239 (b)]	<ul style="list-style-type: none"><li>• Municipal Employees</li><li>• Members on Various Boards and Committees</li></ul>	<ul style="list-style-type: none"><li>• Procedural matters</li><li>• Giving directions or instructions to Staff.</li></ul>

A Proposed or Pending Acquisition or Disposition of Land [S. 239 (c)]	<ul style="list-style-type: none"> <li>• Land purchases</li> <li>• Land sales</li> <li>• Land leases</li> <li>• Expropriation of land</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters Giving directions or instructions to Staff.</li> </ul>
Labour Relations or Employee Negotiations [S. 239 (d)]	<ul style="list-style-type: none"> <li>• Union or employee negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters Giving directions or instructions to Staff.</li> </ul>
Litigation or Potential Litigation [S. 239 (e)]	<ul style="list-style-type: none"> <li>• Current or pending litigation</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters Giving directions or instructions to Staff.</li> </ul>
Solicitor-Client Privilege [S. 239 (f)]	<ul style="list-style-type: none"> <li>• Legal opinions, advice and or status reports/briefings</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters Giving directions or instructions to Staff.</li> </ul>
Matters under Other Legislation [S. 239 (g)]	<ul style="list-style-type: none"> <li>• Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters Giving directions or instructions to Staff.</li> </ul>
Information supplied in confidence by the federal government, provincial government or crown agency [S. 239 (h)]	<ul style="list-style-type: none"> <li>• Information explicitly provided in confidence and in writing by the Government of Canada, a province or Crown Agency</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters Giving directions or instructions to Staff.</li> </ul>
Trade Secret or scientific, technical, commercial, financial or labour relations information supplied in confidence which, if disclosed, could interfere with contractual or other negotiations [S. 239 (i)]	<ul style="list-style-type: none"> <li>• Information explicitly provided in confidence that, upon review by senior Municipal Staff is a trade secret or scientific, technical, commercial, financial or labour relations information that could interfere with negotiations.</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters Giving directions or instructions to Staff.</li> </ul>
Trade secret or scientific, technical commercial or financial information belonging to the municipality which has monetary value [S. 239 (j)]	<ul style="list-style-type: none"> <li>• Information explicitly provided in confidence that, upon review by senior Municipal Staff is a trade secret or scientific, technical, commercial, financial or labour relations information that has monetary value or could be sold or exchanged for cash or something of value</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters Giving directions or instructions to Staff.</li> </ul>

Position, plan, procedure, criteria or instruction to be applied to negotiations carried out by the municipality [S. 239 (k)]	<ul style="list-style-type: none"> <li>• A position, plan, procedure, criteria or instruction directly related to negotiations carried out by the municipality</li> </ul>	<ul style="list-style-type: none"> <li>• Procedural matters Giving directions or instructions to Staff.</li> </ul>
Educating or training [S. 239 (k)]	<ul style="list-style-type: none"> <li>• Council Orientation</li> <li>• Team Building exercises</li> <li>• Professional Development</li> </ul>	<ul style="list-style-type: none"> <li>• no discussion or decisions that materially advance the business or decision-making of Council/Committee</li> </ul>

### 3.0 Statutory Requirements for Closed Meetings

Pursuant to Section 239 of the *Municipal Act, 2001*:

- Before holding a Closed Meeting, Council must state, by resolution, the fact of the holding of the Closed Meeting and the general nature of the matter to be considered at the Closed Meeting.
- All resolutions, decisions, and other proceedings at Closed Meetings are to be recorded without note or comment by the Municipal Clerk or designate.
- Any person can request an investigation of whether the Town has complied with the *Municipal Act* regarding Closed Meetings.
  - i. Aird & Berlis LLP, have been appointed by Municipal Council to investigate such complaints.
  - ii. All investigation reports are to be made available to the public.

### 4.0 Access Requests for Closed Meeting Reports and Materials

Reports and materials prepared for consideration at Closed Meetings are records that may be subject to Freedom of Information requests under the *MFIPPA*. While it would be desirable to protect the confidentiality of records that are considered at Closed Meetings, in the event of an appeal, the Town could be ordered to release such records.

The Town of Cobourg cannot refuse to disclose information provided in a Closed Meeting report simply on the basis that it was considered at a Closed Meeting. To qualify for exemption from disclosure, the information in the records has to reveal the actual substance of Council's deliberations. Content that would not reveal the substance of the deliberations may be subject to disclosure. Examples of records that may be subject to disclosure are:

- background or historical information;
- attachments;
- copies of correspondence and cover letters;
- scope, definition and purpose of report;
- recommendations;
- presentations; and
- Statistical data.

Written material included in a Closed Meeting report should be limited to only information which would qualify for discussion at a Closed Meeting. If general context is required to frame the Closed Meeting discussion, it is recommended that it also be disclosed publically by way of one of the recommended approaches identified in Section 5.0 below.

## **5.0 Closed Meeting Reports and Recommendations**

### **5.1 Closed Session Reports**

All Closed Session Reports shall be in the form of written Closed Meeting Staff Report over verbal reports. Written Reports provide for a more detailed account of the confidential record. Written reports also ensure that Municipal Council is prepared for any decisions they may need to consider in relation to a Closed Meeting discussion. It is also important to ensure that information which can be made available to the public is disclosed appropriately. Verbal Reports must be approved to be part of a Closed Session Agenda by the Mayor, Chief Administrative Officer, and the Municipal Clerk. Aside from a singular report appearing on a Closed Meeting agenda, consideration shall also be given to the following:

**OPTION A:** A companion report to appear on the accompanying Open Meeting agenda which provides for as much general context in relation to the Closed Meeting matter as possible without disclosing confidential details; or,

**OPTION B:** A recommendation for Council to direct staff to prepare a related report to be included as part of a subsequent Open Meeting agenda.

### **5.2 Recommendations**

In a Closed Meeting, Council is only permitted to vote on procedural motions or to direct Municipal employees. No other decisions or approvals are permitted in a Closed Meeting. Some items conform to this requirement and may be discussed and voted on in Closed Meetings. Many items, however, may be discussed in a Closed Meeting but cannot be voted on in a Closed Meeting. The following are best practices with respect to the consideration of an Open Meeting motion related to a matter discussed by Council in a Closed Meeting:

**OPTION A:** If a companion report appears on the accompanying Open Meeting agenda, a procedural motion can appear as part of a recommendation within a closed staff report to allow for the consideration of a related motion in an Open Meeting. In this case, the following clause should be added to the closed staff report prior to the motion which is to be voted on in an Open Meeting:

**THAT Council rise, report and introduce the following motion as part of the Open Meeting report entitled \_\_\_\_\_ appearing on the \_\_\_\_\_ Council Agenda.**

**1. THAT -> Recommendation**

**OPTION B:** If there is no companion report appearing on the accompanying Open Meeting agenda, but the matter requires a resolution of Council at an Open Meeting, a procedural motion can appear as part of a recommendation within a closed staff report to allow for the consideration of a related motion in an Open Meeting. In this case, the following clause should be added to the closed staff report prior to the motion which is to be voted on in an Open Meeting:

**THAT Council rise, report and introduce the following motion as a Special Resolution at its \_\_\_\_\_ meeting:**

**1. THAT -> Recommendation**

In order to ensure that there is appropriate context for the introduction of a motion as a Special Resolution, the Mayor, a Member of Council, or Municipal staff should consider presenting background information prior to Council's consideration of the motion.

**OPTION C:** If there is no companion report appearing on the accompanying Open Meeting agenda, and the recommendation does not require immediate action, direction can be given to staff to report back to a subsequent Open Meeting by way of a staff report. The following direction can appear as part of a recommendation within a closed staff report and be passed in a Closed Meeting:

**THAT Staff be directed to report back to [Date of the Report Due Date] Council Meeting in relation to the report titled \_\_\_\_\_ and dated \_\_\_\_\_.**

## **6.0 Public Disclosure**

Pursuant to the Code of Conduct for Members of Council, Council Members shall not disclose or release information considered in a Closed Meeting. This is a standard practice established to protect the interests of both Council and the municipality. However, if Council deems it desirable and appropriate that such information is released, Council may vote on a motion in a Closed Meeting to direct staff to make public all or part of a closed staff report. The following direction can be voted on in a Closed Meeting in order to disclose a Closed Meeting item:

**THAT Council direct Staff to manage and coordinate the appropriate disclosure of information as it pertains to the [date of report] closed report entitled [title of report].**

Although the information contained in closed staff reports may not be disclosed, the Municipal Act requires that public notice of Closed Meetings be provided for in a Procedural By-law. The Town's Procedural By-law requires that there be public notice of all Open and Closed Meetings and that the agenda, including all items to be dealt with at each meeting, be publicly posted and made available prior to the meeting.

Section 239 (7) of the Municipal Act states that the municipality: "...shall record without note of comment all resolutions, decisions and other proceedings at a meeting..."

In order to be accountable and transparent, and to inform the public about the matters dealt with in a Closed Meeting, Council shall begin all meetings in open session and pass a motion to move into a Closed Meeting. Once the matters in the Closed Meeting have been dealt with, Council shall reconvene in open session to disclose, in a general manner, how the agenda items were dealt with in the Closed Meeting. A sample Chair's script is included as Appendix "A."

## **7.0 Addition of a Closed Meeting Item not on the Agenda**

There are exceptional circumstances where items which appear on an Open Meeting agenda but not on a related Closed Meeting agenda must be discussed in a Closed Meeting. This typically occurs when the discussion regarding an Open Meeting item cannot be continued without disclosing confidential information. In this circumstance the following motion can be voted on in an Open Meeting in order for Council to convene a Closed Meeting:

**THAT Council of the Town of Cobourg now hold a meeting that is closed to the public pursuant to Section 239 [relevant subsection] of the Municipal Act to discuss [topic, subject area or report title].**

## **8.0 Attendance at a Closed Meeting**

Unless otherwise directed by Council, attendance at Closed Meetings is limited to the Chief Administrative Officer, Directors, Municipal Clerk and/or their designate, and other staff at the discretion of the Chief Administrative Officer. Staff are to remain outside the Closed Meeting Forum (physical or electronic) until called to speak to their specific agenda item. Staff should vacate the meeting once that matter has been dealt with by Council.



## **9.0 Closed Meeting Prelude**

In order to remind the Members of Council of their obligations in Closed Meetings, the Chair shall read a script, included as Appendix B, detailing the Closed Meeting rules at the beginning of each Closed Meeting.

### **Definitions**

**“Closed Meeting”** means a meeting, or part of a meeting, which is closed to the public as permitted by Section 239 (2) of the Municipal Act, also referred to as an "in-camera meeting".

**“Open Meeting”** means a meeting of Council/Committee that is open to the public

## **Appendix “A”**

### **Chair’s Script when reporting from a Closed Meeting to an Open Meeting**

Council moved a Motion to proceed into a closed meeting to consider business as permitted under the Municipal Act and as listed on today’s meeting agenda. The following items were considered during closed session.

In the continuing interest of transparency, I will be reporting at this open meeting the outcomes from today’s closed meeting.

At today’s closed meeting the following items were considered:

List the items discussed in the closed meeting as they appear on the meeting agenda and, following each item, provide a description of what occurred.

Examples:

#### **Minutes**

Council approved the closed meeting minutes of the Council meetings.

#### **Citizen Appointments**

Council voted to bring forward a motion to be considered at today’s open meeting. That motion will be voted on later in this meeting.

#### **Legal Update**

Council received information regarding the....

#### **Union Negotiations**

There was direction given to staff regarding this item...

#### **Educational or Training Sessions**

Please be advised that Council will meet in Closed Session in accordance with subsection 239(3) of the Municipal Act for the purpose of:

Examples: Council Orientation; Professional Development

I will be verbally reporting out in a general sense on all items considered in the closed session once we rise from the closed session and move back to open session

**Appendix “B”**  
**Chair’s Script at the Beginning of Closed Meetings**

Please be advised that we are meeting in a closed meeting as permitted in subsections 239 (2) and (3) of the Municipal Act to discuss: [identify the specific open meeting exceptions as listed on the meeting agenda]:

- a) security of municipal property;
- b) personal matters about an identifiable individual;
- c) a proposed or pending acquisition or disposition of land;
- d) labour relations or employee negotiations;
- e) litigation or potential litigation;
- f) advice that is subject to solicitor-client privilege;
- 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.

Only those matters pertaining to the sections of the Municipal Act already mentioned may be discussed. Any other matters related to the subject at hand that do not relate to these open meeting exceptions cannot be discussed. Closed meeting matters shall not be discussed either before or after the closed meeting with any person not related to the subject matter. I will be verbally reporting out in a general sense on all items in this closed agenda when we move into open session. As per the Procedural By-law please turn off any electronic devices while attending this meeting.

# Appendix "B"



## Corporation of the Town of Cobourg

### Policy Title: Closed Meeting Investigation Policy and Procedure

**Division:** Corporate Services

**Department:** Legislative Services

**Effective Date:**

**Revision Date:**

**Approval Level:** Municipal Council

**Section Number:** 3-1

**Policy Number:** LEG-ADM-25

### 1.0 PURPOSE

This document sets out the Closed Meeting Investigation Policy and Procedure (the "Policy") for the Corporation of the Town of Cobourg (the "Town").

The Policy applies to Municipal Council, to all local boards and to committees of which at least 50 percent of the members are also Members of Council or members of local boards and committees.

### 2.0 POLICY STATEMENT

The Town of Cobourg is committed to ensuring that any request for an investigation made pursuant to section 239.1 of the *Municipal Act, 2001* is dealt with in a fair, expeditious and effective manner by an independent and impartial investigator.

### 3.0 STATUTORY FRAMEWORK

The open meeting rule in Ontario is set out in s. 239(1) of the *Municipal Act, 2001* and requires that municipal councils and their committees as well as local boards hold meetings that are open and accessible to the public. There are a number of exemptions to the open meeting rule that are set out in s. 239(2), (3) and (3.1) of the *Municipal Act, 2001*. In addition, every municipality and local board is required to enact a Procedural By-law pursuant to s. 238(2) of the *Municipal Act, 2001* that governs the calling, place and proceedings of meetings.

Any person may request that an investigation be undertaken pursuant to s. 239.1 of the *Municipal Act, 2001* to determine whether a municipality or a local board has complied with s. 239 of the statute or a procedure by-law made under s. 238 in respect of a meeting or part of a meeting that was closed to the public.

Municipalities are authorized to appoint an investigator to conduct the investigation in an independent manner and to report on the investigation pursuant to s. 239.2(1) of the *Municipal Act, 2001* (in the absence of an appointment, the Ombudsman of Ontario is the default investigator).

In carrying out his or her functions, the investigator shall have regard to the importance of his or her independence, impartiality, confidentiality with respect to his or her activities, and the credibility of his or her investigative process. The appointed investigator may

## **Closed Meeting Investigation Policy and Procedure**

delegate in writing to any person, other than a member of council, any of the investigator's powers pursuant to s. 239.2(6) of the *Municipal Act, 2001*.

Upon completion of the investigation, if the appointed investigator is of the opinion that the meeting in question, or part of it, appears to be closed to the public contrary to s. 239 of the *Municipal Act, 2001* or the municipality's procedure by-law, 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 the investigator thinks fit pursuant to s. 239(10) of the statute.

### **4.0 APPOINTED INVESTIGATOR**

The Town appointed Aird & Berlis LLP as its Investigator (the "Investigator") with the authority to conduct investigations upon receipt of a valid request in respect of meetings or part of meetings that are closed to the public. The Investigator shall be responsible to determine compliance with the *Municipal Act, 2001* or the applicable procedure by-law and to report on the results of such investigation.

### **5.0 POLICY**

1. The Town and its local boards, and Advisory Committees commit to full cooperation, including the provision of all information requested by the Investigator, either written or through interviews, to assist the Investigator in his or her investigation.
2. In accordance with s. 239.2(11) of the *Municipal Act, 2001*, the Town shall ensure that any reports received from the Investigator by the Town are made available to the public.
3. The Town and its local boards and Advisory Committees shall include any report received from the Investigator related to an investigation under the *Municipal Act, 2001* on the next available public agenda and will consider that report in an open public session of Council, a Committee of Council or the local board.
4. The Town and its local boards or a committee shall pass a resolution stating how they intend to address the Investigator's report pursuant to s. 239(12) of the *Municipal Act, 2001* if, in the Investigator's opinion, a closed meeting was held in contravention of s. 239 of the statute or the applicable procedure by-law.

### **6.0 REQUEST FOR INVESTIGATION**

A request for investigation must be submitted on the Request Form attached as Appendix "A" to this Policy. The Request Form may be obtained from the Municipal Clerk's Department or downloaded from the Town's website.

## Closed Meeting Investigation Policy and Procedure

### 7.0 PROCEDURE

1. Any person may submit a request under s. 239.1 of the *Municipal Act, 2001* to the Investigator relating to compliance with s. 239 of the statute or the applicable procedure by-law for meetings or part of meetings that are closed to the public.
2. A request for investigation under s. 239.1 of the *Municipal Act, 2001* must be submitted in writing using the Request Form (and attaching all supporting documents) and directly forwarded by mail or email to the Investigator at:

**John Mascarin**  
Aird & Berlis LLP  
Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario M5J 2T9  
Email: [jmascarin@airdberlis.com](mailto:jmascarin@airdberlis.com)

3. All requests will be treated as confidential by the Town, its local boards and the Investigator, unless authorization is given by the requester to release his or her identity or the identity of the requester has been publicly disclosed.
4. All requests must contain the following information:
  - a) the name of the requester, mailing address, telephone number, and e-mail address (if applicable);
  - b) the date of the closed meeting under consideration;
  - c) the nature and background of the particular occurrences;
  - d) all other relevant information necessary for the Investigator to reasonably consider;
  - e) a direction with respect to the release of the requester's identity; and
  - f) the original signature of the requester or the requester's authorized signing officer(s).

The Request Form is intended to provide the Investigator with as much information as possible to aid in the conduct of the investigation. A Request Form that has been improperly or not fully completed may be deemed incomplete by the Investigator and will not be accepted. If such an event occurs, the Investigator will notify the requester of such circumstance.

## **Closed Meeting Investigation Policy and Procedure**

5. When a request is submitted, the Investigator is responsible for compliance with this Policy and shall follow the following procedures:
  - a) assign a file number and record a file number on the envelope or email;
  - b) log the file number together with the date and time received; and
  - c) confirm receipt of the request to the requester.
6. For all requests, the Town or its local boards shall supply forthwith to the Investigator the following or any other information or documentation as requested by the Investigator related to a request:
  - a) a certified copy of the Notice of Meeting;
  - b) a certified copy of the Meeting Agenda;
  - c) a certified copy of the Meeting Minutes;
  - d) any relevant resolutions;
  - e) a municipal or local board contact list; and
  - f) any other relevant information as requested by the Investigator.
7. The Town and its local boards shall allow the Investigator full independence in which to conduct its investigation and shall not interfere or obstruct the Investigator in any way from carrying out its investigation. The Investigator may report any instances of interference or obstruction to the Council or the local board.
8. The Investigator shall review the request to determine whether there are reasonable and probable grounds to proceed with a full investigation. The Investigator is authorized to summarily dismiss the request, with written notice to the requester, if it determines that there are no reasonable or probable grounds to undertake a full investigation.
9. The Investigator will commence its investigation within two (2) weeks of having made a determination that the request merits a full investigation.

### **Administration**

The Chief Administrative Officer designates the Municipal Clerk to implement and administer these Policy.