



TOWN OF COBOURG'S CLOSED SESSION MEETING PROTOCOL GUIDE

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">• Town Property• Town Facilities• Town Assets	<ul style="list-style-type: none">• Procedural matters• Giving directions or instructions to Staff.
Personal Matters about Identifiable Individuals [S. 239 (b)]	<ul style="list-style-type: none">• Municipal Employees• Members on Various Boards and Committees	<ul style="list-style-type: none">• Procedural matters• Giving directions or instructions to Staff.

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

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

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.