

CORPORATE POLICY AND PROCEDURE



Policy	Closed Meeting Protocol
Category	Corporate
Authority	City Clerk's Office
Approved by	City Clerk
Effective Date	July 25, 2011
Revision Date	<u>June 27, 2023</u>

1. Policy Statement

The City of Guelph acknowledges that all meetings of Council, ~~c/~~Committees of Council and local boards shall be open to the public except as ~~related to permitted by~~ the exceptions included in Section 239 (2) and (3) of the Municipal Act.

Section 4.6.1 (c) of the City's Procedure Bylaw requires that City Council approve and maintain a Closed Meeting Protocol.

2. Purpose

The purpose of this policy is to ensure compliance with Section 239 (2) and (3) of the Municipal Act as well as to provide guidance to City Council, local boards and City staff as it relates to ~~c~~losed mMeetings.

3. Definitions

"Closed mMeeting" means a meeting of Council, ~~a /c~~Committee of Council or a local board that is closed to the public pursuant to Section 239 (2) and/or (3) of the Municipal Act.

"Local board", for the purposes of the Closed Meeting Protocol, means a body appointed by City Council, including advisory committees, which is also administered by City staff.

"Open mMeeting" means a meeting of Council, ~~a /c~~ommittee of Council or a local board that is open to the public.

"Weekly information items" means the weekly distribution of information items posted to Guelph.ca and distributed to City Council.

4. Should the Meeting be Closed?

In the interest of accountability and transparency, Guelph City ~~Council~~Council and local boards endeavours to conduct ~~their~~its decision making in public. It is recognized, however, that there are items which should be considered ~~by Council~~ in a ~~c~~losed ~~m~~uMeeting in accordance with the Municipal Act. When determining whether a matter should be considered in a ~~c~~losed ~~m~~uMeeting, City Council, local boards and staff should consider the following:

1. Does the matter/item meet one or more of the open meeting exceptions noted in Section 239 the Municipal Act?
2. If so, and recognizing that the matter can be discussed in a ~~c~~losed ~~m~~uMeeting, is there a compelling reason that it should be?

The determination of whether a matter should be dealt with in a ~~c~~losed ~~m~~uMeeting is the responsibility of the relevant Deputy ~~Chief Administrative Officer (DCAO)/Chief Administrative Officer (CAO)~~AO in consultation with the meeting ~~c~~hair, the City Clerk~~r~~, and the City Solicitor.

The final determination of whether to hold a closed meeting is always made by resolution of the body considering holding a closed meeting.

5. Municipal Act Rules for Closed Meetings

Topic/Municipal Act Exception	Discussion Can Include	Voting Permissions
Security of City Property [S. 239 (a)]	<ul style="list-style-type: none"> • protection of municipally owned City<u>property, facilities and assets</u> • loss, theft or damage can be corporeal (like vandalism) or incorporeal (like fraud) City facilities<u>City assets</u> • management issues identified by auditors 	<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"> • scrutiny of a municipal employee's<u>conduct or performance</u> • candidates for a job • allegations of an individual's possible violation of lawmembers on various boards and committees 	<ul style="list-style-type: none"> • procedural matters • giving directions or instructions to staff
A Proposed or Pending Acquisition or Disposition of Land [S. 239 (c)]	<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"> • <u>union or non-union employee negotiations</u> • <u>compensation, benefits or vacation for specific employees</u> • <u>staff performance, conduct, discipline, hiring and firing</u> • <u>changes to workload or roles of specific employees</u> 	<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"> • <u>current or pending litigation involving the municipality, including proceedings before administrative tribunals (for example, the Ontario Land Tribunal)</u> • <u>litigation that is a real prospect, against or by the municipality</u> • <u>deciding whether or not to litigate in a specific case</u> 	<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"> • <u>legal opinions, advice and or status reports/briefings communication between the municipality and its solicitor, to seek or receive legal advice intended to be confidential</u> 	<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"> • <u>Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) includes discussions that are explicitly permitted by another provincial act, such as the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)</u> 	<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,</p>	<ul style="list-style-type: none"> • information explicitly provided in confidence <u>to</u> 	<ul style="list-style-type: none"> • procedural matters • giving directions or

commercial, financial or labour relations information supplied in confidence which, if disclosed, could interfere with contractual or other negotiations [S. 239 (i)]	<u>the City by a third-party</u> that, upon review by senior City staff or the City Solicitor, is a trade secret or scientific, technical, commercial, financial or labour relations information that could interfere with negotiations	instructions to staff
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"> information <u>explicitly provided in confidence held by the municipality</u> that, upon review by senior City staff or the City Solicitor, is a trade secret or scientific, technical, commercial or financial information that has monetary value or <u>potential monetary value that</u> 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 [Sec. 239 (3.1)]	<ul style="list-style-type: none"> Council orientation <u>and education</u> 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

6. Statutory Requirements for Closed Meetings

Pursuant to Section 239 of the Municipal Act:

- Before holding a closed mMeeting, City Council, a committee or a local board must state, by resolution, the fact of the holding of the closed mMeeting and the general nature of the matter to be considered at the closed mMeeting.
- All resolutions, decisions, and other proceedings at closed mMeetings are to be recorded without note or comment by the Clerk or designate.

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- Any person can request an investigation of whether the City has complied with the Municipal Act regarding closed mMeetings.
 - ~~The City's Closed Meeting Investigator is~~ The Local Authority Services ~~has been appointed by the City to investigate any such complaints.~~ More information on how to submit a closed meeting investigation is available on guelph.ca.
 - All investigation reports ~~are to~~shall be made available to the public.

7. Access Requests for Closed Meeting Reports and Materials

Reports and materials prepared for consideration at closed mMeetings 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 mMeetings, in the event of an appeal, the City could be ordered to release such records.

The City cannot refuse to disclose information provided in a closed mMeeting 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 mMeeting report should be limited to only information which would qualify for discussion at a closed mMeeting. If general context is required to frame the closed mMeeting discussion, it is recommended that it also be disclosed ~~publically~~publicly by way of one of the recommended approaches identified in Section 8 below.

7.1 Requests for Previous Closed Meeting Materials from new Members of City Council

New members of City Council, a committee of Council or local board may request access to previous materials discussed at closed meetings. Such requests shall be made in writing to the Clerk.

8. Closed Meeting Reports and Recommendations

8.1. Reports

Whenever possible, written closed mMeeting reports are preferred over verbal reports as the former provides for a more detailed account of the confidential record. Written reports also ensure that Council, a committee of Council or a local board/Committee is prepared for any decisions they may need to consider in relation to a closed mMeeting discussion. It is also important to ensure that information which can be made available to the public is disclosed appropriately. Aside from a singular report appearing on a closed mMeeting agenda, consideration shall also be given to the following:

Option A: A companion report to appear on the accompanying open mMeeting agenda which provides for as much general context in relation to the closed mMeeting matter as possible without disclosing confidential details; or,

Option B: A recommendation ~~for Council/Committee~~ to direct and/or request staff to prepare a related report to be included as part of a subsequent open mMeeting agenda or wWeekly iInformation items package.

8.2. Recommendations

In a closed mMeeting, ~~Council/Committee is only permitted to only~~ votes on procedural motions or to direct City-officers, agents/agents, or employees (as applicable) are permitted. No other decisions or approvals are permitted in a closed mMeeting. ~~Some~~ items conforming to this requirement ~~and~~ may be discussed and voted on in closed mMeetings. Many items, however, may be discussed in a closed mMeeting but cannot be voted on in a closed mMeeting. The following are best practices with respect to the consideration of an open mMeeting motion related to a matter discussed ~~by Council/Committee~~ in a closed mMeeting:

Option A: If a companion report appears on the accompanying open mMeeting 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 mMeeting. 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 mMeeting:

That <Council or committee or local board> rise, report and introduce the following motion as part of the open mMeeting report entitled <title of report> appearing on the <meeting date> ~~Council~~ <or Council, committee or local board> Committee agenda:

1. That <staff recommendation>.

Option B: If there is no companion report appearing on the accompanying open mMeeting agenda, but the matter requires a resolution ~~of Council/Committee~~ at an open mMeeting, 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

oOpen mMeeting. 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 oOpen mMeeting:

That <Council or cCommittee or local board> rise, report and introduce the following motion as a sSpecial rResolution at its <meeting date> meeting:

1. That <staff recommendation>.

~~In order to~~To ensure that there is appropriate context for the introduction of a motion as a sSpecial rResolution, the ~~chair~~Mayor, ~~a Member of Council~~, or City staff, should consider presenting background information prior to ~~Council's~~ consideration of the motion at an open meeting.

Option C: If there is no companion report appearing on the accompanying oOpen mMeeting agenda, and the recommendation does not require immediate action, direction can be given to staff (as applicable) to report back to a subsequent oOpen mMeeting 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 cClosed mMeeting:

1. That staff be directed to report back to the ~~<date of report back>~~ <Council or cCommittee or local board> ~~meeting~~ in relation to the report titled <title of report> and dated <date of report> by <insert date of report back>.

9. Public Disclosure

Pursuant to the Code of Conduct for ~~Members of Council and Local Boards~~, mMembers ~~of Council~~ shall not disclose or release information considered in a cClosed mMeeting. This is a standard practice established to protect the interests of ~~City both~~ Council, committees of Council, local boards and the municipality. However, if City Council, a committee of Council, or a local board deems it desirable and appropriate that such information is released, ~~Council-it~~ may vote on a motion in a cClosed mMeeting to direct staff (as applicable) to make ~~public~~ all or part of a closed staff report public. The following direction can be voted on in a cClosed mMeeting in order to disclose a cClosed mMeeting item:

1. That staff be directed to manage and coordinate the appropriate disclosure of information as it pertains to the <date of report> closed report ~~en~~titled <title of report>.

The proposed communications strategy in relation to a cClosed mMeeting matter may be summarized in the staff report. Included in the communications strategy should be an explanation of the details/decisions that are being subsequently disclosed to the public, if any. Sharing the proposed communications strategy in advance will provide City Council, a committee of Council or a local board with the assurance that the public disclosure with respect to confidential matters will be managed appropriately ~~and, with the support of Council, lead to a coordinated communication approach~~.

Although the information contained in closed staff reports may not be disclosed, the Municipal Act requires that public notice of closed mMeetings be provided for in a Procedure By-law. The City's Procedure By-law requires that there be public notice of all open and closed mMeetings 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 or r 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 mMeeting, City Council, a /committees of Council or local board shall begin all meetings in open session and pass a motion-resolution to move into a closed mMeeting if required. Once the matters in the closed mMeeting have been dealt with, City Council, a committee of Council or a local board/Committee shall reconvene in open session to disclose, in a general manner, how the agenda items were dealt with in the closed mMeeting. ~~A sample Chair's script is included as Appendix A.~~

10. Addition of a Closed Meeting Item not on the Agenda

There are exceptional circumstances where items which appear on an open mMeeting agenda but not on a related closed mMeeting agenda must be discussed in a closed mMeeting. This typically occurs when the discussion regarding an open mMeeting item cannot be continued without disclosing confidential information. In this circumstance the following motion can be voted on in an open mMeeting in order for City Council, a committee of Council or a local board to convene a closed mMeeting:

1. That the <City Council, a committee of Council or a local board> of the City of Guelph 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>.

11. Attendance at a Closed Meeting of City Council

Unless otherwise directed by City Council or a /committee of Council, attendance at closed mMeetings is limited to the Chief Administrative Officer, Executive Team, City Clerk and/or their designate, and other staff at the discretion of the Executive Team (designates for all listed positions may also join closed meetings as required). Staff are to remain outside the closed mMeeting ~~room~~ until called upon to speak to their specific agenda item by the meeting chair. Staff ~~should~~ must vacate the closed meeting ~~once that matter has been dealt with by Council/Committees~~ directed by the meeting chair.

12. ~~Closed Meeting Prelude~~

~~In order to remind the Members of Council/Committee 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.~~