

City of Stratford Closed Meeting Protocol

Objective

The Closed Meeting Protocol is intended to assist The Corporation of the City of Stratford ("the City") ensure compliance with the statutory requirements for holding Closed Meetings as well as to enhance the transparency of the City decision-making process.

This Protocol is based upon the following principles:

- Mature, responsible local government is fostered by an informed electorate;
- A decision-making process which is open and transparent to the public enhances the democratic legitimacy of local government;
- To the greatest extent possible, the public should be able to observe municipal government in process;
- In some circumstances, the public interest is best served by maintaining the confidentiality and privacy of certain information and decisions;
- The law recognizes that there are legitimate reasons for municipal business to be discussed and debated in the absence of the public.

This Protocol is intended to support and enhance the provisions of the Municipal Act, 2001, ("the Municipal Act") and Council's Procedure By-law, as amended from time to time, and is not intended to be separately enforceable.

Definitions

For the purpose of this Protocol, unless otherwise stated, the following terms shall have the following meanings:

"**Chair**" means the Member of Council presiding over a meeting.

"**Chief Administrative Officer**" means the Chief Administrative Officer of The Corporation of the City of Stratford.

"**City Solicitor**" means the individuals acting as solicitors for The Corporation of the City of Stratford.

"**Clerk**" means the City Clerk of The Corporation of the City of Stratford.

"Closed Meeting" means a meeting, or part of a meeting, which is closed to the public as permitted by the Municipal Act, also referred to as an "in-camera meeting".

"Confidential Report" means a Staff Report intended to be considered in a Closed Meeting.

"Council" means the Council of The Corporation of the City of Stratford and includes committees of Council.

"Department Head" means the member of City Staff responsible for one of the City's departments. This includes a member that is serving in an Acting role.

Statutory Requirements for Closed Meetings

The "Open Meeting Rule" is enshrined in section 239 of the Municipal Act. It provides that, unless otherwise permitted, all meetings of Council (and committees of Council), must be open to the public. There are fourteen (14) subject matter exceptions which permit a Closed Meeting to be held, as set out in subsections 239(2), (3), and (3.1) of the Municipal Act. Section 239 of the Municipal Act also contains certain procedural requirements for holding and conducting Closed Meetings.

The Open Meeting Rule seeks to increase public confidence in local government, and prevent secrecy in decision-making. The Open Meeting Rule also seeks to balance the public interest in open and transparent municipal decision-making, while also recognizing that in certain circumstances, meetings in the absence of the public are required to protect municipal interests.

Roles and Responsibilities

Council as a whole is responsible for making decisions that affect the City, the electorate, and those having business with the City. While Council will consider the recommendations of City Staff in making its decisions, Council bears ultimate responsibility and accountability for those decisions. This includes decisions in relation to Closed Meetings, such as whether it is appropriate to convene a Closed Meeting, which exception should be relied upon, and the appropriate level of public disclosure following a Closed Meeting.

City Staff carry out the decisions and policies of Council, and provide professional advice and recommendations to Council on a range of matters affecting the City. In the course of performing these duties, City Staff will also make recommendations regarding the conduct of Closed Meetings. City Staff are responsible to provide reasoned advice on such matters as the application of closed meeting exceptions, the practices and

procedures of Council, and whether information should be kept confidential on account of various municipal interests.

Individual Members of Council (hereinafter referred to as “Members”) are guardians of the public trust, and the individual decision-makers who, when acting together as a quorum of Council, make decisions that bind the City. In performing these duties, Members will receive confidential information during Closed Meetings. Members bear ethical obligations to preserve the confidentiality of such information. Inadvertence or indiscretion in relation to Closed Meeting matters may significantly harm the City’s interests – financial, legal, and reputational – and the overall public interest.

Before a Closed Meeting

Selecting a Closed Meeting Exception:

Council’s business is often initiated by City Staff or in response to inquiries. Staff then report their professional recommendations on various municipal matters. The City recognizes that staff reports, and the agenda review process will play an integral role in ensuring compliance with the Open Meeting Rule and fostering a transparent decision-making process.

The relevant Department Head shall be responsible for identifying whether a matter should be considered in a Closed Meeting. In making such a determination, the Department Head should, when necessary, consult with the Clerk, the Chief Administrative Officer, and/or the City Solicitor as appropriate.

The Department Head shall consider the following two questions in determining whether a matter should be considered in a Closed Meeting:

1. Does the matter qualify for one of the closed meeting exceptions enumerated in subsections 239(2), (3) or (3.1) of the Municipal Act? In other words, can the subject matter be considered and discussed in a Closed Meeting?
2. If the matter is permitted to be discussed in a Closed Meeting, is there a compelling reason why the matter should be considered in a Closed Meeting? What is the corporate, municipal or other interest that is to be protected by holding a Closed Meeting?

In considering the above questions, the Department Head shall have regard for, among other matters, whether full transparency and disclosure in the immediate term would in any way serve to compromise the municipal interests engaged by the matter.

Naming of Confidential Reports, Agenda Resolution to Convene a Closed Meeting:

Before holding a Closed Meeting, Council must pass a resolution stating the fact that it is holding a Closed Meeting, and the general nature of the matter(s) to be considered at the Closed Meeting. Such a resolution should maximize the information available to the public, while at the same time not undermining the reason for excluding the public in the first place. This resolution should not simply restate the applicable closed meeting exception listed in subsections 239(2), (3) or (3.1) of the Municipal Act.

In some limited circumstances, the need for confidentiality may encompass the very fact of considering a matter in a Closed Meeting. This may include, but is in no way limited to, circumstances where the identification of a specific party, property, or matter in a resolution to convene a Closed Meeting would, in and of itself, reveal the interest sought to be protected by the Closed Meeting. The City recognizes that these circumstances would be limited.

To assist in ensuring compliance with the Municipal Act, the following standard naming convention shall be used for all Confidential Reports, unless to do so would undermine the very reason for excluding the public in the first place:

Confidential Report of the **[Department Head]** with respect to **[Subject Matter / Property / Party / Appeal Reference Number] [Corporate Report Number (X-00-00)] – [Reference to Closed Meeting Exception]**

For example:

Confidential Report of the Chief Administrative Officer with respect to the Proposed Disposition of Land (Long Term Care Home) (CM-24-01) – proposed or pending acquisition or disposition of land s. 239(2)(c)

The title of a Confidential Report must cite the relevant closed meeting exception from the Municipal Act. Where appropriate, City Staff may cite multiple closed meeting exceptions if more than one exception is applicable.

The titles of all Confidential Reports to be considered at a Closed Meeting will be listed on the Open Meeting agenda for the purpose of providing notice to the public, and shall also form the content of the resolution to convene a Closed Meeting.

The following format will be used in developing the motion to adjourn to a closed session:

Motion to proceed into closed session

Moved by Councillor [name] and Councillor [name]

THAT [Council/Committee] move into closed session to consider the following matters:

4.1 Confidential Report of the [Department Head] with respect to [Subject Matter / Property / Party / Appeal Reference Number] [Corporate Report Number (CM-00-00)] – [Reference to Closed Meeting Exception]

4.2 Confidential Report of the [Department Head] with respect to [Subject Matter / Property / Party / Appeal Reference Number] [Corporate Report Number (CM-00-00)] – [Reference to Closed Meeting Exception]

4.3 Confidential Verbal Update of the [Department Head] with respect to [Subject Matter / Property / Party / Appeal Reference Number] [Corporate Report Number (CM-00-00)] – [Reference to Closed Meeting Exception]

The resolution to convene in a Closed Meeting shall be prepared in advance of the Closed Meeting by the Clerk and shall generally form part of the relevant meeting agenda. Where items are added to the agenda for a Closed Meeting as addenda items, the resolution shall be updated to reflect those new items.

During a Closed Meeting

Individuals Entitled to Attend a Closed Meeting:

Attendance at a Closed Meeting shall generally be limited to those individuals required to ensure the Closed Meeting matters are fully and properly considered. This includes the Members who are not otherwise prohibited from attending the Closed Meeting and generally includes the Clerk, the Deputy Clerk, the Director of Corporate Services/Treasurer, the Chief Administrative Officer, and the responsible Department Head for the matter under consideration.

Other individuals may be requested to attend a closed meeting where their attendance may become necessary in the course of Council business. Where appropriate, other individuals shall only be permitted to attend the portion of the Closed Meeting to which their presence is relevant or necessary.

Chair to Preside over Closed Meetings:

In addition to their responsibilities under the Procedure By-law, the Chair shall be responsible for presiding over a Closed Meeting. It is incumbent on the Chair to educate themselves on the statutory requirements that govern a Closed Meeting, including the subject matters which may be permitted to be discussed in a Closed Meeting and the procedural requirements for conducting a Closed meeting, including voting.

The Chair shall preside over deliberations in a Closed Meeting to ensure that Members do not inadvertently discuss matters which are not permitted to be discussed in a Closed Meeting, or matters which are not necessarily incidental to the main topic of discussion. Where a Member begins to stray from an appropriate Closed Meeting topic, the Chair shall promptly advise the Member of their obligation to remain on topic and to refrain from discussing unrelated or unpermitted topics.

Staff Recommendations and Voting in Closed Meetings:

Confidential Reports provide Council with professional advice and recommendations to take action on municipal business and matters. When preparing recommendations that will be considered in a Closed Meeting, City Staff must take into consideration the limitations on what matters can be voted on during a Closed Meeting, and what matters must be voted on in Open Session.

Except where otherwise permitted, no voting shall take place during a Closed Meeting. Voting during a Closed Meeting may only occur if the rules in subsection 239(6) of the Municipal Act, are satisfied. A vote may only be taken during a duly-constituted Closed Meeting if it is for one of two purposes:

- Procedural matters (e.g., to receive and file (take no action) information, to refer a matter, to defer consideration); or
- Giving direction or instruction to City Staff or agents or representatives of the City (e.g., the Chief Administrative Officer, the Clerk, external legal counsel, consultants retained by the City).

During a Closed Meeting, Council shall not make an "informal decision" where no formal vote of the Members is taken. Council is not permitted to make an informal decision by consensus, "head nodding," or to take a "straw poll" during a Closed Meeting. Such decisions constitute a "vote" on the matter, and where not taken for a permitted purpose, such decisions do not comply with the Municipal Act.

The Chair will ensure that any vote taken during a Closed Meeting complies with subsection 239(6) of the Municipal Act. The Chair may rule a vote out of order where it does not comply with the requirements of subsection 239(6) of the Municipal Act.

Recommendations in a Confidential Report may entail a decision which is not permitted to be voted upon in a Closed Meeting (e.g., a decision to adopt a policy, a decision to appoint an individual to a committee). City Staff should indicate in Confidential Reports which portions of the recommendations can be voted upon and adopted during the Closed Meeting, and which portions must be voted on in Open Session.

Recommendations from City Staff should generally follow the following format:

- **For Closed Session:** THAT Report CM-00-22 be received.
- **For Open Session:** THAT Council appoint Jane Doe as City Clerk.

Written Reports Preferred over Verbal Updates:

Written reports from City Staff will generally be preferred over verbal presentations or updates. Written reports circulated ahead of a Closed Meeting provide clarity on the subject matter to be discussed, and help justify the reasoning for holding a Closed Meeting. However, in some circumstance, a verbal presentation or update may be permissible, or practically necessary given other constraints or in recognition of the sensitivity of the specific matter.

For the purpose of this Protocol, the relevant Department Head shall treat a request to make a verbal presentation or update during a Closed Meeting as though it were a written Confidential Report. The Department Head shall submit a verbal presentation form to the Clerk, in the form prescribed by the Clerk, as soon as possible in advance of the Closed Meeting for inclusion on the relevant meeting agenda. Where any presentation materials will be relied upon, the Department Head shall provide same to the Clerk for review and to ensure the subject matter of the presentation forms a subject matter that is permitted to be discussed in a Closed Meeting.

Requests to provide a verbal presentation or update will generally not be considered once a Closed Meeting has already commenced and is underway. In the event of a time sensitive matter or in extenuating circumstances, in consultation with the Chief Administrative Officer and at the discretion of the Clerk, a verbal presentation or update may be added to the Closed Meeting agenda as an item of "New Business" so long as Council adjourns its Closed Meeting, reconvenes in Open Session, and passes a resolution in accordance with subsection 239(4) of the Municipal Act.

Closed Meeting Materials:

Members will require access to highly sensitive, confidential, and privileged materials and information in order to make informed decisions on matters during a Closed Meeting. It is imperative that Members recognize the importance of confidential information, and that they must take every precaution against the unauthorized disclosure of such confidential information. Members shall observe strict compliance with their ethical obligations regarding confidential information outlined in the City's Code of Conduct.

Closed Meeting documents and records, including Confidential Reports, correspondence from external legal counsel, and other confidential information, will be provided to

Members as directed in the Council Procedure By-law. City Staff may circulate hard copies of confidential information to Members during a Closed Meeting, with such copies to be returned to the Clerk immediately upon the conclusion of the Closed Meeting. The Clerk shall be responsible to ensure the shredding or destruction of hard copies of confidential information, and to track whether any hard copies remain in circulation. Members are not to take notes, scans, or photographs of any documents or materials.

If a member of Council does not return confidential closed meeting information to the Clerk, it is their responsibility to safeguard the information by placing it in a cabinet that is locked and which they are the only person who has access to the key to open it. The member of Council will be responsible for all costs of these items.

After Closed Meeting

Reporting Out of Closed Session:

“Reporting out” or “reporting back” immediately following a Closed Meeting is not a requirement in the Municipal Act. However, it is recognized as a best practice for enhancing the transparency of municipal decision-making. The extent of Council’s obligation to report out is outlined in the City’s Procedure By-law. Further the content of or details contained in a resolution to “report out”, not being statutorily prescribed, is within Council’s purview.

While the City is committed to enhancing the transparency of its decision-making process, it also recognizes that, in certain circumstances, full or substantial disclosure of the deliberations of Council in a Closed Meeting in the immediate term is simply not appropriate.

Council’s resolution to report out will be based on the recommendation of City Staff as presented in the corresponding Confidential Report. Where appropriate, City Staff may also recommend the release of any appendices to a Confidential Report following Council’s final consideration of the matter.

City Staff will generally base a recommendation as to the content of the resolution to report out on the following options:

Option A: A recommendation that Council report out as much general context and substance of the Closed Meeting matter as possible.

Application: This option aims to provide the public with the most amount of general information from a Closed Meeting, while refraining from disclosing the sensitive confidential details. Examples may include where Council is provided a general update

about ongoing labour negotiations, or where Council considers and reviews a draft agreement with a known entity. Confidential details about advice or recommendations provided to Council need not be disclosed. However, where there would be no harm to the corporate interests in advising the public that the specific matter was considered, those details should be disclosed.

Option B: A recommendation that Council make a substantive decision in relation to the Confidential Report in Open Session, based upon the discussion and consideration in the Closed Meeting.

Application: This option is appropriate where an immediate Council decision is required to give effect to a recommendation in a Confidential Report, but entails a substantive decision that is not permitted to be voted on in a Closed Meeting. Examples may include the appointment of individuals to fill various positions in the City or on committees or local boards, or a decision to declare municipal lands surplus and authorize the sale of those lands.

Option C: A recommendation that Council report out that the Confidential Report was received for information, and/or direction was given to City Staff, and providing general details about the information received and the direction given.

Application: This option is reserved for matters where sensitive and nonsensitive information can be separated. For example, Council may report out the fact of having considered and given direction on the sale of City property, but without disclosing precisely what direction was given.

Option D: A recommendation that Council only report out that the Confidential Report was received for information, and/or direction was given to City Staff, without providing any specific details.

Application: This option is reserved for matters which are highly sensitive in nature and where full disclosure in the immediate term is not appropriate. This could include receiving legal advice on a highly sensitive or confidential matter, or considering highly confidential information from another level of government.

In making a determination on the content of the resolution to report out, the Department Head responsible for the Confidential Report shall consider whether full or substantial disclosure of the of the deliberations of Council or the matters considered in the Closed Meeting in the immediate term would be prejudicial to the interest considered at the Closed Meeting.

Waiving Privilege, Confidentiality:

Council will often seek and be provided with legal advice during a Closed Meeting. Such advice is protected by solicitor-client privilege, which is itself enshrined as a closed meeting exception in clause 239(2)(f) of the Municipal Act. Solicitor-client privilege is designed to protect the interests of the client in seeking or receiving legal advice, but may be waived where prudent to do so. However, as the City (i.e., the client) can only act through Council, privilege can only be waived through an express resolution of Council, voted on by a majority of Members present at a meeting. Solicitor-client privilege cannot be waived by any single Member of Council, even if purporting to be acting in the public interest.

Similarly, the City, through Council, may also wish to waive the confidentiality of materials and information distributed or discussed at a Closed Meeting.

In general, Council will not waive solicitor-client privilege or confidentiality unless advised by the City Solicitor that doing so would not prejudice the interests of the City.

Should Council wish to waive solicitor-client privilege or confidentiality and release information from a Closed Meeting, Council may do so by adopting a resolution in the following general format in open session:

Moved by Councillor [Name] and Councillor [Name]

THAT Council waive **[solicitor-client privilege / confidentiality]** in and authorize the release of **[Document / Staff Report], [in its entirety / in part]**, but only insofar as **[extent of waiver]**.

Any such waiver of privilege or confidentiality shall not include such confidential information which the City is required by law not to disclose or release. For example, the Municipal Freedom of Information and Protection of Privacy Act generally prohibits the City from disclosing the personal information of an identifiable individual. In this example, the Clerk would review all documents to be disclosed and apply any redactions as may be necessary.

Members should acknowledge that the waiver of privilege or confidentiality in a matter does not automatically authorize the public release or discussion of all information from the Closed Meeting which is not otherwise authorized to be disclosed. For example, if Council authorizes the release of a legal opinion considered at a Closed Meeting, Members are not automatically entitled to publicly release or discuss the substance of Council's deliberations at the Closed Meeting on that item.

Closed Session Minutes:

The Clerk shall be responsible for recording, without note or comment, all resolutions, decisions and proceedings in a Closed Meeting in the form of meeting minutes.

Generally, the minutes of a Closed Meeting will be action or decision oriented, recording both the procedural and substantive resolutions. The minutes of a Closed Meeting shall be maintained by the Clerk in a highly confidential manner.

Guide to Closed Meeting Exceptions

Topic / Municipal Act Exemption	Discussion Can Include	Discussion Does not Include
Security of municipal property – s. 239(2)(a)	Property Facilities Assets	Financial interests of the municipality Strategy with respect to municipal infrastructure or growth
Personal matters about identifiable individuals – s. 239(2)(b)	Municipal Employees Members of boards and committees Scrutiny of an individual's performance or conduct Candidates for a job or committee	Council remuneration An individual in their professional or official capacity Salary bands, a hiring process, or staff reorganization Information already in the public realm
A proposed or pending acquisition or disposition of land – s. 239(2)(c)	Purchases Sales Leases Easements Expropriations	Speculation regarding prospective acquisition or disposition of land, where no bargaining position yet exists Discussions when the other party to a transaction is present

Topic / Municipal Act Exemption	Discussion Can Include	Discussion Does not Include
Labour relations or employee negotiations – s. 239(2)(d)	Unionized and non-unionized employees Employee Negotiations Compensation, benefits, or vacation for specific employees Staff performance, conduct, discipline, hiring and firing Changes to workload or roles of specific employees Grievances under a collective agreement	Council members, including their remuneration Organization reviews or restructuring
Litigation or potential litigation, including matters before administrative tribunals – s. 239(2)(e)	Current or pending litigation Matters before the Ontario Land Tribunal Deciding whether or not to litigate in a specific case	Speculation that litigation may arise in future, or where there is no evidence of any current or future legal proceedings Litigation that has concluded
Advice that is subject to solicitor-client privilege – s. 239(2)(f)	Legal Opinions or Advice Status reports/briefings including through staff	A topic where privilege has been waived, such as where a third party is present A topic other than the legal advice itself Whether or not to seek legal advice

Topic / Municipal Act Exemption	Discussion Can Include	Discussion Does not Include
Matters under other legislation – s. 239(2)(g)	Emergency Management and Civil Protection Act	Where another Act might imply that a matter is sensitive, but does not explicitly state that the matter can be discussed in a closed meeting
Information supplied in confidence by another level of government – s. 239(2)(h)	Provided to the municipality by another level of government (Canada, province or territory, or a Crown Agenda) and explicitly supplied to the City or local board in confidence i.e. marked confidential by the other level of government	Where the municipality determines the matter should be confidential, rather than the other level of government Where the information was provided by another municipality
Information supplied in confidence by a third party – s. 239(2)(i)	Falls into one of the listed types: trade secret, scientific, technical, commercial, financial, or labour relations information Was supplied confidentially, whether explicitly or implicitly, to the municipality by a third party and if disclosed, could reasonably be expected to cause harm, either by prejudicing significantly with the contractual or other negotiations of a person, group of persons or organization	Where the information did not belong to a third party Where there is only a merely possible or speculative risk of harm if the information were to be disclosed

Topic / Municipal Act Exemption	Discussion Can Include	Discussion Does not Include
Information belonging to the municipality – s. 239(2)(j)	<p>Falls into one of the listed types: trade secret, scientific, technical, commercial or financial information</p> <p>Belongs to the municipality and has monetary value or potential monetary value</p>	<p>The municipality or local board has no proprietary or ownership interest in the information</p> <p>There is no evidence that the municipality or local board could sell the information for money</p>
Plans and instructions for negotiations – s. 239(2)(k)	<p>About a position, plan, procedure, criteria or instruction</p> <p>Where the information is intended to be applied to negotiations carried on by the municipality or local board and the negotiations are ongoing or will be carried out in the future</p>	<p>In the absence of related negotiations</p> <p>Where negotiations are concluded</p>
Education or Training – s. 239(3.1)	<p>Council Orientation</p> <p>Professional Development</p>	<p>That materially advance council business or decision making</p> <p>About subjects that are not for the purpose of education or training</p>
Request under the Municipal Freedom of Information and Protection of Privacy Act – s. 239(3)(a)	FOI Requests – only if Council is designated as the Head of the Institution which it currently is not.	Anything outside of the permissible discussion

Topic / Municipal Act Exemption	Discussion Can Include	Discussion Does not Include
An Ongoing Investigation respecting the City by an Ombudsman or an appointed municipal ombudsman or closed meeting investigator – s. 239(3)(b)	Ongoing Investigation by the Ombudsman appointed under the Ombudsman Act or Ombudsman appointed by the City, or a closed meeting investigator	Anything outside of the permissible discussion

Date Adopted:

Date Amended: