



Town of Whitby Policy

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| Policy Title: | Closed Meeting Policy |
| Policy Number: | G 040 |
| Reference: | Municipal Act, 2001 Procedure By-law # 8081-24 and Council Resolutions # 617-16 and # 277-17 |
| Date Originated: | December 12, 2016 |
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| Review Date: | May 26, 2025 |
| Approval: | Council |
| Point of Contact: | Town Clerk |

Policy Statement

The Closed Meeting Policy provides Staff and Members of Council with guidelines and information regarding the statutory requirements and best practices associated with Council and Committee meetings that may be closed to the public.

Purpose

The purpose of this policy is to ensure compliance with the statutory requirements for holding Closed Meetings as well as to enhance the transparency of the Town's decision-making process.

Scope

This policy applies to all meetings of Council and Committee that are closed to the public.

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1 Definitions

- 1.1 Chair** means the presiding officer of any Meeting.
- 1.2 Closed Meeting** means a Meeting, or part of a Meeting, which is closed to the public as permitted by the Municipal Act.
- 1.3 Committee** means any Standing Committee, Advisory Committee, Quasi-Judicial Committee, or other committee, subcommittee or similar entity established by Council.
- 1.4 Confidential Report** means a Staff Report intended to be considered in a Closed Meeting.
- 1.5 Council** means the Council of The Corporation of the Town of Whitby.
- 1.6 Department Head** means an officer or employee of the Town who will generally hold the title of 'Commissioner', appointed by the Chief Administrative Officer or Council, as required, to oversee a department, or a person appointed or designated to act in place of the Commissioner when the Commissioner is absent or refuses to act.
- 1.7 Local Board** means any board established and exercising any power and a substantial amount of authority over their own operations under any Act with respect to the affairs or purposes of the Town, or the Town and one or more other municipalities.
- 1.8 Meeting** shall have the same meaning as Section 238(1) of the Municipal Act, which defines "meeting" as any regular, special or other meeting of a council, of a local board or of a committee of either of them, where (a) a quorum of members is present, and (b) Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the council, local board, or committee.
- 1.9 Member** means a Member of Council, a Committee, or a Local Board, as the context requires, and includes the Mayor.
- 1.10 Motion** means a proposal moved by a Member and seconded by another Member, for the consideration of Council, or a proposal moved by a Member for the consideration of a Committee or Local Board.
- 1.11 Municipal Act** means the Municipal Act, 2001, S.O. 2001, c. 25, as amended or replaced from time to time.
- 1.12 Open Meeting** means a Meeting, or part of a Meeting, which is open to the public.
- 1.13 Procedure By-law** means a by-law passed by the Council of the Town of Whitby, as required by the Municipal Act, for governing the calling, place, and proceedings of Meetings.

2 Responsibilities

- 2.1** Council, Committees, and Local Boards shall adhere to this policy when contemplating holding a Closed Meeting.
- 2.2** Council as a whole is responsible for making decisions that affect the Town, the electorate, and those having business with the Town. While Council will consider the recommendations of Town 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.
- 2.3** Staff may make recommendations to Council, Committees, and Local Boards regarding the conduct of Closed Meetings. Staff are responsible for providing professional advice on 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.
- 2.4** It is imperative that Staff and Members recognize the importance of confidential information, and that they take every precaution against the unauthorized disclosure of such confidential information. Closed Meeting documents and records, including Confidential Reports, correspondence from legal counsel, and other confidential information, will be provided to Members through the Town's electronic meeting management software or other suitable channels as determined by the Clerk and relevant Department Head.
- 2.5** Notwithstanding Section 2.1 above, Council may exempt from this policy a Committee or Local Board when Members of Council on that Committee or Local Board comprise less than 50 per cent of the Committee or Local Board's membership, that being when there are more members of the public on a Committee than Members of Council and a quorum of Council is not present (see also section 238 of the Municipal Act).
- 2.6** The Committees and Local Boards noted as exempt in Appendix 1 to this Policy are hereby exempt from this Policy and are not required to comply with the open and closed meeting provisions of the Municipal Act. The Town Clerk shall be authorized to update Appendix 1 to add and delete Committees and Local Boards as they are approved or disbanded by Council and maintain the exempt and non-exempt status of each Committee and Local Board as specified under a Council approved Terms of Reference for said Committee or Local Board or a Council approved policy that generally governs boards and committees.

3 Should a Meeting be Closed?

3.1 The relevant Department Head(s) bringing forward an item for consideration shall be responsible for identifying whether that matter may need to be considered in a Closed Meeting. In making such a determination, the Department Head should consult with the Clerk, the Chief Administrative Officer, and/or the Commissioner of Legal and Enforcement Services/Town Solicitor as appropriate.

3.2 Prior to considering a matter in a Closed Meeting, the following two questions shall be answered:

Question 1 – Can the matter be considered in a Closed Meeting in accordance with the criteria in the Municipal Act?

Question 2 – Is there sufficient reason to consider the matter in a Closed Meeting for business, public safety, legal, risk mitigation or other pertinent factors?

3.3 In considering the above questions, Council and Staff 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.

4 Agendas, Subject Matter Headings, and Report Titles

4.1 The public agenda must cite relevant closed meeting exception(s) from the Municipal Act for each topic to be considered in the Closed Meeting.

4.2 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.

4.3 Where possible, for reasons of transparency, information on the matter to be considered in a Closed Meeting shall be provided in as much detail as possible on the public agenda, provided such details do not impair the position of the Town or another party. When considering the amount of detail and information to include, the titles and/or subject headings of staff reports available on a public agenda may be referenced.

4.4 For reasons of business, public safety, legal, risk mitigation or other pertinent factors, it may be necessary to generalize the report title or subject matter heading for a Closed Meeting matter. As an example, if Council considered the purchase of privately held property in a Closed Meeting, it could disadvantage the Town financially and otherwise to provide a specific description of the property on the public agenda. In this instance, the public agenda header may be summarized as, "Acquisition or Disposition of Lands".

5 Motions and Staff Recommendations

5.1 A Motion in a Closed Meeting shall only be considered if it is for one of two purposes:

- a) Procedural matters; or,
 - b) Giving direction or instructions to officers, employees or agents of the municipality, or persons retained by or under contract with the municipality.
- 5.2** Staff recommendations, generally contained within a Staff Report, shall contain a notation indicating whether the recommendation is to be considered in the closed or open portion of the Meeting.
- 5.3** Written Confidential Reports from Town 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 circumstances, a confidential verbal presentation or update may be permissible, or practically necessary given other constraints or in recognition of the sensitivity of the specific matter.
- 5.4** The following guidelines and examples are intended to assist in determining whether a Motion should be considered in the closed or open portion of the meeting.

Public Motions

- There are instances where it may be permissible to discuss certain aspects of a matter in a Closed Meeting; however, a motion to dispose of that matter must be made in the open portion of the meeting.

Example 1: Council enters into a Closed Meeting to consider advice that is subject to solicitor client privilege regarding a pending development application and the likelihood of an Ontario Land Tribunal appeal and outcome of an Ontario Land Tribunal decision. After receiving advice from the solicitor, Council must rise to open session prior to considering a Motion on the development application.

Example 2: Council enters into a Closed Meeting to consider labour relations, including changes to staffing, associated with a change in service standards. Such labour relations matters may be discussed in the Closed Meeting, and then Council must rise to consider a Motion regarding a change to service standards in open session.

Closed Motions

- Directions or instructions to officers, employees or agents of the municipality, or persons retained by or under contract with the municipality that are specific in nature and would result in harm to the Town for business, public safety, legal, risk mitigation or other pertinent reasons if the Motion was made public.

Example: "That Payne & Fears LLP be directed to notify Lawn & Order Inc. that unless the outstanding contract payments are received within 30 days, the Town will commence legal action."

- Procedural matters are generally provided for in the Procedure By-law. Examples of procedural matters may include a point of order or motion to extend debate.

Example: "That the rules of procedure be suspended to extend the speaking limit for the Member to longer than five minutes"

5.5 Procedural Motions to enter into Closed Meeting and rise from a Closed Meeting shall always be noted in the public version of the Meeting minutes.

5.6 Consideration of Sale or Disposition of Land in a Closed Meeting

The sale or other disposition of land by the Town is governed by the Acquisition, Sale or other Disposition of Land Policy F 190, established for this purpose in accordance with Section 270 of the Municipal Act. As the sale or other disposition of land is generally subject to the forces of a competitive marketplace, it is often necessary to consider land transactions in a Closed Meeting. Ultimately, the final decision on a land sale or other disposition must be made by Council in an open session.

6 Education and Training

6.1 Ongoing training and education of Members is important to ensure the effective and efficient governance of the Town.

6.2 The Municipal Act Section 239(3.1) permits a Closed Meeting for the purpose of educating or training Members. However, at an education or training Closed Meeting, no member can discuss or otherwise deal with any matter that materially advances the business or decision-making of Council, Committee, or the Local Board.

6.3 As the Municipal Act specifically provides the option to hold training or education in a Closed Meeting, asking whether the education or training can be held in a closed session in accordance with Section 3.2 of this Policy is not required. Council and Staff should rather give consideration as to whether it is beneficial to hold the education and training in a Closed Meeting.

6.4 "Education" and "training" are not defined in the Municipal Act. The dictionary definitions for these two terms are provided below for reference.

Education – "the process of educating, teaching, or training; the process of imparting or acquiring skills"

Training – "to give the discipline and instruction, drill, or practice designed to impart proficiency"

- 6.5** Training for Members on communication skills, governance skills, team building, or leadership skills could be considered appropriate training for a Closed Meeting.
- 6.6** Education for Members that provides general overviews of legislation and Council responsibilities under such legislation, such as Council's role and duties under the Municipal Act or under the Occupational Health and Safety Act, are appropriate education topics for a Closed Meeting.

7 Rising and Reporting

- 7.1** After holding a Closed Meeting, the Chair of the meeting shall report out to the Open Meeting, in a general way, what happened in the Closed Meeting. The Chair can provide a brief summary of why the Closed Meeting occurred (e.g. citing the general nature of the matter discussed) and what happened in the Closed Meeting (e.g. indicating that directions or instructions were given to Staff), without divulging the substance of the Closed Meeting discussions.

- 7.2** Examples of how the Chair may report out in the open session are as follows:

Example 1 – Council received an update from Staff regarding the matter of an Ontario Land Tribunal Appeal pertaining to <subject matter that may include property description and/or planning file number>.

Example 2 – Council considered advice subject to solicitor client privilege regarding an ongoing litigation matter and provided direction to Staff.

Example 3 – Council considered a personnel matter about an identifiable individual when considering appointments to advisory committees and local boards.

8 Waiving Privilege, Confidentiality

- 8.1** Legal advice provided to Council during a Closed Meeting is protected by solicitor-client privilege, which is itself enshrined as a closed meeting exception in clause 239(2)(f) of the Municipal Act.
- 8.2** 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. In general, Council should not waive solicitor-client privilege or confidentiality unless advised by the Town Solicitor that doing so would not prejudice the interests of the Town.
- 8.3** 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 Town, through Council, may also wish to waive the confidentiality of materials and information distributed or discussed at a Closed Meeting.

- 8.4** Any such waiver of privilege or confidentiality shall not include such confidential information which the Town is required by law not to disclose or release. For example, the Municipal Freedom of Information and Protection of Privacy Act generally prohibits the Town from disclosing the personal information of an identifiable individual, information received in confidence from another government, information received in the course of negotiations, etc. The Clerk will review all documents to be disclosed and apply any redactions as may be necessary.
- 8.5** 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.

9 Closed Session Minutes

The Clerk shall be responsible for recording all resolutions, decisions and proceedings in a Closed Meeting in the form of meeting minutes. The minutes of a Closed Meeting shall be maintained by the Clerk in a confidential manner.

10 Closed Meeting Attendance

- 10.1** 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 applicable staff, including but not limited to the Town Clerk, the Chief Administrative Officer, and the responsible Department Head(s) for the matter under consideration.
- 10.2** 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.

11 Virtual Participation at Closed Meetings

- 11.1** The Procedure By-law allows for hybrid meetings whereby Members are permitted to attend a Closed Meeting in-person or virtually through electronic means.
- 11.2** Members and staff participating in a Closed Meeting remotely shall be responsible for ensuring they are in a physically and technologically secure location, and for taking precaution against unauthorized viewing or listening to the proceedings of a Closed Meeting.

12 Related Documents

- Procedure By-law Number # 8081-24

13 Appendixes

Appendix 1 – Committees and Local Boards to which the Closed Meeting Policy applies

This Policy is hereby approved by Council Resolution # XXX-25 on this ___ day of ___, 2025.

| Appendix 1 Committees and Local Boards to which the Closed Meeting Policy applies | |
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| Committee | Closed Meeting Policy Applicable |
| Standing Committees | |
| Audit Committee | Yes |
| Committee of the Whole | Yes |
| Advisory Committees | |
| Accessibility Advisory Committee | Yes |
| Active Transportation and Safe Roads Advisory Committee | Yes |
| Heritage Whitby Advisory Committee | Yes |
| Diversity and Inclusion Advisory Committee | Yes |
| Sustainability Advisory Committee | Yes |
| Local Boards | |
| Ashburn Community Centre Board of Directors | Exempt |
| Community Connection Executive Committee | Exempt |
| Downtown Whitby Business Improvement Area (BIA) Board of Management | Yes |
| Groveside Cemetery Board | Exempt |
| Spencer Community Centre Board of Directors | Exempt |
| Whitby Public Library Board | Yes |
| Quasi-Judicial Committees | |
| Municipal Licensing and Standards Committee | Exempt |
| Committee of Adjustment | Yes |
| Compliance Audit Committee | Yes |
| Other | |
| Grants Review Committee | Exempt |
| Road Watch | Exempt |
| Whitby Tourism Development Corporation | Exempt |
| 55+ Recreation Advisory Committee | Exempt |

| Appendix 1 Committees and Local Boards to which the Closed Meeting Policy applies | |
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| Committee | Closed Meeting Policy Applicable |
| Youth Council | Exempt |