



Town of Whitby Policy

Policy Title:	Closed Meeting Policy
Policy Number:	G 040
Reference:	Municipal Act, 2001 Procedure By-law and Council Resolution #617-16 and #277-17
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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 provide consistent rules and guidelines for Council and Committee meetings that may be closed to the public.

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 for a 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, and may also be referred to as an in-camera meeting.
- 1.3 **Committee** means any Advisory Committee, Standing Committee, Local Board, or Quasi-Judicial Committee, as defined by the Procedure By-law.
- 1.4 **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.
- 1.5 **Meeting** shall have the same meaning as Section 238 of the Municipal Act.
- 1.6 **Member** means the Mayor, Councillor or a person appointed to a standing committee, local board or committee of Council.
- 1.7 **Motion** means a formal proposal moved (and seconded if required) by a Member and voted on in a Meeting, providing that the body take certain actions procedurally or otherwise.
- 1.8 **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 and Committees shall adhere to this policy when contemplating holding a Closed Meeting.
- 2.2 Notwithstanding section 2.1, Council may exempt from this policy a Committee when Members of Council on that Committee comprise less than 50 per cent of the Committee's membership, that being when there are more members of the public on a Committee than Members of Council (see also section 238 of the Municipal Act).
- 2.3 In accordance with Section 2.2 above, the Committees noted as exempt in Appendix 1 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 as they are approved or disbanded by Council, and maintain the exempt and non-exempt status of each Committee as specified under a Council approved Terms of Reference for said Committee or a Council approved policy that generally governs boards and committees.

3 Should a Meeting be Closed?

- 3.1** 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?

4 Subject Matter Headings and Report Titles

- 4.1** 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. 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 would be summarized as Acquisition or Disposition of Lands.

5 Motions

- 5.1** A Motion in a Closed Meeting shall not be considered unless the Motion is for a procedural matter or for 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** 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 OMB appeal and outcome of an OMB 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 associated with a change in service delivery. The labour relations matters are discussed in the Closed Meeting, and then Council must then rise to consider a Motion regarding a change to service delivery 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 made 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 procedure matters may include a point of order or motion to extend debate.

Example: "That the rules of procedure be suspended to extend the meeting past 11:00 pm."

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

The sale or other disposition of land by the Town is governed by a policy 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.

Example – Acquisition of Land

Note: The following process for the acquisition of land may not be applicable in all instances and is only used for illustrative purposes to demonstrate how Council may consider separate aspects of the process to acquire land in closed and open meetings.

- Closed Meeting - Council directs staff to pursue the acquisition of land through a direction Motion.

- Example Motion: “That the CAO be directed to negotiate a purchase price, not to exceed \$1,000, for the vacant land at the northeast corner of Clark and Kent Streets, and report back to Council in a Closed Meeting with the proposed terms of purchase and sale”
- Closed Meeting - Staff have undertaken negotiations and bring a confidential report back to Council with a proposed purchase and sale agreement that includes certain conditions. Council directs the Mayor and Clerk to sign the Agreement through a direction motion, subject to the sale of land being finalized in an open meeting by by-law.
 - Example Motion: “That the Mayor and Clerk be directed to execute the agreement of purchase and sale for the vacant land at the northeast corner of Clark and Kent Street and that, subject to fulfilling the conditions of said agreement, a by-law be brought forward for Council consideration.”
- Open Meeting - Staff have confirmed that the conditions of the agreement have been fulfilled and a draft by-law is brought forward for Council’s consideration at an open meeting.
 - Example Motion: “That By-law Number 0001-16 authorizing the purchase of vacant land from <insert sellers information> at the northeast corner of Clark and Kent Street by the Town of Whitby in the amount of \$1,000 be read a first, second and third time and finally passed this 1st day of January, 2016.”

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

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 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.

6.3 As the Municipal Act provides the option to hold training or education in a closed or open meeting, the following two questions should be answered:

Question 1 – Can the education or training be provided in a Closed Meeting in accordance with the criteria in the Municipal Act and Procedure By-law?

Question 2 – Is there a benefit to having the education and training in a Closed Meeting, which would offer an environment where Members might feel more comfortable openly asking questions of the educators or trainers and when discussing their perceptions about their own personal level of knowledge or ability relating to a proficiency or skill?

- 6.4** “Education” and “training” are not defined in the Municipal Act. The dictionary definitions¹ 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.
- 6.7** If it is determined that the education or training be held as a Closed Meeting, it is highly unlikely that there would be debate on an issue, and nor would it be anticipated that any member may encourage other members to support a particular position.

7 Rising and Reporting

- 7.1** After holding a Closed Meeting, the Chair of the meeting shall report out to the public session, 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 OMB 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.

¹ *The Canadian Living Webster Encyclopedic Dictionary of the English Language*, The English Language Institute of America, Chicago, Illinois, U.S.A. (1974).

Example 3 – Council considered a personnel matter about an identifiable individual.

8 Related Documents

Procedure By-law Number 7072-15, as amended, or a successor by-law thereof

9 Appendixes

Appendix 1 – Committees to which the Closed Meeting Policy applies

This Policy is hereby approved by Council Resolution # 277-17 on this 8th day of May, 2017.

Appendix 1
Committees to which the Closed Meeting Policy applies

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
Brooklin Downtown Development Steering Committee	Yes
Downtown Whitby Development Steering Committee	Yes
Heritage Whitby Advisory Committee	Yes
Whitby Diversity and Inclusion Advisory Committee	Yes
Whitby in Bloom Committee	Yes
Whitby Sustainability Advisory Committee	Yes
Local Boards	
Ashburn Community Centre Board of Directors	Yes
Community Connection Executive Board of Directors	Yes
Downtown Whitby Business Improvement Area (BIA) Board of Management	Yes
Groveside Cemetery Board	Yes
Spencer Community Centre Board of Directors	Yes
Whitby Hydro Energy Corporation Board of Directors ²	Exempt
Whitby Public Library Board ³	Yes

² Pursuant to Section 142(6) of the Electricity Act ("EA") an OBCA Corp, such as Whitby Hydro Energy Corporation, incorporated pursuant to Section 142 of the EA is not a local board for the purposes of any Act.

³ See also Section 4, "Board and its Committees' Meetings", of the Whitby Public Library By-laws adopted by the Whitby Public Library Board.

Committee	Closed Meeting Policy Applicable
Quasi-Judicial Committees	
Animal Services Appeals Committee	Exempt
Committee of Adjustment	Yes
Compliance Audit Committee	Yes
Property Standards Appeals Committee	Exempt
Other	
Mayor's Community Development Fund Grants Review Committee	Exempt
Road Watch	Exempt
Whitby Senior Services' Committee	Exempt
Whitby Youth Council	Exempt