

COUNCIL POLICY		Effective:	Sept. 15, 2020
		Approved:	Sept. 15, 2020
Policy:	Closed Meetings	By-law:	n/a
Section:	Governance / Administration	Resolution:	51/2020
Application:	Members of Council and Staff of the Municipality of Port Hope	Supersedes:	None

1.0 Policy Statement

The Municipality of Port Hope acknowledges that all meetings of Council/Committee shall be open to the public except as related to the exceptions included in Section 239 (2) and (3) of the Municipal Act.

2.0 Application and 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 Council and staff as it relates to Closed Meetings.

The Policy shall apply to procedural decision-making processes and is intended to act as a guidance and compliance document to be utilized by staff and Council when considering closed meeting topics for consideration. This policy does not supersede or replace the previously adopted Accountability and Transparency Policy, or Procedural By-law, but instead looks to further enhance the Municipality’s commitments to accountability and transparency.

3.0 Definitions

The following terms shall have the following meanings in this Policy:

“Closed Meeting” means a meeting of Council/Committee that is closed to the public pursuant to Section 239 of the Municipal Act.

“Municipality” means the Municipality of Port Hope.

“Open Meeting” means a meeting of Council/Committee that is open to the public.

4.0 General Policy Principles

In the interest of accountability and transparency Council of the Municipality of Port Hope endeavours 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. When determining whether a matter should be considered in a Closed Meeting staff and Council should consider the following:

1. Does the matter 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 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 or his/her delegate, in consultation with the Clerk and Chair. Prior to a Closed Meeting, Committees are encouraged to consult with the Clerk with regards to legislated requirements and proper procedure.

5. Municipal Act Rules for Closed Meetings

Appendix A provides rules for further clarity with regard to Closed Meeting considerations.

6. Statutory Requirements for Closed Meetings

Pursuant to Section 239 of the Municipal Act:

- Before holding a Closed Meeting, Council/Committee 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 Clerk or designated Recording Secretary.
- Any person can request an investigation of whether the Municipality has complied with the Municipal Act regarding Closed Meetings.
 - The Municipality will appoint by By-law an Integrity Commissioner to investigate any such complaints.

All investigation reports are to be made available to the public and posted on the municipal website.

7. Closed Meeting Reports and Materials – Freedom of Information

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 Municipality could possibly be ordered to release such records.

The Municipality cannot refuse to disclose information provided in a Closed Meeting report simply on the basis that it was considered at a Closed Meeting. Content included in reports that would not reveal the substance of the deliberations could possibly be subject to disclosure.

Staff should be aware that written material included in a Closed Meeting report should be primarily 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 should be kept to a minimum.

8. Closed Meeting Reports and Recommendations

8.1. Reports from Staff

Whenever possible, written Closed Meeting 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/Committee 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.

8.2. Recommendations

In a Closed Meeting, Council/Committee is only permitted to vote on procedural motions or to direct staff. 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.

In order to ensure that there is appropriate context for the introduction of a resolution / by-law during an open session of Council/Committee, staff should consider presenting background information prior to Council's consideration of the matter at hand.

If there is no background report appearing on the accompanying Open Meeting agenda, and the recommendation does not require immediate action in Closed Session,

direction can be given to staff to report back to a subsequent Open Meeting by way of a staff report.

9. Public Disclosure

Pursuant to the Code of Conduct for Members of Council and Local Board, Members of Council 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.

In order to be accountable and transparent, and to inform the public about the matters dealt with in a Closed Meeting, Council/Committees 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/Committee 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 B.

10. 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 a motion can be voted on in an Open Meeting in order for Council to convene an immediate Closed Meeting:

11. Attendance at a Closed Meeting

Unless otherwise directed by Council, attendance at Closed Meetings is limited to the Chief Administrative Officer, Clerk and/or their designate, and other staff at the discretion of the Chief Administrative Officer or their delegate. Staff are to remain outside the Closed Meeting room until called to speak to their specific agenda item. Staff should vacate the meeting once that matter has been dealt with by Council/Committee.

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 C, detailing the Closed Meeting rules at the beginning of each Closed Meeting.

Appendix A

Topic/Municipal Act Exception	Discussion Can Include	Voting Permissions
Security of Property [S. 239 (a)]	<ul style="list-style-type: none"> • municipal property • municipal facilities • municipal assets • 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"> • municipal employees • members 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
Labour Relations or Employee Negotiations [S. 239 (d)]	<ul style="list-style-type: none"> • union or employee negotiations 	<ul style="list-style-type: none"> • procedural matters • giving directions or instructions to staff
Litigation or Potential Litigation [S. 239 (e)]	<ul style="list-style-type: none"> • current or pending litigation 	<ul style="list-style-type: none"> • procedural matters • giving directions or instructions to staff
Solicitor-Client Privilege [S. 239 (f)]	<ul style="list-style-type: none"> • legal opinions, advice and or status reports/briefings • Port Hope Area Initiative matters and negotiations 	<ul style="list-style-type: none"> • procedural matters • giving directions or instructions to staff
Matters under Other Legislation [S. 239 (g)]	<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
Information supplied in confidence by the federal government, provincial government or Crown agency [S. 239 (h)]	<ul style="list-style-type: none"> • information explicitly provided in confidence and in writing by the Government of Canada, a province or Crown Agency • Port Hope Area Initiative matters and negotiations 	<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 or the Municipal Solicitor, 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 or the Municipal Solicitor, is a trade secret or scientific, technical, commercial or financial 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
<p>Position, plan, procedure, criteria or instruction to be applied to negotiations carried out by the municipality [S. 239 (k)]</p>	<ul style="list-style-type: none"> a position, plan, procedure, criteria or instruction directly related to negotiations carried out by the municipality Port Hope Area Initiative matters and negotiations 	<ul style="list-style-type: none"> procedural matters giving directions or instructions to staff
<p>Educating or training [Sec. 239 (3.1)]</p>	<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

Appendix B

Chair's Script - Reporting from a Closed Meeting to an Open Meeting

Council/Committee passed 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.

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 <meeting dates > Council/Committee meetings.

Direction to Staff / Committee Appointments

Council voted to bring forward a motion to be considered at today's / a future open meeting. That motion will be voted on later in a transparent fashion.

Updates regarding Legal Matters / Litigation

Council received information regarding the <legal case>.

Labour Relations / Employee Negotiations

There was direction given to staff regarding this item.

Appendix C

Chair's Script - 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.