



The Corporation of the Town of Tecumseh

Policy Manual

Policy Number:	130
Effective Date:	June 26, 2024
Supersedes:	N/A
Approval:	RCM - 146/24
Subject:	Closed Meeting Protocol

Table of Contents

1.	Policy Statement.....	2
2.	Purpose	2
3.	Definitions.....	2
4.	Interpretation	3
5.	General Policy Conditions	3
6.	<i>Municipal Act</i> , 2001 Rules for Closed Meetings	4
7.	General Policy Conditions	4
8.	Public Disclosure	7
9.	Addition of a Closed Meeting Item not on an Agenda.....	8
10.	Attendance at a Closed Meeting.....	9
11.	Access Requests for Closed Meeting Reports and Materials.....	9
12.	Closed Meeting Investigation.....	9
	Appendix 1	11
	Appendix 2.....	12

1. Policy Statement

- 1.1 This Closed Meeting Protocol is intended to assist the Town of Tecumseh (“**Town**”) with ensuring compliance with the statutory requirements and best practices for holding Closed Meetings, as well as ensuring and maintaining, to the greatest extent possible, the transparency of the Town decision making process.
- 1.2 The protocol is based upon the following principles:
 - 1.2.1 Mature responsible local government is fostered by an informed electorate.
 - 1.2.2 A decision-making process which is open and transparent to the public enhances the democratic legitimacy of local government.
 - 1.2.3 To the greatest extent possible, the public should be able to observe municipal government in process.
 - 1.2.4 In some circumstances, the public interest is best served by maintaining the confidentiality and privacy of certain information and decisions.
 - 1.2.5 The law recognizes there are legitimate reasons for various enumerated subject matters to be discussed and debated in the absence of the public.

2. Purpose

The purpose of this Policy is to provide consistent and clear rules for meetings that may be closed to the public and to ensure compliance with Section 239 of the *Municipal Act*, 2001, as well as to provide guidance to Town Council and Town Staff as it relates to best practices in the holding of Closed Meetings.

3. Definitions

- 3.1 “**Closed Meeting**” means a meeting or session within a meeting of Council or Committee/Board that is closed (in whole or in part) to the public pursuant to Section 239 of the *Municipal Act*, 2001. A Closed Meeting can also be referred to as an “**In-Camera Meeting**.”
- 3.2 “**Chair**” means the presiding officer of a meeting.
- 3.3 “**Committee**” means all established committees, subcommittees, or other such entities of the Town.

- 3.4 “**Local Board**” means any local board of the Town.
- 3.5 “**Member**” means the Mayor, Deputy Mayor, Councillors, or a person appointed to a Committee or Local Board.
- 3.6 “**Meeting**” means a meeting of Council/Committee that is open to the public.
- 3.7 “**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act*, Ontario.

4. Interpretation

Any reference in this Policy to any statute or by-law, or any section of a statute or by-law shall, unless expressly stated, be deemed to be referenced to the statute or by-law as amended, replaced, re-enacted, or restated from time to time. Any reference to a Town policy shall be deemed to be a reference to the most recently passed policy and any replacements thereto.

5. General Policy Conditions

5.1 Should a Meeting be closed?

In the interest of accountability and transparency and pursuant to its obligations under the *Municipal Act*, 2001, Town Council endeavours to conduct its decision making in public as much as possible. However, it is recognized that there are items which should be considered by Town Council in a Closed Meeting. When determining whether a matter should be considered in a Closed Meeting, Town Staff should consider the following:

- 5.1.1 Does the matter meet one or more of the open meeting exceptions noted in Section 239 of the *Municipal Act*, 2001?
- 5.1.2 If so, and recognizing that the matter can be discussed in a Closed Meeting, is there is a compelling reason that it should be?

The determination of whether a matter can and should be dealt with in a Closed Meeting is the responsibility of the Chief Administrative Officer in consultation with the Clerk and Chair.

6. *Municipal Act, 2001* Rules for Closed Meetings

Attached as Appendix 2 to this Closed Meeting Protocol is a summary guide to the *Municipal Act, 2001* rules for exception and examples of what can be discussed in a Closed Meeting.

7. General Policy Conditions

7.1 Notice

- 7.1.1 Notice of a Closed Meeting shall be provided to the public on the Council Calendar posted on the Town's website forty-eight (48) hours before the Closed Meeting of Council, Committee or Local Board is to be held.
- 7.1.2 This does not preclude a Member from requesting the opportunity to go into a Closed Meeting during the public discussion of a specific report. Notice will be deemed satisfied by the item having been included on the public agenda of the Meeting.

7.2 Closed Meeting Resolution

- 7.2.1 Before holding a Closed Meeting, the Council, Committee or Local Board shall pass a resolution to move into a closed session/meeting. The motion shall state the intent to go into a closed session/meeting, the section under the *Municipal Act, 2001* authorizing the Closed Meeting, and the general nature of the matter to be considered at the Closed Meeting.
- 7.2.2 The reason to move to a Closed Meeting must meet the criteria set out in Section 239 of the *Municipal Act, 2001*. The resolution to move into a Closed Meeting will voluntarily disclose as much information about the general nature of the subject matter without undermining the reason the matter is being dealt with in a Closed Meeting.
- 7.2.3 Closed Meetings under the exemption "education and training" should only be held for the purpose of education or training, and no Member can discuss or deal with any matter that materially advances the business or decision-making of the Council, Committee or Local Board.

7.3 Agendas

- 7.3.1 In most cases, Closed Meeting agendas are circulated by the Director Legislative Services & Clerk or designate. Agendas will adhere to the Town's Procedural By-law and delivery of agendas, where possible.

7.4 Reports and Information provided in Closed Meeting/Session

- 7.4.1 Staff who are considering a report or sharing of certain information to be considered during a Closed Meeting should first seek the advice of the Clerk to ensure that the subject matter meets the criteria for a Closed Meeting discussion.
- 7.4.2 Closed Meeting agenda items will be carefully reviewed to ensure that the matter falls within one of the exceptions provided under Section 239 of the *Municipal Act*, 2001 and that there are pertinent and compelling reasons to consider the matter in a Closed Meeting to the exclusion of members of the public.
- 7.4.3 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.
- 7.4.4 It is also important to ensure that any information provided or discussed or arising from a Closed Meeting/session which can be made available to the public is disclosed appropriately either contemptuously, if possible, to do so, or if and when such information can be publicly disclosed. Aside from a singular report appearing on a Closed Meeting agenda, consideration where and when possible, shall also be given to the following:

Option A: A companion report to appear on the accompanying Open Meeting agenda which provides for as much general context in relation to the Closed Meeting matter as possible without disclosing confidential details;

Option B: A recommendation for Council/Committee to direct staff to prepare a related report to be included as part of a subsequent Open Meeting agenda if and when that information can be disclosed publicly as determined by the Chief Administrative Officer in consultation with the Clerk and Chair.

- 7.4.5 Report templates for Closed Meetings are retained in the Legislative & Clerk Services Department. Due to the confidential matters discussed in Closed Meetings, reports are not to be drafted in escribe, the agenda management software. Report templates for Closed Meetings can be obtained in the Legislative & Clerk Service Department.

7.5 Recommendations

- 7.5.1 In a Closed Meeting, Council, Local Board, and Committees are only permitted to vote on procedural motions or to direct Town officers, agents, or employees to take specified further actions. 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. The following are best practices with respect to the consideration of an Open Meeting motion related to a matter discussed by Council/Committee in a Closed Meeting:

Option A: If a companion report appears on the accompanying Open Meeting 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 Meeting. 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 Meeting:

That <Council or Committee> rise, report and introduce the following motion as part of the Open Meeting report entitled <title of report> appearing on the <meeting date> Council or Committee agenda:

1. That <staff recommendation>.

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

That <Council or Committee> rise, report and introduce the following motion as a Special Resolution at its <meeting date> meeting:

1. That <staff recommendation>.

In order to ensure that there is appropriate context for the introduction of a motion as a Special Resolution, the Mayor, a Member of Council, or Town staff should consider presenting background information prior to Council's consideration of the motion.

Option C: If there is no companion report appearing on the accompanying Open Meeting agenda, and the recommendation does not require immediate action, direction can be given to staff to report back to a subsequent Open Meeting by way of a staff report or other means if and when that information arising from the Closed Meeting/session can be disclosed publicly as determined by the Chief Administrative Officer in consultation with the Clerk and Chair.

7.6 Minutes

Minutes of Closed Meetings will be retained in the Legislative & Clerk Services Department. All Closed Personnel Committee Meetings will be retained with the Director People & Culture and or outside legal representation, and the Clerk shall be notified of the location of such files.

8. Public Disclosure

8.1 Pursuant to Policy No. 63 Code of Conduct for Members of Council, Local Boards and Committees, Members 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 information properly considered in a Closed Meeting. The following direction can be voted on in a Closed Meeting in order to disclose a Closed Meeting 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 entitled <title of report>.

- 8.2 The proposed communications strategy in relation to a Closed Meeting 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 Council 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.
- 8.3 Although the information contained in closed staff reports may not be disclosed, the *Municipal Act, 2001* requires that public notice of Closed Meetings be provided for in a Procedural By-law. The Town's Procedural By-law requires that there be public notice of all Open and Closed Meetings and that the agenda, including all items to be dealt with at each meeting, be publicly posted and made available prior to the meeting.
- 8.4 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, a reporting out of the Closed Meeting shall occur at the next Regular Council meeting, and for Local Board and Committees shall reconvene in open session to disclose after, in a general manner, how the agenda items were dealt with in the Closed Meeting. A sample Chair's script is included as Appendix 1.

9. Addition of a Closed Meeting Item not on an Agenda

- 9.1 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 the following motion can be voted on in an Open Meeting in order for Council to convene a Closed Meeting:
1. That the (date of meeting) meeting of Council convene in closed session in accordance with Section <relevant subsection> of the *Municipal Act, 2001*, which states a meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied: (List the relevant subsection).

10. Attendance at a Closed Meeting

- 10.1 Unless otherwise directed by Council/Committee, 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. Staff are to remain out of 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, Local Board or Committee.

11. Access Requests for Closed Meeting Reports and Materials

- 11.1 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 Town could be ordered to release such records.
- 11.2 The Town cannot refuse to disclose information provided in a Closed Meeting 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.
- 11.3 Written material included in a Closed Meeting report should be limited to only information which would qualify for discussion at a Closed Meeting.

12. Closed Meeting Investigation

- 12.1 If a person believes that a Meeting or part of a Meeting of Council or a Local Board was unlawfully closed to the public, a request for an investigation may be submitted to the Office of the Ombudsman of Ontario who shall appoint a Closed Meeting Investigator.
- 12.2 Section 239.1 of the Municipal Act, 2001 provides that a person may request an investigation into whether Council or a Local Board has complied with Section 239 of the Municipal Act, 2001 (which sets out the open meeting requirements) or complied with the Town's Procedural By-Law in respect of a Meeting or part of a Meeting that was closed to the public.
- 12.3 Complaints to the Ombudsman's Office are confidential, and the identity of complainants is not released in any case without consent.

- 12.4 The Closed Meeting Investigator shall investigate the complaint and file a report with Council or the Local Board, as the case may be, of the results of his or her investigation and may make any recommendations as he or she deems appropriate.
- 12.5 Any report received from the Closed Meeting Investigator related to an investigation under the Municipal Act, 2001 is placed on a public agenda and consideration of such report shall be conducted in a Meeting of Council or the Local Board, as the case may be, that is open to the public.
- 12.6 The Municipal Act, 2001 requires that Council or the Local Board, as the case may be, to pass a resolution stating how it intends to address a report provided by a Closed Meeting Investigator, where the Closed Meeting Investigator reports that a Meeting appears to have been closed to the public contrary to the provisions of the Municipal Act, 2001 or the Procedural By-Law. This may include amending the Procedural By-Law or policies and procedures.

Appendix 1

Reporting out of a Closed Meeting (add date)

A closed meeting of Council was held at (time) pm in accordance with and as permitted with Section 239 (2) (add subsection) of the *Municipal Act, 2001*, which states that a meeting or part of a meeting may be closed to the public if the subject matter relates to:

<Add the relevant sections>

At the meeting, (Add details here)

Appendix 2

Municipal Act, 2001 Guidelines for Closed Meetings

Below is a Guide to staff to the rules and examples of what can be discussed in a Closed Meeting.

Topic <i>Municipal Act Exemption Section</i>	General Principals	Discussions can include:
Security of Town Property s.239(2)(a)	Ensuring that municipally owned property is safe from harm	• Obtain a valuation of a municipally owned corporation • Discussing a police services consultation plan • Town asset management issues identified by auditors
Personal matters about identifiable individuals, including municipal or local boards employees s. 239(2)(b)	Protecting personal matters about members of the Board or identifiable individuals	• Consulting firm's bid to conduct an organizational study of the municipality • Staff member who may be eligible for deputy clerk
A proposed or pending Acquisition or Disposition of Lands by the municipality or local board s.239(2)(c)	Proposed or pending acquisition or disposition of land are properly and fairly handled	• Discuss a potential partnership with a post-secondary institution • Discuss various ongoing land sales and an ongoing lease negotiated for municipally owned property • Discuss a lease proposal related to the municipality's fire hall
Labour Relations or Employee Negotiations s.239(2)(d)	Labour relations/employee negotiations are protected and kept confidential	• Discuss employee compensation • Discuss the municipality's fire services budget

Appendix 2

Topic <i>Municipal Act Exemption Section</i>	General Principals	Discussions can include:
Litigation or Potential Litigation including matters before administrative tribunals, affecting the municipality or local board s.239(2)(e)	Litigation or potential future litigation is kept in confidence and managed professionally	• Concerns that an unsuccessful bidder might initiate legal proceedings against the municipality • Potential litigation following the Health Unit's receipt of a letter from a lawyer threatening litigation
Solicitor-Client Privilege including communications necessary for that purpose s.239(2)(f)	Solicitor – client privilege is securely maintained	• Discuss an ongoing litigation matter • Discuss correspondence from identifiable individuals and provide legal advice in respect thereof • Chief Administrative Officer conveys to council legal advice received from the Town's lawyers
Matters of respect of which a council board committee or other body may hold a close meeting under another Act. s.239(2)(g)	Matters under other legislation outside of the Ontario Municipal Act are upheld properly	• Disclosing records pertaining to the development of the municipality's emergency management program • A municipal police services board meets to discuss public security • A municipal police services board meets to discuss intimate financial, personal, or other matters in which avoiding disclosure is in public interest

Appendix 2

Topic <i>Municipal Act Exemption Section</i>	General Principals	Discussions can include:
Information explicitly supplied in confidence by the federal government or provincial government or Crown agency s.239(2)(h)	Information given by the federal, provincial governments, or Crown agencies is kept private if it is confidential	• Any information explicitly provided from the Federal government on a trade deal which effects the municipality • Any information explicitly provided from Quebec about a future joint project • Any information explicitly provided from the Bank of Canada on future investments
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 significantly prejudice the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization. s.239(2)(i)	Protection of an individual or organization's ability to negotiate in the future and avoid prejudicing the bidder's competitive position	• Discuss a pilot project with an upper-tier municipality • Discussion of third-party commercial and financial information • Discuss detailed information from a third-party company regarding that company's development plans, expected profits, and intended use of proprietary technology
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. S.239 (2)(j)	Information is kept in confidence to ensure a municipality may make proper monetary decisions without devaluing them	• Discuss a study report and a funding application, both related to an internet broadband project • Discuss the municipality's contribution to the local Canadian Football League team's bid for the Grey Cup championship game • Discuss a scientific breakthrough by a local science commission in its preliminary stages

Appendix 2

Topic <i>Municipal Act Exemption Section</i>	General Principals	Discussions can include:
Position, plan, procedure, criteria, or instruction to be applied to negotiation carried out by the municipality s.239(2)(k)	Ensures that a municipalities' decisions are not manipulated and kept professional	• An airport commission in standing negotiations with a third party about future business development • Municipality receives an update about negotiations with a commercial partner • Council discussing plans to proceed with negotiations to enter into a joint venture with a third party and provide staff with directions on a series of matters related to the negotiation
Education or Training s.239 (3.1)	Allows for new councillors or board members opportunities for adequate training	• Municipality receives training on strategic planning • Council meets on an off-site location to participate in a program aimed at improving communication and team-building skills • Members of the newly elected council attending educational workshops on three different days