

Closed Meeting Protocol



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| Council | September 20, 2023 | 113-2023 | 1 | 14 |
| Subsection | Repeals By-Law Number N/A | | Policy Number CC-2-5 | |

Purpose

To provide information regarding the statutory requirements and City procedures with respect to Council and Committee meetings that are closed to the public.

Definitions

“City” – means the Corporation of the City of Kenora.

“Closed Meeting” – means a meeting, or part of a meeting, which is closed to the public as permitted by the Municipal Act, 2001, also referred to as an “in-camera meeting”.

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

Should the Meeting be Closed?

In the interests of accountability and transparency, and when possible, City Council endeavours to conduct its decision-making in public. Staff are requested to consider the following questions when determining whether a matter should be considered in a Closed Meeting:

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| Question #1 | Does the matter meet the criteria in the Municipal Act, 2001 (and outlined in the Procedural bylaw, and closed meeting report template) for the meeting to be closed? |
| Question #2 | If so, just because the meeting can be closed, does that mean it should be closed? Is there a compelling reason that it should be? |

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

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Municipal Act Rules for Closed Meetings:

| Section 239 Exception | Discussion May Include: | Voting Permissions: |
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| (2)(a) The security of the property of the Corporation | <ul style="list-style-type: none"> - City property - City facilities - City assets | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (2)(b) Personal matters about an identifiable individual | <ul style="list-style-type: none"> - Candidates for a job or committee which may contain education & employment history - Scrutiny of an individual's performance or conduct - Investigation of an individual's possible violation of law | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (2)(c) A proposed or pending "acquisition" of land | <ul style="list-style-type: none"> - Buying or selling municipal land, when the bargaining position of the municipality could be impacted by public discussion of the matter - Leased property, easements, or subdivision agreements relating to the municipality's property interests | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (2)(d) Labour Relations or Employee Negotiations | <ul style="list-style-type: none"> - Unionized & non-unionized employee compensation, benefits or labour related matters outside of policy authorities - Staff performance, conduct, discipline, hiring and firing that is required to be brought to Council's attention under policy - CAO performance feedback - Union negotiation mandates or updates | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (2)(e) Litigation or potential litigation, including matters before administrative tribunals | <ul style="list-style-type: none"> - Ongoing litigation involving the municipality, including proceedings before administrative tribunals - Litigation that is a real prospect, against or by the municipality - Deciding whether or not to litigate in a specific case | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |

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| (2)(f) Advice that is subject to solicitor-client privilege | <ul style="list-style-type: none"> - Legal opinions or advice intended to be confidential - Solicitor must be present in-person or virtual OR if not present, advice must be provided in written format from the Solicitor - Status reports/briefings | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (2)(g) Matters that can be discussed in camera under authority of another Act | <ul style="list-style-type: none"> - Information explicitly permitted to be discussed in a closed meeting by an Act other than the Municipal Act (ie: MFIPPA, Emergency Mgmt, Civil Protection Act, etc) | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (2)(h) Information supplied in confidence by another level of government | <ul style="list-style-type: none"> - Provided to the municipality by another level of government (Canada, a province, or territory, or a crown agency) AND - Explicitly supplied to the municipality or local board in confidence (ie: marked confidential by the other level of government) | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (2)(i) Information supplied in confidence by a third party | <ul style="list-style-type: none"> - Falls into one of the listed types: trade secret or scientific, technical, commercial, financial or labour relations information, - Was supplied in confidence to the municipality or local board, explicitly or implicitly to the municipality by a third party; AND - 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 | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (2)(j) Information belonging to the municipality | <ul style="list-style-type: none"> - Falls into one of the listed types: 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; | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |

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| (2)(k) A position, plan, procedure, criteria or instruction to be applied to any negotiations | <ul style="list-style-type: none"> - Information about a position, plan procedure, criteria or instruction - Where the information is intended to be applied to negotiations carried on by the municipality or local board - The negotiations are ongoing or will be carried out in the future | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (3)(a) Request under the Municipal Freedom of Information and Protection of Privacy Act | <ul style="list-style-type: none"> - FOI requests | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (3)(a) An ongoing investigation respecting the City by an Ombudsman | <ul style="list-style-type: none"> - Ongoing investigation by Ombudsman appointed under the Ombudsman Act or Integrity Commissioner appointed by the City | <ul style="list-style-type: none"> ✓ Procedural matters ✓ Giving direction or instructions to staff |
| (3.1) Education or Training | <ul style="list-style-type: none"> - Council orientation - Professional development - Educating and making members of Council aware on matters of the municipality where no direction or decision is required | <ul style="list-style-type: none"> ✓ No discussion or decisions that materially advance the business or decision-making of Council/Committee |

Statutory Requirements for Closed Meetings

Pursuant to Sections 238 and 239 of the Municipal Act, 2001:

- Public notice of a closed meeting must be provided
- Before holding a meeting or part of a meeting that is to be closed to the public, Council 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 designee.
- Closed Meeting proceedings shall be recorded by the City Clerk and/or their designee. No closed session proceedings shall take place without the Clerk or appointed designee.

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- Any person may request an investigation into whether the City has complied with Section 239 of the Municipal Act, 2001 or the Procedural Bylaw in respect of a meeting or part of a meeting that was closed to the public.

Discussion and Voting in Closed Session

In accordance with our Procedural Bylaw, the Deputy Mayor (Chair) or Mayor shall prohibit discussion of any matter that was not disclosed in the resolution authorizing the Closed Meeting. It is the responsibility of each member of Council to limit discussion to only those matters contained in the resolution to move into Closed Meeting.

Access Requests for Closed Meeting Reports and Materials

Reports and materials prepared for consideration at Closed Meetings are records that may be subject to Freedom of Information (FOI) access requests under the Municipal Freedom of Information and Protection of Privacy Act (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 City could 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 deliberation could possibly be subject to disclosure.

Closed Meeting Reports and Recommendations

Reports

Whenever possible, written Closed Meeting reports are preferred over verbal reports as written reports provide 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 that can be made available to the public is disclosed appropriately. Aside from a singular report appearing on a Closed Meeting agenda, consideration shall also be given to the following:

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| Option A | A report to appear on the Open Meeting agenda which provides as much general context in relation to the Closed Meeting matter as possible without disclosing confidential details and a confidential attachment to provide the accompanying confidential details; or |
| Option B | A companion report to appear on the Open Meeting agenda which provides for as much general context in relation to the Closed Meeting matter as possible without disclosing confidential details; or |
| Option C | A recommendation for Council/Committee to direct staff to prepare a related information report to be included as part of a subsequent Open Meeting agenda. |

Report Titles

The following standard format is to be used for Closed Meeting report titles and included on Open Meeting agendas for notice purposes (internal template provided):

- Closed Confidential Council Report (with colour identifying closed item)
- Department and Appropriate Director
- Subject Matter
- Municipal Act reference which permits the matter to be in Closed

Recommendations

Under the *Municipal Act, 2001*, Council or Committee in a Closed Meeting is permitted to vote on procedural motions or to direct or instruct City officers, agents or employees. Under City policy and protocols, instruction from Council is through the Chief Administrative Officer to the appropriate staff.

Some actions which conform to this requirement are inherently confidential and should not be considered publicly. Other actions, however, can and should be voted on in an Open Meeting. The following are best practices with respect to the consideration of an Open Meeting motion related to a matter discussed by Council or Committee in a Closed Meeting:

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| Option | Result | Motion |
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| Option A | <p>If it is recommended that a report be received for information, this recommendation must be introduced in the Open Meeting.</p> <p>Once Council/Committee has returned from the Closed Meeting, the recommendation to receive the report for information may be introduced, using the following motion</p> | <p>That Confidential Report #___ be hereby received for information by Council.</p> |
| Option B | <p>If the report includes recommendations for approval by Council/Committee, the recommendations must be introduced in the Open Meeting. In this case the following procedural notation should be used in the Closed Meeting:</p> <p>Once Council/Committee has returned from the Closed Meeting, the recommendations may be introduced by Council/Committee, using the following motion:</p> <p>In order to ensure that there is appropriate context for the introduction of the motion, the Chair, or designee, shall consider presenting appropriate background information prior to Council’s consideration of the motion.</p> | <p>Closed: Recommendation to Open Council (and include the recommendation to be considered in open session)</p> <p>That the recommendations contained in Confidential Report #___ be adopted as follows:</p> |

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| Option C | <p>If it is recommended that direction be given to staff to report back at a subsequent meeting, this direction can appear as part of a recommendation within the staff report and be passed in a Closed Meeting:</p> <p>Once Council/Committee has returned from the Closed Meeting, the Clerk can note in the open minutes that "Direction was provided to staff in closed session" or Council may pass a motion to authorize that direction subject to the information presented in Closed session.</p> | <p>That staff be directed to report back at a subsequent meeting of Council/Committee in relation to {subject matter}</p> |
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Public Disclosure

Disclosing Closed Meeting Information

Members of Council and City Administration 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 City as well as any third party implications that may be subject to confidentiality. However, if Council deems it desirable and appropriate to release the final recommendations, the following clause may be included as part of the motion to adopt the recommendations in the confidential report, to authorize staff to release/publish the recommendations adopted by Council:

That staff be directed to release the recommendations adopted by Council as it pertains to Confidential Report {Report # XXXX-XX};

Should Council wish to release information provided within a Closed Meeting Report, Council shall direct staff to prepare an Information Memo containing a summary of the content of the report that can be provided in open session without contravening any mandatory closed exemption outlined in the

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Municipal Act, 2001, the Municipal Freedom of Information and Protection of Privacy Act, or any other pertinent legislation related to confidential information or legal implications; such Report or Memo shall be presented to Council at a future meeting for consideration of release of said information.

Disclosing Closed Meeting Agenda Items

Although information contained in Closed Meeting reports shall not be disclosed, the Municipal Act, 2001 requires that public notice of meetings be provided in a Procedural By-law. The City's Procedural By-law requires that there be public notice of meetings and that the agenda, including a list of items to be considered at each meeting, to be posted on the website and made available prior to the meeting.

In order to be accountable and transparent and inform all present in public of matters dealt with in closed session, Council and its committees shall open all meetings in open session and pass a motion to move into closed session. Once 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 attached as "Appendix A" to the Closed Meeting Protocol.

Addition of a Closed Meeting Item Not on the Agenda

In the event an item not appearing on an agenda must be considered at the meeting due to exceptional circumstances involving urgent or time sensitive issues, which require a Council resolution prior to the next regularly scheduled meeting or in advance of the time required to convene a special meeting, the item may be added to the open Council meeting agenda by way of a new item pursuant to the Procedural By-law.

In order for a 'time sensitive' matter to be added to an addendum, as soon as practical the CAO shall advise the City Clerk of the matter and provide an explanation as to its urgency.

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In the event an item does not appear on an agenda or addendum must be added to the agenda, the Chief Administrative Officer shall advise Council and provide an explanation as to its urgency. Pursuant to the Procedural By-law, the item can be introduced by as an urgent new item for the Closed Meeting with members present voting on the addition in accordance with the Procedural Bylaw.

Discussion related to Personal Matters About Identifiable Individuals, Labour Relations or Employee Negotiations

In the event a matter being discussed on the agenda requires discussion related to personal matters about identifiable individuals, labour relation or employee negotiations, in consultation with the Clerk, Council may be requested to enter Closed Session to proceed with the required discussions.

Attendance at a Closed Meeting

Unless otherwise directed by Council/Committee, attendance at Closed Meetings is limited to the City Clerk, Chief Administrative Officer, Directors, and/or his or her designee, and other City Staff as deemed necessary, at the discretion of the CAO.

City Staff are to remain outside the Closed Meeting room/session until called to speak to their specific matter or be present for discussion of a particular matter. City Staff should vacate the meeting once their matter has been dealt with by Council/Committee.

Members and staff attending a closed session meeting through virtual attendance are required to:

- Be attending through a private location whereby no other individual has access to or can hear or view the closed meeting proceedings;
- Wear headphones to ensure privacy of the meeting discussions, if possible

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Closed Meeting Prelude

In order to remind the Members of Council/Committee of their obligations in closed session, the Chair shall read a script at the beginning of the closed session detailing the Closed Meeting rules of the City (Appendix B Sample Script).

- In writing this document, staff reviewed various documents from other municipalities and included various best practices from those policies.

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Appendix "A"

Sample Script when returning from the Closed Meeting

Council/Committee met in Closed Session to consider matters it is permitted to do so under the Municipal Act, 2001, and as listed on today's Council/Committee agenda. The following items were considered during the Closed Session:

List of Items Considered in Closed Session

In the continuing interest of transparency and open government, I am reporting in public session any outcomes from today's closed session meeting.

As a result of our closed session today, I wish to report the following:
Examples:

- Minutes from Previous Closed Session – Council adopted the minutes as presented
- OMB Appeal Update – Council received information regarding OMB Litigation related to <number or file number>
- Labour Relations/Employee Negotiations – Direction was given to staff respecting negotiations with Local XXXX.
- Litigation Matter – Direction was given to staff with respect to litigation related to <subject matter>
- Solicitor-Client Privilege – Council/Committee received legal advice related to <subject matter>

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Appendix "B"

Sample Script at the Beginning of a Closed Meeting

Please be advised that Council/Committee will now meet in Closed Session in accordance with subsection 239(2) of the Municipal Act to consider:

- (a) the security of property of the Corporation
- (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 Council may hold a closed meeting under another Act

I will be verbally reporting out in a general sense on all items considered in the closed session once we return from the closed session and move back to open session.

Note: Only reference the section of the Municipal Act that pertains to the matters to be considered in Closed Session. Any other matters not mentioned in the motion to move into closed session cannot be discussed.

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MFIPPA Requests or Ombudsman Investigation:

Please be advised that Council/Committee will now meet in Closed Session in accordance with subsection 239(3.1) of the Municipal Act to consider:

- (a) a request under the Municipal Freedom of Information and Protection of Privacy Act
- (b) an ongoing investigation respecting the municipality by the Ombudsman

I will be verbally reporting out in a general sense on all items considered in the closed session once we return from the closed session and move back to open session.

Note: Only reference the section of the Municipal Act that pertains to the matters to be considered in Closed Session. Any other matters not mentioned in the motion to move into closed session cannot be discussed.

Educational or Training Sessions

Please be advised that Council/Committee will now meet in Closed Session in accordance with subsection 239(3) of the Municipal Act for the purpose of <subject>.

Examples: Council Orientation; Professional Development

I will be verbally reporting out in a general sense on all items considered in the closed session once we move from the closed session and back into the open session.