

Transparency Practices – Reporting and Closed Meetings

EXECUTIVE SUMMARY

This report presents recommendations and considerations related to establishing practices for closed meetings and reporting which increase transparency of Council and Council Committee meetings.

ADMINISTRATION RECOMMENDATIONS:

That the Priorities and Finance Committee recommends to Council that:

1. Direct Administration to implement the following closed meeting practices:
 - a. Commencing immediately, closed meeting reports are to be presented in the agenda with an enhanced description of the item to be discussed, without revealing the confidential information;
 - b. That starting January 1, 2019, all closed meeting reports include a review-by or release-by date within the recommendations;
 - c. That any written closed meeting report, provide a supporting public report (where possible);
2. Direct Administration to investigate establishing a process for delegating the authority to approve land transactions, up to a certain threshold value, to the SPC on Utilities and Corporate Services.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2011 October 3 Council approved the Transparency and Accountability Policy CC039. This policy defines the manner in which City Council and The City of Calgary will ensure that it is transparent and accountable to the public for its actions.

At the Combined Meeting of Council on 2018 April 05, Council approved the resolution in Notice of Motion C2018-0405 “Ensuring Efficiency, Transparency and the Appropriate use of Closed Meetings for Council Business.” (Attachment 1).

On 2018 October 15 Council referred to Administration the Notice of Motion C2018-1218 “Reforming Council’s Closed-Door Meetings” to be incorporated into the work for the C2018-0405 Notice of Motion (Attachment 2).

BACKGROUND

As stated in the Transparency and Accountability Policy CC039 (Attachment 3), transparency, accountability and openness are essential elements of good government. Information is to be accessible in accordance with legislative requirements as set out in the *Municipal Government Act (MGA)* and the *Freedom of Information and Protection of Privacy Act (FOIP)*. Access to information is important to ensure that governments are open and transparent.

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Legislation

Section 197 of the *MGA* and recent amendments, provide that Council and Council Committees must conduct their meetings in public unless the matter to be discussed falls within one of the exceptions to disclosure outlined in the *FOIP Act* or Regulations made pursuant to the *MGA* (although no such regulation has been enacted). Councils and Council Committees may close all or part of their meeting to the public if a matter to be discussed is within one of the exceptions to disclosure in Division 2 of Part 1 of the *FOIP Act* (subsection 197(2)).

The *FOIP Act* sets out exceptions to disclosure, and provides that some FOIP exceptions to disclosure cease to apply after a prescribed period of time. Examples of some of the exceptions to disclosure include:

- Disclosure harmful to personal privacy (personnel)
- Disclosure harmful to intergovernmental relations
- Advice from officials
- Disclosure harmful to economic and other interests of a public body
- Privileged information (legal advice)
- Disclosure harmful to business interest of a third party

Thus, Council may go into a closed meeting to consider a report that includes or addresses one of the above exceptions to disclosure set out in *FOIP*.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

In responding to both C2018-0405 and C2018-1218, this section is presented as follows:

1. City of Calgary Current State – a tally of closed meetings from May 2017-May 2018
2. Municipal Scan – a summary of notable practices from five Canadian municipalities
3. Considerations on the following practices:
 - a. Enhanced descriptions of closed meeting items
 - b. Release-by or review-by dates
 - c. Including a public component of each report
 - d. Delegation of authority to approve land transactions to the SPC – Utilities and Corporate Services
 - e. Electronic voting for roll call
 - f. Councillor representation
 - g. Meeting investigation
 - h. Recording of closed meetings

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1. City of Calgary Current State

From 2017 May 01 to 2018 May 31, a total of 306 items were discussed in closed meetings in Council and Council Committee meetings. Of these items, 189 were discussed at Council meetings, and 117 were discussed at Council Committee meetings. Some of the same items were discussed at both Committee and at Council.

In total, 99 items (representing 32%) were categorized as land transactions, 36 (12%) were related to personnel matters, 36 (12%) were related to member appointments to Boards, Committees, and Commissions (BCCs), 29 (9%) were categorized as intergovernmental, 29 (9%) were related to audits, 20 (7%) were industry updates from Gas Power and Telecommunications, 18 (6%) were identified as Legal or Legal briefing, and the remaining 25 (8%) covered items on facilities, naming, the Olympic and Paralympic Winter Games bid project, and cannabis. Of the 306 items, 55 of those were identified as verbal reports or verbal updates. The purposes of the closed meetings are consistent with recent changes to the *MGA*.

In Regular Meetings of Council, the time spent in closed meetings was approximately 17 hours and 41 minutes over 8 meetings. The total time spent in these eight meetings on all items was approximately 102 hours and 26 minutes. Of all the meetings tallied, 14% of time was spent in closed meetings.

The breakdown of all meetings, items discussed and time spent in closed meetings is included in Attachment 4 – City of Calgary Current State.

2. Municipal Scan

A municipal scan of governance practices of other Canadian municipalities was completed, and is included as Attachment 5. The scan includes practices from Edmonton, Vancouver, Winnipeg, London and Ottawa.

As not all municipalities scanned have tallies of their closed meetings, and governance practices vary, a direct comparison to Calgary's practices was not possible. However, Vancouver reported 122 in-camera items in 2017, Ottawa reported 6 in-camera items over a one-year span in 2016-2017, and Winnipeg usually has 4-10 in-camera items per year. Ottawa and Winnipeg have seen a significant reduction in items discussed in closed meetings. Administration attributed the drop to a "culture shift" within the organizations, particularly in the approach taken by their respective Councils, rather than legislative requirements. Some municipalities have delegated decision making authority to their committees.

Notable practices of reviewed municipalities:

- prior approval of items to be held in closed meetings by Administration;
- all discussions and appointments to agencies, boards and commissions are done in public meeting (applicants sign a waiver agreeing to their name being put forward in public);
- requirement of a "release-by date" or a "review-by date" on every item discussed in closed meetings;

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- released documents are published on a separate “Information from In-Camera Meetings” website;
- detailed description of confidential item (e.g., personnel matter = labour relations with CUPE, ratification of a tentative agreement);
- requiring a public component of every confidential item;
- detailed written recording of the discussion; and
- the legislative ability to investigate closed meetings.

3. Considerations to alternative practices

Administration has considered these practices in comparable jurisdictions as well as the practices proposed in both Notice of Motions and proposes the following:

a. Enhanced descriptions of potential closed meeting items on the Agenda

Including a consistent item title for all matters discussed in closed meetings will increase transparency. In certain instances, the title accurately describes the item (e.g., Proposed Lease – Downtown West End – Ward 08 -701 11 St SW). However, item titles may give little to no indication of what is being discussed. A standard item title format that can be used as below. A plain language FOIP description (the exception to disclosure) should also be included. An example is as follows:

Current:

Labour Update (Verbal), C2017-1119 (FOIP 23, 24 and 25)

Proposed (example):

Collective Bargaining – CUPE Local xx. Ratification of tentative agreement. C20xx-xxxx.
FOIP – 23, 24, 25 advice

After consultation with Administration, City Clerk’s Office will provide recommended title templates for use. This does not restrict Administration’s ability to name an item to maintain confidentiality.

b. Release-By or Review-By Dates

Some of the *FOIP* exceptions to disclosure cease to apply after a prescribed period of time. Administration could recommend, and Council could set, earlier dates/triggers for which a confidential report is to be released publicly. The appropriate trigger date would depend largely on the circumstances outlined in the report, such as events, when sales are finalized, or when agreements are signed. Once those events have happened, then disclosure is no longer harmful, and the information may be released. Currently, triggers are sometimes recommended by Administration, but would need to be adopted by Council resolution.

The recommendation from Administration is that effective January 1, 2019 all closed meeting reports will require, within the recommendation box, an automatic release-by or review-by date. On that basis, the City Clerk’s Office will maintain a list of release-by or

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review-by confidential reports. On a quarterly basis those reports due for release or review will be forwarded to the department to confirm the release or the continuation of the report's confidentiality. The Department will have 30-days to respond to the request to either provide release-by date instructions or re-establish a review-by date. An online list of confidential items and their release-by date will be maintained by City Clerk's Office.

c. Including a public component of each report.

One mechanism to increase transparency of items that are discussed in closed meetings is to include a public component of the report. The information that is required to be kept confidential would be included as confidential attachments to the public report. Some recent reports before Council have contained both public and closed meeting confidential attachments. This practice will be maintained.

d. Delegation of authority to approve land transactions to the SPC – Utilities and Corporate Services

From the tally of closed meetings between May 2017 and May 2018, 99 items (representing 32%) were categorized as land transactions. Some of these items were discussed confidentially at both Committee and Council. To reduce the duplication of confidential discussions, a threshold for delegating the approval of land transactions to the SPC on Utilities and Corporate Services can be developed. Alternatively, these items could by-pass Committee, and go directly to Council.

e. Electronic Voting for roll call

A recommendation for instituting electronic voting at Council meetings will be forthcoming with the proposed amendments to the Procedure Bylaw (in Q1 2019). Using electronic voting would provide a written record of all votes, including voting on proceeding into a closed meeting. Electronic voting will include a public data record of how Council voted on an item.

f. Councillor Representation

The City Solicitor and General Counsel or her designate provides advice to all members of Council in closed meetings. Advice is also provided by Administration. Section 197(6) of the *MGA* states that Council may allow one or more other persons to attend a closed meeting. Council can permit a non-member to attend. Specifically, if a member of Council wishes to have an advisor attend the closed meeting, Council must approve the inclusion of the advisor prior to them attending the meeting.

g. Meeting Investigation

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Unlike in Ontario, there is no legislated process to review an Alberta municipal council's decision to go into a closed meeting. In the Alberta Ombudsman Act, the Alberta Ombudsman does not have the authority to investigate/review the conduct of Council. It does have the authority to review administrative decisions of a municipality. If the Alberta Ombudsman received this type of complaint, they would review it to determine if it is an administrative decision over which they have the jurisdiction to investigate.

h. Recording of Closed Meetings

In Ontario, to assist an investigation, closed meetings are recorded for the sole purpose of ensuring the meeting operates within the Ontario provincial legislated requirements. In Alberta, the *MGA* specifically outlines that the only decisions that can be made in a closed meeting is a decision to revert to a public meeting. There is no record of decisions, as no record or decisions can be made in a closed meeting.

Stakeholder Engagement, Research and Communication

Research was undertaken with legislative services divisions with five Canadian municipalities.

Strategic Alignment

This report aligns with Council's priority of a well-run city: "Calgary's government is open, responsive, accountable and transparent, delivering excellent services at a fair price."

Social, Environmental, Economic (External)

Ongoing work in refining and updating Council procedures contributes to a more efficient and well-run city, as well as improved accountability and transparency, as outlined in the Transparency and Accountability policy.

Financial Capacity

Current and Future Operating Budget:

No operating budget is required.

Current and Future Capital Budget:

No capital budget is required.

Risk Assessment

Eliminating the ability for Administration or Council to bring verbal reports into closed meetings will reduce the flexibility required for time-sensitive information or action of some items.

In reducing the number of items discussed confidentially, due care is needed to ensure that no public item discloses information of a confidential nature or from a confidential attachment.

There is a risk of legal, financial and reputational loss, costs, damages, and/or exposure for The City should certain matters that are appropriately discussed in closed sessions be discussed in a public forum.

Law and Legislative Services Report to
Priorities and Finance Committee
2018 December 04

ISC: UNRESTRICTED
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<p>REASONS FOR RECOMMENDATIONS: Implementing the recommended practices will support Council's continuing commitment to transparency and accountability.</p>
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ATTACHMENT(S)

- ATTACHMENT 1 – Notice of Motion C2018-0405
- ATTACHMENT 2 – Notice of Motion C2018-1218
- ATTACHMENT 3 – Transparency and Accountability Policy CC039
- ATTACHMENT 4 – City of Calgary Current State
- ATTACHMENT 5 – Municipal Scan of Closed Meetings
- ATTACHMENT 6 – Exceptions to Disclosure in the *FOIP* Act