

THE CORPORATION OF THE TOWNSHIP OF SOUTH STORMONT

BY-LAW NO. 2023-082

BEING a by-law to amend By-law No. 2021-042, to adopt a Closed Meeting Protocol.

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WHEREAS the *Municipal Act, 2001*, c. 25 s. 5 (1) provides that the powers of a municipal corporation are to be exercised by its council;

AND WHEREAS the *Municipal Act, 2001*, c. 25 s. 5 (3) provides that the powers of every council are to be exercised by by-law;

AND WHEREAS Council of the Township of South Stormont did, on the 28<sup>th</sup> day of April, 2021, pass By-law No. 2021-042, being a by-law to adopt a Closed Meeting Protocol;

AND WHEREAS Council deems it expedient to amend By-No. 2021-042, to update the Closed Meeting Protocol.

NOW THEREFORE Council of the Corporation of the Township of South Stormont enacts as follows:

1. That By-law No. 2021-042 is hereby amended as follows:
  - i. Schedule "A", Closed Meeting Protocol, be deleted in its entirety;  
  
and replaced with:
  - ii. Schedule "A", being an updated Closed Meeting Protocol, attached hereto and forming part of this by-law.
  
1. All other relevant sections of By-law No. 2021-042, shall remain.

READ AND PASSED in open Council, signed and sealed this 11<sup>th</sup> day of October, 2023.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk



# TOWNSHIP OF SOUTH STORMONT

Title: Closed Meeting Protocol – Schedule “A” to By-law No. 2021-042

Policy Category: Corporate

Effective Date: April 28, 2021

Revision Date: October 11, 2023 Schedule “A” to By-law No. 2023-082

## 1. Policy Statement

The Township of South Stormont 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. 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.

## 3. Should the Meeting be Closed?

In the interest of accountability and transparency, Council 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 should consider the following:

- Does the matter meet one or more of the open meeting exceptions noted in Section 239 the Municipal Act?
- 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 Director in consultation with the Director of Corporate Services/Clerk and/or the CAO.

## 4. Municipal Act Rules for Closed Meetings

<b>Topic/Municipal Act Exception</b>	<b>Discussion May Include</b>	<b>Voting Permissions</b>
Security of Property of the Township	<ul style="list-style-type: none"><li>• Township property</li><li>• Township facilities</li><li>• Township assets</li></ul>	<ul style="list-style-type: none"><li>• procedural matters</li><li>• giving directions or instructions to staff</li></ul>

<b>Topic/Municipal Act Exception</b>	<b>Discussion May Include</b>	<b>Voting Permissions</b>
Personal Matters about Identifiable Individuals	<ul style="list-style-type: none"> <li>• municipal employees</li> <li>• members on various boards and committees</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>
A Proposed or Pending Acquisition or Disposition of Land	<ul style="list-style-type: none"> <li>• land purchases</li> <li>• land sales</li> <li>• land leases</li> <li>• expropriation of land</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>
Labour Relations or Employee Negotiations	<ul style="list-style-type: none"> <li>• union or employee negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>
Litigation or Potential Litigation	<ul style="list-style-type: none"> <li>• current or pending litigation</li> <li>• potential litigation</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>
Solicitor-Client Privilege	<ul style="list-style-type: none"> <li>• legal opinions, advice and or status reports/briefings</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>
Matters under Other Legislation	<ul style="list-style-type: none"> <li>• Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>
Information supplied in confidence by the federal government, provincial government or Crown agency	<ul style="list-style-type: none"> <li>• information explicitly provided in confidence and in writing by the Government of Canada, a province or Crown Agency</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>
Trade secret or scientific, technical, commercial, financial or labour relations information supplied in confidence which, if disclosed, could interfere with contractual or other negotiations	<ul style="list-style-type: none"> <li>• information explicitly provided in confidence that is a trade secret or scientific, technical, commercial, financial or labour relations information that could interfere with negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>

<b>Topic/Municipal Act Exception</b>	<b>Discussion May Include</b>	<b>Voting Permissions</b>
Trade secret or scientific, technical, commercial or financial information belonging to the municipality which has monetary value	<ul style="list-style-type: none"> <li>• information explicitly provided in confidence that 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</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>
Position, plan, procedure, criteria or instruction to be applied to negotiations carried out by the municipality [S. 239 (k)]	<ul style="list-style-type: none"> <li>• a position, plan, procedure, criteria or instruction directly related to negotiations carried out by the municipality</li> </ul>	<ul style="list-style-type: none"> <li>• procedural matters</li> <li>• giving directions or instructions to staff</li> </ul>
Educating or training	<ul style="list-style-type: none"> <li>• Council orientation</li> <li>• team building exercises</li> <li>• professional development</li> </ul>	<ul style="list-style-type: none"> <li>• no discussion or decisions that materially advance the business or decision-making of Council/Committee</li> </ul>

## 5. Statutory Requirements for Closed Meetings

Pursuant to Section 239 of the Municipal Act:

- Public notice of a Closed Meeting must be given.
- Before holding a Closed Meeting, 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 designate.
- Any person can request an investigation of whether the Township has complied with the Municipal Act regarding Closed Meetings.

## 6. 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 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 Township could be ordered to release such records.

The Township 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. Examples of records that may be subject to disclosure are:

- background or historical information;
- copies of correspondence and cover letters;
- scope, definition and purpose of report;
- recommendations;
- presentations; and
- statistical data.

Written material included in a Closed Meeting report should be 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 is recommended that it also be disclosed publicly by way of one of the recommended approaches identified in Section 7 below.

## 7. Closed Meeting Reports and Recommendations

### 7.1. Reports

Whenever possible, written Closed Meeting reports are preferred over verbal reports as the former provides a formal account of the confidential record.

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Closed Meeting reports will be available for Council's review through a secure agenda portal when the appropriate (COTW, Special or Regular) agenda is released. Notwithstanding, Closed Meeting reports that address staff/employee Personal Matters, Labour Relations and Employee Negotiations will be available for Council's review at the commencement of the Closed Meeting.

It is important to ensure that information which 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:

- 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;  
or,
- 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.

## 7.2 Recommendations

In a Closed Meeting, Council/Committee is only permitted to vote on procedural motions or to direct Township agents or 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. 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 it is recommended that a report be received for information, this recommendation must be introduced in the Open Meeting. In this case, the following procedural motion should be used to rise from the Closed Meeting:

That Council/Committee rise from the closed meeting at \_\_\_\_\_ and report.

Once Council/Committee has risen from the Closed Meeting, the recommendation to receive the report for information may be introduced, using the following motion:

That Confidential Report, concerning <subject matter, dated ##> be received for information.

Option B: 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 motion should be used to rise from the Closed Meeting:

That Council/Committee rise from the closed meeting at \_\_\_\_\_ and report.

Once Council/Committee has risen from the Closed Meeting, the recommendations may be introduced by Council/Committee, using the following motion:

That the recommendations contained in Confidential Report concerning <subject matter, dated ##> be adopted.

In order to ensure that there is appropriate context for the introduction of the motion, the Chair shall consider presenting appropriate background information prior to Council's consideration of the motion.

Option C: 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:

That staff be directed to report back at a subsequent meeting of Council/Committee in relation to <subject matter>.

## 8. 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. The following direction can be voted on in a Closed Meeting in order to disclose a Closed Meeting item:

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>.

Although the information contained in closed staff reports may not be disclosed, the Municipal Act requires that public notice of Closed Meetings be provided for in a Procedural By-law. The Township'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.

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 A.

## 9. 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 the following motion can be voted on in an Open Meeting in order for Council to convene a Closed Meeting:

That the Council of the Township of South Stormont now hold a meeting that is closed to the public pursuant to Section 239 <relevant subsection> of the Municipal Act to discuss <topic, subject area or report title>.

## 10. Attendance at a Closed Meeting

Unless otherwise directed by Council/Committee, attendance at Closed Meetings is limited to the Director of Corporate Services/Clerk and Chief Administrative Officer, and/or their designate, and other staff at the discretion of the Chief Administrative Officer. Staff should vacate the meeting once the relevant matter has been dealt with by Council/Committee.

Relevant professionals, i.e. Township solicitor, are permitted attendance when invited.

## 11. 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 B, detailing the Closed Meeting rules at the beginning of each Closed Meeting.

## 12. Monitoring and Compliance

The Director of Corporate Services/Clerk is responsible for monitoring matters pertaining to Closed Meetings and this policy.

This Protocol shall be reviewed each term of Council to ensure relevancy and appropriateness.

Any member of the public, Council or staff may request an investigation be conducted to determine whether the Township has complied with s. 239, of the Municipal Act.

## 13. Authority and Related Polices

- Municipal Act, 2001 S.O. 2001, c. 25
- Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56

## 14. Contact

For more information on this policy, contact:

Director of Corporate Services/Clerk  
Township of South Stormont  
P.O. Box 84, 2 Mille Roches Road  
Long Sault, ON K0C 1P0  
613-534-8889, Ext. 201



## Appendix A

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

Council moved a motion to proceed into a closed meeting to consider business as permitted under the Municipal Act. In the continuing interest of transparency, I will be reporting at this open meeting the outcomes from today's closed meeting.

During 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 from previous Closed Session

Council approved the closed meeting minutes of the <meeting dates > Council/Committee meetings.

##### Citizen Appointments

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

##### Legal Update

Council received information regarding the <legal case>.

##### Union Negotiations

There was direction given to staff regarding this item.

## Appendix B

### Chair's Script at the Beginning of Closed Meetings

Please be advised that we are moving into a closed meeting as permitted in 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 back into open session.