



SUBJECT: Closed meeting investigation report and findings –
January 12, 2024 Special Council Meeting

TO: Committee of the Whole

FROM: Legal and Legislative Services

Report Number: CL-19-24

Wards Affected: n/a

Date to Committee: November 4, 2024

Date to Council: November 19, 2024

Recommendation:

Receive the legal and legislative services report CL-19-24 providing the Closed Meeting Investigation Report for information; and

Council resolves that the Mayor write to the Minister of Municipal Affairs and Housing to formally request an amendment to the Municipal Act, 2001 to clarify that the exact time and location of closed meetings convened for the purpose of conducting recruitment of the City Manager/Chief Administrative Officer (CAO) position do not have to be provided given the importance of maintaining the integrity and confidentiality of the recruitment process, protecting the personal privacy of the candidates and preserving public interest in the privacy of those meetings.

PURPOSE:

Vision to Focus Alignment:

- Driving organizational performance
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Executive Summary:

This report provides the findings of the Closed Meeting Investigation of the January 12, 2024 Special Council meeting.

Background and Discussion:

In late 2023, the City began recruitment for a new City Manager/Chief Administrative Officer. This recruitment took place between October 2023 and February 2024. As part of the recruitment process, Mayor and Members of Council conducted confidential interviews for candidates in January 2024.

On January 12, 2024 Council passed a motion to enter into a closed session for the purposes of confidential City Manager/CAO interviews and deliberations. The closed session was entered into in accordance with sections 239(2)(b) and 239(2)(k) of the *Municipal Act, 2001*:

239(2)(b) personal matters about an identifiable individual, including municipal or local board employees, and

239(2)(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;

During the interview process, candidate confidentiality was imperative. Disclosing the location, time and date the interviews were to be conducted risked compromising the identity of candidates, potentially leading to repercussions for both the City and the candidate.

To address this concern, staff explored whether or not notice of the Closed meeting could be provided, including that the meeting would occur in the months of January and February, while not disclosing the specific location or time of the meeting to the public. This was viewed as providing sufficient notice to the public, while achieving a confidential and fair recruitment process, and allowing the City to attract the best candidates possible. The position of the City was supported by an external legal opinion.

At all material times, the position taken by the City was that it was substantially in compliance with the Act and the By-law by passing the resolutions to enter into a Closed meeting on January 12. The City's position was that there was no waiver or suspension of any higher order legislative provisions, and every effort was made to provide as much information as possible about the meeting in the motion. The intent of the approach was not to mislead the public or obscure the hiring process, but rather to ensure that the City could have a fair recruitment process for its most high profile position. That position was not accepted by the Closed Meeting Investigator, as is set out in detail in the attached report.

Requirement to Pass a Resolution

Section 239.2(12) of the Municipal Act requires Council to pass a resolution stating how it intends to address the report:

(12) If a municipality or a local board receives a report from a person referred to in clause 239.1 (a) or (b) reporting his or her opinion, and the reasons for it, that a meeting or part of a meeting that was the subject-matter of an investigation by that person appears to have been closed to the public contrary to section 239 or to a procedure by-law under subsection 238 (2), the municipality or the local board, as the case may be, shall pass a resolution stating how it intends to address the report.

To fulfill the requirements of the Act, staff are recommending that Council address the report by directing the Mayor to advocate to the Minister of Municipal Affairs and Housing for an amendment to the *Municipal Act, 2001*, to include provisions that will allow municipalities to limit information related to the closed meetings convened for the purpose of conducting recruitment of senior staff.

Candidate anonymity is paramount in recruitment, and municipalities must be able to provide reasonable assurances that the identities of candidates will remain confidential throughout the recruitment process.

Financial Matters:

The cost of the closed meeting investigation at the time of this report is \$4,407.00.

Climate Implications:

Not applicable.

Engagement Matters:

Not applicable.

Conclusion:

Staff recommend that Council support advocacy to the Minister of Municipal Affairs and Housing for changes to the Municipal Act to clarify rules around meetings pertaining to recruitment of the City Manager/CAO position.

Respectfully submitted,

Samantha Yew

City Clerk

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Blake O. Hurley

City Solicitor

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Appendices:

- A. Closed Meeting Investigation Final Report, dated October 8, 2024

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal and Legislative Services/City Solicitor.