

COUNCIL MEMBERS' MOTION

5. Transparency and Accountability in Conducting Council Business

Submitted by: Councillor Fry

WHEREAS

1. In taking the Oath of Office, members of Vancouver City Council solemnly affirm to be accountable for decisions they make and actions they take in the course of their duties;
2. The business of Council takes place in either open or closed (*in camera*) meetings, and generally, the rules and functions of those meetings are set out in the provincially legislated Vancouver Charter and the City's Procedure By-lawⁱ;
3. The Procedure By-law regulates the procedures of Council, its committees and other bodies, including general meeting procedures, conduct of Council members and speakers, agendas, keeping of minutes, role of the Chair, and rules of order;
4. Members of the public and representative bodies can speak to reports at open meetings that contain recommendations as provided in Part 7 of the Procedure By-law;
5. Where public testimonials may be incomplete or prompt a need for more information, Section 7.7(a) allowed Council to ask clarifying questions of speakers. In the May 2023 report, "Amendments to the Procedure By-law No. 12577",ⁱⁱ staff recommended reducing the time for questions from three minutes to one minute. The report was subsequently amended to eliminate questions altogether. Without the option to ask clarifying questions, it is difficult for Councillors to demonstrate accountability to the community;
6. Meeting sessions held *in camera* are the portions of meetings that are not open to the public due to the sensitive nature of the information shared. The Procedure By-law does not explicitly provide guidance on *in camera* meetings;
7. In Vancouver, the criteria for holding meetings *in camera* are set out in section 165.2 of the Vancouver Charterⁱⁱⁱ and broadly includes HR and personal issues, labour relations, land deals, litigation, and information (often timely) that may harm the interests of the City. The Vancouver Charter does not expressly provide that the subject matter, disclosure, discussion, decision, or votes cast must be treated as confidential;
8. While the Vancouver Charter is not explicit on the extent of confidentiality, the analogous Community Charter^{iv} does identify that under section 117(1): "A council member or former council member must... keep in confidence information considered in any part of a council meeting or council committee meeting that was lawfully closed to the public, until the council or committee

discusses the information at a meeting that is open to the public or releases the information to the public”;

9. While the rules around *in camera* differ between local governments, in many provinces, best practices suggest that although *in camera* discussions are held in private, as much as possible:
 - a. decisions or motions should be made publicly in open meeting,
 - b. justifications for going in-camera should be as explicit as possible, and
 - c. there should be options to release or withhold in-camera material following the closed meeting at a subsequent open meeting;

For example, the Province of Alberta advises “[participants] included in the closed session are required to keep in confidence what was discussed until the item is discussed at a meeting held in public”;^{v vi vii}

In its 2012 report, the BC Ombudsperson suggests a determination of how much to disclose should be made on a case-by-case basis keeping in mind the importance of transparency;^{viii}

“Sometimes the level of confidentiality afforded by closed meetings is necessary to pass resolutions that ensure the orderly functioning of the local government. Some matters must be discussed entirely in confidence. Passing resolutions in closed meetings however, can never be used to conceal the decision-making process from the legitimate gaze of the public. Indeed, local governments should always try to provide as much information as possible about any resolutions passed during closed meetings, including when possible, the considerations on which they were based.”;

10. Meetings held *in camera* can and should be a “safe space” for discussion. To facilitate that, best practices suggest discussions should not be captured in notes or minutes. The Province of Alberta strongly recommends that, “a closed session discussion not be recorded as any notes or minutes taken during the discussion may become part of a FOIP request.”^{ix} However, while respecting safe space for discussion, accountability for the outcomes of those discussions should provide a counter balance;
11. As a matter of practice, the City of Vancouver releases *in camera* decisions and reports specifically and only “because they are no longer considered sensitive”.^x These releases do not include the voting records of decisions made or minutes of discussion;
12. Following the release of an *in camera* decision on the Living Wage Program by the City of Vancouver in March 2023, one Councillor indicated how they voted while two councillors indicated their position on the issue but not explicit vote. The former Councillor was subsequently subject of a code of conduct complaint for disclosing their vote, costing good will and taxpayer funds to resolve, and illustrating the lack of clarity around *in camera* procedure. A subsequent investigation by the Integrity Commissioner for the

City of Vancouver showed that the City has been unclear and inconsistent with regard to disclosure of in camera votes and recommended the City adopt a clear policy that clarifies expectations for Council about how, if ever, a Councillor can say how they voted in an *in camera* meeting; and ^{xi}

13. A further bulletin by the Integrity Commissioner for the City of Vancouver highlighted the Open Meeting Principle, and its importance to municipal democratic process; specifically highlighting the requirement to allow for public discussion and consideration of the matter before any vote is made by Councillors. With affirmation that if a majority or caucus of Councillors are informally gathering to discuss a matter it must be transparent and accessible to the public.^{xii}

THEREFORE BE IT RESOLVED

- A. THAT Council affirms the principles of accountability for decisions and actions taken during the course of their duties should apply as rigorously as possible.
- B. THAT Council request staff to report back with a proposed amendment to Part 7 of the Procedure By-law that includes a provision for a member of Council to request, at the discretion of the chair, to ask clarifying questions of speakers for 1 minute.
- C. THAT Council request staff to report back with proposed amendments to the Procedure By-law to regulate the procedures of Council within and with regard to closed *in camera* meetings, which require:
 - i. Open meeting justifications for going *in camera* that are as explicit as possible;
 - ii. Wherever advisable, decisions to take place in open meetings; and
 - iii. Where decisions take place in a closed session, provision for a specific decision to withhold voting results if necessary, and rationale for why.
- D. THAT pending amendments to the Procedure By-law with regard to *in camera* meetings, staff are directed to include votes or rationale for withholding votes when future *in camera* decisions and reports are deemed no longer sensitive and published on the City website.
- E. THAT Staff are directed to summarize as explicitly as possible what *in camera* meetings were held at the next available open meeting, and to advise Council of the publication of any *in camera* items deemed no longer sensitive as part of regular Council reporting agenda.

ⁱ Vancouver | Procedure By-law No 12577 <https://bylaws.vancouver.ca/12577c.PDF>

ⁱⁱ Vancouver | Amendments to the Procedure By-law No. 12577

<https://council.vancouver.ca/20230509/documents/r4.pdf>

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- iii BC Laws | Vancouver Charter s.165.2, Meetings that may or must be closed to the public
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/vanch_04#section165.2
- iv BC Laws | Community Charter section 117, Confidentiality
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/03026_05#section117
- v Province of Ontario | Running Effective Meetings Guidebook
<https://www.ontario.ca/page/running-effective-meetings-guidebook>
- vi Nova Scotia Federation of Municipalities | Best Practices for In-Camera Sessions
<https://www.nsfm.ca/2019-nsfm-spring-conference-presentations/1302-best-practices-for-in-camera-sessions/file.html>
- vii Alberta Municipal Affairs and Legislative Division | Closed Meetings of Council
<http://municipalaffairs.gov.ab.ca/documents/Closed%20Meetings%20of%20Council.pdf>
- viii BC Ombudsperson | Open Meetings: Best Practices Guide for Local Governments
<https://bcombudsperson.ca/assets/media/Special-Report-No-34-Open-Meetings-Best-Practices-Guide-for-Local-Governments.pdf>
- ix City of Vancouver | Information released from in-camera meetings
<https://covapp.vancouver.ca/councilMeetingPublic/InCameraInfoReleases.aspx>
- x City of Vancouver | Information released from in-camera meetings
<https://covapp.vancouver.ca/councilMeetingPublic/InCameraInfoReleases.aspx>
- xi Lisa Southern, Integrity Commissioner, City of Vancouver | Report September 29, 2023
<https://vancouver.ca/files/cov/integrity-commissioner-investigation-report-september-29-2023.pdf.pdf>
- xii Lisa Southern, Integrity Commissioner, City of Vancouver | Open Meeting Principle
<https://vancouver.ca/files/cov/integrity-commissioner-bulletin-2023-03.pdf>