

**THE CORPORATION OF THE VILLAGE OF MERRICKVILLE-WOLFORD**

**BY-LAW 29-2024**

**BEING A BY-LAW TO ADOPT A CLOSED MEETING PROCEDURES POLICY**

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 the *Municipal Act, 2001* states that with exceptions, all meetings shall be open to the public;

AND WHEREAS the Village of Merrickville-Wolford is committed to accountability and transparency in local government, and acknowledges that the municipality is responsible to adhere to closed meeting requirements as set out in the *Municipal Act, 2001*;

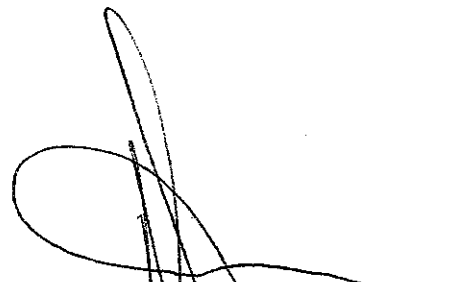
AND WHEREAS it is deemed desirable that the Council of the Corporation of the Village of Merrickville-Wolford adopts a Closed Meeting Protocol to provide clarity on processes to be followed before, during and after a closed meeting;

NOW THEREFORE the Council of the Corporation of the Village of Merrickville-Wolford hereby enacts as follows:


1. That the Closed Meeting Procedures Policy attached hereto as Schedule "A" and forming part of this by-law is hereby adopted.
2. This by-law will come into force and take effect on the date of its passing.

Read a first and second time in open Council this 13th day of May, 2024.

Read a third time and final time and passed, signed and sealed in open Council this 13th day of May, 2024.



Michael Cameron, Mayor



Julia McCaugherty-Jansman, Clerk



## Corporation of the Village of Merrickville-Wolford

Title	Closed Meeting Procedures Policy
By-law Number	29-2024
Date Approved	May 13, 2024
Effective Date	May 13, 2024

### 1. Policy Statement

The Corporation of the Village of Merrickville-Wolford acknowledges that all meetings of Council/ Committee shall be open to the public except as related to the exceptions included in Section 239 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 endeavors 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 of 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 Manager of the Department in consultation with the Clerk and the CAO.

#### **4. Municipal Act Rules for Closed Meetings**

As per Section 239 (2) of the *Municipal Act*, it states that "a meeting or part of a meeting may be closed to the public if the subject matter being considered is:

- a) The security of the property of the municipality or local board;
- b) Personal matters about an identifiable individual, including municipal or local board employees;
- c) A proposed or pending acquisition or disposition of land by the municipality or local board;
- d) Labour relations or employee negotiations;
- e) Litigation or potential litigations, including matters before administrative tribunals, affecting the municipality or local board;
- f) Advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- 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."

As per Section 239 (3), it states that "a meeting or part of a meeting shall be closed to the public if the subject matter being considered is:

- a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or
- b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under

the *Ombudsman Act*, an Ombudsman referred to in subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1)."

As per Section 239 (3.1) it states "a meeting of a council or local board or of a committee of either of them may be closed to the public if the following conditions are both satisfied:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee."

## **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 by the Clerk or designate.
- Any person can request an investigation of whether the Village 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 Village could be ordered to release such records.

The Village 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.

In accordance with Section 239 of the Municipal Act, members of the public, including corporations, may request that an investigation of whether a municipality or local board has complied with Section 239 or a municipal procedural by-law in respect of a meeting or part of a meeting that was closed to the public be undertaken by the Ombudsman appointed under the Ombudsman Act.

## **7. Process**

### **Part One: Before the Closed Meeting**

#### **1. Meetings Must Begin and End in Public**

It is the policy of the Municipality that a body shall only move into a closed meeting after first convening an open meeting. At a minimum, meetings shall first be convened openly and members provided an opportunity to disclose any pecuniary interest, followed by the passing of a resolution or motion to move into closed meeting. The body shall adjourn the closed meeting by motion and return to open meeting, at which time the Chair, in accordance with this policy, will then report out and then the open meeting may adjourn.

#### **2. Notice**

As noted in Section 5, all meetings must begin and end in public. Notice of closed meetings is therefore incorporated into the municipality's practice for providing notice of open meetings. The closed meeting and nature thereof is listed on the agenda of the open meeting.

#### **3. Agendas**

Closed meetings are to be included on the open session agendas, in an order decided at the discretion of the Clerk. In the event it is necessary to change the order of proceedings to move the closed meeting earlier in the agenda, consent of Council is required.

Closed meetings are to be listed on the agenda in such a way as to provide the most information possible without compromising confidentiality. For example:

1. Closed Session

- a) Litigation Matter – Litigation Regarding a Property Located at 123 Example Street

4. Multiple Closed Meeting Discussions in One Meeting

Should it become necessary to address more than one closed meeting matter on one agenda, the agenda shall list each closed meeting matter separately. Following the closed meeting and once the open meeting has resumed, the Chair will then report out on each of the closed meeting matters in the open meeting.

5. Closed Meeting Minutes/Reports/Documents

Closed meeting reports shall use the standard report format and shall include a topic/title that will appear on the open meeting agenda. Report authors should consider using titles for closed meeting reports that provide as much information to the public as possible without releasing information that must remain confidential.

Closed meeting materials, including closed meeting reports, supplemental materials and draft closed meeting minutes will be circulated by the Clerk or CAO.

Closed meeting materials circulated in hard copy at the Council table will be printed on blue paper and marked "Confidential". Closed meeting materials circulated to Council electronically will be provided separately from open meeting material and will be marked "Confidential". It will be provided to Council in advance of the scheduled meeting.

**Part Two: During the Meeting**

6. Resolution to Move into a Closed Meeting

A resolution to move into a closed meeting must be in writing and must identify the time the body moved into the closed meeting, as well as the section of the *Municipal Act* that authorizes the closed meeting. In accordance with Section 239 (4) of the *Municipal Act*, the resolution must also state the general nature of the matter to be discussed in the closed meeting.

7. Discussion and Voting in Closed Meeting

It is the responsibility of the Chair to prohibit discussion of any matter that was not disclosed in the resolution authorizing the closed meeting.

Voting during a closed meeting is restricted to procedural matters, such as referring, tabling or deferring a matter, and providing instruction to staff.

Resolution wording must be given to the Clerk or their designate during the closed meeting for direction or instruction to staff, so that it is in writing to be included within the minutes and for reporting out in open.

8. Resolution to Adjourn Closed Meeting and Return to Open Meeting

At the conclusion of the discussion, the body must pass a written procedural resolution to adjourn the closed meeting and return to the open meeting.

**Part Three: After the Meeting**

9. Chair Reporting Out in Open Meeting

After the closed meeting ends and the open meeting resumes, the Chair shall publicly report that the matters discussed were those authorized by the resolution to move into closed meeting. The Chair shall report any votes that were taken in accordance with the procedural votes taken during the closed meeting. For example, the Chair would restate the general nature of the matter discussed and report that a resolution was passed providing instruction to staff.

10. Closed Meeting Minutes

Minutes are required for all closed meetings. In accordance with Section 239 (7) of the Municipal Act: "A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not".

The recording secretary for a closed meeting shall be the Clerk or an individual designated by the Clerk. The CAO shall determine which members of staff shall be present during a closed meeting.

At a minimum, the minutes of a closed meeting shall contain the following:

- a) The date, time, and place at which the meeting took place

## Schedule "A" to By-law 29-2024

- b) Those in attendance at the meeting
- c) The time the closed meeting was called to order
- d) Any disclosure of pecuniary interest
- e) The resolution to move into the closed meeting, including the time it took place, the section of the Municipal Act authorizing the closed meeting, and the general nature of the matter
- f) All resolutions passed while in the closed meeting
- g) The closed meeting adjournment resolution, including the time the open meeting resumed.
- h) The report out by the Chair
- i) The signature of the Chair and the Clerk or their designate.

### 11. Approval of Closed Meeting Minutes

Closed meeting minutes containing resolutions, decisions or directions will be approved by Council at a subsequent closed meeting. The closed meeting minutes will be approved in a closed meeting.

### 12. Confidential Documents Kept by the Clerk

All confidential documents, including closed meeting minutes, closed meeting resolutions, closed meeting reports, and confidential supplemental materials shall be kept in a secure location by the Clerk of the municipality.

## **8. Recording of Closed Meetings**

### 1. Procedure

- a) The Village Clerk, or assigned Village Office staff, shall commence the audio & video or audio only recording of all Council In-Camera meetings, with details regarding the date, time, location, and type of meeting.
- b) At the conclusion of each Council In-Camera meeting, the Village Clerk, or assigned Village Office staff, shall end the audio & video or audio only recording of all Council In-Camera meetings with details regarding the time of the passing of a motion to resume in public session and shall immediately thereafter stop the recording device.
- c) In those circumstances, where Council convenes in closed session multiple times, throughout one meeting, a separate recording will be made each time the Council resumes in closed session, following steps 1 and 2, above.



- d) All audio & video or audio only recording will be stored in a secure location or on a stand-alone encrypted server in a secure location, to the satisfaction of the Village Clerk.
- e) All audio & video or audio only recordings of closed meetings will be retained for a period of one year from the date of the meetings. The written Closed Council Minutes shall constitute the permanent official meeting record, in accordance with the Municipal Act, 2001, as amended, and any retention periods. If there is a discrepancy in the minutes, the recording will be used to only verify its accuracy by the meeting Clerk.
- f) The Village Clerk shall be authorized to release an audio & video or audio only recording of a closed meeting only to:
  - The Closed Meeting Investigator, only in those instances where they are relevant to a closed meeting investigation; and
  - The Village solicitor, or designate, for the purposes of litigation.

## 2. Exemption

Should the majority of Council wish to not record a closed session meeting, either video and audio or audio only, they may vote on a procedural motion at the beginning of a closed meeting to waive the policy and not record the meeting.

## 9. Public Disclosure

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 the report>.

## 10. Attendance at a Closed Meeting

Unless otherwise directed by Council, staff attendance at closed meetings is limited to the CAO and Clerk or their designates, and other staff at the discretion of the CAO. Staff should vacate the meeting once the relevant matter has been dealt with by Council.

Relevant professionals (ie. Village solicitor) are permitted to attend when invited.

## **11. Monitoring and Compliance**

The Clerk is responsible for monitoring matters pertaining to closed meetings and this policy.

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

## **12. Authority and Related Policies**

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