

IN-CAMERA DISCUSSIONS OF COUNCIL

What is in-camera?

In-camera is a legal term meaning “in private”. When a council goes in-camera, it means that the council meeting(s) (as defined in the *Municipal Government Act (MGA)*) is closed to the public.

Under what authority can a council go in-camera?

Section 197 of the *MGA* states that councils and council committees must conduct their meetings in public unless the matter to be discussed is within one of the exceptions to disclosure in Division 2 of Part 1 of the *Freedom of Information and Protection of Privacy (FOIPP) Act* (Sections 16 to 29). NOTE: Section 197(2.1) is the exception to the rule, allowing municipal planning commissions, subdivision authorities, development authorities and subdivision and development appeal boards to deliberate and make decisions in meetings closed to the public.

How to prepare for in-camera discussions?

In-camera discussions should be listed on the agenda for the meeting in which they are held. The agenda should contain a ‘Confidential’ heading and then provide a brief description of the topic and state the section of the *FOIPP Act* that allows the topic to be discussed in-camera. For example, “Personnel – Evaluation - CAO - *FOIPP Act* Section 17” could be used to describe conducting the performance appraisal of a chief administrative officer or “Legal – Arena Project - *FOIPP Act* Section 27” could describe discussions regarding a pending court case. Further information is not required.

How to record in-camera discussions?

A resolution of council is required to go in-camera to discuss matters covered by the exceptions to disclosure in the *FOIPP Act*. Any background information on the confidential items should be circulated and collected during the discussion.

It is strongly recommended that an in-camera discussion not be recorded as any notes or minutes taken during the discussion may be requested as part of a *FOIPP* request. The council meeting minutes should reflect that a motion was made to move into an in-camera session and then another to move out of the in-camera session and return to the open meeting.

Council members, the CAO and any others included in the in-camera discussion are required to keep in confidence what was discussed until the item is discussed at a meeting held in public.

Section 197(3) of the *MGA* prohibits the passing of a resolution or bylaw during an in-camera discussion (with the exception of a motion to revert to a public meeting). If a

direction or decision is reached in-camera, then a resolution must be made in the open meeting so that council's direction(s) are recorded and acted on.

Municipalities may have additional requirements outlined in their Procedure Bylaw that clarify in-camera discussions, such as identifying when they are held during the regular council meeting.

Who can attend an in camera discussion?

All members of Council, guests (at the discretion of council), and most times, the chief administrative officer may attend in-camera discussion. The media and general public cannot attend the closed discussion, but are welcome to return to the council meeting following the in-camera discussion.

What can be discussed in-camera?

The *FOIPP Act* outlines the discussion items that would allow a council to go in-camera, which include matters where a public disclosure could be harmful to:

- Third party business interests; (see Section 16)
- Third party personal privacy; (see Section 17)
- Individual or public safety; (see Sections 18 and 19)
- Law enforcement; (see Section 20)
- Intergovernmental relations; (see Sections 21, 22, 23 and 24) and
- Economic or other interests (see Sections 25, 26, 27, 28 and 29).

Public bodies should not:

- Reveal confidential employee evaluations;
- Disclose local public body confidences, or advice from officials; or
- Disclose information that is subject to any kind of legal privilege.

For example, a discussion regarding the employment of an individual should be held in-camera to protect the privacy of that individual. Also, preliminary meetings with developers (at their request/or councils discretion) describing a new land use development should be held in-camera (see Section 16).

What should not be discussed in-camera?

The *MGA* sets out clear requirements for municipal councils to conduct their business openly (except in very limited and specific circumstances discussed above). The powers of a municipal council are balanced by councils' accountability to the citizens who elect them. It is therefore essential that citizens are allowed to take an active interest in the development and direction of our local governments and express their views to their locally elected representatives.

As an elected body, councils should avoid conducting business in-camera. This includes discussion of difficult topics, such as:

- Budget deliberations
 - Tax i.e. assessments/mill rates, penalties

- Capital expenditures
- Any contentious issues
 - Sensitive local issues
 - Bylaw amendments i.e. Land use
 - Subdivision proposals
- Tax recovery i.e. reserve bids for auction.
- Discussions regarding the hiring of additional municipal staff and or the setting of salary ranges.

For more information on how the *FOIPP Act* affects municipalities, please visit the Service Alberta website at www.servicealberta.ca/FOIPP/documents/FAQ_Municipal.pdf.

This is an information summary only and has no legislative or legal sanction. For certainty, refer to the *Municipal Government Act* and the *Freedom of Information and Protection of Privacy Act*. Copies are available for purchase from Alberta Queen's Printer Bookstore or electronically at the website link below.

**5th Floor, Park Plaza Building
10611 – 98 Avenue
Edmonton AB T5K 2P7
Phone: 780- 427-4952**

www.qp.alberta.ca