

# **How open meeting laws apply to local boards like TLAB**

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# TLAB is a “local board” under the *City of Toronto Act, 2006*

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- TLAB is a Local Board of the City, as indicated by s. 145 of the *City of Toronto Act, 2006* (COTA)
- TLAB is not a City Board under s. 141 of COTA
- TLAB is not a corporation
- The TLAB’s business meetings will be held under the same meeting laws as City Council and its committees.

# TLAB will meet in Two Different Modes

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- **Business Meetings**

- Governed by COTA and the procedural by-law the TLAB adopts
- The same rules apply to any committee the TLAB may establish

- **Hearings**

- Governed by the *Statutory Powers and Procedures Act* (SPPA)

# **COTA requires TLAB to adopt a procedures by-law**

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- **COTA does not prescribe the content for business meetings but the procedures must comply with COTA provisions.**

# **COTA requires public notice for all meetings of the Board**

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- **The TLAB procedures should establish the method and standard for providing public notice**

# All Board meetings must be open to the public

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- “Open” means:
  - At a place ordinarily considered a public place
  - At a time ordinarily considered a time to conduct public business
  - Accessible in accordance with AODA
  - There is room/seating for the public
  - No barriers such as “buzzing through”, requirement for escorts, presentation of ID etc.

# Portions of a meeting may be “closed”

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- COTA establishes that only certain matters may be considered in closed or “*in camera*” sessions
  - Security of the property of the Board
  - Personal matters about identifiable individuals
  - Proposed or pending land acquisition or disposition
  - Labour relations & employee negotiations
  - Litigation or potential litigation
  - Receiving of advice subject to solicitor-client privilege
  - Education & training if no business is advanced; and
  - a matter in respect of which TLAB may hold a closed meeting under another Act (most likely SPPA).

# #1 – Security of the property of the City or Local Board

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- For example:
  - Information whose disclosure could reasonably be expected to prejudice the economic interests or the competitive position of the Board.
  - Information whose disclosure could reasonably be expected to be injurious to the financial interests of the Board
  - Information including the proposed plans, policies or projects of the Board if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.



## #2 - Personal Matters about an identifiable individual, including a City or Local Board employee

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- For example:
  - Matters relating to an individual's race, national or ethnic origin, colour, religion, age, sex, sexual orientation and marital or family status.
  - The education, criminal, medical or employment history of an identifiable individual
  - Any identifying number, symbol or other particular assigned to an individual
  - The address, telephone number, fingerprints or blood type of an individual.

## **#3 - Proposed or pending land acquisition/disposition by the City or Local Board**

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- This includes acquisition or disposition by way of lease.

# #4 - Labour Relations or Employee Negotiations

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- For example:
  - Positions, plans, procedures, criteria or instructions to be implemented during employee negotiations
  - Hiring, disciplinary or termination matters
  - Management-union negotiations during the collective bargaining process

## **#5 - Litigation or potential litigation, including matters before administrative tribunals, affecting the City or local board**

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- **Matters before all courts**
- **Matters before administrative tribunals such as the Ontario Municipal Board, the Ontario Labour Relations Board or other labour arbitrators, the Ontario Human Rights Commission, the Workplace Safety and Insurance Board etc.**

## #6 – Receiving of advice that is subject to solicitor-client privilege including necessary communications

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- Verbal or written legal advice, whether given in contemplation of or for use in litigation or not.
- To qualify advice must be from person acting as the board's solicitor
  - Does not apply to advice from people who happen to be lawyers
  - Does not apply to the relay of legal advice by non-lawyers

## #7 – Education/training of members (if no business is advanced)

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- Example:
  - Meeting of Councillors to provide Provincially-required training in the Ontario Clean Water Act
- This provision does not apply to “briefings” or “retreats”
- All other meeting rules apply

# #8 – Permitted under another Act

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- As noted “hearings” will be conducted in accordance with SPPA requirements
  - Under s.9(1) of the SPPA, meetings are to be open, but a tribunal such as TLAB may hold a closed hearing for portions dealing with two subjects.
  - The principle of the SPPA is that Tribunals should adhere to the principle that hearings are “open to the public”

# #8 – Permitted under another Act

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- The two subjects for potentially closed “hearings” are where:
  - matters involving public security may be disclosed; or
  - intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.



# A meeting must be closed to consider the following:

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- Interim reports or findings of the City or Provincial Ombudsman

# Meetings must begin and end in public

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- This applies even if all business on the agenda qualifies for a closed session
- Before meeting in closed session, COTA requires the board to adopt a resolution
  - Stating the general nature of the matter to be debated
  - The statutory exception relied upon to close the meeting
- After a closed session, the Board conducts its public debate on a matter

# No votes may be taken in closed session\*

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- Exceptions
  - Votes on procedural motions
  - Votes on instructions to officers, staff or agents
- All other votes must be conducted in public

# Improperly Closed Meetings-Risks

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- Any person who believes a meeting has been improperly closed may request that the City investigate
- The investigator makes a public report to the Board or Council with any recommendations they see fit
- City has retained Osgoode Hall Dean of Law Lorne Sossin as its meeting investigator
- Alternatively a person may make an application to a court or tribunal to have a decision quashed

# **COTA does not permit electronic meeting participation**

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- **COTA does not authorize electronic participation in meetings.**
- **Members must be present to be counted for quorum and to debate and vote**

# Quorum

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- A quorum of a majority of members must be present for business to proceed
- Quorum is not reduced by vacancies on the board
  - e.g. Quorum remains four even if 2 seats are vacant
- Quorum is reduced by Members declaring interests provided that at least 2 members are present.
  - e.g. Quorum is three if 2 members declare an interest in a matter

# Voting

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- The Chair votes
- Tie votes lose
- If any member requests it, the vote shall be recorded

# COTA requires a record of all meetings be made “without note or comment”

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- The Secretary will prepare minutes of Board and committee meetings
- Minutes are public
  - Exception: Minutes of closed sessions must be taken, but are not made public
- This means that your Secretary must be present for all sessions of a meeting.



# Members are bound by the MCIA

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- **Declarations of interest under MCIA**
  - Each member must make an independent determination
  - Members' circumstances are not subject of points of order or rulings by the Chair

# There are some changes to these rules currently before the Legislature

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- Bill 68, Modernizing Ontario's Municipal Legislation Act, 2016 is currently in second reading
  - Additional reasons for closing a meeting
  - Requirement for written declarations of interest under MCI
  - Additional powers for the Integrity Commissioner, including complaints under MCI

# Questions are welcome

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