

How open meeting laws apply to local boards like TLAB

By John D. Elvidge, Deputy City Clerk
Toronto Local Appeal Body Orientation
August 23, 2019



TLAB is a “city board” for the purposes of s. 190 of COTA

- TLAB is a City board
- 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

- 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 Procedures Act

COTA requires every city board to adopt a procedures by-law

- 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


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

All Board & committee meetings must be open to the public

- “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.

A portion of a meeting may be closed to discuss certain matters

- 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

- 
- Confidential Intergovernmental Information
 - Certain competitive information
 - Certain information about negotiations to be carried out

#1 – the security of the property of the City of the local board

- For example:
 - Information that compromises the security of physical premises
 - Information that compromises the security of IT systems or applications

#2 - personal matters about an identifiable individual, including a city employee or a local board employee

- 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 - a proposed or pending acquisition or disposition of land by the City or local board

- This includes acquisition or disposition by way of lease.

#4 - labour relations or employee negotiations

- 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

- 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 – the receiving of advice that is subject to solicitor-client privilege including communications necessary for that purpose

- 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 or training of members if no business is advanced

- 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 - confidential intergovernmental information

- information supplied in confidence to the local board by Canada, a province or territory or a Crown agency of any of them;

#9 – certain competitive information

- a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the City 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;
- a trade secret or scientific, technical, commercial or financial information that belongs to the City or local board and has monetary value or potential monetary value; or

#10 – information concerning certain negotiations

- 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 City or local board.



A meeting must be closed to consider the following:

- FOI requests
- Interim reports or findings of the City or Provincial Ombudsman

Meetings must begin and end in public

- 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*

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

There are risks associated with improperly closed meetings

- 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
- Alternatively a person may make an application to a court or tribunal to have a decision quashed

COTA does not permit electronic participation in meetings

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

Quorum

- 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

- 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”

- 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 Municipal Conflict of Interest Act

- 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
 - Must be made orally and in writing* NEW
 - Written declaration must be available for inspection
*NEW

Questions are welcome

