

POLICY
ADMISSION OF THE PUBLIC
AND THE MEDIA TO MEETINGS
AND THE MARKING OF ITEMS
OF BUSINESS AS BEING
CONFIDENTIAL

[Approved by Council : C 10/04/03]

COUNCIL'S POLICY ON THE CLOSURE OF MEETINGS AND THE MARKING OF CONFIDENTIAL ITEMS

Framework

1. The City of Cape Town ("the City") is committed to the values of openness, transparency and accountability.
2. Section 160(7) of the Constitution of the Republic of South Africa, Act 108 of 1996 ("the Constitution"), as well as section 20(1)(a) of Local Government: Municipal Systems Act, 32 of 2000 ("the Systems Act"), provide that a Municipal Council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so, having regard to the nature of the business being transacted.
3. The Systems Act further provides, in section 20(1)(b), that a by-law or a resolution of the Council must specify the circumstances in which the Council or a committee may close a meeting to the public. The by-law or resolution must comply with the standard set in section 20(1)(a), namely that it is reasonable to close the meeting, having regard to the nature of the business being transacted.
4. Section 20(2) of the Systems Act adds that a Council or its committees may not exclude the public, including the media, when considering or voting on any of the following matters:
 - 4.1 a draft by-law tabled in the Council;
 - 4.2 a budget tabled in the Council;
 - 4.3 the Municipality's draft integrated development plan, or any amendment of the plan, tabled in the Council;
 - 4.4 the Municipality's draft performance management system, or any amendment of the system, tabled in the Council;
 - 4.5 the decision to enter into a service delivery agreement referred to in Section 76(b), i.e. an agreement to provide a municipal service through an external mechanism;
 - 4.6 any other matter prescribed by regulation in terms of the Systems Act.

5. In terms of section 20(3) of the Systems Act, an executive committee or a mayoral committee (as mentioned in sections 42 and 60 respectively of the Local Government: Municipal Structures Act, 117 of 1998) may close any or all of its meetings to the public, including the media, when it is reasonable to do so having regard to the nature of the business being transacted. There is no requirement that the closure be authorized by a Council resolution or a by-law and there is no list of circumstances in which meetings of an executive committee or any mayoral committee must be open to the public. However the Council is not precluded from including the executive committee or any mayoral committee within the scope of its by-law or resolution on the closure of meetings. In the circumstances this matter is left to the executive committee and/or mayoral committee (if established) to consider.
6. This policy is to a large extent based on the provisions of the Promotion of Access to Information Act, 2 of 2000 ("the Promotion of Access to Information Act"). It follows that the relevant sections of that Act are a guide to the interpretation of this policy.
7. This policy replaces all provisions in the Rules of Order of the Council and its committees relating to the marking of items of business as confidential and to the closure of meetings.
8. Council has resolved to adopt the grounds set out below, as circumstances in which it would be reasonable to close a meeting, or part of a meeting, of the Council, any of its committees, and its Sub-Councils.

Grounds for closure of a meeting

9. Privacy

- 9.1 A meeting must be closed if failure to do so will result in unreasonable disclosure of personal information about a third party who is a natural person, including a deceased individual.
- 9.2 This ground of closure will not be met if -
 - 9.2.1 the individual has furnished written consent to disclosure of the information to the public;
 - 9.2.2 the information was given to the City by the individual to whom it relates and the individual was informed by or on behalf of the City, prior to the disclosure of the information, that it belongs to

a class of information that would, or might, be made available to the public;

9.2.3 the information is already publicly available;

9.2.4 the information is about an individual who was or is an official of a public body and which relates to the position or functions of the individual, including but not limited to; -

9.2.4.1 the fact that the individual is or was an official of that public body;

9.2.4.2 the title, work address, work phone number and other similar particulars of the individual;

9.2.4.3 the classification, salary scale, remuneration and responsibilities of the position held or services performed by the individual; and

9.2.4.4 the name of the individual on a record prepared by the individual in the course of employment.

10. Commercial information

10.1 A meeting must be closed if failure to do so will result in disclosure of the following information:

10.1.1 trade secrets of a third party;

10.1.2 financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; and

10.1.3 information supplied in confidence by a third party, which could reasonably be expected to put that third party at a disadvantage in contractual or other negotiations, or to prejudice that third party in commercial competition.

10.2 The grounds of closure in 10.1.1 and 10.1.2 also apply to commercial information of the City, with the changes required by the context, but closure of a meeting in such circumstances is discretionary.

- 10.3 This ground of closure will not be met if the information –
- 10.3.1 is already publicly available;
 - 10.3.2 is about a third party who has consented in writing to the disclosure of the information; or
 - 10.3.3 is about the results of product or environmental testing or investigation supplied by a third party or the result of any such testing or investigation carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk. The results referred to do not include the results of preliminary testing or investigation for the purpose of developing methods of testing or investigation.

11. Confidential information other than commercial information

- 11.1 A meeting must be closed if failure to do so would result in the disclosure of information (other than commercial information) in breach of a duty of confidence owed to a third party in terms of an agreement.
- 11.2 A meeting may be closed if failure to do so would result in disclosure of information that was supplied in confidence by a third party -
 - 11.2.1 the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and
 - 11.2.2 if it is in the public interest that similar information, or information from the same source, should continue to be supplied.
- 11.3 The grounds of closure in 11.1 and 11.2 will not be met if the information –
 - 11.3.1 is already publicly available;
 - 11.3.2 is about a third party who has consented in writing to the disclosure of the information.

12. Safety of individuals and protection of property

- 12.1 A meeting must be closed if failure to do so could reasonably be expected to endanger the life or physical safety of an individual.
- 12.2 A meeting may be closed if failure to do so would be likely to prejudice or impair -
 - 12.2.1 the security of –
 - 12.2.1.1 a building, structure, or system, including but not limited to, a computer or communication system;
 - 12.2.1.2 a means of transport; or
 - 12.2.1.3 any other property; or
 - 12.2.2 methods, systems, plans or procedures for the protection of-
 - 12.2.2.1 an individual in accordance with a witness protection scheme;
 - 12.2.2.2 the safety of the public, or any part of the public; or
 - 12.2.2.3 the security of property referred to in clause 12.2.1.

13. Law Enforcement and legal proceedings

- 13.1 A meeting must be closed if failure to do so would result in the disclosure of information the disclosure of which is prohibited in terms of section 60(14) of the Criminal Procedure Act, 51 of 1977.
- 13.2 A meeting may be closed if failure to do so would result in disclosure of information –
 - 13.2.1 which would reveal the methods, techniques, procedures or guidelines for the prevention, detection, curtailment or investigation or a contravention or possible contravention of the law or the prosecution of offenders, the disclosure of which could reasonably be expected to prejudice their effectiveness or lead to the circumvention of the law or facilitate the commission of an offence;

13.2.2 where the prosecution of an alleged offender is being prepared or about to commence or pending and the disclosure of the information could reasonably be expected to impede the prosecution or to result in a miscarriage of justice in that prosecution;

13.2.3 the disclosure of which could reasonably be expected to: -

13.2.3.1 prejudice the investigation of a contravention or possible contravention of the law, which investigation is about to commence or is in progress or, if it has been suspended or terminated, is likely to be resumed;

13.2.3.2 reveal the identity, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;

13.2.3.3 result in the intimidation or coercion of a witness, or a person who might be or has been called as a witness, in criminal proceedings or other proceedings to enforce the law;

13.2.3.4 facilitate the commission of a contravention of the law;

13.2.3.5 prejudice or impair the fairness of a trial or the impartiality of an adjudication.

14. Legal privilege

14.1 A meeting must be closed if failure to do so would result in disclosure of information which is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

14.2 Information subject to privilege includes, but is not limited to, any confidential communication between the City and its legal advisers, including its salaried legal advisers. Only the Council or Executive Committee, or persons duly authorised to do so by the Council or Executive Committee, may waive

the City's privilege. Any waiver of privilege must be recorded in writing at the time it is done or as soon as possible thereafter.

15. Security

A meeting must be closed if failure to do so would result in disclosure of information the disclosure of which could reasonably be expected to cause prejudice to security of the City, or any office bearer or employee thereof.

16. Economic interests and financial welfare of the City

A meeting may be closed if failure to do so would result in disclosure of information likely to materially jeopardise the economic interests or financial welfare of the City.

17. Research information

17.1 A meeting must be closed if failure to do so would result in disclosure of information about research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose the third party, a person that is or will be carrying out the research on behalf of the third party, or the subject matter of the research, to serious disadvantage.

17.2 This ground of closure also applies to research information of the City.

18. Operations of the City

18.1 A meeting may in exceptional circumstances be closed if failure to do so would frustrate a deliberative process of the City by inhibiting –

18.1.1 the candid communication of an opinion, advice, report or recommendation or the candid conduct of a consultation, discussion or deliberation; or

18.1.2 the supply in similar situations in the future of candid opinions, advice, reports or recommendations or the conduct in similar situations in the future of candid consultations, discussions or deliberations, and it is in the public interest that they be candidly supplied or conducted.

18.2 A meeting must be closed if failure to do so to do so would result in disclosure of information –

- 18.2.1 which could reasonably be expected to jeopardise the effectiveness of a testing, examining or auditing procedure or method used by the City;
- 18.2.2 containing evaluative material, if disclosure would breach an express or implied promise of confidentiality made to the person who supplied the material.
- 18.3 Evaluative material is an evaluation or opinion prepared for the purpose of determining –
 - 18.3.1 the suitability, eligibility, or qualifications of the person to whom or which the evaluation or opinion relates –
 - 18.3.1.1 for employment or for appointment to office;
 - 18.3.1.2 for promotion in employment or office or for continuance in employment of office;
 - 18.3.1.3 for removal from employment or office;
 - 18.3.1.4 for the awarding of a tender or contract; or
 - 18.3.1.5 for the awarding of a scholarship, award, bursary, honour or similar benefit; or
 - 18.3.2 whether any tender, contract, scholarship, award, bursary, honour or similar benefit should be continued, modified, cancelled or renewed.

Public interest

- 19. Notwithstanding any of the grounds of closure outlined above, a meeting must be **open** to the public if –
 - 19.1 that would result in the disclosure of evidence of –
 - 19.1.1 a substantial contravention of, or failure to comply with, the law; or
 - 19.1.2 an imminent and serious public safety or environmental risk; and

- 19.2 the public interest in the disclosure clearly outweighs the harm of disclosure.

Procedure

20. Subject to clause 21 , a meeting may only be closed –
- 20.1 if a business item on an agenda to which a ground of closure contained in this policy applies has been marked confidential by a person referred to in clause 22; and
- 20.2 for the duration of the consideration of such business item.
21. Notwithstanding clause 20, the Council or a committee in question may by a majority of at least two thirds of the members present and voting resolve to close a meeting for the duration of the consideration of a business item that has not been marked confidential provided that the reason for the closure of the meeting falls within one of the grounds of closure of meetings contained in this policy.
22. The City Manager, or a person duly authorized by him or her in writing, is hereby delegated the authority to mark a business item on an agenda of the Council or its committees as confidential.
23. When marking a business item on an agenda as confidential, the City Manager shall specify the ground of closure, in terms of this policy, upon which the decision is based and shall motivate why the ground of closure applies.
24. The documentation relating to a business item that has been marked confidential:
- 24.1 shall be treated as confidential by all employees of the City and the persons to whom it is distributed for the purposes of the meeting;
- 24.2 and shall not be available for inspection by members of the public or the media,
- until the meeting has resolved that it is no longer confidential.
25. Prior to considering a business item on an agenda that has been marked confidential, Council or the relevant committee shall first determine whether the item should remain confidential and if the decision is made that it should not remain confidential, the part of the meeting dealing with that business item shall no longer

be closed and the documentation relating to that business item shall be available for inspection by members of the public or the media.

Training

26. The City shall ensure that any officials tasked with implementing this policy receive adequate training on the provisions of the Promotion of Access to Information Act.

Review

27. This policy shall be reviewed within one year of its adoption, and as part of the review, consideration shall be given to the desirability of passing a by-law governing closure of meetings of the Council and its committees.