

Agenda Item	4- Proposed Changes to By-Law No. 2
Purpose	<p>For Governance Committee review and recommendation to the Board for approval.</p> <p>A new law (Bill 68 - Modernizing Ontario's Municipal Legislation Act, 2017) amends open meeting provisions of the <i>City of Toronto Act</i>, which apply to Waterfront Toronto.</p> <p>Management is proposing changes to our open meeting by-law, to incorporate the Bill 68 amendments. Redline and clean versions attached.</p>
Key Message	<p>Key area (s) of interest (see redline version):</p> <ul style="list-style-type: none"> • 4 additional grounds for closing meetings (s.6.1(1)(i)–(l)) • Clarification to definition of meeting (s.1.1(8))
Areas of note/ Key issues	See Memo and mark-up and clean copies of proposed revised By-Law No. 2 attached.
Expected Outcome	<p>Governance Committee to understand changes to By-Law No. 2 and implications of them to Board and committee meetings.</p> <p>Governance Committee to recommend revised By-Law No. 2 for approval by the Board at the December 7 meeting.</p>
Key Takeaways/ Next Steps	<p>Revised By-Law No. 2 to be brought to the Board for approval at December 7 meeting.</p> <p>If approved, revised By-Law No. 2 to be effective January 1, 2018.</p>



WATERFRONTToronto

MEMORANDUM

To: Governance Committee, Waterfront Toronto

From: Sameer Akhtar, Senior Legal Counsel, Waterfront Toronto

Date: November 14, 2017

Re: **Amendments to By-Law No. 2 to reflect changes to the *City of Toronto Act***

Background:

Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*, was recently passed by the Ontario legislature. This bill makes certain changes to the *City of Toronto Act, 2006* ("COTA") that will be effective January 1, 2018.

Since section 190 of the COTA, which deals with open meetings, applies "with necessary modifications" to meetings of the Waterfront Toronto (the "Corporation") board¹, such changes should be reflected in the Corporation's open meeting by-law, By-Law No. 2.

This also is an opportunity make additional modifications to By-Law No. 2 to further align it to the provisions of section 190 of COTA.

These changes will ensure openness and transparency of meetings and facilitate effective communication and decision-making by directors, in accordance with statutory obligations.

Summary of relevant changes to COTA under Bill 68:

1. Clarification of definition of "meeting":

The definition of "meeting" now expressly requires that:

- a quorum of members be present; and
- such members discuss or deal with board or committee matters.

In other words, if there is no quorum for a meeting, or if it does not deal with board / committee business, then it does not fit within the definition of a meeting under COTA, and consequently, is not subject to open meeting rules.

2. Four additional grounds on which a meeting (or portion thereof) may be closed to the public:

- 1) Confidential government (federal, provincial or Crown agency) information;

¹ section 6.(4) of the *Toronto Waterfront Revitalization Corporation Act, 2002*

- 2) Confidential third party commercially-sensitive information (e.g. technical or financial information);
- 3) Commercially-sensitive information belonging to the Corporation (e.g. technical or financial information) that may have monetary value; and
- 4) Plans, strategies or instructions relating to negotiations of the Corporation.

Proposed changes to By-Law No. 2

See attached mark-up of proposed changes to By-Law No. 2, to be effective on January 1, 2018, consistent with the effective date of Bill 68.

(A 'clean' version of the revised by-law is also provided.)

- The highlighting indicates changes that relate directly to amendments under Bill 68.
- The other changes are being proposed to more closely align the language of By-Law No. 2 to provisions that already exist in section 190 of the COTA, or for greater clarity or readability.

BY-LAW NO. 2

concerning public access to meetings of

Toronto Waterfront Revitalization Corporation

(hereinafter referred to as the "Corporation")

SECTION 1 - INTERPRETATION

1.1 Definitions

In this By-Law:

- (1) *Act* means the *Toronto Waterfront Revitalization Corporation Act*, 2002, S.O. 2002, c.28 as from time to time amended and every statute that may be substituted therefor and includes the regulations made under the Act as from time to time amended;
- (2) *Board* means the board of directors of the Corporation;
- (3) *Chair* means, as applicable, the chair of the Board, a person who chairs a Committee;
- (4) *Closed Meeting Matter* means any matter which may be properly dealt with at a Meeting or part of a Meeting which is closed to the Public;
- (5) *Committee* means any committee of the Board;
- (6) *Corporate Secretary* means the person designated by the Board to act as secretary to the Board or any Committee;
- (7) *Director* means a director of the Corporation;
- (8) *Meeting* means any regular, special or other meeting of the Board or of a Committee ~~of either of them.~~ (“reunion”), where,
 - (a) a quorum of members is present, and
 - (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the Board or Committee;
- ~~(9) *Open Meeting Matter* means any matter which is dealt with at a Meeting which is open to the Public;~~
- ~~(10)~~(9) *Public* means members of the public, including the media; and
- ~~(11)~~(10) *Website* will mean the Corporation's domain on the World Wide Web, designated by the Uniform Resource Locator, <http://www.waterfrontoronto.ca> or its successor.

SECTION 2 – PURPOSE

2.1 Purpose

The Act provides that, in order to ensure openness and transparency, the Public will be able to observe Meetings. The Act also provides for exceptions, when the Directors are permitted or required to address certain confidential or sensitive matters in private. This By-Law sets out the Corporation's policies on how its Meetings will be held.

SECTION 3 - MEETINGS

3.1 Open Meetings

Subject to the Act and this By-Law, all Meetings will be open to the Public.

3.2 Notice

The date, time and place of Meetings will be posted in advance on the Website.

3.3 Agenda Items

Agenda items will be scheduled and dealt with in sequence for the convenience of the Public absent a direction or resolution by the Board or Committee.

3.4 Voting at Open Portion of Meetings

The Public is entitled to be present during the taking of all votes at a Meeting unless the vote is a vote that may be taken in a closed meeting as provided in Section 6.4.

3.5 Observers

The Public are observers at Meetings and do not have participation status unless invited to participate by the Chair.

3.6 Disruptive Behaviour

The Board or a Committee, as the case may be, reserves the right to require any member of the Public to leave any Meeting for improper conduct or if they attempt to participate in any part of a Meeting without the invitation of the Chair.

SECTION 4 – MEETING MATERIALS

4.1 Agendas and Minutes

Subject to Section 6.6, the agendas and minutes of Board and Committee Meetings, will be made available on the Website.

4.2 Materials from the Public

Members of the Public may submit to the Corporate Secretary materials in respect of a Meeting.

SECTION 5 - RECORDINGS

5.1 Recordings

Except for Meetings referred to in Section 6, broadcasting, video or other recordings may be made of Meetings, with prior notice to the Board or the Committee. In the event of any such recording, the Board or Committee, as the case may be, may direct that the recording be made in such a way that is not disruptive to the conduct of the Meeting. If the person making any such recording fails to comply with any such direction, the Board or Committee may require the person making the recording to cease the recording failing which, the Board or Committee take such further action as it feels appropriate to ensure the continuance of the Meeting, without disruption.

SECTION 6- CLOSED MEETING MATTERS

6.1 Closed Meeting Matters

- (1) A Meeting or part of a Meeting may be closed to the Public where the subject matter being addressed involves any of the following ~~or any other matter permitted by law~~:
 - (a) The security of the property of the Corporation;
 - (b) Personal matters about an identifiable individual, including employees of the Corporation;
 - (c) A proposed or pending acquisition or disposition of land;
 - (d) Labour relations or employee negotiations;
 - (e) Litigation or potential litigation, including matters before administrative tribunals, affecting the Corporation;
 - (f) Advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
 - (g) Educating or training of ~~its Board or Committee~~ members if, 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 ~~Board or Committee~~ Corporation;
 - (h) Any matter in respect of which the ~~Corporation Board or Committee~~ is authorized under legislation other than the Act to conduct a Meeting or a portion of a Meeting on a closed basis;

- (i) Information explicitly supplied in confidence to the Corporation by Canada, a province or territory or a Crown agency of any of them;
- (j) A trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the Corporation, 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;
- (k) A trade secret or scientific, technical, commercial or financial information that belongs to the Corporation and has monetary value or potential monetary value;
- (l) 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 Corporation; or
- (m) The consideration of whether any subject matter involves a matter referred to in clauses 6.1(1)(a) to 6.1(1)(h) and whether to exclude the Public from the discussion of such matters; ~~and~~.

~~(2) — A Meeting at which Directors comprise less than fifty percent of those persons in attendance and such Meeting is not called to discuss the business of the Corporation, is not a Meeting for the purposes of this By-Law and need not be open to the Public.~~

- (2) A Meeting or part of a Meeting shall be closed to the Public where the subject matter being addressed involves any of the following:
 - (a) A request under the Corporation's Freedom of Information Policy, or under any applicable freedom of information legislation that may apply to the Corporation or the Board; or
 - (b) An ongoing investigation respecting the Corporation, including an investigation pursuant to section 6.7.

6.2 Attendance at Closed Portions of Meetings

- (1) Attendance at the portion of a Meeting in respect of a Closed Meeting Matter is restricted to Directors and those specifically invited by the Chair.
- (2) Attendees at a Meeting who are not permitted to attend a portion of a Meeting in respect of a Closed Meeting Matter must promptly withdraw, and may return at the conclusion of the closed portion of the Meeting.

6.3 Resolution to Hold Closed Meetings

- (1) Before holding a Meeting or part of a Meeting that is to be closed to the Public, the Board or Committee, as the case may be, shall state by resolution the fact of holding of the closed Meeting and the general nature of the matter to be considered at the closed Meeting.

6.4 Voting at Closed Portions of Meetings

A vote may be taken during a closed Meeting if:

- (a) Subsection 6.1(1) or 6.1(2) permits or requires the Meeting to be closed to the Public, and
- (b) The vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the Corporation, or persons retained by; or under a contract ~~to,~~with the Corporation.

6.5 Record of Meeting

The Board or Committee, as the case may be, shall record, without note or comment, all resolutions, decisions and other proceedings at a Meeting, whether it is closed to the Public or not.

6.6 Confidentiality of Closed Meeting Matters

Except as required by law or unless the Board or Committee directs otherwise, business conducted during closed proceedings, and deliberations or decisions made during those proceedings, will not be disclosed to anyone not present other than to Directors or Committee members, as the case may be.

6.7 Appointment of an Investigator

The Corporation may appoint an investigator who has the function to investigate; in an independent manner, on a complaint made to him or her by any person, whether the Corporation has complied with ~~subsection 6.1(1) above~~Section 6 in respect of a Meeting or part of a Meeting that was closed to the Public.

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 - (a) a quorum of members is present, and
 - (b) members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the Board or Committee;
- (9) **Public** means members of the public, including the media; and
- (10) **Website** will mean the Corporation's domain on the World Wide Web, designated by the Uniform Resource Locator, <http://www.waterfrontoronto.ca> or its successor.

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 - (f) Advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
 - (g) Educating or training of Board or Committee members if, 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 Board or Committee;
 - (h) Any matter in respect of which the Board or Committee is authorized under legislation other than the Act to conduct a Meeting or a portion of a Meeting on a closed basis;

- (i) Information explicitly supplied in confidence to the Corporation by Canada, a province or territory or a Crown agency of any of them;
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 - (k) A trade secret or scientific, technical, commercial or financial information that belongs to the Corporation and has monetary value or potential monetary value;
 - (l) 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 Corporation; or
 - (m) The consideration of whether any subject matter involves a matter referred to in clauses 6.1(1)(a) to 6.1(1)(l) and whether to exclude the Public from the discussion of such matters.
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