

<b>TO:</b>	<b>CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON MARCH 7, 2017</b>
<b>FROM:</b>	<b>CATHY SAUNDERS CITY CLERK</b>
<b>SUBJECT</b>	<b>AUDIO RECORDING OF MUNICIPAL COUNCIL AND STANDING COMMITTEES IN CLOSED SESSION MEETINGS</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the City Clerk the attached proposed by-law (Appendix "A") BE INTRODUCED at the Municipal Council meeting to be held on March 21, 2017, to adopt a new Council Policy with respect to the audio recording of Municipal Council and Standing Committee In Closed Session meetings.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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None.

<b>BACKGROUND</b>
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At its meeting held on October 11, 2016, the Municipal Council resolved:

"That the Civic Administration BE DIRECTED to take the necessary steps to implement audio recording of closed meeting sessions, which would include a report back on the necessary policies and procedures, etc. that would need to be put in place as part of the implementation process."

A scan of the practices and policies of other Ontario municipalities found that there are at least seventeen municipalities that have implemented a similar practice. The majority of these municipalities are smaller municipalities, with a population of less than 50,000. None of these municipalities have provided any detail as to positive or negative impacts arising from the implementation of this practice. Additionally, while the City of Thunder Bay implemented closed session recordings from 2000 to 2003, the practice was discontinued by the incoming Council in 2003.

The Ontario Ombudsman's office routinely recommends the recording of closed meetings in its annual reports and investigation reports as it is their belief that the availability of an audio record greatly assists their investigation process.

## DISCUSSION

It is the role of the Clerk, in accordance with the *Municipal Act, 2001*, S.O. 2001, c. 25, section 228.(1) (a) "to record, without note or comment, all resolutions, decisions and other proceedings of the council;". The potential audio recording of Municipal Council and Standing Committee in closed session meetings would be supplemental to the aforementioned record. The written minutes/reports prepared by the City Clerk would continue to be considered the 'official record' of a meeting (in accordance with section 239(7) and 239(8) of the *Municipal Act, 2001*), and would be permanently retained in hard copy in accordance with the City of London's Records Retention By-law.

In keeping with what the City Clerk's Office believes to be the Municipal Council's intent, audio recordings of closed meetings, in full or in part, would be used solely for the purpose of providing the Closed Meeting Investigator with relevant information pertaining to a closed meeting investigation, unless the Municipal Council explicitly directs the City Clerk to release an audio recording, in full or in part, for any other specific purpose deemed by the City Council to be in the best interests of The Corporation of the City of London. It should be noted that the current practice of the City Clerk is to redact all portions of closed meeting records that are not relevant to an investigation by the Closed Meeting Investigator, and are subject to privilege. The same principle would be applied to audio recordings. Only those portions of the recording that are relevant to the investigation, and are not subject to privilege, would be disclosed to the Closed Meeting Investigator.

It is noted however, that once the recordings are created that access to the recordings may be sought under the *Municipal Freedom of Information and Protection of Privacy Act* (subject to exceptions in the freedom of information process), and any other relevant legislation and/or a Court, Arbitration or other Order.

### Implementation

A proposed Council Policy governing the audio recording Municipal City Council and Standing Committee In Closed Session meetings, as well as access to and retention of those recordings, is attached for consideration. A retention period of one year from the date of the meeting is recommended for these audio recordings as they would not constitute the formal record of the meetings. The City Clerk would be authorized to disclose the audio recordings to:

- a) the Closed Meeting Investigator, only in those instances where they are relevant to a closed meeting investigation and do not breach solicitor-client, or other, privilege;
- b) the City Solicitor, or designate, for the purpose of providing solicitor-client advice with respect to the contents of a recording; and,
- c) any additional party authorized by the Municipal Council.

An audio recording of a meeting does present the challenge of identifying a speaker solely by voice, in the absence of a Chair not specifically identifying each speaker. However, for the purposes of a Closed Meeting Investigation, it is the nature of the business, versus the name of the speaker, which is key to determining whether a closed meeting was or was not conducted in accordance with the closed meeting provisions of the *Municipal Act, 2001*. The written record of the Clerk would be relied upon to identify the parties in attendance at a closed meeting of Municipal Council or of a Standing Committee.

### Equipment

The City Clerk's Office is working with Information Technology Services to obtain the appropriate recording equipment. The purchase and maintenance of this equipment will be accommodated within the existing Operating Budget of the City Clerk's Office.

The equipment will not provide any broadcast outside of the meeting room during recording, or when the recording is paused or stopped. This is specifically noted based on the best practice utilized in the City of London Provincial Offenses Court. Additionally, access to the equipment will be limited to only those staff authorized by the City Clerk in order to carry out their secretariat roles and all audio files will be stored in a secure manner and location.

<b>CONCLUSION</b>
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The audio recording of Municipal Council and Standing Committees In Closed Session meetings will assist the Closed Meeting Investigator in investigating closed meeting complaints, should any arise. The proposed Policy addresses the collection, retention and access to audio recordings of closed meetings. The written minutes and reports prepared by the City Clerk, in accordance with the requirements of the *Municipal Act, 2001*, shall remain the official record of a City Council or Standing Committee meeting.

<b>PREPEARED BY:</b>	<b>RECOMMENDED BY:</b>
<b>BARB WESTLAKE-POWER MANAGER, LEGISLATIVE SERVICES</b>	<b>CATHY SAUNDERS CITY CLERK</b>

**Appendix “A”**

Bill No.  
2017

By-law No. A.-

A by-law to adopt a Council Policy entitled “Audio Recording of Municipal Council and Standing Committee In Closed Session Meetings”.

WHEREAS the Council of The Corporation of the City of London wishes to enact a policy and procedure to provide for audio recording of Municipal Council and Standing Committee In Closed Session meetings;

AND WHEREAS section 5(3) of the *Municipal Act, 2001*, as amended, provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Council Policy entitled “Audio Recording of Municipal Council and Standing Committee In Closed Session Meetings”, attached hereto as Schedule “A”, is hereby adopted.
2. This by-law comes into force on the date it is passed.

PASSED in Open Council on , 2017.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading –  
Second Reading –  
Third Reading –

## Schedule "A"

### Policy for the Audio Recording of Municipal Council and Standing Committee In Closed Session meetings

All Municipal Council and Standing Committee In Closed Session meetings shall be audio recorded by the City Clerk, or assigned City Clerk's Office staff, in accordance with the following procedures, for the purpose of having an audio recording to assist with any closed meeting investigation:

1. The City Clerk, or assigned City Clerk's Office staff, shall commence the audio recording of all Municipal Council or Standing Committee In Closed Session meetings, with details regarding the date, time, location and type of meeting.
2. At the conclusion of each Municipal Council or Standing Committee In Closed Session meeting, the City Clerk, or assigned City Clerk's Office staff, shall end the audio recording of all Municipal Council or Standing Committee In Closed Session meetings with details regarding the time of the passing of a motion to resume in public session and shall immediately thereafter stop the recording device.
3. In those circumstances where Municipal Council or a Standing Committee convenes in closed session multiple times, throughout one meeting, a separate recording will be made each time the Municipal Council or a Standing Committee resumes in closed session, following steps 1 and 2, above.
4. All audio recordings will be transferred from the audio recording device to a secure location, to the satisfaction of the City Clerk. The recording device shall also be stored in a secure location to the satisfaction of the City Clerk.
5. All audio recordings of closed meetings will be retained for a period of one year from the date of the meetings. The written Municipal Council Minutes and Standing Committee Reports shall constitute the permanent official meeting record, in accordance with the *Municipal Act, 2001* and the City of London's Records Retention By-law.
6. The City Clerk shall be authorized to release an audio recording of a closed meeting only to:
  - a) the Closed Meeting Investigator, only in those instances where they are relevant to a closed meeting investigation and do not breach solicitor-client, or other, privilege;
  - b) the City Solicitor, or designate, for the purpose of providing solicitor-client advice with respect to the contents of a recording; and,
  - c) any additional party authorized by the Municipal Council.