

What Is a Closed Meeting and Why Do We Have Them?

By: Chris Branch, County Clerk; October 20, 2023

While closed meetings may seem to go against government transparency, they are very important, necessary, and highly regulated by State Code, specifically in the [Freedom of Information Act](#) (FOIA). Closed meetings can only be called as part of a public meeting – in other words, the public will always know when one is happening. You'll also know why because the reason must be publicly stated when a board member makes a motion to enter into closed meeting. It may sound like mumbo-jumbo but listen carefully and you'll hear the "why". There are only a few reasons a public body (like the Board of Supervisors, Planning Commission, etc.) can call a closed meeting according to [Section 2.2-3711\(A\)](#) of the Code of Virginia. These are the main ones that apply to local government:

- (A)(1) **Personnel Matters** – this includes appointments to boards and commissions, interviews conducted by a public body for employment, and some matters relating to a specific public officer, appointee, or employee. When an individual applies for a position – whether it be volunteer or paid – their application information is confidential until they are appointed or hired. Any conversations the public body may have regarding the appointment or hiring are also confidential. This is much like when you apply for a job and go to an interview. The conversations HR and other company officials have regarding their thoughts on whether you are suited to the position are confidential and not broadcast to the entire company or the public.
- (A)(2) **Public Property** – discussions on the purchase or sale of public property is kept confidential during the bargaining and negotiation process. Once negotiations are complete, the prospective sale or purchase can be discussed publicly since it can no longer harm the strategy of the County or the buyer/seller of the property. When disposing of a property, the motion must include the name of the publicly held property so you'll know, in general terms, what's being considered.
- (A)(4) **Protection of the Privacy of Individuals** – discussions of any personal matter which is not related to public business can be done in closed meeting to protect the person's privacy. It's good to keep in mind that all people's personal information is confidential. It is only when it is related to public business that it becomes public information. I've never heard this exemption used in King William County.
- (A)(5) **Prospective Business or Industry or Expansions of Existing Business or Industry** – like discussions on the purchase or sale of public property, these discussions are kept confidential and done in closed meeting only if the information has not been made public. Some businesses may require board members and staff to sign confidentiality agreements to ensure their plans are not leaked to the public. This offers protection both to the County and the business/industry as negotiations are made.
- (A)(6) **Investing of Public Funds** – these discussions can only take place in closed meeting when there is competition or bargaining involved, and if discussion in open session would adversely affect the financial interest of the County. If those conditions are not met, the matter must be discussed publicly.
- (A)(7) **Legal Matters** – A7 only applies to matters of actual or probable litigation involving the County when the Board needs to discuss things with legal counsel which, if done in open meeting, could negatively affect their litigation position or negotiating strategy. Plain English – either we are being sued, we are suing someone, or we might be sued/sue someone and we need to talk to the lawyer in private because talking to him in public could give the other party an advantage.

(A)(8) **Legal Matters** – while the title is the same as above, this exemption allows the public body to seek legal counsel's advice on specific legal matters not related to litigation. In this case, the legal matter must be identified in general terms when the motion is made.

(A)(14) **Hazardous Waste Siting** - to discuss the terms, conditions, and provisions of a hazardous waste siting agreement after a finding in open meeting that an open meeting will have an adverse effect upon the negotiating position of the board or the establishment of the terms, conditions, and provisions of the siting agreement, or both. Plain English – if a hazardous waste siting agreement has been discussed in public and it's then determined to have a negative impact on the County's negotiations, the Board can conduct further discussions in closed meeting to protect the County's position.

(A)(19) **Terrorist Activity** – while we certainly hope this will never be needed in King William County, this exemption allows the public body to discuss plans to protect public safety relating to terrorist activity or specific cybersecurity threats or vulnerabilities and/or to discuss reports or plans related to the security of any governmental facility, building, or structure, or the safety of persons using such facility, building, or structure. This information is not public for the obvious reasons of not letting the enemy know your plans.

and finally,

(A)(29) **Public Contracts** – again, these discussions can only be done in closed meeting if doing so in an open session would adversely affect the bargaining position or negotiating strategy of the Board. This exemption is also limited to the award of a public contract involving the expenditure of public funds, interviewing bidders or offerors, and/or to discuss the terms or scope of a public contract.

Wow! That's a lot of information. But wait, there's more!

There are also laws regarding how the public body comes back from a closed meeting ([§2.2-3712](#)). A motion to reconvene in open session must be made, seconded, and voted on. Then, in open session, each board member must certify that, to the best of their knowledge, only public business matters lawfully exempted from open meeting requirements were discussed and the only matters discussed were the ones identified in the original motion convening the closed meeting. This is what you'll sometimes hear a board member refer to as SR-1 – Standing Resolution 1 or the certification of closed meeting. It means, we only talked about what we're allowed to talk about and we only talked about what we said we'd talk about, and nothing else.

Lastly, and perhaps most importantly, **the public body cannot take any action in closed meeting**. They can only discuss matters and consult with counsel, staff, or others who can offer advice on the subject. When they are back in an open meeting, motions can be made, and votes taken. So, while some background discussions may be done in private, no decisions are made; no laws are passed; no one is hired, fired, appointed, etc.; no land is bought or sold; no money is invested; and no contracts or agreements are signed. These things must all be done in open meeting. That's how we know no secret deals have been made, because deals can only be made in public – which means they're not a secret!

Often, once the Board decides they really want to consider a matter rather than just tossing around an idea, a public hearing must be held. Or they might direct staff to conduct a community meeting or a citizen survey. All these things let the board hear from citizens, in a public way, about their thoughts or concerns on the matter. These things are announced to the public at Board meetings; on the County website and Facebook page; in the County newsletter; in the County Administrator's Monthly Message, blog, and/or monthly report; and, in the case of a public hearing, in the "newspaper of record", which is the Tidewater Review. But that's a subject for next time.

Whenever you have questions or concerns regarding what's being done, and why it's being done, reach out directly to your District Supervisor or the County Administrator, Deputy County Administrator, or Clerk to the Board. Government has unique challenges and characteristics that private corporations and businesses don't have to worry about. It's hard to read the Code of Virginia and understand every word and sometimes, the regulations in place seem tedious, drawn out, and plain stupid! But, there is a reason for everything under the sun, even in local government. **We really are here for you and we need your input and engagement in order to make King William County the best it can be.**