

## County of Essex Policy and Procedures Manual

### Closed Meeting Policy

<b>Policy Number:</b>	2024-017
<b>Policy Type:</b>	Corporate Policy
<b>Approval Authority:</b>	Essex County Council
<b>Office of Responsibility:</b>	Legislative and Community Services
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<b>Replaces Policy:</b>	N/A

#### 1.0 Introduction

This Closed Meeting Policy (the "**Policy**") is intended to assist the Corporation of the County of Essex (the "**County**") ensure compliance with the statutory requirements for holding a meeting that is closed to the general public ("**Closed Meeting**") as well as to enhance the transparency of the County decision-making process by making it clear to the public when Council can meet in a Closed Meeting and when it cannot.

This Policy is based upon the following principles:

- A mature and responsible local government is fostered by an informed electorate;
- A decision-making process which is open and transparent to the public enhances the democratic legitimacy of local government;
- To the greatest extent possible, the public should be able to observe municipal government in process;
- In some circumstances, the public interest is best served by maintaining the confidentiality and privacy of certain information and decisions;

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- The law recognizes that there are legitimate reasons for various enumerated subject matters to be discussed and debated in the absence of the public.

### 2.0 Scope

This Policy applies to meetings of Council, meetings of Committees of Council, and meetings of local Boards of the County.

### 3.0 Definitions

For the purpose of this Policy, and to provide context for this Policy, in addition to terms defined in the body of this Policy above, the following terms shall have the following meanings, and shall be used To assist in the interpretation of this Policy:

“**Chair**” means the Member presiding over a meeting.

“**CAO**” means the Chief Administrative Officer of the County, or in the absence of the CAO, the designate of the CAO.

“**County Solicitor**” means the Director, Legislative and Legal Services of the County, or, in the absence of the County Solicitor, the designate of the County Solicitor.

“**Clerk**” or “**County Clerk**” means the Clerk appointed by Council from time to time, or, in the absence of the Clerk, the duly appointed Deputy Clerk acting in place of the Clerk.

“**Closed Meeting**” means a meeting, or part of a meeting, that is closed to the public.

“**Confidential Report**” means a Report intended to be considered in a Closed Meeting.

“**Council**” means the Council of the County of Essex.

“**Department Head**” means the member of County staff responsible for one of the County’s departments.

“**Member**” means a member of Council, a Committee of Council, and/or a local Board of the County.

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“**Open Session**” means a meeting, or part of a meeting, that is open to the public.

### 4.0 Purpose

This Policy is intended to clarify, support, and enhance the provisions of the *Municipal Act, 2001* and the County's Procedure By-law, both as amended from time to time, as they related to Closed Meetings, and this Policy is not intended to be separately enforceable.

#### 4.1 Statutory Framework

The “Open Meeting Rule” is enshrined in section 239 of the *Municipal Act, 2001*, which provides that, unless otherwise permitted, all meetings of Council (and committees of Council) must be open to the public. There are fourteen (14) subject matter exceptions which permit a Closed Meeting to be held, as set out in subsections 239(2), (3) and (3.1) of the *Municipal Act, 2001*. Section 239 of the *Municipal Act, 2001* also contains certain procedural requirements for holding and conducting Closed Meetings.

The Open Meeting Rule seeks to increase public confidence in local government, and prevent secrecy in decision-making. The Open Meeting Rule also seeks to balance the public interest in open and transparent municipal decision-making, while also recognizing that in certain circumstances, meetings in the absence of the public are required to protect municipal interests.

### 5.0 Policy (Closed Meeting Protocol)

#### 5.1 Selecting a Closed Meeting Exception

Council’s business is often initiated by Administration, who report their professional recommendations on various municipal matters. The County recognizes that staff reports and the agenda review process will play an integral role in ensuring compliance with the Open Meeting Rule and fostering a transparent decision-making process.

The Department Head shall consider the following three questions in determining whether a matter should be considered in a Closed Meeting:

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- 1) Does the matter qualify for one of the Closed Meeting exceptions enumerated in subsections 239(2) of the *Municipal Act, 2001*? In other words, can the subject matter be considered and discussed in a Closed Meeting?
- 2) Does the matter require that it be considered in Closed Meeting pursuant to Section 239(3) of the *Municipal Act, 2001*?
- 3) If the matter is permitted to be discussed in a Closed Meeting pursuant to one or more of the exceptions enumerated in Section 239(2) of the *Municipal Act, 2001*, is there a compelling reason why the matter should be considered in a Closed Meeting? What is the corporate, municipal or other interest that is to be protected by holding a Closed Meeting?

In considering the above questions, the Department Head shall have regard for, among other matters, whether full transparency and disclosure in the immediate term would in any way serve to compromise the municipal interests engaged by the matter.

The initial determination as to whether a matter should be considered in a Closed Meeting is the primary responsibility of the Department Head. When necessary, the Department Head should consult with the Clerk, the CAO and/or the County Solicitor.

### 5.2 **Naming of Confidential Reports, Agenda Resolution to Convene a Closed Meeting**

Before holding a Closed Meeting, Council must pass a resolution stating the fact that it is holding a Closed Meeting, and the general nature of the matter(s) to be considered at the Closed Meeting. Such a resolution should maximize the information available to the public, while at the same time not undermining the reason for excluding the public in the first place. This resolution should not simply restate the applicable closed meeting exception listed in Section 239(2) or the requirement to hold a Closed Meeting in accordance with Section 239(3) of the *Municipal Act, 2001*.

In some limited circumstance, the need for confidentiality may encompass the very fact of considering a matter in a Closed

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Meeting. This may include, but is in no way limited to, circumstances where the identification of a specific party, property or matter in a resolution to convene a Closed Meeting would, in and of itself, reveal the interest sought to be protected by the Closed Meeting. The County recognizes that these circumstances would be limited.

To assist in ensuring compliance with the *Municipal Act, 2001*, the following standard naming convention shall be used for all Confidential Reports, unless to do so would undermine the very reason for excluding the public in the first place:

Confidential Report [Report Number (YYYY-MMDD-DEP-RXX-XX)], [Subject Matter / Property / Party / Appeal Reference Number], dated [date] from [Department Head] – Closed Meeting Exception: [Reference to Closed Meeting Exception]

For example:

Confidential Report 2024-1120-LCS-R21-JS, Lease of 123 Malden Rd., dated November 20, 2024 from Jane Smith, Solicitor – Closed Meeting Exception: s. 239(2)(c) “proposed or pending acquisition or disposition of land”

The title of a Confidential Report must cite the relevant Closed Meeting exception from the *Municipal Act, 2001*. Where appropriate, multiple closed meeting exceptions can be cited if more than one exception is applicable.

The titles of all Confidential Reports to be considered at a Closed Meeting will be listed on the Open Meeting agenda for the purpose of providing notice to the public, and shall also form the content of the resolution to convene a Closed Meeting.

### 5.3 Staff Recommendations

Confidential Reports provide Council with professional advice and may make recommendations to take action on municipal business and matters. When preparing recommendations that will be considered in a Closed Meeting, County staff must take into consideration the limitations on what matters can be voted on during a Closed Meeting, and what matters must be voted on in Open Session.

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A vote may only be taken during a duly-constituted Closed Meeting if it is for one of two purposes:

- 1) Procedural matters (e.g., to receive and file information, to refer a matter, to defer consideration); or
- 2) Giving direction or instruction to County staff or agents or representatives of the County (e.g., the CAO, the Clerk, external legal counsel, consultants retained by the County).

Recommendations in a Confidential Report may entail a decision which is not permitted to be voted upon in a Closed Meeting (e.g., a decision to adopt a policy, a decision to appoint an individual to a committee). County staff should indicate in Confidential Reports which portions of the recommendations can be voted upon and adopted during the Closed Meeting, and which portions must be voted on in Open Session.

Recommendations from County staff should generally follow the following format:

***For Closed Session:***

*THAT Report CM-00-22 be received and filed.*

***For Open Session:***

*THAT Council appoint Mr. Alan Appleby as County Clerk.*

### 5.4 **Written Reports Preferred over Verbal Updates**

Written Confidential Reports from County staff will generally be preferred over verbal presentations or updates. Written Confidential Reports circulated ahead of a Closed Meeting provide clarity on the subject matter to be discussed, and help justify the reasoning for holding a Closed Meeting. However, in some circumstance, a verbal presentation or update may be permissible, or practically necessary if urgent, subject to other constraints, or in recognition of the sensitivity of the specific matter.

For the purpose of this Policy, the relevant Department Head shall treat a request to make a verbal presentation or update during a Closed Meeting as though it were a written Confidential Report. The

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Department Head shall submit a verbal presentation notice to the Clerk, in the form prescribed by the Clerk, as soon as possible in advance of the Closed Meeting for inclusion on the relevant meeting agenda. Where any presentation materials will be relied upon, the Department Head shall provide same to the Clerk for review and to ensure the subject matter of the presentation forms a subject matter that is permitted to be discussed in a Closed Meeting.

Requests to provide a verbal presentation or update will generally not be considered once a Closed Meeting has already commenced and is underway. In the event of a time-sensitive matter or in extenuating circumstances, at the discretion of the Clerk, a verbal presentation or update may be added to the Closed Meeting agenda as an item of "New Business" so long as Council adjourns its Closed Meeting, reconvenes in Open Session, and passes a resolution in accordance with subsection 239(4) of the *Municipal Act, 2001* in respect of the verbal presentation or update.

### 5.5 Closed Meeting Materials

Members will require access to highly sensitive, confidential, and privileged materials and information in order to make informed decisions on matters during a Closed Meeting. It is imperative that Members recognize the importance of confidential information, and that they must take every precaution against the unauthorized disclosure of such confidential information. Members shall observe strict compliance with their ethical obligations regarding confidential information outlined in the Code of Conduct for Members of Council.

Closed Meeting documents and records, including Confidential Reports, correspondence from external legal counsel, and other confidential information, will be provided to Members by the Clerk, through secure means. County staff will ensure that the appropriate technical security specifications are applied to confidential information.

In certain circumstances, County staff may circulate hard copies of confidential information to Members during a Closed Meeting, with such copies to be returned to the Clerk immediately upon the conclusion of the Closed Meeting. The Clerk shall be responsible to ensure the shredding or destruction of hard copies of confidential information, and to track whether any hard copies remain in circulation. Members are not to take notes or photographs of any documents or materials.

**5.6 Resolution to Convene in Closed Session**

Pursuant to subsection 239(4) of the *Municipal Act, 2001*, before holding a Closed Meeting, Council must pass a resolution stating the fact of holding a Closed Meeting, and the general nature of the matter(s) to be considered at the Closed Meeting. The resolution to convene in a Closed Meeting should maximize the information available to the public, while at the same time not undermining the reason for excluding the public in the first place. This resolution should not simply recite the applicable closed meeting exception.

In some limited circumstances, the need for confidentiality may encompass the very fact that Council is considering a matter in a Closed Meeting. This may include, but is in no way limited to, circumstances where the identification of a specific party, property or matter in a resolution to convene a Closed Meeting would, in and of itself, reveal the interest sought to be protected by the Closed Meeting.

In order to ensure compliance with subsection 239(4) of the *Municipal Act, 2001*, Council shall adopt a resolution in the following standard format, with a list of the descriptive titles of the Confidential Reports and agenda items Council will consider during the Closed Meeting:

*Moved by [name]*

*Seconded by [name]*

*That Council move into closed session to consider the following matters:*

- 1. Confidential Report [Report Number (YYYY-MMDD-DEP-RXX-XX)], [Subject Matter / Property / Party / Appeal Reference Number], dated [date] from [Department Head] – Closed Meeting Exception: [Reference to Closed Meeting Exception]*
- 2. Confidential Report [Report Number (YYYY-MMDD-DEP-RXX-XX)], [Subject Matter / Property / Party / Appeal Reference Number], dated [date] from [Department Head] – Closed Meeting Exception: [Reference to Closed Meeting Exception]*
- 3. Confidential Verbal Update [Verbal Report Number (YYYY-MMDD-DEP-RXX-XX)], [Subject Matter / Property /*



*Party / Appeal Reference Number], dated [date] from  
[Department Head] – Closed Meeting Exception:  
[Reference to Closed Meeting Exception]*

The resolution to convene in a Closed Meeting shall be prepared in advance of the Closed Meeting by the Clerk and shall generally form part of the relevant meeting agenda. Where items are added to the agenda for a Closed Meeting as addenda items, the resolution shall be updated to reflect those new items.

#### 5.7 **Individuals Entitled to Attend a Closed Meeting**

Attendance at a Closed Meeting shall generally be limited to those individuals required to ensure the Closed Meeting matters are fully and properly considered. This includes the Members who are not otherwise prohibited from attending the Closed Meeting and generally includes the Clerk, the CAO, and the responsible Department Head for the matter under consideration.

Other individuals may be requested to attend a Closed Meeting where their attendance may become necessary in the course of Council business. Where appropriate, other individuals shall only be permitted to attend the portion of the Closed Meeting to which their presence is relevant or necessary.

#### 5.8 **Virtual Participation at Closed Meetings**

Council's Procedure By-law allows for "Hybrid Meetings" whereby some Members attend a Closed Meeting in-person at Council Chambers, while others participate remotely through electronic means.

Closed Meetings may be conducted as a Hybrid Meeting. Members participating in a Closed Meeting remotely shall be responsible for ensuring they are in a physically and technologically secure location, and for taking precautions against unauthorized viewing or listening to the proceedings of a Closed Meeting.

At the commencement of the Closed Meeting, the Clerk shall require each remote participant to provide the following attestation:

***The Clerk asks a Member of Council***

*Councillor [Name], are you alone, and able to maintain confidentiality and the integrity of the Closed Meeting.*

*Appropriate Response:*

*I confirm that I am alone, and able to maintain confidentiality and the integrity of the Closed Meeting.*

***For others (staff, consultants etc.)***

*[Name], are you alone, and able to maintain confidentiality and the integrity of the Closed Meeting.*

*Appropriate Response:*

*I confirm that I am alone, and able to maintain confidentiality and the integrity of the Closed Meeting.*

Further, the Warden or Chair may state the following:

“A reminder for those joining us in closed session, both committee members and staff, please ensure that you are alone in the room. If you cannot be alone, please use headphones to ensure that the conversations held in closed session are kept confidential.”

Whether participating in a Closed Meeting virtually or in person, Members shall not use any other form of electronic communication (e.g., email, text messaging, instant messaging, cell phone) to communicate with any other person during a Closed Meeting, including other Members.

Where a Hybrid Meeting is used to conduct a Closed Meeting, the Clerk shall ensure that a separate virtual meeting event is created for the Closed Meeting, which is separate and distinct from the meeting event which the public and other individuals may have access to.

#### 5.9 **The Warden or Chair to Preside over Closed Meetings**

In addition to their responsibilities under the Procedure By-law, the Chair shall be responsible for presiding over a Closed Meeting. It is incumbent on the Chair to educate themselves on the statutory requirements that govern a Closed Meeting, including the subject matters which may be permitted to be discussed in a Closed Meeting and the procedural requirements for conducting a Closed Meeting, including voting.

The Chair shall preside over deliberations in a Closed Meeting to ensure that Members do not inadvertently discuss matters which are not permitted to be discussed in a Closed Session, or matters which are not necessarily incidental to the main topic of discussion. Where a Member begins to stray from an appropriate Closed Meeting topic, the Chair shall promptly advise the Member of their obligation to remain on topic and to refrain from discussing unrelated or unpermitted topics.

#### 5.10 **Voting During Closed Session**

Except where otherwise permitted, no voting shall take place during a Closed Meeting. Voting during a Closed Meeting may only occur if the rules in subsection 239(6) of the *Municipal Act, 2001* are satisfied.

First, the Closed Meeting must be permitted under subsection 239(2) or required under subsection 239(3) of the *Municipal Act, 2001*.

Second, the vote can only be taken for one of two purposes:

- 1) Procedural matters (e.g., to receive and file information, to refer a matter, to defer consideration); or
- 2) Giving direction or instruction to County Staff or agents or representatives of the County (e.g., the CAO, the Clerk, external legal counsel, consultants retained by the County).

During a Closed Meeting, Council shall not make an “informal decision” where no formal vote of the Members is taken. Council is not permitted to make an informal decision by consensus, “head nodding,” or to take a “straw poll” during a Closed Meeting. Such decisions constitute a “vote” on the matter, and where not taken for a permitted purpose, such decisions do not comply with the *Municipal Act, 2001*.

The Chair will ensure that any vote taken during a Closed Meeting complies with subsection 239(6) of the *Municipal Act, 2001*. The Chair may rule a vote out of order where it does not comply with the requirements of subsection 239(6) of the *Municipal Act, 2001*.

#### 5.11 Reporting Out of Closed Session

“Reporting out” or “reporting back” immediately following a Closed Meeting is not a requirement in the *Municipal Act, 2001*. However, it is recognized as a best practice for enhancing the transparency of municipal decision-making. The extent of Council’s obligation to report out will be enshrined in the County’s Procedure By-law, as amended from time to time. Further, the content of or details contained in a resolution to “report out”, not being statutorily prescribed, is within Council’s purview.

While the County is committed to enhancing the transparency of its decision-making process, it also recognizes that, in certain circumstances, full or substantial disclosure of the deliberations of Council in a Closed Meeting in the immediate term is simply not appropriate.

Council’s resolutions to report out will be based on the recommendation of Administration as presented in the corresponding Confidential Report. Where appropriate, Administration may also recommend the release of any appendices to a Confidential Report following Council’s final consideration of the matter.

Administration will generally base a recommendation as to the content of the resolution to report out on the following options:

**Option A:** A recommendation that Council report out as much general context and substance of the Closed Meeting matter as possible.

**Application:** This option aims to provide the public with the most amount of general information from a Closed Meeting, while refraining from disclosing the sensitive confidential details. Examples may include where Council is provided a general update about ongoing labour negotiations, or where Council considers and reviews a draft agreement with a known entity. Confidential details about advice or recommendations provided to Council need not be disclosed. However, where there would be no harm to the corporate interests in advising the public that the specific matter was considered, those details should be disclosed.

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**Option B:** A recommendation that Council make a substantive decision in relation to the Confidential Report in Open Session, based upon the discussion and consideration in the Closed Meeting.

**Application:** This option is appropriate where an immediate Council decision is required to give effect to a recommendation in a Confidential Report, but entails a substantive decision that is not permitted to be voted on in a Closed Meeting. Examples may include the appointment of individuals to fill various positions in the County or on committees or local boards, or a decision to declare municipal lands surplus and authorize the sale of those lands.

**Option C:** A recommendation that Council report out that the Confidential Report was received for information, and/or direction was given to Administration, and providing general details about the information received and the direction given.

**Application:** This option is reserved for matters where sensitive and non-sensitive information can be separated. For example, Council may report out the fact of having considered and given direction on the sale of County property, but without disclosing precisely what direction was given.

**Option D:** A recommendation that Council only report out that the Confidential Report was received for information, and/or direction was given to Administration, without providing any specific details.

**Application:** This option is reserved for matters which are highly sensitive in nature and where full disclosure in the immediate term is not appropriate. This could include receiving legal advice on a highly sensitive or confidential matter, or considering highly confidential information from another level of government.

In deciding on the content of the resolution to report out, the Department Head responsible for the Confidential Report shall consider whether full or substantial disclosure of the deliberations of Council or the matters considered in the Closed Meeting in the immediate term would be prejudicial to the interest considered at the Closed Meeting.

#### 5.12 Waiving Privilege, Confidentiality

Council will often seek and be provided with legal advice during a Closed Meeting. Such advice is protected by solicitor-client privilege, which is itself enshrined as a closed meeting exception in clause 239(2)(f) of the *Municipal Act, 2001*. Solicitor-client privilege is designed to protect the interests of the client (i.e. Council) in seeking or receiving legal advice, but may be waived where prudent to do so. However, as the County can only act through Council, privilege can only be waived through an express resolution of Council, voted on by a majority of Members present at a meeting. Solicitor-client privilege cannot be waived by any single Member of Council, even if purporting to be acting in the public interest.

Similarly, the County, through Council, may also wish to waive the confidentiality of materials and information distributed or discussed at a Closed Meeting.

In general, Council will not waive solicitor-client privilege or confidentiality unless advised by the County Solicitor that doing so would not prejudice the interests of the County.

Should Council wish to waive solicitor-client privilege or confidentiality and release information from a Closed Meeting, Council may do so by adopting a resolution in the following general format during the Closed Meeting:

*Report **YYYY-MMDD-DEP-RXX-XX***

*Moved by **[Name]***

*Seconded by **[Name]***

*That Council waive **[solicitor-client privilege / confidentiality]** in and authorize the release of **[Document / Staff Report]**, **[in its entirety / in part]**, but only insofar as **[extent of waiver]**.*

Any such waiver of privilege or confidentiality shall not include such confidential information which the County is required by law not to disclose or release. For example, the *Municipal Freedom of Information and Protection of Privacy Act* generally prohibits the County from disclosing the personal information of an identifiable individual. The Clerk will review all documents to be disclosed and apply any redactions as may be necessary.

Members should acknowledge that the waiver of privilege or confidentiality in a matter does not automatically authorize the

public release or discussion of *all* information from the Closed Meeting which is not otherwise authorized to be disclosed. For example, if Council authorizes the release of a legal opinion considered at a Closed Meeting, Members are not automatically entitled to publicly release or discuss the substance of Council's deliberations at the Closed Meeting on that item.

#### 5.13 **Closed Session Minutes**

The Clerk shall be responsible for recording, without note or comment, all resolutions, decisions and proceedings in a Closed Meeting in the form of meeting minutes. Generally, the minutes of a Closed Meeting will be action- or decision-oriented, recording both the procedural and substantive resolutions and motions of a Closed Meeting. The minutes of a Closed Meeting shall be maintained by the Clerk in a highly confidential manner.

## 6.0 **Responsibility**

- 6.1 Council as a whole is responsible for making decisions that affect the County, the electorate, and those having business with the County. While Council will consider the recommendations of Administration in making its decisions, Council bears ultimate responsibility and accountability for those decisions. This includes decisions in relation to Closed Meetings, such as whether it is appropriate to convene a Closed Meeting, which exception should be relied upon, and the appropriate level of public disclosure following a Closed Meeting.
- 6.2 Administration carries out the decisions and policies of Council, and provide professional advice and recommendations to Council on a range of matters affecting the County. In the course of performing these duties, Administration will also make recommendations regarding the conduct of Closed Meetings. Administration is responsible to provide reasoned advice on such matters as the application of closed meeting exceptions, the practices and procedures of Council, and whether information should be kept confidential on account of various municipal interests.
- 6.3 Individual Members are guardians of the public trust, and the individual decision-makers who, when acting together as a quorum of Council, make decisions that bind the County.
  - 6.3.1 In performing these duties, Members will receive confidential information during Closed Meetings. Members

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bear ethical obligations to preserve the confidentiality of such information. Inadvertence or indiscretion in relation to Closed Meeting matters may significantly harm the County's interests – financial, legal, and/or reputational – and the overall public interest.

### 7.0 Related Documents and Legislation

The following documents and legislation are associated with this Policy:

- Code of Conduct
- Accountability and Transparency Policy
- Procedure By-law
- *Municipal Act, 2001*

### 8.0 Summary of Amendments

Date	Amendments
2024-12-04	New Policy

### Appendices

- None