

FLORIDA SUNSHINE AND PUBLIC RECORDS

PREPARED FOR THE CITY OF DELTONA, FLORIDA
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INTRODUCTION TO THE SUNSHINE LAW

- ❖ Florida's Sunshine Law, under Chapter 286 F.S., mandates transparency in governmental proceedings, applying to state and local bodies to ensure public access.
- ❖ Article I, Section 24 of the Florida Constitution: "All meetings of any public body of the executive branch... shall be open and noticed to the public."

PURPOSE AND INTENT OF THE SUNSHINE LAW

- **Purpose:** To guarantee open access to government-related meetings.
- **Intent:** Ensure public awareness of officials' actions within the scope of their duties.

Myers v. News-Press Publishing Co., Inc.: Decisions by public bodies should be made openly



CORE REQUIREMENTS FOR MEETINGS

- **Key Requirements (FL § 286.011)**
- All meetings must be open to the public.
- Reasonable notice must be provided.
- No binding actions unless taken in a public meeting.



“Decisions” include discussions, deliberations, and recommendations as part of official action



NOTICE REQUIREMENTS

- **Attorney General's Suggested Guidelines**
- Notice must include time, place, and agenda summary.
- 24-hour notice is sufficient for emergencies

MEETING LOCATION REQUIREMENTS

- Meetings should be held in public, accessible locations
- Avoid restrictive places like restaurants, small rooms, or locations with discriminatory access

REQUIREMENTS FOR MEETING MINUTES

- **Florida Statute §286.011 – Minutes**
- Minutes must be recorded promptly and made available for public inspection.
- Written minutes are required; recording is optional but can support the written record.

PUBLIC PARTICIPATION RIGHTS

- **Florida Statute §286.0114**
- Public must have a reasonable chance to be heard, either at the same meeting or another within a reasonable time.
- Participation need not be at the decision-making meeting but must occur before final action.

PUBLIC PARTICIPATION GUIDELINES

- Public has the right to hear all board-related comments.
- Avoid side conversations, sidebars, private notes, or messages during meetings.
- Time limits on comments are permitted but should not limit meaningful participation.

SCOPE OF COVERAGE

- **Who is Covered?**
- Elected bodies, advisory boards, and any individuals delegated authority to act on behalf of the board.
- Includes council members, councilmembers-elect, and advisory board members.

QUASI-JUDICIAL PROCEEDINGS OVERVIEW

- **Definition and Scope**
- Quasi-judicial hearings, like zoning hearings, must be based on competent and substantial evidence
- Public has the right to hear all presented testimony and refute it

QUASI-JUDICIAL COMMUNICATION RULES

- **‘Ex Parte’ Communications**
- Communications outside hearings are presumed prejudicial and must be disclosed publicly before decision-making.
- Disclosure is required at the time of consideration by the board.

ELECTRONIC COMMUNICATIONS

- **Restrictions on Electronic Communication**
- Board members cannot discuss board business through private electronic means (emails, texts).
- This rule prevents any actions or decisions from being made outside the public eye.
- Board members should not use “Reply All” in board-related emails

INFORMAL GATHERINGS AND SOCIAL EVENTS

- Members may attend social gatherings if public business is not discussed. Violations occur if board-related matters are discussed in private gatherings, even informally.
- Discussions at private events that could influence decisions are prohibited.
- **Nonmember as Liaisons:** Third parties who are not members of a collegial body **may not be used to exchange information between members of the body** if such an exchange would otherwise be subject to the Sunshine Law.

EXEMPTIONS TO SUNSHINE LAW

- **Major Exemptions**
 - pending litigation discussions;
 - collective bargaining;
 - risk management; and
 - vendor negotiations.
- Attorney-client sessions (**Shade Sessions/Executive Sessions**) have strict rules and are limited to specific litigation strategies



VOTING AND ABSTENTION REQUIREMENTS

- **Voting Rules (FL §286.012)**
- Members present must vote unless a conflict of interest exists and is disclosed.
- A member's failure to vote does not invalidate the meeting, but full disclosure is required for conflicts.
- Conflicts of interest must be publicly disclosed, and abstention should only be used in such cases

VIOLATIONS AND CONSEQUENCES

- Civil and criminal penalties, removal from office, and attorney fees may apply
- Violations can render actions void unless they are appropriately “cured”
- Penalties include noncriminal infractions, second-degree misdemeanors, and possible fines up to \$500



CURING VIOLATIONS

- **Cure Process:** A violation can be corrected with a new meeting that allows public input and follows all Sunshine Law requirements.
- Simply ratifying actions without proper procedure is insufficient.
- **“Curing”** requires full transparency and a valid public hearing to validate actions.

CASE EXAMPLES OF VIOLATIONS

- *City of Bradenton Beach v. Metz* (2019): Informal meetings involving planning and zoning violated the law.
- *State v. Foster* (2005): A private meeting with multiple commissioners was deemed a violation due to “common facilitator” issues.
- Escambia County Commission Chairman – **sentenced to jail** for a Sunshine Law violation; served 38 days of a 60-day sentence



FLORIDA PUBLIC RECORDS LAW CHAPTER 119, F.S.

Section 119.11 (11), F.S.: "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

NOTES OR NON-FINAL DRAFTS

- There is no “unfinished business” exception to the public inspection and copying requirements of Chapter 119, F.S.
- If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate or formalize knowledge, then it is a public record regardless of whether it is in final form. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.* 379 So.2d 633, 640 (Fla. 1980).

WHAT AGENCIES ARE SUBJECT TO PUBLIC RECORDS LAW?

- “Any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Services Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency.” Section 119.011(2), F.S.



COMPUTER RECORDS AND EMAIL

- Information stored in a public agency's computer "is as much a public record as a written page in a book or tabulation in a file stored in a filing cabinet." *Seigle v. Barry*, 422 So.2d 63, 65 (Fla. 4th D.C.A. 1982).
- Email messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption from public inspection. AGO. 96-34 (1996).
- **EXCEPTION** - Private emails stored in government computers do not automatically become a public record simply by virtue of that storage. *State v. City of Clearwater*, 863 So.2d 149 (Fla. 2003).



TRANSITORY MESSAGES

- Transitory messages are messages of short-term value based upon the content or purpose of the message, not the format used to transmit it (i.e., reminders, event notices, etc.)
- Transitory messages are not intended to formalize or perpetuate knowledge, do not set policy, establish guidelines, confirm a transaction or act as a receipt.
- Retain until obsolete, superseded or administrative value is lost.

WHO RESPONDS TO PUBLIC RECORDS REQUESTS?

- “Custodian of public records” mean “the elected or appointed state, county or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.” Section 119.011(5), F.S.
- In Deltona, Public Records Requests are routed through the City Clerk’s Office

WHO IS AUTHORIZED TO INSPECT PUBLIC RECORDS?

- **ANYONE!** Section 119.01, F.S.
- No “legitimate need” or “special purpose” requirement. See *State ex rel. Davis v. McMillan*, 38 So.2d 666 (Fla. 1905).

WHEN MUST AN AGENCY RESPOND TO A PUBLIC RECORDS REQUEST?

- Custodian of records must promptly acknowledge request and respond in good faith
- No statutory time to respond, but custodian must make reasonable efforts to do so

EXEMPTIONS TO PUBLIC RECORDS LAW

- See Section 119.071, F.S.
- The Public Records Law is liberally construed in favor of open government
- Exemptions = Narrowly construed
- Burden is on the agency to illustrate why a record falls within the statutory exemption



SUMMARY OF KEY POINTS

Sunshine Law ensures transparency in government.

Key compliance points: public access, meeting notices, record-keeping, and public participation.

Violations are serious but can be corrected through public action.

Public Records Law (Chapter 119, F.S.) mandates open access to all forms of public records, including electronic formats.