Overview

• Authority and Powers
• Sunshine Law
• Public Records Law
• Ethics
• Voting Conflicts
• Quasi-judicial Hearings
Authority and Powers

• U.S. Constitution, 10th Amendment
• Florida Constitution
  • Establishment and Powers of Municipalities – Article VIII, Section 2.
• Laws of Florida
  • Home Rule – Chapter 166, Florida Statutes (1973).
• City of Gainesville
  • City Commission Municipal Powers – Charter Laws, Article II.
  • Comprehensive Plan / Ordinances
Sunshine Law - Basic Requirements

• Any **MEETING** of a public board/commission:
  1. OPEN
  2. NOTICE
  3. MINUTES.

• Section 286.011, Florida Statutes (1967); Article I, Section 24, Florida Constitution (1992).
Sunshine Law – Liability

- **Violation** – noncriminal infraction, fine not exceeding $500.¹
- **Knowing Violation** – criminal 2nd degree misdemeanor, punishable by up to 60 days in jail and $500 fine.²
- **Removal from Office**.³
- **Attorney’s Fees** – may be assessed against individual board member(s) if advice of attorney not followed.⁴
- **Action Void** – any violation (irrespective of intent or degree of resulting prejudice/injury) is “irreparable public injury” that voids any resulting action.⁵

Sunshine Law – “Meeting”

• Any gathering, whether formal or casual, of two or more members of the same board with **discussion on any matter that will foreseeably come before that board** for action.

  • *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010).
Sunshine Law – “Open”

• May not hold a meeting at any facility that:
  • discriminates on the basis of sex, age, race, creed, color, origin, or economic status, OR
  • operates in a manner that unreasonably restricts public access.¹

• Meeting shall not be held in a location or manner that may have a “chilling effect” upon the public’s willingness or desire to attend.²

Public Records

• The public has a right to access **all materials** that are:
  1. made or received by a public body, officer, employee, or persons acting on their behalf, and
  2. used to perpetuate, communicate, or formalize knowledge in connection with official business.

• **Unless** specifically exempted by the Florida Constitution or Florida Statutes.

• 1) Article I, Section 24, Florida Constitution; 2) Chapter 119, Florida Statutes.
Ethics

• May not solicit or accept anything of value that is based on understanding that your vote, official action, or judgment would be influenced.¹

• May not otherwise accept a gift worth more than $100 from anyone who has lobbied you or the City within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist, or from a political committee or vendor doing business with the City.²

• May not corruptly use or attempt to use your position or the resources thereof to obtain a special privilege or benefit for yourself or someone else.³

• 1) Section 112.313(2), F.S.; 2) Section 112.3148, F. S.; 3) Section 112.313(6), F.S.
Ethics

• Form 1 – Limited Financial Disclosure (annually by July 1)
  • Sources and types of financial interests; no dollar values.

• Form 2 – Quarterly Client Disclosure
  • If you or a partner or associate of your professional firm represent a client for compensation before the City.

• Form 9 – Quarterly Gift Disclosure
  • If you received a gift worth more than $100, other than gifts from relatives or gifts primarily associated with your business/employment.
Voting Conflicts

• All board members are **required to vote**, unless:
  1. There is or appears to be a possible **voting conflict**, or
  2. To avoid potential **bias or prejudice** in a quasi-judicial proceeding.¹

• Section 286.012, Florida Statutes.
Voting Conflicts

• Any matter that would result in a special private gain or loss to the board member or a relative, business associate, or principal by whom the board member is retained.
  
  • **Relative**: father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.
  
  • **Principal by whom retained**: an individual or entity that for something of value has permitted or directed another to act for the individual or entity, including a client, employer, or the parent, subsidiary or sibling organization of one’s client or employer.

• Section 112.3143, Florida Statutes.
Voting Conflicts

• **Board member’s responsibility** to determine whether conflict exists.
  • Advisory opinion – City Attorney’s Office
  • Binding Opinion – Florida Commission on Ethics (850-488-7864)

• If conflict exists, **must be disclosed**:
  • Known prior to the meeting – COE Form 8b distributed to board members and verbally disclosed.
  • Unknown prior to the meeting – verbally disclosed and COE Form 8b filed with staff liaison within 15 days and distributed at next meeting.

• After disclosure, appointed board members must abstain from voting (and may not be considered for quorum purposes), but **may participate** in the discussion of the matter.

• Section 112.3143, Florida Statutes.
Quasi-judicial Hearings

• Generally two types of local government board decisions:
  
  • **Legislative** – makes law/policy that generally applies to a broad group of citizens.
  
  • **Quasi-judicial** – applies already-established law/policy to a specific, individualized situation, such as determining whether a specific application meets existing regulations or requirements.
Quasi-judicial Hearings

• Hearing Requirements (and judicial review standards):
  • **Procedural Due Process¹**
    1. Adequate prior notice,
    2. Fair opportunity to be heard, present evidence, and cross-examine any witnesses, and
    3. Unbiased decision-maker.
  • **Essential requirements of correct law**
  • **Competent, substantial evidence**

• ¹ 14th Amendment, U.S. Constitution; Article I, Section 9, Florida Constitution.
Quasi-judicial Hearings

• Unbiased decision-maker:
  • Hearings must be free from any just suspicion of prejudice, unfairness, fraud, or oppression.¹
  • Mere political bias or adverse political philosophy does not equal bias.²
  • Ex-parte communications prohibited.³ Must disclose at hearing any inadvertent communications.

• Questions?