

A serene sunset scene over a beach. The sun is low on the horizon, creating a bright reflection on the water and sand. The sky is a mix of soft orange and pale blue. The waves are gentle, with white foam washing onto the shore.

Public Boards and Commissions

Legal Essentials

City of Gainesville
Office of the City Attorney
January 6, 2015

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**
 - City of Gainesville Established – *Chapter 12760, Laws of Florida (1927), as amended by Chapter 90-394, Laws of Florida (1990).*
 - 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
- **1)** §286.011(3)(a), F.S.; **2)** §286.011(3)(b), F.S.; **3)** §112.52, F.S.; **4)** §286.011(4), F.S.; **5)** *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974), *Port Everglades Authority v. International Longshoreman’s Association, Local 1922-1*, 652 So. 2d 1169 (Fla. 4th DCA 1995).

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
- **1)** Section 286.011(6), Florida Statutes; **2)** Op. Att’y Gen. Fla. 71-159 (1971).

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.
- **1)** *Bd. of Pub. Instruction of Broward Cnty. v. State ex rel. Allen*, 219 So. 2d 430, 432 (Fla. 1969); **2)** *Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482 (1976); **3)** See *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991).

A serene sunset scene over a beach. The sun is low on the horizon, casting a bright, shimmering reflection across the water and onto the wet sand in the foreground. Gentle waves with white foam are washing onto the shore. The sky is a clear, pale blue, transitioning to a warm orange glow near the horizon. The text '•Questions?' is centered in the upper half of the image in a bold, black, sans-serif font.

•Questions?