
**THE CITY OF JACKSONVILLE'S
PUBLIC OFFICIALS' GUIDE AND REFERENCE
TO THE SUNSHINE LAW**

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I. EXECUTIVE SUMMARY

A. THE SUNSHINE LAW SIMPLY EXPLAINED

Simply stated, the “Sunshine Law” is statutory and constitutional law, with judicial and Attorney General interpretations, which provides that:

1. All public meetings of members of boards, commissions, and committees in which discussions or votes will take place on matters that will or may reasonably be expected to be recommended or decided by that group, must be publicly conducted “in the sunshine.”
2. Publicly conducted “in the sunshine” requires:
 - a. Adequate advance public notice of the meeting;
 - b. Reasonable access to the public to the meeting;
 - c. Appropriate written minutes taken of the meeting.

B. FOUNDATION OF THE SUNSHINE LAW

1. Statutory Basis

Florida established a requirement in 1967 to have meetings open to the public. This was about the time the City of Jacksonville consolidated with Duval County. The obligations of public officials in connection with open meetings have since expanded. The expansion of open government requirements have come in the form of legislative, judicial and advisory interpretations. The basic law is found in **Chapter 286, Florida Statutes** and states in pertinent part:

All meetings of any board or commission . . . or of any agency or authority of any county, municipal corporation, or political subdivision . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings. Section 286.011, F.S.

2. Constitutional Basis

In 1992, **Article 1, Section 24(b) of the Constitution of the State of Florida** was adopted, providing a constitutional guarantee to the openness of public meetings:

All meetings of any collegial public body of . . . a county, municipality . . . at which official acts are to be taken or at which public business of such

body is to be transacted or discussed shall be open and noticed to the public

3. Attorney General Guidance

The Attorney General of the State of Florida (AGO) has always been considered the State's guardian in regard to the State's open government laws, including the public meetings law. Annually, the AGO issues formal and informal opinions and publishes the "Government-In-The-Sunshine Manual," which contains over 450 pages of guidance and references to assist Florida's public officials in open government compliance, and citizens in open government access. An electronic version of the manual can be found at:

<http://myfloridalegal.com/sun.nsf/manual>

4. Grand Jury Guidance

On January 17, 2008, the Duval County Grand Jury issued a Final Report addressing all matters related to Sunshine Law compliance and training. The Grand Jury's report included the following admonitions:

As explained by the Florida's Attorney General's Sunshine Law compliance manual, "open government provides the best assurance of government that is responsive and responsible to the needs of the people." Public confidence in Jacksonville's local government is positively correlated to the level of transparency employed by government officials in their decision-making processes.

As explained by the drafters of Florida's Sunshine laws, "building and maintaining public trust in the institutions of government" cannot occur when government operates in secrecy.

As chronicled by legal scholars, the current version of the Sunshine Law was passed because the bill's supporters "felt that certain state and local practices, manifested in closed meetings and behind-the-scenes manipulation, indicated an urgent need for abolition of secretive government practices." While all fifty states have enacted "open government" laws similar to the Sunshine Law, Florida is the only state where "the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable actions will be taken by the public board or commission." As explained in the Florida's Attorney General's Sunshine Law compliance manual, this heightened level of transparency has its basis in the idea that "[i]t is the how and the why officials decided to so act which interests the public, not merely the final decision."

The Florida Supreme Court further explains that "[e]very thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties is a matter of public concern, and it is the entire decision-making process that the legislature intended to affect by the enactment of the [Sunshine Law.]"

Thus, the Grand Jury made clear that Sunshine Law compliance is a serious matter.

C. REASONS TO FOLLOW THE SUNSHINE LAW

1. Good Government Reasons

- a. **Trust – developed by the public from being able to observe government in action.** Those elected and appointed to public positions have a duty to provide the greatest transparency possible. Openness builds citizen trust which further builds community respect and confidence.
- b. **Informed Public – developed from the capacity of interested citizens, the press and the media to review the minutes of deliberations and decision making.** When decisions are made “in the smoke filled rooms”, the public is left out. When citizens and the press and media are included as an integral part of the process, constituent input and expertise is made available and results in enhanced community decision making.
- c. **Responsible Decision Making – occasioned by public officials’ knowledge that the decision making process is open to public scrutiny.** It is generally accepted that when public officials sense that the community is aware of, and is participating in the decision making process, the decisions made will be more reflective of the conscience of the community.
- d. **Public Embarrassment - The institutions of government are harmed when public officials are exposed as law violators.** The institutions of government tend to close down when official misconduct comes to light. Local initiatives are frustrated when the community suffers such a black eye.

2. Legal Reasons

Simply stated, Sunshine Law compliance is:

- a. Statutorily required;
- b. Constitutionally required; and is
- c. Liberally enforced by the Courts.

The consequences of violating the Sunshine Law include:

- a. Potential for voiding the actions of the public body;
See Part I, Section H, Government-In-The-Sunshine-Manual

- b. Potential jail time and fines for intentional violations;
s. 286.011(3)(b) sixty days imprisonment and/or \$500 fine
- c. Potential fines for unintentional violations;
s. 286.011(3)(a) non-criminal penalty up to \$500
- d. Potential civil proceedings;
- e. Potential personal costs;
s. 286.011(4) Attorneys fees and costs
- f. Removal from office.
S. 112.52 By Governor / or by recall

3. Personal Reasons

- a. Integrity;
- b. Character;
- c. Avoiding personal humiliation;
- d. Avoiding political or community career disruption

II. DETAILED APPLICATION OF THE LAW

A. MEETINGS THAT ARE “SUNSHINE APPLICABLE” TO THE COUNCIL, INDEPENDENT AGENCIES, BOARDS, COMMISSIONS, AND COMMITTEES

1. **Formal meetings.** The law applies when any two or more Council, Board, Commission or Committee members meet to discuss any matter which may foreseeably be acted upon by that Council, Board, Commission or Committee, or any committee or subcommittee thereof;¹

Typical applicable events include:

- a. Regular or special Council, board, commission, or committee meetings;
- b. Standing committee meetings;
- c. Ad hoc committee meetings;²
- d. Workshops.³

2. **Informal Meetings.** The law also applies when any two or more Council Members meet informally to discuss any matter which will foreseeably be acted upon by the Council, or any committee or subcommittee thereof;⁴

Typical applicable circumstances include:

- a. Casual gatherings, such as at:
 - i. Parties and socials⁵
 - ii. Assistants' Desks
 - iii. Office Chats
 - iv. Breakfasts, Lunches, Dinners, and Cocktails
 - v. Chance gatherings; (hallways and outside City Hall)
- b. Telephone conversations (Discussing public business by phone violates the Sunshine Law)

3. **Written Communications.** Written or electronic correspondence used to engage or encourage other members in responsive correspondence or phone calls, or to develop a position or engage in written debate violates the Sunshine Law;

- a. But publicly issuing a unilateral statement that does not encourage response, and is made available as a public record, is legal.
- b. The far better course of action is to release such unilateral statements at a publicly noticed meeting.

4. **Liaisons.** It is a violation of the Sunshine Law to use persons as "liaisons" to communicate information between Council or Board Members; This applies to, for example:

- a. Aides⁶
- b. Lobbyists
- c. Attorneys
- d. Mayor's staff

5. **Delegated Decision Making and Fact Finding.** The Sunshine Law applies when any single Council, Board, or Committee Member acts as a delegated decision maker for the Council, Board, or Committee as a whole; Thus, fact finding meetings and personal discussions with staff must be public meetings when the member has been designated as a "committee of one".⁷

6. **Private Boards and Commissions Performing Public Functions.** Various private boards and non-profits are delegated functions by the City of Jacksonville, whether related to the funding of the arts, public service grants, or other functions which the City specifically asks the private organizations to perform. Under these circumstances, the boards of directors of these organizations are subject to the Sunshine Law when performing these delegated functions.

B. MEETINGS THAT ARE NOT “SUNSHINE APPLICABLE” TO THE COUNCIL, INDEPENDENT AGENCIES, BOARDS, COMMISSIONS, AND COMMITTEES

The Notice/Access/Minutes requirements of the Sunshine Law do **not** apply to the following types of meetings or events:

1. **Staff.** A meeting between a single Council Member and one or more Council **staff persons**; (so long as the staff persons are not utilized as Liaisons)
2. A meeting between a single Council Member and the **Mayor and/or one or more members of the Mayor’s staff**;⁸
3. **Public.** A meeting between a single Council Member and any number of **members of the public**;
4. **Another Board.** A meeting between a single Council Member and one elected or appointed **official from another board**, commission or agency;⁹
5. **Public Forum.** A public forum where Council Members are invited to speak about their philosophies, trends, and the issues facing the City and where there is no intent to circumvent the law.¹⁰

C. TYPES OF DISCUSSIONS COVERED BY THE SUNSHINE LAW

1. **Pending Items.** Pending ordinances, resolutions, and agenda items;
2. **Foreseeable Action.** Any matter which will foreseeably be acted upon by the Council or any Council Committee; such as, by way of example;
 - a. Quasi-judicial or fact finding matters;¹¹
 - b. Investigative inquiries;
 - c. Personnel matters;¹²
 - d. Interviews;¹³
 - e. Screening committees;¹⁴

- f. Most economic development matters;¹⁵
- g. Most legal matters including claim settlements.¹⁶

D. TYPES OF DISCUSSIONS NOT COVERED BY THE SUNSHINE LAW

- 1. **Personal.** Personal and social discussions
- 2. **Non-Foreseeable.** Federal, state and local public matters that are not on the Council “radar screen”.
- 3. **Procedural.** Procedural (non-substantive) matters of the Council such as:
 - a. A discussion to place a matter on an agenda (caution – do not discuss the matter substantively)
 - b. A discussion to set a meeting (caution – do not discuss any matter substantively)
 - c. A discussion to appoint an appointed chairperson (caution – do not discuss the substantive issues before the committee or board)

E. EXEMPTIONS TO THE SUNSHINE LAW – “SHADE” MEETINGS

A “shade” meeting is a colloquialism for a meeting that is customized to be held privately and out of the “sunshine.” Shade meetings must be authorized by the Florida Legislature and there are two common types:

- 1. **Collective Bargaining.** Collective bargaining strategy sessions between the Chief Negotiator and the Council, Board or Commission which will ultimately approve the agreement. This is allowed in order to provide direction to the negotiation team. Sec. 447.605(1) F.S.

Note: No notice and no minutes are required.

- 2. **Litigation Strategy.** Limited attorney-client litigation strategy sessions – are authorized to guide the legal team in cost and settlement strategy sessions. Sec. 286.011(8), F.S.¹⁷

Note: Strict notice, and steno-reported minutes are required to be taken and printed. The transcript becomes public when the case is concluded.

F. NOTICE, LOCATION, MINUTES, AND PROCEDURAL REQUIREMENTS

- 1. **Notice.** “Reasonable” notice is required; Sec. 286.011 (1), F.S.

- a. **“Reasonable”** is an undefined term subject to interpretation on a case by case basis. One method of addressing the “reasonableness” standard is to always ask oneself whether a judge ruling on a civil complaint, with the power to award attorneys’ fees and the power to void the action of the Council would find the notice to be reasonable under the circumstances;
- b. **24 hours** is generally considered the minimum notice for special meetings. But the Duval County Grand Jury recommended much greater notice in most instances.¹⁸
- c. Reasonable notice is required even if there is a general knowledge of the meeting;¹⁹
- d. Reasonable notice is required even if a quorum will not be present;
- e. Written notice must be posted in an area typically set aside for posting City notices; Internet posting is good – but does not alleviate the duty to post at regular posting sites;
- f. The meeting sponsors frequently contact the local media;
- g. Some meetings must be advertised;
- h. A posting of a detailed agenda citing every matter to be discussed is generally not required, but circumstances may justify more detailed notice to specific persons from time to time;²⁰
- i. Persons whose rights are being affected should frequently receive hand delivered or mailed notice.

2. Locations. Meetings must be located where the public has reasonable opportunity to attend, and not at any location that discriminates; Sec. 286.011(6) F.S.; The size of the meeting room should be sufficient to accommodate the anticipated attendance.²¹

3. Inspection Trips are permitted but discussions between members may not take place unless the notice, access, and minutes requirements of the Sunshine Law are met. The better course of action is for inspection trips to involve no dialogue between members and for the members to meet at a noticed location immediately thereafter to discuss the inspection trip on the record.

4. Minutes

- a. Council meetings and committee meetings are required to be electronically recorded by Council Rule. Written minutes are thereafter created by the Research Division.

- b. Electronic recording of all other “Sunshine” meetings is discretionary, but written minutes of the meetings are required whether meetings are recorded or not.
- c. The minutes of a “Sunshine” meeting need not be verbatim, though **comprehensive minutes are encouraged.**
- d. At a minimum the minutes of a “Sunshine” meeting shall contain a brief summary or series of brief notes or memoranda reflecting the events of the meeting.

5. Procedure.

- a. “Silent” and non-disruptive recording devices may not be prohibited;
- b. The chair person in a meeting may utilize reasonable time, place, and manner restrictions to ensure the orderly conduct of the meeting;
- c. Unless provided by the Rules of the Council, or unless the meeting will affect the substantial rights of a party, there is no known “right” for a citizen to be heard or speak at a meeting. The receipt of public input is permitted at the discretion of the Council.²²

III. JACKSONVILLE SUNSHINE LAW COMPLIANCE ACT

On June 26, 2007, Jacksonville’s City Council passed Ordinance 2007-733-E, the State of Florida’s most comprehensive Sunshine Law compliance legislation. This legislation created a new Chapter 15, Ordinance Code, and created procedures, methods, best practices and educational obligations to enhance the City Council’s ability to traverse the complex requirements of Florida’s Sunshine Law. It was hailed by the Duval County Grand Jury for the “positive new changes that should increase the level of compliance with the Sunshine Law.”

A. APPLICABILITY

The Jacksonville Sunshine Law Compliance Act (Chapter 15, *Ordinance Code*) applies to the public meetings of the Council.

These public meetings, referred to as “Council Public Meetings” include all of the meetings of the Council, Council committees, and meetings **between and amongst Council members.**

1. Notices (Sec. 15.103)

- a. **Must include** at a minimum:
 - (i) the date and time of the meeting noticed,

- (ii) the date and time the notices are to be posted,
- (iii) the location of the meeting, and
- (iv) the general subject matter of the meeting, and
- (v) the Council Member calling the meeting and any other Council Members who are expected in advance to be in attendance.

b. Notices shall be posted at the following **locations**:

- (i) Council's internet website,
- (ii) Regular City Hall notice publication locations,
- (iii) Such other methods as may be appropriate.

c. **Advance Notice**:

- (i) Minimum 24 hours
- (ii) Not including weekends and holidays
- (iii) Exceptions approved by Council President and City Ethics Officers

d. **Retrievable Filing System** maintained by Legislative Services Div.

2. **Locations (Sec. 15.104)**

- a. Open, reasonable, and convenient access,
- b. Council chambers, public conference meeting and committee rooms,
- c. Individual Member offices only in exigent circumstances,
- d. Public locations unless approved by Ethics Officer in writing.

3. **Commencement of discussions (Sec. 15.105)**

The business and conversations conducted during a noticed Council Public Meeting shall commence upon the opening of the meeting, and shall conclude upon adjournment. The mere fact that a meeting has been noticed does not authorize action or discussions prior to the opening of the meeting or following its adjournment.

4. **Minutes (Sec. 15.106)**

- a. Responsibility of individual Council members
- b. Council Secretary responsible for procedures that will ensure minutes are written and filed for all Council Public Meetings and that they are retrievable
- c. Minutes shall include – at a minimum:
 - (i) Location, date and time meeting commenced and was adjourned,
 - (ii) All public persons in attendance,
 - (iii) The substance of the discussions
- d. Copy must be kept with notice
- e. Minimum 30 day review by Legislative Services Division

5. Annual Continuing Education

- a. The City's Ethics Office and the Office of the General Counsel, with the assistance of the Jacksonville Ethics Commission and other supporting agencies, shall provide, and Council Members shall receive, annual training on Government in the Sunshine and open meetings laws.
- b. Such annual training shall take place within 60 days of the Council President taking office. The Council President shall work with the Office of General Counsel and the City Ethics Officer to assure such continuing education.
- c. In addition to annual training, training on Government in the Sunshine and open meetings laws shall be provided upon special request. These presentations may be given at committee or Council meetings or at other times as may be directed by the Council President.

III. Endnotes

¹ Op. Atty Gen. Fla. 89-23 (1989); Op. Atty Gen. 90-3 (1990) and Hough v. Stenbridge, 278 So. 2d 288 (Fla. 3rd DCA 1973)

² Blackfort v. School Board of Orange County, 375 So.2d 578 (Fla 5th DCCA 1979); Spillis Candela & Partners, Inc. v. Centrust Savings, 535 So2d 694 (Fla. 3rd DCA 1988)

³ Wood v. Marston, 442 So.2d 934 (Fla. 1983); Silver Express v. Miami-Dade, 691 So.2d 1099 (Fla. 3rd DCA 1997); and Op. Atty Gen.Fla. 2003-53(2003)

⁴ City of Miami Beach v. Berns, 245 So.2d 37 (Fla. 1971)

⁵ Op. Atty Gen.Fla. 92-79(1992)

⁶ Op Atty Gen.Fla. 89-39(1989)

⁷ Op. Atty Gen.Fla. 84-54 (1984); Op. Attny Gen.Fla. 90-17(1990)

⁸ Ops. Atty Gen.Fla. 90-26 (1990) and 85-36 (1985)

⁹ Rowe v. Pinellas Sports Authority, 461 So.2d 72(Fla. 1984)

¹⁰ Op. Atty Gen.Fla. 94-62(1994)

¹¹ Cannery v. Board of Public Instruction of Alachua County, 278 So.2d 470(Fla. 2d DCA 1969)

¹² Times Publishing Company v. Williams, 222 So.2d 470(Fla. 2d DCA 1969)

¹³ Op. Atty Gen.Fla. 89-37 (1989)

¹⁴ Wood v. Marston, 442 So.2d 934 (Fla. 1983)

¹⁵ City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971)

¹⁶ Neu v. Miami Herald Publishing Company, 462 So.2d 821 (Fla. 1985)

¹⁷ Zorc v. City of Vero Beach, 722 So.2d 891 (Fla. 4th DCA 1998); Bruckner v. City of Dania Beach, 823 So.2d 167 (Fla. 4th DCA 2002)

¹⁸ Rhea v. City of Gainesville, 574 So.2d 221 (Fla. 1st DCA 1991)(one and a half hours insufficient); Yarborough v. Young, 462 So.2d 515 (Fla. 1st DCA 1985)(3 days sufficient notice)

¹⁹ Ops Atty Gen. Fla. 71-346 (1971) and 90-56 (1990)

²⁰ Ops. Atty Gen .Fla. 73-170 (1973) and 80-78 (1980)

²¹ Rhea v. School Board of Alachua County, 636 So.2d 1383 (Fla. 2st DCA 1994)

²² Op. Atty Gen. Fla. 77-122 (1977)