
2011
City of Jacksonville
Sunshine Law
Public Records Law and
Ethics Training Program

SUNSHINE LAW

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FLORIDA'S OPEN MEETINGS "SUNSHINE" LAW

I. HISTORY OF THE SUNSHINE LAW

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 has expanded ever since. The obligations of public officials in connection with open meetings have expanded by both legislative and judicial and advisory interpretations ever since. 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.

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. 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

The Attorney General of the State of Florida has always been considered the State's guardian of the State's open government laws, including the public meetings law and annually 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.

In the 1996 edition, the Attorney General's introduction quotes James Madison:

A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives.

II. THE SCOPE OF THE SUNSHINE LAW

- A. The law applies to all public elected and appointed officials, commissions, councils, boards, and committees and includes members-elect;
- B. The law requires meetings to be open to the public;
- C. The law requires reasonable notice of each meeting;
- D. The law requires minutes of each meeting to be taken and transcribed.

III. CONSEQUENCES FOR VIOLATION OF THE SUNSHINE LAW

- A. A knowing violation of the law is a misdemeanor of the second degree. (60 days in jail) Sec. 286.011(3)(b), F.S.;
- B. All other violations are considered non-criminal with fines not exceeding \$500.00. Sec. 286.011(3)(a), F.S.;
- C. Removal from office is an option for the Governor. Sec. 112.52, F.S.;
- D. Civil actions for injunctive or declaratory relief may be filed with the result being a court order:
 - 1. Declaring the violation;¹
 - 2. Enjoining future violations;²
 - 3. Invalidating action taken by the Council or Committee;³ and
 - 4. Awarding attorneys' fees and costs in the event a violation is found even against the individual in violation.⁴

IV. THE MEETINGS THAT ARE "SUNSHINE APPLICABLE" TO THE COUNCIL & BOARDS

- A. The law applies when any two or more Council or Board Members meet to discuss any matter which will *foreseeably* be acted upon by the Council or a Board or any committee thereof;⁵
- B. Council or Board meetings;

- C. Standing committee meetings;
- D. Ad hoc committee meetings;
- E. Casual gatherings;
- F. Chance gatherings;
- G. Telephone conversations;
- H. Written or electronic correspondence used to develop a position or engage in written debate;⁶
- I. Liaisons used to communicate information between Council or Board Members;⁷
- J. It applies when any single Council or Board Member acts as a decision maker for the Council or Board as a whole;⁸
- K. The law does not apply to a meeting between a single Council or Board Member and one or more Council or Board staff persons;⁹
- L. Does not apply to a single Council or Board Member and the Mayor or one or more of the Mayor's staff;¹⁰
- M. Does not apply to a single Council or Board Member and members of the public;
- N. Does not apply to a single Council or Board Member and one elected or appointed official from another board, commission or agency;¹¹
- O. Does not apply to a Council or Board Member speaking about their philosophies, trends, and issues facing the City at a public forum where there is no intent to circumvent the law.¹²

V. TYPES OF DISCUSSIONS COVERED BY THE SUNSHINE LAW

- A. Any matter which will *foreseeably* be acted upon by the Council or Board or any committee thereof;
- B. Pending ordinances, resolutions, and agenda items;
- C. Matters that will be *foreseeably* drafted into ordinances, resolutions, and

agenda items such as, by way of example;

1. Quasi-judicial or fact finding matters;¹³
2. Investigative inquiries;
3. Personnel matters;¹⁴
4. Interviews;¹⁵
5. Screening committees;¹⁶
6. Most economic development matters;¹⁷
7. Most legal matters.¹⁸

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

A “shade” meeting is a colloquialism for a meeting that is customized to be held out of the “sunshine.” Examples are:

- A. Certain collective bargaining strategy sessions - Sec. 447.605(1) F.S.
No notice and no minutes required.
- B. Limited attorney-client litigation strategy sessions - Sec. 286.011(8), F.S.
Strict notice, and steno-reported minutes required to be taken and printed.
- C. Other exemptions that may be created by Florida Statute, from time to time;

VII. NOTICE, LOCATION, AND PROCEDURAL REQUIREMENTS

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

1. “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;
2. **24 hours** is generally considered the minimum notice for special meetings.

3. Reasonable notice is required even if there is a general knowledge of the meeting;¹⁹
 4. Reasonable notice is required even if a quorum will not be present;²⁰
 5. Notice must be posted in an area typically set aside for posting City notices;
 6. The meeting sponsors frequently contact the local media;
 7. Some meetings must be advertised;
 8. 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.²¹
- B. 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.;
 - C. Meetings at public facilities are required by the Ethics Code, Chapter 602;
 - D. "Silent" and non-disruptive recording devices may not be prohibited;²²
 - E. The chair person in a meeting may utilize reasonable time, place, and manner restrictions to ensure the orderly conduct of the meeting;²³
 - F. 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.

Acknowledgment

The Office of General Counsel wishes to express its gratitude to the Attorney General's Office for its annual publication of the Government-In-The-Sunshine-Manual, which regularly updates public records law and practice.

Endnotes

1. Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974)
2. Port Everglades Authority v. ILA, 652 So.2d 1169 (Fla. 4th DCA 1995)
3. Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974)
4. Section 286.011 (4), F.S.
5. City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971)
6. Op. Atty Gen. Fla. 89-23 (1989); Op. Atty Gen. Fla. 90-3 (1990)
7. Blackfort v. School Board of Orange County, 375 So.2d 578 (Fla. 5th DCA 1979)
8. Wood v. Marston, 442 So.2d 934 (Fla. 1983); Silver Express v. Miami-Dade, 691 So.2d 1095 (Fla. 3d DCA 1997);
9. Occidental Chemical Company v. Mayo, 351 So.2d 336 (Fla. 1977)
10. Ops. Atty Gen. Fla. 90-26 (1990) and 85-36 (1985)
11. Rowe v. Pinellas Sports Authority, 461 So.2d 72 (Fla. 1984)
12. Op. Atty Gen. Fla. 94-62 (1994)
13. Cannery v. Board of Public Instruction of Alachua County, 278 So.2d 260 (Fla. 1973)
14. Times Publishing Company v. Williams, 222 So.2d 470 (Fla. 2d DCA 1969)
15. Op. Atty Gen. Fla. 89-37 (1989)
16. Wood v. Marston, 442 So.2d 934 (Fla. 1983)
17. City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971)
18. Neu v. Miami Herald Publishing Company, 462 So.2d 821 (Fla. 1985)
19. TSI Southeast, Inc. v. Royals, 588 So.2d 309 (Fla. 1st DCA 1991)
20. Ops. Atty Gen. Fla. 71-346 (1971) and 90-56 (1990)
21. Ops. Atty Gen. Fla. 73-170 (1973) and 80-78 (1980)
22. Op. Atty Gen. Fla. 77-122 (1977)
23. Jones v. Heyman, 888 F.2d 1328 (11th Cir. 1989)

Chapter 15 - JACKSONVILLE SUNSHINE LAW COMPLIANCE ACT

Sec. 15.101. - Statement of purpose.

Sec. 15.102. - Applicability; Public Meeting defined.

Sec. 15.103. - Notice of Council Public Meetings; posting and timing.

Sec. 15.104. - Public Meetings location.

Sec. 15.105. - Public Meeting; commencement and adjournment.

Sec. 15.106. - Public Meetings minutes.

Sec. 15.107. - Annual review and report on council notices, meeting locations and minutes.

Sec. 15.108. - Annual continuing education and training on Sunshine Law requirements.

Sec. 15.109. - Recommendations for improved compliance.

Sec. 15.101. – Statement of purpose.

The purpose of the Jacksonville Sunshine Law Compliance Act is to ensure compliance with the Sunshine Law, F.S. Ch. 286, and to create procedures, methods, best practices and education that will enhance compliance with open meeting laws, and enhance and maintain public confidence and transparency in the legislative practices of the City Council.

(Ord. 2007-733-E, § 1)

Sec. 15.102. – Applicability: Public Meeting defined.

The Jacksonville Sunshine Law Compliance Act shall apply to the Jacksonville City Council and those public meetings of the Council that are contemplated by F.S. Ch. 286, including meetings of the Council and Council committees, and meetings between and amongst Council Members. These meetings shall hereinafter be identified in this Chapter as "Council Public Meetings." Since other agencies are already obligated to comply with Florida's Sunshine Law, F.S. Ch. 286, even if Council Members serve thereon or attend, the Jacksonville Sunshine Law Compliance Act shall not be applicable to the noticed meetings of the various other commissions and agencies established by law, ordinance or executive order.

(Ord. 2007-733-E, § 1. Ord. 2010-135-E, § 1)

Sec. 15.103. – Notice of Council Public Meetings; posting and timing,

(a)

All council public meetings shall be publicly noticed in a timely manner. The notices required shall include at a minimum (i) the date and time of the meeting noticed, (ii) the date and time the notices are 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, at the time of notice, are expected to be in attendance.

(b)

Council Public Meeting notices shall be provided on the Council's internet website, which utilizes modern technology and provides swift public notice to all of Jacksonville. In addition to the internet, posting of notices shall be made at such

locations at City Hall where public meetings are generally noticed, and by such other methods as may be appropriate or required by particular circumstances.

(c)

Notice of Council Public Meetings shall be posted for at least 24 hours prior to the meeting, not including weekends and holidays.

(d)

Notwithstanding subsection (c) above, notice of Council Public Meetings may be posted for a period of less than 24 hours, only in the event of an emergency, and when approved in writing by the Council President and the City's Ethics Officer.

(e)

A copy of the notices of all Council Public Meetings shall be provided to and maintained in a retrievable format and filing system developed by the Legislative Services Division.

(f)

The Director/Council Secretary shall develop and implement standardized policy and procedures for City Council sunshine meeting notices and uniform calendaring practices.

(Ord. 2007-733-E, § 1, Ord. 2008-329-E, § 1)

Sec. 15.104. – Public Meetings location.

(a)

All Council Public Meetings shall be conducted in such places as will assure open, reasonable, and convenient access to the public.

(b)

The locations for Council Public Meetings include the Council Chambers and public conference, meeting, or committee rooms. Public meetings shall not be held in the individual offices of Council Members, except in the event of exigent circumstances.

(c)

Public locations shall be used for all Council Public Meetings, unless other locations are approved in writing. A request therefore shall be made in one written submission to both the City Ethics Officer and the Office of General Counsel Ethics Liaison, with a copy thereof delivered to the Council President. Written approval shall be required from either the City Ethics Officer or the Office of General Counsel Ethics Liaison, with a copy thereof provided to the Council President and to the other approving authority.

(Ord. 2007-733-E, § 1; Ord. 2010-135-E, § 1)

Sec. 15.105. – Public Meeting; commencement and adjournment.

The business and conversations conducted during a noticed Council Public Meeting shall commence upon the chair's or Council Member's 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.

(Ord. 2007-733-E, § 1)

Sec. 15.106. – Public Meetings minutes.

(a)

Each Council member is responsible for the taking and preparation (or delegation thereof) of the minutes of each Council Public Meeting noticed by that Council Member, in a manner as required by F.S. Ch. 286, and subsection (c) below.

(b)

The Director/Council Secretary shall be responsible for developing and implementing procedures for assuring:

(1)

Minutes are written for all noticed Council Public Meetings;

(2)

Minutes are filed; and

(3)

A system for the maintenance and retrieval of minutes is developed for all minutes of Council Public Meetings.

(c)

The minutes of every Council Public Meeting conducted between two or more Council Members outside of the regular Council meeting or committee meeting structure shall reflect, at a minimum:

(1)

The location, date and time the meeting commenced and adjourned;

(2)

The members of the Council, other public officials and employees, and registered lobbyists in attendance;

(3)

The substance of the discussions and positions presented by the persons in attendance.

(d)

A copy of the minutes of all noticed Council Public Meetings shall be kept, with the notice to such meetings, by the Legislative Services Division. The Legislative Services Division shall develop such systems and policies as are necessary for the orderly filing, maintaining and retrieval of minutes.

(e)

No less than once every 30 days, the Legislative Services Division shall review notices of all Council Public Meetings to ensure that copies of the minutes of all applicable public meetings have been placed on file in the Legislative Services Division.

(Ord. 2007-733-E, § 1; Ord. 2010-135-E, § 1)

Sec. 15.107. – Annual review and report on council notes, meeting locations and minutes.

(a)

The Council Auditor shall review information provided by the Legislative Services Division regarding:

(1)

The notices of Council Public Meetings;

(2)

The location of such public meetings; and

(3)

Written minutes of such public meetings, and prepare an annual report thereon.

The Auditor shall file such report with the Council committee to which audit matters are referred, the Council President, the City Ethics Officer, and the Ethics Commission, who may comment thereon.

(b)

The report, as required by subsection (a) above, shall include confirmation, through methods and means developed by the Council Auditor, that:

(1)

Notices were public and timely, and not less than 24 hours exclusive of weekends and holidays, and accessible to the public by internet;

(2)

That meetings were located in appropriate public rooms, with a list of all meetings held in Council Members' offices;

(3)

That minutes were written, maintained in the filing system, and available for retrieval; and

(4)

That all Council Members and Executive Council Assistants have received annual continuing education and training on the Sunshine Law;

and shall provide recommendations, as appropriate to improve compliance, as authorized by Section 15.109 below. The report shall be based upon a review of that information collected and provided by the Council Secretary/designee, and any other information that is known to the Council Auditor.

(c)

The Council Auditor's review shall commence annually on May 1st, 60 days prior to installation of a new Council President, and the report shall be provided no later than June 1. The Council Auditor's review shall be based upon complete data for the first year of each term, but may be based upon statistically significant samples in any other year if the previous year's success rate has been at least 95 percent.

(Ord. 2007-733-E, § 1; Ord. 2010-135-E, § 1)

Sec. 15.108. – Annual continuing education and training on Sunshine Law requirements.

(a)

Council Members and Executive Council Assistants shall receive, and the Office of the General Counsel, with the assistance of the City Ethics Officer the Director/Council Secretary and other supporting agencies, shall provide annual training on Government in the Sunshine and open meetings laws.

(b)

All annual training shall take place within 60 days of the Council President taking office on a date and location determined by the Council President.

(c)

The duration of annual training shall be determined by the Council President upon recommendation of the Office of General Counsel and the City's Ethics Officer; except that the training at the beginning and middle of the Council terms shall be exhaustive and detailed. All Council Members and Executive Council Assistants shall be provided one hard copy reference book with an electronic version at the commencement of their terms of office, with supplementation being provided electronically thereafter.

(d)

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.

(Ord. 2007-733-E, § 1; Ord. 2008-329-E, § 1; Ord. 2010-135-E, § 1)

Sec. 15. 109. – Recommendations of improved compliance.

As part of the annual review, the Council Auditor's office shall make recommendations to the City Council to improve open meetings compliance. The Council Auditor's Office may solicit suggestions from Council Members, the Director/Council Secretary, the Legislative Services Division, the City Ethics Officer, the Office of General Counsel, or others, in support of these recommendations.

(Ord. 2007-733-E, § 1; Ord. 2010-135-E, § 1)