



**TWO ITEMS AGENDA
SUNSHINE LAW AND
STANDARDS OF CONDUCT FOR PUBLIC OFFICERS
WORKSHOP
ARCADIA CITY COUNCIL
CITY COUNCIL CHAMBERS
23 NORTH POLK AVENUE, ARCADIA FL
TUESDAY, MARCH 7, 2017
5:00 P.M.**

CALL TO ORDER AND ROLL CALL

PRESENTATION

1. Sunshine Law Outline (T.J. Wohl - City Attorney)
2. Standards of Conduct for Public Officers and Employees of the City (T.J. Wohl – City Attorney)

ADJOURN

NOTE: Any party desiring a verbatim record of the proceedings of this hearing for the purpose of appeal is advised to make private arrangements therefore.

PLEASE TURN OFF OR SILENCE ALL CELL PHONES

SUNSHINE LAW OUTLINE

I. Basics.

A. Florida Sunshine Law.

(Florida Constitution Article 1, Section 24 and Florida Statutes 286.011-012)

Three basic requirements:

1. Meetings of public bodies must be open to the public;
2. Reasonable public notice of those meetings must be given;
3. Minutes must be taken and kept.

B. Florida Public Records Act.

(Florida Constitution Article 1, Section 24 and Florida Statute 119)

Basic requirement: All public records, with certain limited exceptions, are open for personal inspection and copying by any person.

II. Sunshine Law.

A. Sunshine Law applies to:

1. City Council;
2. Planning and Zoning board;
3. Code Enforcement board;
4. Any other body created to advise City Council, even though their recommendations are not binding;
5. Advisory committees to a single public officer (i.e. to advise the city administrator, police chief, mayor, etc.);
6. One person, if Council has delegated authority to act to that person;
7. Any two or more City Council persons who are discussing City business or any matter that may come before City Council, whether in person, by

telephone, texting or email and whether directly or through a “conduit” or liaison. This also applies to any two or more zoning board or other board members.

B. Sunshine Law does not apply to:

1. Fact finding committees who have no decision making authority;
2. Private entities such as a private local group established to promote the City, unless the entity has been created by law or public agency to perform a public function;
3. Organizations who are receiving public funds for providing services to the City, unless the public agency’s governmental or legislative functions have been delegated to it;
4. Meetings of City staff or private citizens with individual Council persons or other staff members so long as that staff member is not being used as a “conduit” to pass along other council persons ideas and opinions on a matter that may come before Council;
5. A Council person sending a one-way communication to another Council person, without any response.

C. Limited Exceptions:

1. Attorney-client sessions (“shade meeting”) regarding pending litigation per F.S. 286.011(8) as follows:
 - a. At a public meeting of Council, the City Attorney requests an attorney-client session to get the advice of Council regarding pending litigation. He states the date and time of the meeting and who will be attending, which can only include the Council persons, the City Administrator (or in his absence, the Assistant City Administrator or other designee), the attorney or attorneys and a court reporter.

- b. The meeting must be confined to litigation or settlement strategy.
 - c. Notice of the attorney-client session must be published.
 - d. The session starts as an open meeting. The Mayor or City Attorney announces the commencement of the attorney-client session and the estimated length of the meeting and the names of the persons attending. All others are exited from the Council chambers.
 - e. At the conclusion of the attorney-client session, the meeting will be reopened and any remaining public are allowed back in and the public meeting then continues, if needed, and then adjourned.
 - f. The court reporter records the attorney-client session, transcribes the notes and files the transcription with the City Recorder;
 - g. No final settlement can be approved at an attorney-client session, but must be done in a public meeting.
 - h. An attorney-client session cannot be used where litigation is just threatened.
 - i. The transcript of the shade meeting is made part of the official record and is open for inspection upon conclusion of the litigation, *i.e.* when a judgment is entered, the suit is dismissed with prejudice or is dismissed without prejudice and the statute of limitations has run.
2. Risk management meetings under F.S. 768.28(16)(c) when Council is evaluating a claim against the City for injuries under its risk management program. No specification of personnel who can attend. This exemption is limited and applies only to tort claims for which the agency may be liable under s.768.28, F.S. AGO 04-35.
3. Collective bargaining between the City Administrator and Council (including the Mayor) regarding labor negotiations with employees under F.S. 447.605(1). Meetings between the City Administrator and the labor union negotiator are not exempt.

D. Not exceptions to the Sunshine Law, although some seem like they should be:

1. Disciplinary proceedings of employees by Council;
2. Job evaluations by Council;
3. Interviews of job applicants by Council;
4. Purchasing or bid evaluations;
5. Committee meetings; and
6. Negotiations for the purchase or sale of real property.

E. Notice of Sunshine Meetings.

1. Reasonable notice of a meeting is required, even if a quorum is not present. The Sunshine Law does not require Council to give notice by paid advertisements, except where other laws and codes require such notices for meetings such as zoning, comprehensive plan amendments, adoption of ordinances and the like. While there is no specific type of notice that must be given in all cases, it is recommended that the following guidelines be followed:
 - a. The notice should contain the time and place of the meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.
 - b. The notice should be prominently displayed in the area in City Hall set aside for that purpose.
 - c. Except in case of an emergency meeting or special meeting, the notice should be provided at least 7 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.
 - d. Special meetings should have no less than 24, and preferably at least 72 hours reasonable notice to the public.
 - e. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is highly effective in providing notice of upcoming meetings.

2. The length of time of the notice before the meeting depends on the circumstances. In one situation, an appellate court found no Sunshine Law violation occurred when notice of a special meeting held on a Monday was posted at city hall and faxed to the media on the preceding Friday. In another case, telephone calls to the media 1½ hours before a special meeting of the City Council was held to be insufficient notice.

F. Where Can Sunshine Meetings Be Held?

1. Meetings need to be held in places easily accessible to the public. The Attorney General's office has suggested that luncheon meetings not be held, as they may have a "chilling" effect upon the public's willingness or desire to attend. Likewise, meetings should not be held in any facility which discriminates on the basis of sex, age, race, creed, color, origin or economic status or which otherwise unreasonably restricts public access. Meetings should not be held so far out of the City that it would limit the public's attendance.
2. Even in a properly noticed meeting, it is improper to have discussions between council persons or other board members that cannot be heard by the public and it is not appropriate to exclude members of the public, including city staff members, who wish to attend.

G. Public Participation. The Attorney General has noted that "the courts of this state and this office have recognized the importance of public participation and open meetings" and also advises that the public should be afforded a meaningful opportunity to participate at each stage of the decision-making process, including workshops.

H. Authority to Adopt Reasonable Rules. It is recognized that city councils can adopt reasonable rules for the orderly conduct of public meetings, including rules which limit the amount of time an individual may address the council, provided that the time limit does not unreasonable restrict the public's right of access. In

Jones v. Heyman, a federal court held that “to deny the presiding officer the authority to regulate irrelevant debate and destructive behavior at a public meeting - - would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions.” That court concluded that the mayor’s action in attempting to confine the speaker to the agenda item and having the speaker removed from the room when he became disruptive constituted a reasonable time, place and manner regulation and did not violate the speaker’s first amendment rights. Such regulations are sometimes referred to as being “view point-neutral” as they apply to all public input, regardless of the speaker’s opinion.

I. Voting.

1. Secret Ballot. There can be no voting by secret ballot, although Council and board members are not prohibited from using written ballots to cast a vote as long as the votes are made at a public meeting, the name of the person who voted and his or her selection are written on the ballots, which ballots are maintained and made available for subsequent public inspection. Immediately after the vote is taken, the person that tallies the votes should announce the names of the persons who voted, and their votes. However, I recommend all votes be by voice vote to avoid any appearance of impropriety.
2. Proxy. Proxy voting, *i.e.* authorizing one member to vote for another member in the absence of the other, is not allowed.
3. Abstention from Voting. (Florida Statute 286.012)
 - a. No council person or member of any city board who is present may abstain from voting, except where there is or appears to be a possible conflict of interest under Florida Statutes 112.3143, s. 112.311, s. 112.313.
 - b. Florida Statute 112.3143(3)(a) prohibits a city council person or other local public officer from voting on any measure which inures to his or special private gain or loss or which the officer knows would inure to the special private gain or loss of any entity related to his or her employer or

to the private gain or loss of a relative or business associate of the officer (for Statements of the State Policy see F.S. 112.311 and for definitions see F.S. 112.312).

- c. Prior to the vote being taken, the officer who has to abstain must publicly state the nature of his or her interest in the matter for which he or she is abstaining and, within fifteen days after the vote, must disclose the nature of his or her interest in a memorandum to be incorporated in the minutes of the meeting at which the vote was taken.
- d. However, failure of a member to vote does not invalidate the entire proceeding. Otherwise, a member would be allowed to frustrate official action merely by refusing to participate.

J. Roll Call Vote. No roll call vote is required, so long as each member's specific vote on each subject is recorded.

K. Minutes. Written minutes must be kept of all meetings. There is no requirement that meetings be tape recorded or that verbatim transcripts be kept. But, once a recording is made by the City or a transcript is made, it is a public record and must be retained under the same rules as other public documents.

III. Consequences of Failure to Comply with the Sunshine Law.

A. Criminal Penalties. Any public officer who knowingly violates the Sunshine Law can be held guilty of a misdemeanor in the second degree, punishable by imprisonment of not over 60 days and/or fined up to \$500. F.S. 286.011(3)(b), s. 775.082(4)(b), and s. 775.083(1)(e).

B. Noncriminal Infraction. An official violating the Sunshine Law can be held guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. F.S. 286.011(3)(a).

- C. Removal from Office. The governor may suspend an elected or appointed public officer who is indicted for violation of the Government in the Sunshine Law. F.S. 112.52(1).

- D. Attorney's Fees. Reasonable attorney's fees for the complaining party are to be assessed against a board or commission found to have violated the Sunshine Law. Attorney's fees may be assessed against the individual member, except where the member sought and took the advice of the City attorney. F.S. 286.011(4) and (5).

- E. Civil Actions for Injunctive or Declaratory Relief. Circuit courts have jurisdiction to issue injunctions upon showing of that the Sunshine Law is being violated and that it constitutes "irreparable public injury." F.S. 286.011(2).

- F. Invalidity of actions taken in violation of the Sunshine Law and Subsequent Corrective Action. F.S. 286.011 provides that no resolution, rule, regulation or formal action shall be considered binding, except when made at an open meeting and the courts have held that actions taken in violation of this law are void. Such violations can be cured if the board or council holds a full and open meeting after the unnoticed meeting and an effort is made to make available to the public the information provided at the unnoticed meetings.

**STANDARDS OF CONDUCT
FOR PUBLIC OFFICERS
AND EMPLOYEES OF THE CITY**
(Florida Statutes 112.311-.3175)

1. **Public Policy.** The policy of the State of Florida is that no public officer or employee of the City shall have any interest (financial or otherwise, direct or indirect), engage in any business transaction or professional activity or incur any obligation which is in substantial conflict with the proper discharge of his or her duties. Public officers include anyone holding an elected or appointed office of the City, including anyone serving on an advisory body. F.S. 112.311 (5).
2. **No Solicitation or Acceptance of Gifts.** F.S. 112.313(2) provides that “No public officer, employee of an agency, local government attorney or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.”
3. **No Doing Business with the City.** No City employee or public officer shall directly or indirectly purchase, rent or lease anything or get services for the City from any business in which the officer or employee or their spouse or child has a material interest, nor shall a City public officer or employee or their spouse or child rent or sell any goods or services to the City. F.S. 112.313 (3).
4. **Unauthorized Compensation.** No City public officer, employee or City attorney or his or her spouse or minor child shall accept any compensation, payment or thing of value when they know, or reasonably should know, was given to influence a vote or other action in their official capacity. F.S. 112.313 (4).
5. **Salary and Expenses.** No public officer shall be prohibited from voting on a matter affecting his or her City salary, expenses or other City compensation as a public officer. F.S. 112.313 (5).
6. **Misuse of Public Position.** No City public officer, employee or City attorney shall corruptly use or attempt to use his or her official position or perform his or her official duties to secure a special privilege, benefit, or exemption for himself, herself, or others. F.S. 112.313 (6).
7. **Conflicting Employment or Contractual Relationship.** No City public officer or employee shall hold any employment or contractual relationship with any business entity subject to the regulation of or doing business with the City, nor hold a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties. No current or former City public officer, employee or City attorney may disclose or use information gained by reason of their position and not available to members of the general public for his or her personal gain or the gain or benefit of any other person or business entity. F.S. 112.313 (7).

8. **Exemptions.** It will not be a violation for any public officer or employee of the City if City business:

- A. Is transacted under a rotation system among all qualified suppliers within the City; or
- B. Is awarded under a system of sealed competitive bidding and:
 - i. The official or the official's spouse or child in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder and they have not attempted to persuade the City or any City personnel to enter into a contract, other than by the submission of the bid; and
 - ii. The official has filed a statement with the Supervisor of Elections disclosing the official's interest or the interest of the official's spouse or child in the business entity; or,
- C. The business is for legal advertising; or
- D. It is an emergency purchase; or
- E. The business entity is the only source of supply with the City; or
- F. The total amount of the transactions in any calendar year does not exceed \$500; or
- G. The business is by persons serving on advisory boards and the conflict is waived in a particular instance by City Council upon full disclosure of the transaction and after a public hearing. F.S. 112.313 (12).

9. **Lobbying By Former City Officials.** A person who has been an elected City official may not personally represent another person or entity before City Council or any agency of the City for a period of two years after leaving office. F.S. 112.313 (14).

10. **City Attorney.** Neither the City attorney nor any member of his firm shall represent a private individual or entity before the City Council. F.S. 112.313 (15).

11. **Voting Conflicts.** Per F.S. 112.3143, no City Council person nor any appointed City public officer shall vote on a measure which would inure to his or her special private gain or loss or that they know would inure to the special private gain or loss of any entity by whom they are retained or to the parent organization of such entity or the private gain or loss of a relative or business associate. Prior to the vote being taken, the person with the conflict must publicly state their interest in the matter and that he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest in a memorandum filed with the City Recorder who will incorporate it in the minutes.

12. **Financial Disclosure.** F.S. 112.3144 requires annual disclosure of financial interests by public officials and specified employees on a form created by the Commission on Ethics. Any public officer who fails to timely file will be assessed a fine of \$25 per day for each day they are late up to a maximum of \$1,500 and a civil penalty may be imposed if it is filed more than 60 days after the deadline. F.S. 112.3145 requires disclosure of financial interests and of clients represented before agencies by: the local code enforcement officers; zoning board members;

members of board of adjustments; other boards having the power to recommend, create or modify land planning or zoning within the City; pension boards or retirement boards; the mayor; the City manager; the City attorney; the chief code inspector; the chief water resource coordinator; the environmental director; the municipal administrator; the marshal; and, the purchasing agent. The statements of financial interest shall be filed with the local Supervisor of Elections. In addition, every City Council person who represents anyone for a fee or commission before agencies at his or her level of government (*i.e.* the county or any other governmental agency below the state-level) has to file a quarterly report of names of his or her clients.

13. Gifts. F.S. 112.3148 regulates gifts to public officials and employees who have to make financial disclosures and City procurement employees. A procurement employee means an employee of the City who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities obtained by the City if the cost of such services or commodities exceeds, or is expected to exceed, \$10,000 in any year (the 2013 Legislature increased this threshold amount from \$1,000.00). The statute requires that all of those persons who have to report under paragraph 12 above and all procurement employees of the City are prohibited from soliciting and/or accepting any gifts from a political committee or a lobbyist for their personal benefit or the personal benefit of another person in their immediate families if he or she knows or reasonably believes that the gift has a value in excess of \$100. The statute sets forth how gifts are to be valued. The person can accept the gift on behalf of the City or a charitable organization without violating the law. If accepting for the City or a charitable organization, the person receiving the gift shall not keep custody of the gift beyond the time reasonably necessary to transfer it to the City or the charitable organization. This prohibition does not include gifts from your relatives.