

SUNSHINE LAW

(Reference F.S. § 286.011)

Florida's Government-in-the-Sunshine Law establishes a basic right of access to most meetings of boards, commissions, and other governing bodies of state and local governmental agencies or authorities. The law applies:

- Equally to an appointed volunteer board member or a paid elected member of the City Council;
- To **any gathering of two or more members of the same board** to discuss some matter, which will foreseeably come before that board; and
- To members-elect. For example, a newly elected Council Member who has not yet been sworn in is subject to the provisions of the Sunshine Law.

The Sunshine Law is enforced through the local elected State Attorney. Violations of the law range from a civil infraction and \$500 fine up to a second degree misdemeanor and six months in jail for an intentional violation.

The law is approximately 150 words, although case law and Attorney General opinions on the subject fill volumes. The three basic requirements of the law are:

- 1. Meetings of public boards/commissions must be open to the public.**
- 2. Reasonable notice of such meetings must be given.**
- 3. Minutes of the meetings must be taken.**

Meetings of public boards/commissions must be open to the public.

- Two or more members from the same body may not meet outside of an open public meeting to discuss board business. As a member of a public board or commission, you are responsible for avoiding the appearance of impropriety. If it is your practice to have breakfast with another board member, consider how that appears to the public even though you are not discussing board business.
- The law is applicable to any gathering, whether formal or casual, of two or more members of the same board. If you're at a social gathering with another member of your board, you do not get a "pass" on discussing board business.
- The Sunshine Law does not apply to your discussions with staff or members of different boards. Board members are encouraged to contact staff prior to a meeting to resolve any questions.
- Communicating with another member of your board includes the use of a liaison, memoranda, telephone, electronic device (texting), e-mail, etc. These methods may not be used to avoid the Sunshine Law. A person acting as a conduit is typically trying to be helpful. As a member, you

need to recognize possible violations of the Sunshine Law and take positive steps to stop the person from acting as a conduit. You must constantly be on guard!

- A member may use a one-way written report or communication to inform other members of a subject which will be discussed at a public meeting. However, outside of an open public meeting, there may not be interaction among the members related to the report. If you must send a one-way communication to your board, send it through staff for distribution. If you are on the receiving end of a communication from another member, DO NOT RESPOND.
- During a meeting, a board may not use pre-assigned numbers or codes to vote. Each member must clearly state his/her vote when appropriate.
- The public's right to participate affects every aspect of the meeting. For example, if a large turnout is expected, reasonable steps must be taken to ensure the meeting room will accommodate the public, up to and including moving the meeting to a larger facility. During a recess of a meeting, members may not discuss board issues in a manner not generally audible to the public. During interviews, board members may not ask certain members of the public to "voluntarily" leave the room.
- Boards and committees may not meet at a location that is generally not free and accessible by the public. This includes the use of breakfast, lunch or dinner meetings. Meeting in a restaurant may have what the Government-in-the-Sunshine Manual calls a "chilling effect" on the public's willingness to attend. A citizen may feel he/she has to purchase a meal in order to participate in the meeting.
- All boards must allow public comments on agenda items. Boards may adopt rules of procedure relating to the amount of time that will be granted to a speaker to comment on an agenda item, such as three to five minutes. At the discretion of the chair and with the concurrence of the board members, the speaking times adopted in a rule or procedure may be varied. Boards are not required to allow public speaking on the invocation, pledge of allegiance, roll call, approval of minutes, and adjournment. In providing an opportunity for public participation, boards may adopt reasonable rules and policies, which ensure the orderly conduct of a public meeting.

Reasonable notice of such meetings must be given.

- The Sunshine Law provides that reasonable notice of meetings must be given. Emergency meetings should have at least 24 hours notice. A regular meeting should never be noticed less than 24 hours prior to a meeting. The City Attorney has recommended that all regular meetings receive at least three days' notice.
- Historically, the City Council, boards and committees have used an agenda as a "meeting notice." The notice (agenda) must contain the time and place of the meeting and be prominently displayed in the area of City Hall set aside for that purpose (Government-in-the-Sunshine Board located on the first floor of City Hall).
- Notwithstanding the above, any extraordinary requirements for posting set forth in state law, City Code, or City Charter must be followed.

- Recording secretaries must email a copy of the agenda to the following Florida Today accounts: news@floridatoday.com, breakingnews@floridatoday.com, and brevard-news-newsroom@floridatoday.com; post one agenda on the Government-in-the-Sunshine board on the first floor of City Hall; and email one copy to the City's Public Information Office (city.hall@mlbfl.org) for posting to the web site.
- There is no requirement for recording secretaries to sign the agenda.
- The following notices are required on agendas:

Section 286.0105 provides that each notice (agenda) contain the following:

“If a person decides to appeal any decision made by (insert name of board) with respect to any matter considered at such meeting, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.”

Additionally, based on case law, the City Attorney has asked that **all quasi-judicial boards** (Code Enforcement Board, Historic and Architectural Review Board, Planning and Zoning Board, and Zoning Board of Adjustment) place the following notice on its agendas:

“This notice does not constitute consent by the City for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.”

Further, Section 286.26, Florida Statutes, provides for accessibility by the physically handicapped at public meetings. A request from a person who is physically handicapped for reasonable accommodation to participate in the meeting must be received at least 48 hours prior to the meeting. The notice should be in substantially the following format:

“In accordance with the Americans With Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact (list the appropriate Department or Division and telephone number) at least 48 hours prior to the meeting.”

Finally, the following notice is required in order to address instances where more than one Council Member attends a board meeting:

“Note: more than one member of the City Council may be in attendance at the meeting and may participate in discussions.”

The notices outlined above should be listed on the agenda, not the minutes!

Minutes of the meetings must be taken.

- Section 286.011 of the Florida Statutes specifically requires that minutes of a meeting of a public board be promptly recorded and open to public inspection. The minutes are considered public records at the point when the person responsible for preparing them has finished even though they have not yet been sent to the board or officially approved by the board. Minutes are required to be promptly recorded; therefore, the City Clerk recommends that boards, which do not meet often, not wait until the next meeting to distribute the minutes. A three-, six-, or nine-month delay would probably not be viewed as being promptly recorded.
- Minutes are not required to be verbatim. The term minutes contemplates a brief summary or series of brief notes reflecting the events of the meeting.
- In the absence of a State Statute or Code requirement, a roll call vote for each member is not required. However, the minutes must reflect how each member voted on an item.
- Every board member is required to vote on every question unless he/she declares a conflict of interest. Please see information regarding the Voting Conflict of Interest Law located on the City's web site.
- There is no requirement that audio recordings be made by boards; however, once made, the audio files are public record and have a retention period. Once a board begins recording a meeting, that board may not stop during certain portions of the meeting. Items are not considered "off the record."

This concludes general information regarding the Sunshine Law. It is not intended to be all-inclusive. Specific questions should be directed to the City Clerk or the City Attorney.