



BOARD OF COUNTY COMMISSIONERS

County Attorney's Office  
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Viera, Florida 32940

## Inter-Office Memo

**TO:** Members of the Local Planning Agency and Planning and Zoning Board

**FROM:** Alex Esseeesse, Assistant County Attorney

**SUBJECT:** Government in the Sunshine Law; Public Meetings

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Florida's Government in the Sunshine Law provides a right of access to governmental proceedings. The public policy behind the Sunshine Law is to have all deliberations by a public body, including the Local Planning Agency and Planning and Zoning Board, conducted in public meetings of which the public and the media have received advance notice. This ensures the decision-making process is transparent and allows members of the public to voice their concerns and/or support for a particular item.

**1. What are the requirements of the Sunshine Law?**

The Sunshine Law, Section 286.011, Florida Statutes, contains three basic requirements:

- a) meetings of public boards or commissions must be open to the public;
- b) reasonable notice of such meetings must be given; and
- c) minutes of the meeting must be taken.

**2. Who does it apply to?**

Boards, councils, or commissions of Brevard County are subject to the Sunshine Law. The law is equally applicable to advisory boards, such as the Local Planning Agency and the Planning and Zoning Board. While members are permitted to gather factual information and advice from staff, use of staff as a conduit to discuss members' positions on an issue may violate the Sunshine Law.

**3. What is a "meeting" which is subject to the Sunshine Law?**

Florida courts have repeatedly stated that it is the entire decision-making process to which the Sunshine Law applies and not merely to a formal assemblage of a public body at which voting to ratify an official decision is carried out. Thus, the statute extends to "discussions and deliberations," as well as to formal action taken by a public body. Therefore, the law is generally applicable to any gathering where two or more members of a public board, commission, or committee discuss some matter on which foreseeable action will be taken by the board, commission, or committee. The term "meeting" has been found to include briefing sessions, workshop meetings, informal discussion and other meetings of the public body where no formal vote is taken.

When speaking on an item, speak into the microphone to avoid any appearance of dialogue between Board members.

## 4. Public Meetings

### (a) Notice and Recording:

Procedurally, the Sunshine Law requires the giving of notice to members of the public as to the time and place of the proposed meeting of a public entity, such as yours, and the subject matter to be discussed. The notice should include, among other things, the time, place, and if available, an agenda of the subject matter. Section 286.011(2), Florida Statutes, states that all public meetings must be “recorded” and the record made available for public inspection. The recording need not be a tape or verbatim transcript, but must be minutes accurately reflecting actions taken at the meeting.

### (b) Quorum:

A quorum is necessary for a public board to take official action. The general rule is that a majority of members of a public board must be physically present in order to have a quorum.

### (c) Voting:

The use of secret ballot at public meetings is not acceptable. If a vote is required by the Local Planning Agency or Planning and Zoning Board members, then a vote must be made by each member unless there is a bona fide conflict of interest.

### (d) Voting Conflicts of Interest:

As an appointed member of the Local Planning Agency and Planning and Zoning Board, the State’s conflict of interest laws and Code of Ethics apply to you. All members must keep in mind the possibility of a voting conflict of interest arising as to any item(s) that might come before either board based not only on their employment relationship, but also upon other situations.

Section 112.3143(3), Florida Statutes, provides that:

[n]o...local public officer shall vote in his official capacity upon any measure which would inure to his special private gain; which he knows would inure to the special private gain of any principal by whom he is retained or to the parent organization or subsidiary of a corporate principal by which he is retained, other than an agency as defined in s. 112.312(2); or which he knows would inure to the special private gain of a relative or business associate of the public officer.

For a voting conflict to arise, “special private gain” must inure to the board member, a principal or parent organization or subsidiary of a corporate principal by whom he/she is retained, a relative, or a business associate. The test formulated by the Commission on Ethics is based in part on the size of the class of persons who stand to benefit from the measure and also based upon the remote and speculative test. Where the class of persons is large, a special gain will result if there are circumstances unique to the member to gain more than the other members of the class. Where the class of person benefitting from the measure is extremely small, the possibility of special gain is much more likely. Additionally, if the gain is of a questionable nature or magnitude, or is too

remote or speculative, then there may not need to be a “special private gain.”

In addition to abstaining from the vote, if the member intends to “participate” in the decision prior to the meeting, the appointed board member should file a memo stating the conflict prior to the meeting. Section 112.3143(4), Florida Statutes. “Participate” means “any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.” The memo shall be incorporated into the minutes of the meeting and read publicly at the meeting. If the member is only participating in the discussion at the meeting, then the conflict should be disclosed orally at the meeting before participating, and a memo should be filed within fifteen (15) days after the vote. No member may participate (i.e., attempt to influence the vote) without making this disclosure prior to the discussion on the issue.

With respect to an appearance of a conflict, Section 286.012 provides that

[a] member of a . . . county . . . governmental board . . . who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under [certain provisions of the law]. If there is, or appears to be, a possible conflict under [Sections 112.311, 112.313, or 112.3143, Florida Statutes], the member shall comply with the disclosure requirements of [Section 112.3143, Florida Statutes]. . . .

(e) Public Participation:

The Local Planning Agency and Planning and Zoning Board are both required to allow for public comment to assist in the decision-making process in accordance with Section 2-214, Brevard County Code of Ordinances. This body shall establish procedures for taking public comment at all meetings. Two kinds of public comment shall be taken:

1. Relevant comment when the committee discusses a particular issue or takes a final vote on any given issue; and
2. Comment which brings new business or issues before the committee.

Each speaker shall be given at least three minutes to speak, with provision for an extension of time by the chair or majority vote of the board. Speakers may be required to give their name and address for the record.

In 2013, the Florida Legislature implemented legislation that provides for the public to be heard at public meetings which are not specifically exempted by the statute. This law requires that members of the public be given a reasonable opportunity to be heard on a proposition before the public board, council, or commission. The opportunity to comment does not have to occur at the same meeting at which official action is taken if the opportunity:

1. Occurs at a meeting that is during the decision-making process; and

2. Is within reasonable proximity in time before the meeting at which the board, council, or commission takes official action.

Given that County Code requires the opportunity for comment at all committee meetings, you should provide for public comment at all your meetings. With that being said, the opportunity to be heard is subject to limited rules and policies that the board(s) adopt. For example, the board can put in place the following rules/procedures:

- guidelines regarding the amount of time a speaker has to address the board.
- procedures for allowing representatives of a group to address the board (rather than requiring all members of such group to speak) if such members agree to be represented by such an individual.
- procedures for an individual to submit a form/card in order to be heard by the board on a particular item.

Failure to comply with the Sunshine Law is subject to injunctive relief and assessment of attorney's fees. Section 286.0114, Florida Statutes.

## **5. Does this mean we can't have lunch?**

The Attorney General's Office urges public boards or commissions to avoid the use of "luncheon meetings" to discuss board or commission business. These meetings may have a "chilling" effect upon the public's willingness or desire to attend. People who would otherwise attend such a meeting may be unwilling or reluctant to enter a public dining room without purchasing a meal and may be financially or personally unwilling to do so. Discussions at such meetings by members of the board or commission which are audible only to those seated at the table may violate the "openness" requirement of the law. Public boards and commissions are, therefore, advised to avoid meetings at which the public and the press are effectively excluded.

Members of a public board or commission are not, however, prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings.

Members of a public board or commission are also not prohibited under the Sunshine Law from conducting inspection trips. However, if discussions relating to the business of the board or commission will occur between board members, advance notice must be given; the public must be afforded a reasonable opportunity to attend; and minutes must be promptly recorded and made available for inspection. In some cases, it may not be possible to invite the general public to attend such trips. In these instances, inspection trips made by members of a public board, together with staff and officials of other organizations and members of the press, are not secret meetings in violation of Section 286.011, Florida Statutes, even though the general public is not invited to participate. However, members of the public board should avoid discussions with fellow board members regarding public business while on such trips.

## **6. Beware of the Consequences!**

Section 286.011(3), Florida Statutes, provides that any person knowingly violating the Sunshine Law by attending a meeting not held in accordance with the meetings requirements may be guilty of a misdemeanor of the second degree, punishable by up to sixty (60) days in jail and/or a \$500 fine. All other violations are noncriminal infractions subject to a maximum \$500 fine. In addition, attorneys' fees may be assessed against a party found in violation if a civil action is brought to enforce the law.

## **7. Conclusion**

In summary, board members should not discuss with each other, ***directly*** or ***indirectly***, items that will or could foreseeably be discussed and acted on at a public meeting. This is only a brief summary of the Sunshine Law. It is not inclusive of all situations in which the law applies. If you have questions concerning the specific application of the law, please seek guidance from the County Attorney's Office. If you know of a particular factual situation that may constitute a conflict of interest and some doubt exists whether the conflict exists, an advisory opinion from the Commission on Ethics can be obtained.

**Reference:** A valuable resource in this area is the Government in the Sunshine Manual - 2021 Edition, available through the Florida Attorney General's Office at:  
[http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B9QQ79/\\$file/SunshineManual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B9QQ79/$file/SunshineManual.pdf)