



Citizen Boards

City of Gainesville
Office of the City Attorney

Authority and Powers

U.S. Constitution (10th Amendment)

States have concurrent and reserved “police powers” to promote health, safety, morals, and general welfare of their inhabitants.

Florida Constitution

Grants FL Legislature authority, by general or special law, to form municipalities that shall have certain powers (governmental, corporate, and proprietary).¹

Laws of Florida

City of Gainesville established²

Municipal Home Rule Powers Act: municipalities may exercise any power for municipal purposes except when expressly prohibited by state law.³

City of Gainesville

Charter: Most important legal document of city (similar to local constitution); initially adopted by FL Legislature; may be amended locally.

Local Enactments: Comprehensive Plan; Code of Ordinances; Resolutions; Policies.

1) FL CONST., ART. VIII, SEC. 2.; 2) *ORIGINALLY INCORPORATED IN 1866; RE-INCORPORATED 1869; CH. 12760, LAWS OF FLA. (1927), AS AMENDED BY CH. 90-394, LAWS OF FLA. (1990).*; 3) *CH. 166, F.S. (1973).*

Sunshine Law – Basic Requirements

Any MEETING of a public
board/commission:

1) OPEN

2) NOTICE

3) MINUTES

Sunshine Law – “Meeting”

Any gathering, whether formal or casual, of two or more members of the same board with **discussion on any matter that will foreseeably come before that board** for action.

Public Records

The public has a right to access **all materials** that are:

- 1) **made or received** by a public body, officer, employee, or persons acting on their behalf, and
- 2) used to perpetuate, communicate, or formalize knowledge **in connection with official business.**

Unless specifically exempted by the Florida Constitution or Florida Statutes.

Open Government Laws – Liability

Attorney's Fees

may be assessed against individual board member(s) for SL violation, if advice of attorney not followed.¹

Action Void

any SL violation (irrespective of intent or degree of resulting prejudice/injury) is “irreparable public injury” that voids any resulting action.²

Knowing Violation

SL: criminal 2nd degree misdemeanor, punishable by up to 60 days in jail and \$500 fine. PR: 1st degree mis./\$1000 fine.³

Negligent Violation

noncriminal infraction, fine not exceeding \$500.⁴

Removal from office.⁵

1) §286.011(4), F.S.; 2) *TOWN OF PALM BEACH V. GRADISON*, 296 SO. 2D 473 (FLA. 1974), *PORT EVERGLADES AUTHORITY V. INTERNATIONAL LONGSHOREMAN'S ASSOCIATION, LOCAL 1922-1*, 652 SO. 2D 1169 (FLA. 4TH DCA 1995); 3) §286.011(3)(B) AND §119.10, F.S.; 4) §286.011(3)(A) AND §119.10, F.S.; 5) §112.52, F.S.

Ethics

Board member's responsibility to determine the application of Florida's Code of Ethics to any particular situation.

Advisory opinion –
City Attorney's Office

Binding opinion –
Florida Commission on Ethics
(850-488-7864)



Ethics

Public Duties vs. Private Interests

May not be employed with or have a contract with any business or agency:

- 1) that is regulated by or doing business with the City, or
- 2) when such relationship poses a frequently recurring conflict between the official's private interests and public duties.¹

May not either:

- 1) corruptly use your position or the resources thereof, or
- 2) use info not available to the public to obtain a special privilege or benefit for yourself or someone else.²

1) §112.313(7), F.S.; 2) §112.313(6), (8), F.S.

Ethics

Gifts

May not solicit or accept anything of value that is based on understanding that your vote, official action, or judgment would be influenced.³

May not otherwise accept a gift worth more than \$100 from anyone who has lobbied you or the City within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist, or from a political committee or vendor doing business with the City.⁴

3) §112.313(2), F.S.; 4) §112.3148, F.S.

Voting

All board members are **required to vote**, unless:

- 1) There is or appears to be a possible **voting conflict**, or
- 2) To avoid potential **bias or prejudice** in a quasi-judicial proceeding.¹

Voting Conflicts

Any matter that would result in a special private gain or loss to the board member or a relative, business associate, or principal by whom the board member is retained.

Relative: father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

Principal by whom retained: an individual or entity that for something of value has permitted or directed another to act for the individual or entity, including a client, employer, or the parent, subsidiary or sibling organization of one's client or employer.

Voting Conflicts

If conflict exists, **must be disclosed:**

Known prior to the meeting – COE Form 8b distributed to board members and verbally disclosed.

Unknown prior to the meeting – verbally disclosed and COE Form 8b filed with staff liaison within 15 days and distributed at next meeting.

After disclosure, appointed board members must abstain from voting (and may not be considered for quorum purposes), but **may participate** in the discussion of the matter.

Questions?