

Citizen Boards



City of Gainesville
Office of the City Attorney

Overview

- Authority and Powers
- Sunshine Law
- Public Records Law
- Ethics
- Legislative vs. Quasi-judicial

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).
 - *FL Const., Art. VIII, Sec. 2.*

- **Laws of Florida**

- City of Gainesville established:
 - *Originally incorporated in 1866; re-incorporated 1869; Ch. 12760, Laws of Fla. (1927), as amended by Ch. 90-394, Laws of Fla. (1990).*
- Municipal Home Rule Powers Act: municipalities may exercise any power for municipal purposes except when expressly prohibited by state law.
 - *Ch. 166, F.S. (1973).*

- **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.

Sunshine Law

- Any **MEETING** of a public board/commission:

1. **OPEN**

2. **NOTICE**

3. **MINUTES.**

- §286.011, Florida Statutes (1967); Article I, Section 24, Florida Constitution (1992).

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.
- *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010).

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.
 - **1)** Article I, Section 24, Florida Constitution; **2)** Chapter 119, Florida Statutes.

Ethics - 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

- §286.012, F.S.

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 - Behavior

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

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

• 1) §112.313(7), F.S.; 2) §112.313(6), (8), F.S., 3) §112.313(2), F.S.; 4) §112.3148, F.S.

Ethics - 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.
- §112.3143, F.S.

Ethics - 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.
- §112.3143, F.S.

Ethics – Disclosures

Only certain boards required to file these disclosures.

- **Form 1** – Limited Financial Disclosure (annually by July 1)
 - Sources and types of financial interests; no dollar values.
- **Form 2** – Quarterly Client Disclosure
 - Filed only if you or a partner or associate of your professional firm represent a client for compensation before the City.
- **Form 9** – Quarterly Gift Disclosure
 - Filed only if you received a gift worth more than \$100, other than gifts from “relatives” (defined in §112.312, F.S.) or gifts primarily associated with your private business/employment.
- Forms should be received from and filed with **Supervisor of Elections**, but see Staff Liaison or City Clerk’s Office for assistance.

Legislative vs. Quasi-judicial

- Generally two types of local government board decisions:
 - **Legislative** – makes law/policy that generally applies to a broad group of citizens.
 - **Quasi-judicial** – applies already-established law/policy to a specific, individualized situation (i.e., determining whether a specific application meets existing regulations or requirements).

Quasi-judicial Hearings

- Hearing Requirements (and judicial review standards):
 - **Procedural Due Process¹**
 1. Adequate prior notice,
 2. Fair opportunity to be heard, present evidence, and cross-examine any witnesses, and
 3. Unbiased decision-maker.
 - **Essential requirements of correct law**
 - **Competent, substantial evidence**

• 1) 14th Amendment, U.S. Constitution; Article I, Section 9, Florida Constitution.

Quasi-judicial Hearings

- Unbiased decision-maker:
 - Hearings must be free from any just suspicion of prejudice, unfairness, fraud, or oppression.¹
 - Mere political bias or adverse political philosophy does not equal bias.²
 - Ex-parte communications prohibited.³ Must disclose at hearing any inadvertent communications.
- 1) *Bd. of Pub. Instruction of Broward Cnty. v. State ex rel. Allen*, 219 So. 2d 430, 432 (Fla. 1969); 2) *Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482 (1976); 3) See *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991).



•Questions?