

## CITY OF VENICE

### SUNSHINE, PUBLIC RECORDS, AND ETHICS LAWS TRAINING

November 29, 2023

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#### I. SUNSHINE LAW

The purpose of the Sunshine Law is to provide a right of access to government proceedings. All public agencies are subject to the Sunshine Law.

The Sunshine Law is set forth in Florida Statutes § 286.011 and Article 1, Section 24 of the Florida Constitution. **The Sunshine Law extends to discussions and deliberations taken by a public board and is applicable to any gathering (formal or casual) of two or more members of the same board of commission to discuss some matter on which foreseeable action will be taken by the public board or commission.**

#### THREE BASIC REQUIREMENTS OF THE SUNSHINE LAW AS SET FORTH IN FLORIDA STATUTES § 286.011:

1. Meetings of the public must be open to the public;
2. Reasonable notice of such meetings must be provided; and
3. Minutes of the meeting must be taken.

#### MEETING:

1. The Sunshine Law applies to meetings between individuals who are members of the same board.
2. Meetings with agency staff are not ordinarily subject to the Sunshine Law unless staff ceases to function in a staff capacity and is delegated authority normally within the public agency's discretion.
3. Discussions between a public board and its attorney are subject to the Sunshine Law, except in limited circumstance.
4. Members of the same board or committee can meet socially provided that matters which are coming before the board or may come before the board are not discussed.
5. The Sunshine Law applies to subcommittees unless they are engaged solely in fact-finding or information gathering. Note: The City Council passed a policy in November 2021 prohibiting the formation of subcommittees by advisory boards and committees.

### **MEETINGS OPEN TO THE PUBLIC:**

1. Meetings must occur somewhere that is easily accessible to the public.
2. The public must be provided with a “reasonable opportunity” to be heard on a matter before a board takes official action. Any violations of this provision can result in the recovery of attorney’s fees by the affected party.

### **REASONABLE NOTICE:**

1. Reasonable notice of all meetings must be provided. According to the Florida Attorney General, the definition of “reasonable” depends on the facts of the situation and board involved.
2. The Sunshine Law does not mandate that an agency provide notice of each item to be discussed through a published agenda. A public body can add additional items to the agenda at regularly noticed meetings and take action on the added item.

### **MINUTES:**

1. Written minutes of all meetings and workshops must be recorded and open to the public for inspection. The minutes do not need to be a verbatim transcript.

### **CONSEQUENCES OF SUNSHINE VIOLATIONS:**

1. Any member of a board or commission who knowingly violates the Sunshine Law may be subject to criminal penalties of a misdemeanor of the second degree. Fla. Stat. § 286.011(3)(b).
2. The Sunshine Law provides that a fine not exceeding \$500.00 may be imposed for noncriminal infractions.
3. In civil actions to enforce the Sunshine Law, reasonable attorney’s fees will be assessed against any board or commission found to have violated the Sunshine Laws.

### **BEWARE:**

*Lorenzo v. City of Venice*, Case No. 2008 CA 8108 SC (Fla. 12<sup>th</sup> Cir. Ct. Oct. 7, 2009) –The City of Venice was ordered to pay \$777,114.42 in attorney’s fees and costs to the Plaintiff’s attorney. This judgment (for just the Plaintiff’s attorneys’ fees and costs) remains one of the highest and most costly judgments entered against a local government for violations of the Public Records and Sunshine Laws.

## II. PUBLIC RECORDS LAWS

Chapter 119, Florida Statutes, and Article I, Section 24 of the Florida Constitution set forth Florida's Public Records laws. These laws apply to your board or committee.

Article I, Section 24 of the Florida Constitution states:

Every person has the right to inspect or copy **any public record made or received in connection with the official business** of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

Florida Statutes § 119.011(12) defines public records as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

### **PUBLIC RECORDS:**

1. **Public records include ALL materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge no matter the form.**
2. There is no “unfinished business” exception to the public inspection and copying requirement of Chapter 119, Florida Statutes, meaning even drafts of documents are subject to review and inspection.
3. Communications on social networking sites (Facebook, Twitter, YouTube, LinkedIn, etc.) and text messages are considered a public record regardless of whether you sent or received them when related to official business of your board or committee. The content of the communication is the determining factor.
4. There are numerous statutory exemptions to disclosure, but most do not apply to advisory boards and committees.

### **RIGHT TO INSPECT/COPY:**

1. **Any person is authorized to inspect and receive copies of public records. They do not have to have a special or legitimate interest. Requests do not have to be made in writing.**

2. The records custodian of the agency or his/her designee is responsible for making public records available for inspection and/or copying “at any reasonable time, under reasonable conditions”. Fla. Stat. § 119.07.
3. Any exemption from the public records laws must be stated in writing. Fla. Stat. § 119.07(1)(e). **The public records laws are construed in favor of open government**, so exemptions are strictly construed.

### **CONSEQUENCES OF PUBLIC RECORD VIOLATIONS:**

1. Any member of a board or commission who knowingly violates the Public Records Act may be subject to criminal penalties of a misdemeanor of the first degree (one year in prison or \$1,000 fine, or both). Fla. Stat. § 119.10(1)(b).
2. The Public Records Act provides that a fine not exceeding \$500 may be imposed for noncriminal infractions by a public officer. Fla. Stat. § 119.10(1)(a).
3. If a civil action is filed against an agency and the court determines that the agency unlawfully refused to permit a public record to be inspected or copied and the complainant provided written notice identifying the public record request to the agency’s custodian of public records at least 5 business days before filing the civil action, the court shall assess and award attorney’s fees against the agency responsible. If the court determines the complainant request to inspect or copy a public record for an improper purpose, the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action.
4. Further, any person who willfully and knowingly violates any provision of the Public Records Act commits a misdemeanor of the first degree punishable by one year in prison or \$1,000 fine, or both. Fla. Stat. § 119.10(2)(a).

### **III. FLORIDA’S ETHICS CODE**

Florida’s Ethics Code is found in Part III of Chapter 112, Florida Constitution and Article II, Sec. 8 of the Florida Constitution.

1. Premised upon maintaining public trust and prohibits public officials from using their office for “private gain”. Private gain almost always references a public official’s ***financial interest*** that is directly affected as a result of the vote.

2. Voting Restrictions: You must abstain from voting and refrain from participating in discussion on any measure that would inure to your special private gain or loss, or that of any employer, principal, or relative. Fla. Stat. § 112.3143
  - a. If conflict is known, publicly state to the assembly the nature of the conflict and abstain from voting.
  - b. Memorandum of Voting Conflict must be filed with board secretary within 15 days.

Also note that Fla. Stat. § 286.012 provides that a member of a municipal governmental board, commission, or agency 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 s. 112.311, s. 112.313, s. 112.3143. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.