

# Citizen Boards



City of Gainesville  
Office of the City Attorney

# Overview

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

# Authority and Powers

- **U.S. Constitution (10<sup>th</sup> 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 - Basic Requirements

- 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.

# Open Government Laws – Liability

- **Attorney's Fees** – may be assessed against individual board member(s) for SL violation, if advice of attorney not followed.<sup>1</sup>
- **Action Void** – any SL violation (irrespective of intent or degree of resulting prejudice/injury) is “irreparable public injury” that voids any resulting action.<sup>2</sup>
- **Knowing Violation** – SL: criminal 2<sup>nd</sup> degree misdemeanor, punishable by up to 60 days in jail and \$500 fine. PR: 1<sup>st</sup> degree mis./\$1000 fine.<sup>3</sup>
- **Negligent Violation** – noncriminal infraction, fine not exceeding \$500.<sup>4</sup>
- **Removal from Office.**<sup>5</sup>

- **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.<sup>1</sup>
- 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.<sup>2</sup>

## *Gifts*

- May not solicit or accept anything of value that is based on understanding that your vote, official action, or judgment would be influenced.<sup>3</sup>
- 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.<sup>4</sup>

• 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

- 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.

# 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.<sup>1</sup>

• §286.012, F.S.

# 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.

# 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.

# 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 Process**<sup>1</sup>
    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) 14<sup>th</sup> 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.<sup>1</sup>
  - Mere political bias or adverse political philosophy does not equal bias.<sup>2</sup>
  - Ex-parte communications prohibited.<sup>3</sup> 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?**