City of Eustis



Municipal Government, Ethics, Sunshine Law and Public Records



Municipal
Government,
Art. VIII
Sec. 2(b)
FL Constitution

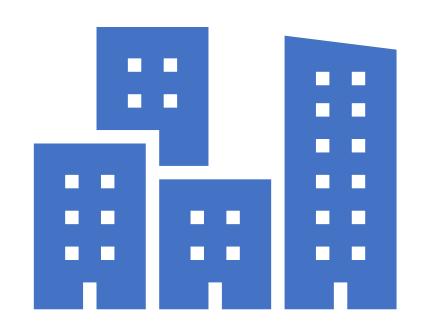
Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

Each municipal legislative body shall be elective.

Municipal charter is an essential and fundamental element of every Florida municipality as no municipal government may be created nor may exist without a charter. Due to their importance Charters cannot be changed by ordinance, without a public referendum.

A municipal charter must originate within the community and must be formally approved by a majority of the registered voters of the community. The charter is, in a sense, a compact among the residents of the community regarding the extent and form of government that they desire.

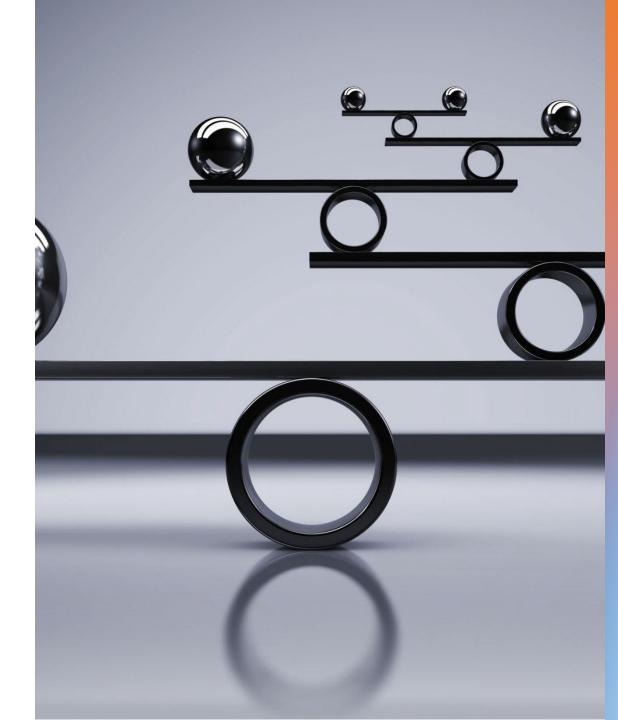
Municipal Charter



City of Eustis Charter



Ethics



Three
Fundamental
Principles of
Florida
Ethics Law

"A public office is a public trust"

Concern that public servants avoid any situation that "tempts to dishonor"

No one can serve two masters

Ethical Principles Declared by Law Chapter 112, Part III (Legislative Intent)

"It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public.

...promoting the public interest and maintaining the respect of the people in their government must be of foremost concern."

The Underlying Principle: Preventing/Avoiding a Conflict of Interest

That is: "a situation in which regard for a private interest tends to lead to disregard of a public duty or interest."

Statutory Subjects Chapter 112, part III

Solicitation or acceptance of gifts (bribes)

Unauthorized compensation (gift for influence)

Doing business with one's agency

Misuse of public position

Conflicting employment or contractual relationship

Disclosure or use of certain information

Voting conflicts

Restriction on employment of relatives (nepotism)

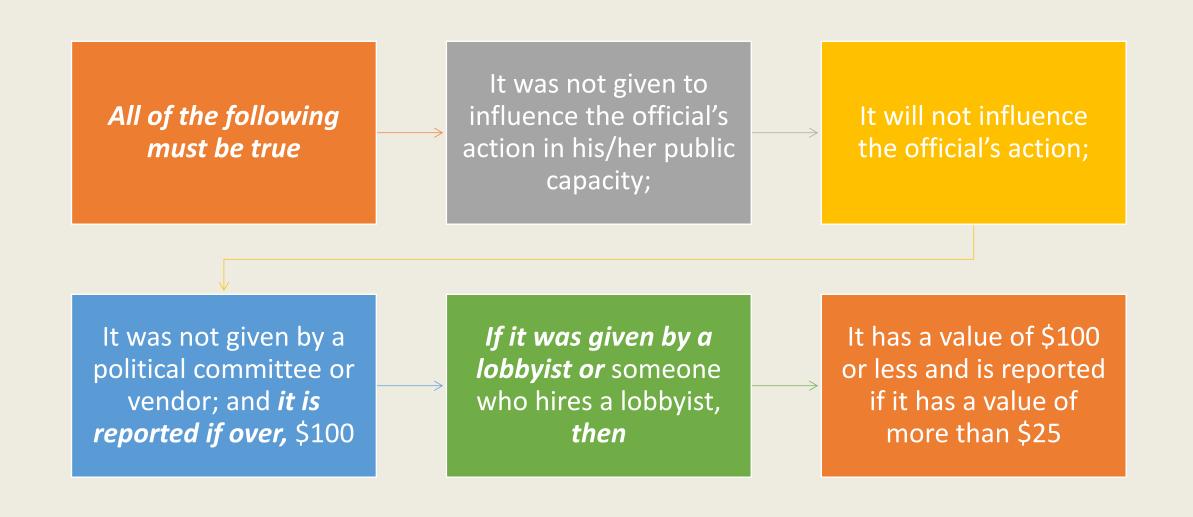
Illegal Gifts: Anything of Value that Could Have Influence

 Prohibition on Solicitation or Acceptance of Gifts No public officer, employee ... or candidate ... shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor or service, based upon any understanding that the vote, official action or judgment of the public officer, employee, local government attorney or candidate would be influenced thereby.

Illegal Gifts: Anything of Value that Could Have Influence

 Prohibition on Accepting Compensation Given to Influence a Vote No public officer, employee of an agency, or local government attorney or spouse or minor child shall accept any compensation, payment or thing of value when the person knows, or, with reasonable care, should know that it was given to influence a vote or other action.

Legal and Reportable Gifts



Gifts:
Perception
and Cure

Even if a particular gift is legal, consider carefully the public perception of that gift.

Curing an Improper Gift: pay the value of the gift to the giver within 90 days

Prohibition of Doing Business with One's Agency

An officer or employee, when acting in an official capacity, shall not, either directly or indirectly, purchase, rent or lease any realty, goods or services from any business entity of which the officer or employee, spouse or child is officer, partner, director or proprietor or in which he or she, spouse or child has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease or sell any realty, goods, or services to the municipality or any agency thereof.

Prohibition of Conflicting Employment or Contractual Relationships

No public officer or employee shall hold any employment or contractual relationship with any business entity or agency which is subject to the regulation of the agency of which one is an officer or employee or which does business with the said agency; nor shall an officer or employee have any employment or contractual relationship that will create a continuing or frequently recurring conflict between one's private interests and the performance of public duties or that would impede the full and faithful discharge of public duties. Reference Florida Statutes for exceptions to this standard.

Prohibition of Misuse of Public Position

A public officer, employee or local government attorney shall not corruptly use or attempt to use one's official position or any property or resource which may be within one's trust or perform official duties to secure a special privilege, benefit or exemption.

Prohibition of Misuse of Privileged Information

No public officer, employee of an agency or local government attorney shall disclose or use information not available to members of the general public and gained by reason of one's official position for one's personal gain or benefit or the personal gain or benefit of any other person or business entity.

Prohibition of Nepotism

Nepotism is the practice of showing favoritism to relatives, especially in the awarding of jobs. A municipal officer or employee vested with the power to appoint, employ, promote or advance individuals or to make recommendations concerning such shall not appoint, employ, promote, advance or advocate for such benefit to a position over which he or she exercises jurisdiction, any relative. "Relatives" includes parents; uncles, aunts and first cousins; siblings, their spouses and their children; spouses and their parents; children and their spouses; stepparents, step-siblings and stepchildren; and half-siblings.

Voting Conflicts of Interest: What to Do

Read agendas carefully. If you think you have a conflict of interest on an agenda item, it is best to contact the City attorney ahead of the meeting to discuss the matter.

If elected officials have a voting conflict, they must disclose the conflict verbally at the public meeting PRIOR TO ANY VOTE. Then, ABSTAIN FROM VOTING on the item, and FILE THE CONFLICT FORM with the person taking minutes.

If appointed officials have a voting conflict, they must disclose the conflict prior to the meeting (or at the meeting if not disclosed before), ABSTAIN FROM VOTING on the item, and FILE THE CONFLICT FORM with the person taking minutes.



right of access to governmental proceedings of public boards and commissions at both state and local levels (Judiciary and Legislature not subject to the Sunshine Law).

Protects the public from "closed door" decision-making by providing a

Purpose of Sunshine Law

Florida Constitution, Art. I, § 24 and § 286.011, Fla. Stat.:

"All meetings of any board or commission . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no . . . formal action shall be considered binding except as taken or made at such meeting."

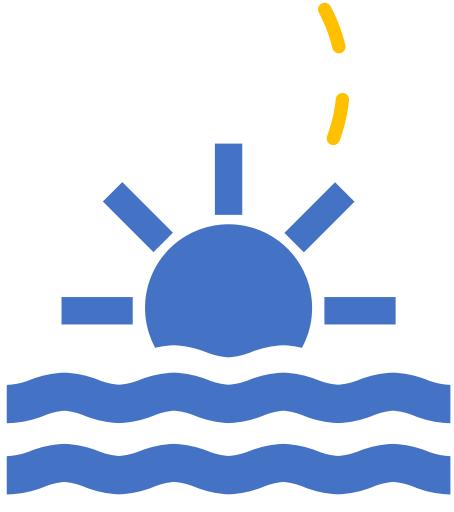
Who is covered by Sunshine Law?

Sunshine law applies to elected and appointed boards and commissions, regardless of the voting ability.



Also applies to:

- Advisory bodies, even if recommendations are not binding on agencies.
- Individual members appointed to negotiate, narrow decisions, or make decisions for the full board. [AGO 93-78]
- Private entities if they are acting as a replacement for the public agency.



Conducting Meetings In the Sunshine



1. Open-meeting requirement



2. Advance Notice Requirement



3. Agenda



4. Minutes and Other Records



5. Parliamentary Procedures



6. Requirement to Vote

Policymaking - Meetings

Commission meetings, and the procedure and records, heart of municipal government.

Proper conduct of meetings is key to successful municipal functioning

Formal decisions
must be made in an
orderly, timely
manner, with
adequate input from
an informed public.

Many jurisdictions adopt rules of procedures to assist with the conduct of elected bodies' business at prescribed meetings.

Meeting Types

Legislative

- Formal action may be taken on policy proposals in the form of adoption or rejection of proposed ordinances and resolutions.
- May be regular or special meetings.

Non-Legislative

 Workshops: informal discussion to achieve better understanding of topics; no action may be taken; straw poll ok; public input may be limited.

Open Meeting Requirement



Meetings/gatherings of two or more individuals to whom the public has delegated the conduct of public business are subject to Open Meetings Requirement



Use of non-members or staff to communicate information and/or thoughts is subject to the Open Meeting Requirement (use of conduit)

Public Meeting Requirement

A gathering or discussion, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which *foreseeable action* will be taken by said governing body.

Communication may occur in any manner - through phone or email communications, or exchanges during social events such as football games and neighborhood barbecues.

Two or more members of the same board or commission should not privately discuss issues relating to or that might come before their governing body with one another. Members must hold such conversations at a public meeting and on the record.

Public Meeting Requirement and Social Media



Social media sites "could easily become a forum" for board or commission members to discuss official issues that should be discussed at a public meeting.



Care should be taken to avoid posting position statements on issues that may come before their board or commission.



It is incumbent upon members to avoid any action that could be construed as an attempt to evade the requirements of the law.

Violation of Public Meeting Requirement

• Rackleff v. Bishop (1990): Jefferson County Commission meeting, Chairman recessed the public meeting for several minutes to get advice from the County Attorney. Two Commissioners joined the private, off-the-record conversation. Court: "The irony of a public meeting violation occurring during a duly noticed county commission meeting... is not lost upon the Court. However, the private confab... resulted in a clear violation of this statute."

- "Sunshine Law violation will cost Martin County taxpayers" –
 Treasure Coast Newspapers, 1.27.13
- Three school board members visited the District's adult education school, touring classrooms and speaking with teachers and students, without providing any notice of their visit or having minutes taken. Fourth DCA held: "...defendant board members, without providing notice, conducted a meeting at the adult education school relating to matters on which foreseeable action would have been taken... Thus, a Sunshine Law violation occurred."

Advance Notice

- Requires reasonable timely notice to the public so they can decide whether to attend a meeting.
- Reasonableness and timeliness depends on the circumstances.
- Notice does not necessarily require a newspaper advertisement and preparation of an agenda is not required.



Agenda

- Not Required but Recommended
- Consent Agenda
- New Business



Minutes Requirement



Written minutes must be taken and made available promptly. Sound recordings of minutes are not a substitute for written minutes.



Minutes need not be a transcript of each word spoken; a brief summary is sufficient.



Votes must be recorded in the minutes.

Public Comment

- Members of the public shall be provided an opportunity to address any appointed or elected body during the decision-making process and prior to the body taking official action.
- Boards are authorized to adopt rules or policies that:
 - provide time limits for speakers;
 - allow a representative of a group to speak, as opposed to all members;
 - provide forms for an individual to use to inform the board of a desire to be heard, to indicate his/her position and a representative; and
 - designate a specified period of time for public comment.



Requirement to Vote



Under Florida law, elected municipal officials have an



obligation to vote on all matters that come before



their board, unless there is a conflict of interest in law

Major Exemptions from Public Meetings Law

- Pending litigation
- settlement negotiations
- strategy sessions
- expenditures
- Labor negotiations-bargaining team
- Risk management committee
- Security system meeting
- Negotiation with a vendor

Parliamentary Procedures

May be established by Commission

Public has the right to hear all comments made by or to commissioners. Avoid private discussions.

Receipt of messages, private notes or emails during meetings must be avoided.

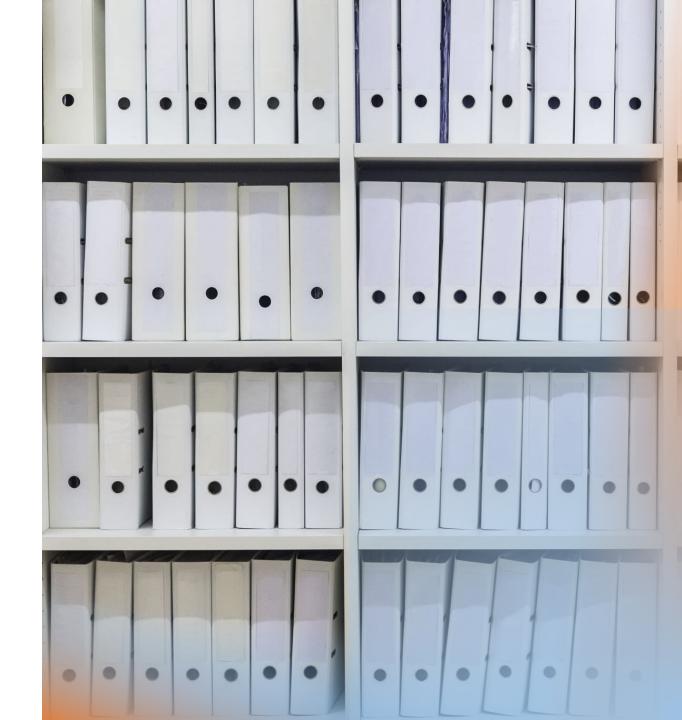
Time limits are permissible as long as they do not unreasonably restrict access.

The presiding officer can regulate comment to avoid repetitive, irrelevant or disruptive comments/behavior.

Prevention of Sunshine Law Violations

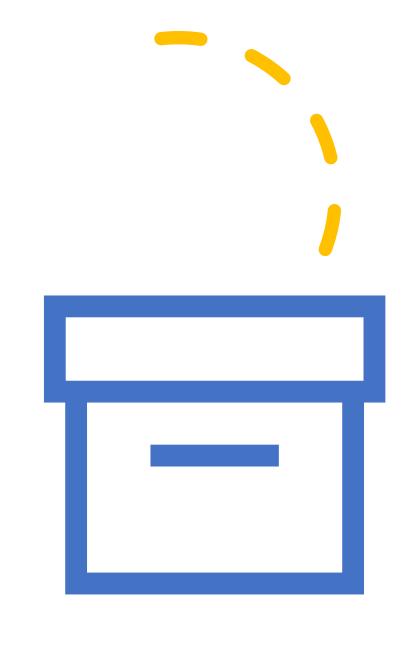
- <u>Do not</u> 'reply all' to e-mails from staff to entire board/committee (for example, e-mails sending out meeting agendas), as that creates the <u>potential</u> for Sunshine Law violations.
- If you have any questions about the meeting (i.e., questions about time, location, date, etc.), call or reply only to the staff member. If you have comments, an opinion or a position concerning something on the agenda, express them at the public hearing.
- Do not use "evasive devices" such as using staff, lobbyists or other means to seek other members' positions about issues.
- Do not circulate written reports/statements to elicit responses or positions of other board/committee members on issues.

Public Records



Public Records Act

- Access to Government Records is a Constitutional Right in Florida under Article I, § 24(a), Fla. Const.
- The Public Records Act (Chapter 119, Fla. Stat.) affords the right of access to public records to:
 - 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, which are used to perpetuate, communicate, or formalize knowledge.



Violation of Public Records Act

Raydient LLC v. Nassau County (2021)

- The Court concluded the county violated Ch. 119, Fla. Stat., when it failed to provide text messages between county officials and employees in response to a public records request in a "reasonable and timely manner." Specifically, the "routine and indiscriminate destruction of text messages by BOCC members and certain county employees, regardless of the content of each message violated § 119.021, Fla. Stat.," requiring that records be kept in accordance with a retention schedule adopted by the Florida Department of State.
- "In addition to employees and officials indiscriminately deleting text
 messages after 30 days or an otherwise arbitrarily chosen period of time,
 the county violated the Public Records Act by failing to undertake a
 reasonable search for the requested public records."
- "If public agency employees and officials transact public business on their **privately-owned accounts or devices**, then the agency has an affirmative duty in response to public records requests to do what is reasonably necessary to promptly retrieve any public documents from those employees or officials."

Recommendations for Prevention of Public Records Act Violations

- Ensure staff retains a copy of any public record sent to you so you are free to dispose of your copy when you are done with it.
- If you receive any public record from a source other than staff, send the original or a copy to staff so that it can be kept in accordance with public records law.
- Conform to the deletion schedule as provided by the Florida Department of State. If unsure, consult with your attorney prior to deletion.
- If a record is available in a specific format, the records custodian cannot refuse providing the requestor with the record in the format requested or impose a requirement that the record be provided in an alternate format.

