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**TOWN OF HIGHLAND BEACH
NATURAL RESOURCES PRESERVATION ADVISORY BOARD WORKSHOP**

GOVERNMENT IN THE SUNSHINE LAW

What is the Government in the Sunshine Law?

The Government in the Sunshine Law, as codified in section 286.011, Florida Statutes, provides a right of public access to governmental proceedings at the state and local levels.

When does the Sunshine Law apply?

- A. The Sunshine Law applies to any gathering of two or more members of the same municipal board to discuss some matter which foreseeably **may** come before that board for action.
- B. The Sunshine Law applies to advisory boards created by the Town Commission, even when the recommendations of such boards are not binding on the Commission.

What are the basic requirements of the Sunshine Law?

As applied to municipal boards, the Sunshine Law has three basic requirements:

A. All Meetings Must be Open to the Public

- (1) Public meeting cannot be held at any facility that discriminates on the basis of sex, age, race, creed, color, origin or economic status, or which operates in such a manner as to unreasonably restrict public access.
- (2) Public has right to record public meetings (video and audio) so long as such recording is not disruptive.

B. Public Must be Given Reasonable Notice of Such Meetings

- (1) No “bright line” test for what constitutes reasonable notice. Type of notice required depends on the particular facts and circumstances. In some instances, posting is sufficient. In others, publication in a newspaper may be necessary.
- (2) The Sunshine Law does not require that a public agency provide notice of each item to be discussed at a public meeting via a published agenda. Such a requirement would preclude access to meetings by members of the general public who wish to bring specific issues before a governmental body.

C. Minutes of the Meeting Must be Taken

- (1) Minutes of public meeting, including workshop meetings, must be promptly recorded and open for public inspection.
- (2) The use of the term “minutes” contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting (also known as “action minutes”).
- (3) No requirement that meetings be recorded; however, once recordings have been made, they are public records and subject to public records retention schedule established by the Department of State.

What are the practical applications of the Sunshine Law to members of municipal boards?

- A. Two or more members of the **same board** cannot privately “discuss” any matter that will foreseeably come before the board for official action, regardless of when or where the discussions take place.

ALL CONVERSATIONS REGARDING BOARD BUSINESS MUST OCCUR DURING THE COURSE OF A PUBLIC MEETING.

- (1) This prohibition includes conversations at informal gatherings, all telephone conversations, and all exchanges of written communications, including e-mails and texts.
- (2) Members of the same board may not have any private discussions or communications relating to issues before the board before or after the board meeting. Additionally, such discussions are prohibited during the meeting (including recesses) if such discussions are not audible to the public attending the meeting. Such discussions or communications violate the letter and spirit of the Sunshine Law.

Note: This prohibition specifically includes any "off-microphone" discussions between board members and the exchange of written notes, e-mails or text messages during the course of a meeting.

- (3) Members of the same board are not precluded from attending social or business functions together so long as board matters are not addressed at such functions.
 - (4) Members of one board are not prohibited from attending meetings of another municipal board and commenting on agenda items that may subsequently come before their board for final action so long as the members do not discuss the items among themselves. For example, members of the Town Commission may attend advisory board meetings and comment upon items. AGO 00-68.
- B. Board members may discuss board matters with the Town Manager, members of Town Staff, legal counsel or a member of a different board (including members of the Town Commission). However, the Town Manager (or any other non-board member) may not act as a liaison for board members by circulating information and the thoughts of the individual board members. AGO 74-47.
- C. Members of a municipal advisory board are not prohibited from conducting "inspection trips" to view properties or other matters that are the subject of board action, but members may not take such trips together or discuss such inspections prior to the public meeting.
- E. A member of a Town board who is present at a meeting of that body at which an official decision, ruling or other official act is to be taken or adopted may **not** abstain from voting. A vote shall be recorded or counted for each such member present, *except when there is or appears to be a conflict of interest or voting conflict.* §286.012, Fla. Stat. Failure to vote, however, does not invalidate the proceeding. City of Hallandale v. Rayel Corporation, 313 So. 2d 113 (Fla. 4th DCA 1975).

Note: When a member of a local advisory board is required to abstain, the member is disqualified from voting and may not be counted for the purposes of determining a quorum. AGO 86-61.

5. What are the consequences for a violation of the Sunshine Law?

- A. *Criminal penalties:* A knowing violation of the Sunshine Law is a second-degree misdemeanor and is punishable by up to 60 days in jail and/or a fine not exceeding \$500.00.
- B. *Civil penalties:* Noncriminal violations of the Sunshine Law are punishable by a fine not exceeding \$500.00. The state attorney may pursue such actions on behalf of the state. AGO 91-38.
- C. *Attorney's fees:* Attorney's fees may be assessed against both the board and the individual members when sued for a Sunshine Law violation (except that the individual board members are not liable for attorney's fees where the board sought, and took, the advice of its attorney).
- D. *Effect on board action:* Any action taken by a board in violation of the Sunshine Law is invalid and of no effect. A violation can be cured by independent final action (as opposed to mere ratification) in the sunshine. Tolar v. School Board of Liberty County, 398 So. 2d 427 (Fla. 1981).
- E. *Civil action for declaratory or injunctive relief:* A civil action for declaration or injunctive relief can be pursued by any citizen of the state. The mere showing that the Sunshine Law has been violated constitutes "irreparable injury."

PUBLIC RECORDS LAW

1. What are public records?

- A. Public records include 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.** §119.011(11), Fla. Stat.
- B. This definition encompasses all materials made or received by the Town or Town officials in connection with official business which are used to perpetuate, communicate or formalize knowledge. Shevin v. Byron, Harless, Schaffer, Reid and Associates, 379 So. 2d 633 (Fla. 1980). All such records, irrespective of whether they are in final form, are open to public inspection unless the Legislature has exempted them from disclosure. Wait v. Florida Power & Light Co., 372 So. 2d 420 (Fla. 1979).

2. **How does this apply to communications by members of the Natural Resources Board?**

A. Notes and Draft Documents

The scope of the Public Records Act includes any materials received or created by a member of the Board that relate to Town business, including draft documents and hand-written notes if intended to communicate, perpetuate or formalize knowledge of some type. See AGO 05-23 (handwritten notes prepared by assistant city labor attorney during interviews with city personnel are public records when those notes are used to communicate information with the labor attorney). Notes are only exempt if they are designed for the employee's or officer's **own personal use**. Coleman v. Austin, 521 So. 2d 247 (Fla. 1st DCA 1988).

B. Mail

All materials received by the Town or by a member of a Town Board that relate to official Town business are public records and subject to disclosure and inspection by members of the public in the absence of an exemption.

Note: Once mail addressed to a member of a Town board is received by the Town, the Town has an obligation to open such mail and determine whether it constitutes a public record. If it does constitute a public record, the Town must maintain a copy. See AGO 2004-43 (mail addressed to a mayor or city council member at city hall and received at city hall may not be forwarded unopened to the private residence of the mayor or council member).

C. Electronic Mail and Text Messages

Electronic mail or text messages made or received in connection with official business are public records and subject to disclosure in the absence of an exemption. E-mail addresses are public records once they are received by a public agency, public employee or public official in connection with agency business.

*Note: The Florida Supreme Court has ruled that private e-mail stored on government computers does **not** automatically become a public record by virtue of that storage. State v. City of Clearwater, 863 So. 2d 149 (Fla. 2003).*

D. Attorney-Client Communications

The Public Records Act applies to communications between attorneys and government agencies; there is no judicially created privilege that exempts these documents from disclosure. City of North Miami v. Miami Herald Publishing Co., 468 So. 2d 218 (Fla. 1985). There is a limited exemption for attorney work product, specifically defined as:

A public record that was prepared by an agency attorney or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial proceedings. § 119.071(1)(d)1, Fla. Stat.

Note: Work product developed by the public employer in preparation for collective bargaining negotiations, and during negotiations, shall be confidential and exempt from disclosure pursuant to the Public Records Law. §447.605(3), Fla. Stat.

D. Contact Information

Home addresses and telephone numbers of members of the Board are not exempt from disclosure unless another exemption applies, such as the exemptions applicable to current or former law enforcement personnel, state attorneys, or human resource personnel. However, social security numbers held by an agency are exempt.

ROLE OF THE BOARD

Sec. 2-139. - Purpose.

The purpose of the natural resources preservation advisory board shall be to provide constructive advice and counsel to town departments and boards, and to the town commission, with a broad outlook toward environmental and natural resources preservation, protection, and conservation.

The Board was created by the Town Commission and only has such power and authority delegated to the Board by the Town Commission.

Sec. 2-140. - Powers and duties.

The powers and duties of the natural resources preservation advisory board shall include the following:

- (a) Coordinate activities related to regular beach clean-up events.

- (b) Assist the sea turtle program with activities related to the program and recruitment of volunteers.
- (c) Review existing and proposed town ordinances which affect the environment, and advise the town commission regarding the need for modifications or changes to such ordinances.
- (d) Assist in the effort to encourage homeowners and associations to keep adequate levels of vegetation on the beach in order to avoid erosion.
- (e) Promoting green landscaping and advocating environmental concerns relating to plastics, etc.
- (f) Make recommendations about regulations related to beach cleaning as the board sees fit.
- (g) Assist the town commission, upon the commission request, with items and issues related to waterways within the corporate limits of the town including boat wakes, manatee protection and mangroves.
- (h) Perform other reviews as assigned or requested by the town commission.

Sec. 2-141. - Advisory capacity.

The actions decisions and recommendations of the natural resources preservation advisory board shall not be final or binding on the town commission but shall be advisory only.

PARLIAMENTARY PROCEDURE

All Town boards operate in accordance with the basic principles of parliamentary procedure.

All recommendations from the Board to the Town Commission must be accomplished via motion. A motion requires two people: a “mover” and a “second.”

To the extent possible, motions should be clear and concise and follow the following basic steps:

1. A member is recognized by the Chair.
2. The member makes a motion.
3. The Chair asks if there is a second to the motion.

4. A member seconds the motion.
5. The Chair repeats the motion (and may restate the motion for clarity).
6. The Chair opens the floor for discussion.
7. All members should be given a chance to discuss the motion and no member should speak for a second time until all members have had a chance to speak.
8. If there is an amendment proposed to a motion, it should also be accomplished by motion (requires a motion to amend and a second). In the alternative, the mover and seconder can agree to the amendment. If the amendment is passed or agreed upon, discussion on the motion, as amended, can continue.
9. When everyone has had a chance to speak, the Chair should restate the motion and call for a vote by the Board.