

Florida's Open Government Laws

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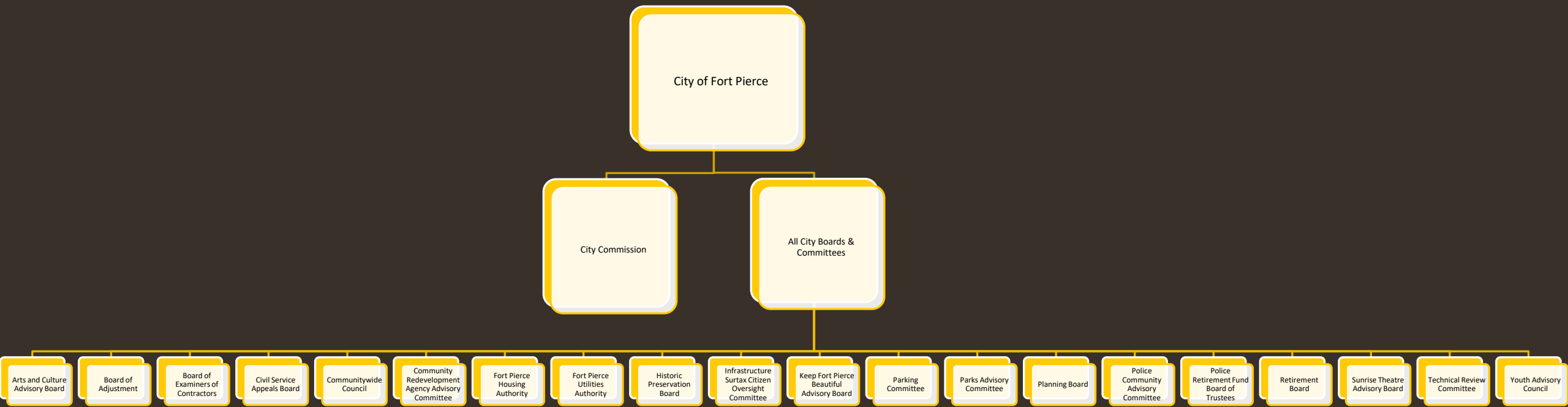
Florida's Open Government Laws

Florida's Government in the Sunshine Law

Florida's Public Records Act

Voting Conflicts of Interest

Who do these laws apply to?



Florida's Government in the Sunshine Law: Chapter 286, Florida Statutes

Provides for a right of access to governmental proceedings of any board or commission at both the state and local levels of government.

Applies to any gathering of two or more members of a board or commission to discuss any matter which will foreseeably come before them for action.

Applies to both elected and appointed boards or commissions.

Basic Requirements of Section 286.011, Florida Statutes

1. Meetings of public boards or commissions must be open to the public
2. Reasonable notice of such meetings must be given
3. Written minutes of the meetings must be taken, promptly recorded, and open to public inspection

Advisory Boards and Committees

Sunshine Law applies to advisory boards, even though their recommendations are not binding upon the agencies that created them.

Very limited exception applies to advisory committees established for fact-finding only. However, if the committee has any decision-making function (making recommendations to the governmental body) as part of their duties, the Sunshine Law applies.

“The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State.”

Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974).

Ex Officio Board Members

An ex officio board member is subject to the Sunshine Law, no matter whether serving in a voting or non-voting capacity.

Staff and Non-Board Members

Board members are not prohibited from discussing board business with City staff or non-board members.

Cannot, however, use such individuals as a liaison to communicate with members of your board.

Examples:

Member of the CRA Advisory Committee speaking to the City's Economic Development Manager regarding an item on the agenda for an upcoming meeting?

Member of the CRA Advisory Committee asking the Economic Development Manager to poll the remaining members of the committee to see how they will vote on the review of upcoming grant applications?

Types of Gatherings Considered a Meeting

Gathering does not have to be a formal meeting.

Sunshine Law applies to informal gatherings as well.

Types of Communication Constituting a Meeting

Sunshine Law is not limited to just verbal in person communication.

Applies to all communications.

Includes:

Telephone Conversations

Text Conversations

Emails

Public Social Media Posts

Private Social Media Communications

One Way Communications

May send documents to other commission or board members for their review.

But, once there is a response to the group or to one individual, that has triggered a meeting for which the Sunshine Law applies.

BEST PRACTICE: Do not send such communications. Do not reply to such communications.

Behavior by Members of the Public

The public must “be given a reasonable opportunity to be heard on a proposition before a board or commission,” subject to limited exceptions in the statute.

The board or commission is permitted to maintain “orderly conduct or proper decorum in a public meeting.”

May adopt rules or policies for the meetings.

Section 286.0114, Florida Statutes.

Rules or Policies Governing Opportunity of the Public to be Heard at Public Meetings

Section 286.0114, Florida Statutes limits the rules or policies to permit those that:

1. Provide guidelines regarding the amount of time an individual has to address the board or commission;
2. Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
3. Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
4. Designate a specified period of time for public comment.

Prohibited Restrictions on Meetings

Cannot ask certain members of the public to “voluntarily” leave a meeting.

Cannot ban videotaping, tape recording, or photography at public meetings when doing so is nondisruptive.

Cannot require those attending a public meeting to provide identification in order to attend.

Secret Ballots

Secret ballots violate the Sunshine Law.

Written ballots may be used so long as the votes are made openly at a public meeting. Ballot must include the name of the person voting and their selection. Ballot must be maintained and made available for public inspection.

Consequences of Violating the Sunshine Law

No resolution, rule, regulation, or formal action shall be considered binding except when taken or made at an open meeting.

Civil action can be brought for the violation.

Violations of the Sunshine Law result in those decisions being voided. They will have to be cured by reexamining the decision within the Sunshine.

Waste of time and resources of the City.

Penalties for Violating the Sunshine Law

Public officer who violates any provision is guilty of non-criminal infraction, punishable by a fine up to \$500.00.

Member of a board or commission who knowingly violates the provisions by attending a meeting not held in accordance with the Sunshine Law is guilty of a misdemeanor of the second degree, punishable by up to 60 days in the county jail, 6 months of probation, and/or a fine up to \$500.00.

Conduct occurring outside of the State of Florida which would be a knowing violation is a misdemeanor of the second degree, punishable by up to 60 days in the county jail, 6 months of probation, and/or a fine up to \$500.00.

May also be suspended or removed from your position

How Serious Should You Take the Sunshine Law?

Damien Gilliams, Pamela Parris, and Charles Mauti, formerly of the Sebastian City Council.

Accusation was that they held an illegal meeting outside of the Sunshine, where they voted to remove the Mayor and fire the City Manager, City Clerk, and City Attorney.

Mauti entered a plea to two civil infractions. Ordered to pay fines, court costs, cost of investigation, and attend and complete sunshine law training in the cases. Total ordered to be paid equaled \$1,886.00.

Gilliams found guilty at trial of 3 counts of Violation of the Sunshine Law (affirmed on appeal) and 1 count of Perjury – Unofficial Proceeding (reversed on appeal).

Parris found guilty at trial of 1 count of Violation of the Sunshine Law (affirmed on appeal) and 2 counts of Perjury – Unofficial Proceeding (Count V reversed on appeal, Count VI affirmed on appeal).

Damien Gilliams Sentences

3120210065303 RECORDED IN THE RECORDS OF JEFFREY R. SMITH, CLERK OF COURT
BK: 3464 PG: 607, 9/16/2021 8:36 AM

IN THE COUNTY COURT, OF THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY
STATE OF FLORIDA

CRIMINAL COURT

CASE: 312020MM001119AXXXXX

STATE OF FLORIDA
VS
DAMIEN HERMAN GILLIAMS

Charge(s): CT(1)
VIOLATION OF THE SUNSHINE LAW

JUDGMENT AND SENTENCE

- The Defendant now being before the Court and having:
 pleaded guilty
 pleaded no contest
 been tried and found guilty
- The Court does hereby:
 Adjudge the Defendant to be Guilty
 Withhold Adjudication of Guilty
- The Court orders the Defendant to pay a fine, cost and assessments as follows:
FINE \$ 500 PD FEE \$ _____
COSTS \$ 243 PD APP FEE \$ _____
TV AD \$ _____ C.O.P. \$ Reserved
COI \$ Reserved ADDITIONAL COSTS \$ _____
- The Defendant is incarcerated for a period of 45 days in the Indian River County Jail.
a. _____ as a condition of probation. as CTS concurrent
- The Defendant is placed on Supervised Probation for _____ months with these special conditions:
a. _____ hours of community service.
b. Restitution of \$ 26088.00 to City of Sebastian; Joint and several
c. Drivers License to be suspended for _____ Business Permit Yes No
d. _____ Attend the next victim impact panel.
e. _____ Attend DUI School and follow any recommendations.
f. _____ Days House Arrest.
g. _____ day car impounded / _____ Ignition Interlock
h. _____ days work program, minimum _____ days per week.
i. _____ Attend and complete:
 26 week Batterer's Intervention Program
 12 week Living without Violence Program / Anger Mgt. Class
 ACF Mileposts Misd. Class
 Enroll within _____ Days.
j. Report to CORE Probation within 72 hrs. of release from jail.
k. Pay In Full or Set Up Payment Plan Today or _____
l. Other No contact with [REDACTED]

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BK: 3464 PG: 609, 9/16/2021 8:36 AM

IN THE COUNTY COURT, OF THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY
STATE OF FLORIDA

CRIMINAL COURT

CASE: 312020MM001119AXXXXX

STATE OF FLORIDA
VS
DAMIEN HERMAN GILLIAMS

Charge(s): CT(2)
VIOLATION OF THE SUNSHINE LAW

JUDGMENT AND SENTENCE

- The Defendant now being before the Court and having:
 pleaded guilty
 pleaded no contest
 been tried and found guilty
- The Court does hereby:
 Adjudge the Defendant to be Guilty
 Withhold Adjudication of Guilty
- The Court orders the Defendant to pay a fine, cost and assessments as follows:
FINE \$ 500 + 25 PD FEE \$ _____
COSTS \$ _____ PD APP FEE \$ _____
TV AD \$ _____ C.O.P. \$ _____
COI \$ _____ ADDITIONAL COSTS \$ _____
- The Defendant is incarcerated for a period of 45 days in the Indian River County Jail.
a. _____ as a condition of probation. as CTS concurrent
- The Defendant is placed on Supervised Probation for _____ months with these special conditions:
a. _____ hours of community service.
b. Restitution of \$ _____ to _____
c. Drivers License to be suspended for _____ Business Permit Yes No
d. _____ Attend the next victim impact panel.
e. _____ Attend DUI School and follow any recommendations.
f. _____ Days House Arrest.
g. _____ day car impounded / _____ Ignition Interlock
h. _____ days work program, minimum _____ days per week.
i. _____ Attend and complete:
 26 week Batterer's Intervention Program
 12 week Living without Violence Program / Anger Mgt. Class
 ACF Mileposts Misd. Class
 Enroll within _____ Days.
j. Report to CORE Probation within 72 hrs. of release from jail.
k. Pay In Full or Set Up Payment Plan Today or _____
l. Other _____

3120210065305 RECORDED IN THE RECORDS OF JEFFREY R. SMITH, CLERK OF COURT
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IN THE COUNTY COURT, OF THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY
STATE OF FLORIDA

CRIMINAL COURT

CASE: 312020MM001119AXXXXX

STATE OF FLORIDA
VS
DAMIEN HERMAN GILLIAMS

Charge(s): CT(3)
VIOLATION OF THE SUNSHINE LAW

JUDGMENT AND SENTENCE

- The Defendant now being before the Court and having:
 pleaded guilty
 pleaded no contest
 been tried and found guilty
- The Court does hereby:
 Adjudge the Defendant to be Guilty
 Withhold Adjudication of Guilty
- The Court orders the Defendant to pay a fine, cost and assessments as follows:
FINE \$ 500 + 125 PD FEE \$ _____
COSTS \$ _____ PD APP FEE \$ _____
TV AD \$ _____ C.O.P. \$ _____
COI \$ _____ ADDITIONAL COSTS \$ _____
- The Defendant is incarcerated for a period of 45 days in the Indian River County Jail.
a. _____ as a condition of probation. as CTS concurrent
- The Defendant is placed on Supervised Probation for _____ months with these special conditions:
a. _____ hours of community service.
b. Restitution of \$ _____ to _____
c. Drivers License to be suspended for _____ Business Permit Yes No
d. _____ Attend the next victim impact panel.
e. _____ Attend DUI School and follow any recommendations.
f. _____ Days House Arrest.
g. _____ day car impounded / _____ Ignition Interlock
h. _____ days work program, minimum _____ days per week.
i. _____ Attend and complete:
 26 week Batterer's Intervention Program
 12 week Living without Violence Program / Anger Mgt. Class
 ACF Mileposts Misd. Class
 Enroll within _____ Days.
j. Report to CORE Probation within 72 hrs. of release from jail.
k. Pay In Full or Set Up Payment Plan Today or _____
l. Other _____

Pamela Parris Sentences

3120210065296 RECORDED IN THE RECORDS OF JEFFREY R. SMITH, CLERK OF COURT
BK: 3464 PG: 574, 9/16/2021 8:30 AM

IN THE COUNTY COURT, OF THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY
STATE OF FLORIDA

CRIMINAL COURT

CASE: 312020MM001119BXXXXX

STATE OF FLORIDA
VS
PAMELA RAPP PARRIS

Charge(s): CT(1)
VIOLATION OF THE SUNSHINE LAW

JUDGMENT AND SENTENCE

- The Defendant now being before the Court and having:
 pleaded guilty
 pleaded no contest
 been tried and found guilty
- The Court does hereby:
 Adjudge the Defendant to be Guilty
 Withhold Adjudication of Guilty
- The Court orders the Defendant to pay a fine, cost and assessments as follows:
FINE \$ 500 PD FEE \$ _____
COSTS \$ 243 PD APP FEE \$ _____
TV AD \$ _____ C.O.P. \$ Reserved
COI \$ Reserved ADDITIONAL COSTS \$ _____
- The Defendant is incarcerated for a period of 30 days in the Indian River County Jail.
a. _____ as a condition of probation. CS CR5 Concurrent
- The Defendant is placed on Supervised Probation for _____ months with these special conditions:
 - _____ hours of community service.
 - Restitution of \$ 2698.95 to City of Sebastian; Joint and Several
 - Drivers License to be suspended for _____ Business Permit Yes No
 - _____ Attend the next victim impact panel.
 - _____ Attend DUI School and follow any recommendations.
 - _____ Days House Arrest.
 - _____ day car impounded / _____ Ignition Interlock
 - _____ days work program, minimum _____ days per week.
 - Attend and complete:
 26 week Batterer's Intervention Program
 12 week Living without Violence Program / Anger Mgt. Class
 ACF Mileposts Misd. Class
 Enroll within _____ Days.
 - Report to CORE Probation within 72 hrs. of release from jail.
 - Pay In Full or Set Up Payment Plan Today or _____
 - Other No Contact with _____

3120210065300 RECORDED IN THE RECORDS OF JEFFREY R. SMITH, CLERK OF COURT
BK: 3464 PG: 601, 9/16/2021 8:30 AM

IN THE COUNTY COURT, OF THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY
STATE OF FLORIDA

CRIMINAL COURT

CASE: 312020MM001119BXXXXX

STATE OF FLORIDA
VS
PAMELA RAPP PARRIS

Charge(s): CT(6)
PERJURY - NOT IN OFFICIAL PROCEEDING

JUDGMENT AND SENTENCE

- The Defendant now being before the Court and having:
 pleaded guilty
 pleaded no contest
 been tried and found guilty
- The Court does hereby:
 Adjudge the Defendant to be Guilty
 Withhold Adjudication of Guilty
- The Court orders the Defendant to pay a fine, cost and assessments as follows:
FINE \$ 1000 + 50.00 PD FEE \$ _____
COSTS \$ _____ PD APP FEE \$ _____
TV AD \$ _____ C.O.P. \$ _____
COI \$ _____ ADDITIONAL COSTS \$ _____
- The Defendant is incarcerated for a period of 90 days in the Indian River County Jail.
a. _____ as a condition of probation. CS CR5 Concurrent
- The Defendant is placed on Supervised Probation for _____ months with these special conditions:
 - _____ hours of community service.
 - Restitution of \$ _____ to _____
 - Drivers License to be suspended for _____ Business Permit Yes No
 - _____ Attend the next victim impact panel.
 - _____ Attend DUI School and follow any recommendations.
 - _____ Days House Arrest.
 - _____ day car impounded / _____ Ignition Interlock
 - _____ days work program, minimum _____ days per week.
 - Attend and complete:
 26 week Batterer's Intervention Program
 12 week Living without Violence Program / Anger Mgt. Class
 ACF Mileposts Misd. Class
 Enroll within _____ Days.
 - Report to CORE Probation within 72 hrs. of release from jail.
 - Pay In Full or Set Up Payment Plan Today or _____
 - Other _____

One Last Thought on the Sunshine Law

“We note that the Sunshine Law was enacted in the public interest to protect the public from ‘closed door’ politics and, as such, the law must be broadly construed to effect its remedial and protective purpose.” Wood v. Marston, 442 So.2d 934 (Fla 1983).

Florida Public Records Act: Chapter 119, Florida Statutes

Florida's public records laws create a right of access to records of state and local governments and private entities acting on their behalf.

Material falling within the definition of a "public record" must be disclosed to the public absent a statutory exemption.

Be mindful, a public records exemption does not create a Sunshine Law exemption.

Definition of “Public Records”

“Public records’ means 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.” Section 119.011(12), Florida Statutes

When “intended to perpetuate, communicate, or formalize knowledge of some type.” Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633 (Fla. 1980).

Personal Communications and “Public Records”

Personal notes are a public record if they are intended to communicate, perpetuate, or formalize knowledge of some type.

Emails to and from personal email, texts on personal cell phone, social media exchanges, etc. made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency or intended to communicate, perpetuate, or formalize knowledge of some type are public record.

Personal communications or documents stored on government equipment are not automatically public records, but they may be depending on the circumstances.

Retention of Public Records

All public records have a specific retention schedule approved by the Department of State.

Even exempt records must be retained.

Bottom Line: Do **NOT** destroy, delete, or alter a public record. If you are unsure whether something is a public record, **KEEP IT**.

Public Records Requests

Cannot be withheld at the request of the sender.

No legitimate purpose or noncommercial interest must be established by the requestor, motivation is irrelevant.

Cannot deny a request because it is overbroad.

Unless a statute authorizes such, requestor cannot be required to identify themselves or make the request in writing.

Cannot delay production of the records requested further than reasonable amount of time to retrieve and redact the records (according to the law).

Penalties for Noncompliance with Public Records Laws

Civil Actions

Civil action to enforce compliance with chapter 119 requires an immediate hearing and takes priority over other matters.

Attorney's fees shall be awarded if agency is found to have unlawfully withheld public records.

Civil Penalties

An unintentional violation is a non-criminal infraction punishable by up to a \$500.00 fine.

Criminal Penalties

Knowing and intentional violation is a first degree misdemeanor, punishable by up to 1 year in the county jail, 1 year of probation, and/or up to a \$1,000.00 fine.

May also be suspended or removed from your position

Voting Conflicts of Interest: Section 286.012, Florida Statutes

As a general rule, cannot abstain from voting.

Members must vote unless there is, or appears to be, a possible conflict of interest under Florida Statutes (112.311, 112.313, 112.3143, and 112.326).

If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326.

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.

Voting Conflicts of Interest: Section 112.3143, Florida Statutes

A voting conflict of interest exists when voting on any matter that would inure to the special private gain or loss of the person voting, their relative, their business associate, or a principal by whom they are retained.

Relative: father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

Business associate: any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, co-owner of property, or corporate shareholder.

Principal by whom retained: individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one's client, employer, or the parent, subsidiary, or sibling organization of one's client or employer.

Voting Conflicts of Interest: Section 112.3143, Florida Statutes

Special private gain or loss: an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

Additional Conflicts of Interest Statutes

Section 112.311, Florida Statutes: Legislative Intent and Declaration of Policy.

Excerpt of subsection (5): “It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest.”

Section 112.313, Florida Statutes: Standards of Conduct for Public Officers, Employees of Agencies, and Local Government Attorneys.

Topics addressed include accepting gifts, doing business with own agency, misuse of public position, etc.

Voting Conflicts of Interest: Section 112.3143, Florida Statutes

If you have a voting conflict:

Must: Announce the nature of the conflict, abstain from voting, and file a Memorandum of Voting Conflict (Commission on Ethics Form 8B).

May: Participate (attempt to influence the decision orally or in writing by self or at your direction) if follow specifically outlined steps in the statute based on when you decide to participate.

Best Practice: Disclose the conflict prior to the meeting and remove oneself from the room during that agenda item.

Questions about Sunshine Law, Public Records Laws, Ethical Concerns, Etc.

May contact the City Attorney's Office

- Remember, we represent the City and will take a position that best protects the City
- We will advise you to stay "1,000 feet" away from the line
 - Example: voting conflicts of interest
- You should always follow up with:
 - The Commission on Ethics
 - Your own private, personal attorney

Resources Available:

- Sunshine Manual
- Attorney General's Office
- Florida Statutes