



PLANNING BOARD AGENDA REGULAR MEETING

TUESDAY

January 28, 2025 – 2:00 PM

COUNCIL CHAMBERS

4300 S. ATLANTIC AVE., PONCE INLET, FL

SUNSHINE LAW NOTICE FOR BOARD MEMBERS – Notice is hereby provided that one or more members of the Town Council or other Town Boards may attend and speak at this meeting.

A complete copy of the materials for this agenda is available at Town Hall.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE.
2. ROLL CALL AND DETERMINATION OF QUORUM.
 - A. Oaths of Office
 - B. Election of Chair
 - C. Election of Vice-Chair
3. ADOPTION OF AGENDA.
4. APPROVAL OF MEETING MINUTES:
 - A. September 24, 2024
5. REPORT OF STAFF:
 - A. Planning Division Reports
 - B. Other Updates and/or Reports – Mr. Lear, Planning & Development Director
6. CORRESPONDENCE & DISCLOSURE OF EX-PARTE COMMUNICATION – None.
7. HEARING OF CASES (Public hearings & Quasi-Judicial matters): A Quasi-Judicial decision entails the application of already-established criteria and general public rule or policy to a limited number of specific individuals, interests, properties, or activities. Certain standards of basic fairness must be adhered to in order to afford due process. The parties must receive notice of all hearings and be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which a Quasi-Judicial board acts. It shall be the responsibility of the APPLICANT to ensure that the proposal meets all the criteria and standards established in the Land Use and Development Code for the development sought. Procedure for Public Hearings:
 1. Reading of the Item for the Record;
 2. Staff Testimony, including noticing information;
 3. Board Discussion;
 4. Public Discussion, including statement of Applicant(s);
 5. Boardmembers individually complete Quasi-Judicial worksheets (if applicable);
 6. Motion and Second by the Board; followed by Board discussion, and
 7. Roll-call Vote.
 - A. None
8. BUSINESS ITEMS.

A. Annual Board Member Training and Form 8-B Review – Town Attorney

9. PUBLIC PARTICIPATION.

10. BOARD DISCUSSION.

11. ADJOURNMENT.

*If a person decides to appeal any decision made by the Planning Board with respect to any matter considered at a meeting or hearing, he/she will need a record of the proceedings and that for such purpose, may need to ensure that a verbatim record of the proceedings is made (at their own expense), which includes testimony and evidence upon which the appeal is to be based. Persons who require an accommodation to attend this meeting should contact the Ponce Inlet Town Hall at 236-2150 **at least 48 hours prior to the meeting**, in order to request such assistance.*



Meeting Date: January 28, 2025

Agenda Item: 2

Report to Planning Board

Topic(s): Roll Call & Determination of Quorum

Summary:

- A. Oaths of Office.
 - Mr. Cannon
 - Mr. Revak
 - Ms. Vanderbeek
 - Mr. Young
- B. Election of Chair.
- C. Election of Vice-Chair.

Requested by: Ms. Stewart, Assistant Deputy Clerk

Reviewed by: Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



Meeting Date: January 28, 2025

Agenda Item: 4

Report to Planning Board

Topic: Approval of Meeting Minutes

Summary:

Staff has prepared the attached set of Planning Board meeting minutes and submits for the Board's review and approval.

A. September 24, 2024

Requested by:

Ms. Stewart, Assistant Deputy Clerk

Reviewed by:

Mr. Lear, Planning & Development Director

Approved by:

Mr. Disher, Town Manager



Town of Ponce Inlet

Planning Board

Regular Meeting Minutes

September 24, 2024

1 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** Pursuant to proper notice,
2 Chair Kaszuba called the meeting to order at 2:00 p.m. in the Council Chambers, 4300 S. Atlantic
3 Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.

4
5 **2. ROLL CALL AND DETERMINATION OF QUORUM:**

6
7 Board members present:

8 Mr. Oebbecke, Seat #1
9 Mr. Kaszuba, Seat #2; Chair
10 Mr. Burge, Seat #3
11 Mr. Cannon, Seat #4
12 Mr. Carney, Seat #5; Vice Chair
13 Mr. Revak, Alternate #1 - Absent
14 Mr. Young, Alternate #2 - Absent

15
16 Staff present:

17 Ms. Dowling, HR Coordinator
18 Ms. Fisher, Senior Planner
19 Ms. Gjessing, Assistant Deputy Clerk
20 Mr. Hooker, Code Compliance Manager
21 Ms. Hugler, Fire Department Office Manager
22 Attorney Knight, Town Attorney
23 Mr. Lear, Planning & Development Director
24 Ms. Rippey, Principal Planner

25
26 Other officials present:

27 Mayor Paritsky
28 Councilmember Villanella

29
30 **3. ADOPTION OF AGENDA:** - Mr. Cannon moved to adopt the agenda as presented;
31 seconded by Vice-Chair Carney. The motion PASSED by consensus, 5-0.

32
33 **4. APPROVAL OF MINUTES:**

34
35 **A. July 23, 2024 -** Mr. Cannon moved to approve the July 23, 2024, meeting minutes
36 as presented; seconded by Vice-Chair Carney. The motion PASSED by consensus, 5-0

37
38 **5. REPORT OF STAFF:**

39 **A. Planning Division Reports** – Mr. Lear announced there are three new employees
40 in the Planning and Development Department: Bernadette Fisher, Senior Planner; Bailey
41 Hornbuckle, Code Enforcement Administrative Assistant; and Heather Ricci, Permit Technician.

42 He announced a Town Hall landscaping project to replant the areas previously cleared by Public
43 Works of the muscadine grape vines; planting is scheduled to begin in October. They will be
44 installing 272 native plant specimens; once established, these plants will help reduce soil erosion,
45 conserve water and water run-off, lower maintenance needs, and enhance wildlife habitat.
46 Regarding the S. Peninsula Drive sidewalk, contractors were hired last month by Volusia County
47 to conduct survey work from the northern town limits to Lighthouse Drive; the survey is expected
48 to take approximately five months after which the county will engage an engineer for the design
49 work. Chair Kaszuba asked if there is a completion date for the sidewalk project. Mr. Lear
50 explained that will be finalized during the design phase; public meetings must still take place.

51

52 **B. Other Updates and/or Reports** - There were no other updates.

53

54 **6. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION:** Mr.
55 Oebbecke stated he identified communications between Mr. Revak and himself that was forwarded
56 to staff for the record regarding the ordinance change to the LUDC. Mr. Revak texted Mr.
57 Oebbecke on September 23, 2024 at 5:28 PM indicating he had reviewed what was being presented
58 and the only question he had was “with modification zoning district permitting uses with major
59 special exceptions designation what are the next steps required to get the event approved?” Mr.
60 Oebbecke replied he received the message; Mr. Revak responded that he should probably bring up
61 his thoughts and potentially identify an issue with Sunshine requirements. Vice-Chair Carney
62 commented he went to the farmers market on Sunday and spoke with the ladies that run it who
63 discussed their concerns with him; he requested they send their concerns to Ms. Rippey which they
64 have done.

65

66 **7. HEARING OF CASES:** None.

67

68 **8. BUSINESS ITEMS/PUBLIC HEARINGS:**

69

70 **A. Ordinance 2024-XX (proposed), Amending the LUDC, Article 2 “Zoning**
71 **Districts”, Section 2.40.1 “Interpretation of Uses and Structures Permitted,” Table 2-5,**
72 **“Table of Permitted Uses”; adding farmers markets as a major special exception to the**
73 **Public-Institutional zoning district.** – Ms. Rippey explained this proposed ordinance has been
74 drafted in response to the Town Council’s directive at the June 4, 2024 special meeting with the
75 Planning Board and Town Council to amend the Land Use and Development Code (LUDC) to
76 allow farmers markets as a major special exception use in the Public-Institutional (P-I) zoning
77 district. She explained how amendments are adopted and reviewed the background of this
78 proposed amendment to the LUDC. Currently, farmers markets are only permitted in the planned
79 waterfront development (PWD) zoning district and allowed as a minor special exception use in the
80 B-1, B-2, and PUD zoning districts. In the P-I zoning classification, farmers markets are not a
81 permitted or special exception use, although they may be allowed through a special event permit,
82 limited to 12 times per calendar year. According to LUDC Section 6.6.3, a special exception is a
83 use that would not be appropriate without restriction, but which, if controlled as to number, area,
84 location or relation to the surrounding area, would promote the public health, safety and general
85 welfare. These uses require more comprehensive review, and by their nature may necessitate
86 specific conditions to mitigate any potential adverse impacts. The Planning Board serves as the
87 decision-making authority for minor special exceptions while major special exceptions require a
88 recommendation from the Planning Board and approval by the Town Council. The request to add
89 farmers markets as a special exception use to the P-I zoning district would provide additional

90 locations for farmers markets to serve the local population; 16 properties within the town limits
91 are zoned Public-Institutional. Those properties include town-owned facilities and parks, county-
92 owned facilities and parks, and private scientific facilities. The Ponce Inlet Community Center
93 Board of Trustees is in support of allowing a farmer’s market to operate at the Community Center.
94 Based on its safety, convenience, and unique location, the Board has requested that farmers
95 markets be added as a special exception use. The proposed amendment will add a major special
96 exception notation in the P-I zoning column in Section 2.40, Table 2-5 (Table of Permitted Uses)
97 under the “Community Facilities and Public Assembly” section of the table ; footnote 10 is
98 included in the notation and the footnote itself is located on the last row of Table 2-5 to identify
99 those P-I zoned properties excluded from the major special exception. The three P-I zoned
100 properties where farmers markets are proposed to be allowed as a major special exception are:
101 Ponce Inlet Community Center, Ponce Inlet Fire Rescue, and Timothy Pollard Memorial Park, all
102 of which are located adjacent to each other on S. Peninsula Drive. The P-I zoned properties where
103 farmers markets would be excluded as a special exception use are: Ponce Preserve, Timucuan Oaks
104 Garden, Winter Haven Park, the Public Works facility, Ponce Inlet Historic Museum, the two
105 Batelle Institute properties, Jesse Linzy Boat Ramp, Marine Science Center, and Lighthouse Point
106 Park. Originally, the Pacetti Hotel Museum, Ponce de Leon Lighthouse and Museum, Kay and
107 Ayres Davies Lighthouse Park were included; however, after a discussion with Ed Gunn, Director
108 of the Historic Lighthouse Preservation Association, they did not want that use to occur on those
109 properties and upon further review, there are some deed restrictions on those properties that within
110 the 10-acre Lighthouse Reservation location. As reviewed regarding the comprehensive plan, the
111 ordinance will maintain consistency with the Town’s desired vision and direction. The Future Land
112 Use Element of the comprehensive plan classifies the P-I land use category as land used for quasi-
113 public and private activities or facilities which will serve the public interest in an educational,
114 recreational, or scientific context. Staff recommends Ordinance 2024-XX, amending Section 2.40
115 Table of Permitted Uses to include farmers markets as a major special exception use in the P-I
116 zoning district, excluding 13 of the 16 P-I zoned properties.

117
118 Vice-Chair Carney referred to the email provided by Jair Kessler regarding this issue and
119 her concern that Mr. Oebbecke has a conflict of interest as he is a Board Member of the Ponce
120 Inlet Community Center. Attorney Knight explained Mr. Oebbecke will be recusing himself from
121 the vote on this issue. Mr. Lear clarified that Ms. Kessler’s email was forwarded to all the Planning
122 Board members. Members discussed the proposed amendment, the use of the Fire Department and
123 Timothy Pollard Park properties, uses other than farmers markets, and potential parking issues.
124 They discussed it being a major versus minor special exception; they discussed the properties that
125 are excluded and why. Board members discussed communication submitted from the Ponce Inlet
126 Community Center Board of Directors and their decision to allow farmers markets. Mr. Oebbecke
127 explained on behalf of the PICCI Board of Directors why a weekly farmers market will be a benefit
128 to the community and their reasons for supporting this amendment. Discussion continued. Chair
129 Kaszuba opened public comment; seeing none, he closed public comment. Chair Kaszuba opened
130 the floor for more Board discussion or a motion. Mr. Cannon asked for clarification of the nature
131 of a farmer’s market; that it is an aggregation of vendors that are not beholden to anyone. There is
132 no contractual agreement; it is only an assembly point. Mr. Oebbecke explained that is correct;
133 there is no agreement, no contract is signed, and no fee is charged to the vendors; it is a place for
134 them to congregate and sell their wares on a weekly basis. Mr. Lear clarified that the current
135 farmers market operating at the North Turn Restaurant is under a special event permit that is
136 allowable only 12 times per year. Mr. Cannon asked if this is approved, if there is anything that
137 prohibited one market operating at will and another that is limited to 12 times per year. Vice-Chair
138 Carney commented that the Board members recently received training, and he would like guidance

139 on what the threshold should be for an exception like this or what they should be looking for to
140 make this decision. Attorney Knight explained there is no set criteria, and this is not a quasi-judicial
141 proceeding. Discussion continued; Attorney Knight explained the difference between a variance
142 and a special exception.

143
144 Mr. Cannon moved Ordinance 2024-XX, amending the LUDC, Article 2 “Zoning Districts”,
145 Section 2.40.1 “Interpretation of Uses and Structures Permitted,” Table 2-5, “Table of Permitted
146 Uses” to include farmers markets as a major special exception to the Public-Institutional district
147 excluding 13 of the 16 P-I zoned properties be forwarded to the Town Council with a
148 recommendation of APPROVAL; seconded by Chair Kaszuba. The motion FAILED 2-2, with the
149 following vote: Mr. Cannon – yes; Chair Kaszuba – yes; Mr. Burge – no; Vice-Chair Carney –
150 no.

151
152 Mr. Oebbecke abstained, and his filed Form 8-B is attached as part of the record.

153
154 **B. Ordinance 2024-XX (proposed), Amending Articles 3, 8, and 9 of the LUDC**
155 **to substitute references of Code Enforcement Board with Special Magistrate** – Mr. Lear
156 explained that this ordinance has been developed to implement the Town Council’s directive to
157 shift from a Code Enforcement Board process to a Special Magistrate process. The amendment
158 changes references found throughout the LUDC pertaining to enforcement of land development
159 regulations. Chapter 162, Florida Statutes, authorizes the use of a Special Magistrate to enforce
160 the city’s codes and ordinances. A Special Magistrate is an attorney and a member of the Florida
161 bar who is appointed by the Town Council; he explained the duties of a Special Magistrate in
162 relation to code enforcement. He noted that the Town of Ponce Inlet is the only municipality in
163 Volusia County that exclusively uses a Code Enforcement Board rather than a Special Magistrate
164 or a combination of both. At the July 18, 2024, Town Council meeting, Council directed staff to
165 proceed with transitioning from a Code Enforcement Board to a Special Magistrate. Staff
166 recommends approval for this item. Vice-Chair Carney commented he has heard that Ponce Inlet
167 code, as it refers to housing and short-term leasing, is grandfathered and could not be changed; he
168 wants to ensure that when we update this, we do not lose the grandfather status. Mr. Lear explained
169 that would not affect this. Attorney Knight explained it is not a substantive change where we would
170 lose the grandfathering status. Chair Kaszuba asked how long the Town has had a Code
171 Enforcement Board. Mr. Hooker explained the first Code Enforcement Board meeting was in the
172 1980’s. The Town has had the same attorney since that time, Mr. Charles Cino, who has indicated
173 he will likely retire within the next year. The Special Magistrate is anticipated to start in January;
174 Mr. Hooker explained the process and noted that the Special Magistrate would only serve the Town
175 of Ponce Inlet. He explained that the Special Magistrate will be chosen through an RFP process.
176 He explained the appeal process and why the Town is transitioning to a Special Magistrate. Chair
177 Kaszuba opened public comment; seeing none, he closed public comment.

178
179 Mr. Cannon moved that Ordinance 2024-XX amending Articles 3, 8, and 9 of the Land Use
180 Development Code to substitute references of the Code Enforcement Board with Special
181 Magistrate be forwarded to the Town Council with a recommendation of APPROVAL; seconded
182 by Vice-Chair Carney. The motion PASSED 5-0, with the following vote: Mr. Cannon – yes; Vice-
183 Chair Carney – yes; Mr. Oebbecke – yes; Chair Kaszuba – yes; Mr. Burge – yes.

184
185 **9. PUBLIC PARTICIPATION:** Chair Kaszuba opened public participation – hearing none,
186 he closed public participation.

187

188 **10. BOARD DISCUSSION:** None.

189

190 **11. ADJOURNMENT:** The meeting was adjourned at 3:07 p.m.

191

192 Prepared and submitted by,

193

194 *Draft*

195 Debbie Stewart

196 Assistant Deputy Clerk

197

DRAFT



Meeting Date: January 28, 2025

Agenda Item: 8-A

Report to Planning Board

Topic: Annual Board Member Training and Form 8-B Review

Summary: The Town Attorney will provide a review of Florida Sunshine Law, Quasi-Judicial Procedures, Public Business, Ethics, and Form 8-B filing.

Suggested Motion: N/A

Requested by: Ms. Stewart, Assistant Deputy Clerk

Reviewed by: Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



**Town
of
Ponce Inlet**

**Boardmember
Annual
Training
Packet
2025
Planning Board**



Town of Ponce Inlet

Boardmember Annual Training Packet

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Disclaimer:

The information contained herein is provided as a **Guide**; it is not intended to be all-inclusive. Always refer to the appropriate State Statute, Town staff member or the Town Attorney.



Section I

Florida's Sunshine Law & Public Records Law

FLORIDA SUNSHINE, PUBLIC RECORDS, AND CODE OF ETHICS LAWS

This presentation is intended to provide a general overview of Florida Sunshine and Public Records law and the Florida Code of Ethics. For specific guidance or a legal opinion, please contact the Attorney's office.

All boards or commissions of any state, county, municipal corporation or political subdivision have a legal obligation to comply with:

- The Sunshine Law, and
- The Public Records Law, and
- The Florida Code of Ethics.

THE LAWS

■ SUNSHINE LAW [FS §286.011 (“Sunshine Law”) and FL Constitution Art. I, Sec. 24]

Protects the public from “closed door” decision making and provides a right of access to governmental meetings.

■ PUBLIC RECORDS LAW [FS Chap. 119]

Creates a right of access to records made or received in connection with official business of a public body.

■ CODE OF ETHICS [FS 112, Part III, Code of Ethics for Public Officers and Employees and the FL Constitution Art. II, §8]

Protects against conflict of interest and establishes standards for the conduct of elected official and government employees in situations where conflicts may exist.

Committee type determines the applicability of these laws. There are two types of committees:

1. Decision Making Committees
2. Fact Finding/Focus Group Committees

1. Decision Making Committees - become part of the governing body’s decision making process and:

- Choose alternatives and direction; narrow or eliminate options for the governing body’s consideration.
- Make decision by voting.
- Make recommendations to the governing body directly or through staff.
- Create by-laws.

2. Fact Finding/Focus Groups - provide a source of community input and factual resources and:

- Have no characteristics of a Decision Making Committee.
- Do not need by-laws.
- Provide individual input, data and factual findings to staff, as part of staff’s development in its advisement to the governing body.
- Do not take votes.
- Maintain a brainstorming focus.

THE SUNSHINE LAW - gives the public access to meetings of “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision” (“Governing Body”) AND

- Allows the public to observe each preliminary step leading to the final decision.
- Prevents the governing body from creating closed committees that narrow the governing body’s decisions.
- Applies to appointed committees.
- An AG opinion advises it also applies to an individual Board member, appointed to negotiate, narrow decisions, or make decisions for the full board.

MEETINGS SUBJECT TO THE SUNSHINE LAW - include formal or casual discussions about a matter on which the governing body may foreseeably take action, between:

- Two or more members of the governing body, or
- Two or more members of a Decision Making Committee.

Discussions may occur through telephone or e-mail communications, or exchanges during workshops, social events, football games and neighborhood barbeques.

■ **THE SUNSHINE LAW IMPOSES THREE OBLIGATIONS OF OPENNESS**

1. Reasonable notice of meetings subject to the Sunshine Law must be given; requires giving the public reasonable and timely notice so they can decide whether to attend.

What is “reasonable” or “timely” depends on the circumstances. Does not necessarily require a newspaper advertisement (contact the Attorney’s office for guidance).

2. Public must be allowed to attend meetings; however there is no obligation to allow the public to participate.
 - Meetings cannot be held at exclusive or inaccessible facilities.
 - No evasive actions are allowed, such as:
 - a. Circulating written reports to elicit responses or positions on issues.
 - b. Using staff, lobbyists, or other means to seek other members’ positions about issues.
3. Minutes of the meetings are required. Written minutes must be taken and made available promptly.
 - Sound recordings may also be used, in addition to written minutes.
 - Minutes may be a brief summary of meeting’s events.
 - Minutes are public records.
 - Minutes must record the votes.

■ **THE SUNSHINE LAW APPLIES WHEN:**

- Two or more members of a governing body discuss a matter that may foreseeably come before the governing body.
- A governing body moves any part of its decision making process to a committee or group, thereby appointing an “alter ego.”

According to an AG opinion, this may also include an individual Board or Committee member appointed formally or informally to negotiate, narrow or eliminate options or decisions for the full Board or Committee.

- **THE SUNSHINE LAW DOES NOT APPLY TO:**
 1. Committees or groups appointed to engage only in fact-finding activities.
 2. Created focus groups or other such committees that:
 - a. Only provide individual input, data and facts as part of staff's development in its advisement to the governing body.
 - b. Do not narrow options.

The Sunshine Law is *broadly* construed. ~ Exemptions are *narrowly* construed.

- **SUNSHINE LAW:**
Penalties for Noncompliance (also applies to Decision Making Committees)
A violation of the Sunshine Law by the governing body or a Decision Making Committee, can nullify governing body's decisions.
- **Criminal Penalties:**
 1. It is a second degree misdemeanor to knowingly violate the Sunshine Law.
 2. Is Punishable with a fine of up to \$500 and/or up to 60 days imprisonment.
- **Other Penalties Include:**
 1. Removal from position.
 2. Payment of attorney's fees incurred by the challenging party, as well as declaratory and injunctive relief.

SENTENCED TO JAIL FOR SUNSHINE LAW VIOLATIONS:
Suspended Escambia County Commissioner, W.D. Childers, was sentenced to 60 days in jail for discussing redistricting in a telephone conversation while fellow commissioner listened on a speaker phone, and pleaded no contest for talking with two fellow commissioners about county building projects in front of a staffer.

- **PUBLIC RECORDS LAW:**
Public Records Include: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form or means of transmission made or received pursuant to law in connection with transaction of official business by the agency. (Fl. Stat. Chapter 119)

THE PUBLIC RECORDS LAW APPLIES TO:

- Records developed by the governing body, Board Appointed Committees, and employees;
- All types of records including written communications, letters, notes and e-mails. Numerous exemptions are identified in FS 119.07 and other statutes.

Public Records Requests can be made:

- Verbally or in writing,
- By any person.

THE GOVERNING BODY OR APPOINTED COMMITTEE:

- Has a "reasonable" time to respond.
- Can charge for the cost of retrieving records if the amount requested is voluminous.
- Can charge 15 cents/page.

THE PUBLIC RECORDS LAW DOES NOT REQUIRE:

- The retention of records (this is covered under the State's records retention policy).
- The creation of records or the provision of records in the format requested.
- And explanation of the records.

FLORIDA CODE OF ETHICS:

- ADDRESSES:
 - a. Standards of conduct
 - b. Voting Conflicts
 - c. Financial Disclosure
 - d. Prohibits certain action or conducts.
 - e. Requires certain disclosures be made to the public.

Standards of Conduct Prohibit Public Officials from:

- **Soliciting and Accepting Gifts** - May not solicit or accept anything of value that is based on an understanding that their vote, official action, or judgment would be influenced by such a gift.
- **Accepting Unauthorized Compensation** - May not accept any compensation, payment, or thing of value that is given to influence a vote or other official action.
- **Misusing his/her Public Position** - May not corruptly use their official position to obtain a special privilege for themselves or others.
- **Disclosing or Using Certain Information** - May not disclose or use information not available to the public and obtained by reason of their public positions for the personal benefit of themselves or others.
- **Doing business with their agency** - A public official's agency may not do business with a business entity in which the public official, or their spouse or child own more than 5% interest.
- **Engaging in Conflicting Employment or Contractual Relationships** - A public official may not be employed or contract with any business entity regulated by or doing business with his or her public agency.

THE GOVERNING BODY MAY WAIVE THE LAST TWO PROHIBITIONS, AS THEY RELATE TO APPOINTED COMMITTEES.

Voting Conflicts of Interest

- Requires no County, municipal, or other Local Public officer (including members of the appointed committees) shall vote in an official capacity upon any measure which would inure to the special private gain or loss of themselves, any principal or entity by whom they are retained, other than an agency as defined in the Fl. Stat. 112.312(2), or to any relative or business associate.
- Requires that public officers, including members of decision making committees:
 1. Must announce the nature of the conflict before the vote; abstain from voting; and file a memorandum of voting conflict
 2. May not participate in the discussion without first disclosing the nature of their interest in the matter (either in writing prior to the meeting, or orally as soon as they become aware that a conflict exists).

BECOMES AN ISSUE WHEN STAKEHOLDERS ARE APPOINTED TO DECISION-MAKING COMMITTEES

- FINANCIAL DISCLOSURES

Appointed committee members with land-planning, zoning or natural resources responsibilities must file an annual financial statement.

Which Laws Apply to Which Committees?

	Focus Group	Decision-making Committee
Florida Laws		
Sunshine law		X
Public Records Law	X	X
Code of Ethics		
Standards of Conduct	X	X
Voting Conflict		X
Financial Disclosure		X

*Includes discussions about a matter which may foreseeably come before the Committee;; between one or more Committee member(s), or involving subcommittees or an individual Committee member who has been formally or informally authorized to exercise any decision-making authority or to reduce options for the Committee’s consideration.

**Committees with land-planning, zoning, or natural resources responsibilities.

OPEN GOVERNMENT OVERVIEW:

Sunshine Law and Public Records Law



Patricia R. Gleason
Special Counsel for Open Government
Attorney General Pam Bondi

SUNSHINE LAW

- Florida's Government in the Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. In the absence of statutory exemption, it applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.

Scope of the Sunshine Law

- Board members may not engage in private discussions with each other about board business, either in person or by telephoning, emailing, texting or any other type of electronic communication (i.e. Facebook, blogs).

Scope of the Sunshine Law

- While an individual board member is not prohibited from discussing board business with staff or a nonboard member, these individuals may not be used as a liaison to communicate information between board members. For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

SCOPE OF THE SUNSHINE LAW

There are three basic requirements:

- 1) Meetings of public boards or commissions must be open to the public
- 2) Reasonable notice of such meetings must be provided;and
- 3) Minutes of the meetings must be prepared promptly and open to public inspection.

SCOPE OF THE SUNSHINE LAW

- The Sunshine Law applies to advisory boards created pursuant to law or ordinance or otherwise established by public agencies or officials.

Scope of the Sunshine Law

- Staff meetings are not normally subject to the Sunshine Law.
- However, staff committees may be subject to the Sunshine Law if they are deemed to be part of the “decision making process” as opposed to traditional staff functions like factfinding or information gathering.

Scope of the Sunshine Law

- Only the Legislature may create an exemption from the Sunshine Law (by a two-thirds vote).
- An exemption from the Public Records Law does not allow a board to close a meeting. Instead, a specific exemption from the Sunshine Law is required.

Board meetings

- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine law does not allow boards to ban nondisruptive videotaping, tape recording, or photography at public meetings.

Board meetings

- Section 286.0114, F.S., provides, subject to listed exceptions, that boards must allow an opportunity for the public to be heard before the board takes official action on a proposition. The statute does not prohibit boards from “maintaining orderly conduct or proper decorum in a public meeting.”

Penalties

- Civil action
 - Action taken in violation of the Sunshine Law may be invalidated.
- Criminal penalties
- Suspension or removal from office

PUBLIC RECORDS LAW

- Florida's Public Records Act, Chapter 119, Florida Statutes, provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- If material falls within the definition of "public record" it must be disclosed to the public unless there is a statutory exemption.

The term “public records” means:

- a) 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” **(includes electronic communications like text messages, emails).**
- b) Made or received pursuant to law or ordinance or in connection with the transaction of official business
- c) By any agency [including a private entity acting ‘on behalf of’ a public agency]
- d) Which are used to perpetuate, communicate, or formalize knowledge

PROVIDING PUBLIC RECORDS

- a) Public records cannot be withheld at the request of the sender
- b) A requestor is not required to show a “legitimate” or “noncommercial interest” as a condition of access
- c) A request cannot be denied because it is “overbroad”
- d) Unless authorized by another statute, an agency may not require that public records requests be in writing or require the requestor to identify himself or herself

PROVIDING PUBLIC RECORDS

- The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days).
- The Florida Supreme Court has stated that the only delay in producing records permitted under the statute is the reasonable time allowed the custodian to retrieve the record and redact those portions of the record the custodian asserts are exempt.

PROVIDING PUBLIC RECORDS

- An agency is not required to comply with a “standing” request for records that may be created in the future.
- An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost)
- An agency is not required to create a new record

PROVIDING PUBLIC RECORDS

- Chapter 119 authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. An additional 5 cents may be charged for two-sided copies. For other copies, the charge is the actual cost of duplication of the record. Actual cost of duplication means the cost of the material and supplies used to duplicate the record but does not include labor or overhead cost.

Fees

- In addition to the actual cost of duplication, an agency may impose a reasonable service charge for the actual cost of extensive labor and information technology required due to the large volume of a request.

Retention

All public records must be retained in accordance with retention schedules approved by the Department of State

Even exempt records must be retained.


Penalties for noncompliance

- a) Criminal penalties
- b) Civil action
- c) Attorney's fees

In the Sunshine

Florida Sunshine Law Public Records Ch.119 F.S.

Presented by Clifford B. Shepard
Materials by John G. Hubbard & Clifford B. Shepard



1

In the Sunshine

Public Records Law

Perpetuate

Communicate

Formalize



2

Florida Constitution Article I, section 24

- (a) **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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

“or persons acting on their behalf”



3

119.01 General State Policy on Public Records

- (1) It is the policy of this state that all state, county, and **municipal** records are open for **personal inspection and copying by any person**. Providing **access** to public records is a **duty** of each agency.

THE DUTY IS ALSO YOURS, IF YOU HAVE CUSTODY



4

119.07 General State Policy on Public Records

(1)(a) Every **person** who has **custody** of a public record shall permit the record to be **inspected and copied** by any person desiring to do so, at any **reasonable time**, under **reasonable conditions**, and **under supervision by the custodian** of the public records.

**DO YOU HAVE CUSTODY?
TRANSFER CUSTODY TO CITY CLERK**



5

119.07 General State Policy on Public Records

(c) A **custodian** of public records and his or her designee must **acknowledge** requests to inspect or copy records **promptly** and **respond to such requests in good faith**. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

DUTY: ACKNOWLEDGE PROMPTLY



6

119.07 General State Policy on Public Records

- (d) A person who has **custody** of a public record who **asserts that an exemption applies** to a part of such record shall **redact** that portion of the record to which an exemption has been asserted and validly applies, and such person **shall produce the remainder** of such record for inspection and copying.

DUTY: IF PORTIONS ARE EXEMPT, REDACT AND PRODUCE
ISSUES: IS THE RECORD EXEMPT, CONFIDENTIAL
OR BOTH?



7

119.07 General State Policy on Public Records

- (e) If the person who has **custody** of a public record **contends** that all or part of the record is **exempt** from inspection and copying, he or she shall **state the basis** of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.
- (f) **If requested** by the **person seeking** to inspect or copy the record, the **custodian** of public records shall **state in writing** and with particularity the **reasons** for the conclusion that the record is exempt or confidential.

DUTY: STATE STATUTORY BASIS FOR
EXEMPTION – IN WRITING



8

119.07 General State Policy on Public Records

- (4) **The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law.** If a fee is not prescribed by law, the following fees are authorized:

DUTY: FURNISH COPY

ADVICE: COLLECT IN ADVANCE FOR COPY FEES



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119.07 General State Policy on Public Records

- (d) If the **nature or volume** of public records requested to be inspected or copied pursuant to this subsection is such as to require **extensive use of information technology** resources or **extensive clerical or supervisory assistance** by personnel of the agency involved, or both, **the agency may charge**, in addition to the actual cost of duplication, **a special service charge**, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

DUTY: GATHER DOCUMENTS FOR INSPECTION

ADVICE: COLLECT SPECIAL SERVICE FEE IN ADVANCE



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Definition of Public Records

Statutory

Public records means **all** documents, papers, letters, mps, 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.



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Definition of Public Records

Case Law

Any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.

Perpetuate

Communicate


Formalize



12

Clearwater Case

STATUTORY TEST: TRANSACTION OF OFFICIAL BUSINESS




A cartoon illustration of two laptops with human-like faces on their screens, appearing to be in conversation. They are positioned on a desk in front of a sign that reads "COMPUTERS". The scene is set against a warm, orange-to-yellow gradient background.

13

13

Life Lesson

Merlot and email do not mix



A silhouette of a person's head and hand holding a wine glass, drinking wine. The background is a sunset or sunrise with a bright sun low on the horizon.

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Meeting Notes
Draft documents

Perpetuate

Communicate

Formalize



15

Retention of Records

The custodian has an obligation to retain public records (this might be you.)

Department of State, Division of Library Services

Deposit with City Clerk



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Schwab Case

Totality of factors case
 “persons acting on their behalf”



17

119.10 Violation of chapter; penalties.

- (1) Any public officer who:
- (a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.
 - (b) **Knowingly** violates the provisions of s. [119.07\(1\)](#) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#). (2) Any person who **willfully and knowingly** violates:
 - (a) Any of the provisions of this chapter commits a **misdemeanor** of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
 - (b) Section [119.105](#) F.S. commits a **felony** of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).



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Yes, you can go to jail for this too.

Martin County's Sarah Heard Indicted and Booked for Public Records Violations

By [BARBARA CLOWDIS](#) (SOURCE: [BARBARA CLOWDIS](#))
January 5, 2018 - 8:15am



The story of Florida public records law violations in Martin County moved further into the public light Thursday for County Commissioner Sarah Heard and former commissioner Anne Scott.

Heard was indicted and booked on two criminal counts of violating public records laws, according to the Martin County Sheriff's Office. She was released on her own recognizance after her fingerprints and mug shot were taken.

Her charges are criminal misdemeanors that could lead to a fine and/or jail time if she's found guilty. She also could be removed from office by the governor.

Thursday's charges were in addition to a previous non-criminal infraction filed by the prosecutor Nov. 27 for not responding to a public records request in January 2013, to which she pleaded not guilty.

A hearing date was set for Feb. 19. The state prosecutor informed Heard's attorney, Barbara Kibbey Wagner, during a December court hearing that five days needed to be set aside for the hearing due to the case's complexity.

Officials close to the case, however, anticipate the additional misdemeanor charges will result in a request for a hearing continuance. Heard also may now ask for a jury trial, if she pleads not guilty.

Heard is up for re-election in August for the District 4 County Commission seat; however, she has not yet filed, according to Martin County Elections Office records.

Former commissioner Scott, of Jupiter Island, also was charged Thursday with two additional criminal misdemeanor counts of violating public records laws. She, too, was booked and released on her own recognizance, according to the Martin County Sheriff's Office.



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Lawsuits are no bargain.

Lawsuit alleges Sarasota city manager broke public records law

Source: [Herald Tribune](#)
By: [Nicole Rodriguez](#) - Staff Writer

The suit asks a judge to grant an accelerated hearing in the case, and declare that Barwin and the city violated state record retention rules and the Sunshine Law

SARASOTA — A lawsuit filed Thursday against Sarasota City Manager Tom Barwin and the city alleges that the top administrator's frequent failure to produce city-related discussions from his private Gmail account as part of numerous public records requests broke state open records law and eroded public trust in local government.

The suit, filed by Michael Borfield, a paralegal consultant and president of the Florida American Civil Liberties Union, asks a judge to grant an accelerated hearing in the case, and declare that Barwin and the city violated state record retention rules and the Sunshine Law, which is intended to guarantee that citizens have access to public records and the decision-making of governmental officials. The 23-page suit requests a judge to order Barwin and the city to follow the law, make records on Barwin's personal electronic devices available for inspection, pay Borfield's legal fees and award any other relief the court deems appropriate.



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Perpetuate
Communicate
Formalize



21

21

Thank You!

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Section II

Formal Quasi-Judicial Hearings & Proceedings

Quasi-Judicial Hearings - A Guide

For the purposes of this document, “Petitioner” and “Applicant” or variations thereof, shall have the same meaning.

1. Introduction(s) - the Chairperson reads the case type and nature of the issue
2. Affected Party determination
3. Ex-parte communication - the Board members disclose any ex-parte communications that may have occurred. The Petitioner (applicant) and any affected party may ask questions of each Board member about these communications (directed through the Chairperson).
4. Swearing-in of the parties - the Petitioner (applicant), staff, and all witnesses shall be collectively sworn.
5. Staff presentation - Town staff shall present any staff, board, or other report on the matter. These reports any all other documentary evidence shall become part of the record. Evidence will be presented through oral testimony of witnesses and documentary evidence.
6. Petitioner (applicant) presents its case - the Petitioner or applicant may include a description and nature of the application if there is additional information that has not been previously provided by the Town staff. The Petitioner may introduce any documentary evidence and elicit testimony through witnesses.
7. Affected Party *for* the Petitioner (Applicant) - any affected person will present its case clearly indicating if they are in support of the Petition. The affected person may introduce documentary evidence and elicit testimony through witnesses.
8. Affect Party *against* the Petitioner (Application) - any affected person will present its case clearly indicating if they are opposed to the Petition. The affected person may introduce documentary evidence and elicit testimony through witnesses.
9. Any rebuttal by Petitioner (Applicant).
10. Any rebuttal by Staff.
11. Close of presentation by petitioner, staff, and affected parties.
12. Public Hearing.
13. Close Public Hearing; deliberations and vote of the Board.

General rules as to Witnesses:

After each witness testifies, any member of the Board, the Petitioner, or any affected party is permitted to question the witness, unless the Chairperson deems the question to be irrelevant or immaterial. The Chairperson may defer to the Town Attorney to determine the scope of questioning. The questioning party is not permitted to make statements - only to ask questions which are directly related to the testimony presented.

The Board may, in its discretion and at any time during the hearing, continue the hearing, and may request further information from any party.

Instructions:

Consideration of the Evidence - In Board deliberations, Board members must *only* consider the evidence - that is, the testimony of witnesses and the exhibits and all evidence admitted into the record.

The Board is not bound by strict rules of evidence or limited to consideration of the evidence which would be admissible in a court of law, but as you consider the evidence, both direct and circumstantial, you may make deductions and reach conclusions which reason and common sense lead you to make. The Board shall weigh all the competent, material, and/or relevant evidence presented, giving each piece of evidence the weight he or she sees fit.

The Board may exclude evidence or testimony which is not relevant, material or competent, or testimony which is unduly repetitious.

The Board will determine the relevancy of evidence, and the Board may ask the Attorney for opinions on the relevancy of evidence. However, the **attorney's opinion is not evidence** in the case - it is your own recollection and interpretation of the evidence that controls.

The public may provide input to the Board. The Board must not act merely because there is public sentiment for or against the petitioner. The Board must base its decision on the facts and competent evidence presented at the hearing.

Credibility of Witness(es) - You should decide whether you believe what each witness states and how important the testimony was. In making that decision, you may believe or disbelieve any witness; in whole or in part. Also, the number of witnesses testifying concerning any particular matter is not controlling. You may decide that the testimony of a smaller number of witnesses is more believable than the testimony of a larger number of witnesses to the contrary.

You should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or whether there was evidence that at some other time, the witness said or did something or failed to say or do, which was different from the testimony he or she gave before you during the hearing.

Expert Witness(es) - When knowledge of a technical subject matter might be helpful, a person having special training or experience in that technical field (an expert witness) is permitted to state his or her opinion concerning those technical matters. Merely because an expert witness has expressed an opinion however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

Information obtained from: <https://floridaldrs.com/tag/quasi-judicial-hearings/>

CONDUCTING QUASI-JUDICIAL HEARINGS ON LAND USE MATTERS

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Ponce inlet, Florida

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Special thanks to:

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Weiss Serota Helfman Cole & Bierman

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Outline

- Planning Board as LPA
- The Difference Between Legislative and Quasi-Judicial Hearings and Decisions
- Relationship Between Comp Plan and LUDC
- Characteristics of Quasi-Judicial Decisions
- *Ex Parte* Communications and Quasi-Judicial Bias
- Findings of Fact
- Best Practices

2

Planning Board as LPA

- LPA – Local Planning Agency
- Fla. Stat. § 163.3174
- Responsible to conduct comprehensive planning program, including:
 - ✓ *preparing plan or plan amendment after hearings to be held after public notice*
 - ✓ *making recommendations to the Town Council regarding adoption or amendment of the plan*
 - ✓ *monitoring/overseeing effectiveness of plan (EAR process)*
 - ✓ *reviewing LUDCs for consistency*
 - ✓ *other tasks as assigned by Town Council*

3

Setting Policy = Legislative

- Adopting or amending the Comprehensive Plan
- Includes large and small-scale plan amendments
- Adopting or amending Land Use Development Code (LUDC)
- All legislative (also known as quasi-legislative) decisions in land-use practice involve setting policy

4

Legislative Hearing Process

- Broad notice (*i.e.* posted agenda, newspaper publication)
- Wide-ranging public hearing, including consideration of pure preferences and opinions, conjecture and assumptions
- Presentation of evidence: anything relevant
- Substantial discretion: Board as policy-makers
- Can take a public or private position ahead of the hearing - *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170 (Fla. 3rd DCA 1984).

5

Fairly Debatable Standard of Review

- There must be a reasonable basis to support the action.
- Very deferential standard.
- Akin to a bar debate.
- **The Court:**
 - may not second guess the wisdom of the local government's action; and
 - must affirm if there is any reasonable basis for the decision and that there are no constitutional violations.

6

Applying Code and Comp Plan = Quasi-Judicial

- Application of the Code and/or the Comp Plan to specific properties
- Cannot create new policies to govern the decision (legislative process)
- Site-specific application of Land Development Regulations (Examples: rezonings, site plans, conditional uses, variances, administrative adjustments, plats, special exceptions, licenses, permits)
- **Key elements:**
 - finding of facts regarding the specific proposal
 - exercise of judgment and discretion in applying adopted policies to the specific situation

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Quasi-Judicial Hearing Process

- Notice to owner and affected persons
- Sworn testimony – swear or affirm (all at once, or one at a time)
- Parties (City, applicant, affected persons) have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any relevant matter, and rebut evidence
- Applicant and affected parties entitled to more than the 3 minute rule because their rights are uniquely affected
- Board acting as judges

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Hearing Process Continued...

- Where evidence conflicts, the Board has the responsibility of deciding how much weight to accord each piece of evidence.
- Continued hearings: must be present for all, or must review the complete record of portions missed.
- Record-keeping is important – keeping all things exhibits and things handed up to the Clerk or shown to the Board.
- Review is on the record. No ability to create additional evidence after decision is made.
- Board should give due consideration to the professional judgement of your zoning and planning staff, considering their training and experience. But the question of what the Code means is a question of law for which the Board must make its own decision, as the creator of the law.

9

Affected Parties? Objectors With Standing to Sue

- A person who has a **legally recognizable interest** which is or will be affected by the action of the zoning authority in question has standing.
- **May be shared in common with other members of the community** (an entire neighborhood), but not every resident and property owner of a municipality can, as a general rule, claim such an interest.
- **Must be a definite interest exceeding the general interest** in community good shared in common with all citizens.
- **Relevant factors:**
 - **proximity** of property to the property to be zoned or rezoned,
 - **character of the neighborhood**, including the existence of common restrictive covenants and set-back requirements
 - **type of change** proposed
 - **entitlement to receive notice** under the zoning ordinance is a factor, but is **not controlling**.

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Burden of Proof for Quasi-Judicial Matters

- The **burden is on the applicant** for a rezoning, special exception, conditional use permit, variance, site plan approval, etc. to demonstrate the application **complies with the requirements** of the applicable ordinance and that the use sought is **consistent with the applicable comprehensive plan**.
- The **burden then shifts to the government** to present **competent substantial evidence** that the application does not meet applicable criteria under the code and that maintaining the status quo on the property **accomplishes a legitimate public purpose, and is not arbitrary, discriminatory, or unreasonable**.
- Quasi-judicial decisions generally are based on their facts and do not set precedents.

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Variations – Applicability

- A variance may be granted by the planning board, acting as the board of adjustment, only to modify the area, size, setbacks, or open space requirements of this code.
- A variance shall not be granted to permit or expand a use not permitted generally or by special exception in the applicable zoning classification.
- A variance may be granted only if the applicant meets **all** of the criteria listed in subsection 6.6.4.E below.
- No nonconforming use of neighboring land, structures, or buildings in the same zoning classification and no permitted use of lands, structures or buildings in other zoning classifications shall be considered grounds for the authorization of a variance.
- Inconveniences or financial burdens that can be resolved by means other than a variance shall not constitute evidence of unnecessary and undue hardship and shall not alone be considered grounds to justify granting a variance.
- State and/or federal laws or requirements may not be varied by the town.

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Variance Standards

- Special conditions and circumstances exist that are peculiar to the land, structure, or building involved and not typical of other lands, structures, or buildings in the same zoning classification; and
- The special conditions and circumstances do not result from the actions of the applicant; and
- Literal interpretation of this code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification and would create an unnecessary and undue hardship on the applicant; and
- Strict adherence to the provision does not promote the purpose for which it is intended; and

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Variance Standards – cont'd.

- The variance does not conflict with a town policy such as preservation of dunes, water conservation, or preservation of natural vegetation; and
- The variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and
- The variance is in harmony with the general intent and purpose of the LUDC and does not injure the area involved.

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Important Provisions

- **Chapter 1 - PLAN INTERPRETATION**
- It is the responsibility of the director of planning and development or a duly authorized representative to interpret the Comprehensive Plan and its application to public and private land and to uses and/or activities permitted thereon. Plan interpretations shall be based on the applicable text, maps, figures, and tables within the Comprehensive Plan along with the plan's support document. When making plan interpretations, the Comprehensive Plan shall be construed as a complete document and no specific goal, objective, or policy shall be used independently.

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Important Provisions

- **9.1.2 - Responsibility for interpretation.**
- The director of planning and development shall have the duty and responsibility of interpreting the comprehensive plan and the LUDC. The director's responsibility to interpret is limited to the standards, regulations, and requirements of the LUDC. It does not include interpretation of any technical codes adopted by reference in the LUDC, or override the responsibilities given to any commission, board, or official named in the LUDC. The director shall be authorized to promulgate any rules and procedures found necessary for the implementation of the comprehensive plan and the LUDC.

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Competent Substantial Evidence

- ✓ Evidence a reasonable mind would accept as adequate to support a conclusion
- ✓ Substantial Competent Evidence from lay witnesses/residents must be “fact based”
- ✓ Subjective preferences (“love it”/“hate it”) are not fact based and do not constitute Substantial Competent Evidence
- ✓ Conjecture or assumptions are irrelevant to the issues

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Competent Substantial Evidence

- Example: Harm to Property Values
 - Is there testimony from an appraiser about the impacts of a similar project?
 - Is the similar project truly similar?
 - Does the evidence in the record reflect reduced values, or are you just relying on personal knowledge?
 - Don't just tell, **SHOW**. What may be obvious to local citizens will not be known by a reviewing court unless its in the record.
 - Property owners testifying from personal knowledge of appraisals, sales prices or cancelled contracts resulting from similar development or from the pending application should be supported with the documents themselves.

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Findings of Fact

- The Fla. Supreme Court ruled that local government “will NOT be required to make findings of fact” to support its decision on an application for rezoning.
- However, written findings of fact are a good idea in case of appeal to support the local government’s quasi-judicial decisions because they:
 - Are essential to effective strict judicial scrutiny of quasi-judicial decisions.
 - Greatly reduce the possibility of arbitrary or politically-motivated rezoning decisions, thereby providing protection for property rights.
 - Ensure mindfulness of consistency with Comp Plan requirement; if local government makes written findings of fact to support their consistency determinations, local government officials will focus more closely on the relationship between proposed rezoning and goals, objectives and policies of the Comp Plan.

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Ex-Parte Communications

- An ex parte communication occurs when a party to a case, or someone involved with a party, talks or writes to or otherwise communicates directly with a Board member about the issues in the case **without the other parties' knowledge**.
- Example: A Board member meets with the applicant or an opponent without the public present.
- **Attributes of ex-parte communications on local quasi-judicial matters:**
 - ✓ Occurs outside the official hearing
 - ✓ Usually one-sided (opposition or support)
 - ✓ Does not allow the other side an opportunity to respond
 - ✓ Can be in any form – written, verbal, electronic, etc.

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Ponce Inlet Reso 2007-18 & Planning Board Bylaws provide:

- Ex-parte communications are **not presumed prejudicial** if disclosure is made at the beginning of the public meeting.
- Must disclose the following information for the record:
 - The subject matter of the communication and the identity of the person, group or entity with whom the communication took place
 - Written communications should be submitted into the record
 - Disclose the existence and nature of any investigations, site visits and expert opinions received

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Bias in Quasi-Judicial Hearings

- Bias (**a predetermined opinion that is not susceptible to change**), undisclosed ex parte communications, and close family or business ties can **disqualify Board members from participating or voting** as a matter of due process – even if there is no statutory conflict of interest
- Those participating in quasi-judicial proceedings have a right to expect **impartial decision-making on the basis of the evidence presented**. Decision-makers should **not take a position** on a quasi-judicial application until each party (City, applicant, affected person) has made its presentation at the hearing. Doing so deprives a party of its constitutionally protected right to a fair hearing.
- Board members should **not** actively involve themselves in efforts to support proponents or opponents of a quasi-judicial land development action. To do so could subject the City and the individual Board member to a lawsuit.

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Voting Conflict of Interest Statute Allows Abstention for Quasi-Judicial Bias

- Section 286.012, Fla. Stat. **Voting requirement at meetings of governmental bodies.**—A member of a ... municipal governmental ... commission... who is present at a meeting of any such body at which an official decision... is to be taken or adopted **may not abstain from voting** in regard to any such decision...; 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** If there is, or appears to be, a possible conflict. . . , the member shall comply with the disclosure requirements of 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.**

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QJ Hearing Standard of Review

- Narrow and limited review by certiorari on three issues:
 - Whether procedural due process was accorded;
 - Whether the essential requirements of the law were observed; and
 - Whether the decision was supported by competent substantial evidence
- Petitions for writ of certiorari must be filed **within 30 days** of rendition of the development order to be reviewed.
- Denials must cite to the legal authority for the decision.

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Best Practices for Quasi-Judicial Decisions

- **BE AN OBJECTIVE DECISION-MAKER**
- Do not prejudge the case - avoid making up your mind beforehand.
- Provide objective decisions based on all the facts and evidence presented.
- Follow your community's plan and the local zoning codes, and local land development codes.
- Base decision on the information available to you at the meeting, including the staff report, the site visit, relevant information presented at the meeting, and public comment.
- **MAKE THE BEST DECISION POSSIBLE BASED ON ALL OF THE INFORMATION PRESENTED TO YOU**

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More Best Practices

- **BE AN EFFECTIVE BOARD MEMBER**
- Prepare well for the meetings
- Keep the meeting tempo the same at the beginning and end
- Seek to understand each other's positions and opinions
- Be civil to each other so the public will be civil to you
- Have a bias for action
- Explain your rationale, but don't lecture
- Make your final action clear to the public

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More Best Practices

- **MAKE SOUND DECISIONS & DEFENSIBLE MOTIONS**
 - Ask applicant if he/she agrees. If not, why not? Verify understanding and assumptions before voting. Allow rebuttal as needed.
 - Restate and discuss criteria to support the motion.
 - Follow competent substantial evidence, not the Roar of the Crowd
 - Repeat the “gift wrapped” motion provided by staff if you agree
 - Motions different than staff-recommended motion
 - Develop defensible public record based on evidence in the record
 - May not be arbitrary
 - Denials must provide a reason, in writing, to the applicant

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Even More Best Practices

- Adding Conditions of Approval?
 - Make sure they do not overlap or conflict with the staff-recommended conditions
 - Should relate to the criteria for approval
 - Rational nexus test
 - Rough proportionality test
 - Section 70.45, Fla. Stat., exposure for unlawful exaction

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Section III

Conducting a Meeting

“Cheat Sheet”



BOARD MEETING “CHEAT SHEET” - A GUIDE

Note: you must be recognized by the Chair prior to speaking, by stating “*Chairman, I have a question*” or “*Chairman, may I make a comment*”. This procedure prevents members from speaking over each other and avoids confusion when preparing minutes.

Meeting Procedures: Meetings generally run in the following order (according to an approved agenda format):

1. Call to Order and Pledge of Allegiance
2. Roll Call / Determination of Quorum
3. Adoption of Agenda
4. Approval of Minutes (of prior meetings)
5. Report of Staff
6. Correspondence and Disclosure of Ex-parte Communication
7. Hearing of Cases
8. Business Items
9. Public Participation
10. Board Discussion
11. Adjournment

1. Call to Order and Pledge of Allegiance – the Chair will call the meeting to Order, noting the date, Board name, and time. The Chair leads attendees in the Pledge of Allegiance.

2. Roll Call and Determination of Quorum - the Board Secretary will perform the roll call to determine a quorum and document member’s attendance/absence.

3. Adoption of the Agenda – the Chair will ask if there are any changes to the Agenda; a motion and second to “adopt agenda as presented” - or - “adopt the agenda as amended” is required. A vote by consensus is acceptable (all in favor/opposed).

4. Approval of the Minutes – the Chair will ask if there are any changes to the Minutes; a motion and second to “approve the minutes as presented -or - as amended” is required. A vote by consensus is acceptable (all in favor/opposed).

5. Report of Staff - Staff will provide an update to projects currently under review.

6. Correspondence and Disclosure of Ex-parte Communication - the Chair will ask if any correspondence has been received regarding any of the items on the agenda; the Chair asks members to disclose ex-parte communication.

7. Hearing of Cases (Quasi-Judicial) – the Chair should refer to the procedure designated in the “Formal Quasi-Judicial Hearings” guide or consult the Board Attorney. All matters decided during hearings must be by **roll-call vote**, indicating which members voted for or against the issue as a matter of clarity for the record.

8. Business Items (Non-Quasi-Judicial) – staff introduces the item, providing relevant information and making a recommendation. Once finished, the Chair will ask for public comments. After the public has had the opportunity to comment, the Chair will bring the item back to the Board for discussion and deliberation. Board members discuss their viewpoints on the item. If action is required, the Chair will ask for a motion and second. A **roll-call vote** is taken indicating which members voted for and against the issue as a matter of clarity for the record.

9. Public Comment – the Chair asks if any members of the public wish to speak about an item not listed on the agenda.

10. Board Discussion – the Chair asks if any member of the Board wishes to discuss a topic not listed on the agenda. *Note: it is common to add discussion items in advance during Adoption of the Agenda section.*

11. Adjournment – the Chair may ask for a Motion to Adjourn, followed by a second, and vote to adjourn by consensus; or the Chair may simply adjourn the meeting and state the time.

Motions and Voting:

The Town follows a simplified version of Robert’s Rules of Order. Nearly everything can be accomplished in a meeting by a **Main Motion** and/or by **Amending a Main Motion**.

How a Main Motion is brought: used when a member wants to propose action by the Board.

- A member states: “I move that” (or ‘to’) ...
- Another member seconds the motion
- The Chair requests public comment
- The Chair requests Board comment
- The Chair requests a vote
- If a majority votes in favor of the motion, then the motion **PASSES**. If a majority votes in opposition to the motion, or if the vote is a tie, then the motion **FAILS**. The Board Secretary will state the results.

Amending a Main Motion: A member may make a motion to amend a main motion. The Chair will then ask for a member to second the amended motion. If seconded, then the Chair may deem the motion amended; if not seconded, the amendment dies and the original motion stands.

Other motions: A *Motion to Rescind* or *Motion to Consider* may also be made, but these types of motions are rarely utilized and can be explained by the Attorney if needed.

Voting: All members present must vote on the agenda item unless a conflict is declared. In those instances, a Form 8B will be provided to the member, who must complete and return the form to the Board Secretary for filing with the meeting minutes.



Section IV

Robert's Rules of Order & Parliamentary Procedure

Robert's Rules of Order & Parliamentary Procedure

- I. What is Parliamentary Procedure?
It is a set of rules for conduct at meetings that allows everyone to be heard and to make decisions without confusion.
- II. Why is Parliamentary Procedure important?
Because it is a time-tested method used for conducting business at meetings and it can be adapted to fit the needs of any organization. Robert's Rules of Order is the basic handbook of operation for most organizations – so it is important to know the basic rules.
- III. Organizations using Parliamentary Procedure usually follow a fixed order of business called an Agenda.
- IV. The method used by members to express themselves is in the form of “motions”. A motion is a proposal that the entire membership take action or a stand on an issue.
Individual members can:
 1. Call to Order
 2. Second motions
 3. Debate motions
 4. Vote on motions
- V. How are Motions presented?
 1. Obtaining the floor:
 - a. Wait until the last speaker has finished
 - b. Raise your hand and address the Chairman by saying, “Mr./Madam Chairman”
 - c. Wait until the Chairman recognizes you before speaking
 2. Make your motion:
 - a. Speak in a clear and concise manner
 - b. Always state a motion in the positive (for example, say, “I move that we ...” rather than, “I move that we do not ...”)
 - c. Avoid personality conflicts and stay on topic
 3. Wait for someone to second your motion: another member will state second, or the Chairman will call for a second. If there is no second to the motion, the motion dies.
 4. The Chairman re-states the motion:
 - a. The Chairman states, “it has been moved and seconded that we ...”. Thus placing your motion before the members for consideration and action.
 - b. The membership then either debates your motion or may move directly to a vote.
 - c. Once your motion is presented to the membership by the Chairman, it cannot be changed by you without the consent of the members.
 6. Expanding on Your Motion:

- a. Now is the time for you to speak in favor of your motion – not when you first make the motion.
- b. The **mover** is always allowed to speak first.
- c. All comments and debate must be directed to the Chairman.
- d. The mover may speak again **only** after all other speakers are finished (unless called upon by the Chairman).

7. Putting the Question (Motion) to the Membership:

- a. The Chairman asks, “Are you ready to vote on the motion?”
- b. If there is no more discussion, a vote is taken.
- c. The Board Secretary will state the results for the record.

VI. Voting on a Motion: The method of vote on any motion depends on the situation and the By-laws of the Board. These are typical methods:

1. By **Voice** – the Chairman asks those in favor to say, “aye”, those opposed to say “no”. Any member may move for an exact count.
2. By **Roll Call** – the member answers “yes” or “no” as his/her name is called. This method is used when a record of each person’s vote is required or desired.
3. By **General Consent** – when a motion is not likely to be opposed, the Chairman says, “if there is no objection ... “ The membership shows agreement by their silence, however if one member says, “I object,” the item must be put to a vote.
4. By **Ballot** – members write their vote on a slip of paper; the Clerk calculates and announces the results to the Chairman.

These are two other motions that are commonly used:

1. **Motion to Table** – this motion is often used to provide an extended, indefinite period of time to resolve concerns before a final vote is taken. Tabled items are removed from subsequent meeting agendas until brought back by a vote of the Board. The option is always present, to “take off the table” for reconsideration by the membership.
2. **Motion to Continue to a Date Certain** – this motion is used to allow a limited period of time to obtain additional information, resolve outstanding issues, or reschedule an item that has been previously advertised and noticed. No further public notice is required as long as the date and time of the future meeting are announced. The discussion on that particular item “continues” to the future date.

Robert’s Rules of Order and Parliamentary Procedure provides a standard of orderly framework for getting work done. Your meetings will be successful and productive by following these tips:

1. Allow motions that are in order;
2. Have members obtain the floor properly;
3. Speak clearly and concisely;
4. Obey the rules of debate; and most importantly ...
5. Be courteous.



Section V

Town's Policy for Use of Social Media by Board Members

Per Resolution 2020-17

Town of Ponce Inlet Policy for Use of Social Media by Board Members

3.0 Informational Policy

3.1 Policy

The Town understands that social media can be a beneficial and rewarding way for individuals to share information about themselves and interact with others and the public at large. However, when it comes to members of the Town Council, as well as other Town boards and committees, use of social media can violate Sunshine and Public Records laws when discussing public business, resulting in potential litigation and even criminal charges. In addition, using a Social Media Channel for official statements can transform the Channel into a “public forum” subject to First Amendment considerations. The following is a policy for use of social media to be used as guidance to avoid creating actual or perceived violations of the First Amendment, as well as Sunshine and Public Records laws.

3.2 Definitions

For purposes of this Policy:

Board Member means a member of the Town Council, or any Town Board or Committee which is subject to Section 286.011, *Florida Statutes*.

Social media content or content means and includes any materials, documents, photographs, graphics, or other information that is created, posted, distributed, or transmitted on a Social Media Channel.

Posts or Postings mean information, articles, pictures, videos of any other form of communication posted on a Social Media Channel.

Social Media Account means the legal arrangement with a social media provider to authorize use of a social media tool. For example, a Facebook account authorizes use of Facebook.

Social Media Tool means an online utility that provides for mass communication, such as message boards, web sites, and blogs. Specific examples include Facebook, Twitter, LinkedIn, YouTube, Pinterest, and Instagram. Social media tools may provide for one-way or two-way communication.

Social Media Channel means a specific social media platform available through a Social Media Account. For example, each Facebook Page opened through the establishment of a Facebook account is a Social Media Channel.

Personal Social Media Channel means a specific social media platform available through a Social Media Account managed by an Employee which is not associated with the Town, such as an Employee’s personal Facebook page.

3.3 Guidance

- A. Any Board Member who uses a Social Media Channel to make statements relating to public business should not prevent any other user from interacting with any post on that Social Media Channel. Board Members may not take any action to make any individual's comments or replies to posts on the Social Media Channel less visible to others. If available, Board Members may instead choose to turn off replies and comments entirely on any given post.
- B. Board Members should not interact with other members of their same board through Social Media Tools on any matter which could be perceived as relating to public business. "Interacting" includes both substantive and non-substantive interactions, such as commenting on one another's posts, tagging one another on statements, liking one another's posts, or making any statement explicitly or implicitly referring to a member of the same board.
- C. Board Members should not use a Social Media Channel to state an opinion on a matter which may come before their board in a quasi-judicial capacity. Board Members should avoid engaging in *ex parte* communications regarding quasi-judicial matters through Social Media Tools. If a Board Member does communicate regarding a quasi-judicial matter using a Social Media Tool, the Board Member shall disclose such *ex parte* communications at the relevant hearing on the matter.
- D. Board Members should avoid making any statements regarding public business through posts which are not publicly available. For the purposes of this policy, "publicly available" shall mean accessible by hyperlink without any required sign-in or other credential. If a Social Media Tool does not provide for the creation of publicly available posts, Board Members should refrain from utilizing that Social Media Tool.
- E. Whenever a Board Member makes any statement regarding public business using a Social Media Tool, including a reply to another user's post, the Board Member should immediately create a copy of the statement and provide the copy to the Town Clerk. The copy may either be physical form or a computer file, such as a PDF. Board Members who desire technical guidance in creating a copies of social media posts should contact the Town Clerk.
- F. Board Members may not delete any posts which relate to public business.
- G. The Town reserves the right to change, modify, or amend all or part of this policy at any time.



Town of Ponce Inlet
Boardmember
Annual Training Packet

Section VI

Code of Ethics

FL Statute Chapter 112

Title X
PUBLIC OFFICERS, EMPLOYEES, AND
RECORDS

Chapter 112
PUBLIC OFFICERS AND EMPLOYEES: GENERAL
PROVISIONS

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(1) **DEFINITION.**—As used in this section, unless the context otherwise requires, the term “public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(2) **SOLICITATION OR ACCEPTANCE OF GIFTS.**—No public officer, employee of an agency, local government attorney, or candidate for nomination or election 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.

(3) **DOING BUSINESS WITH ONE’S AGENCY.**—No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer’s or employee’s spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer’s or employee’s spouse or child, or any combination of them, 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 officer’s or employee’s own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator’s place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.

(4) **UNAUTHORIZED COMPENSATION.**—No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

(5) SALARY AND EXPENSES.—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. No local government attorney shall be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.

(6) MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. [104.31](#).

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.—A current or former public officer,

employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. [110.402](#) or any person holding a position in the Selected Exempt Service as defined in s. [110.602](#) or any person having authority over policy or procurement employed by the Department of the Lottery.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

b. "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

c. "State agency" means an entity of the legislative, executive, or judicial branch of state

2020 Florida Statutes

government over which the Legislature exercises plenary budgetary and statutory control.

3.a. No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

b. For a period of 2 years following vacation of office, a former member of the Legislature may not act as a lobbyist for compensation before an executive branch agency, agency official, or employee. The terms used in this sub-subparagraph have the same meanings as provided in [s. 112.3215](#).

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph shall be subject to the penalties provided in [s. 112.317](#) and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

- a. A person employed by the Legislature or other agency prior to July 1, 1989;
- b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;
- c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;
- d. A person who has reached normal retirement age as defined in [s. 121.021\(29\)](#), and who has retired under the provisions of chapter 121 by July 1, 1991; or
- e. Any appointed state officer whose term of office began before January 1, 1995, unless reappointed to that office on or after January 1, 1995.

(b) In addition to the provisions of this part which are applicable to legislators and legislative employees by virtue of their being public officers or employees, the conduct of members of the Legislature and legislative employees shall be governed by the ethical standards provided in the respective rules of the Senate or House of Representatives which are not in conflict herewith.

(10) EMPLOYEES HOLDING OFFICE.—

(a) No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council,

commission, or authority, by whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer.

(b) The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office.

(11) PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS.—No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a state examining or licensing board for the profession or occupation.

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

(a) Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.

(b) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

1. The official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;

2. The official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.

(c) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.

(d) An emergency purchase or contract which would otherwise violate a provision of subsection (3) or subsection (7) must be made in order to protect the health, safety, or welfare of the citizens

of the state or any political subdivision thereof.

(e) The business entity involved is the only source of supply within the political subdivision of the officer or employee and there is full disclosure by the officer or employee of his or her interest in the business entity to the governing body of the political subdivision prior to the purchase, rental, sale, leasing, or other business being transacted.

(f) The total amount of the transactions in the aggregate between the business entity and the agency does not exceed \$500 per calendar year.

(g) The fact that a county or municipal officer or member of a public board or body, including a district school officer or an officer of any district within a county, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such public board or body, provided it appears in the records of the agency that the governing body of the agency has determined that such officer or member of a public board or body has not favored such bank over other qualified banks.

(h) The transaction is made pursuant to s. [1004.22](#) or s. [1004.23](#) and is specifically approved by the president and the chair of the university board of trustees. The chair of the university board of trustees shall submit to the Governor and the Legislature by March 1 of each year a report of the transactions approved pursuant to this paragraph during the preceding year.

(i) The public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

(j) The public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency and:

1. The price and terms of the transaction are available to similarly situated members of the general public; and
2. The officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

(13) COUNTY AND MUNICIPAL ORDINANCES AND SPECIAL DISTRICT AND SCHOOL DISTRICT RESOLUTIONS REGULATING FORMER OFFICERS OR EMPLOYEES.—The governing body of any county or municipality may adopt an ordinance and the governing body of any special district or school district may adopt a resolution providing that an appointed county, municipal, special district, or school district officer or a county, municipal, special district, or school district employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of 2 years following vacation of office or termination of employment, except for the purposes of collective bargaining. Nothing in this section may be construed to prohibit such ordinance or resolution.

(14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.—A person who has been elected to

any county, municipal, special district, or school district office or appointed superintendent of a school district may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

(a) The “government body or agency” of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

(b) The “government body or agency” of any other county elected officer is the office or department headed by that officer, including all subordinate employees.

(c) The “government body or agency” of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.

(d) The “government body or agency” of an elected special district officer is the special district.

(e) The “government body or agency” of an elected school district officer is the school district.

(15) ADDITIONAL EXEMPTION.—No elected public officer shall be held in violation of subsection (7) if the officer maintains an employment relationship with an entity which is currently a tax-exempt organization under s. 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the officer’s agency and:

(a) The officer’s employment is not directly or indirectly compensated as a result of such contract or business relationship;

(b) The officer has in no way participated in the agency’s decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the agency, or otherwise; and

(c) The officer abstains from voting on any matter which may come before the agency involving the officer’s employer, publicly states to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining, and files a written memorandum as provided in s.112.3143.

(16) LOCAL GOVERNMENT ATTORNEYS.—

(a) For the purposes of this section, “local government attorney” means any individual who routinely serves as the attorney for a unit of local government. The term shall not include any person who renders legal services to a unit of local government pursuant to contract limited to a specific issue or subject, to specific litigation, or to a specific administrative proceeding. For the purposes of this section, “unit of local government” includes, but is not limited to, municipalities, counties, and special districts.

(b) It shall not constitute a violation of subsection (3) or subsection (7) for a unit of local

government to contract with a law firm, operating as either a partnership or a professional association, or in any combination thereof, or with a local government attorney who is a member of or is otherwise associated with the law firm, to provide any or all legal services to the unit of local government, so long as the local government attorney is not a full-time employee or member of the governing body of the unit of local government. However, the standards of conduct as provided in subsections (2), (4), (5), (6), and (8) shall apply to any person who serves as a local government attorney.

(c) No local government attorney or law firm in which the local government attorney is a member, partner, or employee shall represent a private individual or entity before the unit of local government to which the local government attorney provides legal services. A local government attorney whose contract with the unit of local government does not include provisions that authorize or mandate the use of the law firm of the local government attorney to complete legal services for the unit of local government shall not recommend or otherwise refer legal work to that attorney's law firm to be completed for the unit of local government.

(17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.—No citizen member of the Board of Governors of the State University System, nor any citizen member of a board of trustees of a local constituent university, shall have or hold any employment or contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to s. [11.045](#).

History.—s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349; s. 4, ch. 82-98; s. 2, ch. 83-26; s. 6, ch. 83-282; s. 14, ch. 85-80; s. 12, ch. 86-145; s. 1, ch. 88-358; s. 1, ch. 88-408; s. 3, ch. 90-502; s. 3, ch. 91-85; s. 4, ch. 91-292; s. 1, ch. 92-35; s. 1, ch. 94-277; s. 1406, ch. 95-147; s. 3, ch. 96-311; s. 34, ch. 96-318; s. 41, ch. 99-2; s. 29, ch. 2001-266; s. 20, ch. 2002-1; s. 894, ch. 2002-387; s. 2, ch. 2005-285; s. 2, ch. 2006-275; s. 10, ch. 2007-217; s. 16, ch. 2011-34; s. 3, ch. 2013-36; s. 2, ch. 2018-5.



Town of Ponce Inlet
Boardmember
Annual Training Packet

Section VII

Public Business

FL Statute Chapter 286
(Abridged)

2018 Florida Statutes

Title XIX PUBLIC BUSINESS (Abridged)

Chapter 286

PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

- 286.0105 Notices of meetings and hearings must advise that a record is required to appeal.
- 286.011 Public meetings and records; public inspection; criminal and civil penalties.
- 286.0113 General exemptions from public meetings.
- 286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.
- 286.0115 Access to local public officials; quasi-judicial proceedings on local government land use matters.
- 286.012 Voting requirement at meetings of governmental bodies.
- 286.26 Accessibility of public meetings to the physically handicapped.

286.0105 Notices of meetings and hearings must advise that a record is required to appeal. —

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

History.—s. 1, ch. 80-150; s. 14, ch. 88-216; s. 209, ch. 95-148.

286.011 Public meetings and records; public inspection; criminal and civil penalties. —

- (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.
- (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this

state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which 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 to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a

violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History.—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.

286.0113 General exemptions from public meetings. —

(1) That portion of a meeting that would reveal a security or fire safety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(2)(a) For purposes of this subsection:

1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. “Team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

(b) 1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c) 1. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

History.—s. 2, ch. 2001-361; s. 44, ch. 2005-251; s. 2, ch. 2006-158; s. 2, ch. 2006-284; s. 13, ch. 2010-151; s. 2, ch. 2011-140; s. 2, ch. 2016-49; s. 3, ch. 2018-146.

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(1) For purposes of this section, “board or commission” means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

(b) 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;

(c) 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

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7) (a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

History.—s. 1, ch. 2013-227.

286.0115 Access to local public officials; quasi-judicial proceedings on local government land use matters. —

(1) (a) A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials pursuant to this subsection or by adopting an alternative process for such disclosure. However, this subsection does not require a county or municipality to adopt any ordinance or resolution establishing a disclosure process.

(b) As used in this subsection, the term “local public official” means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member. If adopted by county or municipal ordinance or resolution, adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials.

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to part III of chapter 112 for not complying with this paragraph.

(2) (a) Notwithstanding the provisions of subsection (1), a county or municipality may adopt an ordinance or resolution establishing the procedures and provisions of this subsection for quasi-judicial proceedings on local government land use matters. The ordinance or resolution shall provide procedures and provisions identical to this subsection. However, this subsection does not require a county or municipality to adopt such an ordinance or resolution.

(b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decision-making body who is not a party or party-intervenor shall be allowed to testify before the decision-making body, subject to control by the decision-making body, and may be requested to respond to questions from the decision-making body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. The decision-making body shall assign weight and credibility to such testimony as it deems appropriate. A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate.

(c) In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decision-making body by application of ex parte communication prohibitions. Disclosure of such communications by a member of the decision-making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision-making body. All decisions of the decision-making body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.

(3) This section does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.

History.—s. 1, ch. 95-352; s. 31, ch. 96-324.

286.012 Voting requirement at meetings of governmental bodies. — A member of a state, county, or 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, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. 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.

History.—s. 1, ch. 72-311; s. 9, ch. 75-208; s. 2, ch. 84-357; s. 13, ch. 94-277; s. 19, ch. 2013-36; s. 7, ch. 2014-183.

286.26 Accessibility of public meetings to the physically handicapped. —

(1) Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person.

(2) If an affected handicapped person objects in the written request, nothing contained in the provisions of this section shall be construed or interpreted to permit the use of human physical assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this section.

History.—s. 1, ch. 77-277; s. 1, ch. 79-170; s. 116, ch. 79-400; s. 1, ch. 81-268.

“LET THE SUNSHINE IN” Public Meetings Law Chapter 286 F.S.

Clifford B. Shepard

Materials by John G.
Hubbard, Esq. & Clifford
B. Shepard



1

Florida Constitution Article I, section 24 (b)

(b) All **meetings** of any **collegial public body** of the executive branch of state government or of any collegial public body of a county, **municipality**, school district, or special district, at which **official acts are to be taken** or at which **public business** of such body is to be **transacted or discussed**, shall be **open and noticed** to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

2

2

Florida Statute 286.011

- (1) All **meetings** of any board or commission of any state agency or authority or of any **agency or authority** of any county, **municipal** corporation, or political subdivision, except as otherwise provided in the Constitution, at which **official acts are to be taken** are declared to be public meetings **open to the public at all times**, and **no resolution, rule, or formal action** shall be considered **binding** except as taken or made at such meeting. The board or commission must provide **reasonable notice** of all such meetings.

3

3

Florida Statute 286.011

- 2) The **minutes** of a meeting of any such board or commission of any such state agency or authority shall be **promptly recorded**, and such records shall be **open to public inspection**. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

4

4

Notice

Reasonable

Location

Restaurant ❌

Private club ❌

Identification required ❌

In city limits ⚡

No “CHILLING” effect

Minutes

Summary v. verbatim

Draft is a public record

Must be approved timely



Public Meeting
At City Hall

5

Florida Statute 286.011 = MEETING LOCATION

(6) All **persons** subject to subsection (1) are **prohibited from holding** meetings at any facility or **location** which **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** to such a facility.

- **Public meetings must be accessible to the physically handicapped Chapter 286.26 FS**

6

Florida Statute 286.011

- **Knowingly attending a meeting in violation of the statute is a misdemeanor of the second degree**
- **Conduct outside the State is a misdemeanor of the second degree**
- **A court may assess an attorney's fee against you for enforcement of this statute unless you have sought and followed the advice of the city's attorney**

7

7

What is a public meeting?

Florida Constitution

Meeting of a collegial public body at which official acts taken or business discussed

Florida Statutes

Meeting at which official acts taken

Case Law

All meetings where there are discussions of matters which may foreseeably come before a board or commission

"All meetings" include staff, committees, temporary groups or even a single person.

8

Yes, Prosecutions Still Happen

Grand Jury To Review Century Town Operations; Council Members Charged With Sunshine Law Violations

January 4, 2019



A grand jury will investigate operations of the Town of Century, and three council members have been charged with violating the Sunshine Law.

"A number of issues have been brought to the attention of the State Attorney's Office regarding the manner in which the town has operated, and these are the issues that may brought before the grand jury." Assistant State

9

9

What's going on here?



The fact that we don't know IS the point.

10

10

W.D. Childers goes to jail



11

Florida Statute 286.011

- The statute is “broadly construed to effect it’s remedial and protective purposes.”
- Applicable to elected and appointed bodies
- Substantial delegation affecting a decision...single individual
- Recommendations limit choices; part of decision process
- Fact finding only IS AN EXCEPTION: **EXCEPT FOR ELECTED BODIES!**

12

12

Major Exceptions – ALL STATUTORY

- Pending litigation...settlement negotiations or strategy sessions related to litigations expenditures...limited attendees
- Labor negotiations-bargaining team – exemption as to public meetings and public records Chap 447 F.S.
- Risk management committee
- Security system meeting
- Negotiation with a vendor

13

13

Exchange of written memorandums

- First bite at the apple
- No response



14

14

Outside Contact

- You can socialize with other board members
- You can attend the same meeting....**BUT...**



15

You Can Cure a Violation

- No rubber stamp meeting
- Ultimate decision safeguarded
- Multiple cases describing proper procedure

Cure...
Don't Ignore



16

Notice

Location

Minutes

17

17

New Challenges

E-mail...twitter...texting...Facebook...websites



18

18

Thank You

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19



Addendum

FS Chapter 163

Local Planning Agency

Entire Statute

Title XI
COUNTY ORGANIZATION AND INTERGOVERNMENTAL
RELATIONS

Chapter 163
INTERGOVERNMENTAL
PROGRAMS

163.3174 Local planning agency.—

(1) The governing body of each local government, individually or in combination as provided in s. [163.3171](#), shall designate and by ordinance establish a “local planning agency,” unless the agency is otherwise established by law. Notwithstanding any special act to the contrary, all local planning agencies or equivalent agencies that first review rezoning and comprehensive plan amendments in each municipality and county shall include a representative of the school district appointed by the school board as a nonvoting member of the local planning agency or equivalent agency to attend those meetings at which the agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application. However, this subsection does not prevent the governing body of the local government from granting voting status to the school board member. The governing body may designate itself as the local planning agency pursuant to this subsection with the addition of a nonvoting school board representative. All local planning agencies shall provide opportunities for involvement by applicable community college boards, which may be accomplished by formal representation, membership on technical advisory committees, or other appropriate means. The local planning agency shall prepare the comprehensive plan or plan amendment after hearings to be held after public notice and shall make recommendations to the governing body regarding the adoption or amendment of the plan. The agency may be a local planning commission, the planning department of the local government, or other instrumentality, including a countywide planning entity established by special act or a council of local government officials created pursuant to s. [163.02](#), provided the composition of the council is fairly representative of all the governing bodies in the county or planning area; however:

(a) If a joint planning entity is in existence on the effective date of this act which authorizes the governing bodies to adopt and enforce a land use plan effective throughout the joint planning area, that entity shall be the agency for those local governments until such time as the authority of the joint planning entity is modified by law.

(b) In the case of chartered counties, the planning responsibility between the county and the several municipalities therein shall be as stipulated in the charter.

(2) Nothing in this act shall prevent the governing body of a local government that participates in creating a local planning agency serving two or more jurisdictions from continuing or creating its own local planning agency. Any such governing body which continues or creates its own local planning agency may designate which local planning agency functions, powers, and duties will be performed by each such local planning agency.

(3) The governing body or bodies shall appropriate funds for salaries, fees, and expenses necessary in the conduct of the work of the local planning agency and shall also establish a schedule of fees to be charged by the agency. To accomplish the purposes and activities authorized by this act, the local planning agency, with the approval of the governing body or bodies and in accord with the fiscal practices thereof, may expend all sums so appropriated and other sums made available for use from fees, gifts, state or federal grants, state or federal loans, and other sources; however, acceptance of loans must be approved by the governing bodies involved.

(4) The local planning agency shall have the general responsibility for the conduct of the comprehensive planning program. Specifically, the local planning agency shall:

(a) Be the agency responsible for the preparation of the comprehensive plan or plan amendment and shall make recommendations to the governing body regarding the adoption or amendment of such plan. During the preparation of the plan or plan amendment and prior to any recommendation to the governing body, the local planning agency shall hold at least one public hearing, with public notice, on the proposed plan or plan amendment. The governing body in cooperation with the local planning agency may designate any agency, committee, department, or person to prepare the comprehensive plan or plan amendment, but final recommendation of the adoption of such plan or plan amendment to the governing body shall be the responsibility of the local planning agency.

(b) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the governing body such changes in the comprehensive plan as may from time to time be required, including the periodic evaluation and appraisal of the comprehensive plan required by s. [163.3191](#).

(c) Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof, when the local planning agency is serving as the land development regulation commission or the local government requires review by both the local planning agency and the land development regulation commission.

(d) Perform any other functions, duties, and responsibilities assigned to it by the governing body or by general or special law.

(5) All meetings of the local planning agency shall be public meetings, and agency records shall be public records.



**Town of Ponce Inlet
Board Member
Annual Training Packet**

Addendum

LUDC, Article 6

§6.2.2 - Review Authority: Planning Board

and

§6.6 - Specific Procedures

Planning Board Members:

Section 6.2.2 - *Review Authorities, Planning Board* and Section 6.6 - *Specific Procedures* are located in the Town of Ponce Inlet **Land Use and Development Code**. These documents are “living documents” as they periodically updated.

The following documents are available on-line at “Municode”, through the link on the Town’s website: www.ponce-inlet.org – click *On Line Services* then select *Municipal Code*:

- Part I - Town Charter
- Part II - Code of Ordinances
- Part III - Land Use and Development Code
- Part IV - Comprehensive Plan
- Appendix A - Fees, Rates, and Charges
- Appendix B - Town Code Fine and Cost Schedule

To view current versions, pending updates, and to verify accuracy, please visit:

https://library.municode.com/fl/ponce_inlet/codes/code_of_ordinances

Or use the following link:

https://library.municode.com/fl/ponce_inlet/codes/code_of_ordinances

How to navigate the Municode home page:

- The list on the **LEFT** contains links to the Charter, Code of Ordinances, LUDC, Comprehensive Plan, and the Appendices;
- The list on the **RIGHT** contains all Ordinances that have been adopted and are awaiting codification.

If you have any questions, please contact:

Planning & Development staff @ 386-236-2181

or

Debbie Stewart, Assistant Deputy Clerk @

386-293-0035

Or email: dstewart@ponce-inlet.org

6.2.2 - Planning board.

A. *Established.* A planning board is created that has the power and duties of a planning commission and a board of adjustment, consistent with [section 7.01](#) of the Charter, and serves as the local planning agency in accordance with the Community Planning Act (2011) F.S. § 163.3161 et. seq. It is referred to in this code as the "board." Membership, powers, duties, responsibilities, and limitations are provided in this section.

B. *Membership and terms of office.* The board shall consist of five regular members and two alternates appointed by the town council. Each regular member shall be appointed for a three-year term, in staggered sequence, with an exception for the initial term of this board as a five-member board: terms for seats one and two shall expire in December 2019, terms for seats three and four shall expire in December 2018, and the term for seat five shall expire in December 2017. Alternate members shall be appointed for a term of one year.

C. *Rules of procedure.*

1. The board shall meet at regular intervals and other times as it may deem necessary. It shall adopt written bylaws and procedures necessary for the administration of its responsibilities, as consistent with the Code of Ordinances, and this code. Bylaws and procedures shall be approved by town council. The board shall keep a properly indexed public record of its transactions, findings, and determinations.

2. A quorum shall be three members. A simple majority of members present is necessary to render a decision.

D. *Powers and duties.* The planning board shall have the powers and duties set forth in [section 6.6](#) (Specific procedures) and the following:

1. As the local planning agency, to review proposed land development regulations, determine their consistency with the comprehensive plan, and make recommendations to the town council as to whether the regulations should be adopted;

2. To hear, review, and make recommendations on the approval of quasi-judicial land use and development applications and whether the applications meet the general criteria of [section 6.3.6](#), including consistency with the comprehensive plan.

3. To hear and decide variances and appeals of orders, administrative decisions, or determinations in the enforcement and interpretation of this code. On appeal, the planning board may reverse, affirm, or modify any administrative order, requirement, decision or determination.

4. To perform other duties and functions consistent with F.S. § 163.3161 et seq., the comprehensive plan, Code of Ordinances, or this code, and as directed by the town council.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY COUNTY	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED	NAME OF POLITICAL SUBDIVISION:
MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, _____, hereby disclose that on _____, 20 ____ :

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____ ;
- inured to the special gain or loss of my relative, _____ ;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.