

SUMMARY OF THE REQUIREMENTS OF FLORIDA'S SUNSHINE LAW AND PUBLIC RECORDS LAW

FOR CEPD, COMMITTEE & BOARD MEMBERS

Your GO- TO GUIDE

Florida Sunshine Manual Abridged Copy – Sunshine Law and Public Records
FAQ:

<http://myfloridalegal.com/pages.nsf/4492D797DC0BD92F85256CB80055FB97/BDC595CDC2A9EA8D85256CC7000A776A?OpenDocument>

Florida's Government in the Sunshine Law, also known as the Open Meetings Law, contains three basic requirements that relate to CEPD elected and appointed officials and members of CEPD sponsored committees formed for the purpose of assisting and advising the CEPD in carrying out official business:

- (1) Meetings of such committees must be open to the public;
- (2) Public notice of such meetings must be given; and
- (3) Minutes of the meetings must be taken.

As a public entity in Florida, the CEPD takes care of scheduling all committee meetings in publicly accessible places, providing public notice of the meetings, and preparing minutes of the meetings.

However, all commissioners and committee members need to be aware that the Sunshine Law also imposes some important constraints on the conduct of the individual commissioners and individual committee members during their tenure of public service.

Among the most important of these requirements are:

- Elected and Appointed Officials who are members of the same board (or liaisons) may not discuss committee business with each other outside of a

duly noticed public meeting, whether in person, by telephone, or by other means of communication.

- The Sunshine Law is applicable to *any* gathering, whether formal or casual, of two or more members of the committee at which committee business is discussed. Committee business includes *any matter that will foreseeably come before the committee for action*.
- Thus, committee members must avoid discussing committee business or matters relating to committee business with each other in private telephone or e-mail conversations, in hallways during meeting breaks, at restaurants over lunch, and in similar circumstances that are outside the context of a duly noticed public meeting.
- A limited exception exists for written reports or materials that are used to inform committee members about a subject that will be discussed at a public meeting, provided that prior to the meeting there is no discussion or interaction among the committee members regarding the report, and the report is not being used as a substitute for action at a public meeting.
- All reports should be distributed by submitting them to the Clerk who can then distribute such reports or documents in advance of public meetings provided that these reports are (1) made available to the public at the public meeting and (2) included in the record of the public meeting.
- Any discussion about the report or information contained therein can only occur at the duly noticed, public meeting.
- Reports, letters, or other documents received by commissioners and committee members in connection with their official duties as committee members are also subject to Florida's Public Records Law, Chapter 119, Florida Statutes.
- Any materials presented for consideration by the public or CEPD should be provided to the CEPD Clerk for inclusion in the CEPD's official files.

The CEPD will provide guidance and advice on the Sunshine Law throughout any proceedings as circumstances require.

Case Law

The Florida Supreme Court noted that Florida's Sunshine Law "*Fla.Stat. § 286.011(1)*, F.S.A., specifically provides that "no resolution, rule, regulation or formal action shall be considered binding" where the government in the sunshine law is violated. Town of Palm Beach v. Gradison, 296 So.2d 473, 477 (Fla. 1974).

The Town can comply with both the Town Code and the Sunshine Law by allowing the public to attend negotiations between the Applicant, the Mayor and City Attorney. The Town can not evade the Sunshine Law by sending a matter to the Mayor and the Town Attorney to negotiate behind closed doors. As early as 1971 the Florida Supreme Court noted in City of Miami Beach v. Berns, 245 So. 2d 38, 41 (Fla. 1971) that "The evil of closed door operation of government without permitting public scrutiny and participation is what the law seeks to prohibit."

In Town of Palm Beach v Gradison, at 477, the Florida Supreme Court found a Town's comprehensive plan to be **void** even where the Plan was later approved by the Town Council itself - because the Sunshine Law was violated in the early plan formulation stages by the earlier citizens' ad hoc committee:

"we hold that the zoning ordinance adopted by the zoning authorities and the Town Council after public hearing was rendered invalid because of the non-public activities of the citizens planning committee, which committee was established by the Town Council, active on behalf of the Council in an advisory capacity, and *participated in the formulation* of the zoning plan."

Decisions can be made individually without violating the sunshine law, but when made at a committee meeting, such as negotiating recommended terms and conditions of a Development Agreement, then fall under the Sunshine Law requirements that the meeting be open to the public. News-Press Publishing Company, Inc. v. Carlson, 410 So. 2d 546, 548-549 (Fla. 2d DCA 1982) held that:

"when they put on their committee hat, ... these meetings constitute official acts which are an indispensable requisite to formal action. At that point the committee must give reasonable notice to the public, meet in public, and keep minutes of their meetings as required by section 286.011, Florida Statutes" *citing* Times Publishing Company v. Williams, 222 So.2d 470 (Fla. 2d DCA 1969)).

It makes no difference under the sunshine law, whether the decision is the mere formulation of a decision or the final decision itself:

The purpose of the Sunshine Law is "to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance." See Monroe County v Pigeon Key Historical Park, Inc., 647 So.2d 857, 860 (Fla 3d DCA 1994) (quoting Palm Beach v Gradison, 296 So.2d 473 (Fla 1974)). As such, Florida requires governmental

entities to conduct their business at open, public meetings, “in the sunshine.” *Any meeting at which official acts are to be taken are to be open to the public . . .*” (emphasis added)

Zorc v. City of Vero Beach, 722 So.2d 891, 896 (Fla. 4th DCA 1988).

The Courts have held that even “advisory boards whose powers are limited to making recommendations to a public agency and which possess no authority to bind that agency in any way are subject to the Sunshine Law. Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974). Monroe County v. Pigeon Key Historical Park, Inc., 647 So. 2d 857, 869 (Fla. 3d DCA 1994). Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county commission to serve in an advisory capacity to the county manager).”

The Florida Supreme Court held in Wood v. Marston, 442 So. 2d 934 (Fla. 1983) that “the Sunshine Law applies to an ad hoc advisory committee appointed by university president to screen applications and make recommendations for the position of dean of the law school.” The “fact that an advisory committee's recommendations *are subject to further review* prior to final approval does not insulate the committee from the Sunshine Law - because “[n]o official act which is in and of itself decision-making can be 'remote' from the decision-making process, regardless of how many decision-making steps go into the ultimate decision.” Wood v. Marston, 442 So. 2d at 941.”

“The courts have recognized the importance of public participation in open meetings. The Florida Supreme Court has stated that “specified boards and commissions . . . should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.”

Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693, 699 (Fla. 1969).

SUNSHINE LAW CLASS

WEB LINKS

1. **“GOVERNMENT IN THE SUNSHINE MANUAL”** published by the First Amendment Foundation – print copies available at CEPD Hall from the CEPD Clerk

An online version of this manual is available at :

<http://myfloridalegal.com/sun.nsf/manual>

The Florida Attorney General’s Website is also helpful to access all of the cited (AGO) Attorney General Opinions, (as well as those Informal Opinions cited in the Government in the Sunshine Manual), at the Office of the Attorney General Website at:

<http://myfloridalegal.com>

For questions you may contact myself, **Ralf Brookes, CEPD Attorney at (239) 910-5464** or contact the **Florida Attorney General, General Counsel Pat Gleason** via e-mail: pat_gleason@oag.state.fl.us ; or by telephone at (850) 245-0203

Open Government Mediation Program - Section 16.60, Florida Statutes, establishes the open government mediation program as a voluntary alternative for resolution of public access disputes. For more information about mediation, please contact the Attorney General's Office at the following address: The Capitol, PL-01, Tallahassee, Florida 32399-1050; telephone: (850) 245-0203; e-mail: ag@oag.state.fl.us.

2. **Florida First Amendment Foundation – not for profit**

Florida Focus – Sunshine Law and Public Records Issues, Legislation

<http://www.floridafaf.org/>

3. **Brechner Center for Freedom of Information – University of Florida**

National Focus FOIA

<http://brechner.org/>