

**ORGANIZATIONAL MEETING OF THE CITY COUNCIL  
MONDAY, NOVEMBER 17, 2014 10:00 A.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**A G E N D A**

- 1. Call to Order of Canvassing Board – City Attorney**
  - A) Roll Call – Deputy City Clerk**
  - B) Pledge of Allegiance – City Clerk**
  
- 2. Certification of Election Results**
  - A) Presentation of Election Results – City Clerk**
  - B) Reading of Certification Resolution – City Manager**
  - C) Motion to Adopt Resolution Certifying Election Results**
  
- 3. Oath of Office of New Councilmembers**
  - A) Administration of Oath of Office – City Clerk**
  - B) Adjournment of Canvassing Board**
  - C) Council Takes Seats at Dais**
  
- 4. Election of Mayor**
  - A) Call for Nominations for Mayor – City Attorney**
  - B) Motion for Election of one of the Nominees as Mayor**
  - C) Mayor assumes Control of Meeting**
  
- 5. Election of Vice-Mayor**
  - A) Call for Nomination for Vice-Mayor – Mayor**
  - B) Motion for Election of One of the Nominees as Vice-Mayor**
  
- 6. Seating Assignment & Appointments to Commission and Boards**
  
- 7. Public Comment**
  
- 8. Sunshine Law Briefing – Assistant City Attorney**
  
- 9. Adjournment**

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and that for such purpose he 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. Anyone who needs a special accommodation for the meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4922 at least 48 hours in advance of the meeting.

**COMMITTEE APPOINTMENTS  
2014 – 2015**

**1. TREASURE COAST COUNCIL OF LOCAL GOVERNMENTS**

This Board meets the first Wednesday of every month at 10:00 a.m. The meetings are held in conference room #3 in the Roger Poitras Annex Building (off of Virginia Avenue).

**2. TREASURE COAST REGIONAL PLANNING COUNCIL**

This Board meets the third Friday of each month at 9:30 a.m. The meetings are held in Stuart, Florida.

**3. COUNTY ECONOMIC DEVELOPMENT COUNCIL (EDC)**

This Committee meets the second Tuesday each month at 3:00 p.m.. The meetings are held in the first floor conference room at the County Administration Building.

**4. TOURIST DEVELOPMENT COUNCIL**

This Committee meets on an as needed basis. The meetings are held at the County Administration Building.

**5. METROPOLITAN PLANNING ORGANIZATION (MPO)**

This Board meets the second Wednesday of each month at 10:00 a.m. The meetings are held in the first floor conference room at the County Administration Building. The City has two full members and one alternate member serving on this Board.

**6. TREASURE COAST LEAGUE OF CITIES**

This Board meets the third Wednesday of every other month at 10:30 a.m. at different locations on the Treasure Coast.

**7. BEACH AND SHORE PRESERVATION ADVISORY COMMITTEE**

This Committee meets the third Monday of each month at 3:00 p.m. in the first floor conference room located in the County Administration Building.

**8. ELECTED OFFICIALS OVERSIGHT COMMITTEE**

This Committee meets once a year on the second Friday in April at 9:00 a.m. at the County Administration Building.

**9. ENTERPRISE ZONE DEVELOPMENT AGENCY**

This Agency meets quarterly on the second Thursday of every month at 8:30 a.m. at the County Administration Building.

**10. COUNTY AFFORDABLE HOUSING ADVISORY COMMITTEE (AHAC)**

This Committee meets when necessary at the County Administration Building.

**12. REPRESENTATIVE ON FMPA**

**13. LIAISON TO DOWNTOWN MAINSTREET**

**14. LIAISON TO CULTURAL ARTS**

**15. LIAISON TO THE CHAMBER OF COMMERCE**

**16. RAILROAD COORDINATOR COMMITTEE**

**COMMITTEE APPOINTMENTS**  
**2013 – 2014**

**1. TREASURE COAST COUNCIL OF LOCAL GOVERNMENTS**

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Mayor Richard Winger

**2. TREASURE COAST REGIONAL PLANNING COUNCIL**

This Board meets the third Friday of each month at 9:30 a.m. The meetings are held in Stuart, Florida.

Councilmember Craig Fletcher

**3. COUNTY ECONOMIC DEVELOPMENT COUNCIL (EDC)**

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Vice Mayor Jay Kramer

**4. TOURIST DEVELOPMENT COUNCIL**

This Committee meets on an as needed basis. The meetings are held at the County Administration Building.

Councilmember Pilar Turner

**5. METROPOLITAN PLANNING ORGANIZATION (MPO)**

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Councilmember Craig Fletcher, Vice Mayor Jay Kramer and Councilmember Pilar Turner, Alternate Member

## **6. TREASURE COAST LEAGUE OF CITIES**

This Board meets the third Wednesday of every other month at 10:30 a.m. at different locations on the Treasure Coast.

Councilmember Amelia Graves  
Councilmember Pilar Turner, Alternate Member

## **7. BEACH AND SHORE PRESERVATION ADVISORY COMMITTEE**

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Councilmember Amelia Graves

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Mayor Richard Winger

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Mayor Richard Winger

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Councilmember Pilar Turner

**13. LIAISON TO DOWNTOWN MAINSTREET**

Councilmember Jay Kramer

**14. LIAISON TO CULTURAL ARTS**

Councilmember Amelia Graves

**15. LIAISON TO THE CHAMBER OF COMMERCE**

Councilmember Pilar Turner

**16. RAILROAD COORDINATOR COMMITTEE**

Mayor Richard Winger



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OFFICE OF THE CITY ATTORNEY

MEMORANDUM

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**To:** Mayor, Vice-Mayor, and Councilmembers

**Through:** Wayne R. Coment, City Attorney *WRC*

**From:** Peggy Lyon, Assistant City Attorney *PL*

**Subject:** City of Vero Beach Organizational Meeting and Up-Coming Ethics Training & Reporting for Elected Municipal Officials

**Date:** November 17, 2014

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Attached is a brief synopsis of Florida's new requirement, effective January 1, 2015, for elected municipal officers to complete four hours of ethics training annually and certify that completion on their required annual financial disclosure form. The relevant statutory provisions are attached. Note that the training will include discussion of the Code of Ethics for Public Officers and Employers, Sunshine "open government" law, and public records law. I have included in your organizational meeting backup a copy of the 2014 Florida Commission on Ethics pamphlet as well. Recognizing that all of the Councilmembers currently serving on the City Council as of the date of this organizational meeting are seasoned veterans of the Sunshine law and public records law, I include here only a very brief encapsulation---

- Do not communicate with other members of your City Council, board or commission about public government business involving your council, board or commission at any place or any time except at an open, noticed public meeting where minutes are being taken.
- Any record you create or receive having to do with public government business involving your council, board or commission is a public record and must be retained under the state retention schedule. Chances are good that none of the 1,084 public records exemptions applies to any records you will create or receive during your time as a public official. Remember that it is *not* the technology that you use (home computer, city computer, cell phone, texting, note pad); it is the substantive *message itself* that makes something a public record. If you don't know how to save it, don't use that technology for public government business.

City Clerk Tammy Vock and I have been in discussion with the League of Cities about the possibility of the City of Vero Beach hosting an ethics training session for the League here in Vero Beach after the first of the year. We are also seeking to become certified in providing the required training so that in years to come City staff can provide elected officials with the option of completing the four hours of ethics training without having to travel to another location.

## FLORIDA LEAGUE OF CITIES LEGISLATIVE UPDATE SUMMARY 2014

### Ethics

**CS/CS/CS/SB 846 (Latvala)** relates to various aspects of governmental ethics.

- ▶▶ Beginning January 1, 2015, elected municipal officers must obtain four hours of ethics and sunshine law training on an annual basis (this is a current requirement for state- and county-level elected officials). For all elected officials subject to the training requirement, if the elected official assumes office or a new term of office on or before March 31, the official must fulfill the training requirement before the following December 31. Those assuming office after March 31 are not required to complete the training for the calendar year in which the term of office began.
- ▶▶ Beginning January 1, 2015, elected officials required to participate in annual ethics and Sunshine Law training must certify their participation on their full and public disclosure of financial interest forms. Failure to certify completion of the annual ethics and Sunshine Law training on a disclosure form does not constitute an immaterial, inconsequential or de minimus error or omission.
- ▶▶ The bill expands the circumstances under which a member of a board, commission or agency may abstain from voting if there is, or may be, a conflict

of interest under more stringent local standards of conduct and allows for disclosure of the conflict. The bill also allows for abstention when a member is participating in a quasi-judicial proceeding and the abstention is to assure a fair proceeding.

- ▶▶ The Commission on Ethics is authorized to initiate an investigation and hold a public hearing without a complaint having been filed if an individual fails to file the disclosure of financial interest for any year and the maximum automatic fine has been imposed upon the individual.
- ▶▶ Citizen support and direct-support organizations are required to adopt a minimum code of ethics and post the ethics code on the organization's website.
- ▶▶ A person is prohibited from lobbying a water management district until the person registers as a lobbyist. The bill provides various registration and reporting requirements.
- ▶▶ Members and employees of various entities, including the Florida Clerks of Court Operations Corporation, Enterprise Florida, Inc., Citizens Property Insurance Corporation, and the Florida Development Finance Corporation, are made subject to specified provisions of the code of ethics.
- ▶▶ For an expressway authority in Miami-Dade County, a lobbyist is prohibited from serving as a member of the expressway authority; lobbying restrictions are applicable to members and the executive director of the authority; the authority's general counsel is made the authority's ethics officer; lobbying restrictions are imposed for authority board members, employees and consultants; and various disclosures and reporting are required. Additionally, the authority must update its code of ethics, and the authority must provide ethics training.
- ▶▶ The bill does NOT prohibit an elected municipal, county or school board officer from registering as a lobbyist for purposes of lobbying either the Legislature or state agencies on behalf of a person or entity other than his or her political subdivision.

Effective: July 1, 2014. Chapter No. 2014-183. (Conn)

Select Year: 2014 

## The 2014 Florida Statutes

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[Title X](#)  
PUBLIC OFFICERS, EMPLOYEES,  
AND RECORDS

[Chapter 112](#)  
PUBLIC OFFICERS AND EMPLOYEES:  
GENERAL PROVISIONS

[View Entire  
Chapter](#)

**112.3142 Ethics training for specified constitutional officers and elected municipal officers.—**

(1) As used in this section, the term “constitutional officers” includes the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, state attorneys, public defenders, sheriffs, tax collectors, property appraisers, supervisors of elections, clerks of the circuit court, county commissioners, district school board members, and superintendents of schools.

(2)(a) All constitutional officers must complete 4 hours of ethics training each calendar year which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

(b) Beginning January 1, 2015, all elected municipal officers must complete 4 hours of ethics training each calendar year which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of this state. This requirement may be satisfied by completion of a continuing legal education class or other continuing professional education class, seminar, or presentation if the required subjects are covered.

(c) The commission shall adopt rules establishing minimum course content for the portion of an ethics training class which addresses s. 8, Art. II of the State Constitution and the Code of Ethics for Public Officers and Employees.

(d) The Legislature intends that a constitutional officer or elected municipal officer who is required to complete ethics training pursuant to this section receive the required training as close as possible to the date that he or she assumes office. A constitutional officer or elected municipal officer assuming a new office or new term of office on or before March 31 must complete the annual training on or before December 31 of the year in which the term of office began. A constitutional officer or elected municipal officer assuming a new office or new term of office after March 31 is not required to complete ethics training for the calendar year in which the term of office began.

(3) Each house of the Legislature shall provide for ethics training pursuant to its rules.

**History.—**s. 4, ch. 2013-36; s. 2, ch. 2014-183.

# The 2014 Florida Statutes

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## **Title X**

PUBLIC OFFICERS,  
EMPLOYEES, AND  
RECORDS

## **Chapter 112**

PUBLIC OFFICERS AND  
EMPLOYEES: GENERAL  
PROVISIONS

**112.3145 Disclosure of financial  
interests and clients represented before  
agencies.—**

(4) Beginning January 1, 2015, an officer who is required to complete annual ethics training pursuant to s. 112.3142 must certify on his or her statement of financial interests that he or she has completed the required training.

Select Year: 2014 

## The 2014 Florida Statutes

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[Title XIX](#)[Chapter 286](#)[View Entire Chapter](#)

PUBLIC BUSINESS PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

**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.

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# **2014 CITY ATTORNEY BRIEFING**

**GOVERNMENT IN THE SUNSHINE LAW**

**PUBLIC RECORDS LAW**

**FLORIDA COMMISSION ON ETHICS**

**VOTING REQUIREMENTS**

**CONFLICTS OF INTEREST**

# **FLORIDA GOVERNMENT IN THE SUNSHINE**

## **ACCESS TO PRESENTATIONS**

The City of Vero Beach Website [covb.org](http://covb.org); click on City Departments; click on City Attorney; go to the bottom of the page:

Florida Sunshine Law Power Point Presentation (including Quasi-Judicial Hearings)

Pat Gleason, Attorney General's Office Presentation

Peggy Lyon, Assistant City Attorney Presentation

## Two sentence Sunshine Law Seminar:

### Florida's Open Meetings Law:

Whether it is by twitter, tweet, email, telephone, Facebook, instant messaging or face to face conversation, any City business that may foreseeably come before your Council, Board, Commission or Committee must be discussed by the members ONLY at a noticed meeting open to the public where minutes are taken.

### Florida's Public Record Law:

No matter how records are created, from pen and pencil on paper to the most sophisticated computer technology, ALL documents made or received in connection with the official City business of your Committee are must be retained and preserved under the state retention schedule and are open for public inspection unless there is an exemption under state law.

## FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW

### 1. What is the Sunshine Law?

Florida's Government in the Sunshine Law provides a right of access to governmental meetings. The law is equally applicable to elected and appointed boards. Even advisory boards that are limited to making recommendations to a public agency and have no authority to bind the agency in any way are subject to the Sunshine Law.

### 2. What are the basic requirements of the Sunshine Law?

The three basic requirements are:

- (a) Meetings of public boards, councils and commissions must be open to the public;
- (b) Reasonable notice of such meetings must be given; and
- (c) Minutes of the meetings must be taken.

Unless these three requirements are met, two or more members of the same board, council or commission may not discuss any matter on which foreseeable action will be taken by the board, council or commission. The rule to remember is: *no interaction on government business except during an advertised meeting where minutes are taken.*

### 3. When is the Sunshine Law applicable?

The law is applicable to *any* gathering, whether formal or casual, of two or more members of the same board, council or commission to discuss some matter on which *foreseeable action* will be taken by the board, council or commission. Although members of same board, council or commission are not prohibited under the Sunshine Law from meeting together socially, matters which may come before the board, council or commission must not be discussed. This also means no interaction via other means such as telephone, correspondence, email or go-betweens.

### 4. What is the penalty for violation of the Sunshine Law?

An unintentional violation of the Sunshine Law is a noncriminal infraction punishable by a fine of up to \$500.00. A *knowing* violation of the law is a second degree misdemeanor, carrying a jail term of up to 60 days and/or a fine of not more than \$500.00. Any action taken at a meeting held found to have been in violation of the Sunshine Law will be voided by the court.

**5. THE RULE TO REMEMBER: EXCEPT AT A DULY NOTICED MEETING WHERE MINUTES ARE TAKEN, DO NOT COMMUNICATE *IN ANY WAY* WITH ANY OTHER MEMBER OF THE BOARD, COUNCIL, OR COMMISSION ABOUT ANY MATTER THAT MIGHT COME BEFORE THE BOARD, COUNCIL OR COMMISSION.**

## **FLORIDA'S PUBLIC RECORD LAW**

### **1. What is a public record that is open to inspection?**

Florida Statutes defines "public records" to include ALL documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. All materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge, regardless of whether they are in final form, are open for public inspection unless the Florida Legislature has exempted them from disclosure. This includes all materials made or received by councilpersons and board members in any matter relating to City business. Even after the elected or appointed official's term has ended, all materials must be retained by the City.

### **2. Are computerized public records and "e-mail" governed by the public records rule? How about other electronic forms of communication?**

Yes, each agency must ensure reasonable access to records that are electronically maintained. In 1995 the Florida legislature modified the definition of public records to include all material "regardless of the physical form, characteristics, or means of transmission," ensuring that all electronic communications between officials would be included.

### **3. Can public records ever be disposed of under the rule?**

Yes, but only in strict accordance with the retention schedules established by the Division of Library and Information Services of the Department of the State.

## **FLORIDA COMMISSION ON ETHICS, VOTING REQUIREMENTS, CONFLICT OF INTEREST, REPRESENTATION OF CLIENTS**

### **1. What is the Florida Commission on Ethics?**

The Florida Commission on Ethics publishes a variety of materials intended to inform public officials, both elected and appointed, and the public about Florida's ethics laws, including ethics opinions on a wide range of topics. These opinions can be obtained online at [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

### **2. What should I do if I have a question regarding an ethical issue?**

Call the City Attorney's office for direction. If there is no past advisory opinion dealing with the issue that is confronting you, we can help you to seek an opinion from the Commission on Ethics.

### **3. When must I vote on an issue coming before my Council, board or commission? When must I abstain from voting?**

Florida Statute 286.012 requires that if you are present at a meeting you must vote unless you have a financial conflict. Florida Statute 112.3143 defines what a financial voting conflict is and what you must do to abstain when you have a financial conflict. Any elected or appointed public officer *must* abstain from voting if the measure being voted upon would inure to:

- the private gain or loss of the public officer; or
- the private gain or loss of the officer's relative, meaning father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law or daughter-in-law; or
- the private gain or loss of the principal by whom the public officer is retained, or of the parent organization or subsidiary of a corporate principal by which he or she is retained or a business associate of the public officer.

### **4. How do I abstain from voting when I have a financial voting conflict?**

Prior to the vote being taken, the public officer shall publicly state the nature of the public officer's interest in the matter from which the officer is abstaining from voting and within 15 days after the vote, disclose the nature of the officer's interest as a public record in Form 8B (Memorandum of Voting Conflict for County, Municipal, and Other Public Officers), a memorandum filed with the Clerk's office. The Clerk will then incorporate the memorandum into the minutes.

**5. May I *participate* in the discussion if I have a financial voting conflict?**

Interestingly, yes.

For elected officials, you need only declare your financial voting conflict as outlined above and there are no further statutory restrictions on participation.

For appointed officials, you may only participate after declaring your financial voting conflict *and* complying with certain additional statutory disclosure requirements about the nature of your interest in the matter being discussed and voted upon. This disclosure is normally required **prior to the meeting by written memorandum, Form 8B**, though there is a section that allows the disclosure at the meeting under certain circumstances followed by a written memorandum within 15 days after the oral disclosure. Please consult the City Attorney's office in advance of the meeting for direction if you are an appointed official with a financial voting conflict but would like to participate in the discussion.

**6. What should I do if I have no financial voting conflict but I have a personal bias that would prevent me from making a fair decision?**

The City is required to provide each applicant with fundamental due process. If, as an elected or appointed official, you feel that you have a personal bias that would prevent you from making a fair decision and would deprive the applicant of fundamental due process, please consult with the City Attorney's in advance of the meeting for direction.



OFFICE OF THE CITY ATTORNEY

MEMORANDUM

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**To:** City of Vero Beach Boards and Commissions Members

**Via:** Wayne Coment, Acting City Attorney

**From:** Peggy Lyon, Assistant City Attorney

**Subject:** Use of Written Memorandum between Board and Commission Members

**Date:** June 6, 2011

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It has come to our attention that there has been an increase in members of City Boards and Commissions using written memoranda to convey information to members of their same Board or Commission or members of other Boards or Commissions. Although the Florida Sunshine Open Meeting Law does not prohibit such *one-way, non-responsive* correspondence to members of the same Board or Commission, the distribution and circulation of such "position papers" could be seen as problematic and should be discouraged. Because of the increasing number of memos being circulated through the City Clerk's office to Boards, Commissions and City Council members, there is a concern that the inadvertent use of language in such a one-way communication may cause the appearance of impropriety.

It is the opinion of both this office and the City Clerk's office that the better course of action when a Board or Commission member wishes to convey information is to follow the following procedure that has been used successfully for many years at the City of Vero Beach: Any written information that a Board or Commission member desires to present to the other members should be added to the meeting agenda and presented and discussed by the members at a duly advertised meeting held open to the public. In this way, there can be a full and open discussion of the members' concerns and ideas, leading to an effective consensus by the group of the various issues being raised and helping to avoid even the appearance of impropriety involving the exchange of written correspondence.

**Cc:** City Councilmembers  
City Manager  
City Clerk

## Quick Quasi-Judicial:

1. Land use decisions are *legislative* when policy is being set, impacting a large portion of the public. Land use decisions are *quasi-judicial* when adopted policy is being applied to a limited number of persons of identifiable parties and interests. Both procedurally and legally, legislative and quasi-judicial proceedings are handled differently.
2. In quasi-judicial hearings, elected and appointed public officials sit as judges.
3. Officials must go into the hearing with an open mind and base their decisions on the competent substantial evidence and the law presented *at* the quasi-judicial hearing.
4. To that end, ex parte communications, which are communications *outside* of the hearing, are to be avoided by those sitting as quasi-judicial judges to the extent possible.
5. If such ex parte communications do occur, the public official should declare the ex parte communication on the record at the hearing to give the other side a chance to respond. Note that this disclosure does not remove the presumption of prejudice arising from ex parte communications, but alleviates the appearance of impropriety.

## Quasi-Judicial Review Procedure

### 1. What Makes a Land Use Decision Legislative or Quasi-Judicial?

In 1993, the Florida Supreme Court decided the Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993). This case changed the method local governments use to review and process land development applications, especially for rezonings and site and development plan approvals. The Florida Supreme Court in Snyder stated:

- a. A rezoning [land use decision] is **legislative** in nature when it affects "a large portion of the public," and involves the setting of general policy.
- b. A rezoning [land use decision] is **quasi-judicial**:
  - 1) When it impacts a limited number of persons of identifiable parties and interests; and
  - 2) When the decision can be viewed as policy application, rather than policy setting.

Stated most broadly, those actions which can be characterized as setting policy as opposed to implementing policy will be considered **legislative**. Decisions implementing an adopted policy will be considered **quasi-judicial**.

### 2. What Evidence can be considered?

When a land use decision is **quasi-judicial**, the decision must be supported by **competent substantial evidence**. "**Competent substantial evidence**" is defined in the Florida Supreme Court case of DeGroot v. Sheffield, 95 So.2d 912 (Fla. 1957) as:

Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. The evidence relied on to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the "**substantial**" evidence should also be "**competent**."

3. What type of Evidence Will be Considered Competent Substantial Evidence at Quasi-Judicial Land Use Hearings?

Since neither the Florida Supreme Court in DeGroot v. Sheffield in 1957 nor subsequent case law has provided any exact guidelines as to what type of evidence will definitively constitute **competent substantial evidence**, we are left with only general rules based on case analysis.

a. Professional planning staff and planning commission opinions and comments:

As a general rule, according to applicable case law, local government professional staff and advisory planning commission opinions would constitute **competent substantial evidence** upon which a local government may base a decision. If there are no facts on the record to support that opinion, however, it will not be adequate grounds upon which to base an opinion.

b. Professional expert comment:

Expert testimony from non-staff professionals can **constitute competent substantial evidence**. As such, local government should encourage speakers to state any education or experience which they may have in order to assure that the proper weight is given to their comments and opinions. Certain case law indicates that even if **competent substantial evidence** exists both in favor of and in opposition to a matter, generally the local government decision should be upheld as being adequately supported by the evidence.

c. Non-professional public comment:

Lay testimony may or may not be considered **competent substantial evidence**. Mere statements of public support or opposition, by themselves, clearly would not constitute such evidence. For highly technical and scientific matters, the opinion of non-experts also would not appear to be an adequate basis upon which to make a determination. However, fact-based testimony from lay persons which does not require such technical or scientific expertise to establish could constitute **competent substantial evidence**, although the case law decisions are not consistent on this issue.

d. Testimony from attorneys:

Testimony by attorneys representing parties in **quasi-judicial hearings** has not generally constituted **competent substantial**

**evidence.** The Fourth DCA has emphatically stated that "...argument of counsel does not constitute evidence." However, given the increasing number of attorneys with post-graduate degrees and significant amounts of prior employment experiences, it may be possible for a court to find comments of counsel to constitute substantial evidence in a situation if the expertise was adequately established.

4. Who has the Burden of Proof in the Quasi-Judicial Land Use Decisions?

Once the property owner proves the requested land use decision to be consistent with the comprehensive plan, the burden of proof then shifts to the government to prove a legitimate public purpose.

5. What is Due Process and how does it relate to the Decisions We Make?

**Due process** of law means the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal or other body with the power to decide the case.

**Quasi-judicial hearings** require procedural **due process** requirements, although such hearings do not require the same procedural requirements as a judicial hearing. Case law suggests that a **quasi-judicial** hearing generally meets basic **due process** requirements if the parties are provided notice of the hearing and an opportunity to be heard. The parties must also be able to present evidence and to cross-examine witnesses.

6. What are Findings of Fact and Do We Need to Establish Them?

A finding of fact is a specific setting forth of every ultimate fact necessary to be found to sustain the final decision.

Although the Florida Supreme Court in the 1993 Snyder case declared that findings of fact are not required in **quasi-judicial** land use proceedings, the Court's view on this issue may be changing as indicated in more recent cases.

A hearing record that includes a finding of facts and clearly stated bases for the decision reached is appropriate and encouraged. If the final decision is appealed, courts tend to uphold the findings by the Board or Council as to issues of fact. For this reason, a discussion by the Board or Council of the evidence and testimony presented as it relates to the facts and to the Code of Ordinances criteria, and a decision based upon specific, stated, factual findings is strongly recommended.

7. Are There any Limits on Us in Communicating with Interested Persons and Parties to These Hearings?

These types of communications are called **ex-parte communications**. An **ex-parte communication** is a communication made outside of a hearing and off the record to a councilmember or board member by an interested person or a party concerning a **quasi-judicial** case to come before a board or council.

A court decision called Jennings v. Dade County, 589 So.2d 1337 (Fla. 3<sup>rd</sup> DCA 1991), rev. denied, 598 So.2d 75 (Fla. 1992), established that an **ex-parte communication** or contact with a decision maker before a **quasi-judicial** hearing (not a **legislative** hearing) makes any decision of the board or council subject to a presumption of prejudice. This case states that **quasi-judicial** officers should avoid all **ex-parte communications** where they are identifiable. Ex-parte communications include all communications, investigations, site visits and expert opinions regarding quasi-judicial actions pending before the board or council.

The Florida legislature acted in 1995 and 1996 to remove the presumption of prejudice created by an ex-parte communication by providing a procedure local governments may choose to follow. This procedure, outlined in Florida Statute 286.0115, involves adopting an ordinance or resolution that removes the presumption of prejudice by establishing a process to disclose ex-parte communications. However, the City Council of the City of Vero Beach has NOT adopted such an ordinance or resolution.

A 2004 Fourth District case, City of Hollywood v. Hakanson, 866 So. 2d 106 (Fla. 4<sup>th</sup> DCA 2004) holds that Florida Statute Section 286.0115 requires public officials to disclose ex-parte communications in order to assure an adverse party the opportunity to confront, respond, and rebut any such disclosures so as to prevent any appearance of impropriety. This disclosure must be made by the public official either before or during the meeting at which final action is taken. Please note that the disclosure does not remove the presumption of prejudice arising from ex-parte communications, but only alleviates the appearance of impropriety.

8. How does the City Attorney's Office Suggest We Conduct These Hearings?

PLEASE SEE ATTACHED:

"CONDUCT OF QUASI JUDICIAL HEARING  
ORDER OF PROCEEDING ON APPEALS/APPLICATIONS TO CITY COUNCIL"

9. What Happens if a Party Wants to Appeal The Decision?

Florida case law requires that if an administrative hearing is **quasi-judicial**, appeal of the final local government decision to the Circuit Court is by writ of

certiorari (that is a review of the record of the proceedings before the administrative body, not a new hearing).

In deciding whether to grant a petition overturning the Council's decision, the Circuit Court will consider three things:

- a. Whether the essential requirements of law were followed;
- b. Whether there was **due process** afforded;
- c. Whether there was **competent substantial evidence** to support the decision that was reached by the Council.

The Court will not substitute its judgment for that of the council or the board. The Court cannot reweigh the evidence. It is restricted to reviewing the record of the proceedings before the administrative body.

Revised April 19, 2011

**QUASI-JUDICIAL HEARINGS**  
**ORDER OF PROCEEDING ON APPLICATIONS TO CITY COUNCIL**

**I. PRELIMINARY MATTERS.**

- A. The Mayor shall read the case title.
- B. Disclosure by City Councilmembers of ex parte communications, if any.
- C. Swearing in of applicant, staff and all witnesses collectively by City Clerk.
- D. Charge as to custody of exhibits by City Clerk: "All exhibits, diagrams, photographs and similar physical evidence referred to during the testimony or which you would like the Council to consider must be marked for identification and kept by the Clerk for 30 days until the time for appeal has expired."

**II. STAFF'S PRESENTATION**

- A. Staff's opening statement
- B.. Calling of witnesses and presentation of evidence by staff
- C. Cross examination after each witness, if so elected

**III. APPLICANT'S PRESENTATION**

- A. Applicant's opening statement
- B. Calling of witnesses and presentation of evidence by applicant
- C. Cross examination after each witness, if so elected

IV. Testimony and presentation of evidence by the public with alternating speakers in support of and in opposition to the application and cross examination after each witness, if so elected

V. Closing argument by applicant

VI. Closing argument by staff

VII. Rebuttal argument by applicant, if so elected

VIII. Discussion by City Council of the evidence presented as it applies to the requirements of the City of Vero Beach Code of Ordinances and applicable law

IX. After deliberation, a motion should be made which would presumably either:

**GRANT THE APPLICATION:**

"I move that the City Council find that the following facts presented and reviewed here are competent substantial evidence to grant the application: (list factors)"

OR

**DENY THE APPLICATION:**

"I move that the City Council find that the following facts presented and reviewed here are competent substantial evidence to deny the application: (list factors)"

**QUASI-JUDICIAL HEARINGS  
ORDER OF PROCEEDING ON APPEALS TO CITY COUNCIL**

**I. PRELIMINARY MATTERS.**

- A. The Mayor shall read the case title.
- B. Disclosure by City Councilmembers of ex parte communications, if any.
- C. Swearing in of appellant, staff and all witnesses collectively by City Clerk.
- D. Charge as to custody of exhibits by City Clerk: "All exhibits, diagrams, photographs and similar physical evidence referred to during the testimony or which you would like the Council to consider must be marked for identification and kept by the Clerk for 30 days until the time for appeal has expired."

**II. STAFF'S PRESENTATION**

- A. Staff's opening statement
- B. Calling of witnesses and presentation of evidence by staff
- C. Cross examination after each witness, if so elected

**III. APPELLANT'S PRESENTATION**

- A. Appellant's opening statement
- B. Calling of witnesses and presentation of evidence by appellant
- C. Cross examination after each witness, if so elected

- IV. Testimony and presentation of evidence by the public with alternating speakers in support of and in opposition to the appeal and cross examination after each witness, if so elected
- V. Closing argument by appellant
- VI. Closing argument by staff
- VII. Rebuttal argument by appellant, if so elected
- VIII. Discussion by City Council of the evidence presented as it applies to the requirements of the City of Vero Beach Code of Ordinances and applicable law
- IX. After deliberation, a motion should be made which would presumably either:

**AFFIRM THE BOARD'S ACTION:**

"I move that the City Council find that the following facts presented and reviewed here are competent substantial evidence to affirm the Board's action: (list factors)"

**OR**

**REVERSE THE BOARD'S ACTION:**

"I move that the City Council find that the following facts presented and reviewed here are competent substantial evidence to reverse the Board's action: (list factors)"