

# Florida Government in the Sunshine



**Prepared by the  
Office of the  
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City of Vero Beach**

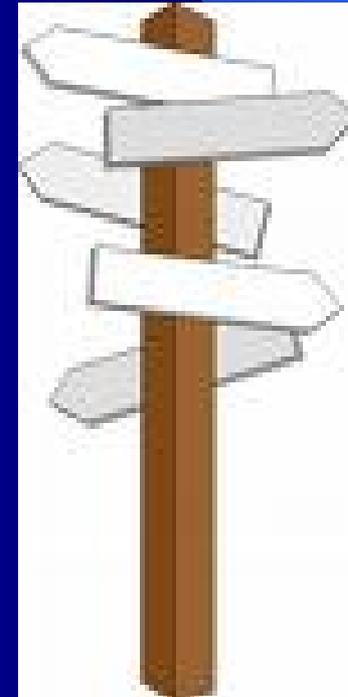
# City Attorney Briefing



- Section 2-1 of the City of Vero Beach Code of Ordinances states: "In November of each year, after the annual City election, the City Attorney shall give a briefing on the several laws in the state that pertain to the conduct of members of City Council, commissions, and boards. All members are urged to attend."

# Topics for Review

- Florida Government in the Sunshine: Open Meetings
- Public Records
- Quasi-judicial Review



# What is the Sunshine Law?

- Florida's Government in the Sunshine Law, also called the Open Meetings law, provides a right of access to governmental proceedings.
- The Government in the Sunshine law is such an important part of Florida law that it is constitutionally guaranteed at Article I, Section 24 of the Florida Constitution.



# Open Meetings Requirements: Florida Statute 286.011



Three Simple Requirements:

1. Meetings of public boards, councils and commissions must be open to the public;
2. Reasonable notice of such meetings must be given; and
3. Minutes of the meetings must be taken.

# Open Meetings Requirements



*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 that board, council or commission.*

# Who is covered under the law?

- Councils, boards and commissions of state agencies, counties, municipal corporations and political subdivisions.
- ***Elected*** or ***appointed*** councils, boards or commissions.
- Private companies doing business on behalf of a government agency.
- One person acting on behalf of a board or commission.



# Does the Open Meetings law apply to members-elect?

Yes. Members-elect of public councils, boards and commissions are covered by the Sunshine Law immediately upon their election to public office.



# Can two members of the same public board socialize?



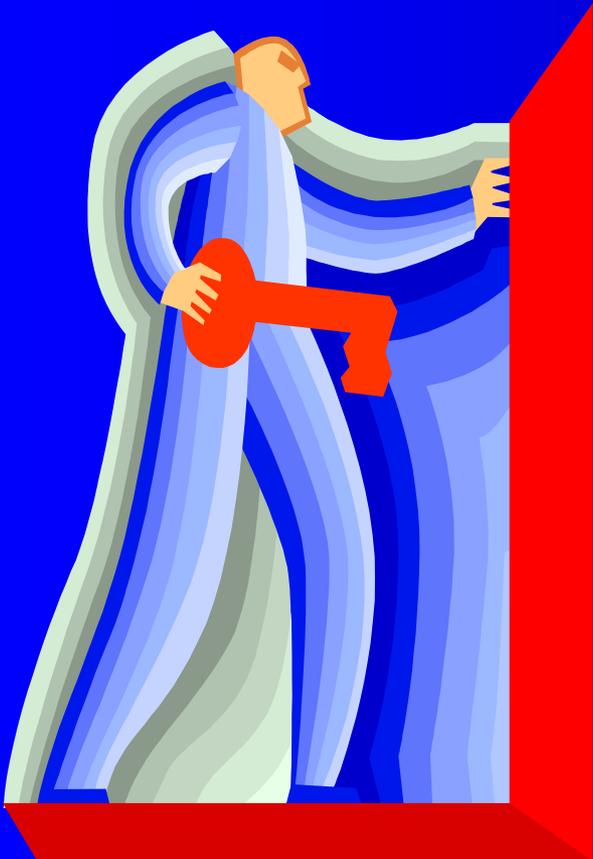
Yes, but they may not discuss matters which may come before their council, board or commission. Be careful to avoid the appearance of impropriety.

# Open Meetings Sanctions



- An unintentional violation: non-criminal infraction punishable by a fine up to \$500.00
- A knowing violation: 2<sup>nd</sup> degree misdemeanor punishable by a fine of not more than \$500.00 and/or a jail term of not more than 60 days
- Suspension or removal from office
- Attorney's fees and court costs

# Florida's Public Records Law



Florida's  
Constitution  
guarantees the  
access to  
Government  
Records in Article I,  
Section 24(a).



# What is a public record?

The Florida Supreme Court has determined that public records are **all** materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. ***They are not limited to traditional written documents: Tapes, photographs, films, emails and sound recordings are all considered public records subject to inspection unless a statutory exemption exists.***

# What about emails?



- An email sent to or from a work or home computer is a public record if it is prepared or received in connection with official City business and if there is no exemption from the Public Record law.
- The Florida Supreme Court has ruled that private email does not automatically become a public record just because it is stored in a government computer. To be considered a public record, such email must meet the definition.

# How long do public records have to be retained by the local government?

The state Bureau of Archives and Records Management publishes a retention schedule. Our City Clerk's office oversees the retention of all City records. Please provide copies of all public records to the City Clerk.



# Summary of Open Meetings Law and Public Records Law



- **Open Meetings Law:** No interaction with another member of your same council, board or commission except during an advertised meeting where minutes are taken.
- **Public Records Law:** Council, board and commission members must not dispose of any materials made or received that relate to City business. Instead, all such public records should be provided to the City Clerk for retention pursuant to state requirements.
- *When in doubt, contact the Clerk's office or the City Attorney's office with any questions.*

# Quasi-Judicial Review Procedure



- In 1995 the Florida Supreme Court changed the way local governments review and process land use decisions and other decisions that apply adopted policy. This court decision dramatically changed your jobs as decision-makers, placing you in the role of a judge when deciding quasi-judicial matters.
- This change in the law applies to quasi-judicial hearings before the City Council, the Board of Building Appeals, the Code Enforcement Board, the Planning and Zoning Board, the Architectural Review Board and the Historical Preservation Commission.

# What is the difference between quasi-judicial and legislative actions?



- Decisions that **set** general policy rather than *implement or apply* policy are **legislative**.
- Decisions that *implement or apply* an adopted policy are **quasi-judicial**.
- Examples of *quasi-judicial matters*: rezonings, site plan approvals, development plan approvals, appeals of administrative decisions, code enforcement proceedings and variances.

# So why does it matter?



In a quasi-judicial hearing, where decisions *implementing an adopted policy* are considered:

- You are acting in a quasi-judicial role, similar to a judge in a courtroom. You should go into the hearing with an open mind.
- The decision you reach must be supported by **competent substantial evidence**.
- You must apply the applicable law to the facts and evidence presented in the hearing.
- Quasi-judicial hearings require that due process be afforded.
- Ex-parte communications should be avoided.

# What is Competent Substantial Evidence?

Evidence that is:

- **Relevant**
- **Material**
- **Reasonable**



# Some examples of competent substantial evidence exactly



- Professional planning staff and Planning and Zoning Board opinion/comments where there are facts in the record to support those opinions.
- Professional expert opinion supported by facts the expert knows or has reviewed.
- Non-professional lay-person opinion that is fact-based on issues that are not highly technical or scientific.

# What is NOT competent substantial evidence?



- Mere statements/opinions of public support or opposition.
- Attorney argument unless the attorney establishes on the record additional educational background or employment experience in the field at issue.
- “Expert” testimony from non-staff professionals who do not state on the record the education or experience they are claiming to have.
- Letters, documented phone calls, emails or petitions where there can be no cross-examination by the parties.

# Must the Council, Board or Commission make a finding of fact?



- Legally, no. The Florida Supreme Court has stated that findings of fact are not required in quasi-judicial proceedings.

## **HOWEVER.....**

- Practically speaking: YES! A hearing record that includes a coherent finding of facts based upon competent substantial evidence tends to be upheld by the courts on appeal.

# What is the recommendation about findings of fact by the City Attorney's Office?



- During the discussion and deliberation portion of the quasi-judicial hearing, the council, board or commission is strongly encouraged to discuss the evidence and testimony presented as it relates to the facts and to the Code or Ordinances criteria, and base a decision upon those specific, stated, factual findings.
- Findings of fact should be recited in the motion for inclusion in the order.

# What is due process and how does it fit in to a quasi-judicial decision?



- Due process means following the established rules set up for the enforcement and protection of private rights.
- Quasi-judicial hearings meet basic due process requirements if the parties are provided notice, provided an opportunity to be heard, and allowed to present evidence and cross-examine witnesses. We also require swearing-in of those who speak or testify at the hearing.

# What *is* an ex-parte communication?



- It is a communication made outside of the hearing and off the record. Such a communication makes your final decision subject to a presumption of prejudice. Imagine someone who will be appearing before a judge in a court of law talking to the judge about the case before the hearing!
- Ex-parte communications include: all forms of communications, investigations, site visits and expert opinions.
- Ex-parte communications should be avoided where they are identifiable. Just say no when someone wants to discuss a pending quasi-judicial matter with you outside of the council chambers. It protects you and it protects the proceeding!

# What happens if there is an ex-parte communication?

- Ex-parte communications must be disclosed by the council, committee or board member at the beginning of the quasi-judicial hearing. In this way, an adverse party is provided the opportunity to confront, respond to and/or rebut any such disclosure to prevent the appearance of impropriety.



# Is there a special way we conduct quasi-judicial proceedings at the City of Vero Beach?

- Yes. The City Attorney's Office has a Quasi-Judicial Order of Proceeding that the Mayor or Chairman follows to make sure that the strict requirements of a quasi-judicial hearing are met. A copy of the Order of Proceeding is provided to you at the hearing.



# Summary of Quasi-judicial hearings



- Decisions that apply an adopted policy are *quasi-judicial*.
- In a quasi-judicial hearing, elected and appointed officials act as “judges.”
- The decision you reach must be supported by competent substantial evidence, the applicable law must be followed, and due process/basic fairness must be afforded.
- Ex-parte communications should be avoided, and if they occur, should be disclosed on the record.