



# North Port

FLORIDA



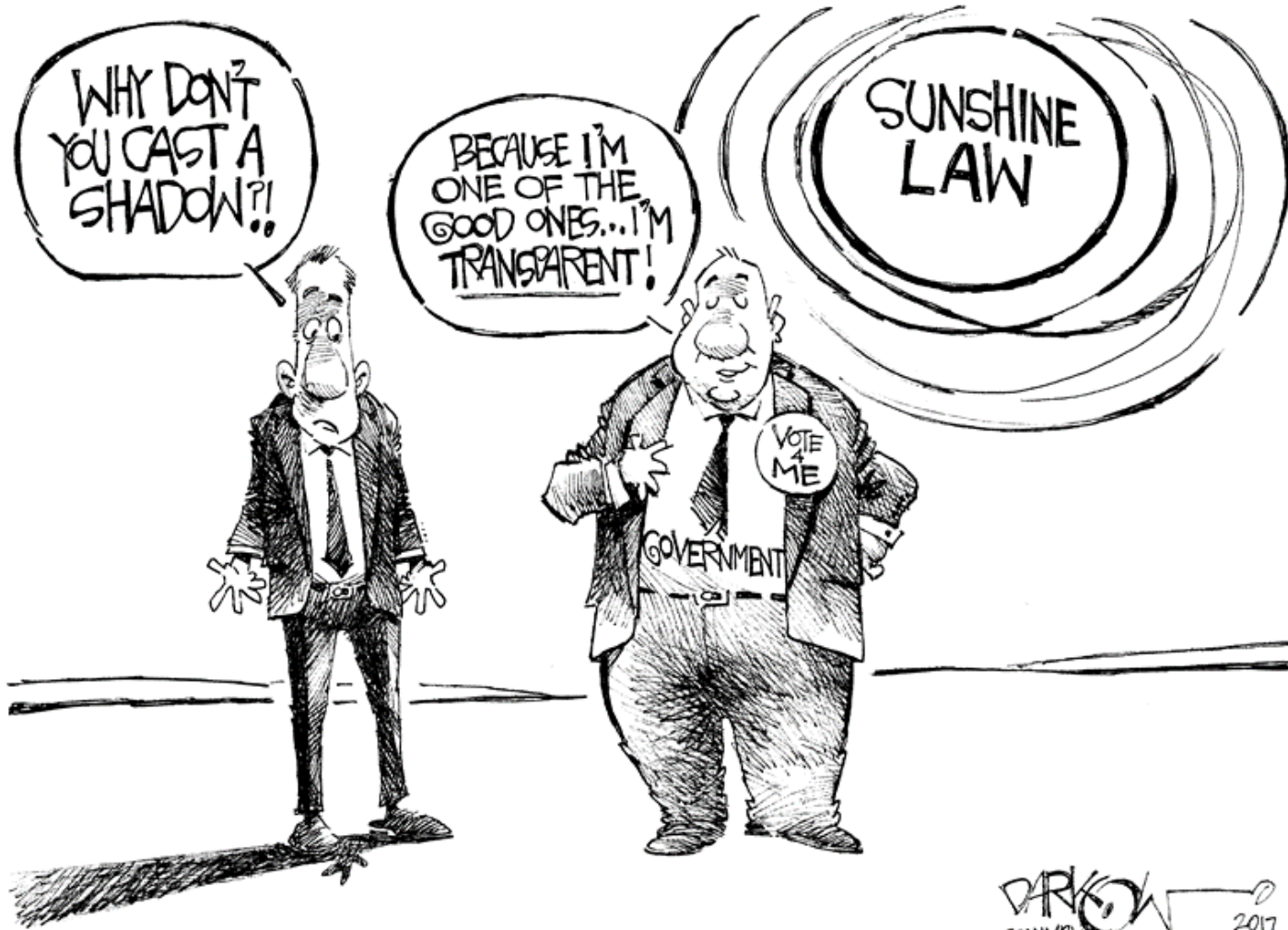
# Sunshine Law & Public Meetings

Elected Official Training

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# Sunshine Law Overview



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DARKOW  
COLUMBIA  
DAILY TRIBUNE  
CAG CARTOONS  
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# What is Sunshine Law?

The constitutional and statutory right of access to governmental proceedings, discussions and deliberations at both the state and local levels.

- Florida Constitution, Article I, Section 24(b)
- Florida Statutes Section 286.011

## GOVERNMENT-IN-THE-SUNSHINE MANUAL



**2023 Edition**

*A Reference For Compliance  
with Florida's Public Records  
and Open Meetings Laws*



Prepared by  
Florida Office of the Attorney General



Provided by  
First Amendment Foundation

Volume 45

# When Does the Sunshine Law Apply?



1. Any gathering, whether formal or casual
2. Of 2 or more members of the same board
3. Where they discuss a matter or topic on which foreseeable action will be taken by their board.
  - a. A voting item
  - b. A reasonably foreseeable voting item



# Who is Subject to the Sunshine Law?

- ALL collegial bodies [Commission, Advisory Boards (PZB, ZBA, and Pension) and Committees]
- Existing board members and members-elect serving on future boards
  - Unopposed candidates are considered “members-elect” once the election is held
  - Members-elect can meet with the board member they are replacing



# Sunshine Law Requirements



Meetings must be open  
to the public



Reasonable notice of  
the meetings must be  
provided



Minutes of the  
meetings must be  
taken and recorded

# Sunshine Law Requirements



**Meetings must be  
open to the public**





The public has a right to view the meeting and hear all discussions.

- Facilities: accessible, adequate, non-discriminatory
- No inaudible discussions
- No “confidential” votes
- No “polling” or unofficial votes
- Cross-talk and closed captioning





# Meetings Occur Anywhere

- Lunch, dinner, coffee
- Social events, City events
- City Hall
- Parks
- Publix
- On a boat
- Playing golf, tennis, etc.
- Out of town

There is no requirement that a quorum be present for a meeting to be covered under the law. It only takes 2

# Social Gatherings

- Members of a public board are not prohibited under the Sunshine Law from meeting socially, **provided that** matters which *may* come before the board are not discussed
- While a violation may not be present for having a social gathering, to *avoid the appearance of impropriety*, it is advised that board members expend all efforts to conform to the spirit as well as the letter of the Sunshine Law



# Other Potential Meetings

- Any writing reflecting board member views on a particular action (i.e., emails, “position papers”, etc.)
- Telephone conversations between board members
- Text messages
- Communications relayed through an individual or resident acting as a conduit between board members.





# Social Media



- A board member seeing another board member's content reflecting their views on a particular action
- Applies to posts AND comment (these will be public records)

# Attorney General Opinions

- City commissioners may not use an **electronic newsletter** to communicate among themselves on issues that foreseeably may come before the board. (Inf. AGO to Syrkus, October 31, 2000)
- Members of a city board or commission may not engage on the **City's Facebook page** in an exchange or discussion of matters that foreseeably will come before the board. (AGO 09-19)
- Board members should discuss public business at publicly noticed meetings rather than in a series of **letters** between board members. (Inf. AGO to Martelli, July 20, 2009)
- Members of a public board may not use **computers** to conduct private discussions among themselves about board business. [AGO 89-39; *Linares v. Dist. Sch. Bd. of Pasco Co.*, No. 17-00230 (Fla. 6th DCA Jan. 10, 2018)]

## Personal Devices

- Communications on computers and phones may constitute a meeting, regardless of whether they occur on a private device or a City-issued device
- This is also true of email accounts



Avoid the  
“Reply All”  
Trap







## Staff Meetings

1:1 board member meetings with agency staff are not subject to the Sunshine Law

Internal meetings among staff are generally not subject to the Sunshine Law. However, when staff ceases to function in a staff capacity and is delegated authority from a board to act and make selections on the Board's behalf

Examples: Staff performing RFP function, audit committee, or selection function

# Meetings with the Agency Attorney

**General rule:**  
Discussions between the entire public board and its attorney are subject to the Sunshine Law; but individual meetings are not.



# Sunshine Law Exception - Pending Litigation & Risk Management Claims

- The Board may meet in private with the Attorney in narrow circumstances
- **Topics:**
  - To discuss settlement negotiations or strategy sessions related to litigation expenditures.
  - Applies to pending litigation and claims filed with the Risk Management Program.
- **Process:**
  - Attorney advises at a public meeting that the attorney desires advice at a future meeting concerning the litigation;
  - Municipality provides reasonable public notice of the attorney-client session and names the attendees;
  - A court reporter records the entire session verbatim;
  - The transcript must be made part of the public record upon conclusion of the litigation.
- **Attendees – Limited to:**
  - City Manager
  - City Attorney & litigation counsel
  - Not the City Clerk



# Sunshine Law Exemption – Collective Bargaining Discussions

- All discussions between the City Manager (or designee) and the Board related to collective bargaining **shall be closed and are exempt from** the Sunshine Law.
  - Applies when the purpose is to update the board or when seeking input from the board
  - Attendees may include key members of manager's staff and the negotiator, but should be restricted to those persons absolutely necessary
- Because the Sunshine Law does not apply, there are no requirements for a notice or meeting minutes.
- Participants should not disclose anything related to or discussed in these closed meetings.
  - "Participants in [collective bargaining] meetings that are closed . . . should be sensitive to the stated denial of public access when matters discussed at such meetings subsequently arise." AGO Fla. 2003-09 (2009).





## Can a board vote by secret ballot?

Sunshine Law requires that meetings of public boards or commissions be "open to the public." Any use of preassigned numbers, codes or secret ballots would violate the law.



# Curing Sunshine Law Violations

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- Must conduct a full, open public hearing with independent, final action in the sunshine that is “not merely a ceremonial acceptance... and... a perfunctory ratification of secret decisions.”
- Full deliberations and discussion must take place at the public meeting.
- **Avoid the need to cure by following the law**



# Public's Right to Speak

The public must be provided with a “reasonable opportunity” to be heard on a matter before the board takes official action.

Florida Statutes Section 286.0114

- A “reasonable opportunity” does not mean unfettered.
- Difference between “public comments” during meetings and “public hearings.”
- Public is allocated more time in public hearings to provide additional due process.
- Codes recognize different allotments of time to the public depending on the proceedings. For example, 3 minutes for public meetings as compared to 5 minutes for quasi-judicial hearings.



# Public's Right to Speak

The Sunshine Law does not prevent:

- Adopting laws relating to the orderly conduct of public participation
- Structuring meeting agendas in such a way that affords the public one or more timeframes to provide public comment
- Adopting time limits on public comment and hearings





# Sunshine Law Requirements



**Reasonable notice of the meetings must be provided**

# What is Reasonable Notice?

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- According to the Florida Attorney General, the definition of “reasonable” depends on the facts of the situation and board involved
- Check your City codes and policies – some include a time frame for posting notice
- Notice period can be reduced for a “bona fide emergency”



# Reasonable Notice continued...

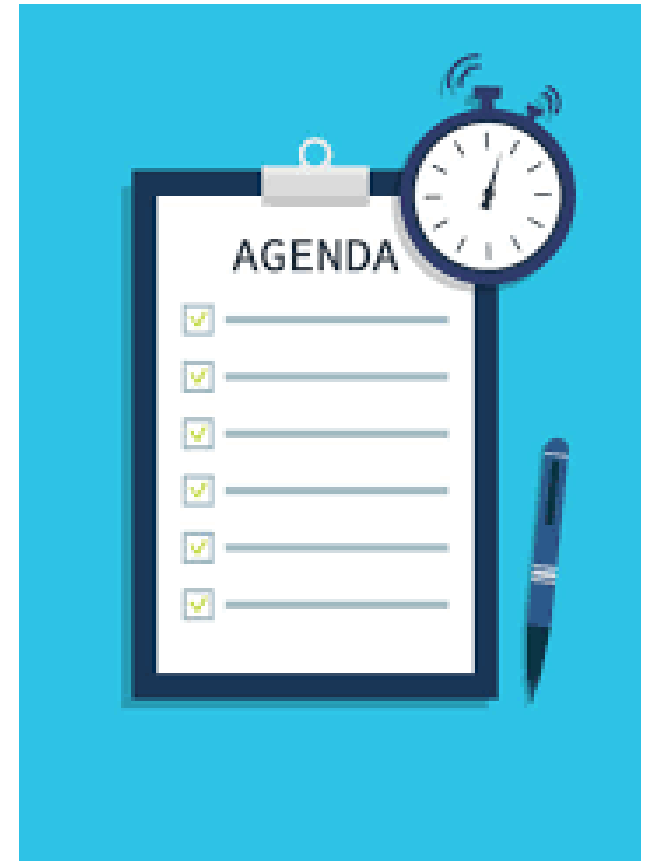
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- Notice is required even though meetings of the board are “of general knowledge” and are not conducted in a closed-door manner
- Sunshine Law does not define what is appropriate for reasonable notice, the type of notice required depends on:
  - 1) Purpose for the notice;
  - 2) Character of the event ; and
  - 3) Nature of the rights affected

# Does “Reasonable Notice” Apply to Agenda Items?

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- Sunshine Law does not prevent local governments from adding items to an agenda after publication.
- Best practice is to properly notice all agenda items to allow for full public participation
- The public should always be provided a reasonable opportunity to be heard before voting on any “newly” added items.



# Sunshine Law Requirements



**Minutes of the meetings  
must be taken and  
recorded**





# “Minutes” Requirements

- Definition: A “brief summary or series of brief notes reflecting the events of the meeting.”
  - Should reflect any board action on resolutions or motions.
  - Does not need to be a transcript of who said what to whom.
- Must be promptly recorded and open to the public for inspection (includes drafts).
- Must be approved by the board



# Sunshine Law Penalties

WITHOUT FLORIDA'S SUNSHINE LAWS ASSURING OPEN GOVERNMENT, HOW WOULD YOU KEEP ELECTED OFFICIALS FROM ABUSING THEIR POWERS?



# Penalties for Violation

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- **Criminal prosecution** - 2nd degree misdemeanor, up to 60 days in jail and/or maximum \$500.00 fine
- **Non-criminal infractions** – maximum \$500.00 fine
  - Both are pursued by the State Attorney's Office
- **VOIDS official action** - Any action taken in violation of Sunshine Law is *void ab initio*
- **Civil actions** – May recover of attorney's fees for violations
- **Removal from office** – by governor



# Sebastian council members arrested on Sunshine Law violations

By **Meghan McRoberts** | June 16, 2020 at 7:28 PM EDT - Updated June 17 at 12:28 PM

Two Sebastian council members have been arrested on criminal charges related to their involvement in an illegal meeting in April where they tried to remove multiple top city officials from their positions.

On April 22, the Sebastian city manager postponed a regular council meeting where the removal of the mayor was a topic of discussion. The postponement was advertised on the city's website.

Council members Charles Mauti, Damien Gilliams and Pamela Parris are accused of still holding their own meeting that night, unbeknownst to the public, and voting to fire the city attorney, city manager, and city clerk from office and remove the mayor from his position.

The actions were voided as the legality of the meeting was under review.





## 2 Florida county commissioners from The Villages removed after perjury charges

Gov. Ron DeSantis removed the men from office several weeks after they were charged with lying during an investigation of possible Sunshine Law violations.



This combo of booking photos released by the Sumter County Sheriff's Office shows Oren Miller, left, and Gary Search, two Sumter County commissioners who were suspended from office on Thursday. [AP]

Phone records showed Miller and Search contacted each other directly over 40 times between November 2020, when they were both elected, and July 2021, prosecutors said...

Arrest affidavits didn't say what Miller and Search were discussing, but many of the calls were made just before or just after scheduled county commission meetings, prosecutors said.



# Lorenzo v. City of Venice

- The court determined that Venice City Council members violated the Sunshine law through emails and entered a judgment against the City of **\$777,114.42** in attorney's fees and costs to Plaintiff.
- The City also paid attorneys fees for the five (5) individual City Council members who had to individually defend the case.
- The total amount paid by the City of Venice including the judgement and their own attorney fees was over **\$2,000,000**

Lorenzo v. City of Venice, 2009 WL 2626294, 2008 CA 8108 SC (Fla. Cir. Ct. 2008).

# Mapes v. City of Bradenton Beach

- Lawsuit filed against individual PZAB and Scenic Board members seeking a ruling on whether there was a violation to the Sunshine Law regarding open meetings and requirements to discuss official public business in properly noticed public meetings.
- After a 4-day trial, the court ruled the board members violated the Sunshine law during their non-city-affiliated Concerned Neighbors of Bradenton Beach meetings. The city prevailed, but the individual board members did not.
- Judge issued an order that the city recover \$369,498 for attorney fees spent defending the individual member. The parties agreed to a settlement of **\$350,000**.

Sunshine lawsuit defendants agree to pay city \$350,000

By Joe Hendricks - November 9, 2020



Shown here at the 2019 trial, Tjet Martin and John Metz have offered to pay the city \$350,000. - Joe Hendricks | Sun

BRADENTON BEACH – Sunshine Law lawsuit defendants John Metz and Tjet Martin have agreed to pay the city of Bradenton Beach \$350,000 as partial reimbursement for the attorney's fees the city has incurred.



Bradenton Beach Mayor John Chappie speaks during a press conference Thursday at Bradenton Beach City Hall. Chappie discussed the importance of government transparency and the Sunshine Law. In the background are City Attorney Rickida Perry and paralegal Richard Smith. (PHOTO: JIMMYE DUFFY/AMISUN.COM)

## 'Hijacking of city government?'

Bradenton Beach grapples with alleged Sunshine Law violations  
By Chris Anderson  
chris.anderson@sunshine.com

as Planning and Zoning members.  
The city also obtained emails from the group calling for a ballot initiative that would change the city charter and alter the form of government.

the sunshine.  
"Anything less than a government in the sunshine is just not acceptable."  
When Mapes -- who is represented by attorney Jim Dye -- was asked if he plans

[Mapes v. City of Bradenton Beach, et al., 348 So. 3d 1130 \(Fla. Dist. Ct. App. 2022\).](#)

Source: *Anna Maria Island Sun*, November 9, 2020; <https://www.amisun.com/2020/11/09/sunshine-lawsuit-defendants-agree-to-pay-city-350000/>

# Kneapler v. City of Miami

- A lawsuit was filed on September 23, 2013 by a member of a selection committee that was created to review bids submitted pursuant to an RFP for the development of waterfront land. According to the complaint, after receiving two bids in response to the RFP, the City scheduled a public meeting to hear oral presentations from the bidders. However, **the City subsequently rescheduled the meeting for an earlier date and time without notice to the public.** In addition to failing to provide proper public notice of the meeting, the complaint **also alleged that the City refused access to the media and members of the public at the meeting,** and therefore, violated the public meeting requirement contained in Florida's Sunshine Law.
- At the meeting, the Assistant City Attorney announced that the meeting was being held pursuant to an exception to Florida's Sunshine Law which permits meetings to be closed where only members of the selection committee and bidders are present.
- Court granted Summary Judgment in favor of the City stating that Kneapler did not have standing to bring the suit. The Appellate Court affirmed the trial court's decision.

[Kneapler v. City of Miami, 173 So. 3d 1002 \(Fla.3d DCA 2015\).](#)

## Citizens for Sunshine v. City of Sarasota

- 2 Sarasota City Commissioners were alleged to have violated the Sunshine law while attending a luncheon where local business owners discussed the issue of homelessness in the downtown area.
- One settled; Commissioner Susan Chapman went to trial. After a 2-day trial, the court found that the Commissioner's decision to attend the meeting with another serving commissioner did not technically violate the Sunshine law, but that those holding public office should, "always endeavor to *avoid even the appearance of impropriety.*"
- The City prevailed, but spent **\$400,000+** in attorney's fees defending Chapman in this litigation and appeal.



Questions?





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