SECTION 15 – PUBLIC RECORDS/SUNSHINE LAW/ETHICS/ORDINANCES

Public Records/Sunshine Laws

The State of Florida has established some of the most comprehensive open government laws in the country, laws that can impact virtually every aspect of local government operations. The open government laws include the Public Records Law (Chapter 119, Florida Statutes) and the "Sunshine Law" (See Section 286.011, Florida Statutes).

The Public Records Law provides that:

- All state, county, and municipal records are open for personal inspection and copying by any person, unless specifically exempt.
- Public records are defined to include all materials made or received in connection with official business, regardless of form (e.g. paper, email, text, data systems, photographs, recordings).
- The Division of Library and Information Services within the Florida Department of State adopts retention schedules and disposal processes for records (Section 257.36, Florida Statutes).
- Agencies must ensure that contractors handling public records comply with Section 119.0701, Florida Statutes
- Exemptions are updated annually by the Legislature. Agencies must review and apply current exemptions (see the Government-in-the-Sunshine Manual, Attorney General's Office).

Responding to Public Records Requests:

Public records requests must be acknowledged promptly and handled in good faith. Agencies should make reasonable efforts to identify and locate responsive records. When only part of the record is exempt or confidential, the exempt information should be redacted and the remainer produced. If an exemption is asserted, the agency must identify the statutory basis for the exemption and, if requested, state in writing, with particularity, the reasons for the conclusion that the record is exempt or confidential (Section 119.07, Florida Statute).

The Sunshine Law requires that:

- Meetings of public boards or commissions must be open to the public.
- Reasonable notice of such meetings must be provided to the public.
- Minutes of the meeting must be taken.
- The law applies to in-person, electronic, and written communication between board members when discussing public business.
- The public has the right to be heard on propositions before a board or commission (Section 286.0114, Florida Statutes).
- Closed sessions are permitted only in narrow circumstances (e.g., litigation strategy, security matters) under Section 286.0113, Florida Statutes
- Violations may result in civil or criminal penalties.

Attorney General Resources

The Florida Department of Legal Affairs, headed by the Attorney General (AG), is responsible for administering Florida's open government laws. The Attorney General publishes the Government-in-the-Sunshine Manual, which provides detailed guidance on the Public Records Law and Sunshine Law, including exemptions, redactions, fees, meeting requirements, and case law summaries.

The manual is updated annually and is available electronically. The AG's Office also provides:

- Training resources and FAQs to help local governments and agencies address records and meeting requirements.
- A searchable database of AG Opinions on open government issues.

Issue Resolution

When public records or Sunshine Law issues arise, officials should:

- Review the statutory provisions.
- Consult any applicable local ordinances or policies.
- Refer to the AG's Sunshine Manual.
- Seek legal counsel.
- Request an AG opinion if unresolved.

Ethics Law

The Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes), establishes standards of conduct for public officers, employees, candidates, lobbyists, and others in State and local government.

Key provisions include

- Conflicts of interest, prohibited transactions, and misuse of position (Section 112.313, Florida Statutes).
- Disclosure requirements for financial interests (Section 112.3145, Florida Statutes).
- Mandatory ethics training (Section 112.3142, Florida Statutes): constitutional officers, elected municipal officers, commissioners of community redevelopment agencies, and elected officers of independent special districts must complete four hours of training annually covering the Constitution, the Code of Ethics, public records, and public meetings.

The Florida Commission on Ethics administers these requirements and enforces violations. The State of Florida publishes this Code of Ethics at: https://ethics.state.fl.us/ Ordinance Laws Counties (Section 125.66, Florida Statutes) and municipalities (Section 166.041, Florida Statutes) must follow uniform procedures when adopting ordinances and resolutions. These statutes establish minimum notice requirements that cannot be waived. [AGO Informal Opinion, 7/15/97]

Financial Disclosures

Officials and employees subject to financial disclosure requirements should determine whether they are required to file Form 1 or Form 6 and comply with the applicable filing requirements. Financial disclosures administered by the Florida Commission on Ethics are filed electronically through the Electronic Financial Disclosure Management System (EFDMS). See Sections 112.3144, 112.31446, and 112.3145, Florida Statutes.

Ordinance Laws

Counties (Section 125.66, Florida Statutes) and municipalities (Section 166.041, Florida Statutes) must follow statutory procedures when adopting ordinance. These procedures include notice and hearing requirements, with additional requirements for emergency ordinances and certain zoning or land-use ordinances. Local requirements should also be reviewed for any additional procedures consistent with general law.

Key requirements

- Certain ordinances require preparation of a Business Impact Estimate (BIE) before adoption.
- Counties and municipalities must suspend enforcement of certain recently enacted ordinances when all conditions in Sections 125.675 or 166.0411, Florida Statutes, are met. These provisions apply to specified challenges alleging express preemption or that an ordinance is arbitrary or unreasonable, when the action is filed within 90 days after adoption, suspension is requested in the initial complaint or petition, and the local government has been served.
- Section 57.112, Florida Statutes, addresses attorney fees, costs, and damages in specified challenges to local ordinances. For express-preemption challenges, the court must award reasonable attorney fees and costs and damages to the prevailing party. For challenges alleging that an ordinance is arbitrary or unreasonable, the court may award a prevailing plaintiff reasonable attorney fees and costs and damages, subject to the statutory $50,000 cap.
- Failure to comply with notice requirements may render an ordinance void.

References

- Chapter 119, Florida Statutes – Public records. Official link
- Section 119.07 Florida Statutes – Inspection and copying of records; photographing public records; fees; exemptions. Official link
- Section 257.36, Florida Statutes – Records management and retention. Official link
- Sections 286.011, 286.0113, 286.0114, and 286.012, Florida Statutes – Public meetings, exemptions, public participation, and voting. Official link
- Chapter 112, Part III, Florida Statutes – Code of Ethics for Public Officers and Employees. Official link
- Section 125.66, Florida Statutes – County and municipal ordinance procedures. Official link
- Section 166.041, Florida Statutes – Legal challenges to certain recently enacted ordinances. Official Link
- Florida Attorney General – Government-in-the-Sunshine Manual and open government resources. Official link
- Section 57.112, Florida Statutes – Attorney fees, costs, and damages in certain local government ordinance challenges. Official link
- Section 125.675, Florida Statutes – Legal challenges to certain county ordinances. Official link
- Section 166.0411, Florida Statutes – Legal challenges to certain municipal ordinances. Official link
- Florida Commission on Ethics. Official link
- Section 112.3144, Florida Statutes – Full and public disclosure of financial interests. Official link
- Section 112.31446, Florida Statutes – Electronic Filing of financial disclosure forms. Official link
- Section 112.3145, Florida Statutes – Disclosure of financial interests and clients represented before agencies. Official link