

SPECIAL MEETINGS & MINUTES
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2023 Municipal Clerks Fall Certification Academy

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SPECIAL MEETINGS & MINUTES

Goals & Objectives

I. SPECIAL MEETINGS

- A. Sunshine Law Basics
- B. Meetings Exempt from Sunshine Law
 - 1. Most common types
 - 2. Process & procedures
- C. Local Special Meetings
 - 1. Most common types
 - 2. Process & procedures
- D. Local Issues / Suggestions

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SPECIAL MEETINGS & MINUTES

Goals & Objectives

II. MINUTES - WHEN REQUIRED

- A. Sunshine Law / Public Records Law
- B. Other General Laws
- C. Local Requirements

III. MINUTES - WHAT IS REQUIRED

- A. Sunshine Law
- B. Robert's Rules of Order
- C. Local Requirements

IV. LOCAL ISSUES / SUGGESTIONS

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SPECIAL MEETING & MINUTES

DISCLAIMERS

- A little information is a dangerous thing.
 - Check with your attorney!
- Each City is unique.
 - Check your charter, code, and internal policies, and check with your attorney!
- Each City has its own interpretation.
 - Interpretations offered in this presentation do not necessarily represent the interpretation of any particular city (check with your attorney)!

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SPECIAL MEETINGS

Sunshine Law - Basics

- Sunshine Law created in 1967.
- Referenced in Florida Constitution and set forth in section 286.011, Florida Statutes.
- Created to prevent “official action” outside a public meeting.
- Construed by Florida courts to current (much broader) status.

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SPECIAL MEETINGS

Sunshine Law - Basics

- Unless the meeting is exempt, the Sunshine Law governs all public meetings.
- A “public meeting” is where two or more municipal board members engage in a discussion or some form of communication about “foreseeable” board business.

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SPECIAL MEETINGS

Sunshine Law - Basics

- Municipal board members governed by Sunshine Law include:
 - Current members of governing body;
 - Members elected to the governing body who have not yet taken office; and,
 - Advisory board and committee members (involved in more than fact-finding).

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SPECIAL MEETINGS

Sunshine Law - Basics

- **“Discussions” or “communication” between board members governed by the Sunshine Law include:**
 - In-person meetings;
 - Phone calls;
 - Written communications (notes, letters, texts, social media posts, emails, etc.);
 - Exchanging or responding to position papers;
 - Using third party as conduits;
 - Possibly non-verbal communication (winks, nods, hand-gestures, smoke signals);
 - Whispering before, during, or after board meeting (often right in front the board attorney).

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SPECIAL MEETINGS

Sunshine Law - Basics

- **“Public meeting” is “legal” under the Sunshine Law if it includes:**
 - Reasonable notice
 - Open and accessible to the public
 - Minutes
 - Public Participation prior to final action

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

- Pending litigation (§ 286.011, Fla. Stat.)
- Labor negotiation strategy (§ 447.605, Fla. Stat.)
- Risk management (§ 768.28(16), Fla. Stat.)
- Competitive solicitations (§ 286.0113, Fla. Stat.)
- Other meeting exemptions

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Know your exemption before the meeting*

- Strictly follow statutory requirements
- Court reporter vs. audio recording
- Who can attend
- Limits on access to transcript / recording
- Time limits on exemption / retention
- Only portions may be exempt

* Bring a copy of the statute with you to the exempt meeting.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.):

Under certain conditions, a board, its chief administrative or executive officer may meet in private with the entity’s attorney to discuss pending litigation before a court or administrative agency.

The conditions include the following:

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #1:

- To use the “Pending Litigation” exemption, there must be a lawsuit filed or a pending administrative proceeding.
- Imminent litigation or proceeding is not sufficient.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #1:

“Pending Litigation” DOES NOT include:

- Arbitration
- Mediation
- Pending criminal, ethics, Inspector General, or personnel investigation
- Service of a subpoena.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #1:

“Pending Litigation” requires the city to be named in the proceeding or a “real party in interest” (e.g., potentially responsible for the outcome).

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #2:

The entity’s attorney shall advise the entity at a public meeting that the attorney desires advice concerning the litigation.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #2:

“Attorney requests advice” - When does the city’s attorney request the closed session:

MUST BE AT A PUBLIC MEETING

1. Reasonable time before session to be held?
2. Just prior to session being held?

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #3:

The subject matter of the closed meeting must be confined to settlement negotiations and strategy sessions related to litigation expenditures.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #3:

- Closed session discussion must be related to settlement or strategy related to litigation expenditures.
- Closed discussion should not stray into lengthy discussions on politics, plaintiff, policy changes, ordinance changes, etc.
- **Recommendation:** avoid voting during closed session; but, consider obtaining consensus on settlement or strategy direction.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #4:

Court reporter must record the entire session (commencement to end), which includes:

1. All discussion;
2. All persons present and comments;
3. Name of speaker and when speaking;
4. Fully transcribed and filed with Clerk within reasonable time.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #4:

Court reporter transcript:

1. “Reasonable time” may vary with length and cost.
2. Do **not** file with city attorney or records accessible to others.
3. **Recommendation:** Place transcript in large envelope and mark as “EXEMPT” with name of case, date of closed session, and attorney involved for city; and, calendar follow-ups with city attorney for advice on “conclusion of litigation”.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #5:

The board must provide reasonable notice of the time and date of closed session and names of persons who will be attending the session.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #5:

- Reasonable notice of the time and date of closed session and who is attending:
 - City attorney could announce date and time at earlier public meeting;
 - Include information on meeting notice or agenda and post the same reasonable time prior to closed session;
 - Attendees' names announced at meeting and on notice and/or agenda.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Condition #6:

The session must commence at an open meeting with the chair* announcing:

- (1) commencement;
- (2) estimated time; and,
- (3) who is attending.

* Recommend script for chair.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings
Pending litigation (§ 286.011(8), Fla. Stat.)
Condition #6:
 Chair announces commencement, estimated time, and who is attending:

- (1) Attendees limited to: city manager, city attorney, outside attorney(s), board members, court reporter.
- (2) Attendees do not include: clerk, department director, other named defendant(s), insurance carrier, risk manager, etc.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings
Pending litigation (§ 286.011(8), Fla. Stat.)
Condition #7:
 The transcript shall be a part of the public record upon conclusion of the litigation.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings
Pending litigation (§ 286.011(8), Fla. Stat.)
Condition #7:
 Conclusion of the litigation:

- Check with city attorney.
- Potential appeal timeframe should be considered.
- May need to redact information from transcript covered by another public records exemption.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Potential Process (example)

1. Administratively decide on date for closed session (e.g., hour before 2nd regular city meeting of month);
2. Attorney requests closed session at 1st regular city meeting of month and states name of case; date, time, location of closed session; and, who will be in attendance.
3. Attorney schedules court reporter.
4. Clerk posts notice of meeting with same information as attorney announced.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

Potential Process (example - continued)

5. Open closed session as open public meeting.
6. Board chair states that the board is going into a closed meeting (commencing), estimated time, and repeats name of case and names of all attendees.
7. Meeting is closed except for identified attendees.
8. Make sure audio and video are turned off.
9. Conclude closed session.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Pending litigation (§ 286.011(8), Fla. Stat.)

- At conclusion of closed session, public meeting can be reconvened.
- Board could vote on issues from closed session **OR**
- Board could add any votes to agenda for upcoming regular meeting.
- **Recommendation:** Place all pending litigation decisions on consent agenda.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Closed meeting for labor negotiation strategy (§ 447.605, Fla. Stat.):

Sunshine Law exemption for city manager and attorney and/or negotiations committee to meet with governing board to discuss upcoming and/or pending collective bargaining negotiations.

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Seven horizontal lines for notes.

SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Closed meeting for labor negotiations:

- Pure exemption - closed meeting does not require:
 - Meeting notice or agenda;
 - Court reporter;
 - Audio recording; or,
 - Minutes*
- * Public records exemption for city-developed work-product. See § 447.605, Fla. Stat.

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Seven horizontal lines for notes.

SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Closed meeting for labor negotiations:

- Attendees: Not clearly set by statute – governing board members, city manager, city attorney and/or negotiations committee (e.g., outside counsel, finance and relevant department director).
- Actual negotiations with bargaining agent/unit must be conducted in the **Sunshine** (§ 447.605(2), Fla. Stat.).

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Closed meeting for labor negotiations:

Recommendations:

- Although not required, post notice of meeting before meeting and outside meeting
Mark all work-product records as "exempt and confidential" to prevent accidental disclosure
Remind board members that they will ultimately vote on union contract (i.e., do not discuss issues outside of closed meeting or Sunshine Law compliant meeting)

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Risk management program meetings

(§ 768.28(16)(c), Fla. Stat.):

- Limited exemption for evaluation of tort claims and settlements of the tort claims filed with city's risk management program
Claim needs to be filed with City (not a pre-claim exemption).
Torts = personal injury & property damage.

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Seven horizontal lines for notes.

SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Risk management program meetings

(§ 768.28(16)(c), Fla. Stat.):

- No requirement for audio recording or transcription;
Exemption for minutes under subsection (16(d));
Attendees are not specified in statute;
Recommendation: Attendees limited to those with need to know (e.g., city manager, city attorney, governing board*, insurance carrier, relevant department director, risk manager, etc.)

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Competitive solicitations (§ 286.0113, Fla. Stat.):

- Any portion of a meeting pursuant to a competitive solicitation:
 1. at which a negotiation with a vendor is conducted
 2. at which a vendor makes an oral presentation
 3. at which a vendor answers questions as part of a competitive solicitation

“Competitive solicitation” means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Competitive solicitations (§ 286.0113, Fla. Stat.):

- Any portion of a team meeting at which negotiation strategies are discussed is exempt.

“Team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Competitive solicitations (§ 286.0113, Fla. Stat.):

- All portions of these purchasing exempt meetings must be audio recorded.
- Audio recording and records presented are exempt from public disclosure until agency provides notice of intended decision or until 30 days after opening bids, proposals, or final replies, **whichever occurs earlier**.
- Public disclosure can be delayed if re-issuing competitive solicitation (limited to 12 months total).

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Competitive solicitations (§ 286.0113, Fla. Stat.)

Recommendations:

- Limited exemption: Discuss with purchasing/procurement department and determine prior to issuing competitive solicitation.
Notify potential bidders/respondent of process early.
If not using exemption, do not ask bidders or respondents NOT to attend presentations or discussion of other bidders/respondents (Sunshine Law violation).

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SPECIAL MEETINGS

Sunshine Law – Common Exempt Meetings

Other Sunshine Law Exempt Meetings:

- Public-Private Partnership (§ 255.065, Fla. Stat.)
Security or Fire Safety System Plan (§ 286.0113, Fla. Stat.)
Security of technology for city-owned utility (§ 286.0113, Fla. Stat.)
Public safety 911/radio communication plans and infrastructure (§ 286.0113, Fla. Stat.)

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SPECIAL MEETINGS

Local Special Meetings

- Emergency
Special
Workshop
Quasi-Judicial (often part of meeting)
Other boards and committees

***Regardless of type of special meeting, always check local charter, code of ordinances, board rules of procedure, internal policy for requirements.

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Seven horizontal lines for notes.

SPECIAL MEETINGS

Local Special Meetings

Regardless of type of local meeting, Florida Attorney General recommends the following for notice:

- Notice should contain date, time, and location of meeting
If agenda is available, include with notice or state nature of meeting
Notice displayed in prominent location or where notices generally posted
Aim for at least 7-days notice for regular local meetings or no less than 72-hours for emergency meetings
More notice is always preferred (e.g., press release, e-mail, phone calls/faxes to local media, etc.).

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SPECIAL MEETINGS

Local Special Meetings

Emergency meetings:

- Emergency meetings still require reasonable public notice.
What is "reasonable" is dictated by the subject matter of the meeting and/or rights to be affected (i.e., fact specific analysis).
Public participation at an emergency meeting not required if:
emergency affects public health, welfare, or safety and
public participation would require unreasonable delay in ability of board to act.

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Seven horizontal lines for notes.

SPECIAL MEETINGS

Local Special Meetings

Special Meetings:

- Governed by charter, code, local rules of procedures, or other internal policy of city.
Typically limited in subject matter.
All Sunshine Law requirements must be met for special meetings (e.g., reasonable public notice, open to public, minutes, and public participation).

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SPECIAL MEETINGS

Local Special Meetings

Special Meetings:

- Comment on “open to the public”: Can we have virtual meetings...

“Had the Legislature intended that a meeting is only “open to the public” under Florida’s Sunshine Law when the public is permitted to attend in person, it could have easily stated so. That is the Legislature’s prerogative, not ours.”
Burton v. Oates, 362 So. 3d 311 Fla. 5th DCA 2023)

- Always check local requirements!
- Physical quorum is not Sunshine Law requirement.

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SPECIAL MEETINGS

Local Special Meetings

Workshop Meetings:

- Usually for a board to discuss a topic that will take longer than desired in a regular meeting;
- Public participation not required **IF** item discussed will soon appear on regular meeting in which public participation will be provided prior to final action;
- All other Sunshine Law requirements must be met for workshop meetings (e.g., reasonable public notice, open to public, and minutes).

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SPECIAL MEETINGS

Local Special Meetings

Workshop Meetings:

- If all Sunshine Law requirements met (i.e., reasonable public notice, open to public, and minutes taken), meeting can be just between two or more board members.
- Quorum not required – especially if no official action is to be taken (i.e., town hall type of meeting).

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SPECIAL MEETINGS

Local Special Meetings

Quasi-Judicial Meetings/Hearing:

Is it Quasi-Judicial?

- A quasi-judicial action is one in which the board applies legislatively established criteria to a particular situation to determine compliance or non-compliance (i.e., policy application NOT policy setting).
- Examples:
 - Site plans
 - Variances
 - Special exceptions
 - Conditional uses
 - Some site specific re-zoning
 - Plats
 - Code enforcement hearings

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SPECIAL MEETINGS

Local Special Meetings

Quasi-Judicial Meetings/Hearing:

- The following are not quasi-judicial:
 - Comprehensive Plan Amendments (legislative)
 - Large scale re-zonings (legislative)
 - Text amendments to zoning regulations (legislative)
 - Other administrative or executive actions (approving minutes; setting meeting dates and times; setting board rules of procedure; selecting board chair and vice-chair; etc.)

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SPECIAL MEETINGS

Local Special Meetings

Quasi-Judicial Meetings/Hearing:

- If it is quasi-judicial, role of board is as follows:
 - Judge of whether the established legislative criteria has been satisfied
 - Must be impartial
 - May ask questions of all participants
 - Must make decision purely on testimony and evidence presented in meeting/hearing
 - No strict rules of evidence; however, board must ensure basic due process (fairness) to all participants
 - Check local charter, code, rules of procedure, policy!

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SPECIAL MEETINGS

Local Special Meetings

Quasi-Judicial Meetings/Hearing:
Typical Quasi-Judicial Procedure

- All participants **sworn in** as all testimony must be under oath (i.e., city staff, applicant, consultants, and adversely affected party)
- Upon introduction, each board member must **disclose ex parte communications** (§ 286.0115, Fla. Stat.)
- City staff, applicant, and adversely affect party right to make presentations (testimony and evidence), present witnesses (consultants), cross-examine each other and their witnesses, and make closing arguments
- Public participation may be allowed but is not usually under oath and is not usually testimony or evidence

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SPECIAL MEETINGS

Local Special Meetings

Quasi-Judicial Meetings/Hearing:
Typical Quasi-Judicial Procedure (continued)

- Once evidence and testimony is completed, Chair closes hearing and board deliberates consistent with Robert’s Rules of Order
 - **Competent, substantial evidence** is required to support decision (i.e., sufficiently relevant and material evidence that a reasonable mind would accept as adequate to support a conclusion).
 - Motion to approve (or approve with conditions) should be based on **all criteria being satisfied** by competent, substantial evidence (with reasonable conditions imposed)
 - Motion to deny should be based on **lack of competent, substantial evidence to support all or specific criteria**

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SPECIAL MEETINGS

Local Special Meetings

Quasi-Judicial Meetings/Hearing:
Typical Quasi-Judicial Procedure (continued)
Ex Parte Communications

- Disclosure of ex parte communications at outset of hearing
- Ensures all participants know each board member’s knowledge of matter
- Helps to protect the record on appeal from due process challenges of prejudice or bias due to ex parte communications

** If a disclosure of ex parte communications suggests the board member may not be impartial, further disclosures may be necessary to ensure impartiality or consideration of recusal.

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SPECIAL MEETINGS

Local Special Meetings

Other boards and committees:

- Decision-making (examples: Planning and Zoning, Board of Adjustment, Board of Contract Appeals, Code Enforcement Board);
- Advisory (examples: educational advisory board, selection committees, hiring committees).

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SPECIAL MEETINGS

Local Special Meetings

Other boards and committees:

- Some boards have both decision-making and advisory powers.
 - Always make sure to understand in what capacity board is acting and nature of decision.
 - In either capacity, Sunshine Law requirements must be met (except may be public participation when acting in advisory capacity).

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SPECIAL MEETINGS & MINUTES

We made it to Part II!

Goals & Objectives

- II. MINUTES - WHEN REQUIRED**
 - A. Sunshine Law / Public Records Law
 - B. Other General Laws
 - C. Local Requirements
- III. MINUTES - WHAT IS REQUIRED**
 - A. Sunshine Law
 - B. Robert's Rules of Order
 - C. Local Requirements
- IV. LOCAL ISSUES / SUGGESTIONS**

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MINUTES – HOW WE GOT HERE

- History of Municipalities
 - Formation and Limitations
 - 1822 – St. Augustine and Pensacola first Florida cities (territorial powers granted)
 - 1845 – Florida becomes a State (27th)
 - Legislature controlled formation of municipalities
 - Legislature controlled powers afforded to municipalities

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MINUTES – HOW WE GOT HERE

- History of Municipalities
 - Early Statutory Laws (pre-1969 Constitution)
 - Generally
 - Legislature dictated powers of municipalities
 - General laws
 - Local laws
 - 1885 Constitution imposes some limits
 - Referendum required for local laws
 - Legislature worked-around

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MINUTES – HOW WE GOT HERE

- History of Municipalities
 - Early Statutory Laws (pre-1969 Constitution)
 - Sunshine Law
 - Section 165.22, Florida Statutes (1905 - 1973)
 - (1) All meetings of any city or town council or board of alderman of any city or town in the state, shall be held open to the public of any such city or town, and all records and books of any such city or town shall be at all times open to the inspection of any of the citizens thereof.
 - (2) Any city or town councilmen, or member of any board of alderman, or other city or town official, who shall violate the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in §775.082 or §775.083.
 - (3) Such conviction shall immediately vacate the office held by such city or town councilman, or member of the board of aldermen, or other officer of such city or town.

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MINUTES – HOW WE GOT HERE

- History of Municipalities
 - Early Statutory Laws (pre-1969 Constitution)
 - Public Records Law
 - Section 165.20, Florida Statutes (1905 - 1973)
 - The city or town council **shall keep or cause to be kept a regular record of their proceedings and ordinances**, and they shall promulgate, without unnecessary delay, all laws and ordinances which they may enact by posting at the door of the city or town hall, and at one other public place within the municipality, or by publishing the same in any newspaper in said city or town, in either case for a period of not less than four weeks.

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MINUTES – HOW WE GOT HERE

- Home Rule Power
 - Passed in 1968 / codified in 1969 Constitution
 - Article VIII, Section 2(b):

“Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.”
 - Legislature enacted statutory provision in 1969 & in 1973 re-enacted after court battle
 - Codified in Florida Statutes, § 166.021, Fla. Stat.:

“... may exercise any power for municipal purposes, except when expressly prohibited by law.”

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MINUTES – HOW WE GOT HERE

- Home Rule Power
 - Statutes
 - 1909 & 1967 enactments of Chapter 119, What it changed
 - What it did not change
 - Constitutional pre-emption
 - Statutory pre-emption
 - What remained
 - Sections 165.20 & 165.22, Florida Statutes
 - 1967 enactment of section 286.011, Florida Florida Statutes

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MINUTES – HOW WE GOT HERE

- Home Rule Power
 - 1974 Legislative Changes:
 - Sunshine Law:
 - Section 165.22, Florida Statutes, repealed
 - Due to passage of Sunshine Law, section 286.011, Florida Statutes
 - Public Records Law:
 - Section 165.20, Florida Statutes, repealed
 - Due to changes to Chapter 166, Florida Statutes

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MINUTES – HOW WE GOT HERE

- As of 1974, two statutory requirements for “minutes”:
 - 166.041 & 286.011, Florida Statutes:
 - 166.041:
 - All ordinances and resolutions to be in writing.
 - Official notice provided regarding ordinances.
 - Vote of each member entered “on the official record of the meeting”.
 - Upon passage, every ordinance or resolution “be recorded in a book kept for that purpose”.

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MINUTES – HOW WE GOT HERE

- As of 1974, two statutory requirements for “minutes” (continued):
 - 286.011, Florida Statutes (1967 version):
 - (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or any political subdivision, except as otherwise provided in the constitution, **at which official acts are to be taken** are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.
 - (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

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MINUTES – HOW WE GOT HERE

- As of 1974, two statutory requirements for “minutes” (continued):
 - 286.011, Florida Statutes (current version):
- (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.
- (2) **The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection.** The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

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MINUTES – HOW WE GOT HERE

- Court Cases on Minutes
 - 1886 to 1967 - references to municipalities’ minutes
 - 1967 to present
 - Continued references to municipalities’ minutes
 - Sunshine Law cases
 - Broaden Sunshine Law to more than “official acts” and includes entire decision-making process.
 - Minutes are usually not main subject of cases
 - Except: *Grapski v. City of Alachua*, 31 So. 3d 193, 200 (Fla. 1st DCA 2010).

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MINUTES – HOW WE GOT HERE

- Florida Attorney General Opinions on Minutes
 - Opinions Issued
 - Not the law
 - Not binding (unless you requested opinion)
 - But are highly persuasive
 - Opinions on Minutes
 - Brief summary or series of brief notes (AGO 82-47)
 - Minutes required of workshops (AGO 74-62 & AGO 08-65)
 - Minutes required in addition to recording (AGO 75-45)
 - Written transcript as minutes (Informal AGO 1993)

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MINUTES – WHAT NOW AND WHEN

- Florida Constitution & Florida Statutes Requirements for “Minutes”
 - Florida Constitution (Article I, Section 24)
 - Right to inspect or copy records of agencies
 - Right of notice and right to attend meetings for all agencies
 - No mention of minutes
 - Florida Statutes
 - Sunshine Law
 - Must prepare for all Sunshine Law meetings
 - Must prepare “promptly” and provide for inspection
 - Public Records Law
 - All “minutes” or notes are subject to inspection
 - Comment on drafts

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MINUTES – WHAT NOW AND WHEN

- Florida Constitution & Florida Statutes Requirements for “Minutes”
 - Florida Statutes (continued)
 - Other Laws
 - Code Enforcement under Chapter 162 (Part I)
 - Requires hearings to be public and “testimony recorded”
 - Section 286.011 applicability
 - Orders vs. minutes
 - Section 255.0518 – sealed bids for construction
 - Although exempt under Chapter 119, if opening prices for construction or repairs of public building or public work:
 - Meeting in compliance with section 286.011
 - Announce name of bidder and price
 - Make name and price available (i.e., put it in your minutes)

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MINUTES – WHAT NOW AND WHEN

- Florida Constitution & Florida Statutes Requirements for “Minutes”
 - Florida Statutes (continued)
 - Other Laws
 - Section 286.012 – Voting requirement

No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted **may 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, except when, with respect to any such member, **there is, or appears to be, a possible conflict of interest** under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. **112.3143**.

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MINUTES – WHAT NOW AND WHEN

- Florida Constitution & Florida Statutes Requirements for “Minutes”
 - Florida Statutes (continued)
 - Other Laws
 - Section 112.3143 – Voting Conflict
 - All public officers prohibited from voting on measure which would:
 - Inure to his or her special private gain or loss
 - Inure to his or her principal / parent org. / subsidiary
 - Inure to a relative or business associate
 - Must before the vote is taken:
 - Publicly state to the assembly the nature of the conflict
 - Within 15 days after the vote:
 - Disclose nature of interest in public record (COE Form 8B)
 - Provide to person responsible for minutes
 - Be included in minutes

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MINUTES – WHAT NOW AND WHEN

- Florida Constitution & Florida Statutes Requirements for “Minutes”
 - Florida Statutes (continued)
 - Other Laws
 - Section 286.0105 - Notices of meetings and hearings
- “Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, **he or she will need a record of the proceedings, and that, for such purpose, he or she 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.** The requirements of this section do not apply to the notice provided in s. 200.065(3).”

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MINUTES – WHAT NOW AND WHEN

- Florida Constitution & Florida Statutes Requirements for “Minutes”
 - Florida Statutes (continued)
 - Other Laws
 - Section 286.0115 – Access to public officials and **ex parte communications**
 - Municipality may adopt policy on ex parte communications
 - If adopted for general meetings, it requires the ex parte communication to be included in the “record”
 - If adopted for quasi-judicial, it does not require the ex parte communication to be included in the “record”
 - Check your policy
 - The “record” may be your “minutes”

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MINUTES – WHAT NOW AND WHEN

- Florida Constitution & Florida Statutes Requirements for “Minutes”
 - Florida Statutes (continued)
 - Other Laws
 - **Section 447.605 – Labor Negotiations Strategy vs. Collective Bargaining**
 - All discussions between city manager or representative/committee and governing body is exempt (i.e., minutes not required)
 - All discussions between city manager or representative/committee and bargaining agent must comply with section 286.011 (i.e., minutes required)
 - Applies before impasse
 - Applies after impasse

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MINUTES – WHAT NOW AND WHEN

- Florida Constitution & Florida Statutes Requirements for “Minutes”
 - Florida Statutes (continued)
 - Other Laws - Retention Requirements:
 - Florida’s General Records Schedule (GS1-SL) for State and Local Government Agencies
 - Minutes of Official Meetings: **Permanent**
 - A meeting is “official” if it requires compliance with the Sunshine Law.
 - Includes agenda and background materials “if necessary to understand the minutes” (or two years).

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MINUTES – WHAT NOW AND WHEN

- Local Requirements for “Minutes”
 - Charter
 - Clerk’s duties
 - Legislative requirement
 - Code of Ordinances
 - Clerk’s duties
 - Legislative requirement
 - Governing Board Policy
 - Clerk’s duties
 - Board Preferences

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MINUTES – ISSUES

• **Action vs. Verbatim**

Robert's Rules of Order:

"In an ordinary society, unless the minutes are to be published, they should contain mainly a record of what was done at a meeting, not what was said by the members."

- Type of meeting (regular or special)
- Name of Board
- Date, time and place
- Board members present
- All main motions and disposition
- Public participants
- Time of adjournment

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MINUTES – ISSUES

• **Changes**

Robert's Rules of Order:

"The minutes should never reflect the secretary's opinion, favorable or otherwise, on anything said or done."

- Changes at board meeting to approve
- Changes without board approval

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MINUTES – ISSUES

• **Who Prepares and Maintains**

- The Clerk
- User Department
- Delegate to outside vendor

- Comment on Audio Tapes
- Comment on "Let the Record Reflect"

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SPECIAL MEETINGS AND MINUTES

QUESTIONS & COMMENTS

THANK YOU!

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