

# BOARDS & COMMITTEES

## ETHICS SEMINAR:

### SUNSHINE LAW, FINANCIAL DISCLOSURE & CORAL GABLES ETHICS CODE



Miriam S. Ramos  
Deputy City Attorney

# PUBLIC BOARD MEETING REQUIREMENTS

# AUTHORITY FOR GOVERNMENT- IN-THE-SUNSHINE

**Art. 1, Sec. 24, Florida Constitution**

**§ 286.011, Florida Statutes**

# THREE BASIC REQUIREMENTS FOR PUBLIC MEETINGS

- 1) must be open to the public
- 2) reasonable notice of such meetings must be given
- 3) minutes of the meeting must be taken



# OPEN TO THE PUBLIC

## **Accommodations:**

- Public boards should take **reasonable steps** to ensure that the location where the meeting is held will accommodate for the expected turnout.
- Facility must be kept open and accessible.

## **Communication:**

- A violation may occur if, during a meeting, board members are speaking to each other about the item, in a manner not audible to the public and outside of the record.
- A violation may occur if, during a recess of a public meeting, board members discuss issues before the board.

# NOTICE REQUIREMENT

- **“Reasonable notice” required – what is reasonable depends on facts and board involved**
- **Notice should contain time and place and general subjects to be discussed or agenda, if available.**
- **Should be posted in designated public area and on webpage.**
- **Should be posted at least 7 days in advance unless there is an emergency.**
- **For special meetings, notice posted no less than 24 hours in advance and preferably 72 hours in advance.**
- **For matters of great public importance, consider providing notice in newspaper of general circulation.**

# MINUTES

- The use of the term "minutes" in Section 286.011, F.S., **contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting.**
  - AGO 82-47.
- An agency is not prohibited from using a written transcript of the meeting as the minutes, if it chooses to do so.
  - Inf. Op. to Fulwider, June 14, 1993.

# MINUTES

## The minutes should show:

- **Kind of meeting**, "regular" (or stated) or "special," or "adjourned regular" or "adjourned special";
- **Name** of the organization or assembly;
- **Date/time of meeting and place**;
- **Who is in attendance**: The fact of the presence of the regular chairman and secretary, or in their absence the names of their substitutes,
- **Whether the minutes of the previous meeting were read and approved**, or approved as corrected, and the date of the meeting if other than a regular business meeting;
- **All main motions** (except such as were withdrawn) and motions that bring a main question again before the assembly, stating the wording as adopted or disposed of, and the disposition--including temporary disposition (with any primary and secondary amendments and adhering secondary motions then pending);
- **Secondary motions** not lost or withdrawn where needed for clarity of the minutes;
- **Previous notice of motions**;
- **Points of order and appeals**, and reasons the chair gives for the ruling;
- **Time of adjournment**.

# WHAT GOVERNMENT BODIES ARE COVERED?

- “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision”
- equally applicable to elected and appointed boards or commissions

# WHAT IS A MEETING?

- Sunshine Law extends to the discussions and deliberations as well as formal action taken by a public board.
- **There is no requirement that a quorum be present for a meeting of members of a public board to be subject to section 286.011.** The law is applicable to any gathering, whether formal or casual, of two or more members of the same board to discuss some matter on which foreseeable action will be taken by the public board.
  - *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973).
- The term “meeting” extends to e-mail correspondence, as well as meetings conducted over electronic media, such as Facebook, if the exchange or discussion concerns matters that foreseeably will come before the board for official action
  - *State v. Childers*, No. 02-21939-MMC; 02-21940-MMB; AGO 09-19

# WRITTEN CORRESPONDENCE BETWEEN BOARD MEMBERS

A board member may send a written report to other board member on a subject that will be discussed at a public meeting without violating the Sunshine Law if:

- 1.) prior to the meeting there is no interaction related to the report among the commissioners and;
- 2.) the receiving board member does not respond.

Best practice is not to do so; only use when necessary.



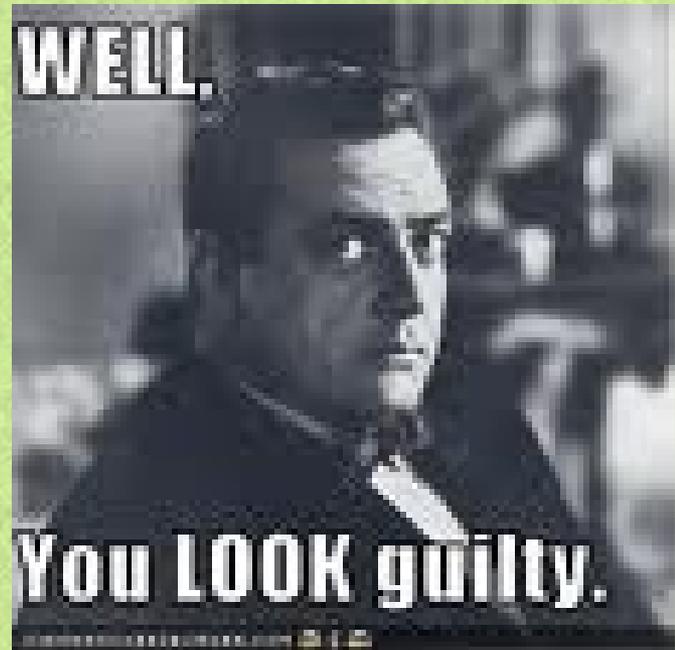
# E-MAIL CORRESPONDENCE

- **E-mail communication of factual background information from one council member to another is a public record but does not constitute a meeting subject to the Sunshine Law when it does not result in the exchange of council members' comments or responses on subjects requiring council action.**
  - AGO 01-20
- **Exception:** If the report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to Section 286.011. (ie., do not “reply all” ).
  - AGO 90-03



# PENALTIES AND SANCTIONS

- **Criminal Violation:** Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who *knowingly* violates the Sunshine Law is guilty of a *misdemeanor of the second degree*.  
Section 286.011(3)(b), F.S.
- **Non- Criminal Violation:** any public officer violating the provisions of the Sunshine Law that is guilty of a noncriminal infraction, is punishable by a *fine not exceeding \$500*.  
Section 286.011(3)(a), F.S.



# FINANCIAL DISCLOSURE

# WHO HAS TO FILE?

- **“Autonomous personnel”** members of semi-autonomous boards entrusted with day-to-day policy setting operation and management of certain defined City functions. (I.e. retirement board and construction regulation board)
- **“Quasi-judicial personnel”** members of boards that perform quasi-judicial functions. (I.e. encroachment committee, planning and zoning board, board of adjustment and code enforcement board)
- **“Advisory personnel”** – members of City advisory boards whose responsibility is to recommend legislation or give advice to the City Commission. (I.e. landscape beautification advisory board, library advisory board, traffic advisor board and parks and recreation advisory board)

# WHAT NEEDS TO BE FILED?

- Source of Income Statement (may be obtained at City Clerk's Office)
- Copy of tax returns; or
- Financial statement on form approved by State or national banks.

**MIAMI-DADE COUNTY** SOURCE OF INCOME STATEMENT

Disclosure for Tax Year Ending	First Name	Middle Name/Initial	Last Name
Mailing Address - Street Number, Street Name, or P.O. Box			
City, State, Zip			ID Number

If your home address is your mailing address, and your home address is exempt from public records pursuant to Fla. Stat. § 119.07, read instructions on the following page and check here.

**Filing as an Employee**

County Employee     Municipal Employee, Name of Municipality: \_\_\_\_\_

Position held or sought \_\_\_\_\_

Department where employed \_\_\_\_\_

Work address \_\_\_\_\_ Work telephone \_\_\_\_\_ Term began on \_\_\_\_\_

**Filing as a Board Member**

County Board Member     Municipal Board Member, Name of Municipality: \_\_\_\_\_

Board where serving \_\_\_\_\_

Work address \_\_\_\_\_ Work telephone \_\_\_\_\_ Term began on \_\_\_\_\_

List below every source of income you received, along with the address and the principal activity of each source. Include your public salary. Place the sources of income in descending order, with the largest source first. Also include any source of income received by another person for your benefit. However, the income of your spouse or any business partner need not be disclosed. If continued on a separate sheet, check here.

Name of Source of Income	Address	Description of the Principal Business Activity

I hereby swear (or affirm) that the information above is a true and correct statement.

Signature of person disclosing _____	<b>FOR OFFICE USE</b> Processed By _____ Processed Date _____ Scanned Date _____ Comments _____
Print name _____	
Date signed _____	

FORM 10-17-07

# WHEN AND WHERE DO I NEED TO FILE?

- City Clerk's Office



- By 12 noon on July 1<sup>st</sup> of each year including the July 1<sup>st</sup> following the last year that person served on board/committee.
- Disclosure due July 1<sup>st</sup> is for preceding calendar year (i.e. 7/1/15 – statement for 2014).

**CORAL GABLES  
ETHICS CODE**

# PROVISIONS DISTINCT FROM MIAMI-DADE ETHICS CODE

- Gifts:

- adds unlawful for any person to give or receive a gift because of attendance or absence from a public meeting at which official action is to be taken.
- Gift disclosure filed with the City Clerk.



# PROVISIONS DISTINCT FROM MIAMI- DADE ETHICS CODE

- **Appearances:**

- **Exception for architects serving the Board of Architects.** May submit plans on behalf of a client so long as such members make known their representation of the applicant and disqualify themselves from speaking or voting or otherwise participating on such application. Once an application submitted for board of architects review, no person serving on the board, either directly or through an associate or their firm, may be retained by any person, including the applicant, to represent, appear, or make a presentation on behalf of the applicant or any other party on the specific matter being considered by the board.
- Adds – No Board member, after deliberating, considering, ruling or recommending on an application filed with his/her board, shall appear before a higher board or the city commission to testify as an affected party. BUT - chairperson may appear before the city commission to provide the board's recommendation.



# PENALTIES

- Violation of Miami-Dade Ethics Code.
- \$500 fine for first count, \$1,000 for each subsequent count.
- Doubles for intentional violations.
- Letter of Instruction or Letter of Reprimand.



# PROVISIONS DISTINCT FROM MIAMI-DADE ETHICS CODE

- City exceptions:
  - Public official/city staff on matters within their official duties;
  - Person in his/her individual capacity (including HOA members);
  - Persons appearing in quasi-judicial proceedings;
  - Person under contract with the City regarding services under contract;
  - Collective bargaining unit representative;
  - Foreign dignitary;
  - Reporter.

# PENALTIES FOR LOBBYIST

- Same as violation of Miami-Dade Ethics Code;
- Suspension from lobbying in the City for up to 2 years.

# CORAL GABLES CONE OF SILENCE

When does Cone of Silence apply?

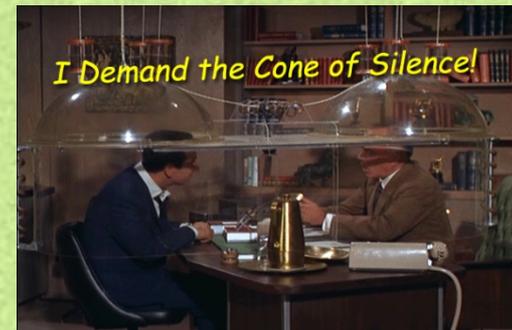
RFP, RFQ, Bid  
advertised



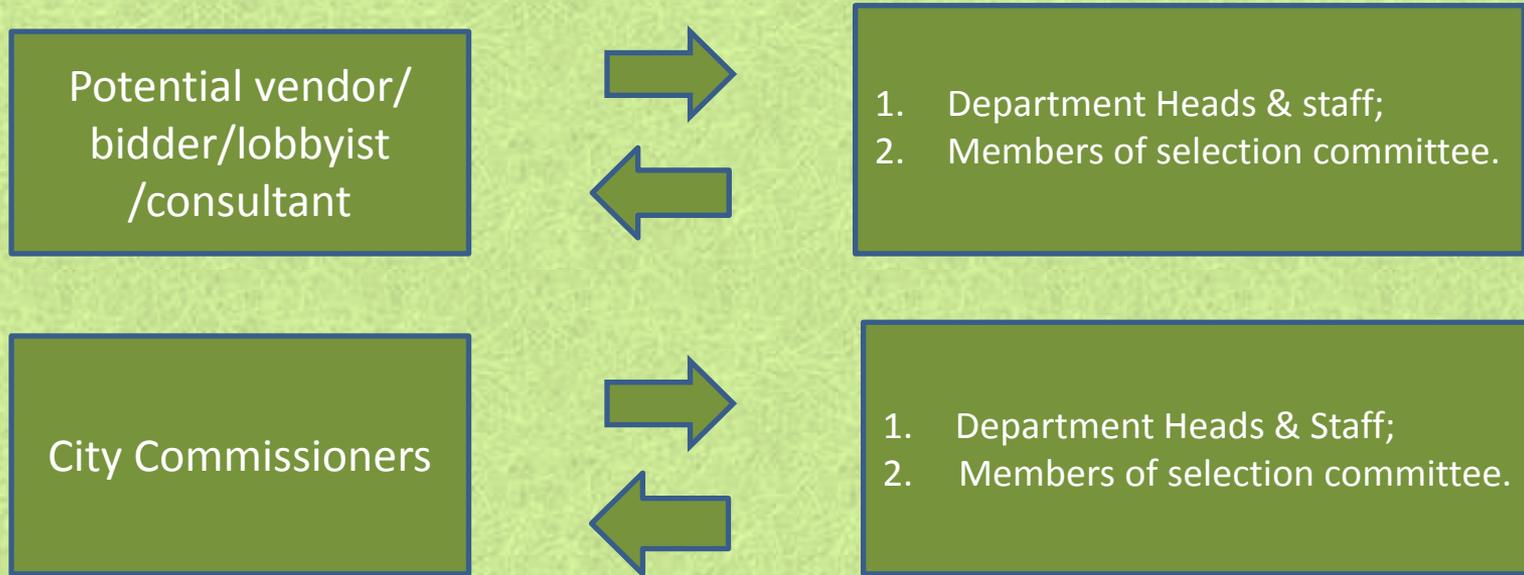
Contracts over \$25K

- 1) City Manager approves award OR
- 2) City Manager makes recommendation to City Commission

- If the recommendation is referred back to the Manager, the Cone is re-imposed until the Manager makes a subsequent written recommendation to Commission.



# Prohibited Oral Communications



# Exceptions

- **Informal bids;**
- **Emergency purchases;**
- **Duly noticed pre-bid conferences;**
- **Duly noticed site visits;**
- **Sole source procurements;**
- **Bid waivers;**
- **Oral presentations at duly noticed public meetings (including to City Commission);**
- **Competitive negotiations;**
- **Contract negotiations;**
- **Written communications to staff regarding process or procedure;**
- **Communications with City Attorney, Manager, ACM, Clerk or Chief Procurement Officer;**
- **Communications between City Commissioner, Manager, ACMs, Clerk and Attorney;**

# PENALTIES

- Award voidable;
- For City employee, disciplinary action;
- For Selection Committee member, barred from future service;
- For bidder/service provider, debarment.