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TO: 2020 Charter Review Commission

FROM: Kate Latorre, Assistant County Attorney *KML*

DATE: March 8, 2019

RE: Sunshine and Public Records Laws & Social Media

This memorandum is provided in response to a request from Chairperson Evans to elaborate on a few points made during the legal orientation presented at the February 25th meeting of the Charter Review Commission ("CRC"). The information that follows is intended to provide general guidance to the CRC regarding the application of the Sunshine and Public Records Laws specifically to CRC member participation in and presence on social media.

The Sunshine Law applies to any gathering or meeting of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. *See Hough v. Stembbridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). Further, the Sunshine Law is to be construed "so as to frustrate all evasive devices." *See e.g. Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). Florida courts, as well as the office of the Florida Attorney General, have concluded that a gathering or meeting between board or commission members does not have to be a formal one, and that the physical presence of two or more members is not necessary in order to find the Sunshine Law applicable. *See Op. Att'y Gen. Fla. 09-19* (2009). Thus, members of a public board may not use computers to conduct a private discussion among themselves about board business. *See Op. Att'y Gen. Fla. 89-39* (1989).

It follows that any communication between two or more members of the CRC on social media or any other form of electronic communication is subject to the Sunshine Law. This does not necessarily mean that CRC members may not be friends with, follow, or be linked with one another on social media. If members are already connected to fellow CRC members on social media, there is no requirement that the connection be severed.

That being said, CRC members are prohibited from engaging in any back and forth discussion on any matter that could foreseeably come before the CRC for official action. Any such communication must only occur at a noticed meeting, open to the public, at which minutes are taken consistent with the requirements of the Sunshine Law. Responding to another CRC member's post on a matter of public business or potential public business would be a violation of the Sunshine Law, subject to possible criminal and non-criminal penalties.

Similarly, the Public Records Law applies to any online or electronic records, including records originated on social media, when those records constitute public records. Therefore, if a social media post or comment is made or received in connection with the transaction of official CRC business, that post or comment would likely be considered a public record. CRC members would be responsible for maintaining the record – that is, not deleting or archiving it so that it would not be able to be accessed for public inspection and copying, if requested. Each CRC member is the custodian of their own public records, which means each member must maintain their public records and make them available for inspection and/or copying if such records become the subject of a public records request. The length of time the record must be maintained varies depending on the content of the record.

As your substantive work on the CRC commences, I encourage you to keep these points in mind as you engage with others using social media platforms. You are free to engage with one another on matters not related to your work on the CRC, whether it be online or in person. If you have any additional questions regarding this information, or if you want to discuss a specific situation or occurrence, please feel free to contact my office.