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# ***Mayor & Commissioner Orientation***

**Orange County Board of  
County Commissioners**

**Orange County Attorney's Office  
December 4, 2018**



# **MAYOR & COMMISSIONER ORIENTATION**

- **County Charter**
- **Sunshine Law**
- **Public Records Law**
- **Financial Disclosure**
- **Ethics and Gifts**
- **Public Hearings**



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# County Charter

- **Division of Powers (Charter, Section 108)**
  - Board – Establishment and adoption of policy
  - County Mayor Staff – Execution of policy
  
- **Powers and Duties of the Board (Charter, Article II)**
  - Adopt ordinances, resolutions and administrative regulations
  - Approve contracts (*e.g.*, real estate, goods and services, grants, litigation settlements)
  - Approve the annual budget
  - Study and improve county programs and services
  - Elect the vice-mayor
  - Confirm the appointment of all department, division and agency heads



# County Charter

**“The commissioners shall only devote such time as is necessary to perform the legislative responsibilities of their office” (Charter, Section 207)**

**“Except for purposes of inquiry and information, commissioners are prohibited from interfering with employees, officers, or agents under the direct or indirect supervision of the county mayor.” (Charter, Section 212)**



# County Charter

- **Power and Duties of the County Mayor (Charter, Sections 302 and 402)**
  - Manage the operation of all elements of county government
  - Negotiate and execute contracts and legal documents
  - Administer all contracts
  - Prepare annual budget
  - Appoint, dismiss and supervise all county department, division and agency heads
  - Supervise all county employees
  - Execute and enforce all ordinances, resolutions and policies of the Board, and all applicable state laws
  - Present the annual State of the County address
  - Serve as official county representative
  - Issue proclamations
  - Call the Board to session and chair Board meetings
  - Prepare Board agendas
  - Vote on all Board matters



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# SUNSHINE LAW

- **Provides right of access to governmental proceedings**
- **Applies to both elected and appointed boards**
- **General Rule – All meetings at which official acts are taken or public business is transacted or discussed shall be open and noticed to the public**





# SUNSHINE LAW

- **Sunshine Law applies to:**
  - Any meeting
  - Between two or more members of the same board
  - When discussing matters that may foreseeably come before that board
  
- **“Meeting” includes:**
  - BCC, advisory board, work group meetings
  - Telephone calls, text messages
  - Emails, other written correspondence
  - Informal discussions or deliberations



# **SUNSHINE LAW**

- **Sunshine Law meetings are subject to three basic requirements:**
  - **Meeting must be noticed to public**
  - **Meeting must be open to public**
  - **Minutes must be recorded**



# **SUNSHINE LAW**

- **“Reasonable notice”**
  - **Not defined by statute**
  - **Notice given at such time and in such manner that media and general public may attend meeting**
  - **County regulations require at least two full working days notice**
  - **Dependent on circumstances and type of meeting**



# **SUNSHINE LAW**

- **Meetings must be open to public**
  - **Location easily accessible to public**
  - **Adequate size**
  - **May not discriminate against or restrict access to public**



# **SUNSHINE LAW**

- **Minutes**
  - **Promptly recorded in writing**
  - **Available and open to public for inspection and copying**
  - **Consist of brief notes reflecting events of meeting**
  - **Audio recording permitted but not required**



# **SUNSHINE LAW**

- **Penalties**

- **Non-criminal:**

- **Fine up to \$500**

- **Criminal:**

- **Knowing violation is 2<sup>nd</sup> degree misdemeanor**

- **Fine up to \$500**

- **Imprisonment up to 60 days**

- **Suspension or removal from office by Governor**



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# **PUBLIC RECORDS LAW**

- **Provides right of access to government records**
- **General Rule – Every person has the right to inspect or copy any public record made or received in connection with the transaction of the official business of any public body**
- **Exemptions provided by statute**

**Article I, Section 24, Florida Constitution  
Section 119.07, Florida Statutes**





# **PUBLIC RECORDS LAW**

- **Right of access applies to:**
  - All materials;
  - Made or received by an agency;
  - In connection with the transaction of official business; and
  - Used to perpetuate, communicate or formalize knowledge
- **Includes all documents regardless of physical form, characteristics, or means of transmission**
  - Drafts
  - Telephone logs
  - Emails
  - Computer discs



# PUBLIC RECORDS LAW

- **Penalties**
  - **Non-criminal:**
    - **Fine up to \$500**
  - **Criminal:**
    - **Knowing violation is 1<sup>st</sup> degree misdemeanor**
    - **Imprisonment up to one year**
    - **Suspension or removal from office**



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# **FINANCIAL DISCLOSURE**

- **County Commissioners required to make state and local financial disclosures**
- **Annual disclosure required by Florida law**
  - Full and Public Disclosure of Financial Interests (Form 6)
  - Assets, liabilities, sources of income, net worth, etc.
  - Due at time of qualifying and annually by July 1
  - Filed with Florida Commission on Ethics
- **Quarterly disclosure required by County Ordinance**
  - Filed with Agenda Development Office
  - Required in addition to annual state filing



# FINANCIAL DISCLOSURE

- **County ordinance requires quarterly disclosure of:**
  - **Business Associates**
  - **Business Entities in which the Commissioner has a Significant Interest**
- **Significant Interest means:**
  - **More than \$1,000 of assets or capital stock in any Business Entity**
  - **Return on investment valued at more than \$1,000 within previous 12-month reporting period**



# **FINANCIAL DISCLOSURE**

- **County ordinance requires supplemental disclosure of:**
  - **All new Business Associates**
  - **All Business Entities in which Commissioner acquires a Significant Interest**
  - **All known Parent Entities and Subsidiary Entities**
  - **Due within seven (7) days of the formation of the Business Entity or the date the Commissioner enters into the Business Relationship with the new Business Associate.**



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# ETHICS

- **Generally required to vote on official decisions, rulings or actions unless a conflict of interest exists**
- **Certain conflicts require abstention, others allow abstention**
- **Voting conflict causing a “special private gain or loss” to public officer, or a business associate or relative of the public officer requires abstention**
- **“Special private gain or loss” is almost always financial in nature**
- **Prior to vote being taken:**
  - **Publicly state nature of interest**
  - **Abstain from voting**
  - **File voting conflict memo with Clerk within 15 days**





# ETHICS

- **County ordinance requires disclosure of:**
  - **Current Business Associates bringing matters before the BCC**
  - **Matters before BCC that will benefit a person who was a Business Associate within the previous two-year period**
- **Commissioner may abstain from voting on matter if:**
  - **Brought by or benefits a current Business Associate**
  - **Brought by or benefits a person who was a Business Associate within the previous two-year period**
- **Prior to vote being taken:**
  - **State nature of conflict**
  - **File voting conflict memo with Clerk within 15 days**



# ETHICS

- **County Ordinance requires additional disclosure if:**
  - **Commissioner votes favorably on a matter and within one year, Commissioner enters into a Business Relationship with person who brought matter before BCC**
  - **Disclosure made verbally at next BCC meeting following knowledge of Business Relationship**
- **Obligation ceases after date Commissioner vacates office**



# ETHICS

- **County Commissioner required to complete 4 hours of ethics training each calendar year**
- **Training must address County government, Code of Ethics, public records, public meetings, etc.**
- **Examples:**
  - **Continuing legal education classes**
  - **Professional education classes**
  - **Seminars**
  - **Presentations**



# GIFTS

- **Anything of value given for nothing in return**
  - **Money (cash or discounts)**
  - **Food & beverages**
  - **Services**
  - **Real estate, use of real estate**
  - **Membership dues**
  
- **Gifts do not include:**
  - **Salary, benefits, commissions associated with employment**
  - **Campaign contributions**
  - **Awards or plaques given in recognition of service**



# GIFTS

- **May not ask for or accept anything of value based on understanding that it will influence your vote**
- **May not accept anything of value when you know or should know it is intended to influence your vote**
- **May not solicit gifts from County vendor, political committee, lobbyist or employer of lobbyist**
- **May not accept gifts valued at more than \$100 from County vendor, political committee**
- **Gifts valued at more than \$100 must be reported quarterly to Florida Commission on Ethics (Form 9)**



# GIFTS

- **County ordinance prohibits acceptance of any gifts from lobbyist or principal retaining lobbyist**
- **Exceptions:**
  - **Food or beverage not exceeding \$35.00 in value provided at meetings of professional, civic, nonprofit, or charitable organizations**
  - **Gifts valued at less than \$5.00**
  - **Food or beverage of any value provided at function where mayor or commissioner is featured guest/speaker, and the function is either open to public or other community leaders are invited, regardless of whether admission charged**
  - **Food or beverage of any value served at stand-alone social event**
  - **Gift from relative**



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# Public Hearings

## ■ Quasi-Judicial Hearings

### —Types of quasi-judicial hearings include:

- Rezoning (“straight” or PD)
- Substantial changes to PD zonings
- Variances
- Special exceptions
- Appeals from Zoning Manager determinations
- Preliminary subdivision plans
- Shoreline alteration permits
- Conservation area impact permits





# Public Hearings

- **Quasi-Judicial Hearings (Con't)**
  - **Quasi-judicial hearings on the BCC agenda are denoted with a “check mark”**
  - **The BCC sits as an informal judicial tribunal**
  - **Each party must be given notice and a fair opportunity to be heard**
  - **BCC's decision must be supported by substantial competent evidence and must not depart from the essential requirements of law**



# Public Hearings

- **Ex Parte Communications**

- **An attempt to communicate with one or more BCC members in advance of the hearing**
- **When the other side is not present, such a communication prior to a quasi-judicial hearing is known as an “ex parte” contact**
- **Another type of ex parte contact can be a site visit**



# Public Hearings

- **Ex Parte Communications (Con't)**
  - **It is the responsibility of the party who communicated with the BCC member, not the BCC member, to disclose the ex parte contact on the record at the quasi-judicial hearing**
  - **Timely disclosure allows the other party an opportunity to inquire about or rebut such ex parte communication during the quasi-judicial hearing**
  - **BCC member is encouraged to inform the person who makes the ex parte contact that he/she must and will reserve judgment on the matter until the quasi-judicial hearing is held and closed**



# Public Hearings

- **Quasi-Legislative Hearings**
  - **Other public hearings held by the BCC are legislative in nature**
  - **Types of legislative hearings include:**
    - **Ordinances, resolutions, comprehensive plan amendment hearings, petitions to vacate, MSBU and MSTUs**
  - **Unlike quasi-judicial hearings, the BCC has wide latitude to adopt, deny or modify the proposed legislative action**



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**Questions?**

***County Attorney's Office at 407-836-7320***

***Florida Commission on Ethics at 850-488-7864***

***<http://www.ethics.state.fl.us/>***

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