

February 24, 2021 Harbor Capacity Steering Committee Meeting

WEDNESDAY, FEBRUARY 24, 2021

5:30 PM

***Core Value of the Month -Stewardship*

Please turn off all Cell Phones and like devices prior to the start of the meeting.

1. **CALL TO ORDER/PLEDGE OF ALLEGIANCE/ROLL CALL**
2. **INTRODUCTION**
 - A. **Nomination of Chair and Vice Chair**
 - B. **Sunshine Law Information- City Attorney**
3. **HARBOR AND WATERWAYS CARRYING CAPACITY STUDY OVERVIEW**
 - A. **Opening Remarks- By Director**
 - B. **Presentation by Meredith LaDart, Project Manager, US Army Corp of Engineers**
4. **SURVEY WALKTHROUGH**
5. **QUESTIONS FROM THE COMMITTEE**
6. **PUBLIC COMMENTS**
7. **DIRECTOR'S REPORT**
8. **MEMBER REPORTS**
 - A. Jason Klosterman
 - B. Mike Buckingham
 - C. Michael Dombrowski
 - D. John Stephens
 - E. Eddie Morgan
 - F. Capt. Jim Green III
 - G. Ian Blaise
 - H. Patrick Wilson
9. **NEXT MEETING DATE: March 24, 2021**
10. **ADJOURNMENT**

If a person decides to appeal any decision made by the City Council, committee, board, panel, or agency 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 will may need to ensure that a record of the verbatim record of the proceedings is made, which record includes the testimony and evidence upon the appeal is to be based. "Persons with disabilities who require assistance to participate in this meeting are requested to notify the City Clerk's Office 850.837.4242 at least 48 hours in advance".

RESOLUTION 19-27

The City of Destin's Enhanced Public Records
Policy

BRIEF HISTORY OF THE CITY'S PUBLIC RECORDS POLICIES

- ▶ In addition requirements set forth in Florida Statutes, the City has had in place additional, internal requirements and protocols since 2009 relating to public records and how to handle public record requests. These policies help ensure that the law is adhered to and that the City's goal of full transparency is met.
- ▶ See, Operating Instruction ADM-05; Operating Instruction ADM-35; Operating Instruction ADM-56.
- ▶ These policies were legally sufficient and represented more stringent requirements than those in place at most state agencies and local governments. In fact, most state agencies and local governments do not have any written policy in place and rely strictly on Chapter 119, Florida Statute. See, The Florida Public Records Act in the Era of Modern Technology, Ralph A. DeMeo and Lauren M. DeWeil (Florida Bar Journal, Vol. 92, No. 9).

BRIEF HISTORY OF THE CITY'S PUBLIC RECORDS POLICIES

- ▶ While legally sufficient, the City's internal Public Records Policies were disjointed and located in separate locations, making compliance more difficult than necessary.
- ▶ The attorneys and City staff identified this as an area that could be strengthened and made more efficient by adopting a new policy containing all internal requirements in a single location and strengthening mechanisms already in place beyond those found in Chapter 119, Florida Statutes.
- ▶ On November 4, 2019, the attorneys and City staff presented Resolution 19-27 for Council's consideration and Council adopted the Resolution in its entirety.
- ▶ Resolution 19-27 is substantially similar to the City of Tallahassee's policy, which legal scholars believe is the "model template for other agencies and local governments to adapt and apply." The Florida Public Records Act in the Era of Modern Technology, Ralph A. DeMeo and Lauren M. DeWeil (Florida Bar Journal, Vol. 92, No. 9)

EMAILS -- DO'S AND DON'TS FOR ELECTED OFFICIALS

Do's

- ▶ Use your @cityofdestin email address for all correspondence relating to City business. (D.05).
- ▶ If you receive an email at your private email address, then immediately transfer it to your @cityofdestinemail address. (D.05)

Don'ts

- ▶ Use any other email address for any correspondence relating to City business. (D.05)

TEXT MESSAGING & OTHER FORMS OF INSTANT, WRITTEN COMMUNICATION (E.G., DIRECT MESSAGES ON FACEBOOK, TWITTER, INSTAGRAM, SKYPE, ETC.) -- DO'S AND DON'TS FOR APPOINTED OFFICIALS

Do's

- ▶ If you receive or send a text message from your private phone, then you must transmit the text message to your City issued phone or @cityofdestin email address.
(D.06)

Don'ts



SOCIAL MEDIA ACCOUNTS -- DO'S AND DON'TS FOR APPOINTED OFFICIALS

Do's

- ▶ If you maintain social media accounts, then you must maintain all public records relating to your board or committee on such accounts. (D.07).
- ▶ If you maintain accounts and the City receives a public records request, then you must thoroughly search your account and produce any responsive material to the City Clerk. (D.07)

Don'ts

- ▶ Delete any social media account relating to the business of your board or committee. (D.07, E.01)
- ▶ Delete any public or private message that you may have created or received from any individual or entity relating to the business of your board or committee. (D.07, E.01).

COMMENTS/QUESTIONS

A series of several parallel white lines of varying lengths and positions, all slanted diagonally from the bottom-left towards the top-right, located in the lower right quadrant of the slide.

Sunshine Law Handout

*Anchors Smith Grimsley, PLC
Kyle S. Bauman, Esq.
City of Destin City Attorney*

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Cell #: (850) 585-4775
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Last Updated: November 2020

****** This Handout is intended to be used as a basic overview of the Sunshine Law and no Board or Council Member should rely on it when taking specific actions which may be impacted by the Sunshine Law. Please contact me and City staff if you have specific questions before taking action and we will respond to you as quickly as possible. ******

The 2018 Government in the Sunshine Manual can be found at:

[http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AXJGEU/\\$file/2018+Government+in+the+Sunshine+Manual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AXJGEU/$file/2018+Government+in+the+Sunshine+Manual.pdf)

Laws can be found at:

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WHAT IS THE SUNSHINE LAW?

- Two interrelated but separate laws are colloquially referred to as the “Sunshine Law”:
 - **(1) Public Records Act** – Chapter 119, Fla. Stat. (2018)
 - Primary Purpose: Provide the public “a right to access to the records of the state and local governments as well as to private entities acting on their behalf.”
 - http://leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0119/0119ContentsIndex.html&StatuteYear=2018&Title=%2D%3E2018%2D%3EChapter%20119
 - **(2) Government in the Sunshine Law** – § 286.011, Fla. Stat. (2018); Art. I, § 24, Fla. Const.
 - Primary Purpose: Provide the “public a right of access to governmental proceedings of public boards or commissions at both the state and local levels.”
 - http://leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0200-0299/0286/Sections/0286.011.html
- Florida has arguably the broadest, most “public-friendly,” laws in the entire country and you immediately became subject to these laws the second you were appointed to this Board.

THE PUBLIC RECORDS ACT

- Lengthy statute, but application to advisory boards is relatively simple.
- General Rule: Any record you generate or receive in connection with your role on a City board is a public record and any member of the public has the right to request to view these records at any time. *See* Inf. Op. to Nicoletti, November 18, 1987.
- What is a “public record”?
 - “All materials used or received in connection with official business *used to perpetuate, communicate, or formalize knowledge.*”
 - “Public Records” are *very* broad, essentially including *any* written document and most non-written material. For example:
 - Physical documents such as: “papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software.” § 119.011(12), Fla. Stat. (2018).
 - Electronic documents such as: emails, documents generated in word processing software (including this Handout!), text messages, etc.
- Are there any exemptions?
 - Yes, there are lengthy exemptions listed in the statute, however, most of these will **not** apply to advisory boards. These exemptions are sometimes complex and heavily litigated.
 - Therefore, if the City receives a public records request and City staff asks you to turn over public records related to the particular subject contained in that request, do **not** try to determine by yourself whether the document is (a) a public record; and (b) whether an exemption is applicable. Instead, contact my office and City staff and allow us the opportunity to review the record.
 - **If the “public record” is located on my personal device is it exempted?**
 - **NO! This is a common misconception. Just because something is located only on your personal device does not mean that it is exempt.** The inquiry is whether the item is “used to perpetuate, communicate, or formalize knowledge” relating to City business, and where this information is located is irrelevant.
- What happens if I violate the Public Records Act?
 - **Knowing Violations** are a first degree misdemeanor, punishable by removal from office, up to one year in prison, and/or a \$1000 fine.
 - “**Non-knowing Violations**” are non-criminal but still subject to a \$500 fine.
- Rules of Thumb: **When you generate or receive any document relating to your position, always presume that the document is a “public record” that will eventually be subject to the public’s view. Also, if you generate receive a “public record,” retain it and do not destroy it to ensure compliance with the Public Records Act.**

GOVERNMENT IN THE SUNSHINE LAW

- Shorter statute, but it has generate tons of litigation and its application to advisory boards is more impactful than the Public Records Law.
- Basic Sunshine Law Requirements:
 - (1) “Meetings” of public boards or commissions must be open to the public;
 - (2) Reasonable notice of these meetings must be given to the public; and
 - (3) Minutes of the meetings must be taken, promptly recorded, and open to public inspection.
 - Most of these you do not need to worry about because City staff ensures compliance. Your primary concern is making sure that “meetings” do not take place outside publicly noticed meetings.
- What is a “meeting”?
 - The Sunshine Law defines “meeting” *very* broadly to include:
 - (a) informal meetings of two or more members; and
 - (b) electronic communications between two or more members regarding any foreseeable matter which could come before the board.
- Examples of specific scenarios:
 - One member sends a text message to another board member saying he is “against agenda item 2(b).”
 - This is an obvious but important example of strictly forbidden actions.
 - One board member sends an email to another board member’s husband stating that he is “against agenda item 2(b).”
 - Also likely a violation. You cannot use an intermediary to do indirectly what you cannot do directly.
 - One board member sends an email to City staff explaining why they are “against agenda item 2(b).”
 - Because staff are not elected or appointed officials, this communication is likely ok. If, however, you have reason to believe staff might disclose this information to other board members, then it is a violation.
 - One board members emails strictly factual information regarding item 2(b) to other board members.
 - Likely, it is technically ok to share strictly factual information directly with each other, however, because of how the information could be interpreted it is strongly discouraged. The better practice is to ask staff to include the information in the Agenda material.
 - Two board members carpool to a meeting.
 - This is ok, so long as you do not discuss any matter which foreseeably could come before the board.
 - However, because of the possible appearance of impropriety, these types of actions are discouraged.
 - Two board members are at the same charity event.
 - This is ok, so long as you do not discuss any matter which foreseeably could come before the board with the other board member.
 - The board took official action on agenda item 2(b) at a publicly noticed meeting. After the meeting, two board members discuss agenda item 2(b).

- Because boards have the inherent authority to change their positions on items at any time it is “reasonably foreseeable” that the item might come before the board again and, therefore, this type of action is strongly discouraged.
- What happens if I violate the Government in the Sunshine Law?
 - **Knowing Violations** can result in 2nd degree misdemeanor charges, with penalties up to 60 days in jail and up to a \$500 fine.
 - **“Not-knowing” Violations** are non-criminal but still subject to a fine of up to \$500.
 - Also, failure to comply could **void the board’s actions** relating to the subject matter of the violation.
- Rules of Thumb: **Always err on the side of caution and, outside of publicly noticed meetings, do not engage in any discussions or communications with other elected or appointed officials regarding pending matters before your board or any reasonably foreseeable matter that might come before your board. Also, generally it is ok for you to privately communicate with City staff and City attorneys regarding such matters provided there are no other elected or appointed city officials present or copied on the communication.**

STANDARDS OF CONDUCT FOR PUBLIC OFFICERS

Anchors Smith Grimsley, PLC
Kyle S. Bauman, Esq.
City of Destin City Attorney

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Last Updated: November 2020

**** This Handout is intended to be used as a basic overview of the Standards of Conduct for Public Officials and no Board or Council Member should rely on it when taking specific actions which may be impacted by the Chapter 112, Florida Statutes. Please contact me and City staff if you have specific questions before taking action and we will respond to you as quickly as possible. ****

Laws can be found at:

<http://leg.state.fl.us/>

WHAT ARE THE STANDARDS OF CONDUCT FOR PUBLIC OFFICERS?

*“A public office is a public trust.”
– Article II, Section 8, Florida Constitution*

- **Chapter 112.313, Florida Statutes**, describes a series of “standards of conduct” public officers must adhere to. Essentially, the standards of conduct are the basic statutory principles of ethics public officials are legally obligated to adhere to.

GIFTS

- **Solicitation or Acceptance of Gifts (Bribery)**: You are not allowed to solicit or accept anything of value, including a gift, loan, reward, promise of future employment, favor or service, based upon any understanding that your vote, official action, or judgment would be influenced by the gift or promise. § 112.313(2), Fla. Stat.
- **Unauthorized Compensation**: You cannot accept anything of value when you know or should know that the item is being given to influence your vote or other action. § 112.313(4), Fla. Stat.
 - Also applies to your spouse and minor children.
- You are always prohibited from soliciting any gift and from accepting any gift when the gift is intended to influence your actions as an elected official.

BUSINESS PROHIBITIONS

- **Doing Business with the City:** You are not allowed to purchase, rent, or lease any realty, goods, or services for the City from any business entity of which you are an officer, partner, director, or proprietor or in which the officer has a material interest. § 112.313(3), Fla. Stat.
 - Also applies to your spouse and children.
- **Conflicting Employment or Contractual Relationships:** You cannot hold any employment or contractual relationship with any entity which is subject to the regulation of or is doing business with the City. §112.313(7), Fla. Stat.
 - Legal tests to determine whether there is a conflict:
 - Is the conflict frequently recurring?
 - Does the conflict impede the full and faithful discharge of public duties?

GENERAL PROHIBITIONS

- **Misuse of Public Position:** You cannot corruptly use or attempt to use your position or any property or resource within your trust to secure special privilege, benefit, or exemption for yourself. § 112.313(6), Fla. Stat.
- **Disclosure or Use of Certain Information:** You cannot disclose or use information not available to members of the general public and gained by reason of your official position for your personal gain or benefit or the personal gain or benefit of any other person or business entity. § 112.313(8), Fla. Stat.

REQUIRED ETHICS TRAINING & FINANCIAL DISCLOSURE

- All elected municipal officials must complete at least 4 hours of ethics training each year. § 112.3142, Fla. Stat.
- All elected municipal officials must file a financial disclosure with the Florida Commission on Ethics no later than July 1 each year. § 112.3144, Fla. Stat.

CONSEQUENCES

- Generally, this statute is policed by the Florida Commission on Ethics and violation of the statute can lead to punishments including impeachment, removal from office, suspension from office, public censure and reprimand, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received because of the violation committed. § 112.317, Fla. Stat.
- Can also carry criminal penalties in some instances.

VOTING CONFLICTS

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WHAT IS A VOTING CONFLICT?

§ 112.3143, Florida Statutes

- A voting conflict arises when you are prohibited from voting on a specific matter coming before your board. In instances in which you do not have a conflict, you must vote. § 286.012, Fla. Stat.
- Designed to avoid situation where a public officer is tempted to exercise the powers of his or her office to promote the interest of someone other than the public because of that someone's relationship to the officer.

Statutory Language:

- You cannot vote on any measure which would
 - inure to your "special private gain or loss,"
 - which you know would inure to the special private gain or loss of any "principal by whom you are retained" or to the parent organization or subsidiary of a corporate principal by which you are retained, or
 - which you know would inure to the special private gain or loss of your "relative" or business associate.

Definitions:

- **"Principal by whom retained"** – means an individual or entity that has permitted or directed another to act on behalf of the principal for compensation, salary, pay, or consideration. E.g., your client or employer. Also, the parent, subsidiary, or sibling organization of your client or employer.
- **"Relative"** – means your father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

- **“Business associate”** – means any person or entity engaged in or carrying out a business enterprise with a public officer, public employee, or candidate as a partner, joint venture, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property. § 112.312(4), Fla. Stat.
- **“Special private gain or loss”** – means an economic benefit or harm that would inure to you, your relative, your business associate, or principal.

WHO IS PROHIBITED FROM BENEFITTING?

- Four classes of people are prohibited from benefiting from the public officer’s vote:
 - (1) The public officer;
 - (2) A relative;
 - (3) A business associate;
 - (4) A principal, subsidiary, or parent corporation of a principal.

WHAT KIND OF BENEFITS ARE PROHIBITED?

“Special Private Gain or Loss”

- This is the test by which voting conflicts are determined. There are four factors to look for:
 - (1) The size of the class affected by the vote;
 - (2) The nature of the interests involved;
 - (3) The degree to which the interests of all members of the class are affected by the vote;
 - (4) The degree to which the officer, relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.
- Standards – Depending on the type of special gain or loss, three different “standards” are considered:
 - *Special private gain or loss* – the gain or loss must be *special* and *private* to the officer, relative, business associate, or principal. Cannot be general.
 - *Size of the class test* – typically, the Commission on Ethics applies the “1% Rule” which means that if the special gain or loss of people prohibited from benefitting is less than 1% of the total class affected, then there is no voting conflict.
 - *Remote and speculative test* – generally, the special private gain or loss must be somewhat concrete and certain in order to rise to the level of a voting conflict.

WHAT TO DO WHEN YOU HAVE A CONFLICT

- Four steps are required:
 - (1) *Announce* the conflict at the meeting;
 - (2) *Abstain* from voting on the matter;
 - (3) *Disclose* the conflict on the Conflict Form provided to you by the City Clerk;
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- You are also prohibited from participating in discussion on the matter.

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