



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.9.

4/5/2022

Subject:

Appointment(s) / Reappointment(s)

Fiscal Impact:

N/A

Dept/Office:

County Manager's Office

Requested Action:

It is requested the Board of County Commissioners approve the District appointment(s) / reappointment(s). The Board's approval of this item will acknowledge the District Commissioner appointment(s) and approve at-large appointment(s).

Summary Explanation and Background:

Clerk to the Board Instructions:



April 6, 2022

Sharon Spikes
3682 Catalina Drive
Cocoa, FL 32926

Dear Ms. Spikes:

Re: Appointment to Cocoa West Community Center Advisory Committee

On the recommendation of Commissioner Rita Pritchett, the Board of County Commissioners, in regular session on April 5, 2022, acknowledged your appointment to the Cocoa West Community Center Advisory Committee, replacing Kim Gipson. Said term of appointment expires December 31, 2023. Enclosed are memorandums explaining the "Sunshine Law" and changes to Voting Conflict Law for your information.

Your willingness to serve the citizens of Brevard County in this capacity is appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

for Deanna Scott
Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

cc: Commissioner Pritchett
Parks and Recreation Director



BOARD OF COUNTY COMMISSIONERS

COMMISSIONER RITA PRITCHETT, DISTRICT 1

7101 S Highway 1
Titusville, Florida 32780
d1.commissioner@brevardfl.gov

FROM THE DISTRICT 1 COMMISSION OFFICE

ADVISORY COMMITTEE APPOINTMENT CANDIDATE

Name of Committee: COCOA WEST COMMUNITY CENTER
ADVISORY COMMITTEE

Name of Appointee: Sharon Spikes

Home Address: 3682 Catalina Drive, Cocoa FL 32926

Cell Number: 321-266-5991

Home Number:

Email Address: sharonspikes83@gmail.com

Reappointment: Yes () or No (X)

Replacing: Kim Gipson

Term of Appointment: 04/05/2022-12/31/23

Office Contact: Carol Mascellino

Date of Request: 04/5/2022

A waiver of the term limit is recommended due to difficulty to fill the
appointment? Yes () or No (X)



County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

Inter-Office

Memo

TO : Advisory Board Members

FROM: Melissa H. Powers, Assistant County Attorney

DATE: January 18, 2022

SUBJ : Government in the Sunshine/Florida's Public Meetings Law

Florida's Government-in-the Sunshine Law provides a right of access to governmental proceedings. The public policy behind the Sunshine Law is to have all deliberations by a public body conducted in public meetings of which the public and the media have received advance notice.

1. What are the requirements of the Sunshine Law?

The Florida Government in the Sunshine Law, Section 286.011, Florida Statutes, contains three basic requirements:

- a. meetings of public boards or commissions must be open to the public;
- b. reasonable notice of such meetings must be given; and
- c. minutes of the meeting must be taken.

2. Who does it apply to?

All boards or commissions of Brevard County are subject to the Sunshine Law. The law is equally applicable to advisory boards such as this Committee.

3. What is a "meeting" which is subject to the Sunshine Law?

Florida courts have repeatedly stated that it is the entire decision-making process to which the Sunshine Law applies and not merely to a formal assemblage of a public body at which voting to ratify an official decision is carried out. Thus, the statute extends to "discussions and deliberations" as well as to formal action taken by a public body. Therefore, the law is generally applicable to any gathering where two or more members of a public board or commission discuss some matter on which foreseeable action will be taken by the board, commission or committee. The term "meeting" has been found to include briefing sessions,

workshop meetings, informal discussion and other meetings of the public body where no formal vote is taken.

4. Public Meetings

a. Notice and Recording:

Procedurally, the Sunshine Law requires the giving of notice to members of the public as to the time and place of the proposed meeting of a public entity, such as yours, and the subject matter to be discussed. The notice should include, among other things, the time, place, and if available, an agenda of the subject matter. Section 286.011(2), Florida Statutes, states that all public meetings must be "recorded" and the record made available for public inspection. The recording need not be a tape or verbatim transcript, but must be minutes accurately reflecting actions taken at the meeting.

b. Quorum:

The general rule is that a majority of members of a public board must be physically present in order to have a quorum. In some circumstances the Governor may waive this requirement (for example during the earlier stages of the pandemic), however, the executive order issued by the Governor earlier in 2020 on this subject has expired and the general physical quorum requirement is currently in effect. If a majority of board members are physically present at the public meeting, "the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;]...[w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board." AGO 03-41

c. Voting:

The use of secret ballot at public meetings is not acceptable. If a vote is required by the council members then a vote must be made by each member unless there is a bona fide conflict of interest.

d. Voting Conflicts of Interest:

As an appointed member of this Committee, the State's conflict of interest laws apply to you. All members must keep in mind the possibility of a voting conflict of interest arising as to any items that might come before the Board based not only on their employment relationship, but upon other situations.

Section 112.3143(3), Florida Statutes, provides that:

No...local public officer shall vote in his official capacity upon any measure which would inure to his special private gain;

which he knows would inure to the special private gain of any principal by whom he is retained or to the parent organization or subsidiary of a corporate principal by which he is retained, other than an agency as defined in s. 112.312(2); or which he knows would inure to the special private gain of a relative or business associate of the public officer.

For a voting conflict to arise, "special private gain" must inure to the council member, a principal or parent organization or subsidiary of a corporate principal by whom he/she is retained, a relative, or a business associate. The test formulated by the Commission on Ethics is based in part on the size of the class of persons who stand to benefit from the measure and also based upon the remote and speculative test. Where the class of persons is large, a special gain will result only if there are circumstances unique to the member to gain more than the other members of the class. Where the class of person benefitting from the measure is extremely small, the possibility of special gain is much more likely. Additionally, if the gain is of a questionable nature or magnitude, or is too remote or speculative, then there may not be "special private gain."

In addition to abstaining from the vote, if the member intends to "participate" in the decision prior to the meeting, the appointed board member should file a memo stating the conflict prior to the meeting, Section 112.3143(4), Florida Statutes. "Participate" means "any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction." The memo shall be incorporated into the minutes of the meeting and read publicly at the meeting. If the member is only participating in the discussion at the meeting, then the conflict should be disclosed orally at the meeting before participating, and a memo should be filed within fifteen (15) days after the vote. No member may participate (attempt to influence the vote) without making this disclosure prior to the discussion on the issue.

e. Public Participation:

This committee is required to allow for public comment to assist in the decision-making process in accordance with Section 2-214, Brevard County Code of Ordinances. This body shall establish procedures for taking public comment at all committee meetings. Two kinds of public comment shall be taken:

1. Relevant comment when the committee discusses a particular issue or takes a final vote on any given issue; and
2. Comment which brings new business or issues before the committee.

Each speaker shall be given at least three minutes to speak, with provision for an extension of time by the chairman or majority vote of the committee. Speakers

may be required to give their names and addresses for the record, however, social security numbers shall not be required.

Additionally, effective October 1, 2013, the State Legislature implemented legislation that provides for the public to be heard at public meetings which are not specifically exempted by the statute. This law requires that members of the public be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to comment does not have to occur at the same meeting at which official action is taken if the opportunity:

1. Occurs at a meeting that is during the decision-making process; and
2. Is within reasonable proximity in time before the meeting at which the board or commission takes official action.

Per the Florida statute, the opportunity to be heard is subject to limited rules or policies adopted by the board/commission. The rules/procedures are limited, per the statute, to the following: guidelines regarding the amount of time an individual has to address the board or commission; procedures for allowing representatives of groups or factions on a proposition to address the board or commission (rather than all members of such groups or factions) at meetings in which a large number of individuals wish to be heard; procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard to indicate his or her support, opposition, or neutrality on a proposition and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or designate a specified period of time for public comment. Failure to comply with this state statute is subject to injunctive relief and assessment of attorney's fees. Section 286.0114, Florida Statutes.

Given the County Code requires the opportunity for comment at all committee meetings, you should provide for public comment at all your meetings.

5. Does this mean we can't have lunch?

The Attorney General's Office urges public boards or commissions to avoid the use of "luncheon meetings" to discuss board or commission business. These meetings may have a "chilling" effect upon the public's willingness or desire to attend. People who would otherwise attend such a meeting may be unwilling or reluctant to enter a public dining room without purchasing a meal and may be financially or personally unwilling to do so. Discussions at such meetings by members of the board or commission which are audible only to those seated at the table may violate the "openness" requirement of the law. Public boards or commissions are, therefore, advised to avoid meetings at which the public and the press are effectively excluded.

Members of a public board or commission are not, however, prohibited under the Sunshine Law from meeting together socially provided that matters which may come before the board or commission are not discussed at such gatherings.

Members of a public board or commission are also not prohibited under the Sunshine Law from conducting inspection trips. However, if discussions relating to the business of the board will occur between board members, advance notice must be given; the public must be afforded a reasonable opportunity to attend, and minutes must be promptly recorded and made available for inspection. In some cases, it may not be possible to invite the general public to attend such trips. In these instances, inspection trips made by members of a public board, together with staff and officials of other organizations and members of the press, are not secret meetings in violation of section 286.011 even though the general public is not invited to participate. However, members of the public board should avoid discussions with fellow board members regarding public business while on such trips.

6. Beware of the Consequences!

Section 286.011(3), Florida Statutes, provides that any person knowingly violating the Sunshine Law by attending a meeting not held in accordance with the meetings requirements may be guilty of a misdemeanor of the second degree, punishable by up to sixty (60) days in jail and/or a \$500 fine. All other violations are subject to a \$500 fine. In addition, attorneys' fees may be assessed against a party found in violation if a civil action is brought to enforce the law.

7. Conclusion.

In summary, Board members should not discuss with each other, directly or indirectly, items that will or could foreseeably be discussed and acted on at the board's/committee's public meeting. This is only a brief summary of the Sunshine Law. It is not inclusive of the areas when the law applies. If you have questions concerning specific application, please seek guidance from the County Attorney's Office. If you know of a particular factual situation that may constitute a conflict of interest and some doubt exists whether the conflict exists, an advisory opinion from the Commission on Ethics can be obtained.

Reference: A valuable source in this area is the Government in the Sunshine Manual – new editions issued annually.

Select Year: 2021

The 2021 Florida Statutes

Title X
PUBLIC OFFICERS, EMPLOYEES,
AND RECORDS

Chapter 112
PUBLIC OFFICERS AND EMPLOYEES:
GENERAL PROVISIONS

[View Entire
Chapter](#)

112.3143 Voting conflicts.—

(1) As used in this section:

(a) “Principal by whom retained” means an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one’s client, employer, or the parent, subsidiary, or sibling organization of one’s client or employer.

(b) “Public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(c) “Relative” means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(d) “Special private gain or loss” means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

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, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

(2)(a) A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss. Any state public officer who abstains from voting in an official capacity upon any measure that the officer knows would inure to the officer’s special private gain or loss, or who votes in an official capacity on a measure that he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained other than an agency as defined in s. 112.312(2); or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer, shall make every reasonable effort to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. If it is not possible for the state public

officer to file a memorandum before the vote, the memorandum must be filed with the person responsible for recording the minutes of the meeting no later than 15 days after the vote.

(b) A member of the Legislature may satisfy the disclosure requirements of this section by filing a disclosure form created pursuant to the rules of the member's respective house if the member discloses the information required by this subsection.

(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

(5) If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

-(6) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

History.—s. 6, ch. 75-208; s. 2, ch. 84-318; s. 1, ch. 84-357; s. 2, ch. 86-148; s. 5, ch. 91-85; s. 3, ch. 94-277; s. 1408, ch. 95-147; s. 43, ch. 99-2; s. 6, ch. 2013-36.