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Board Members: Al Goldberg, Chairman Daniel Dicus, Vice Chair Carlisle Burch Fred Collins Walter Birriel	Others: Tracy Kelley, Community Development Director Sharon Williams, Administrative Assistant
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**WORKSHOP AGENDA
PLANNING & ZONING BOARD
FEBRUARY 18, 2021
6:00PM**

- I. INVOCATION AND PLEDGE OF ALLEGIANCE**
- II. CALL TO ORDER**
- III. ROLL CALL**
- IV. CITY BOARDS AND FLORIDA SUNSHINE LAWS**
- V. ADJOURNMENT**

Public
Records
Training for
Planning &
Zoning
Board

February 18,

2021

The City of Fruitland Park is subject to and governed by Florida's Public Records Act, Chapter 119, Florida Statutes. Prepared by City Attorney, Anita Geraci-Carver, Esq.

City of Fruitland
Park

PUBLIC RECORDS LAW

- Chapter 119, Florida Statutes, Florida Public Records Act, provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- “It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. **Providing access to public**

records is a duty of each agency.” §119.01(1), Florida Statutes.

- A right of access to records is also recognized in Art. I, s. 24, Florida Constitution.
- Public records must be available to the public for inspection and copying unless there is a statutory exemption.

What is a public record?

1. All “documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of the physical form, characteristics, or means of transmission.
2. Made or received pursuant to law or ordinance or in connection with the transaction of official business.
3. By any agency” §119.011(12), Florida Statutes

What is a public record?

- Definition of public record is interpreted by the Florida Supreme Court to encompass all materials made or received by an agency in connection with official business which are **used to perpetuate, communicate or formalize knowledge**. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633 (Fla. 1980)
- Not limited to written documents.

- Includes electronic communications like text messages & e-mails.
- Includes drafts and final versions.
- Includes calendar appointments.

To Whom Does It Apply?

- City Commission
- Advisory Boards, including Planning & Zoning Board
- City Staff
- Private entity or corporation acting on behalf of a public agency

Providing Public Records

- A requesting party is not required to show a “legitimate” or “noncommercial interest” as a condition of access.
- A request is not required to be in writing. AGO 80-57
- A requesting party is not required to identify himself or herself. *Bevan v. Wanicka*, 505 So.2d 1116 (Fla. 2nd DCA 1987).
- Public records cannot be withheld at the request of the sender or creator of the public record.

- Cannot tell the requesting party to obtain it from the City's website.
- Cannot deny because request is overbroad.

Providing Public Records

- An agency is not required to comply with a standing request for records that may be created in the future. Inf. Op. to Worch, June 15, 1995.
- An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost).
- An agency is not required to create a new record.
- The Public Records Act does not contain a specific time limit to provide access or copies.

- The Florida Supreme Court has stated that the only delay in producing records permitted under the state is the reasonable time allowed the custodian to retrieve the record and redact those portions of the record the custodian asserts are exempt.

Tribune Co. v. Cannella, 458 So. 2nd 1075 (Fla. 1984).

Records on City devices v. Personal devices

- The **location** of e-mails, documents, text messages, etc. does not control the application of the Public Records Act. If it is a public record, whether sent from a private e-mail account using a personal computer or sent from a private phone, it remains a public record subject to inspection and copying.
- Similarly personal communications on a public device does not make the communication a public record.

Statutory Exemptions

- Art. I, s. 24(c) of the Florida Constitution authorizes the Legislature to enact exemptions from the Public Records Act.
- The Legislature in the bill must state with specificity the public necessity justifying the exemption and be no broader than necessary to accomplish the purpose of the exemption.

- An agency claiming an exemption from disclosure bears the burden of proving the right to an exemption. *Woolling v. Lamar*, 764 So.2d 765 (Fla. 5th DCA 2000)
- The Legislature has designated some records to be exempt from the Public Records Act and others to be exempt from the Act and confidential.
- If information is deemed exempt and confidential, then it may not be inspected or copied by the public and may be released only to those persons and entities designated in the statute. AGOs 08-24, 04-09, and 86-

97. The agency is prohibited from allowing inspection or copying.

- If records are not confidential, but are exempt, then the agency is not prohibited from disclosing the documents in all circumstances. *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA).
- Once an exempt record is disclosed, then full access to that record must be allowed thereafter. An agency can no longer deny access by claiming it is exempt.

Public Records

- E-mails
- Text messages
- Agendas
- Agenda item materials
- Meeting minutes
- Ordinances and resolutions
- Development application and materials

Remedies and Penalties

- Voluntary mediation process through the Office of the Attorney General
- Civil actions
- Criminal and noncriminal infraction penalties

References:

1. Government-In-The-Sunshine Manual, 2020 Edition, Volume 42, prepared by the Office of the Attorney General and published by First Amendment Foundation.
2. Pat Gleason, Esq., Office of the Attorney General.
3. 2020 Florida Statutes.

Sunshine
Law Training
for Planning
& Zoning
Board

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Prepared by City Attorney, Anita Geraci-Carver, Esq.

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SUNSHINE LAW

Scope: Applied to gathering of two or more members of the same board to discuss some matter which will foreseeably come before their board for action. There are three basic requirements:

- i. Meetings of public boards must be open to the public
- ii. Reasonable notice of the meetings must be given
- iii. Minutes of the meeting must be taken

Purpose: to assure public access to the decision-making processes of public boards or commissions

- Discussions of public business need to be audible to those present, not just the board members at the table.

Applicable to:

- City Commission
- Advisory Boards which make recommendations which includes Planning & Zoning Board
- Community Redevelopment Agency
- Fact finding committees are exempt
 - Committee appointed by city manager to report to him on employee working conditions was not subject to Sunshine law

Staff

- Staff meetings are not normally subject to the Sunshine Law; however, staff committees may be subject to Sunshine Law if they are deemed to be part of the “decision making process” as opposed to traditional staff functions like fact finding or information gathering
- An individual board member may discuss Board business with staff or a non-board member; however, these individuals may not be used as a liaison to communicate information between board members.

Board Members

- Board members may not engage in private discussions with each other about Board business, either in person or by telephone, e-mail, text, or any other type of electronic communication (Facebook, blogs, etc.)
- No violation to receive a written report from one board member circulated to all other board members on a subject prior to meeting at which the subject will be discussed, although not recommended
- It is a violation if comments to written report are solicited and then those comments are shared with the

others outside the meeting because then there is an exchange of communications

- Members of the same board are not prohibited from the meeting together socially, provided that matters which may come before the board are not discussed.
- Board members cannot vote by secret ballot.
- Board members cannot abstain from voting unless a conflict of interest exists.

Public Participation:

- Section 286.0114, Florida Statutes, provides, subject to listed exceptions, that boards must allow an opportunity for the public to be heard before the board takes official action on a proposition.
- Boards are not prohibited from “maintaining orderly conduct or proper decorum in a public meeting.”
- Boards may adopt reasonable rules and policies to ensure orderly conduct of meetings; however, boards may not ban non-disruptive videotaping, audio recording, or photography at public meetings

Penalties for violations:

- Criminal penalties, misdemeanor
- Suspension or removal from office if indicted or convicted
- Noncriminal fine
- Action taken in violation is not valid and must be reconsidered at a meeting in conformance with the Sunshine law

References:

1. Government-In-The-Sunshine Manual, 2020 Edition, Volume 42, prepared by the Office of the Attorney General and published by First Amendment Foundation.
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3. 2020 Florida Statutes.