

**ECONOMIC ADVISORY COMMITTEE
SUMMARY OF SUNSHINE LAW, PUBLIC RECORDS & ETHICS
REQUIREMENTS**

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I. SUNSHINE LAW

The Economic Advisory Committee (“EAC”) is a governmental body subject to Florida’s Government in the Sunshine Law, (“the Sunshine Law”). The Sunshine Law is contained in Chapter 286, Florida Statutes, and the right of public access to meetings of collegial bodies is recognized in the Florida Constitution. The purpose of the Sunshine Law is to provide public access to the workings of government and its processes.

1. **Scope.** The Sunshine Law applies to all meetings, discussions, deliberations, etc., whether formal or casual, of two or more members of the EAC at which they may discuss matters that will foreseeably come before the EAC for action.
2. **Requirements.** The Sunshine Law requires that all such meetings be:
 - open to the public
 - reasonably noticed
 - have minutes taken.
3. **Who Must Comply.** Many persons and entities must comply with the Sunshine Law including, but not limited to, the following:
 - a. The EAC
 - b. Two or more members of the EAC attending the same event or meeting where it is possible that a matter that could foreseeably come before the EAC will be discussed;
 - c. One member of the EAC attending an event or meeting when
 - 1) someone meeting or communicating with one EAC member is acting as liaison between two or more EAC members;
 - 2) one EAC member is authorized to act on behalf of the EAC;

3) another EAC member is on the other end of the phone or the other end of a computer connection.

- Remember that the Sunshine Law applies to all written correspondence, including emails or other electronic media. For example, while it is not a violation of the Sunshine Law for one commissioner to send an email to other commissioners, **it IS A VIOLATION to reply to that email.**
- If there is something that you feel needs to be shared with other EAC members, please send the email to City of Tampa staff, who can either send it to the other EAC members with a reminder about the Sunshine Law, or schedule it for discussion at a noticed meeting.

d. Advisory committees formed to make recommendations, regardless of whether such advisory committee have the authority to bind the EAC;

e. Fact-finding committees whose only function is to gather information and report it are not subject to the Sunshine Law.

- What if a commissioner serves on a different (non-sunshine) board with other commission members? The commissioner may discuss issues relating to the other board, provided that such issues are not likely to come before the EAC for consideration or action.

4. **Types of Meetings Covered.** The following types of meetings are subject to the Sunshine Law:

a. All meetings of the EAC;

b. Inspection trips, workshops and out of town meetings.

- A violation of the Sunshine Law may occur if, during a recess of a public meeting, EAC members discuss issues before the EAC in a manner not audible to the public. Although the meeting is noticed, such conduct violates the letter and spirit of the law.

5. **Notice and Procedural Requirements.** The following notice and procedural requirements apply to meetings and events subject to the Sunshine Law:

a. The meeting or event must be noticed;

- 1) the notice must be reasonable in the given circumstances;
- 2) including notice of continued meetings; and

- 3) the notice must comply with any other applicable laws.
 - b. The meeting or event must take place at a location which does not have restricted or discriminatory access and which provides reasonable access to interested or affected persons or entities given the subject of the meeting or event;
 - c. The meeting may be subject to reasonable rules and policies for keeping order; and,
 - d. Minutes of the meeting must be kept and open to public inspection.
6. **Public Participation.** Section 286.0114, Florida Statutes provides for public participation at meetings as follows:
- a. the public is to be provided reasonable opportunity to be heard on a proposition before the EAC, either at the same meeting at which the EAC takes official action or at a meeting within reasonable proximity in time before the meeting at which the committee takes official action.
 - b. the EAC is authorized to adopt certain rules governing the opportunity to be heard *i.e.* time limits for speakers; designation of a speaker to represent a group; forms to indicate a speaker's position on a matter; and designation of specified time for public comment.
 - c. An action taken by EAC which is in violation of this statute is not void; however a circuit court may issue an injunction to enforce the statute and a failure to comply could result in award of attorney's fees against EAC.
7. **Consequences of Violating the Sunshine Law.** The following penalties apply to violations of the Sunshine Law:
- a. a fine not to exceed \$500.00 and imprisonment for up to sixty (60) days for knowingly violating the Sunshine Law, which is a second degree misdemeanor;
 - b. a fine not to exceed \$500.00 for unknowingly violating the Sunshine Law, which is a non-criminal infraction;
 - c. suspension from office by the Governor if indicted or informed against and, if convicted or plead guilty or nolo contendere, removal from office by executive order of the Governor;
 - d. assessment of attorney's fees against the EAC, and also against the individual members unless EAC has sought and follows the advice of its attorney and against the individual members in all other situations, including appellate fees;

- e. injunction against future similar violations of the Sunshine Law with the penalties applicable that flow from violating an injunction and declaratory relief; and
 - f. voiding of the action taken in violation of the Sunshine Law *ab initio* (legally nullified).
8. **Voting.** No member who is present at any meeting at which an official decision is to be taken may abstain from voting in regard to any such decision; and a vote shall be recorded for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of Florida Statutes sections 112.311, 112.313, or 112.3143. (See below, in Section III). In such cases, said member shall comply with the disclosure requirements of section 112.3143, Florida Statutes.

II. PUBLIC RECORDS

The EAC is subject to Florida's Public Records Law, Chapter 119, Florida Statutes, which provides any member of the public with a right of access to inspect and/or copy all records in connection with the transaction of the EAC's official business.

1. **Scope- not limited to traditional written documents.** The Public Records Law applies to all materials made or received by the EAC and its members that are defined as public records regardless of physical form, characteristics, or means of transmission including, but not limited to all documents, such as papers, letters, maps, books, tapes, photographs, films, sound recordings, **emails, text messages** made or received in connection with the transaction of official business by EAC.

Note: a committee member's personal notes that are not circulated or intended to serve as final evidence of knowledge or action are not public records.

2. **Who Must Comply.** Any EAC member who is the custodian of a record made or received in connection with official business of the EAC must comply with the Public Records Law.
3. **Requirements.** Duties upon receipt of a written or verbal request for public records include:
- a. you must acknowledge the request to copy or inspect the records and promptly respond to the request in good faith
 - 1) a member of the public requesting a public record is not required to identify themselves or the reason for which he or she is seeking the public record.

- b. all records are presumed open for inspection and copying unless the Florida legislature has created a specific statutory exemption.
 - c. you must state the basis of an exemption if claiming the whole or part of a public record is exempt from inspection or copying
 - d. fees for duplication of public records are authorized by statute (Please ask us if you believe fees for duplication or copying documents should be charged)
 - e. documents do not have to be created to fulfill a public records request, nor does an explanation of the record have to be provided
4. **Public Record Retention.** Maintenance and disposal of all public records must be in compliance with Florida law. Ask before destruction of any record.
5. **Consequences of Violating the Public Records Law.** The following may apply for violating the Public Records Law:
- a. for willfully and knowingly violating Section 119.07(1), Florida Statutes, (i) suspension and removal or impeachment from office, and (ii) a misdemeanor of the first degree, punishable by possible imprisonment up to one (1) year, or up to a \$1,000 fine, or both.
 - b. for any other violation of Chapter 119, Florida Statutes, a fine not to exceed \$500 which is a non-criminal infraction.
 - c. award of reasonable costs including attorney's fees against the EAC if complainant prevails in a civil action.

III. ETHICS: CONFLICTS OF INTERESTS (CITY & STATE)

Generally, there are two (2) ethics codes with which you must comply. City of Tampa Code Chapter 2, Article VIII sets forth the **Code of Ethics for City Officials and Employees** ("Local Code of Ethics") and Florida Statutes Chapter 112, Part III, sets out the **Code of Ethics for Public Officers and Employees** ("State Code of Ethics"). Certain provisions of these two codes are outlined below.

1. City of Tampa Code of Ethics – Chapter 2, Article VIII, City of Tampa Code

In addition to employees, the City Ethics Code applies to an "official", which is defined as any person elected or appointed to any public office of the City.

NOTE: Individuals appointed to City advisory committees, such as this committee (the EAC), are considered “officials” under the code.

In particular, the following City Ethics Code provisions apply to appointed committee members:

- a. Sec. 2-513. Parties contracting with city; prohibition of employment of certain officials and employees.
 - Prohibits an official from soliciting, accepting or being employed by any person, firm or corporation having any contractual relation with, or rendering any services to the city – especially if the contract or service is provided to the board or committee on which the official is serving.
- b. Sec. 2-514. Prohibition against receipt of benefit from contracts with the city.
 - Prohibits an official and any member of his or her immediate family or close personal relation, either directly or through any firm of which he or she is a member, or through any corporation of which he or she is a stockholder, or through any business entity of which he or she has a controlling financial interest, from receiving any substantial benefit or profit out of any contract or obligation entered into with the city department for which the official works, or having any direct or indirect financial interest in effecting any such contract or obligation.
- c. Sec. 2-517. Actions prohibited when certain financial interests involved.
 - Prohibits an official from participating in any official action which directly or indirectly affects a business in which he or she or any member of his or her immediate family or close personal relation has a financial interest.
- d. Sec. 2-545. Misuse of position.
 - Prohibits an official from intentionally using his or her official position to secure, by coercion or threat or otherwise, a special privilege or exemption for himself or herself, or others, or to secure confidential information for any purpose other than official responsibilities.

2. State Code of Ethics for Public Officers and Employees

Members of a City of Tampa advisory committee are also subject to the State of Florida’s ethics code, Section 112.311, et.seq., Florida Statutes.

In particular, the following provisions apply to advisory committee members:

a. Fla. Stat. §112.313(3). Doing business with one's agency.

Members are prohibited from:

- In his or her official capacity, directly or indirectly purchasing, renting, or leasing realty, goods or services for his or her own agency from a business entity of which the public officer, or his or her spouse or child (or any combination thereof) is an officer, partner, director, proprietor, or the owner of a material interest.
- While acting in a private capacity, renting, leasing, or selling any realty, goods, or services to their agency.

b. Fla. Stat. §112.313(7). Conflicting employment or contractual relationships.

Members are prohibited from:

- having an employment or contractual relationship with an agency or business entity that is either subject to the regulation of, or is doing business with, the public officer's agency.
- having a contractual relationship or employment that will create a "continuing or frequently recurring" conflict of interest, or that would "impede the full and faithful discharge" of public duties.

c. Fla. Stat. §112.3143. Voting conflicts.

A member is prohibited from voting in an official capacity upon any measure which would:

- inure to his or her special private gain or loss; or
- 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.

If a voting conflict exists, the member must:

- (1) abstain from voting on the measure;
- (2) publicly state, prior to the vote being taken, the nature of his or her interest in the matter;

- (3) file a memorandum of conflict form with the person responsible for recording the minutes (City Clerk) within 15 days of the vote.

When in doubt, ask before acting!

For more details:

Florida Government in the Sunshine Law, Section 286.011, et.seq., Florida Statutes
Florida Public Records Law, Chapter 119, Florida Statutes
Florida Code of Ethics for Public Officers and Employees, Section 112.311, et.seq.,
Florida Statutes
City of Tampa Ethics Code, Chapter 2, Article VIII, City of Tampa Code of Ordinances