To: Council Members
From: Staff
Date: May 18, 2018 Council Meeting
Subject: Sunshine Law Refresher

Introduction

The purpose of this agenda item is to provide an overview to Council members of Florida’s “Government in the Sunshine” law, found in Chapter 286 of the Florida Statutes. This law addresses public records and public meetings requirements.

Council’s attorney will provide an overview of the law and its application to how Council conducts its business at the May Council meeting. His presentation will include information contained in the attached.

Recommendation

For information only.

Attachment
MEMORANDUM

TO: Treasure Coast Regional Planning Council
CC: Michael Busha
FROM: Keith W. Davis, Esq.
DATE: February 22, 2018
RE: Sunshine Law Update

In conjunction with my presentation at the March 16, 2018 Council Meeting, I offer the following salient points relative to the Florida “Government in the Sunshine” law and its application to the conducting of business by the Council:

A. Sec. 286.011, Fla. Stat. (the Florida Government in the Sunshine Law) requires that all meetings of any board or commission of any state agency, or of any county or municipality or other political subdivision at which official acts are to be taken must be public meetings at which the public has real opportunity to attend (restricts limited access facilities and out of town meetings). Any act taken otherwise is deemed void.

B. The Florida Government in the Sunshine Law applies to the Treasure Coast Regional Planning Council itself. It also applies to the various subcommittees to which the Council delegates certain decision-making and recommending authority, such as the Comprehensive Economic Development Strategy Committee, the Nominating Committee, and the Budget/Personnel Committee.

C. Reasonable notice must be given of all “sunshine” meetings. There is no hard/fast definition for the term “reasonable notice” and it is determined on a case by case basis. However, all notice should contain time & place information and be prominently displayed. Also, certain notices, especially dealing with meetings at which quasi-judicial action will be taken, must contain advice concerning appellate rights.

D. Minutes must be kept and “promptly recorded” for all “sunshine” meetings.

E. The Sunshine Law applies to all discussions and deliberations as well as ultimate formal action taken by the public board or commission. There is no re-
requirement that a quorum be present for a meeting of members of a public board or commission to be subject to this law. Instead, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the board or commission.

F. The Sunshine Law is not applicable to a meeting between a single board or commission member and a private citizen, or between a single board or commission member and Council staff. Typically, it does not apply to interaction between a single member of one board or commission and a single member of another board or commission; however, this exception does not apply to the Council’s sub-committees since they are composed on Council members as opposed to appointees that are not on the Council.

G. The key to the Sunshine Law is “interaction” between two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the board or commission. This interaction can occur through letters, e-mails or telephone calls IF there is an exchange of opinions/ideas/thoughts. However, one way dissemination is not technically a sunshine law violation as long as it does not become a two-way exchange. Regardless; however, I discourage the practice of the one-way e-mail.

H. The Sunshine Law applies to non-voting “ex-officio” members. This is because even though these members may be non-voting members, they are still entitled to, and expected to, participate in discussions and deliberations on action items, and are therefore part of the decision-making process. See, e.g. Fia. Atty. Gen. Op. 2005-18.

I. LIMITED EXCEPTIONS include

1. Attorney shade meetings to discuss pending litigation (strict procedure and attendance requirements: atty. must request this meeting; subject matter limited to strategy/settlement; attendance is limited to the elected officials, the atty., the chief administrative officer of the municipality and the court reporter; the entire session must be recorded by the court reporter; public notice of the meeting must be given; the meeting must commence in a public setting, then convene to closed session, then return to public setting at its conclusion; the transcript becomes public record at the conclusion of the litigation)

2. Meeting between the government and its own collective bargaining representative, but only while contract negotiations are actually pending.

3. Meetings between a regular Council member and their designated alternate member to prepare for an upcoming meeting. The idea is that the regular member would not be in attendance and that the alternate member operates as the same voice as the regular member in the absence of the regular member. I advise extreme caution in use of this exception with Treasure Coast Regional Planning Council. The practice of Treasure Coast Regional Planning Council has historically been to allow both an alternate and regular member to attend the same meeting and participate in action items at the same meeting. While this practice may
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be acceptable for purposes of meeting participation, it runs afoul of
the Sunshine Law exception since this exception contemplates that
the alternate will not participate except in the absence of the regular

J. A knowing violation of the Florida Government in the Sunshine Law is a
second degree misdemeanor. Civil penalties also include removal from office by
the Governor, and fines up to $500.00. Resulting attorney’s fees may be as-
sessed against the board or commission found to be in violation as well. As men-
tioned above, a violation will render the subject action that was taken void.