



City of Palm Coast
Agenda
CITY COUNCIL SPECIAL
WORKSHOP

City Hall
160 Lake Avenue
Palm Coast, FL 32164
www.palmcoastgov.com

Mayor David Alfin
Vice Mayor Ed Danko
Council Member Theresa Carli Pontieri
Council Member Cathy Heigher
Council Member Nick Klufas

Tuesday, January 31, 2023

9:00 AM

COMMUNITY WING

City Staff

Denise Bevan, City Manager

Neysa Borkert, City Attorney

Virginia A. Smith, City Clerk

- Public Participation shall be in accordance with Section 286.0114 Florida Statutes.
- Other matters of concern may be discussed as determined by City Council.
- If you wish to obtain more information regarding the City Council's agenda, please contact the City Clerk's Office at 386-986-3713.
- In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing a reasonable accommodation to participate in any of these proceedings or meeting should contact the City Clerk at 386-986-3713, at least 48 hours prior to the meeting.
- City Council Meetings are streamed live on YouTube at <https://www.youtube.com/user/PalmCoastGovTV/live>.
- It is proper meeting etiquette to silence all electronic devices, including cell phones while Council is in session.
- Any person who decides to appeal any decision of the City Council with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose, may need to hire a court reporter to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

A CALL TO ORDER

B PLEDGE OF ALLEGIANCE TO THE FLAG

C ROLL CALL

D PUBLIC PARTICIPATION

E PRESENTATIONS

1 CITY COUNCIL ANNUAL TRAINING ON COUNCIL POLICIES AND PROCEDURES

F PUBLIC PARTICIPATION

Remainder of Public Comments is limited to three (3) minutes each.

- G DISCUSSION BY CITY COUNCIL OF MATTERS NOT ON THE AGENDA**
- H DISCUSSION BY CITY ATTORNEY OF MATTERS NOT ON THE AGENDA**
- I DISCUSSION BY CITY MANAGER OF MATTERS NOT ON THE AGENDA**
- J ADJOURNMENT**

City of Palm Coast, Florida Agenda Item

Agenda Date : January 31, 2023

Department	CITY ADMINISTRATION	Amount
Division		Account
		#
Subject	CITY COUNCIL ANNUAL TRAINING ON COUNCIL POLICIES AND PROCEDURES	
Presenter : Denise Bevan, City Manager and Neysa Borkert, City Attorney		
Background : This is City Council’s first annual workshop review of each policy for discussion. In 2017, City Council approved the amended Council Meeting Policies and Procedures. It is the policy of the Palm Coast City Council that these Rules of Procedure shall govern all official meetings of the City Council. In March 2022, City Council approved the policy for Elected Officials regarding public records, and use of email, texting, social media, and city-issued devices. Should there be any changes to either policy suggested, those changes will be presented for Council’s consideration at a future business meeting.		
Recommended Action : FOR CITY COUNCIL DISCUSION AND DIRECTION		



CITY COUNCIL ANNUAL TRAINING ON COUNCIL POLICIES AND PROCEDURES

January 31, 2023 Special Council Workshop





1. City Council Meeting Policy and Procedures
 - a. Agenda Format
 - b. Rules of Debate
 - c. Public Input
2. Appeals to City Council
3. Sunshine Law
4. Ethics
5. Policy for Elected Officials
 - a. Public Records
 - b. Use of Email, Texting, Social Media and City issued devices
6. Personal Appearances and Liaison Duties
 - a. Managing calendars
 - b. Liaison Reports during City Council comments
7. Next Steps



CITY COUNCIL MEETING POLICIES AND PROCEDURES



Agenda Format

- Setting the agenda
Policy page 3 Sec. V-B
- Placing items on agenda
Policy page 5 Sec. J
- Supplemental items
Policy page 5 Sec. L
- Departures
Policy page 5 Sec. I



Rules of Debate

- City Council Member Decorum
Policy page 6 Sec. VII
- Motions (regular vs. quasi-judicial)
Policy page 7 Sec. B
- Motions to amend
Policy page 7 Sec. C



Public Input

- Time Limitation (3 mins and 30 mins total subject for City Council consensus for all non-agenda item comments)
Policy page 9 Sec. B
- Addressing the City Council (citizen requirements)
Policy page 10 Sec. F
- Decorum for Citizen Comments
Policy page 10 Sec. G



APPEALS AND SUNSHINE LAW



Appeals to City Council

- Per the Code of Ordinances and the LDC, appeals from certain Code Enforcement Board decisions, City Manager decisions in defined matters, or PLDRB decisions on some land use cases where the PLDRB has final decision making authority.
- Depending on the matter, Council will need to consider different standards when reviewing the appeal.





Sunshine Law

Open Meetings Law-It applies to any gathering of two (2) or more members of the same board, committee, commission or council to discuss some matter which will foreseeably come before that board, committee, commission or council for action. The Government-in-the-Sunshine Law applies to all discussions or deliberations as well as the formal action by a board, committee or commission. The law, in essence, is applicable to any gathering, whether formal or casual, of two (2) or more members of the same board, committee or commission to discuss some matter on which foreseeable action will be taken by the public board or commission.



Sunshine Law continued

There is no requirement that a quorum be present for a meeting to be covered under the law. Communications between board, commission or committee members can occur in many ways: orally in person, orally over a telephone, by writings, through e-mails, through conduit individuals, or by any other means. The Law provides that debates or discussions on issues should occur at open meetings noticed as required by law, not in letters, etc. – to whoever directed or at non-noticed meetings.



Sunshine Law

In essence, the “Open Meetings Law” (or “Government-in-the-Sunshine Law”) of the State of Florida requires that:

- 1) meetings of boards or commissions must be open to the public;
- 2) reasonable notice of such meetings must be given, and
- 3) minutes of the meeting must be taken.



Interpretation of Statute

1. Inconsistent with Plain wording

- a. The word “meetings” does not necessarily mean there has to be a meeting.
- b. There really does not have to be a board or commission for the law to apply.



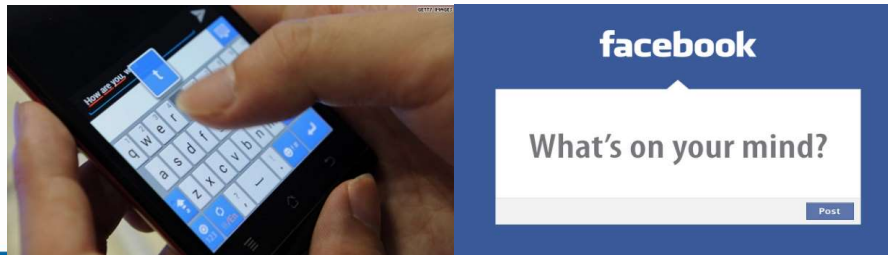
Interpretation of Statute continued

- c. The words “at which official acts are to be taken” does not really mean that any action has to be taken in order for a violation of the Sunshine Law to exist.
- d. It only applies to members of the same board or council. Council members may call upon staff members for factual information and advice without being subject to the Sunshine Law. However, the staff cannot be used as a liaison to conduct a de facto meeting by circulating information and thoughts of the individual Council members to other members.



Interpretation of Statute continued

2. Arguably the statute could be rephrased to state:
Any communication between two members of the same board on any matter which may reasonably or foreseeably come in front of the board must take place at a time and place of which the public has reasonable notice and location where the public has reasonable access.



Interpretation of Statute continued

3. Validity of Actions Taken in Violation of Sunshine Law.

- a. The violation makes the action **void ab initio**. No resolution, rule or formal action shall be considered binding except as taken or made at an open meeting. For example, a zoning ordinance was declared invalid because of Sunshine Law violations by a citizen's planning committee. Also, a contract for the purchase of real estate was held non-binding.



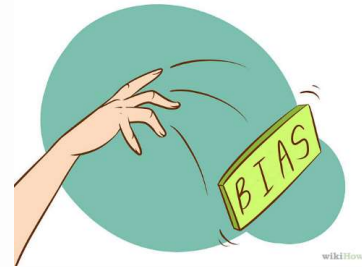
Interpretation of Statute continued

- b. The violation can be cured by reconsidering the matter at a later public meeting, however the meeting must include a full debate and a public hearing. The Board must take “independent final action”, not just perfunctory action.



Mandatory Voting Exceptions

- a. An exception to the voting requirement exists only when the member has a possible conflict of interest.
- b. Another exception only applies to quasi-judicial proceedings where the member must abstain “to assure a fair proceeding free from potential bias or prejudice.” Fla. Stat. 286.012.



2005 Attorney General List of Don'ts

Do not talk about

- matters between meetings (even at City Hall).
- matters after meetings.
- matters before meetings.
- matters during recesses.
- votes, hearings, actions AFTER the public meetings as these matters may come back in different contexts.
- public business at social settings.
- Do not whisper to another member or pass notes to another member during a meeting.



Important reminder:

- Boards may not take action on, nor engage, in private discussion of board business via written correspondence, emails, text messages, or other electronic communications (Facebook, Instagram, etc.).
- Email communication of information from one board member to another may not violate the Sunshine Law if there is no interaction related to the report, but circulating “position statements” is highly discouraged and may pose other procedural due process concerns.





Sanctions for Violation of Sunshine Law

1. Criminal

- a. Any public officer who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082, Section 775.083 or Section 775.084, Fla. Stat. (jail, fines, surcharges, etc.).

2. Civil

- a. Any public officer who violates any provision of this section is guilty of a non-criminal infraction, punishable by fine not exceeding \$500.00.
- b. Local governments may also be required to pay attorney's fees on behalf of those who enforce the Sunshine Laws.





Example of Violation:

August 2011: A member of the Florida Keys Mosquito Control District pleaded guilty to a non-criminal violation of the Open Meetings Law. Joan Lord-Papy, a five term commissioner, must pay \$250 fine along with \$270 in court costs.

Lord-Papy was charged after responding to an email from a fellow commissioner discussing interview dates for district director applicants. The original email, sent by Commissioner Jack Bridges, included a warning that other commissioners should not reply to avoid violating the Open Meetings Law.



Violation:

- Remember sometimes just being seen speaking together can give rise to suspicion, so use caution.
- Sunshine Law is not violated by attendance of all members at a “candidates' night” as long as the board members don’t speak among themselves about government issues.



Violation continued:

- Additionally, the Laws are applicable where a single member of a committee or board has been delegated authority to negotiate on behalf of the commission, committee or board and does so without holding a public meeting.

For example, the circulation of written memoranda seeking the concurrence of other members is a violation.



ETHICS



Ethics-Chapter 112 Florida Statutes

- Voting requirement and voting conflict explanation
- Other ethics requirements (generally)
- Required statutory training should be done sooner rather than later (in person or online options are shown below)



Verifying Conflicts (Sec. 112.3143, F.S.)

- No 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 OR to the special private gain or loss of:
 - A principal by whom the officer is retained (e.g., employer or clients)
 - To the parent organization or subsidiary of a corporate principal by which the officer is retained.



Verifying Conflicts

(Sec. 112.3143, F.S.) cont.

- Special private gain or loss – economic benefit or harm
- Before the vote is taken, officer shall publicly state to the Board the nature of the interest in the matter from which he or she is abstaining and within 15 days after the vote occurs, disclosure the nature of the 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 into the minutes.



Verifying Conflicts

(Sec. 112.3143, F.S.) cont.

- A relative or business associate of the officer (father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law; but may extent broader to other relatives such as brother-in-law if the benefit would impact a relative such as sister). (Note that measure affecting relative's employer may also create a conflict)
- No appointed officer shall PARTICIPATE in any manner that would inure to the special private gain or loss of any of the persons or entities listed above without first disclosing the nature of the interest.



Verifying Conflicts (Sec. 112.3143, F.S.) continued

- If interest is not given to person responsible for recording minutes BEFORE the meeting, disclosure must be made orally at the meeting when it becomes known that a conflict exists. Memorandum must be filed 15 days after.



Code of Ethics–Chapter 112, F.S.

- Cannot
 - solicit or accept anything of value, such as a gift, loan, favor, or service given for the purpose of influencing votes or actions.
 - do business with one's own agency – to and from
 - use position to secure a special privilege or benefit
 - hold conflicting employment or contractual relationship
 - misuse privileged information
 - appoint, employ, promote, or advance relatives
 - vote on any measure which would inure to the special private gain
- Must disclose personal interests, financial interest, clients represented, contributions and honoraria
- Penalties include removal from office, censure, restitution and civil penalty up to \$10,000





Options for required Ethics, Public Records, and Sunshine Training

- **Florida Commission on Ethics:**

Training page: <https://www.ethics.state.fl.us/Training/Training.aspx>

Ethics portion: <https://www.youtube.com/watch?v=U8JktIMKzyl>

Public Records & Sunshine portion:

<http://myfloridalegal.com/pages.nsf/Main/A142321A365C83168525791B006A54E5>

- **First Amendment Foundation:** \$75 coming soon-Ethics, open meetings and public records
- **Florida Institute of Government:** \$79 <https://iog.fsu.edu/online-ethics>





Options for Required Ethics Public Records, and Sunshine Training continued

- **Florida League of Cities: Free**

Here's the link <https://www.floridaleagueofcities.com/education-and-events/ethics-education>

*Remember, this one is on the honor system. You can send yourself an email with the link indicating the date/dates you watched it, and then that email is your proof- FLC cannot send anything for the video option.



POLICY FOR ELECTED OFFICIALS



Policy for Elected Officials

- Public Records
- Use of Email, Texting, Social Media and City Issued Devices

Adopted March 1, 2022



PUBLIC RECORDS, EMAIL, AND TEXT MESSAGES



Public Records **Policy page 3**

1. Definition. Section 119.011 defines public records as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

2. Includes:

- a. Anything in writing.
- b. Tapes and recordings.
- c. Photographs and film.
- d. Emails and texts and computer data storage (including citizens' email addresses).



What are the procedures for production?

Policy page 2 Sec. 5

- a. Public has the right to inspect records for free. Public also has a right to copy the records, but there may be a charge for the copies.
- b. The requestor can remain anonymous by sending an email request. The request can be oral. Anyone can make a request, even if the purpose is monetary gain or partisan politics.



Procedures for production continued

- c. The documents must be produced “within a reasonable time”, to allow time to review for exempt or confidential information. Many governments have been penalized for delay.
- d. There’s no objection for an “overbroad” request. Requests can be made throughout litigation and can tie up staff.
- e. Government must state the legal basis for refusing to provide a document or a part of a document.



Email/Text Receipt and Retention

Policy Page 4

Emails and texts made or received in connection with official business are public records and subject to disclosure in the absence of a specific statutory exemption. Emails and texts are also subject to the statutory restrictions on the destruction of public records requiring records be retained for a certain period of time. Email addresses of constituents are also public records, necessitating a disclosure statement on City emails. Any City related email or text received on personal computers should be forwarded to the City Clerk or to Councils' City email address for proper retention.



Doubts

When in doubt about whether a document is public record, give or forward the document to the City Clerk.



Penalties for failure to comply

- a. If a requestor files suit, and a court determines that the agency unlawfully refused to provide records or a timely basis, then the plaintiff is entitled to attorney's fees.
- b. Attorney's fees are also awarded where access is denied in good faith but it turns out the documents are not exempt from disclosure. In a recent case, a county quickly responded to a request by stating the county would provide the records, but then delayed complying with the request, and the plaintiff was entitled to attorney's fees.



Penalties continued

- c. An agency that misplaced the request was also dinged with attorney's fees.
- d. In addition to attorney's fees, a public officer who knowingly violates the statutes is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree. A violation of Chapter 119 is a noncriminal infraction, punishable by a fine not exceeding \$500.



CITY ISSUED DEVICES



City Issued Devices

Policy Page 5-6

- Each Elected Official shall be issued a City-owned tablets and cell phone (“City-Issued Devices”) for use during the term in office to conduct City business.
- It is strongly recommended that Elected Officials refrain from using Personal Devices to conduct City business.
- The phone and the service contract are owned by and supplied by the City of Palm Coast.



City Issued Devices continued

- Elected Officials shall return all City-Issued Devices to the City upon the end of their term in office, or earlier resignation or otherwise from the City, as is relevant.
- Additional charges over the limits set by the City may be the responsibility of the Elected Official. All programming to City-Issued Devices shall be completed by the City's IT Department.



City Issued Devices continued

- Each Elected Official shall use the City-Issued Devices in accordance with this Policy.
- Each City-Issued Device is enrolled into the retention system and the text messaging archiver.



City Issued Devices continued

Location Services:

- Usage for calls: Each Elected Official shall exercise discretion in making and receiving personal calls on a City-Issued Device.
- Text messages: Each Elected Official understands that all text messages relating to City business should be conducted on a City-Issued Device for record retention purposes.



City Issued Devices continued

Location Services:

- Should an Elected Official choose to use a Personal Device to send or receive text messages relating to City business, the Elected Official will be solely responsible for retaining those public records and promptly providing them to the City upon request.
- All text messages sent or received on City-Issued Devices will be automatically archived for responses to public records requests received by the City.



City Issued Devices continued

Location Services:

- Internet usage: Each Elected Official shall exercise discretion in accessing the internet, which shall only be accessed for related City business, on City-Issued Devices. Additional charges over the limits set by the City may be the responsibility of the Elected Official.
- All Programs and Applications on City-Issued Devices shall be installed by the City's IT Department.



SOCIAL MEDIA



Use of Social Media

Policy Page 6-8

Individual vs. City business

- Extreme caution and care should be exercised by Elected Officials in posting or uploading personal social media platforms to:
 - avoid the appearance of impropriety;
 - unnecessarily expose themselves or the City to liabilities;
 - prevent complaints or allegations of bias or favoritism;
 - avoid violations of the Sunshine Law or the Public Records law, including retention or spoliation issues;
 - avoid violations of Florida's ethics rules; and, to avoid violations of Florida's Election Code.



Social Media continued

Statements, opinions or beliefs conveyed by Elected Officials using websites, applications, personal social media platforms or social networking sites should be clearly identified as personal in nature and not attributable to the City.

Recommended language similar to the following slide should be included on the Elected Official's personal social media account.



Social Media continued

“The postings on this site are my own and do not represent the City of Palm Coast’s positions or opinions. Please be aware that I currently serve as a City Council Member for the City of Palm Coast and that, therefore, under Chapter 119, Florida Statutes, every response and submission to this website may constitute a public record. If any submission is removed in whole or in part, please be advised that all of such removed submissions may survive deletion, whether by you or others, and will be archived offline and will be considered a public record available for inspection to the extent allowed by Chapter 119, Florida Statutes. Requests for public records may not be made via this site but must be directed to the City Clerk.”



Social Media continued

- Social media can be beneficial to share at large; however could violate sunshine and public records when discussing City business.
- Could result in litigation and even criminal charges
- Using a personal social media platform or social networking site for official statements or the discussion of public business can transform the personal social media platform or social networking site into a “public forum” subject to First Amendment regulation.



Social Media continued

Guidance to avoid creating actual or perceived violations of the First Amendment, as well as Sunshine and Public Records laws:

- Should not prevent any other user(s) from interacting with any post. Elected Officials may not take any action to make any individual's comments or replies to posts on the social media platform or social networking site less visible to others.
- If available, Elected Officials may instead choose to turn off replies and comments entirely on any given post.



Social Media continued

- Elected Officials must not engage each other in an exchange or discussion of matters that foreseeably will come before the City Council for official action.
- This includes both substantive and non-substantive interactions, such as commenting on one another's posts, tagging one another on statements, liking one another's posts, or making any statement explicitly or implicitly referring to a member of the same board. Communication between Elected Officials via social media, as with telephone and email, may potentially constitute a "meeting" under the Sunshine Law. For this reason, Elected Officials are strongly discouraged from "friending" other Elected Officials, "liking" other Elected Official's posts, or participating in social media discussions/threads regarding City business that involve other Elected Officials.



Social Media continued

- Elected Officials should not use a personal social media platform or social networking site to state an opinion on a matter which may come before their board in a quasi-judicial capacity.
- Elected Officials should avoid engaging in *ex parte* communications regarding quasi-judicial matters through personal social media platform or social networking site.



Social Media continued

- If an Elected Official does communicate regarding a quasi-judicial matter using a personal social media platform or social networking site, the Elected Official shall disclose such *ex parte* communications at the relevant hearing.
- Elected Officials should avoid making any statements regarding public business through posts which are not publicly available.
- Elected Officials that choose to utilize personal social media platforms or social networking sites to conduct City business shall be solely responsible to retain all data from personal social media accounts pertaining to City business.



Social Media continued

- All such data must be forwarded to the Elected Official's City-issued email with proper identification of the date, time, and topic of the post as well as from which medium the communication was originally located.
- Elected Officials may not delete any posts which relate to public business.



QUASI-JUDICIAL HEARINGS



What does quasi-judicial mean?

- “Quasi”: “nearly”; “almost but not quite” “sorta”
- “Justice”: “dealing with someone reasonably by applying the law”; judges



Statutes recognizing quasi-judicial proceedings?

Local governments get their power generally from the Fla. Constitution and F.S. 166.021 (home rule powers)

- F.S. 286.0115: limited rules regarding land use decisions and swearing in witnesses.
- F.S. 166.033: City must provide written notice to applicant when application is denied in land use decisions and to cite the applicable ordinance(s) as basis for denial. Reasons must also be given for approvals

Rules regarding quasi-judicial proceedings have been developed over time by court decisions.



Judicial Tests for Challenges:

1) Was the decision by the City “fairly debatable”?

It is always wise to state reasons (i.e., “whereas” clauses) in ordinances or have a record when awarding major contracts since courts pay great deference to City’s legislative decisions. (NOTE: The “fairly debatable” test does not apply when a decision is challenged on other grounds, such as a violation of state or federal law or the constitution.)

2) Was due process afforded?

3) Was there competent substantial evidence to support the decision?

4) Were the essential requirements of the law followed?

(NOTE: This judicial test does not apply when a decision is challenged on other grounds, such as a violation of state or federal law or the constitution. In such cases, there will be a trial before the court.)



Due Process

Due process (i.e. fair procedures)- constitutional mandate

- Proper notice
- The opportunity to be heard
- Parties must be able to:
 - Present evidence
 - Cross examine witnesses (done differently in judicial proceedings)
 - Know why the board/commission/committee decided the way it did (was the decision based on facts?)



Competent Substantial Evidence

- Competent substantial evidence is evidence that a reasonable mind would accept as adequate to support the decision.
- The applicant has the burden to prove the competent substantial evidence that they meet the criteria of the Code. If the applicant meets the criteria by competent evidence, with the exception of variances, the burden shifts to the City to prove the granting the application/permit would be detrimental to the public interest.



Competent Substantial Evidence continued

- Boards have a fair amount of discretion to determine what is competent substantial evidence because they can judge the credibility of the witnesses by their demeanor, voice intonations, facial expressions, and conduct during the hearing.
- Appellate courts have developed rules of what constitutes LEGAL competent evidence.



Competent Substantial Evidence

continued

- Reports and testimony of planners, engineers, fire chiefs, police, code inspectors, and other staff are competent and often are considered experts in technical matters.
- Ultimate conclusions are not competent evidence; there must be facts presented to support the conclusion (i.e., “the special exception will generate undue traffic congestion”). Opinions without facts are not competent.
- “Popularity Polls” are not competent evidence. (Conetta v. City of Sarasota, 400 So.2d 1051 (Fla. 2d DCA 1981))



Competent Substantial Evidence

continued

- Although hearsay is allowed, hearsay by itself is not competent substantial evidence
- “Testimony” of attorneys representing applicants is not considered competent substantial evidence; it should not be a basis for a decision.
- Neighbors are competent to give facts about which they have first-hand knowledge in areas such as aesthetics, recreational needs, compatibility with the neighborhood. Traffic and property values are sometimes not considered competent since they are not experts.



Essential Requirements of the Law

When there is a departure from a clearly established principle of law which results in miscarriage of justice.

Examples: When a board makes a decision based on a criteria not set forth in the code or when the board applies the wrong code provision.



Ex Parte Communications

Definition: involving one side only; made on behalf of, or by, only one of the parties involved in a case outside of the noticed hearing.

Due process problems:

- No notice to the other party
- No opportunity to “cross examine”
- When the board finally makes a decision in the noticed hearing, parties are to be informed of the facts upon which the board made its decision.
- Prejudicial (quasi judicial officer may pre-judge)

When ex parte communication is established, there is a presumption of prejudice.



Ex Parte Communications continued

- Disclosure
 - Subject of communication;
 - Who; and
 - Did the communication prejudice you in any way from fairly making a decision based only on evidence presented here today?



Ex Parte Communications continued

- If you can, disclose early in the proceedings to give any opponents reasonable to respond/refute.
- Ex parte communications should be discouraged, and the ability to disclose ex parte communication should not be treated as a license for unmitigated ex parte communication. If you are approached by someone, tell him/her to come to the hearing and be heard by all at that time and that you should not be receiving the information outside of the hearing. Forward any emails to the City Clerk/Development Services Director without opening.





Case Law – Quasi-Judicial

City of Apopka v. Orange County, 299 So 2d 657 (Fla. 4th DCA 1974)

Application for a special exception for construction of airport. County denied special exception based on testimony from neighbors who felt that the airport would damage the surrounding area. Also, 200 people signed a petition against the airport. Court held that where evidence against airport was mainly laymen's opinions, unsubstantiated by competent facts, and Board made no findings of fact on the effect of the airport on the public interest, there was no substantial competent evidence to support denial. Not the function of the board to hold an election on the application. Comments of lay persons on technical issues are not sufficient.



Case Law – Quasi-Judicial

Pollard v. Palm Beach County, 560 So. 2d 1358 (Fla. 4th DCA 1990).

Application for special exception for Assisted Care Living Facility (ACLF) was denied. Various neighbors testified that the proposed use would cause traffic problems, light and noise pollution, and have an unfavorable impact on the area. Court held this was not factual evidence and not a sound basis for denial.



Case Law – Quasi-Judicial

Richard Road Estates, LLC v. Miami-Dade County, 2 So.3d 1117 (Fla. 3d DCA 2009)

Rezoning Request. The indisputable evidence is that (a) the previous agricultural nature of the area no longer prevails, so that (b) the surrounding property is now used as permitted either by EU or, if anything, even more liberal zoning. In these circumstances, it is obvious that continuing the AU designation results in an instance of impermissible “reverse spot zoning,” which cannot be sustained. The County's justification for the contrary result was the desire to preserve the property's present status as an area into which excess rain water which would otherwise accumulate on the surrounding land.



Richard Road Estates case continued

Richard Road's property is thus forced to act, as it were, as an uncompensated storm sewer for the neighborhood. As a matter of constitutional law, however, a policy such as this one, which is unrelated to appropriate zoning principles, cannot support the action below. [W]hile this aim may represent a desirable public policy which might support, for example, the condemnation of property for that use, it emphatically may not be promoted on the back of a private landowner by depriving him of the constitutionally protected use of his property.



Case Law – Quasi-Judicial

Conetta v. City of Sarasota, 400 So.2d 1051 (1981)

Request for special exception to build guest house. City Commission denied application. The District Court of Appeal held that denial of special exception allowing petitioner to build guest house on her property, which was based on objections of several residents which did not bear on any of the relevant criteria set forth in applicable section of city zoning code, was improper.



Conetta case continued

One of the major reasons for objection that was stated was that appellant's guest house would not conform to the rest of the area. This was because the structure was to be raised on stilts to twelve feet above ground level. This aspect of the design was not of appellant's own choosing, however; it was mandated by the flood plan zoning currently in effect. Moreover, there was at least one other parcel of property in the neighborhood that contained a raised structure. The other major objection involved the concern that despite appellant's assurances that she would not rent her guest house, she might later sell her property, and the new owner might rent the guest house. This was also not a permissible basis to deny the special exception.



PERSONAL APPEARANCES AND LIAISON DUTIES



Personal Appearances and Liaison Duties

- Protocol for attending events
- Managing Calendars
- Liaison reports – during Council comments



Next Steps

Any suggested changes to either policy will be presented for City Council's consideration at a future Business Meeting.





MAYOR and CITY COUNCIL

Meeting Policies and Procedures

It is the policy of the Palm Coast City Council that these Rules of Procedure shall govern all official meetings of the City Council. The members of the City Council, City Manager, City Attorney, City staff, and the public shall adhere to these rules, to wit:

I. Governing Rules.

Except as may be provided by these rules or by law, questions of order, the methods of organization and the conduct of business of the City Council shall be governed by *Robert's Rules of Order Revised* in all cases in which they are applicable as determined to be consistent with the customs and practices of the City Council.

II. Open to the Public.

- A. Meetings Open to Public. All meetings of the Palm Coast City Council shall be open to the public in accordance with the Florida Government in the Sunshine Law, Section 286.011, *Florida Statutes*.
- B. Exempt Meetings. The exception shall be those meetings statutorily exempt, such as executive collective bargaining sessions, Section 447.605(1), *Florida Statutes*, meetings regarding risk management claims, Section 768.28(15), *Florida Statutes*, and litigation meetings pursuant to Section 286.011(8), *Florida Statutes*, the City Council shall follow all statutory requirements for exempt meetings.
- C. Seating Capacity. Due to the need to comply with seating capacity requirements of the controlling Fire Code, there may be occasions when entrance by the public to the City Council Chambers or other meeting rooms shall be limited. In cases where there is limited seating capacity, every effort will be made to provide "overflow seating" in a room or rooms equipped with "streaming" audio and video of the meeting in progress.
- D. Accessibility. All meetings of the Mayor and City Council shall be conducted in a publicly accessible building and, as feasible, provide access to meetings through diverse media sources.
- E. Signs, Placards, Banners. For public safety purposes, no signs or placards mounted on sticks, posts, poles or similar structures shall be allowed in the meeting rooms. Other signs, placards, banners, shall not disrupt meetings or interfere with others' visual rights.

III. Quorum.

- A. Quorum. A majority of the entire City Council shall constitute a quorum. No ordinance, resolution, policy, or motion shall be adopted by the City Council without the affirmative vote of the majority of the members present or, if required by the *Florida Statutes*, a super-majority vote of the members present.

- B. Remaining in Chambers. During a City Council meeting, City Council Members should remain in the City Council Chambers at all times unless an emergency or illness should occur. City Council Members present in the meeting should not absent themselves for a particular item.
- C. Conflict of Interest. Any member of the City Council who announces a conflict of interest on a particular matter pursuant to Section 112.3143 or Section 286.012, *Florida Statutes*, and chooses to refrain from voting or otherwise participating in the proceedings related to that matter, shall be deemed present for the purpose of constituting a quorum.
- D. Loss of Quorum. In the event that a City Council Member is required to depart a City Council meeting prior to adjournment, and the departure causes a loss of quorum, no further official action may be taken until or unless a quorum is restored, other than adjournment.
- E. No Quorum. Should no quorum attend within thirty (30) minutes after the hour appointed for the meeting of the City Council, or upon a meeting having commenced with a quorum, which quorum has been lost, the Mayor or the Vice-Mayor, or in their absence, another City Council Member, in order of seniority, shall adjourn the meeting. The names of the members present and their action at such meeting shall be recorded in the minutes by the City Clerk. In the event that an emergency situation, such as a hurricane or other similar event, results in the unavailability of a quorum for a meeting or public hearing, the City Manager, or designee, may grant a continuance of the meeting, but, if practicable, shall be present at the site of the meeting or public hearing, post a notice of a continuance to a later date and time and advise members of the public who attempt to attend of the date and time of the meeting or hearing.

IV. **Presiding Officer.**

- A. Mayor. The Presiding Officer shall be the Mayor of the City of Palm Coast. The Mayor presides at all meetings of the City Council. The Mayor's responsibilities shall include, but not be solely limited to:
 - 1. Open the meeting at the appointed time and call the meeting to order, having ascertained that a quorum is present.
 - 2. Announce the business to come before the City Council, in accordance with the prescribed order of business.
 - 3. Recognize all City Council, the City Manager or City Attorney, who seek the floor under correct procedure. All questions and comments are to be directed through the Mayor.
 - 4. Preserve decorum and order, and in case of disturbance or disorderly conduct in the City Council Chambers, may cause the same to be cleared or cause any disruptive individual to be removed.
 - 5. Call to order any member of the City Council who violates any of these procedures and, when presiding, decide questions of order, subject to a majority vote on a motion to appeal.
 - 6. Expedite business in every way compatible with the rights of the members.

7. Remain objective. For the Mayor to make a motion, the gavel must be relinquished. Upon relinquishing the gavel, the Mayor or such other members of the City Council who may be presiding may offer motions and seconds, subject only to limitations of debate. The gavel shall be relinquished in the following order:
 - (a) to the Vice-Mayor;
 - (b) to other City Council Members based upon seniority.
 8. In the event that the Mayor relinquishes the gavel to offer a motion or a second he/she should not resume chairing the meeting until the pending main motion has been decided.
 9. Declare the meeting adjourned when the City Council so votes, or at any time in the event of an emergency affecting the safety of those present.
- B. Vice Mayor. In the absence of the Mayor or in the event of the Mayor's inability to serve by reason of illness or accident, the Vice Mayor shall perform the duties and functions of the Mayor until the Mayor's return or recovery and resumption of duty. In the absence of both the Mayor and Vice Mayor, City Council Members, in order of their seniority, shall chair.

V. Order of Business.

- A. Official Agenda. There shall be an official agenda for every meeting of the City Council, which shall determine the order of business conducted at the meeting. All proceedings and the order of business at all meetings of the City Council shall be conducted in accordance with the official agenda subject to matters being added on to an agenda consistent with these Policies and Procedures.
- B. Agenda Form; Availability; Support Information. The agenda shall be prepared by the City Manager in a form approved by the City Council. The City Manager shall make available to City Council Members a copy of the agenda before the meeting. All supporting information for agenda items shall be delivered to the City Council no later than the evening of three (3) business days before the regular meeting (electronically onto IPADs and/or in paper format if necessary).
- C. Agenda Format for Regular Meeting. The agenda format for a regular City Council meeting shall be in substantially the form as set forth below; provided, however, that the Mayor may move agenda items as he or she deems in the public interest or for the convenience of the public or City Council Members:
 1. Call to Order and Pledge of Allegiance.
 2. Public Comments on Non-Agenda Items (three (3) minute limit individually and thirty (30) minute limit for this agenda item).
 3. Awards and Presentations.
 4. Scheduled Public Hearings.

5. General Business.
 6. Consent Agenda.
 7. Public Comments on Non-Agenda Items (three (3) minute limit).
 8. City Council Comments and Directions for Action on Non-Agenda items.
 9. City Manager Comments and City Attorney reports, as needed.
 10. Adjournment.
- D. Scheduled Public Hearings. Public hearings shall be held as required to receive public comments on matters of special importance or as prescribed by law. For regular City Council meetings, public hearings shall be heard as the first order of business or as soon thereafter as is possible. In the event the party initiating the public hearing process requests a continuance of a public hearing after a notice of the hearing has been distributed, posted or published; the City Manager, or designee, may, in the event that the City Manager concludes that the motion has been filed in good faith and not solely for the purposes of delay or another improper purpose, grant the motion to continue and notify other potentially affected or interested parties of the continuance; provided, however, that this power shall only be applicable to the first request for a continuance and any other requests shall be subject to approval by the City Council.
- E. General Business. Business items are items of a general nature that require City Council direction or pertain to City Council policy. The City Council shall provide an opportunity for the public to comment on each item considered under general business. Persons commenting shall limit their contribution to three (3) minutes. All comments shall be addressed to the Mayor.
- F. Consent Agenda. On the portion of the agenda designated as "Consent," all items contained therein may be voted on with a single motion. Consent items are considered to be routine in nature, are typically non-controversial and do not deviate from past City Council direction or policy. However, any City Council Member may withdraw an item from the consent agenda and it shall then be voted on individually.
- G. Public Comments on Non-Agenda Items. The public may provide comments to the City Council relative to matters not on the agenda for a meeting at an appropriate time during the course of each meeting. Following all comments from the public, there may be discussion by the City Council, but the City Council shall take no major policy action except to agenda the topic for a later date or by a unanimous vote of the City Council but may take action to address exigent matters or to ensure that matters are addressed in a timely manner.
- H. City Council Comments. The purpose of City Council Comments is to promote the public discussion of City Business and to encourage the dissemination of information. The City Council shall take no major policy action without an agenda item unless such is approved by the consent of the City Council but may take action to address exigent matters or to ensure that matters are addressed in a timely manner.

- I. Departure from Order of Business. Any departure from the order of business set forth in the official agenda shall be made only by the Mayor or upon motion and consent of the majority of City Council members of the City Council present at the meeting.
- J. Placing Items on Agenda. Matters may be placed on the agenda by the City Manager or by any member of the City Council. When a City Council Member wishes to place a matter on the agenda, the City Council Member shall raise the matter at a regular City Council meeting or workshop and seek the City Council's consent for inclusion of the matter on the next available regular agenda or, in exigent circumstances or circumstances clearly warranting immediate action, on the current agenda. A City Council Member may not unilaterally add a matter to an agenda without the majority of the City Council's prior approval.
- K. Additions, Deletions, or Corrections to Agenda. Deletions or corrections to the agenda may be considered by the City Council. Non-agenda matters shall generally be confined to items that are informational only consistent with these Policies and Procedures.
- L. Supplemental Agenda Items. Items not included on the agenda for a meeting should be considered by the City Council only in exigent circumstances or as otherwise stated in these Policies and Procedures, for issues that are time critical or cost sensitive to the City. If the "supplemental" agenda is approved, the City Manager shall modify and reprint the agenda table of contents for redistribution to all persons who receive the initial agendas if time permits. Furthermore, the City's Web site should be updated to reflect the new agenda as soon as practicable. For matters of extreme emergency, a special meeting of the City Council may be called by the Mayor or a majority of the City Council upon adequate notice being provided under Section 286.011, *Florida Statutes*.
- M. Announcing Agenda Items. The Mayor shall announce each item on the agenda. The City Manager or City Attorney shall then present the item to the City Council.

VI. Special Meetings and Emergency Meetings.

- A. Special Meeting. A special meeting of the City Council may be called by the City Manager, the Mayor, or by a majority of the members of the City Council. Whenever a special meeting is called, the City Manager shall serve personal notice upon each member of the City Council stating the date, hour and place of the meeting and the purpose for which such meeting is called. At least twenty-four (24) hours must elapse between the time City Council receives notice and the time the meeting is held. However, if a determination to hold a special meeting is reflected upon the record of any regular City Council meeting, no additional notice is necessary. If after reasonable diligence, it was impossible to give notice to each City Council Member or it was impossible to let twenty-four (24) hours elapse between the time the notice of the meeting and the time the meeting was held, such failure shall not affect the legality of the meeting if a quorum is in attendance.
- B. Emergency Meeting. An emergency meeting of the City Council may be called by the City Manager or the Mayor whenever in his, her, or their opinion an emergency exists which requires immediate action by the City Council. Whenever

such an emergency meeting is called, the City Manager shall serve personal notice upon each member of the City Council, stating the date, hour and place of the meeting and the purpose for which it is called. At least twenty-four (24) hours shall elapse between the time the City Council receives notice of the meeting and the time the meeting is to be held. If because of the nature of the emergency it was impossible to give notice to each City Council Member or it was impossible to let twenty-four (24) hours elapse between the time the notice of the meeting and the time the meeting was held, such failure shall not affect the legality of the meeting if a quorum is in attendance.

- C. Minutes: Open Meetings. The minutes of each special or emergency meeting shall show the manner and method by which notice of such special or emergency meeting was given to each member of the City Council or shall show a waiver of notice. (See paragraph D. below) Minutes thereof shall be kept by the City Manager. All special or emergency meetings shall be open to the public.
- D. Notice. Reasonable public notice, sufficient to comply with the provision and intent of Section 286.011, *Florida Statutes*, must be given and in no event may be waived.
- E. Litigation Meetings. The City Attorney may request litigation strategy meetings in accordance with the controlling provisions of State law.

VII. Parliamentarian.

The City Attorney shall act as parliamentarian and shall advise and assist the Mayor in matters of parliamentary law. In the absence of a policy or procedure as provided for by these Policies and Procedures, the parliamentarian shall refer to such sources as he or she deems appropriate to provide guidance to the City Council.

VIII. Rules of Debate.

- A. Decorum.
 - 1. Every City Council Member desiring to speak should address the Mayor, and upon receiving recognition by the Mayor, shall confine discussion to the question under debate.
 - 2. City Council Members shall refrain from: attacking a member's motives; speaking adversely on a prior motion not pending; speaking while the Mayor or other City Council Members are speaking; and disturbing the City Council.
 - 3. A City Council Member, once recognized, should not be interrupted when speaking unless said Member is being called to order. The Member should then cease speaking until the question of order is determined, without debate, by the Mayor. If in order, said member shall be at liberty to proceed.
 - 4. A City Council Member shall be deemed to have yielded the floor when he or she has finished speaking. A Member may claim the floor only when recognized by the Mayor.

B. Motions.

1. All motions shall be made and seconded before debate.
2. When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter, except to: adjourn, to lay on the table, to postpone, to substitute, or to amend until the question is decided. These motions shall have preference in the order in which they are mentioned.
3. The following motions are not debatable: to adjourn; to lay on the table; to take from the table; to call the question.

C. Motions to Amend. An amendment to a motion must be germane, that is, it must relate to the substance of the main motion. An amendment may not introduce an independent question, and an amendment may not serve as the equivalent of rejecting the original motion. A City Council Member may amend the main motion in either of the following ways:

1. Consent of the City Council Members. The Mayor, or another City Council Member through the Mayor, may ask for certain changes to be made to the main motion. If there are no objections from the maker of the motion, the motion shall stand as amended.
2. Formal Amendment. An amendment may be presented formally by moving to amend the motion in some way. If it is in the form of a formal motion to amend, a second shall be required and discussion shall follow on the amendment. If an amendment passes, the main motion shall be the motion as amended. If it fails, the motion shall be the motion as it was before the amendment was presented.

IX. Voting.

- A. Votes and Voice Votes. The Mayor may, after a motion is made and seconded as to a matter, ask if there is objection to the motion and, if none is stated, all votes shall be recorded as affirmative "aye" votes on the matter; provided, however, if directed by the Mayor, votes shall be taken by roll call voice votes.
- B. Results. At the conclusion of voting the City Clerk shall announce the results. Upon any roll call, there shall be no discussion by any City Council Member prior to voting, and each City Council Member shall vote either in the affirmative or negative on the matter in accordance with custom unless abstaining from a vote in accordance with the controlling provisions of law.
- C. Voting. Every member who was in the City Council Chambers when the question was put must give his or her vote, unless the member has publicly stated that he or she is abstaining from voting due to a conflict of interest pursuant to Sections 112.3143 or 286.012, *Florida Statutes*. If any City Council Member declines to vote "aye" or "nay" by voice, his or her silence shall be counted as an "aye" vote.
- D. Absent for Vote, Changing Vote. If a City Council Member is momentarily absent from a meeting and misses a vote on a particular item or a City Council

Member desire to change his or her vote on a matter, a vote may be recorded or a vote may be changed if such action occurs before the next item is called for consideration, or before a recess or adjournment of the meeting occurs, whichever occurs first. After either such event, no vote of a City Council Member may be recorded or changed except with the consent of all the City Council Members who voted thereon. If an advertised public hearing has concluded no vote may be modified if not permitted by controlling State law. A City Council Member changing his or her vote on a matter or voting after an absence shall not be entitled to move for reconsideration of the vote as a voting City Council Member on the prevailing side of the matter.

- E. City Council Reconsideration Of/Rescinding Action Previously Taken. A motion to reconsider enables the City Council to set aside a vote on a main motion taken at the same meeting, or at the next meeting as set forth herein. If a motion to reconsider is made and passed, the City Council may set aside the reconsidered vote and consider the matter anew as though no vote had been taken. Only a City Council Member who voted on the prevailing side of the matter may make a motion to reconsider. Motions to reconsider may only be made when no other matter is being considered or heard. A motion to reconsider merely determines whether or not to reconsider the matter to which the motion is directed. If successful, a motion on the main matter must be made and acted upon. The last opportunity to make a motion to reconsider is the meeting after the action occurred for which reconsideration is proposed. If the motion relates to a matter heard at a public hearing which has concluded, and the motion is successful, all required advertisements and notices shall be implemented to notify affected persons and the public that the matter will be reheard.
- F. Majority Vote; Super Majority Vote; Tie Vote. The passage of any motion, policy, ordinance or resolution requires a majority vote of a quorum of the City Council unless a controlling provision of law requires otherwise. In the case of a tie vote on any matter, the action shall be deemed not to have been approved; provided, however, that if an advertised public hearing results in a tie vote, all reasonable consideration shall be given to continuing the hearing if the tie results from an absence of a City Council Member and not recusal or a long term inability to attend.
- G. Voting Conflict. A City Council Member shall not vote on a matter when the City Council Member has a voting conflict of interest as specified in Section 112.3143 or Section 286.011, *Florida Statutes*. A City Council Member abstaining from voting due to a conflict shall announce the conflict prior to discussion on the matter. Within fifteen (15) days following that City Council meeting, the City Council Member shall file with the Clerk a Form 8B "Memorandum of Voting Conflict" which describes the nature of the interest in the matter. Form 8B shall be received by the Clerk and incorporated into the meeting minutes as an exhibit.
- H. Votes On City Council Appointees. When making appointments to City boards, committees, etc., the City Council shall attempt, insofar as practical, to reflect the diversity of the City. The City Manager shall design a form that shall be used to record City Council Member votes for appointees when motions are made relative to appointments unless the Mayor determines that a voice vote is appropriate.

X. Public Input: Addressing the City Council.

- A. Public Input. The City Council recognizes the importance of protecting the right of the public to express their opinions on the operation of City government and encourage citizen participation in the local government process. The City Council also recognizes the necessity for conducting orderly and efficient meetings in order to complete City business in a timely manner. Public participation shall be encouraged in order that the public interest may be best served with regard to all matters. Also, it is acknowledged that quasi-judicial proceedings require special treatment in order for the City to comport with the requirements of controlling law and afford administrative due process to all parties. The Mayor shall seek guidance from the City Attorney as to quasi-judicial proceedings as may be necessary under the particular circumstances of the matter.
- B. Non-Agenda Public Comments. The City Council shall provide a scheduled comment period for public comment on non-agenda items. This public comment period is denoted on the agenda as "Public Comments." The remarks of each speaker shall be limited to no more than three (3) minutes, unless the Mayor extends the time.
- C. Public Input on a Matter Pending Before the City Council. Each person who addresses the City Council on an agenda item pending before the City Council shall limit his or her presentation to three (3) minutes. The Mayor has the discretion to either extend or reduce the time limits, based on the number of speakers. The Mayor shall evaluate the statements of persons stating that they are either legal counsel for or a representative of a group or association of persons or entities in terms of granting such persons additional time to present the views of the group.
- D. Issues of Concern Expressed by the Public.
 - 1. Members of the public may submit a "Public Inquiry Form" to the City Manager to provide him or her all necessary information relative to the matter of concern.
 - 2. The matter expressed in the "Public Inquiry Form" will then be considered by the City Manager, or his/her designee, and the City Manager may choose to resolve the matter or to present the matter to the City Council.
 - 3. In any event, the City Manager shall report to the City Council the filing of the "Public Inquiry Form" and any action that he or she may have taken.
 - 4. This procedure shall not be used if "appeal" mechanisms already exist to address the matter set forth in the "Public Inquiry Form" and the filing of a "Public Inquiry Form" shall not constitute the filing of an appeal under any provision of any City code or ordinance.
- E. Public Input at Workshops. Public input at City Council workshops shall be limited to the items on that workshop agenda. Such public input at City Council workshops shall be conducted twice: 1) as the Workshop's 1st Agenda

item after Call to Order and Pledge of Allegiance, and 2) after the Council's consideration of its' agenda items and before reports.

F. Addressing the City Council.

1. When addressing the City Council, each individual in turn, shall step up to the speaker's lectern and shall give the following information in an audible tone of voice for the minutes:
 - (a). name;
 - (b). place of residence or business address;
 - (c). if requested by the Mayor, the person may be required to state whether the person speaks for a group of persons or a third party, if the person represents an organization, whether the view expressed by the person represents an established policy or position approved by the organization, and whether the person is being compensated by the organization.
2. All remarks shall be addressed to the Mayor.
3. Speakers must make their comments concise and to the point and present any data or evidence they wish the City Council to consider. No person may speak more than once on the same subject unless specifically granted permission by the Mayor.
4. If a person or group intends to introduce written or illustrative materials to be considered by the City Council, such materials, once submitted, become part of the public record and will not be returned to the presenter. Also, if such materials are voluminous, a presenter should provide the materials as early as possible to the City Manager for review and analysis and inclusion, as appropriate, in agenda materials. The presentation of voluminous materials at a City Council meeting could result in continuation of the matter.

G. Decorum.

1. Order must be preserved. It is prohibited for a person, by speech or otherwise, to delay or interrupt the proceedings or the peace of the City Council or disturb any person having the floor. No person shall refuse to obey the orders of the Mayor or the City Council. Any person making irrelevant, impertinent, or slanderous remarks or who becomes boisterous while addressing the City Council shall not be considered orderly or decorous. Any person who becomes disorderly or who fails to confine remarks to the identified subject or business at hand shall be cautioned by the Mayor and given the opportunity to conclude remarks on the subject in a decorous manner and within the designated time limit. Any person failing to comply as cautioned shall be barred from making any additional comments during the meeting by the Mayor, unless permission to continue or again address the City Council is granted by the majority of the City Council Members present. Presentations at City Council meetings are to relate to matters on the agenda or matters that are suggested with regard to actions proposed to be taken by the City Council.

2. The use of presentations at City Council meetings for political campaign purposes is prohibited. People who attempt to use the public participation opportunity at City Council meetings for political campaign purposes shall be first cautioned to confine their comments to non-political campaign purposes and, failing to comport with such warning, shall relinquish their opportunity to make comments at the public participation time as enforced at the direction of the Mayor.
3. If the Mayor or the City Council declares an individual out of order, he or she will be requested to relinquish the podium. If the person does not do so, he or she is subject to removal from the City Council Chambers or other meeting room and may be arrested by a law enforcement officer subject to Section 810.08(1), *Florida Statutes*.
4. Any person who becomes disruptive or interferes with the orderly business of the City Council may be removed from the City Council Chambers or other meeting room for the remainder of the meeting.

XI. Adjournment.

No meeting shall be permitted to continue beyond 11:00 P.M. without the approval of a majority of the City Council. A new time limit must be established before taking a City Council vote to extend the meeting. In the event that a meeting has not been adjourned or continued by City Council vote prior to 11:00 P.M., the items not acted on are to be continued to 9:00 a.m. on the following day, unless State law requires hearing a matter at a different time, or unless the City Council determines, by a majority vote of City Council Members present, some other time certain.

POLICY FOR ELECTED OFFICIALS REGARDING PUBLIC RECORDS, AND USE OF EMAIL, TEXTING, SOCIAL MEDIA, AND CITY-ISSUED DEVICES.

A. PURPOSE

It is the purpose of this policy to ensure that the public records of the City of Palm Coast are efficiently retained and disposed in a manner consistent with Florida Statutes, Florida Administrative Code, the Florida Public Records Act, and the City Charter. This policy provides the basic requirements related to the creation, maintenance, use and disposition of public records contained in electronic mail messages (e-mails and texts) and social media accounts received and sent by Elected Officials of the City of Palm Coast. This policy also provides guidelines pertaining to Elected Officials' use of personal social media accounts.

B. PUBLIC RECORDS

Section 1. Executive Summary Authority

Authority

Constitution, Article I, Section 24
Florida Statutes, Chapter 119 (Public Records);
Florida Statutes, §257.36 (Records Disposition);
Florida Statutes, Chapter 668 (Electronic Commerce);
Florida Statutes (various chapters / exemptions to public access to certain records);
Florida Administrative Code (F.A.C.), Ch. 1B-24 (Disposal of Records);
Florida Administrative Code (F.A.C.), Ch. 1B-26 (Electronic Record-keeping);
City Charter, Art. II.
City Ordinances; and
Florida Records Retention Schedules.

Section 2. Scope and Authority

This policy shall apply to all Elected Officials for the City of Palm Coast.

Section 3. Policy Statement

It is the policy of the City of Palm Coast to comply with the Public Records Act by making City's public records available for inspection at reasonable times and under reasonable circumstances and, upon request, provide copies of such records at costs authorized by Florida Statutes. Furthermore, it is recognized that Elected Officials have a duty to preserve and retain all public records, including electronic communications, in compliance with Florida law.

Section 4. Supplemental Administrative Policies and Procedures

The City of Palm Coast has adopted separate policies and procedures for its employees necessary to carry out the recordkeeping and public records functions of the City.

Section 5. General Procedure and Prompt Handling

The State of Florida has determined that providing access to public records is a constitutional right of each person and it is the duty of the City to comply with all State laws relating to public records. It is the goal of the City to fulfill public records requests in accordance with Florida Statutes, provided the requested records are readily accessible and absent of exempt or confidential information. It is the intent of the City that its Elected Officials comply with the State of Florida's public records laws, follow City policy and procedure for safeguarding records, and improve the public's access to public records in the City.

Every person who has custody of a public record has an obligation to permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record (i.e., the City Manager, as the chief administrative officer of the City) or their designee, except for those exemptions provided by law. By designation of the State of Florida, the City Clerk is the Records Management Liaison Officer, and as such has been designated by the City Manager as the point of contact for all public records requests.

Elected Officials shall immediately forward all public records requests received to the City Clerk's office. All public records requests shall be produced by the City Clerk's office. The City Clerk will work closely with the appropriate department heads for confidential and exempt records, such as personnel files and medical records. If it is determined that an Elected Official has custody of a public record responsive to a public records request received, and the public record is not already in the custody of the City, the Elected Official shall promptly provide such public record to the City Clerk.

Section 6. Custodian of Records

All public records requests shall be to the City Clerk/Records Custodian, for the most expeditious processing. Requests may be sent to:

City Clerk/Records Custodian
City of Palm Coast
160 Lake Ave.
Palm Coast, FL 32164
cityclerk@palmcoastgov.com
386-986-3713

Section 7. Definitions

Appointed Officials: Shall mean the City Manager, and the City Attorney. The City Clerk is appointed by the City Manager.

Confidential Public Record: Shall be those records, or portions thereof, specifically designated as “*confidential*” by applicable Florida Statutes. Unlike “*exempt*” records, the City has no discretion and may not release records designated by the Florida Legislature as confidential.

City-Issued Device: Any electronic device provided by the City to an Elected Official for use, including but not limited to tablets, cell phones, and computers.

Elected Officials: Shall mean the Mayor and Members of the City Council of the City of Palm Coast.

Electronic Communications: All communications, regardless of the technology or means of transmission, sent electronically from one device to another. This includes electronic mail (e-mail), SMS messages (text messages), MMS (multimedia / picture messages), social media records (Facebook, Instagram, YouTube, Twitter, etc.).

Employee: As used in this policy, *employee* shall include all persons who are full-time or part-time employees of the City and this policy shall also include any non-paid volunteers, interns, and appointees to the various advisory boards or committees.

Exempt Public Record: Shall be those records, or portions thereof, specifically designated as “*exempt*” by applicable statute. As exempt records, the City has discretion to release such records, in whole or part, when there is a specific public purpose.

Personal Device: Any electronic device used by an Elected Official which is not provided by the City to the Elected Official for use, including but not limited to personal tablets, cell phones, and computers.

Public Record: Shall have the definition as specified by §119.011(12), F.S., as may be amended from time to time, which currently reads:

“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, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

This definition shall be interpreted liberally to include all records prepared in connection with official agency business, including electronic communications, which are intended to perpetuate, communicate, or formalize knowledge. This definition includes e-mails and text messages created or transmitted in connection with the transaction of official business,

regardless if the communications were sent from a City-Issued Device or a Personal Device.

Social media platform or social media account: any web-based technology used for community-based input, interaction, content-sharing, blogs, and collaborations.

Social networking site: a dedicated site or other application that enables users to communicate with each other by posting information, comments, messages, videos, images, etc.

Section 8. Records retention/ retention scheduled.

The State of Florida, Department of State, Division of Library & Information Services (DLIS), per rulemaking authority granted by §257.36(6), F.S., has developed a set of *records schedules* containing individual *record series* defining various public records, and establishing minimum retention requirements. The City must adhere to these schedules and shall keep records in compliance with the longest retention period imposed therein.

C. EMAILS AND TEXTS

Section 1. The City of Palm Coast will provide each Elected Official with a City e-mail address and remote access to the City's e-mail server.

Section 2. Elected Officials are expected to only utilize their City e-mail address for all ingoing and outgoing e-mail correspondence related to City business. Should Elected Officials receive any e-mail messages which constitute public records to their personal e-mail accounts or via text on their Personal Devices, it is strongly recommended that the e-mail message or text be forwarded or copied to their City e-mail address to be part of the complete public record. In addition, Elected Officials should only respond to e-mail messages with their City e-mail address.

Section 3. Only the City e-mail address should be used on City documents, business cards, publications and the City's official website.

Section 4. Elected Officials may not delete e-mail messages or texts which constitute public records in their possession or control. This includes e-mail messages received or created from their personal e-mail address or via text on their Personal Device if the message is in connection with official City business, until they are moved or copied to the Elected Official's City e-mail address and stored on the City's e-mail server. Once the Elected Official has verified that any moved or copied e-mails or texts are located on the City's e-mail server, they may delete the text or the subject message from their personal e-mail accounts and Personal Devices.

Section 5. Elected Officials may, from time to time, receive ex-parte communications in relation to City business. Upon receipt thereof, Elected Officials shall immediately forward all such communications to the City Clerk for inclusion into any related agenda items being presented to City Council, and for preservation in accordance with state law.

Section 6. The City Clerk shall determine the retention and be responsible for the systematic disposition of the Elected Officials' e-mail and text messages contained on the City's server, in accordance with state law.

D. CITY-ISSUED DEVICES

Section 1. Each Elected Official shall be issued a City-owned tablets and cell phone ("City-Issued Devices") for use during the term in office to conduct City business. It is strongly recommended that Elected Officials refrain from using Personal Devices to conduct City business. All City-Issued Devices are and remain the property of the City of Palm Coast. The service contract is entered into by the City, and all payments are made directly to the service provider by the City. The rate plan is selected by the City. Elected Officials shall return all City-Issued Devices to the City upon the end of their term in office, or earlier resignation or otherwise from the City, as is relevant. Additional charges over the limits set by the City may be the responsibility of the Elected Official. All programming to City-Issued Devices shall be completed by the City's IT Department.

Section 2. Each Elected Official shall use the City-Issued Devices in accordance with this Policy.

Section 3. Each City-Issued Device shall be enrolled into the retention system to ensure that all communications sent or received on the City-Issued Device are automatically retained for public record purposes. City-Issued Devices with texting capabilities shall maintain, preserve, and archive all text messages.

Note: Under this policy, it shall be permissible to transmit messages from a Personal Device to a City-Issued Device, or vice versa, as the City-Issued Device will preserve a record of the communications. It is the intent of this section to prohibit business-related communications originating from a Personal Device from being transmitted to another Personal Device, thereby circumventing the City's automatic-retention software.

Section 4. Usage for calls: Each Elected Official shall exercise discretion in making and receiving personal calls on a City-Issued Device.

Section 5. Text messages: Each Elected Official understands that all text messages relating to City business should be conducted on a City-Issued Device for record retention purposes. Should an Elected Official choose to use a Personal Device to send or receive text messages relating to City business, the Elected Official will be solely responsible for retaining those public records and promptly providing them to the City upon request. All text messages sent or received on City-Issued Devices will be automatically archived for responses to public records requests received by the City.

Section 6. Internet usage: Each Elected Official shall exercise discretion in accessing the internet, which shall only be accessed for related City business, on City-Issued Devices. Additional charges over the limits set by the City may be the responsibility of the Elected

Official. All Programs and Applications on City-Issued Devices shall be installed by the City's IT Department.

E. SOCIAL MEDIA

Elected Officials that individually wish to utilize City social media sites or to create or utilize their own or others' websites, applications, personal social media platforms or social networking websites, which pertain to or allow for communications relating to City matters, should be aware of the risks and requirements as set forth in Florida law, including but not limited to Florida Attorney General Opinions, the Sunshine Law, and the Public Records Law, prior to the establishment of such a site or activities thereon. Extreme caution and care should be exercised by Elected Officials in posting or uploading any content to a website, application, personal social media platform or social networking website in order to: avoid the appearance of impropriety; unnecessarily expose themselves or the City to liabilities; prevent complaints or allegations of bias or favoritism; avoid violations of the Sunshine Law or the Public Records law, including retention or spoliation issues; avoid violations of Florida's ethics rules; and, to avoid violations of Florida's Election Code.

Statements, opinions or beliefs conveyed by Elected Officials using websites, applications, personal social media platforms or social networking sites should be clearly identified as personal in nature and not attributable to the City. It is recommended that language similar to the following should be included on the Elected Official's personal social media account:

"The postings on this site are my own and do not represent the City of Palm Coast's positions or opinions. Please be aware that I currently serve as a City Council member for the City of Palm Coast and that, therefore, under Chapter 119, Florida Statutes, every response and submission to this website may constitute a public record. If any submission is removed in whole or in part, please be advised that all of such removed submissions may survive deletion, whether by you or others, and will be archived offline and will be considered a public record available for inspection to the extent allowed by Chapter 119, Florida Statutes. Requests for public records may not be made via this site but must be directed to the City Clerk."

What constitutes city business for Public Records Act purposes can be complex. Elected Officials are advised that posting information relating to city business on personal social media platforms or social networking sites may result in the creation of public records and impart legal obligations individually upon them pursuant to the Public Records Act.

The City understands that social media can be a beneficial and rewarding way for individuals to share information about themselves and interact with others and the public at large. However, when it comes to members of the City Council, as well as other City boards and committees, use of social media can violate Sunshine and Public Records laws when discussing public business, resulting in potential litigation and even criminal charges.

In addition, using a personal social media platform or social networking site for official statements or the discussion of public business can transform the personal social media platform or social networking site into a “public forum” subject to First Amendment regulation.

Section 1. Guidance. The following may be used as guidance to avoid creating actual or perceived violations of the First Amendment, as well as Sunshine and Public Records laws.

- a. Any Elected Official who uses a personal social media platform or social networking site to make statements relating to public business should not prevent any other user from interacting with any post. Elected Officials may not take any action to make any individual’s comments or replies to posts on the social media platform or social networking site less visible to others. If available, Elected Officials may instead choose to turn off replies and comments entirely on any given post.
- b. Elected Officials must not engage each other in an exchange or discussion of matters that foreseeably will come before the City Council for official action. This includes both substantive and non-substantive interactions, such as commenting on one another’s posts, tagging one another on statements, liking one another’s posts, or making any statement explicitly or implicitly referring to a member of the same board. Communication between Elected Officials via social media, as with telephone and email, may potentially constitute a “meeting” under the Sunshine Law. For this reason, Elected Officials are strongly discouraged from “friending” other Elected Officials, “liking” other Elected Official’s posts, or participating in social media discussions/threads regarding City business that involve other Elected Officials.
- c. Elected Officials should not use a personal social media platform or social networking site to state an opinion on a matter which may come before their board in a quasi-judicial capacity. Elected Officials should avoid engaging in *ex parte* communications regarding quasi-judicial matters through personal social media platform or social networking site. If an Elected Official does communicate regarding a quasi-judicial matter using a personal social media platform or social networking site, the Elected Official shall disclose such *ex parte* communications at the relevant hearing.
- d. Elected Officials should avoid making any statements regarding public business through posts which are not publicly available. For the purposes of this policy, “publicly available” shall mean accessible by hyperlink without any required sign-in or other credential. If a social media platform or social networking site does not provide for the creation of publicly available posts, Elected Officials should refrain from utilizing that personal social media platform or social networking site.
- e. Elected Officials that choose to utilize personal social media platforms or social networking sites to conduct City business shall be solely responsible to retain all data from personal social media accounts pertaining to City business. All such data must be forwarded to the Elected Official’s City-issued email with proper identification of

the date, time, and topic of the post as well as from which medium the communication was originally located. Whenever an Elected Official makes any statement regarding public business using a personal social media platform or social networking site, including a reply to another user's post, the Elected Official should immediately create a copy of the statement and forward to their City issued email with the proper date, time, social media site and with whom they communicated. The copy may either be physical form or a computer file, such as a PDF. Elected Officials who desire technical guidance in creating a copies of social media posts should contact the City Clerk.

- f.** Elected Officials may not delete any posts which relate to public business.

F. EFFECTIVE DATE

This policy shall become effective immediately upon adoption by the City Council.