

Public Meetings & Florida Sunshine Law

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LEGAL RESOURCES



Florida Statutes on Public Meetings



Statutes, Constitution, & Laws of Florida
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The 2019 Florida Statutes

[Title XIX](#) [Chapter 286](#) [View Entire Chapter](#)
PUBLIC BUSINESS PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

CHAPTER 286 PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

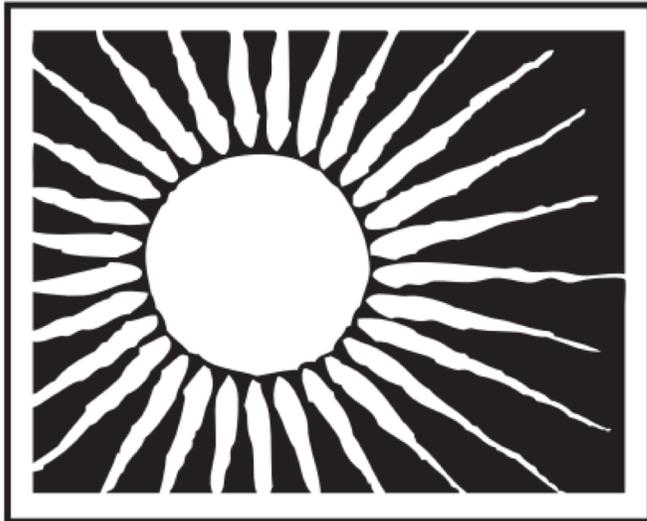
[286.001](#) Reports statutorily required; filing, maintenance, retrieval, and provision of copies.
[286.0105](#) Notices of meetings and hearings must advise that a record is required to appeal.
[286.011](#) Public meetings and records; public inspection; criminal and civil penalties.
[286.0111](#) Legislative review of certain exemptions from requirements for public meetings and recordkeeping by governmental entities.
[286.0113](#) General exemptions from public meetings.
[286.0114](#) Public meetings; reasonable opportunity to be heard; attorney fees.
[286.01141](#) Criminal justice commissions; public meetings exemption.
[286.0115](#) Access to local public officials; quasi-judicial proceedings on local government land use matters.
[286.012](#) Voting requirement at meetings of governmental bodies.
[286.021](#) Department of State to hold title to patents, trademarks, copyrights, etc.
[286.031](#) Authority of Department of State in connection with patents, trademarks, copyrights, etc.
[286.035](#) Constitution Revision Commission; powers of chair; assistance by state and local agencies.
[286.036](#) Taxation and Budget Reform Commission; powers.
[286.041](#) Prohibited requirements of bidders on contracts for public works relative to income tax returns.

www.leg.state.fl.us

Section 286.011, F.S.

Public Meetings - Florida Sunshine Law

GOVERNMENT-IN- THE-SUNSHINE MANUAL



2020 Edition

Florida Attorney General

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› File a Complaint	› Consumer Protection
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- Advisory opinions concerning public meetings, sunshine law, and public records
- AGO 2020-03 Public meetings using technology
- www.myfloridalegal.com

THE DECISION-MAKING PROCESS



Entire decision-making process must be in the Sunshine



”Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire decision-making process that the legislature intended to affect by the enactment of the statute before us.”

Times Publishing Company v. Williams,
222 So. 2d 470, 473 (Fla. 2d DCA 1969)

Who is governed by the Sunshine Law?



- *Any local government collegial body*
- *Advisory Boards*
- *Candidates*

What meetings are covered by the Sunshine Law



- *Workshops*
- *Inspection Trips*
- *Board members attending other meetings*
- *Emails, texts and other written communications between board members*

Certain staff meetings are subject to Sunshine Law

- Purchasing
- Planning Technical Review Committee
- Selection Committee for a Request for Proposals



MEETING REQUIREMENTS



Open Public Meetings



- all meetings of any local gov. must be open to the public
- no formal action is binding except as taken at an open meeting
- must provide opportunity for public comment

Florida Constitution Article I, Section 24(b)

Florida Statutes Sections 286.011(1) and 286.0114

Meeting Accessibility



Federal Law

Title II of the Americans with Disabilities Act prohibits discrimination against all people with disabilities in all state and local government activities

Florida Law

A person may submit written request to attend the meeting at least 48 hours before it occurs

Chairperson must provide accommodation or move the meeting to an accessible location (*Section 286.26, Florida Statutes*)

Public Comment



- Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission
- Public comment must occur during the decision-making process and must be reasonably proximate in time to the decision
- Board may adopt policies governing amount of time given, representatives of groups, and forms

Section 286.0114, Florida Statutes

Voting Requirement

- Board members present at the meeting must vote
- may not abstain
- unless there is a conflict of interest

Section 286.012, Florida Statutes

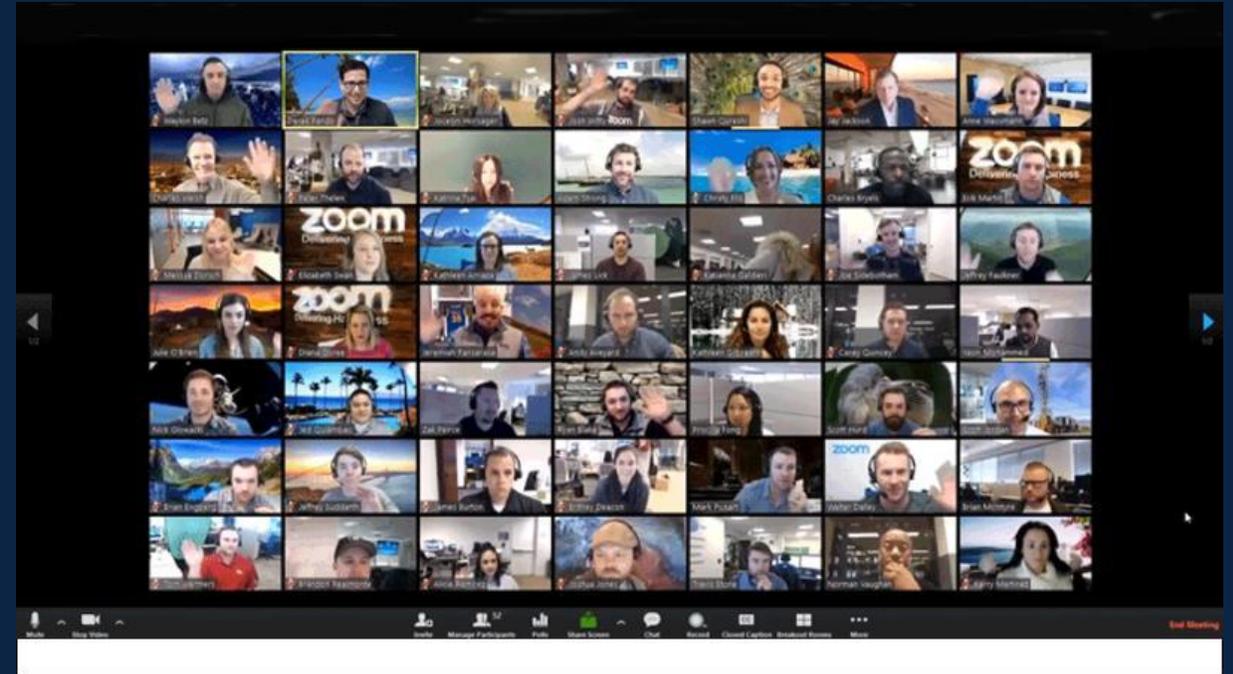


ELECTRONIC PUBLIC MEETINGS



Electronic Public Meetings

- Communications technology new to local boards under governor's order
- OK for State boards
- Administrative Procedure Act – allows video hearings under Chapter 120 Florida Statutes
- Electronic media to increase public participation



Statutes allow electronic public meetings for

- State Agencies (120.54(5)(b)(2), Florida Statutes)
- Interlocal Agencies
- Water Management Districts
- Florida Inland Navigation Districts
- Florida Building Commission



See AGO 2020-03

Quorum is required

- a majority of members constitutes a quorum
- Must have an affirmative vote of a “majority of a quorum present” to adopt an ordinance or resolution

See § 166.041(4), Fla. Stat.

Attorney General Opinion (AGO)

2020 – 03

Only 2 ways a local government can legally hold meetings using communications media technology:

1. Legislative change to Florida Statutes
2. Governor-declared State of Emergency

Florida Attorney General Advisory Legal Opinion

Number: AGO 2020-03
Date: March 19, 2020
Subject: Public meeting quorums using technology

The Honorable Ron DeSantis
Governor
The Capitol
Tallahassee, Florida 32399-0001

Dear Governor DeSantis:

Our office has received your letter dated March 17, 2020, requesting an opinion pursuant to Section 16.01(3), Florida Statutes, in light of recent developments arising from the spread of COVID-19. On March 9, 2020, you issued Executive Order No. 20-52, declaring a state of emergency statewide and requiring Florida government officials to take necessary and timely precautions to protect their communities.

You state that, as a result of the dangers of COVID-19, public safety directives encourage citizens to engage in "social distancing" and to avoid public gatherings, where possible. As a result, your office "has been contacted by numerous county and local government bodies regarding concerns for public meetings held in light of the COVID-19 public health emergency. These entities raise issues involving Florida Statutes and Attorney General Advisory Opinion interpretations that limit the ability to hold public meetings using communications media technology."¹

Question Presented

Under these circumstances, you ask the following question:

Whether, and to what extent, local government bodies may utilize teleconferencing and/or other technological means to convene meetings and conduct official business, while still providing public access to those meetings?

It is my opinion under existing law that, if a quorum is required to conduct official business, local government bodies may only conduct meetings by

Governor's Executive Order 20 – 69

**STATE OF FLORIDA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 20-69**

(Emergency Management — COVID-19 — Local Government Public Meetings)

Section 1. I hereby suspend any Florida Statute that requires a quorum to be present in person or requires a local government body to meet at a specific public place.

Section 2. Local government bodies may utilize communications media technology, such as telephonic and video conferencing, as provided in section 120.54(5)(b)2., Florida Statutes.

Section 3. This Executive Order does not waive any other requirement under the Florida Constitution and "Florida's Government in the Sunshine Laws," including Chapter 286, Florida Statutes.

What is a quorum?

- No statute says members must be physically present to constitute a quorum
- Attorney General has consistently concluded that:
 - *a quorum consists of members that are physically present*
 - and
 - *members present by electronic means do not count toward establishing the quorum*

Public meetings must be public

https://www.beacononlinenews.com/news/deltona-city-commission-locks-out-public-from-public-meeting/article_969a0efc-9a1a-11ea-b8e3-af3c787f03ed.html

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FEATURED

Deltona City Commission locks out public from public meeting

Al Everson May 19, 2020

West Volusia Beacon asks --- What constitutes a quorum?

Deltona City Charter language -

- A majority of the Commission shall constitute a quorum. No action of the Commission shall be valid unless adopted by an affirmative vote of the majority of the Commission in attendance, unless otherwise provided by law or stated herein. All actions of the City Commission shall be by ordinance, resolution or motion.”
- With that in mind, could a quorum — meaning at least four of the members of the commission — be a “virtual” number, not necessarily present in one place, but connected with audio and video links to one another? Or must the quorum be together in one place.

NOTICE & AGENDA



Notice of Meetings

- “The board or commission must provide reasonable notice of all such meetings.”
Section 286.011(1), F.S.
- Statute provides no definition of “reasonable notice”
- The Sunshine Law does not define the term “reasonable notice,” and “[f]ew cases address the question of what is reasonable notice.” See Transparency for Florida, Inc. v. City of Port St. Lucie, 240 So. 3d 780 (Fla. 4th DCA 2018). In Transparency, the court referenced AGO 73- 170, which concluded that the type of notice given depends on the purpose for the notice, the character of the event about which the notice is given, and the nature of the rights to be affected.

Notice and Agendas



- No mandate for an agenda
- OK to consider matters outside of an agenda
- Public may bring up an issue
- AGO suggests that council postpone a vote on matters not on the agenda
- AGO 03-53
- Other laws may require agenda – Administrative Procedure Act
- Allows changes to the agenda for good cause shown - 120.052(2)

REMEDIES AND PENALTIES



Remedies for Violation of Sunshine Law



- A Sunshine Law violation occurs when officials discuss matters on which foreseeable action may be taken by that board or commission in clear violation of the purpose, intent, and spirit of the Sunshine Law. [Fla. Stat. Ann. § 286.011\(1\)](#).
- Actions taken at a meeting that violates the sunshine law are void ab initio
- Does not have to be a “knowing violation”

Penalties for Violation of Sunshine Law

■ Criminal

- A knowing violation of the Sunshine Law
- is a misdemeanor of the second degree (Section 286.011(3)(b), F.S.)
- imprisonment up to 60 days and/or up to \$500 fine

■ Non-criminal

- Infraction subject to fine up to \$500
- Governor may suspend an official if indicted and remove them from office if convicted





Thank You