

# BEACH BUSINESS IMPROVEMENT DISTRICT ADVISORY COMMITTEE

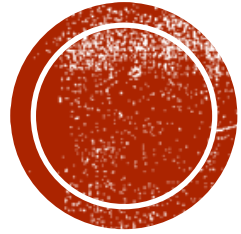


D'Wayne Spence, Assistant City Attorney

March 14, 2022

# TOPICS

- What is the Beach Business Improvement District?
- What is the purpose and function of the Beach Business Improvement District Advisory Committee?
- State of Florida Voting Requirement
- Code of Ethics
- Sunshine Law
- Public Records



# BEACH BUSINESS IMPROVEMENT DISTRICT



# **SPECIAL ASSESSMENT**

- An enforced contribution from property owners for a special benefit from improvement or service for which the assessment is levied
- Assessed property must derive a special benefit from the improvement and services
- Assessment must be fairly and reasonably apportioned among payers.

# LEGISLATION

- Ordinance C-06-34: Home-rule ordinance authorizing the City of Fort Lauderdale to establish to impose a Beach Business Improvement Assessment.
- Resolution 06-206: Initial Assessment Resolution
- Ordinance C-07-02: amends ordinance C-06-34 to revise the definition of government property to include property used by government and exclude government property leased to private entity for commercial use.
- Resolution 07-26: Final Assessment Resolution

**SECTION 1.03. GENERAL FINDINGS.** It is hereby ascertained, determined, and declared that:

(A) Pursuant to Article VIII, section 2(b), Florida Constitution, and sections 166.021 and 166.041, Florida Statutes, the City Commission has all powers of local self-government to perform municipal functions and to render municipal services in a manner not inconsistent with law, and such power may be exercised by the enactment of City ordinances.

(B) The City Commission may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the City Commission may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in (a), (b), (c), and (d) of section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of section 166.021(3), Florida Statutes, are not relevant to the imposition of assessments related to Beach Business Improvement services, facilities or programs of the City.

(C) The purpose of this Ordinance is to (1) provide procedures and standards for the imposition of Beach Business Improvement Assessments under the general home rule powers of a municipality to impose special assessments; (2) authorize a procedure for the funding of Beach Business Improvement services, facilities, or programs providing special benefits to property within the City; and (3) legislatively determine the special benefit provided to Assessed Property from the provision of the Beach Business Improvement services.

## **ORDINANCE C-06-34**

- Provides procedures and standards for imposition of Beach Business Improvement Assessments
- Authorizes procedure for funding Beach Business Improvement services, facilities, or programs
- Legislatively determines the special benefit provided to the Assessed property

"Beach Business Improvement Assessment" means a special assessment lawfully imposed by the City Commission against Assessed Property to fund all or any portion of the cost of the provision of Beach Business Improvement services, facilities, or programs providing a special benefit to property as a consequence of possessing a logical relationship to the value, use, or characteristics of the Assessed Property.

"Beach Business Improvement Assessed Cost" means the amount determined by the City Commission to be assessed in any Fiscal Year to fund all or any portion of the cost of the provision of Beach Business Improvement services, facilities, or programs which provide a special benefit to Assessed Property, and shall include, but not be limited to, the following components: (A) the cost of all security, safety, beautification, maintenance, marketing, promotion and advocacy within the district (B) the costs incurred in any required acquisition or purchase; (c) the cost of all labor, materials, machinery, and equipment; (D) the cost of fuel, parts, supplies, maintenance, repairs, and utilities; (E) the cost of computer services, data processing, and communications; (F) the cost of physical construction, reconstruction or completion of any required facility or improvement; ; (G) the cost of any indemnity or surety bonds and premiums for insurance; (H) the cost of salaries, volunteer pay, workers' compensation insurance, or other employment benefits; (I) the cost of uniforms, training, travel, and per diem; (J) the cost of construction plans and specifications, surveys and estimates of costs; (K) the cost of engineering, financial, legal, and other professional services; (L) the costs of compliance with any contracts or agreements entered into by the City to provide Beach Business Improvement services; (M) all costs associated with the structure, implementation, collection, and enforcement of the Beach Business Improvement Assessments, including any service charges of the Tax Collector, or Property Appraiser and amounts necessary to off-set discounts received for early payment of Beach Business Improvement Assessments pursuant to the Uniform Assessment Collection Act or for early payment of Beach Business Improvement Assessments collected pursuant to Section 3.02 herein; (N) all other costs and expenses necessary or incidental to the acquisition, provision, or construction of Beach Business Improvement services, facilities, or programs, and such other expenses as may be necessary or incidental to any related financing authorized by the City Commission by subsequent resolution; (O) a reasonable amount for contingency and anticipated delinquencies and uncollectible Beach Business Improvement Assessments; and (P) reimbursement to the City or any other Person for any moneys advanced for any costs incurred by the City or such Person in connection with any of the foregoing components of Beach Business Improvement Assessed Cost.

## **BEACH BUSINESS IMPROVEMENT ASSESSED COST**

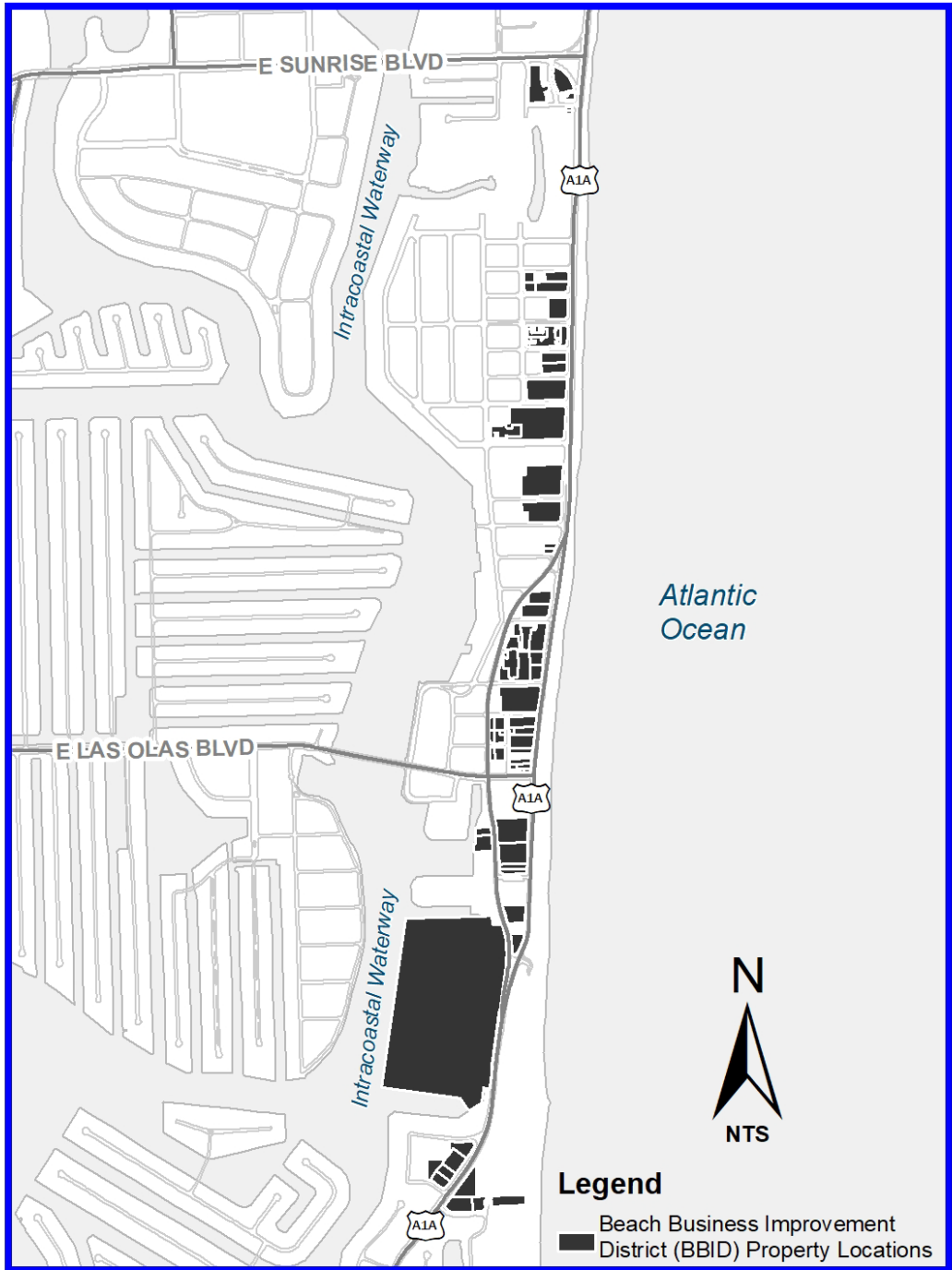
“Assessment Area” means the area which includes all Assessed Property pursuant to the Ordinance and this Resolution as more particularly described on Appendix A attached hereto and made a part hereof.

“Improvement District Area” means the area which includes all Assessed Property and all property that may be improved for a public purpose with the funds collected through the Beach Business Improvement Assessment as depicted on Appendix B attached hereto and made a part hereof.

“Beach Business Improvement Assessed Costs” for purposes of this Resolution means the amount determined by the City Commission to be assessed for the portion of the fiscal year from March 7, 2007-September 30,2007 to fund all or any portion of the cost of the provision of services, facilities and/or programs in the Improvement District Area as more particularly defined in the Ordinance as detailed in Appendix F attached hereto and made a part hereof.

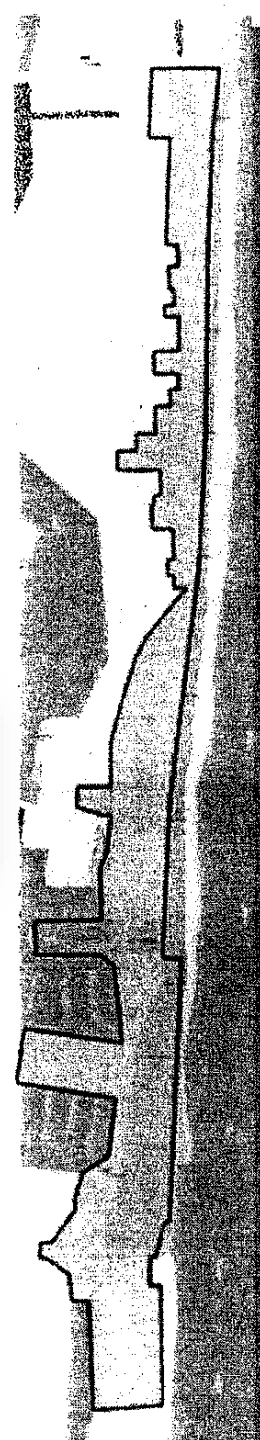
## **RESOLUTION 06-207**

- **Creates an Assessment Area**
- **Creates an Improvement District Area**
- **Sets the methodology for computing the assessment**
- **Determines the special benefit**
- **Determines fair cost appointment**



"Assessment Area" means the area which includes all Assessed Property pursuant to the Ordinance and this Resolution as more particularly described on Appendix A attached hereto and made a part hereof.

"Improvement District Area" means the area which includes all Assessed Property and all property that may be improved for a public purpose with the funds collected through the Beach Business Improvement Assessment as depicted on Appendix B attached hereto and made a part hereof.



The "Service Area" includes all properties along both sides of AIA (also known as Seabreeze Boulevard and South Fort Lauderdale Beach Boulevard) and has the following boundaries:

- (i) On the North, the Service Area is bounded by the northernmost part of Sunrise Boulevard, including sidewalks.
- (ii) On the South, the Service Area is bounded on the east by the southernmost portion of the Best Western Oceanside Inn and on the west by the properties adjacent to the southern side of Harbor Drive.
- (iii) On the East, the Service Area is bounded north of SE 5<sup>th</sup> Street by the easternmost part of AIA, including sidewalks, and to the south of SE 5<sup>th</sup> Street, the Service Area includes the South Beach Municipal Lot and the extents of the properties along AIA to Holiday Drive.
- (iv) On the West, the Service Area includes all properties adjacent to both sides of AIA.

## **ORDINANCE C-07-02**

SECTION 1. That SECTION 1.01 of Ordinance No. C-06-34 defining "Government Property" shall be amended to read as follows:

"Government Property" means property owned and used by the United States of America or any agency thereof, a sovereign state or nation, the State of Florida or any agency thereof, a county, a special district or a municipal corporation. Government Property shall not include property owned by a government and leased to a private entity for a commercial use.

# BEACH BUSINESS IMPROVEMENT ASSESSED COST

- (A) the cost of all security, safety, beautification, maintenance, marketing, promotion and advocacy within the district;
- (B) the costs incurred in any required acquisition or purchase;
- (C) the cost of all labor, materials, machinery, and equipment;
- (D) the cost of fuel, parts, supplies, maintenance, repairs, and utilities;
- (E) the cost of computer services, data processing, and communications;
- (F) the cost of physical construction, reconstruction or completion of any required facility or improvement;
- (G) the cost of any indemnity or surety bonds and premiums for insurance;
- (H) the cost of salaries, volunteer pay, workers' compensation insurance, or other employment benefits;
- (I) the cost of uniforms, training, travel, and per diem;
- (J) the cost of construction plans and specifications, surveys and estimates of costs;
- (K) the cost of engineering, financial, legal, and other professional services;
- (L) the costs of compliance with any contracts or agreements entered into by the City to provide Beach Business Improvement services;
- (M) all costs associated with the structure, implementation, collection, and enforcement of the Beach Business Improvement Assessments;
- (N) all other costs and expenses necessary or incidental to the acquisition, provision, or construction of Beach Business Improvement services, facilities, or programs, and such other expenses as may be necessary or incidental to any related financing authorized by the City Commission by subsequent resolution;
- (O) a reasonable amount for contingency and anticipated delinquencies and uncollectible Beach Business Improvement Assessments; and
- (P) reimbursement to the City or any other Person for any moneys advanced for any costs incurred by the City or such Person in connection with any of the foregoing components of Beach Business Improvement Assessed Cost.



# ADVISORY COMMITTEE'S FUNCTION

# **RESOLUTION 07-114**

- Monitor the progress of the BID
- Make recommendations on:
  - Service
  - Enhancements
  - Special programs and events.



# VOTING REQUIREMENTS

# VOTING

## **What is a majority vote?** *(page 29)*

- Required for approval of an action or choice
- More than half the votes cast by persons legally entitled to vote at a properly called meeting with a quorum.

## **What is the outcome of a tie vote?** *(page 29)*

- For **Quasi-judicial** boards, an item needs to be approved or denied by an affirmative vote. That means that a majority must vote for a motion to approve or a motion to deny. If there is no majority vote then it is neither approved or denied. For all other boards and committees, a motion is made to approve and if a tie vote occurs, the motion is defeated.

## **What is a two-thirds vote? When is two-thirds vote required?** *(pages 29)*

- (1) suspends or modifies a rule of order previously adopted; (2) prevents the introduction of a question for consideration; or (3) closes, limits or extends the limits of debate.

# ABSTENTION

Advisory board members who are appointed by the commission and who are responsible for making recommendations to the city commissioner on city issues are subject to voting requirements for state, county, and municipal bodies set forth in by section 286.012, Florida Statutes, requiring a vote be recorded for each member present unless a conflict of interest exists under the Florida Code of Ethics for Public Officers and Employees. - **Attorney General Opinion 2002-40**

# ABSTENTION

## SECTION 286.012, FLORIDA STATUTES

Voting requirement at meetings of governmental bodies.—**A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting** in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

# Conflicts of Interest

*(page 30)*

If a member has a conflict, he or she should announce the nature of the conflict and obtain the required memorandum of voting conflict form 8B from the staff liaison or online:

<http://www.fortlauderdale.gov/departments/city-clerk-s-office/forms-and-guides>

The voting conflict is required to be filed with the staff liaison within 15 days after the vote.

*(page 59: Appendix F)*



# **CODE OF ETHICS**

Chapter 112, Part III

Florida Statutes

# Code of Ethics/Conflicts of Interest

Chapter 112, Part III, of Florida Statutes is the Code of Ethics for Public Officers and Employees

**“Public Officers”** are governed by these ethics law. A “public officer” as defined in F.S. 112.313(1) and 112.3143(1)(a) to include persons “elected or **appointed** to hold office in any agency, **including any person serving on an advisory body.**” One can be “appointed” by various means (CEO 02-15) – see *page 17 of booklet*

# Code of Ethics/Conflicts of Interest

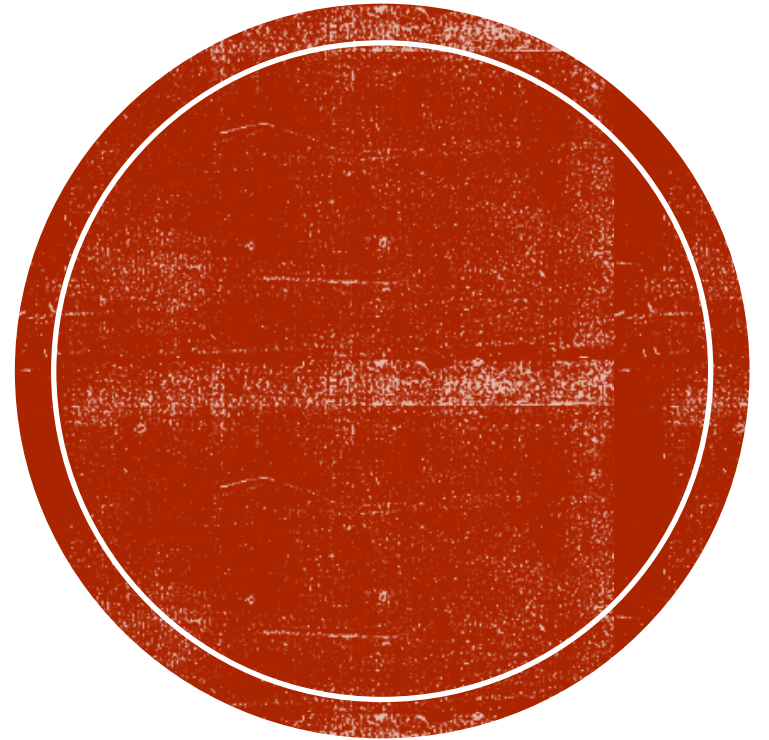
## VOTING CONFLICTS OF INTEREST

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would:

1. Inure to his or her special private gain or loss;
2. Which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in Section [112.312\(2\)](#), Florida Statutes; or
3. Which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Section 122.3143(3), Florida Statutes.

- **Code of Ethics/Conflicts of Interest**

- “Relative” means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law



# Code of Ethics/Conflicts of Interest

## Special Private Gain or Loss

**-Size of class of persons affected** - Where the class of persons is large, a special gain will result only if there are circumstances unique to the officer or principal under which he stands to gain more than the other members of the class. The smaller the class the possibility of special gain is much more likely. CEO 77-129

Ex. Sign ordinance (affect is no significantly greater on commissioner than other affected businesses) CEO 86-59

**-Remote or Speculative** – gain or loss resulting from the measure would be so remote or speculative that it could not be said to inure to the official’s special gain or loss.

**-Procedural or Preliminary Issues** – actions that are procedural or preliminary to the later action that would result in actual gain or loss do not present a voting conflict.

Ex. Removing an item from consent agenda for discussion. CEO 78-74

# SOLICITATION OR ACCEPTANCE OF GIFTS

“No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.”



# MISUSE OF PUBLIC POSITION

“No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.” – Florida Statutes Section 112.313(6)



# CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.

“No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.” - Florida Statutes Section 112.313(7)(a)



The Florida Commission on Ethics  
325 John Knox Road  
Building E, Suite 200  
Tallahassee, FL 32303

Telephone: (850) 488-7864



# QUORUM

- Five (5) members
- A majority vote of a quorum shall be required for a decision on any matter before the board.
- If a quorum is not present, a meeting shall not be held and any items of business shall be continued to the next regular meeting of the board.



# SUNSHINE LAW

# WHAT IS A MEETING?

The Sunshine law is applicable:

1. to **any gathering**,
2. whether **formal or casual**,
3. of **two or more members of the same board or commission**,
4. to **discuss** some matter on which **foreseeable action** will be taken by the public board or commission.

*Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010). And see *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); and *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).

# FLORIDA'S GOVERNMENT IN THE SUNSHINE LAW *(PAGE 14)*

- ***What are the requirements for a “Sunshine” meeting?***
- ***Open to the Public***
- ***Reasonable Notice given to the Public***
- ***Written **Minutes** taken, promptly recorded and open to public inspection***
- ***What should minutes include? (page 20)***

# **Rules of debate, order and decorum**

*(page 31)*

**Decorum directly relates to the Sunshine Law.**

**The Sunshine Law also states that all meetings shall be subject to order and decorum. “Order” is defined as customary or prescribed methods used in the conduct of deliberative, legislative or public meetings, (i.e., parliamentary rules of order). “Decorum” is defined as customs of formality that are followed by a presiding officer and members of a board/committee; propriety and good taste in conduct or appearance.**



# **PUBLIC RECORDS**

# WHAT IS THE SCOPE OF THE PUBLIC RECORDS ACT?

“Every person has the **right to inspect or copy any public record made or received in connection with the official business** of any public body, officer, or employee of the state, or persons acting on their behalf, **except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.** This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, **municipalities**, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.” Art. I s. 24(a) Fla. Const.

# WHAT IS THE SCOPE OF THE PUBLIC RECORDS ACT?

Florida's Public Records Law, Chapter 119, Florida Statutes, provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. In the absence of a statutory exemption, this right of access applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge.



**WHAT IS A PUBLIC  
RECORD?**

**“ ‘Public records’ means 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.”**

**Section 119.011(12), Florida Statutes**

# WHAT IS A PUBLIC RECORD?

The Florida Supreme Court has interpreted this definition to encompass **all materials made or received by an agency** in connection with official business which are **used to perpetuate, communicate or formalize knowledge.** *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

# WHAT KIND OF AGENCY RECORDS ARE SUBJECT TO THE PUBLIC RECORDS ACT

- 1. **All materials made or received by an agency** in connection with official business which are **used to perpetuate, communicate or formalize knowledge**. (Disclosure of the record is subject to the restrictions of copyright and trade secret laws and public records exemptions).

Drafts and notes	There is no “unfinished business” exception to the public inspection and copying requirements.
	<i>Personal notes not shared with anyone are not public records.</i>
E-mails	Messages made or received in connection with official business are public records.
Social Media Accounts (e.g. Facebook, Instagram, LinkedIn)	“City council members who post comments and emails relating to the transaction of city business on a privately owned and operated website” would be responsible for ensuring that the information is maintained in accordance with the Public Records Law. – AGO 08-07
Text messages	Apply the same rules that apply to e-mails.

# DRAFT & NOTES

PUBLIC RECORD	NOT PUBLIC RECORD
Interoffice and intra-office memoranda.	
Draft documents circulated for review, comment, or information.	Draft containing mental impressions that would later form a part of a government record not shared with anyone else.
Portions of preliminary drafts or notes prepared for personal use referred to when answering questions.	Preliminary drafts or notes prepared for personal use and not shared with anyone else.
Tapes or notes taken by a secretary at the direction of a supervisor.	Tapes or notes taken by a secretary as dictation and not shared with anyone else.



**QUESTIONS?**