



City of North Port

Office of the City Attorney

Official Legal Opinion

To: Heather Taylor, City Clerk

From: Michael Golen, Assistant City Attorney

Through: Amber L. Slayton, City Attorney

Copy: Margaret T. Roberts, Assistant City Attorney

Date: January 12, 2022

Re: Revisions to Minutes Prior to Commission Meeting

This memo addresses the procedure required to comply with the Sunshine Law when meeting minutes are revised prior to adoption.

I. SUMMARY

A review of Florida's Sunshine Law has determined that reviewing and revising draft minutes by City Commissioners or advisory board members prior to the meeting where those minutes are approved is authorized. However, a vote on the concurrence and/or revisions must occur, with the minutes and any revisions thereto discussed, during the meeting when the minutes are adopted.

In order to ensure that the minutes accurately and completely reflect the events of the meeting, the Sunshine Law authorizes a policy of circulating draft minutes for concurrence and possible revision before the minutes are voted on. In order to comply with the Sunshine Law, revisions made to circulated draft minutes must be identified and discussed on the record when the minutes are approved. A vote to approve draft minutes is required even where no revisions to the minutes are made.

II. ANALYSIS

Florida Law requires Commission meeting minutes to be recorded promptly and open to public inspection.¹

¹ See § 286.011(2), Fla. Stat.

A. Minutes Are Official Action

Pursuant to Florida Attorney General Opinion 02-51 (“AGO 02-51”), the Sunshine Law requires Commission meeting minutes to be approved by “being read or signed at a subsequent meeting,” even when no change to the minutes is made. The Sunshine Law further requires that a vote to adopt, or revise and adopt, Commission meeting minutes occur during a public meeting.²

When analyzing the Sunshine Law’s open meeting requirements, the courts hold that the law applies to the entire decision-making process, not merely those meetings where the final vote is taken.³ As found by the court in *Times Publishing Company v. Williams*:

Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each such step constitutes an “official act,” an indispensable requisite to “formal action,” within the meaning of the [Sunshine Law].⁴

Pursuant to AGO 02-51, the adoption of City Commission meeting minutes as the formal record of a meeting is a step in the “decision-making process” that the public may have an interest in. While nothing in the Sunshine Law establishes a particular procedure for the adoption of minutes, the Attorney General’s Office identifies that one purpose of the Sunshine Law is to ensure that governmental action is taken at meetings open to the public.⁵ Therefore, a vote must be taken to adopt Commission meeting minutes.

Currently the Commission votes to adopt meeting minutes by placing the draft minutes on the Commission’s Consent Agenda. All requirements of the Sunshine Law are met when unrevised draft Commission and advisory board meeting minutes are adopted as part of a Consent Agenda.⁶ However, draft minutes that have been revised prior to adoption must be treated differently, as further explained below.

B. Minutes Must Be Revised on the Record

The Sunshine Law requires that all meetings of a municipal board or commission at which official acts are to be taken must be “declared to be public meetings open to the public at all times,”⁷ and that “no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.”⁸ Florida Attorney General Opinion 74-294 (“AGO 74-294”) interprets this section of the Sunshine Law and directly addresses the question of how to adopt revised minutes of public meetings.

AGO 74-294 determines that, pursuant to the Sunshine Law, board members are authorized to “circulate a draft of the minutes of the previous meeting among the members for concurrence and for individual members to make suggested corrections of the minutes to the authority’s secretary for inclusion in the

² Discussed in AGO 74-294 and reiterated in AGO 02-51.

³ Fla. Op. Atty. Gen. 2002-51 (2002), citing *Times Publishing Co. v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969).

⁴ *Times Publishing Co.*, 222 So. 2d at 473.

⁵ Fla. Op. Atty. Gen. 2002-51 (2002)

⁶ The City Attorney’s Office has found no case or opinion that identifies this as a violation of the Sunshine Law.

⁷ § 286.011, Fla. Stat.

⁸ *Id.*

draft of the minutes which is to be considered by the members at their next ensuing regular meeting.”⁹ However, at the public meeting where the minutes are to be approved, the board must vote on the revisions “with the minutes and any changes or revisions thereto also discussed.”¹⁰ To meet this requirement, revised draft minutes cannot appear on a consent agenda. The revisions must be discussed on the record, and the approving motion should state that the minutes are adopted as revised. AGO 74-294 provides the following reasoning behind the determination for the existence of a Sunshine Law violation:

While nothing in section 286.011, Florida Statutes, establishes a particular procedure for the adoption of minutes of public meetings, the purpose of the Government in the Sunshine Law is to insure that governmental action is taken at meetings open to the public. To allow the minutes of prior meetings to be adopted without official action which is observable by members of the public would appear to authorize official actions to be accomplished outside a public meeting.¹¹

Although not binding precedent, opinions from the Attorney General’s Office are considered persuasive by the courts, and the City Attorney’s Office has found no legal precedent contrary to above-cited AGOs.¹²

⁹ 1974-294, Fla. Op. Atty. Gen. (1974)

¹⁰ *Id.*

¹¹ 2002-51, Fla. Op. Atty. Gen. (2002).

¹² The legal burden of removing revised minutes from the Consent Agenda may be reduced through more thorough proofreading prior to circulating draft minutes for Commissioner review. Additional safeguards may be available, follow up with the City Clerk community is advised.