

A close-up, slightly angled view of the American flag. The top left corner shows the blue field with white stars, while the rest of the image is dominated by the red and white stripes. The flag appears to be made of a heavy fabric, possibly cotton or polyester, and is slightly wrinkled. The lighting is bright, highlighting the texture of the fabric.

Miami-Dade County League of Cities
ELECTED OFFICIALS'
HANDBOOK

Executive Board 2011-2012

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Introduction

Becoming an elected official is both rewarding and challenging. Your role as an elected official will be impacted by numerous factors. Each person's experience is unique. What follows is a general informational guide to help you make informed decisions as you lead your City. Please realize that many of these rules are factually driven. No one answer fits all questions confronted by elected officials. You are not alone. Your first line of assistance is with your City Attorney, City Manager or City Clerk.* each has developed an experience in their respective fields. In the guide, we have included additional resources to answer your leadership questions.

This guide was developed by the Miami-Dade County League of Cities and its City Attorneys Advisory Committee as a service to elected officials. MDCLC provides the organizational framework for our municipalities to work together. The handbook is a general guide intended to provide initial orientation regarding your challenging and rewarding role. Of course, MDCLC is also available to assist you. You may contact the League office at 305-416-4155, mdclc@bellsouth.net or visit our website at www.mdclc.org.

We wish to thank the members of the City Attorneys Advisory Committee for their volunteer efforts to develop this handbook. The committee members are:

- Darcee Siegel, Esq., Chairperson, City Attorney, City of North Miami Beach
- Nina Boniske, Esq., Town Attorney, Town of Miami Lakes
- Bennett Brummer, Esq., Former Miami-Dade Public Defender
- Sonja Dickens, Esq., City Attorney, City of Miami Gardens
- Cynthia Everett, Esq., Village Attorney, Village of Pinecrest
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- Richard Kuper, Esq., Executive Director, MDCLC
- Howard Lenard, Esq., General Counsel, MDCLC
- Hans Otinott, Esq., City Attorney, City of Sunny Isles Beach
- Jose Smith, Esq., City Attorney, City of Miami Beach
- Jean Olin, Esq.

With best wishes for great success in your public service,

Richard Kuper, Esq.,
Executive Director, MDCLC

Darcee Siegel, Esq.,
Chair, MDCLC City
Attorney Advisory Committee,
City Attorney, North Miami Beach.

*The term city includes towns & villages.



ELECTED OFFICIALS' HANDBOOK

I Legal Foundation for Local Government

A. Public Officials

1. Role of the Appointed Officials

a. City Manager: Responsible for the Administration of City Government and for implementation of the City Council's/Commission's policies. The City Manager is the supervisor of all department heads including Police Chief, Building Director and Zoning Director. The City Manager is the Chief Administrative Officer and is responsible for running the day-to-day operations of the City. The City Manager's Office is responsible for setting administrative policy and is responsible for hiring staff and proposing the annual budget.

b. City Attorney: Chief Legal Advisor for the Mayor and City Council and City Staff. The City Attorney's Office is responsible for preparing the Ordinances and Resolutions that go with the Agenda Cover Memoranda, as well as the preparation and/or review of supporting documentation, like Contracts. Advises all City Staff and handles all litigation and controversies involving the City.

c. Clerk: Keeper of the City Council's/Commission's minutes and manager of all important City documents. The City Clerk's Office is responsible for organizing, printing the Agenda and maintaining public records. In some cities, the Clerk acts as the Chief Election Supervisor for local elections.

2. Role of the Elected Officials

a. Strong Manager Form of Government: Mayor: The Mayor is the officer who presides over all City Council/Commission meetings. The Mayor is the official head of the City and is designated by the Charter to represent the City in all dealings with other governmental agencies.

b. Strong Mayor Form of Government: Mayor: The Mayor runs the day-to-day business of the City. He/she is similar to the Chief Executive Officer of the organization.

c. City Councilperson/Commissioner: The City Councilperson/Commissioner sets the policy for all City government and approves the City's annual budget.

3. Limits on Liability

a. Legislative (Absolute) Immunity: Public Officials have absolute immunity from liability for legislative activities when such actions are an integral step in the legislative process. For example, signing an Ordinance into law, speech and debate on an issue and voting on an issue. Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it.

b. Administrative (Qualified) Immunity: Public Officials have qualified immunity from liability when the state of the law gives the public official fair warning that his/her alleged conduct was not unconstitutional. In other words, a constitutional right is clearly established only if its contours are sufficiently clear that a reasonable official will understand that what he/she is doing violates someone's rights.



II Legal Foundation for Local Government

A. Home Rule Powers of a Municipality

Municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law. This means that unless it is expressly prohibited by Constitution, state statute or county code, the City enacts whatever legislation it deems necessary to protect the health, safety and welfare of its citizens.

B. Charter/Code

1. A Charter is the founding document upon which a local government is created. It is akin to a Constitution.
2. A Code of Ordinances is a body of local laws enacted by the Mayor and City Council.

C. Ordinance/Resolution

1. "Ordinance" is defined as an official legislative action of a municipality or county body which is a regulation of a general and permanent nature and enforceable as a local law.
2. "Resolution" is defined as an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.

D. Agenda Process (Public Purpose)

The Agenda Process is often managed by the City Clerk's Office, City Manager's Office and the City Attorney's Office. Usually staff prepares an Agenda Cover Memorandum, which explains the matter to be heard before the City Council/Commission. Most memoranda provide for a funding source for all items that cost money.



III Sunshine Law / Public Records

A. Definition of the Sunshine Law

The "Sunshine Law" is the broad categorization given to the Public Records laws and Open Meeting laws throughout the State of Florida. The general rule is that all documents of a public entity are public records absent an express exemption in the State statutes.

The Sunshine Law requires that meetings of two or more members of a public agency be held in public. It requires that these meetings be publicly noticed and that minutes be kept. There are two exemptions when the agency or entity is permitted to meet in private with the agency's Attorney: 1) to discuss litigation settlement or strategy, and 2) to discuss labor negotiations. The purpose of the Sunshine Law is to prohibit the public's business from being conducted in "back rooms."

B. Definition of Public Records

Section 119.011(1) Florida Statutes - All documents, e-mails, drafts, 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.

C. Definition of Public Meeting

Discussions, deliberations or any gathering in person or electronically, formally or informally where two or more members of the same board, commission or committee discuss some matter on which foreseeable action will be taken by that board, commission or committee. The meeting must be advertised and either minutes or a recording of the meeting must be made.



IV Ethics

A. FOR DEFINITIONS OF "ETHICS"

1. See Applicable Local, State, Federal laws:
 - (a) City Code: Check municipal code
 - (b) County Code: See Miami Dade Code, Chapter 2
 - (c) State Statutes: See Florida Statutes, Chapter 112
 - (d) Federal Regulations: See 5 USCA App. 4 Ethics in Government Act of 1978
2. Jurisdiction on Ethics Issues Contacts:
 - (a) Parties:
Contact your City Attorney

- (b) Miami Dade County Commission on Ethics and Public Trust
19 West Flagler Street
Suite 820
Main Number (305)579-2594
Ethics Hotline (786) 314-9560
Fax (305) 579-0273 Fax
ethics@miamidade.gov
- (c) State Attorney's Office
E.R. Graham Building
1350 N.W. 12 Avenue
Miami, Florida 33136
Telephone (305) 547-0100
Miamisao.com
- (d) State Ethics Commission
3600 Maclay Boulevard South
Suite 201
Tallahassee, Florida 32312
Telephone (850) 488-7864
Fax (850) 488-3077
Griffin.nancy@leg.state.fl.us

B. CONFLICT OF INTEREST

1. **Per Se Conflicts:** Certain contractual, business or family relationships held by an elected official, create a conflict of interest. The following reflects such prohibited conflicting relationships:

(a) **Doing business with City:** An elected official may not enter into any contract or transact business with the City when either he or any member of his immediate family has a financial interest in said transaction; nor may an elected official enter into any contract or transact any business with the City through an entity in which he or any member of his immediate family has a "controlling financial interest" (10% or more interest). [Miami Dade County Code section 2-11.1 (c)]

An elected official may not in his/her official City capacity purchase, rent or lease goods, equipment or services to the Municipality from either his own business entity or an entity in which his spouse or child is an officer, director, proprietor, partner or owner of a "material interest" (an interest of 5% or more). [section 112.313(3) Florida Statutes]

(b) Employment and contractual relationship with entity doing business with City: An elected official is prohibited from having any employment or contractual relationship with a business entity which is doing business with, or is subject to the regulation of his City. [section 112.313(7) Florida Statutes]

(c) Elected official serving as City employee: An elected official may not be an employee of his City. This restriction is limited to simultaneous service in the same City, meaning that an elected official may be employed by a governmental entity other than the City in which he presently serves as an elected official. [section 112.313(10) Florida Statutes]

(d) Lobbying representation restrictions: An elected official is prohibited from:

- Appearing on behalf of any third party before any of his/her City's boards, committees or agencies (including the City Commission) for the purpose of seeking relief sought by that third party. This prohibition also restricts the elected official's receipt of compensation, directly or indirectly or in any form, for services rendered to a third party, who seeks some benefit from a City board, committee or agency (including the City Commission), in connection with the benefit sought by that third party; and

- Appearing in any court or administrative tribunal as counsel or legal advisor to a party who seeks legal relief from the City agency through the suit in question. [Miami Dade County Code section 2-11.1(m)1]

2. Voting Conflicts: When an elected official is expected to vote on a matter that may result in a benefit or loss to a party with whom he/she has a certain contractual, business or family relationship, a voting conflict of interest may exist. When faced with such a voting conflict, the elected official must publicly declare the conflict, abstain from voting on the particular item, leave the Commission Chambers during discussion of that item, and file a written disclosure of the conflict within 15 days from the subject vote. [Miami Dade County Code section 2-11.1(d); section 112.3143 Florida Statutes]

3. Post-Service Lobbying Restrictions: For a period of 2 years, after leaving their office, former elected officials are prohibited from lobbying their City directly or indirectly.

(a) However former elected officials may within two years of leaving office, lobby City personnel other than the governing body of that municipality, its Chief Administrative Officer or employees, and their immediate support staff when they become employed by governmental entities, 501(c)(3) non-profit entities



or educational institutions or entities, and lobby on behalf of such entities in their official capacities. [Miami Dade County Code section 2-11.1(q); section 112.313(14) Florida Statutes]

4. Prohibited Solicitation/Gifts-Solicitation: There are numerous restrictions on the ability of an elected official to solicit a gift, the primary restriction being the prohibition on solicitation based upon an understanding that official action would be influenced thereby. [Miami Dade County Code section 2-11.1(e) (3); section 112.313(2) Florida Statutes] State law also prohibits the solicitation by elected officials of certain gifts from political committees and from lobbyists. [section 112.3148 Florida Statutes]

(a) Exceptions: The County Ethics Code sets forth limited categories of items that may be solicited by elected officials—these categories include political contributions, gifts from relatives or members of one's household, as well as gifts solicited in connection with the Commissioner's official duties for use solely by the City, as well as solicitation on behalf of non-profit entities where neither the Commissioner nor his staff receive compensation for the solicitation. [Miami Dade County Code section 2-11.1(e)(2)]

(b) Value of gift: In addition to the solicitation rules set forth above, an elected official is prohibited from accepting any gift exceeding \$100 from certain political committees or from a person who lobbies his/her City. [section 112.3148 Florida Statutes]. There are certain limited exceptions from the legal definition of what is a “gift” (i.e., gifts from a relative), and you should contact your City Attorney to confirm whether any of these exceptions apply and the legal effect thereof.

C. TRANSPARENCY/DISCLOSURE REQUIREMENTS

The following situations require the filing of written disclosures on forms available in your City Clerk’s Office:

- 1. Voting Conflict:** When an elected official has a voting conflict, disclosure of that conflict must be made both orally (prior to the subject vote), and in writing (within 15 days from the vote).
- 2. Gift Receipt:** An elected official is required to disclose in writing all gifts or series of gifts from any one person having a value in excess of \$100—this disclosure must be made in the calendar quarter immediately following receipt of gift.
- 3. Certain Relationships:** The County Ethics Code requires the written disclosure of certain business relationships held by City personnel or persons affiliated with them. These relationships relate primarily to said person’s interest and/or employment with an entity which is doing business with your City. [Miami Dade County Code sections. 2-11.1(c)(4) and (f)]
- 4. Financial Disclosure:** All elected officials are required to file by July 1 of each year, a statement of financial interests for the immediately preceding calendar year, to be filed with their County Supervisor of Elections.

Frequently Asked Questions

Q: A City Council would like to hold a retreat. Could they hold it outside the City limits and if so what procedure would need to be followed?

A: Public access to meetings of public bodies such as a City Council is the key element of the Sunshine Law and public agencies have been advised by the State Attorney General to avoid holding municipal council meetings in places not easily accessible to the public, such as out-of-town meetings. The Sunshine Law requires that meetings of a City Council be “public”, and for a meeting to be truly “public”, the public must be given advance notice and provided with a reasonable opportunity to attend. Meetings held outside the municipal boundaries have been generally determined to deny the public a reasonable opportunity to attend, and absent state legislative authorization, may not be held. However, in those limited instances in which a city has a compelling need to hold a meeting outside its boundaries, which location is not within the power of the council to change and must be held, then such meetings may occur, subject to compliance with notice requirements.

Q: I am going to Tallahassee or Washington to meet with a senator/representative to lobby for “xyz”. Other members of my council may also be there. Can we attend these meetings together?

A: Yes, you may attend, but if you will be discussing business that could foreseeably come before your council/commission, such a meeting would be subject to the Sunshine Law. Private political or community forums may not be used to circumvent the statute’s requirements.





Q: If, during a council meeting, one member of the council whispers to another member, is the communication subject to sunshine?

A: Yes, if the conversation pertains to a subject that may come before the council for a vote. At a publicly noticed council meeting, council members should refrain from whispering to each other as all communications on the dais should be audible to the audience. Although the conversation between the two council members is occurring at a publicly noticed meeting, if the public cannot hear the substance of the communication then the two council members are having a conversation outside of the Sunshine Law. However, if the conversation is not related to a subject to be voted upon, then the communication is not subject to sunshine. We would suggest that council members refrain from any such communications as sunshine violations have been alleged against two or more council members speaking to each other (or together to audience members) after a council meeting has been adjourned or recessed, while the video recording of the meeting has still been running.

Q: May City commissioners, outside a public meeting, exchange documents that they wish other members of the commission to consider or matters coming before the commission for official action, and if so, what limitations exist?

Q: May a City commissioner prepare a written report, which is to be the basis of discussion at a public meeting, and furnish it to the City Manager for distribution to the other City commissioners without violating section 286.011, Florida Statutes, Florida's Sunshine Law?

A: The use of a written report by one committee member to inform another committee member of an item or subject which will be discussed at a public meeting does not violate the Sunshine Law, as long as there is NO interaction among the committee members related to the report and the report is NOT circulated for comments to be distributed to the committee members. "On the other hand," if a report reflects the views of a committee member on a pending issue and is circulated among the members with each person indicating his or her approval or disapproval, a violation of the Sunshine Law would occur.

Q: Are text messages a public record? Is there a distinction between my personal phone and a City provided phone?

Q: If I write notes during a council meeting on my own pad, are they public records? Even if they are cartoons?

Q: If I use my personal computer to send an e-mail for City business, then are all my e-mails subject to public records?

A: It is the public policy of the State of Florida that the “business” of government be open and available for review by the public. All e-mails text messages, cartoons and other writings, whether sent or received, which addresses government business, are public records. However, to the extent the City commissioner has taken notes for his or her own personal use and such notes are not intended to perpetuate, communicate, or formalize knowledge, personal notes taken at a workshop or during a commission meeting would not be considered public records.

Q: Is a community citizens’ police academy subject to Sunshine Law, pursuant to section 286.011, Florida Statutes if two or more officials attend?

A: A City elected official may attend a public meeting held to consider a proposed city ordinance and express his or her views on the proposed ordinance even though other City elected officials may attend. However, the City elected officials in attendance may not engage in a discussion or debate with each other. The Sunshine Law could be violated if elected officials from the same City attend a private community forum sponsored by a private organization and ask questions of a speaker to express their views even though no direct comments or questions were made to each other.

The law does not differentiate between private or public communication devices. If the essence of the e-mail/text message is the public’s “business”, it is likely to be an available public record.

Q: Can my significant other accept a gift from a lobbyist?

A: If the primary motivation for the gift from the lobbyist to the elected official’s significant other is to provide some indirect benefit to the elected official then the gift is only lawful if its value does not exceed \$100 and it was not based upon any understanding that official action would be influenced thereby.

Q: Do I need to disclose gifts I have received from my Agency, such as tickets to events, travel, etc?

A: Gifts that have been provided to an elected official from the official’s City do not have to be disclosed if the elected official provides some official City-related service at the ticketed event. However, additional tickets provided by the City to the elected official to be used by other persons must be disclosed and reported as gifts by the elected official.

Q: Does a Commissioner have to disclose a gift from a developer who is a personal friend where the gift is valued over \$100?

A: The gift laws prevent an elected official from accepting a gift exceeding \$100 from a lobbyist or principal of a lobbyist, whether or not a “personal friendship” exists—if the developer is not a “lobbyist or principal of lobbyist”, this gift may be accepted and since its value exceeds \$100, it must be disclosed.

Q: Does a Commissioner have to disclose complimentary tickets to a political fundraiser where the cost of attendance exceeds \$100.00

A: In general, admission tickets are valued on the face value of the ticket or the per event basis, whichever is greater—since the attendance value here exceeds \$100, this gift must be disclosed.





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