

**MEETING MINUTES
TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
SPECIAL MEETING MINUTES
TUESDAY, OCTOBER 27, 2020, 4:00 P.M.
VIRTUAL MEETING**

1. CALL TO ORDER

Mayor Chris Vincent called the meeting to order at 4:04 p.m. Also present were Vice Mayor Alfred “Buz” Oldaker, Commissioner Edmund Malkoon, Commissioner Randy Strauss, Commissioner Elliot Sokolow, Town Attorney Susan Trevarthen, and Assistant Town Attorney Robert Meyers

2. VIRTUAL INTERACTIVE ETHICS TRAINING FOR TOWN COMMISSION

Town Attorney Susan Trevarthen stated that most of today’s session would focus on ethical “traps” and defense mechanisms, Florida Constitutional provisions and the Commission on Ethics, and requirements for State ethics law, Sunshine Law, and public records law. Content for today’s session was drawn from *The Ethical Executive* by Paul Hersey and Robert Hoyk.

While general principles for ethics and leadership can often be traced back to training most individuals receive as children, it can also be complex. Leaders who practice ethical behavior find opportunities to set examples, recognize “teachable moments,” and exercise transparency.

Ethical traps include several aspects, such as:

- Obedience
- Small steps in the wrong direction
- Sidestepping authority
- Faceless victims
- Acting as part of a group
- Competition
- Self-interest
- Actions that are ethical only under dire conditions
- The influence of money
- Conflicts of interest and/or loyalty
- Desire to not make waves
- Self-enhancement

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- Time pressure
- Acting a role
- Decision framework
- Power/authority
- Justification/rationalization
- Obligation

Ethical defense mechanisms are adaptive behaviors people often use to maintain their self-image when they choose to do something that is not ethical. These may include:

- Anger/hostility
- Desensitization
- Minimization/renaming
- Distancing oneself
- Advantageous comparison
- Peer pressure
- Self-serving bias
- Addiction to the fruits of unethical behavior
- Established impression
- Contempt for/dehumanization of victims
- Unequal power relationship

Assistant Town Attorney Robert Meyers advised that one issue to keep in mind with public sector ethics is the core values of that sector: transparency, accountability, diversity, honesty, and efficiency. If these values conflict with one another, it can be difficult to make decisions.

The State Constitution sets forth requirements that promote transparency and good governance, such as filing financial disclosures, campaign finance reporting, and creation of an Ethics Statute.

The Florida Commission on Ethics has jurisdiction over county or municipal ethics organizations. It consists of nine members:

- Five members appointed by the Governor
- Two members appointed by the Senate President
- Two members appointed by the Speaker of the House

This is a more politicized makeup than most ethical entities.

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The Florida Commission on Ethics has jurisdiction over virtually every state and local elected official, every government employee, and individuals who sit on government boards. The Commission on Ethics has 20 employees, including a limited number of investigators. Locally based ethics commissions are typically better funded.

The Florida Commission on Ethics may conduct investigations, provide enforcement, provide legal opinions, and provide training. They may only investigate matters when a formal complaint has been filed and do not accept referrals from sources other than the Governor's or State Attorney's Office. This contrasts with the role of the Office of the Inspector General (OIG) in Broward County, who may conduct an investigation without a formal complaint.

The Commission on Ethics has a commitment to confidentiality that allows individuals against whom a complaint has been filed to receive a copy of the complaint; however, the Commission itself is not permitted to comment on that complaint until it has either been dismissed or probable cause has been found. Probable cause is a preliminary determination that there may be sufficient evidence to hold a public hearing. The difficulty occurs when probable cause becomes public whether or not the individual has committed any wrongdoing.

Ethics violation penalties may include fines, reprimands, censures, or restitution; however, the key penalty is loss of reputation. Maximum penalties, such as heavy fines or removal from office, are rarely imposed. Officials against whom ethics violations are filed are encouraged to immediately seek counsel, even if the charge is likely to be found legally insufficient.

The Town Attorneys presented a number of examples that have occurred in the past and discussed them with the Commissioners in terms of whether or not they represent ethics violations. These included examples that involved abstention from voting, which requires a special financial or economic benefit. The Florida Commission on Ethics typically feels a financial interest of 1% or more constitutes a special interest and the affected individual should abstain from voting.

Even if a voting conflict does not exist, an individual may abstain from voting if he or she felt the issue created the appearance of a conflict. This is not a requirement if no actual conflict exists, but individuals who feel discomfort have the right to abstain.

Town Attorney Trevarthen pointed out that if there is no conflict of interest, an elected official has a statutory obligation to vote. Voting "present" rather than affirmative or

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negative is not an option in Florida. Assistant Town Attorney Meyers cautioned against the overuse of abstention due to appearance of a conflict.

Other items reviewed during discussion of examples included:

- Diffuse or general benefits which do not apply only to an elected official
- Disclosure of present or former business partnerships
- Applying legal standards to evidence without being contaminated by outside considerations
- Perceived bias as a basis for challenging a decision

If an individual files a complaint against an official for having a bias in voting, it must be dismissed, although the item on which the official voted might have to be re-heard. The Florida Commission on ethics does not prosecute on the basis of bias. There is no legal duty to disclose a prior relationship that could be construed as bias. A bias is only an issue when an official is acting in a quasi-judicial capacity and does not apply to Ordinances, Resolutions, or contract awards.

If an official has a conflict or appearance of a conflict, s/he must state the nature of the conflict, abstain from voting, and file a memorandum of conflict within 15 days after the vote occurred. State law permits officials with a voting conflict to participate in discussion. If the official is absent from the meeting at which the item was discussed, they must advise the municipal clerk of the conflict. If the official is present, s/he may also choose to leave the dais for both the discussion and the vote upon the matter that is in conflict, but must state the nature of the conflict and fill out the memorandum.

An official is allowed to advocate for or against ballot initiatives if there is no financial benefit associated with this advocacy. This includes advocacy on behalf of a political action committee (PAC).

Under State law, it must be demonstrated that an official had corrupt intent in order to show misuse of position. An honest mistake is not considered to be corrupt intent.

Conflicting employment occurs when an official's employment is so antithetical to what s/he may do as an elected official that s/he must either resign from public office or cease engaging in the employment. This applies in cases where an official's employer may wish to do business with the government, which cannot be rectified by voting conflict.

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An elected official who is offered a position in government must be fully qualified for the position s/he accepts. If the official currently works in government, s/he may not be promoted or receive a salary adjustment only because s/he is an elected official. Positions may not be created for elected officials. An official may not do business with his or her own agency; however, if a sole source contract occurs, there is no violation of Ethics Code.

Assistant Town Attorney Meyers moved on to the Sunshine Law and public records, noting that criminal and civil penalties may be imposed for violations of these laws. Officials may attend speeches given by fellow elected officials that touch on governmental issues if there is no dialogue. One alternative in this case may be to turn this portion of the meeting into a public meeting, with appropriate notice, minutes taken, and attendance by the public. In this format, dialogue between officials would be permitted.

If an official writes a letter to the editor in response to criticism of a proposed ordinance, and provides the other members of the governing body with copies of the letter, this does not constitute a violation of the Sunshine Law. If another elected official responded to the letter to the editor, however, this constitutes a dialogue. The better decision is not to circulate copies of the letter to other elected officials.

If an official is named in a lawsuit filed against the municipality, s/he is prohibited from attending shade sessions at which the governing body discusses this litigation. This also applies to any business entities to which the official may be connected. While this is acceptable under Florida Ethics Law, the Town's Code of Ethics prohibits this attendance.

Elected officials are prohibited from going together to inspect a site if they do not discuss the site before, during, or after the inspection. Officials inspecting a site are advised to go there separately. Town Attorney Trevarthen recalled that in the past, the Town has held a "walking meeting," including public notice, recording, and minutes, to take readings associated with the Town's Noise Ordinance. These provisions followed the requirements of the Sunshine Law.

If an item not on a regular meeting agenda is brought up for discussion at a regular meeting, the governing body may discuss it but should not vote upon that issue, as the public is entitled to appropriate notice. While this may not be a direct violation of the Sunshine Law, it would not be good policy.

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Town Attorney Trevarthen recalled that Lauderdale-By-The-Sea has always placed significant emphasis on encouraging public comment. There is an obligation that the public be permitted to comment during some point in the decision-making process if the Commission plans to take any action on a proposition. The Town's meeting procedure Resolution also states that no actionable item may be added.

Circumstances in which public participation is not required include appointment by policy according to precedent, such as the appointment of a Vice Mayor based upon an individual official's longevity. Officials may also impose reasonable rules regarding lengthy public comment: for example, if repetitive testimony occurs, it is not unreasonable to ask that individuals hold their comments unless they have something new or different to offer. Assistant Town Attorney Meyers emphasized the importance of keeping in mind that proceedings are recorded, and these recordings eventually become public record.

Town Attorney Trevarthen advised that the Town has rules of order and decorum with regard to delaying or interrupting the proceedings or peace of a meeting. The meeting procedure Resolution further states that no one shall engage in personal attacks. This applies to members of the public as well as to the Commissioners. The definition of a personal attack may be very fact specific.

Public records law applies to elected officials, Town Staff, and board or committee members. Town Attorney Trevarthen cautioned that while an official may believe s/he is acting in good faith, a court hearing a particular public records challenge may still find against him or her, resulting in liability for attorneys' fees. Records that are personal in nature but are stored on a personal Town-issued device, such as a computer or phone, may not be accessed via public records request.

If a former government employee sues an elected official and the case is settled, the settlement agreement is generally considered to be public record. If there is a confidentiality aspect to the agreement, it may be possible to prevent on-the-record statements from being made about the document. Sending a document from a home computer does not exempt the document from public records disclosure if it addresses Town business.

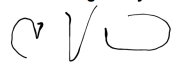
It is not considered necessary to retain transitory texts regarding meetings; however, text discussions with Town personnel are public records and must be retained as such. Texts may be forwarded to an official's email account, which would retain them through

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the Archive Social program. If these are not shared with the Town or archived, the official would be responsible for releasing them in the event of a public records request.


Documents related to a contract between a business and the Town are also considered to be public record: however, the requesting party may not get records directly from the contractor, but must make the request of the City, which can procure the records from the contractor.

With no further business to come before the Commission at this time, the meeting was adjourned at 6:02 p.m.

DocuSigned by:

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Mayor Chris Vincent

ATTEST:

DocuSigned by:

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Town Clerk Tedra Allen

12/11/2020

Date