CITY OF NAPLES AIRPORT AUTHORITY (NAA)

Notice of Ethics and Sunshine in Government Training

Naples AIRPORT AUTHORITY

FINAL AGENDA

Airport Office Building, 2nd Floor Conference Room
200 Aviation Drive North
Naples, Florida

Thursday, April 25, 2019
10:30 a.m. (or Immediately Following the NCC Regular Meeting)

Commissioner Donna M. Messer – Chair and NCC Liaison
Commissioner Michael Lenhard – Vice Chair and Consultant Selection Committee Chair
Commissioner James Rideoutte – Audit Committee Chair, Consultant Selection Committee Member
Commissioner Ted Broussard – Legal Liaison
Commissioner Kerry C. Dustin, Audit Committee Member
Executive Director: Christopher A. Rozansky
Authority Attorney: William L. Owens, Esq. of Bond, Schoeneck & King, PLLC

Welcome. If you wish to address an item listed on the Agenda, please complete a Speaker Registration form and hand it to the Executive Assistant prior to consideration of that item. We ask that speakers limit comments to 5 minutes and that large groups name a spokesperson whenever possible. All written, audio-visual, and other materials distributed to Committee members or staff during this meeting will become the property of NAA and will be a public record. Thank you for your interest and participation.

NOTICE

Formal action may be taken on any item listed on the Agenda below, or added to the Agenda before or during the meeting, or discussed during the meeting without being added to the Agenda. Also, the sequence of items may be changed as the meeting progresses.

Any person who decides to appeal a decision of this Committee with respect to any matter considered at this meeting (or hearing) will need a record of the proceeding and may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be heard.

Any person with a disability requiring auxiliary aids or services in order to participate in this proceeding for meetings at the City Council Chamber may call the City Clerk’s Office at 213-1015, or for meetings at the Airport Office Building, the NAA Executive Assistant’s Office at 643-0733, with requests at least two business days before the meeting.

Information on Action Items and other items which has been provided in advance of this meeting may be inspected at the office of the Executive Assistant, General Aviation Terminal Building, 2nd Floor, 160 Aviation Drive North. Minutes of this meeting will be prepared for Board approval, usually at the next Regular Meeting.
A. **ROLL CALL**

B. **PLEDGE OF ALLEGIANCE**

C. **AGENDA** (Add, delete or re-sequence items)

D. **PRESENTATION AND TIME CERTAIN ITEMS**

   1. Ethics and Sunshine in Government Training – William L. Owens, Jim Morey, and Pam Lundborg of Bond, Schoeneck & King, PLLC

E. **PUBLIC COMMENTS** (Public comments accepted for items not otherwise listed on the Agenda; 5 minute limit)

F. **CORRESPONDENCE/COMMISSIONER COMMENTS & REQUESTS/MEETINGS**

G. **ADJOURN**

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Information on Discussion Items and other items which has been provided in advance of this meeting may be inspected at the office of the Executive Assistant, General Aviation Terminal Building, 2nd Floor, 160 Aviation Drive North. Minutes of this meeting will be prepared for Board approval, usually at the next Regular Meeting.
AVOID TURBULENCE BY STAYING IN THE SUN
The Public Official’s Roadmap for Complying with Florida’s Ethics, Sunshine and Public Records Laws

City of Naples Airport Authority NOISE COMPATIBILITY COMMITTEE
April 25, 2019
Ethics and Sunshine in Government

- Presenters:
  - Jim Morey—Public Records Laws; Florida’s Code of Ethics for Public Officers, Voting Conflicts of Interest and Form 8B
  - Pam Lundborg --Sunshine Laws
The Definition of Public Records Open to Inspection to Any Person is Very Broad.

A public record encompasses all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge, regardless of whether such materials are in final form.
Public Records Law

Public Records include: All documents, paper, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of 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. (Chapter 119, Florida Statutes)
Public Records Law

( Records developed by the Board, Board Appointed Committees, and employees

( All types of records including written communications, letters, notes and e-mails

Numerous exemptions are identified in § 119.07, Florida Statutes, and other statutes
What Public Records are Exempt From Disclosure?

**Common Exemptions are:**

- Records prepared for litigation proceedings or in anticipation of legal proceedings
- Social Security numbers of employees or former employees
- Sealed bids or proposals
Public Records Requests
Can be made verbally or in writing by any person

The Board or Board Appointed Committee:
- Has a “reasonable” time to respond
- Can charge for the cost of retrieving records if the amount requested is voluminous
- Can charge 15 cents per page for copies
Public Records Requests
Can be made verbally or in writing by any person

- The Public Records Law does not require:
  - The retention of records for an indefinite period of time (this is covered by the State’s records retention policy)
  - The creation of records or the provision of records in the format requested
  - An explanation of the records
Restrictions Placed on Access to Public Records

The restrictions a public entity may place on access to public records for reasons of administrative convenience, cost or other factors are narrow and limited.
A violation of the Public Records Act carries both civil and criminal penalties!
Example of Public Records Controversy

- https://www.youtube.com/watch?v=1LfPfzrU4r0
ETHICS
Florida’s Code of Ethics

The Code of Ethics for Public Officers and Employees (the “Ethics Code”) – Chapter 112 of the Florida Statutes
- The goals of the Ethics Code
- Impact of the Ethics Code upon public officers
- The type of conduct prohibited by the Ethics Code
- Conflicts of Interest
- Penalties for violating the Ethics Code
Ethics Code

• The Ethics Code sets forth the standards of conduct required of public officers of political subdivisions in the performance of their official duties.

• It is the policy of the State of Florida that public officers be agents of the people and hold their positions for the benefit of the public, promoting the public interest and maintaining the respect of the people in their government must be of the foremost concern.
The Goals of the Ethics Code in the context of the NAA

- To promote the public interest and maintain the respect of the people.

- To ensure that public officers and employees conduct themselves independently and impartially, not using their office for private gain.

- To protect against any conflict of interest and establish standards for the conduct of public officers and employees in situations where conflicts may exist.
Impact of the Ethics Code upon Public Officers

- Requires public officers to observe in their official capacity the highest standards of ethics, recognizing that promoting the public interest and maintaining the respect of the people in their government is of foremost concern.
- Public officers must act with independence and impartiality and insure that public office never be used for private gain.
- Public officers must perform their duties efficiently and faithfully.
The type of conduct prohibited by the Ethics Code

- Solicitation of gifts
- Unauthorized compensation
- Misuse of public position
- Doing business with the NAA
Conflicts of Interest

"It is hereby declared to be a policy of the State that . . ."

No public officer of a political subdivision shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in conflict with the proper discharge of his/her duties in the public interest.
Section 112.313(7), F.S. – Conflicting Relationships

- No public officer or employee shall have or hold any employment or contractual relationship with any business entity or any agency which is doing business with the NAA;

- Nor shall a public officer or employee of the NAA 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.

- Past or possible future contractual relationships do not violate the statute; the contractual relationship or employment must exist simultaneously with the other elements of the statute. CEO 88-11.
Section 112.313(7), F.S.
(cont.)

- The statute is grounded in the principle that one cannot serve two masters. It is entirely preventative in nature, intended to prevent situations in which private economic considerations may override the faithful discharge of public responsibilities.

- It is concerned with what might happen, with the temptation to dishonor.
Basic Rule

- No public officer or employee shall have an employment or contractual relationship with any entity doing business with the NAA or which otherwise impedes the faithful performance of his or her duties.
Basic Rule (cont.)

- This provision requires an examination of the nature and extent of the public officer's duties together with a review of his/her private interests to determine whether the two are compatible, separate and distinct, or whether they coincide to create a situation which "tempts dishonor."
Voting Conflicts
Section 112.3143(3), Florida Statutes

- No local public officer shall vote in an official capacity upon any measure which would inure to his or her gain or loss; . . . Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.
Penalties for violating the Ethics Code

The penalty provisions of The Ethics Code (Section 112.317, F.S.) include public censure and reprimand, a civil penalty, and restitution.

In the case of Commissioners or Committee Members of the NAA:

- Removal from office.
- Suspension from office.
- Public Censure and reprimand.
- A civil penalty not to exceed $10,000.
- Restitution of any pecuniary benefits received because of the violation committed.

In the case of an employee of the NAA:
- Dismissal from employment.
- Suspension from employment for not more than 90 days without pay.
- Demotion.
- A civil penalty not to exceed $10,000.
- Restitution of any pecuniary benefits received because of the violation committed.
Local Elected and Appointed Officials and Gain or Loss
Voting Conflicts

- Voting Conflicts are governed by Section 112.3143 of the Florida Statutes.
- **Basic Rule**: No county, municipal, or other local public officer shall VOTE in an official capacity upon any measure which would inure to his or her SPECIAL PRIVATE GAIN OR LOSS; 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 s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.
Participation – without voting?

- No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer 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; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.
“Private” Gain or loss

- To the Official
- Principal by whom he/she retained
- The parent organization or subsidiary of a corporate principal
- A business associate
- A relative (Father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law)
“Special” Gain or Loss

- Components to consider include remote or speculative; preliminary or procedural; size of class
- Some situations indicate that any gain or loss would be so remote or speculative that the measure taken would not inure to official’s gain or loss
- Some measures are preliminary or procedural to later actions so as to not present a conflict
- Size of the class effected – for example if the measure inured to a large constituency might not be considered special gain or loss
Recap – Appointed Officials

Voting Conflicts of Interest for Appointed Local Officials

If the measure under consideration would have a special gain or loss of:

- Yourself
- Your relative

(Your father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law)
- Your business associate

(A person or entity who is carrying on a business enterprise with you, regardless of the legal form of the business—be it a corporation, a partnership, or a joint venture, unless it is an arm's length transaction)
- A principal by whom you are retained

(For example, your employer or a client of your law firm or other professional firm. If the principal retaining you is a corporation, then this also includes the parent organization or subsidiary of that corporation.)

Then you must:

[If you will not take any action to influence the decision]

- Abstain from voting on the measure; AND
- Before the vote, publicly state the existence of your interest in the matter; AND
- Within 15 days of the vote, file a memorandum of voting conflict (Commission Form 68) with the person responsible for recording the minutes of the meeting, who incorporates the form in the minutes.

[If you intend to take some action to influence the decision (other than voting)]

EITHER:

- File a memorandum of voting conflict (Commission Form 68) prior to the meeting, in which case the memorandum will be provided to the other members of the agency and will be read at the next meeting after its filing; OR
- Make the oral disclosure orally at the meeting before participating, then file the written Form 68 within 16 days after the oral disclosure, with the memorandum being provided to the other members of the agency and being read at the next meeting.

Exceptions:

If the principal retaining you is a public agency, you are not prohibited from voting on a measure leading to the special gain of the agency and are not required to make any specific disclosures.

Commissioners of the community redevelopment agencies created or designated pursuant to statute are not prohibited from voting. They may vote on matters affecting their interests but still are required to publicly announce the conflict and file a voting conflict memorandum.
FORM 8B

MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

WHO MUST FILE FORM 8B

This form is for use by any person running in this county, city, or other local government on an appointed or elected board, council, commission, or committee. It applies equally to members of advisory and non-advisory bodies who are associated with a voting conflict of interests under Section 112.3143, Florida Statutes.

Your organization under the laws of the state of Florida has a requirement to file a notice of interests in which you have a conflict of interest in advance of the commencement of the meeting. Please give your attention to the preparation of this form before coming to the meeting or taking any action.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elected or appointed office is required to file a statement of the nature of the conflict of interests with the appropriate body or agency. The statement must be filed with the appropriate body or agency on or before the date of the meeting to which the conflict of interests relates.

ELECTED OFFICERS:

In addition to the information required above, you must disclose the following:

1. POSITION AND VOTING RIGHTS: You must disclose the nature of your position and voting rights in any situation where you are prohibited from voting.

2. APPOINTED OFFICERS: You must disclose any situation where you are prohibited from voting.

APPOINTED OFFICERS:

Although you may obtain information from the records of the board, you may not participate in the decisions of the board except for the purpose of obtaining information. You may not vote or participate in any decision of the board.

IF YOU INTEND TO VOTE, YOU MUST FILE A STATEMENT OF INTEREST WITH THE appropriate body or agency on or before the date of the meeting.

* BOND SCHOENECK & KING ATTORNEYS
Example of Ethics Controversy

The public’s right of access to information about its government is a fundamental constitutional right in Florida. In addition, Florida’s open government laws are some of the strongest in the nation, and aside from specific and narrow exceptions, governmental bodies must keep their affairs open to the public.
Don't Be Chuck!

AUBURN COUNCILORS MIGHT BE BREAKING THE LAW BY SENDING PRIVATE MESSAGES.

By Pam Greene Staff writer

Saturday

10/28/2000

Corporation Counsel Tom Leone advised city councilors Friday to do away with their long-standing practice of passing private notes to each other during its meetings.

The issue came to a head Thursday night when Councilor Chuck Mason was asked following the meeting to reveal the content of two notes passed to him by Mayor Melina Carnicelli and Councilor David Dempsey.

Mason refused, asking a reporter to file a formal Freedom of Information request at City Hall.

That night, he destroyed the documents, raising yet another issue: destruction of what might be public documents.
Sunshine Law

Protects the public from "closed door" decision making and provides a right of access to governmental meetings.

(F.S. § 286.011 ("Sunshine Law") and FL. Constitution Art. 1, Sec. 24)
The Sunshine Law gives the public access to meetings of "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision" AND

- Allows the public to observe each preliminary step leading to the final decision.
- Prevents the Board from creating closed committees that narrow the Board's decisions.
- Applies to Board Appointed Committees.
Sunshine Law in the News Recently

- Jacksonville City Council Investigation
- https://www.bing.com/videos/search?q=Jacksonville+City+COUNCII+sunshine+law+investigation&view=detail&mid=3C2D346A17737EFC45F93C2D346A17737EFC45F9&&FORM=VRDGAR
Size Doesn’t Matter

- Loxahatchee Groves Issue
The Three Basic Requirements of the Sunshine Law, § 286.011, Florida Statutes

Meetings of public boards, commissions or committees ("boards") must be open to the public.

Reasonable notice of such meetings must be given.

Minutes of the meeting must be taken.
Meetings of public boards, commissions or committees ("boards") must be open to the public.
Meetings Must be Open to the Public

The public must be allowed to attend meetings; however, there is no obligation to allow the public to participate. The location:

- Must be accessible
- Sufficient size for turnout
- Facility cannot discriminate based on age, race, etc.
- Public access not unreasonably restricted
- Be within Collier County with few exceptions
The Sunshine Law applies when --

Two or more members of a governing board discuss a matter that may foreseeably come before the governing board.
Committee type determines the applicability of these laws.

There are two types of committees:

- Decision Making Committees
- Fact-finding/Focus Group Committees
Decision Making Committees become part of the Board’s decision making process AND

- Choose alternatives and direction; narrow or eliminate options for the board’s consideration.
- Make decisions by voting.
- Make recommendations to the Board directly or through staff.
- Create bylaws.
Focus Groups provide a source of community input and factual resources AND

- Have no characteristics of a decision making committee.
- Do not need bylaws.
- Provide individual input, data and factual findings to staff, as part of staff’s development in its advisement to the Board.
- Do not take votes.
- Maintain a brainstorming focus.
The Sunshine Law does not apply when --

- Committees or groups are appointed to engage only in fact-finding activities.
- Board created focus groups or other such committees that:
  - Only provide individual input, data and facts as part of staff’s development in its advisement to the Board.
  - Do not narrow options.

*The Sunshine Law is broadly construed. Exemptions are narrowly construed.*
E-Mails

Emails of factual background information from one board member to other board members are permitted if there is no exchange of board members' comments or responses on subjects requiring board action. The emails become a public record.
Written Correspondence

A board member may send documents on matters coming before the Board for official action to other board members, **PROVIDED** there are no responses from, or interaction related to documents among, the board members prior to the public meeting. The written correspondence becomes a public record.
II.

Reasonable notice of such meetings must be given.

The public must be given reasonable and timely notice so they can decide whether to attend. What is "reasonable" or "timely" depends on the circumstance. It does not necessarily require a newspaper advertisement.
Minutes of the meeting are required. Written minutes must be taken and made available promptly.

- Sound recordings may also be used, but only in addition to written minutes.
- Minutes may be a brief summary of meetings' events.
- Minutes are public records.
- Minutes must record the votes.
Sunshine Law Applications

- Does not apply to members of different boards
- Social events are fine – but do not discuss Authority business
- Does not apply to a meeting between a Commissioner and a private citizen
- Does not apply to staff so long as staff is in a fact-finding mode
- Applies to staff once staff become part of the decision making process
Social Media

- Like email, social media such as Facebook and Twitter provide a unique obstacle for public entities.
- The Attorney General published an opinion April 23, 2009:
  - Material posted on a public entity’s Facebook page is likely to be considered a public record, subject to Florida’s retention laws (if it deals with official business)
  - Members of the board or commission must not engage in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.
  - Accordingly, communications on the city's Facebook page regarding city business may be subject to Florida's Government in the Sunshine Law, section 286.011, Florida Statutes.
The Sunshine Law and Staff

(1) When a staff member is appointed to a Board, the staff member loses his or her identity as staff while working on the Board and the Sunshine Law applies to the Board.

(2) It is the nature of the act performed, not the makeup of the Board or the proximity of the act to the final decision, which determines whether a Board composed of staff is subject to the Sunshine Law.
Validity of Action Taken in Violation of The Sunshine Law/Subsequent Corrective Action

Section 286.011, F.S., provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law is void *ab initio*.

*Within limitations*, some case law exists holding that Sunshine Law violations can be cured by independent, final action taken completely in the Sunshine.
What are the Consequences if a Public Board or Commission Fails to Comply with the Sunshine Law?

Criminal Penalties:

- It is a second degree misdemeanor to knowingly violate the Sunshine Law.
- Punishable with a fine of up to $500 and/or up to 60 days imprisonment.

Other Penalties Include:

- Removal from position.
- Payment of attorney’s fees incurred by the challenging party, as well as declaratory and injunctive relief.
QUESTIONS