# Sunshine Law--Non-Voting Member--Ex Officio Member

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**Date:** August 19, 2021

**Subject:**
Sunshine Law--Non-Voting Member--Ex Officio Member

Mr. A. Kurt Ardaman,
City Attorney
City of Belle Isle
Fishback Dominick Law Firm
1947 Lee Road
Winter Park, FL 32789-1834

Dear Mr. Ardaman:

This office has received your inquiry on behalf of the Belle Isle City Council ("City Council" or "Council"), requesting an opinion addressing substantially the following questions:

1. May the Mayor of the City of Belle Isle ("Mayor"), who is a non-voting member of the Council, but who has veto power over ordinances and resolutions adopted by the Council, presides over all Council meetings, and has the right to participate in discussions regarding matters pending before the Council, privately meet with an individual Council member to discuss matters that foreseeably may come before the Council?
2. May the Mayor, who is an *ex officio*, non-voting member of several municipal advisory boards and committees created by ordinance, resolution, or policy of the Council, meet privately with other members of those collegial bodies to discuss matters that foreseeably may come before those bodies?
3. May the Mayor, who is an *ex officio*, non-voting member of the board of directors of a Florida non-profit corporation that operates a charter school pursuant to section 1002.33, Florida Statutes, meet privately with an individual member of the board to discuss matters that foreseeably may come before the board?

*In Sum*

The Mayor is a non-voting member of the Council and a non-voting *ex officio* member of various municipal advisory bodies created by ordinance, resolution, or policy of the Council. Each of these collegial bodies is subject to the requirements of section 286.011(1), Florida Statutes, the Government in the Sunshine Law ("Sunshine Law"). Accordingly, the Mayor, when meeting with other members of these bodies on the subject of any business that may foreseeably come before the body in question, must do so in accordance with the requirements of section 286.011(1), that is, in a meeting (1) that is open to the public, (2) that has been called on reasonable public notice, and (3) the minutes of which are promptly recorded and open to public inspection. This precludes private communications with any member on the subject of any business that may foreseeably come before the body in question.

As to the Mayor's status as a non-voting member of the board of directors of City of Belle Isle Charter Schools, Inc., a not-for-profit corporation operating a local charter school pursuant to section 1002.33, Florida Statutes, because the charter school or its public sponsor has not joined in the request for an opinion regarding how the Sunshine Law relates to meetings of individual charter school board of director members, this office will not address the portion of the request that deals with the corporation.1

*Background*

In 2018, several amendments to the City of Belle Isle's charter were enacted impacting the Mayor's status as a non-voting member of the City Council; his duties and powers with respect to the City Council; and his veto power over ordinances and resolutions. Prior to the amendments, the Mayor was not a member of the City Council. Section 3.01 of the city charter now provides that the Mayor is a non-voting member of the City Council.2 Based on the materials you have provided, the amendment was intended to:

> [bring] the office of mayor into the city's legislative body. Although still non-voting, the mayor is an active participant in council discussions, so it makes sense to include the Mayor as a member of the Council. . . . As member of Council, what applies to the Council also applies to the Mayor. As the mayor is a non-voting member of Council, the Mayor's status under the Sunshine Law would not be affected.3

You have also stated that the Mayor is an *ex officio*, non-voting member of several boards created by ordinance, resolution or policy of the City Council, including the Solid Waste and Recycling Advisory Board, the Tree Advisory Board, the Budget Advisory Board, the Special Events Committee, and the Police Advisory Committee.

The materials you provided reflect the Council's and Mayor's uncertainty, in light of the charter amendments, about the extent to which the Mayor is bound under the Sunshine Law with respect to private meetings with other members of these collegial bodies. The City Council and Mayor now seek an opinion from our office addressing these issues.

*Analysis*

The Sunshine Law, section 286.011(1), Florida Statutes, provides:

> All meetings of any board or commission . . . of any agency or authority of any county, municipal corporation, or political subdivision . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

The Sunshine Law was "enacted in the public interest to protect the public from 'closed-door' politics, [and] the Sunshine Law must be broadly construed to effect its remedial and protective purposes." 4 Further, where "two or more members of [a] city council meet to discuss some matter which will come before the council for action, such a meeting is subject to the Sunshine Law." 5

This office has previously addressed a mayor's responsibilities under the Sunshine Law while serving on a city council or board. The focus has been the nature of the relationship between the mayor and the collegial body (in this case, the City Council and the advisory boards), and the extent to which the mayor contributes to the decision-making process.6

Clearly, discussions between a mayor and council members on issues that foreseeably could come before the council must be held in accordance with the Sunshine Law where the mayor is designated by charter as a full member of the council.7 Likewise, where an *ex officio* non-voting member of a council "is involved in decision-making . . . as a participant in meetings," 8 conversations between the non-voting member and voting members of the council must be held in accordance with the Sunshine Law. Where a mayor has not been designated a council member but is still authorized to contribute to the decision-making process – such as through the ability to vote in order to break a tie vote of the council – this office has considered the mayor's discussions with council members to be subject to the Sunshine Law.9

On the other hand, where a mayor is not a member of the council or board, has no voting authority, and otherwise does not contribute to the decision-making process, this office has opined that conversations between a mayor and a council member are generally not subject to the Sunshine Law.10 This principle is subject to the some exceptions. For example, an individual who is not a board member may still be subject to the Sunshine Law if he or she has been delegated authority by a board member to act on behalf of the board, or is serving as liaison in order to communicate between two board members.11

The Mayor as a Non-voting Member of the Council

Pursuant to the city charter for the City of Belle Isle, the Mayor "shall be a non-voting member of the city council" and "shall preside over all council meetings and shall have the right to take part in discussion[s] but may not vote."12 The Mayor is required to "serve as presiding officer at any scheduled or specially held city council meeting," and must approve or disapprove ordinances and resolutions adopted by the city council.13

Here, the Mayor's membership on the council alone is sufficient to subject discussions or meetings he has with members of the council to the Sunshine Law.14 The nature of the Mayor's overall relationship to the council reinforces the conclusion that discussions by the Mayor with fellow council members of issues that could foreseeably come before the council are subject to the Sunshine Law. As a member of the council, the Mayor is required to preside15 over each city council meeting and has the right to take part in council discussions – in fact he "is an active participant in council discussions." 16

The Mayor as a Member of Advisory Boards and Committees

A board or committee is clearly subject to the Sunshine Law when it is delegated decision-making authority, which can take the form of having a direct influence in the decision-making process,17
making recommendations to the decision-maker,18 or submitting a report that is "rubber-stamped" by the decision-maker.19 Conversely, when an advisory board or committee is created and operated for the *sole and limited* purpose of fact-finding or information-gathering, that body

will tend to fall outside the purview of the Sunshine Law.20

“Because all advisory committees by their very nature are created to provide input or feedback, that factor alone is not dispositive of the status of the committee for Sunshine purposes.” 21 It follows that a determination whether the board or committee is subject to the Sunshine Law requires an examination of its duties, functions, and responsibilities.

You have inquired regarding whether the following City of Belle Isle collegial bodies are subject to the Sunshine Law: the Tree Advisory Board, the Citizen Police Advisory Board, the Solid Waste and Recycling Advisory Board, the Budget Advisory Committee, and the Special Events Committee. The City of Belle Isle Charter authorizes the City Council to establish advisory committees and provides that “[t]he term ‘advisory committee’ shall mean any committee established by the council, not identified in the city Charter, and advisory in nature to the council. The council shall identify the duties and purpose of the advisory committee.” 22 The City Council in this case created each of these collegial bodies to serve in an advisory capacity to the Council, not simply and exclusively as a fact-finding body. Each of these boards and committees is discussed below.

· The Tree Advisory Board is required to “[d]evelop and present annually a written community tree management program and supporting work plan which, upon acceptance by city council shall constitute the official comprehensive tree plan for the city . . . [and to][m]ake recommendation[s] to the city council upon any matter coming within the scope of its work, as deemed necessary.” 23

· The Citizen Police Advisory Board is required to “advise the Chief of Police on issues in the community . . . [and to] discuss ways to manage various operational challenges and prioritize delivery of police services.” 24

· The Solid Waste and Recycling Advisory Board is required to “establish and maintain a comprehensive program for solid waste handling . . . evaluate waste provider services and act as a liaison between the waste provider and the city on operational issues . . . discuss ways to work with residents to lessen the amount of waste collection . . . [and] assist in drafting Requests for Proposals for waste providers.” 25

· The Budget Advisory Committee is required to review and make recommendations on the annual operating budget, annual capital expenditures, supplemental appropriations and expenditures, and to make any other recommendations on fiscal matters as deemed advisable. Furthermore, the City Budget Advisory Committee is expected to “develop a good understanding of the City’s fiscal constraints and the services funded and thereby [be] able to explain those to community members, providing an important communication conduit to the community regarding the City and its services.” 26

· Finally, the responsibilities of the Special Events Committee include assisting the “City council in evaluating the public’s expectations for City sponsored events and participation in other events in the City of Belle Isle . . . develop short and long term goals, objectives and projects . . . [and requesting] approval of events by submitting a report with a letter recommending the event to the city council . . for approval.” 27

The Tree Advisory Board, Budget Advisory Committee, and Special Event Committee are all required to make recommendations to the City Council. Making recommendations to an appointing authority is a clear indication that an advisory board is subject to the Sunshine Law. 28 Making recommendations requires evaluating and eliminating options for the body and the City Council, which is an integral part of a decision-making process.29 It follows, then, that those bodies are subject to the Sunshine Law.

The Police Advisory Board and the Solid Waste and Recycling Advisory Board are required to evaluate how to manage city-provided resources, such as police services and solid waste management services, while considering the community's needs. Even assuming that they do not produce formal recommendations, or that they lack authority to implement the policies they develop, the boards are intended to directly influence the decision-making process of the City Council beyond mere fact-finding.30

Accordingly, I conclude that all of the boards and committees raised in your inquiry are collegial bodies subject to the Sunshine Law.31 Therefore, the Mayor, as a member of these boards, must comply with the law's requirements when meeting with other members.

Prior Florida Attorney General Opinions

In your analysis of the Sunshine Law, you raise a concern that the conclusions reached by our office in Attorney General Opinion (AGO) 2005-18, AGO 90-26, and in the Informal Opinion to Cassady dated April 7, 2005, potentially call into question "whether the Sunshine Law prohibits the mayor from meeting individually with other" members of the collegial bodies of which the Mayor is a member. However, the analyses contained in those opinions are consistent with the conclusions stated above. Specifically, AGO 90-26 and Informal Opinion to Cassady address situations that are factually distinct from the Mayor's circumstances, while the Mayor's circumstances are similar to those set forth in AGO 2005-18.

Unlike the Mayor of the City of Belle Isle—who is a member of the City Council—in both AGO 90-26 and in the Informal Opinion to Cassady dated April 7, 2005 the mayor was not a member of the public body in question. In AGO 90-26, the mayor had the authority to veto action of the city council and could speak at council meetings, but was not a council member.32 Our office concluded that "meetings between the mayor and an individual member of the council, therefore, would not generally be subject to the terms of s. 286.011, F.S." 33 In the Informal Opinion to Cassady dated April 7, 2005, this office considered three different scenarios, addressing whether a mayor—who was not a member of the city council—could discuss city business with a non-city council member, with a prospective city council board appointee, or with a current city council member. After a particularized analysis of each scenario, this office concluded there was no applicable exception to the general rule that the Sunshine Law "does not ordinarily apply to meetings of public officials who are not board or commission members," 34 and opined that those meetings and discussions were not subject to the Sunshine Law.

On the other hand, AGO 2005-18—which addresses communications between two members of the same advisory council—involved a factual scenario analogous to the one presented by your request. In that opinion, this office considered whether "meetings between a member of the Advisory Council on Condominiums and the Director of the Division of Florida Land Sales,

Condominiums, and Mobile Homes, who serves as an *ex officio*, non-voting member of the council," was subject to the Sunshine Law. This office concluded that, "although he or she is an *ex officio* member, the director of the division is designated by statute as a member of the council, which is a collegial body," and, thus, was within the purview of the Sunshine Law.35

Here, unlike the scenarios considered in AGO 90-26 and Informal Opinion to Cassady, the Mayor of Belle Isle is a member of the city council and of various municipal advisory boards, each of which is subject to the Sunshine Law. Like the non-voting council member involved in AGO 2005-18, because the Mayor is a member of various boards, each of which is subject to Sunshine Law requirements, he must comply with the Sunshine Law in engaging in meetings or discussions.

*Conclusion*

Based on the foregoing, I conclude that the Mayor of the City of Belle Isle, as a member of the City Council and the various municipal advisory bodies discussed in this request, cannot meet privately with another member to discuss matters that may foreseeably come before the body in question. I trust these informal comments will prove useful to you.

Very truly yours,

Rachel Kamoutsas
Deputy General Counsel

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1 *See* Requesting an Attorney General Opinion, http://myfloridalegal.com/pages.nsf/Main/DD177569F8FB0F1A85256CC6007B70AD ("Questions relating to the powers and duties of officials who sit on a public board . . . should be requested by a majority of the members of that body . . . "). Because the charter school question is not addressed, we do not determine in this opinion which entity might properly request an opinion.

2 *See* City of Belle Isle Ordinance No. 17-17 (Dec. 5, 2017).

3 City of Belle Isle, "A Brief Review of Belle Isle Ballot Questions," Bob Francis, City Manager (March 8, 2018).

4 Op. Att'y Gen. Fla. 2005-18 (2005); *see also Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983); *Canney v. Bd. of Pub. Instruction of Alachua Cty.,* 278 So. 2d 260, 263 (Fla. 1973); *Bd. of Pub. Instruction of Broward Cty. v. Doran*, 224 So. 2d 693, 698-99 (Fla. 1969).

5 Op. Att'y Gen. Fla. 90-26 (1990); *see also* Op. Att'y Gen. Fla. 85-36 (1985).

6 *See Wolfson v. State*, 344 So. 2d 611, 614 (Fla. 2d DCA 1977) ("[I]t is the entire Decision-

making process that the legislature intended to affect by the enactment of the [Government in the Sunshine Law].”); *see also* Op. Att’y Gen. Fla. 85-36 (1985) (“[T]he question of whether the Sunshine Law applies to . . . business-related conversations between a mayor and individual members of the council turns on the nature of the relationship between the mayor and the town council.”).

7 *See* Op. Att’y Gen. Fla. 85-36 (1985) (“Clearly, where two members of the town council are present during discussion[s] of foreseeable public business, the Sunshine Law is applicable.”); Op. Att’y Gen. Fla. 83-70 (1983); s*ee also* Op. Att’y Gen. Fla. 90-26 (1990); Op. Att’y Gen. Fla. 74-47 (1974) (“The Sunshine Law apparently covers meetings of or discussions between members of a board.”).

8 Op. Att’y Gen. Fla. 2005-18 (2005) (concluding that an *ex officio* non-voting member of a council is subject to the Sunshine Law when authorized to participate in meetings and to influence the decision-making process of the council).

9 *See* Op. Att’y Gen. Fla. 75-210 (1975) (“Since, pursuant to the [city charter], the mayor has or may have a voice in decision making by voting in case of a tie, I am of the view that the mayor is subject to the [Sunshine Law] when discussing matters which could come before the entire board and possibly involve him directly, through his power to break ties.”).

10 *See* Op. Att’y Gen. Fla. 90-26 (“[T]he mayor, possessing only the power to veto, is not a member of the city council to whom the Sunshine Law applies.”); Op. Att’y Gen. Fla. 85-36 (1985).

11 *See* Op. Att’y Gen. Fla. 90-26 (1990); *see also Sarasota Citizens For Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 763 (Fla. 2010) (“Whether, in fact, the delegation is a delegation of decision-making authority or fact-finding authority is evaluated according to the ‘nature of the act performed, not on the make-up of the committee or proximity of the act to the final decision.’”) (quoting *Wood v. Marston*, 442 So. 2d 934, 939 (Fla. 1983)).

12 City of Belle Isle, Fla. Code of Ordinances, Part 1-Charter, art. III, § 3.01; art. IV, § 4.05(a).

13 City of Belle Isle, Fla. Code of Ordinances, Part 1-Charter, art. IV, §§ 4.05(f), 4.06.(a).

14 *See supra* note 7.

15 *See supra* notes 3 and 12; *see also* Black's Law Dictionary (11th ed. 2019), “preside” (1.“To be in charge of a formal event, organization, or company; specif., to occupy the place of authority, esp. as a judge during a hearing or trial[.] 2. To exercise management or control[.]”).

16 *Cf*. Op. Att’y Gen. Fla. 90-26 (1990) (“[The Mayor] does not participate in the council proceedings except to be allowed to speak.”).

17 *See, e.g., Town of Palm Beach v. Gradison,* 296 So. 2d 473, 474 (Fla. 1974) (“[T]he Council delegated to the committee much of their administrative and legislative decisional zoning formulation authority which is ordinarily exercised by a city-governing body itself . . .”); *Krause v.*

*Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979) ("[I]n this case, the advisory group was an integral part of the decision-making process.").

18 *See Gradison,* 296 So. 2d at 478 ("[T]he zoning ordinance adopted by the zoning authorities and the Town Council after public hearing was rendered invalid because of the non-public activities of the citizens planning committee, which committee was established by the Town Council, active on behalf of the Council in an advisory capacity and participated in the formulation of the zoning plan.")*; Krause*, 366 So. 2d at 1251 ("[T]here can be no doubt that an advisory board appointed to make recommendations to an appointing authority is subject to the dictates of the Sunshine Law.").

19 *See e.g. Spillis Candela & Partners, Inc. v. Centrust Sav. Bank*, 535 So. 2d 694, 695 (Fla. 3d DCA 1988) (discussing a board's "perfunctory ratification" of a committee's report).

20 *See Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010) ("[A] committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only conducts such activities."). *See also Cape Pub'ns, Inc. v. City of Palm Bay*, 473 So. 2d 222, 225 (Fla. 5th DCA 1985) ("the committee selected by the city manager had the sole function of assisting him with 'fact-finding,' to supply him with the necessary information so that he could properly exercise his duties and responsibility in selecting a new chief of police").

21 Inf. Op. to Wallace, January 7, 2019.

22 City of Belle Isle, Fla. Code of Ordinances, Part 1-Charter, ch. 2, art. II, § 2-54. The charter does not separately define the term "advisory board;" however, because the terms "board" and "committee" are presented interchangeably in the City's request and are similarly defined, they will be treated accordingly in this analysis.

23 City of Belle Isle, Fla. Code of Ordinances, Part 1-Charter, ch. 2, art. III, § 2-129(g).

24 City of Belle Isle, Fla. Resolution No. 19-04 (May 7, 2019).

25 City of Belle Isle, Fla. Resolution No. 19-11 (September 25, 2019).

26 City of Belle Isle, Fla. Resolution No. 19-18 (October 15, 2019).

27 City of Belle Isle, Special Events Committee Policy (June 2017), https://www.belleislefl.gov/sites/default/files/fileattachments/special_events_committee/page/2791/b3141d
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28 *See supra* note 18.

29 *See Krause*, 366 So. 2d at 1251 (reflecting that an advisory group engaging in an elimination process to provide narrow recommendations of applicants for the City Manager to consider was an integral part of the decision-making process).

30 *Spillis Candela & Partners, Inc.*, 535 So. 2d at 695 (“The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law.”).

31 Notably, pursuant to each board’s or committee’s enabling legislation, all of these entities’ meetings are *already* required to be open to the public and properly noticed.

32 *See supra* note 10.

33 Op. Att’y Gen. Fla. 90-26 (1990).

34 Informal Opinion to Cassady, April 7, 2005 (exceptions contemplate “that the mayor or the individual council member has been delegated the authority to act on behalf of the council or that the mayor is acting as a liaison between board members.”).

35 Op. Att’y Gen. Fla. 2005-18.