

**Jacksonville Sunshine Law Compliance Review**

**May 28, 2009**

**Special Report #663**

**Released on: May 29, 2009**

**OFFICE OF THE COUNCIL AUDITOR**  
Suite 200, St. James Building



May 28, 2009

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Honorable Members of the City Council  
City of Jacksonville

**INTRODUCTION**

Pursuant to Section 15.107, Ordinance Code, we conducted a review of the City Council's compliance with Chapter 15 of the Code. The Code requires us to conduct an annual review and report on Council notices, meeting locations and minutes to determine if the City Council is in compliance with the Jacksonville Sunshine Law Compliance Act. The purpose of the Jacksonville Sunshine Law Compliance Act is to ensure compliance with the Florida Sunshine Law (Florida Statute, Chapter 286) and to create procedures, methods, best practices and education that will enhance compliance with open meeting laws, and enhance and maintain public confidence and transparency in the legislative practices of the City Council.

This report does not represent an audit or attestation conducted pursuant to Government Auditing Standards. It is important to note that the Council Auditor is appointed and confirmed by the City Council.

We are providing this special written report in accordance with Code Sections 102.102 and 15.107. The findings detailed in this report only pertain to meetings initiated by Council Members with other Council Members. We did not review meeting notices or minutes related to the following:

Regular Council Meetings	Standing Council Committees
Metropolitan Planning Organization	Downtown Development Review Board
Northeast Florida Regional Council	Tourist Development Council
Jacksonville Waterways Commission	Value Adjustment Board
Jacksonville Journey	Storm Water Advisory Committee
Blue Ribbon Commission on Cemeteries	Tower Review Committee

Following our 2008 review, the Office of the General Counsel issued written legal guidance (See Attachment A) indicating that these meetings were not subject to the narrower administrative focus of Chapter 15. In addition to the above, the Office of the General Counsel also excluded the following meetings for the 2009 review: Seaport and Airport Special Committee, Committee on City Pension Sustainability, Access Jacksonville Community Hearings, and Shade Meetings. Therefore, the findings within this report are limited to meetings initiated by Council Members with other Council Members. In addition, pursuant to Section 15.107 of the Code regarding

meetings between Council Members, we have placed reliance on the Legislative Services Division to provide all records needed to complete our review.

## **STATEMENT OF OBJECTIVES**

The objectives of the review as established by Section 15.107(b) were:

1. To verify that Council Member Public Meetings were noticed at least 24 hours in advance and were accessible to the public on the internet in accordance with Section 15.103.
2. To verify that Council Member Public Meetings were located in appropriate public rooms and that all meetings held in Council Members' offices were properly documented in accordance with Section 15.104.
3. To verify that minutes were written, maintained in a filing system, and available for retrieval in accordance with Section 15.106.
4. To verify that Council Members and Executive Council Assistants received annual continuing education and training on the Sunshine Law within 60 days of the Council President taking office in accordance with Section 15.108.

## **STATEMENT OF SCOPE AND METHODOLOGY**

The scope of our review included all meetings initiated by Council Members with other Council Members which took place from May 1, 2008 to April 30, 2009 that were posted on the City Council Public Notice website. The link for the City Council Public Notice website is: <http://apps.coj.net/CouncilPublicNotices/Meetings/ShowMeetingsTablePage.aspx>

Our testing included a review of all relevant supporting documentation, examination of the City Council's website and discussions with the City Council Director/Secretary, Legislative Services Division, and Office of General Counsel staff.

Pursuant to the Jacksonville Sunshine Compliance Act, we reviewed the information provided on the City Council Public Notice website by the Legislative Services Division regarding the notice of Council Public Meetings, the location of such public meetings, and written minutes of such public meetings. We did not review additional information other than that provided on the website by the Legislative Services Division. Therefore, additional meetings could have occurred between two or more Council Members that would not have been detected through our review work if such meetings were not properly noticed on the website. As a result, we are placing reliance on Legislative Services as the basis for determining the population of records to be reviewed for compliance.

## **RESPONSES**

Responses from the Council Director/Secretary have been inserted after the respective finding and recommendation. We received responses from the Council Director/Secretary, Cheryl Brown, on May 28, 2009.

## **OVERALL CONCLUSIONS**

Overall, we did not find any evidence to indicate noncompliance with Florida Sunshine Laws, Chapter 286 of the Florida Statutes.

By Objective, we concluded the following:

1. Notices were public and timely, posted at least 24 hours prior to the meeting, exclusive of weekends and holidays, and accessible to the public by internet.
2. Meetings were located in appropriate public rooms. The City Ethics Officer did not approve any meetings located in Council Members' offices nor did we see any notices indicating that meetings were held in Council Members' offices.
3. All minutes were written, maintained on the Council website, and available for retrieval.
4. According to attendance records maintained for the Sunshine Training session held on June 19 and 20, 2008, as well as interviews with staff, all Council Members and all Executive Council Assistants were in compliance with the training component of Chapter 15 of the Code.

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## **OBJECTIVE #1**

**To verify that Council Member Public Meetings were noticed at least 24 hours in advance and were accessible to the public on the internet in accordance with Section 15.103 of the Code.**

Notices were public and timely, posted at least 24 hours prior to the meeting, exclusive of weekends and holidays, and accessible to the public by internet.

## **Finding #1 \*Several meeting notices did not include date or time to be posted\***

In our testing, we noted that nine (9) out of 52 meeting notices did not include the time to be posted and one (1) out of 52 meeting notices did not include the date and time to be posted. Section 15.103(a) of the Code states that "the notices required shall include at a minimum ... (ii) the date and time the notices are to be posted..." The date and time the notices are to be posted informs Legislative Services Division of when to post a meeting notice in order to meet the 24-

hour requirement, ensuring that the public has sufficient notice to attend meetings. This finding was noted in the previous Sunshine Law Compliance report #651. It appears that the Council Director/Secretary has taken the necessary action to address and correct the issues identified in our initial report.

In addition, all 10 instances of noncompliance with this requirement occurred in May and June 2008, prior to the issuance of Report #651, and prior to the annual Sunshine Law Training provided in June 2008. Although these were technical exceptions, all 10 meetings were correctly posted at least 24 hours in advance of the meeting date.

### **Recommendation to Finding #1**

We recommend that the sample template for meeting notices (prepared by the Council Director/Secretary) be adhered to in order to ensure compliance with Chapter 15 of the Code. The purpose of including the date and time to be posted on notices is to promote on-time posting to the Public Notices website by the Legislative Services Division. This allows the public sufficient notice to attend the meeting if desired.

### **Council Director/Secretary's Response to Finding #1**

*The Council Auditor's Office reviewed 41 notices for meetings scheduled after the annual Sunshine Law Training and found 100% compliance. The Council Director/Secretary appreciates the diligence and professionalism of the Executive Council Assistants which contribute to transparency and openness in government.*

### **Finding #2 \*Several meeting notices did not include meeting initiator\***

In our testing, we noted that seven (7) out of 52 meeting notices did not include the meeting initiator. Section 15.103(a) of the Code states that "the notices required shall include at a minimum: ...the Council Member calling the meeting..." This finding was noted in the previous Sunshine Law Compliance report #651. It appears that the Council Director/Secretary has taken the necessary action to address and correct the issues identified in our initial report through the use of Council Member letterhead on initiated meeting documents.

In addition, all seven instances of noncompliance with this requirement occurred in May and June 2008, prior to the issuance of Report #651, and prior to the annual Sunshine Law Training provided in June 2008.

### **Recommendation to Finding #2**

We recommend continuing to post notices on the meeting initiator's personal letterhead to ensure clarity as to which Council Member is initiating the meeting.

## **Council Director/Secretary's Response to Finding #2**

*The Council Auditor's Office reviewed 41 notices for meetings scheduled after the annual Sunshine Law Training and found 100% compliance. The Council Director/Secretary appreciates the diligence and professionalism of the Executive Council Assistants which contribute to transparency and openness in government.*

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### **OBJECTIVE #2**

**To verify that meetings were located in appropriate public rooms and that all meetings held in Council Members' offices were properly documented in accordance with Section 15.104 of the Code.**

Meetings were located in appropriate public rooms.

We did not identify any meetings located in the offices of Council Members during our review of meeting notices and minutes. The City Ethics Officer did not receive any requests to approve meetings to be held in Council Member offices or other non-public locations.

Section 15.104 states, "The locations for Council Public Meetings include the Council Chambers and public conference, meeting, or committee rooms. Public meetings shall not be held in the individual offices of Council Members, except in the event of exigent circumstances... Public locations shall be used for all Council Public Meetings, unless other locations are approved by the City Ethics Officer in writing."

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### **OBJECTIVE #3**

**To verify that minutes were written, maintained in a filing system, and available for retrieval in accordance with Section 15.106 of the Code.**

All minutes were written, maintained on the Council website, and available for retrieval.

### **Finding #3 \*Several meeting minutes did not include date of meeting\***

In our testing, we noted seven (7) out of 52 meeting minutes did not include the date of the meeting. Section 15.106(c) states that "the minutes of every Council Public Meeting conducted between two or more Council Members outside of the regular Council meeting or committee meeting structure shall reflect, at a minimum: the location, date and time the meeting commenced and adjourned..."

### **Recommendation to Finding #3**

The current template has a heading for the date of the meeting, but it appears that some Executive Council Assistants (ECAs) are not consistently using the template. Some ECAs have elected to use certain portions of the template, while others have elected to use an entirely different format to document meeting minutes. To ensure compliance with Chapter 15 regarding the minutes, and to provide consistency in the format, we recommend that all ECAs utilize the standardized template created by the Council Director/Secretary.

### **Council Director/Secretary's Response to Finding #3**

*Though 90% of the ECAs complied with Chapter 15, Finding #3 will be a focus of 2009 ECA training as the Council pursues 100% compliance.*

### **Finding #4 \*Minutes for one meeting did not include adjournment time\***

In our testing, we noted one (1) out of 52 meeting minutes did not include the meeting adjournment time. Section 15.106(c) of the Code states that “the minutes of every Council Public Meeting conducted between two or more Council Members outside of the regular Council meeting or committee meeting structure shall reflect, at a minimum: the location, date and time the meeting commenced and adjourned...”

### **Recommendation to Finding #4**

We recommend that the sample template for meeting minutes be adhered to in order to ensure compliance with Chapter 15 of the Code.

### **Council Director/Secretary's Response to Finding #4**

*The Council Director/Secretary appreciates the diligence and professionalism of the Executive Council Assistants as all work together with the Council Director/Secretary and the Council Members to achieve 100% Chapter 15 compliance.*

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### **OBJECTIVE #4**

**To verify that Council Members and Executive Council Assistants received annual continuing education and training on the Sunshine Law within 60 days of the Council President taking office in accordance with Section 15.108 of the Code.**

Per Section 15.108, Council Members and Executive Council Assistants are to be provided annual training on Government in the Sunshine and open meetings laws provided by the City's Ethics Office and the Office of the General Counsel. In addition to this training, Executive Council Assistants are required to attend separate annual training on Government in the Sunshine and open meetings laws, provided by the Council Director/Secretary.

The Office of the General Counsel and the City Ethics Officer provided group training on the Sunshine Law on June 20, 2008. Three Council Members were excused from the group training session but were given the training materials and certified completion. Two Council Members who were installed after the group training session took place received subsequent training by an OGC employee. All other Council Members and Executive Council Assistants attended training provided on June 20, 2008.

The Council Director/Secretary provided group training on the Sunshine Law to all Executive Council Assistants on June 19, 2008. From the review of attendance records provided by the Council Director/Secretary, it appears that all nineteen Executive Council Assistants attended the required training on that day.

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### **OVERALL OPPORTUNITIES FOR IMPROVEMENT**

Pursuant to Section 15.109 of the Code, the Council Auditor's office shall make recommendations to the City Council to improve open meetings compliance. In our Sunshine Compliance Review Report #651 issued last year, we noted several Opportunities for Improvement (OFI). These have been addressed in the following manner:

- OFI #1- To avoid confusion, draft minutes are no longer posted on the City Council Public Notice website.
- OFI #2- Required Sunshine Law Training for Executive Council Assistants was addressed through the enactment of Ordinance 2008-329-E, effective June 17, 2008.
- OFI #3-Reinforcement on meeting the 72 hour requirement for posting minutes was presented in the 2008 Sunshine Law Training for Executive Council Assistants. Training materials addressing this requirement were provided to Executive Council Assistants and were also copied to the City Council G:Shared drive for easy access.
- OFI #4- The Office of General Counsel chose to draft a legal opinion in lieu of additional legislation. This legal opinion, issued in response to Report #651, narrowed the focus of the Sunshine Law Compliance review to only include meetings initiated by and among Council Members and guided the meeting selection for our 2009 review.
- OFI #5- The “date changed” field on the City Council Public Notice website can only be changed if an employee modifies a posted document. It is a system-generated timestamp used to promote transparency.
- OFI #6- We did not experience any technical difficulties such as website unavailability or nonfunctioning hyperlinks in our 2009 review. It appears that all technical issues have been resolved.
- OFI #7- Several instances of meeting notices not being posted on the initiating Council Member’s letterhead were found, but the notices were for meetings that occurred before Report #651 was issued. This issue was discussed in the 2008 Sunshine Law Training for Executive Council Assistants. Training materials addressing this requirement were provided to Executive Council Assistants and were also copied to the City Council G:Shared drive for easy access.

- OFI #8 – An invitation for all interested parties to attend was included on all member to member meetings reviewed.

From the current year’s review, we noted one Opportunity for Improvement (OFI).

**OFI #1 \*Meeting minutes did not include attendees\***

In our testing, we noted that three (3) out of 52 meeting minutes did not include a list of the attendees, although the sign-in sheet from the meeting was filed with the meeting minutes maintained by the Legislative Services Division. Section 15.106(c) of the Code states that “the minutes of every Council Public Meeting conducted between two or more Council Members outside of the regular Council meeting or committee meeting structure shall reflect, at a minimum... the members of the Council and other public officials and employees in attendance...”

**Recommendation to OFI #1**

We recommend that the names of the Council Members and other public officials and employees in attendance be documented in all meeting minutes. This will allow the public to clearly identify which Council Members, public officials and employees are present at a meeting, especially if signatures are illegible on the sign-in sheet. The original attendance sign-in sheet should still be retained with the official meeting minutes for a complete record of all attendees.

**Council Director/Secretary’s Response to OFI #1**

*The Council Director/Secretary appreciates the diligence and professionalism of the Executive Council Assistants as all work together with the Council Director/Secretary and the Council Members to achieve 100% Chapter 15 compliance.*

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We appreciate the assistance and cooperation we received from the Council Director/Secretary, Cheryl Brown, the Office of the General Counsel, and Legislative Services staff throughout the course of this compliance review.

Respectfully submitted,

*Kirk A. Sherman*

Kirk A. Sherman, CPA  
Council Auditor

***Attachment A- Memorandum from Office of the General Counsel***

## ATTACHMENT A

**OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE  
117 WEST DUVAL STREET  
SUITE 480  
JACKSONVILLE, FL 32202  
PHONE: (904) 630-1672**

### MEMORANDUM

**TO:** Kirk Sherman, Council Auditor

**FROM:** Steve Rohan, Managing Deputy General Counsel  
Legislative Affairs Department

**RE:** Applicability of Chapter 15, *Ordinance Code*,  
Jacksonville Sunshine Law Compliance Act

**DATE:** June 10, 2008

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In support of the Council Auditor's review of Chapter 15 (Jacksonville Sunshine Law Compliance Act), *Ordinance Code*, compliance, your office has verbally inquired as to whether Chapter 15 applies to the following group meeting settings:

Regular Council Meetings	Standing Council Committee Meetings
MPO	Downtown Development Review Board
Northeast Florida Regional Council	Tourist Development Council
Jacksonville Waterways Comm.	Value Adjustment Board
Jacksonville Journey	Stormwater Advisory Committee
Blue Ribbon Commission on Cemeteries	
Tower Review Committee	

The Jacksonville Sunshine Law Compliance Act (Act) was established in Ordinance 2007-733-E on June 26, 2007. The applicability of the Act can be discerned from the wording of the enabling ordinance.

The legislative history of the Act demonstrates a focus on the Council as a legislative branch, and its legislative processes.

The first "whereas" clause to Ordinance 2007-733-E refers to the need for open and public meetings of "legislative bodies." The statement of purpose set forth in Section 15.101 of the Act seeks to "enhance and maintain public confidence and transparency in the legislative practices of the City Council." Section 15.102 of the Act specifically applies the Act to public meetings of the "Council and Council committees" and "meetings between and amongst Council Members."

Considering this legislative history of Ordinance 2007-733-E, it is the opinion of the Office of General Counsel that the primary focus of the Act was to bring transparency to the lawfully noticed individual meetings of the Council Members, and to the legislative practices of the Council, and not to the commissions, boards, and committees that are otherwise established by directive, executive order or ordinance, in which one or more Council Members may serve or participate. Each of these other commissions, boards, and committees that are established by directive, executive order or ordinance are still obligated to comply with the State's Sunshine Law, but are not a contemplated part of the legislative practices of the Council and are not subject to the narrower administrative focus of Chapter 15, to wit: ensuring that the legislative process is transparent and complies with Florida law.

A good example of the support for this determination is found in the enabling legislation for the Metropolitan Planning Organization. Section 339.175 Florida Statutes states that "each M.P.O. shall be considered separate from the state or the governing body of a local government that is represented ...". Each of the other boards, commissions or committees are established either as advisory bodies or as final decision makers for the City of Jacksonville, and the composition of each body has more than just City Council Members, all are relatively independent, and most have nothing to do with the legislative process.

With regard to application of the Act to Council meetings and committee meetings, Chapter 15 regulates "notice" (Sec. 15.103), "location" (Sec. 15.104), and "commencement and adjournment" (Sec. 15.105), each of which applies to the Council's meetings, committee meetings, and individually noticed meetings.

Chapter 15 also regulates "minutes" (Sec. 15.106), and some regulations are applicable to all meetings (subsections (b) (d) and (e)), while others are applicable to individual meetings (subsections (a) and (c)) only.

Nothing in the legislative history of the Act suggests that the Act requires Council Members to prepare separate minutes or separate notice for attendance at duly noticed and Sunshine Law complying meetings of the various boards, commissions and committees referred to above. Each of these other boards, commissions and committees are required by Florida law to comply with state open meetings requirements.

In conclusion, unless amended by legislative action of the Council, the regular council meetings and standing committees of the Council are subject to the Act, to the extent identified in this opinion. All of the other boards, commissions, and committees enumerated above, and their members, are not, when serving on said body, part of the legislative practice of the Council, and though subject to Florida's Sunshine Law, are not subject to the specific requirements of Chapter 15, *Ordinance Code*.