

**Jacksonville Sunshine Law Compliance Review**

**May 29, 2008**

**Special Report # 651**

**Released on: June 19, 2008**

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



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Honorable Members of the City Council  
City of Jacksonville

**INTRODUCTION**

Pursuant to Ordinance 2007-733-E, we conducted a review of the City's compliance with Chapter 15 of the Jacksonville Municipal Code. This Ordinance 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.

We are providing this special written report in accordance with Municipal Code Sections 102.102 and 15.107. It is important to note that the Council Auditor is appointed and confirmed by the City Council. The findings detailed in this report only pertain to meetings initiated by Council Members with other Council Members. We did not include any findings 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

These meetings were initially included in our review based on our interpretation of Chapter 15 of the Municipal Code; however, the Office of the General Counsel has issued written legal guidance (See Attachment A) indicating that these meetings were not subject to the "narrower administrative focus of Chapter 15." 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 Jacksonville Municipal 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 Municipal Code Chapter 15.107(b) were as follows:

1. To verify that notices were public and timely, not less than 24 hours exclusive of weekends and holidays, and accessible to the public by internet.
2. To verify that meetings were located in appropriate public rooms and that all meetings held in Council Members' offices were properly documented.
3. To verify that minutes were written, maintained in the filing system, and available for retrieval.
4. To verify that all Council Members received annual continuing education and training on the Sunshine Law.

### **STATEMENT OF SCOPE AND METHODOLOGY**

The scope of our review included all meetings initiated by Council Members with other Council Members that were posted on the City Council Public Notice website scheduled from July 1, 2007 to April 30, 2008. We initially examined a total of 673 meetings (including Council and Committee meetings since they are categorized as Council Member Public Meetings pursuant to Municipal Code Section 15.102), which we later reduced to 171 meetings after conferring with the Office of the General Counsel. Our testing included a review of all relevant supporting documentation, examination of the City Council's website and discussions with the City Council Secretary and Legislative Services 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 Secretary have been inserted after the respective finding and recommendation. We received initial responses from the Council Secretary, Cheryl Brown, on June 4, 2008 after submitting an initial draft report to her on May 29, 2008. After numerous meetings with the Council Secretary and Office of the General Counsel concerning the applicability of Chapter 15, we received final responses from the Council Secretary on June 18, 2008.

## **OVERALL CONCLUSIONS**

Overall, nothing we found appeared to indicate noncompliance with Florida Sunshine Laws, Chapter 286 of the Florida Statutes.

By Objective, we concluded the following:

1. Overall, 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 and the City Ethics Officer approved two separate meetings held at local churches. In our review, 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. The majority of minutes were written, maintained on the Council website, and available for retrieval. However, we did note some instances where minutes were not posted to the City Council Public Notice website in a retrievable format.
4. A training session on the Sunshine Law was held on June 1, 2007, prior to the enactment of the Jacksonville Sunshine Compliance Act on June 26, 2007. Therefore, we did not assess whether Council Members were in compliance with the training component of Chapter 15 of the Municipal Code since this time period was before the scope of our review.

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## **OBJECTIVE #1**

**To verify that notices were public and timely, not less than 24 hours exclusive of weekends and holidays, and accessible to the public by internet.**

### **Finding 1 - Meeting notices were not available for posted meetings**

In our testing, we noted that three (3) out of 171 meetings did not have notices posted on the City Council Public Notice website. In two of the three instances, the Council Members did submit electronic notices; however, due to technological limitations concerning the length of the file name, these notices were not able to be posted to the City Council Public Notice website. The

City of Jacksonville Municipal Code Section 15.103(b) states, “Council Public Meeting notices shall be provided on the Council’s internet website...” The regulations ensure that meetings are noticed properly to best serve the public’s information needs.

**Recommendation to Finding 1**

We recommend that staff ensure that meeting notices are posted on the City Council Public Notice website for all public meetings.

**Council Secretary’s Response to Finding 1**

*The Council Secretary believes that the Council Members and their staff achieved 100% compliance in their efforts. Any errors that occurred during the year occurred due to technology aberrations.*

**Finding 2 - Meeting notices did not include date and time to be posted**

In our testing, we noted that none of the meeting notices included the time the notice was to be posted. The date and time the notices are to be posted informs Legislative Services of when to post a meeting notice in order to meet the 24-hour requirement, ensuring that the public had sufficient notice to attend meetings. Jacksonville Municipal Code Section 15.103(a) states “All Council Public Meetings shall be publicly noticed in a timely manner....the notices required shall include ...the date and time the notices are to be posted.” It appears that this exception was caused by misinterpretation of this requirement. For instance, Council staff use the time the email notice was sent to the Council Records email as the intended posting date. Notices may not be posted immediately after the email is sent to Council Records, resulting in meeting notices that are not provided to the public in an appropriate format that meet the requirements of Municipal Code Section 15.103.

**Recommendation to Finding 2**

We recommend that meeting notices include the time the notice is to be posted as required by Chapter 15 of the Municipal Code. We also recommend that the template used as a sample meeting notice be updated to include the requirement to specify the date and time the notice is to be posted.

**Council Secretary’s Response to Finding 2**

*As a result of an administrative glitch, the times of notice posting were left off of the notice documents. This occurred as a result of the reliance on email documentation of timing, which accurately captured the time of notice posting. Arrangements have been made to change the notice macro and to train the ECAs on identifying the time of notice posting in the notice document.*

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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.**

The Jacksonville Municipal Code 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." We did not identify any meetings located in the offices of Council Members. The City Ethics Officer approved two (2) meetings that were held at local churches. We confirmed that these meetings were properly noticed, open to the public, and that minutes were maintained.

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## **OBJECTIVE #3**

**To verify that minutes were written, maintained in the filing system, and available for retrieval.**

### **Finding 3 - Meeting minutes were not posted**

In our testing, six out of 171 noticed meetings did not have minutes posted on the City Council Public Notice website. In three of the six instances, the Council Members did submit meeting minutes; however, these minutes were not able to be posted to the City Council Public Notice website due to technological constraints concerning the length of the file name. And in two instances, minutes were completed, but simply not forwarded electronically to the City Council's Public Notice website. Section 15.106(a) of the Jacksonville Municipal Code states that each Council Member is responsible for the taking and preparation (or delegation thereof) of the minutes of each Council Public Meeting noticed by that Council Member.

### **Recommendation to Finding 3**

We recommend that staff ensure that meeting minutes are posted on the City Council Public Notice website for all public meetings.

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

*Council Members and their staff achieved a laudable 96 % compliance rate on posting minutes on the website. The goal the Council Secretary is pursuing is 100% compliance. Training and emphasis on compliance will continue monthly this fiscal year.*

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#### **OBJECTIVE #4**

**To verify that all Council Members received annual continuing education and training on the Sunshine Law.**

The Jacksonville Sunshine Compliance Law was not enacted at the time Council Members received Sunshine Law Training. However, the Office of the General Counsel and the City Ethics Officer provided 45 minutes of group training on the Sunshine Law, which was held within the June 1, 2007 Orientation and Ethics Program. The next training session is scheduled for June 19 and 20 of 2008.

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#### **OVERALL OPPORTUNITIES FOR IMPROVEMENT**

General recommendations for improving Sunshine Law compliance based on our observations, interviews, and data testing include the following:

##### **Opportunity for Improvement 1 – Posting of draft minutes**

Preliminary meeting minutes were posted on the City Council Public Notice website with final copies posted elsewhere on the City website. This was a common occurrence for Committee meetings and Council meetings.

##### **Recommendation to Opportunity for Improvement 1**

We recommend that preliminary drafts posted on the City Council Public Notice be clearly identified as preliminary with a draft watermark and that the draft minutes be linked to the Directory of Council and Committee Agendas and Votes website located at <http://citycirc.coj.net/coj/>, where final minutes can be obtained when available. The hyperlink would assist the public in navigating the City website to obtain meeting information.

##### **Council Secretary's Response to Opportunity for Improvement 1**

*The Council Secretary will address whether changes to the drafting and identification of standing committee meeting minutes by the Council research division is needed or prudent.*

##### **Opportunity for Improvement 2 – Required Sunshine Law training for Executive Council Assistants**

We observed that Executive Council Assistants (ECAs), who are employed by and report to the individual Council Members, prepare a significant amount of meeting documents on behalf of Council Members, but not all ECAs attended training sessions conducted by Council staff. Municipal Code Section 15.106(a) specifies that "Each Council member is responsible for the taking and preparation (or delegation thereof) of the minutes of each Council Public Meeting

noticed by that Council Member.” Chapter 15 of the Jacksonville Municipal Code states that the Council Secretary is responsible for developing procedures and implementing procedures for assuring Sunshine Law compliance. The Council Secretary currently provides voluntary training to ECAs.

We also observed that ECAs regularly amend meeting notices and minutes, which is an indication that the original documents were not prepared properly; these revisions to notices and minutes indicate that either ECAs did not attend the original training sessions or possibly more training is needed. Mandatory training will enable all ECAs to receive consistent training on the Council Secretary’s policies, which will lead to less amendments and better information presented to the public.

### **Recommendation to Opportunity for Improvement 2**

We recommend that Chapter 15 of the Jacksonville Municipal Code be amended to require Executive Council Assistants attend Sunshine Law training. It appears this issue is being addressed in Ordinance 2008-329 that is currently before the Council.

### **Council Secretary’s Response to Opportunity for Improvement 2**

*The Council Secretary, in coordination with the Office of General Counsel and Council President Davis, introduced Ordinance 2008-329-E requiring mandatory Sunshine Training for ECAs and this Ordinance has been enacted.*

### **Opportunity for Improvement 3 - Deadline of Three Business Days for Posting Minutes**

In our testing, we identified five out of 171 meetings in which the minutes were posted more than three business days after the meeting occurred. The Council Secretary has implemented a 72 hour deadline in which to post minutes after a Council Public Meeting has adjourned. Chapter 15 of the Jacksonville Municipal Code does not dictate the acceptable timeframe for posting Council Public Meeting minutes.

### **Recommendation to Opportunity for Improvement 3**

We recommend adherence to the Council Secretary’s internal procedures relating to the recording and posting of meeting minutes. The three business day requirement is a proactive initiative to provide timely meeting information to the public.

### **Council Secretary’s Response to Opportunity for Improvement 3**

*Council Members and their staff achieved a laudable 97% compliance rate on filing minutes within 72 hours of a scheduled meeting as directed by the Council Secretary. The goal the Council Secretary is pursuing is 100% compliance. To facilitate compliance, the Council Secretary intends to focus training on this requirement.*

#### **Opportunity for Improvement 4 – Conflicting Language in Jacksonville Sunshine Law**

The establishing legislation for the Jacksonville Sunshine Law Compliance Act contains conflicting language. Section 15.102 states that the Jacksonville Sunshine Law Compliance Act shall apply to the Jacksonville City Council and those public meetings of the Council that are contemplated by Florida Statute, Chapter 286, *including* meetings of the Council and Council Committees, and meetings between and amongst Council Members (i.e. Council Public Meetings). However, Section 15.106(c) on meeting minutes documentation requirements contradicts this language by stating that the requirements for minutes apply to Council Public meetings *outside of* the regular Council or Committee meeting structure.

#### **Recommendation to Opportunity for Improvement 4**

Based on the legal advice provided by the Office of the General Counsel, the intent of Chapter 15 of the Municipal Code is to address transparency of meetings between and amongst Council Members that occur outside of the Council and Committee meeting structure. Therefore, we recommend that Municipal Code Section 15.102 be amended to ensure that the meetings governed by Chapter 15 are clearly and consistently identified. Overall, the requirements of the Jacksonville Sunshine Compliance Law should reflect the purpose of the Sunshine Law, Florida Statute Chapter 286.

#### **Council Secretary’s Response to Opportunity for Improvement 4**

*The Council Secretary intends to discuss this recommendation with Council leadership and the Office of General Counsel to determine if changes to the existing ordinance are needed or prudent.*

#### **Opportunity for Improvement 5 – System-generated posted date and time**

The “Date Changed” field is a date stamp that indicates when documents were posted or edited on the City Council Public Notice website. The initial date stamp is system generated; however, we observed that Council staff has the ability to modify the date shown. The ability to modify the “Date Changed” field causes uncertainty as to whether meeting notices and minutes were posted in time to comply with reporting requirements. Although the posting date can be verified through a Council mailbox system, the public has limited access to this information, and will most likely rely on the City Council Public Notice website.

#### **Recommendation to Opportunity for Improvement 5**

We recommend that the City Council Public Notice website be enhanced so that Council staff no longer has the ability to modify the “Date Changed” field. The system-generated timestamp provides the most accurate information about the time and date meeting information was available to the public on the City Council Public Notice website.

### **Council Secretary's Response to Opportunity for Improvement 5**

*The Council Secretary concurs that altering the access to the website will reduce confusion, and intends to fully implement this recommendation.*

### **Opportunity for Improvement 6 - System Limitation of Posting Files**

We observed that information on the public notice website was not accessible at certain times throughout the day and were unable to view meeting notices and minutes due to the City Council Public Notice website's unavailability. We were unable to view the meeting minutes on 17 occasions because the hyperlink on the website was not working at the time of our review. The system used to post documents on the City Council Public Notice website has specific formatting guidelines that must be used to create a functional hyperlink. Any deviation from the system formatting requirements results in malfunctioning hyperlinks. In addition, the website may be undergoing maintenance making information temporarily unavailable. Posting meeting documents on the internet allows the public to access public meeting notices at their convenience, instead of having to visit City Hall for information.

### **Recommendation to Opportunity for Improvement 6**

We recommend that the City Council consult with the City's Information Technology Department to evaluate website accessibility, resolve current issues, and implement techniques of ensuring that the website is running properly.

### **Council Secretary's Response to Opportunity for Improvement 6**

*The Council Secretary concurs, and intends to work closely with the City's ITD to evaluate and improve website accessibility, resolve current issues, and implement techniques of ensuring that the website is run properly.*

### **Opportunity for Improvement 7 – Initiator of Meeting Notices**

Based on our review of meeting notices posted on the City Council Public Notice website, we found in a small number of instances that the meeting notices did not clearly identify the Council Member calling the meeting. According to staff, hard copies of these notices provided to the media were on the letterhead of the initiating Council Member. In addition, in all notices we reviewed on the City Council Public Notice website, all Council Members expected to attend these meetings were clearly identified.

### **Recommendation to Opportunity for Improvement 7**

We recommend that all meeting notices published on the City Council Public Notice website clearly include the name of the meeting initiator. We also recommend that electronic meeting notices available on the City Council Public Notice website be prepared on Council Member letterhead to help clearly identify the Council Member calling the meeting.

**Council Secretary's Response to Opportunity for Improvement 7**

*Council Members and their staff achieved laudable compliance rates. Training to ensure identification of the meeting initiator will ensure 100% compliance in the future*

**Opportunity for Improvement 8 – Invitation to Attend Meetings**

We consistently observed that notices posted on the City Council Public Notice website invited all interested parties to attend each meeting. These notices were initiated by a Council Member and all other Council Members could have attended the meeting. According to the Office of the General Counsel, the Council Member is not required to submit meeting minutes if only one Council Member is present at the meeting. The open invitation on the meeting notices makes it difficult to determine if more than one Council Member attended the meeting and if Chapter 15 of the Municipal Code is applicable without documented meeting minutes. However, in two particular instances we questioned, the Council Secretary stated that only one Council Member attended these meetings; therefore, minutes were not required.

**Recommendation to Opportunity for Improvement 8**

We recommend that all meetings noticed on the City Council Public Notice website include meeting minutes or some form of documentation indicating that only one Council Member was present at the meeting and that requirements of Chapter 15 of the Municipal Code do not apply.

**Council Secretary's Response to Opportunity for Improvement 8**

*Chapter 15 requirements far exceed State of Florida Sunshine requirements. Furthermore, Chapter 15 compliance is extraordinarily good. The Council Secretary will meet with Council leadership to determine if changes to the existing protocol are needed or appropriate.*

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We appreciate the assistance and cooperation we received from the Council 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, 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*.