

Jacksonville Sunshine Law Compliance Review

May 31, 2012

Special Report # 716

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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 Section 15.107, Ordinance Code, we conducted a review of the City Council's compliance with Chapter 15 of the Jacksonville Municipal Code. This Ordinance Code section 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, and therefore, should not be considered independent for purposes of this review.

We are providing this special written report in accordance with Sections 102.102 and 15.107, Ordinance Code. The findings detailed in this report only pertain to meetings initiated by Council Members with other Council Members.

Following our 2008 review, the Office of the General Counsel issued written legal guidance (See Attachment A) indicating that certain 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, 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) are as follows:

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 118 meetings initiated by Council Members with other Council Members which occurred between May 1, 2011 and April 30, 2012 and 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 Secretary/Director, 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 Secretary/Director and the Office of General Counsel have been inserted after the respective finding and recommendation. We received responses from the Council Secretary/Director, Cheryl Brown, and Deputy General Counsel, Steve Rohan, on May 29, 2012.

OVERALL CONCLUSIONS

Overall, we did not find any evidence to indicate noncompliance with Chapter 15 of the Jacksonville Municipal Code.

By Objective, we concluded the following:

1. Virtually all 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. We noted one instance in which meeting notices did not include the date and time to be posted and one instance in which a meeting notice was not posted 24 hours in advance.

2. All meetings were located in appropriate public rooms. The City Ethics Officer did not approve any meetings to be located in Council Members' offices nor did we review any notices indicating that meetings were held in Council Members' offices. No meetings were found to be held in non-public locations.
3. Overall, minutes were written, maintained in the filing system, and available for retrieval. We noted three instances in which minutes were not posted and available for retrieval on the City Council's website.
4. Based on training certificates issued by the Office of the General Counsel, all Council Members and Executive Council Assistants are in compliance with the training component of Chapter 15 of the Municipal Code.

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.

Finding #1 *Meeting notice not posted 24 hours in advance*

In our testing, we noted that one meeting notice was posted less than 24 hours prior to the meeting date. The meeting notice was posted at 5:45 p.m. for a meeting that occurred at 5:00 p.m. the following day. Section 15.103(c) states that "notices of Council Public Meetings shall be posted for at least 24 hours prior to the meeting, not including weekends and holidays."

Recommendation to Finding #1

We recommend that all meeting notices be posted at least 24 hours prior to the meeting date in order to provide sufficient notice to interested parties.

Council Secretary's Response to Finding #1

Management Response / Corrective Action Plan

Agree Disagree Partially Agree

Chapter 15 requires meeting notices to be posted at least 24 hours in advance. The Executive Council Assistants have a virtual 100% success rate on this requirement. The one 45 minute departure in the past year noted by the Auditor was a result of an adhoc group meeting sponsored by a Council Member that ran late and the only time available for the reset of the meeting was the following day, 45 minutes short of the 24 hour notice requirement. Due to the extraordinary circumstances, this meeting was set with the approval of the Office of General Counsel.

Council Auditor Rebuttal to Council Secretary’s Response to Finding #1

Chapter 15 does not grant the Office of General Counsel the authority to approve waivers. Section 15.103 (d) provides relief from the 24 hour notice requirement in 15.103 (c) as follows:

“Notwithstanding subsection (c) above, notice of Council Public Meetings may be posted for a period of less than 24 hours, only in the event of an emergency, and when approved in writing by the Council President and the City's Ethics Officer.”

Finding #2 *One meeting notice did not include date & time to be posted*

In our testing, we noted that one meeting notice did not include the date and time to be posted. Section 15.103(a) 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 the 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 reports. Although this was a technical exception, the meeting notice was correctly posted at least 24 hours in advance of the meeting date.

Recommendation to Finding #2

We recommend that the Executive Council Assistants use the sample template for meeting notices (prepared by the Council Secretary/Director) in order to ensure compliance with Chapter 15. If a deviation from the sample notice template is deemed necessary, we recommend that the meeting notice be thoroughly scrutinized to ensure it is still in compliance with the requirements of Chapter 15. The purpose of including the date and time to be posted on notices is to promote on-time posting to the City Council Public Notice website by the Legislative Services Division. This allows the public sufficient notice to attend the meeting if desired.

Council Secretary’s Response to Finding #2

Management Response / Corrective Action Plan

Agree Disagree Partially Agree

The Auditors found only one deviation from established protocol out of 118 set meetings. It is clear that the ECAs are demonstrating better than 99% compliance. Nonetheless, the ECA's under the guidance of the Council Secretary / Director continue to pursue 100% compliance with chapter 15.

OBJECTIVE #3

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

Finding #3 *Three meeting minutes not available*

In our testing, we noted that three out of 118 noticed meetings did not have minutes posted on the City Council Public Notice website. In addition, the Legislative Services Division was unable to provide a copy of the minutes. Therefore, minutes were not available in a retrievable format. Section 15.106(d) states that “a copy of the minutes of all noticed Council Public Meetings shall be kept, with the notice to such meetings, by the Legislative Services Division. The Legislative Services Division shall develop such systems and policies as are necessary for the orderly filing, maintaining and retrieval of minutes.” In addition, Section 15.106(e) states that “no less than once every 30 days, the Legislative Services Division shall review notices of all Council Public Meetings to ensure that copies of the minutes of all applicable public meetings have been placed on file in the Legislative Services Division.”

Finding #4 *No adjournment time on meeting minutes*

In our testing, we noted one meeting in which the time the meeting adjourned was not listed on the meeting minutes. Per Ordinance Sec. 15.106(c)(1), the minutes of every Council Public Meetings should include “The location, date and time the meeting commenced and adjourned.”

Recommendation to Findings #3 and #4

We recommend that minutes be prepared, archived and routinely reviewed by the Legislative Services Division in accordance with Section 15.106.

Council Secretary’s Response to Findings #3 and #4

Management Response / Corrective Action Plan

Agree Disagree Partially Agree

Out of 118 total meetings, only three discrepancies were found; a better than 97% success rate. In all case, the minutes had in fact been taken but were not turned in because the ECA believed that requirement was not necessary because no other Council Members attended. All minutes have since been filed, and the ECA now understands that minutes must be filed for every noticed meeting, regardless of attendance.

This recommendation was made because one out of 118 minutes taken did not include an adjournment time. The ECAs' record on this requirement is near 100% and the one flawed set of minutes were extraordinarily detailed and exemplary minutes which only lacked the adjournment time.

OVERALL OPPORTUNITIES FOR IMPROVEMENT

Pursuant to Section 15.109, the Council Auditor's Office shall make recommendations to the City Council to improve open meetings compliance. In our Sunshine Compliance Review Report #700 issued on May 31, 2011, we noted two Opportunities for Improvement (OFI).

- OFI #1 - We noted that two Council Members and one Executive Council Assistant were not able to attend the Sunshine Law group training session held on August 24, 2010. However, all individuals received make-up training and were issued make-up training certificates. The certificates incorrectly indicated that these individuals attended the group training session held on August 24, 2010. These individuals signed an affidavit dated August 30, 2010 and September 27, 2010 certifying completion of the Sunshine training program.
- OFI #2 - Chapter 15 of the Municipal Code does not address when make-up training should occur for those Council Members and ECAs who are unable to attend the group Sunshine training session.

These same items are still an issue as noted below in the current year OFIs.

OFI #1 *Incorrect date used on training make-up certifications*

In our testing, we noted that two Council Members and one Executive Council Assistant were not able to attend the Sunshine Law group training session held on June 2, 2011. However, all individuals received make-up training and were issued make-up training certificates. The certificates incorrectly indicated that these individuals attended the group training session held on June 2, 2011. The two Council Members and the Executive Council Assistant signed affidavits dated August 15, 2011 and April 10, 2012, respectively, certifying completion of the Sunshine training program.

Recommendation to OFI #1

We recommend that make-up training certifications be reviewed to ensure that the correct date is printed on the certificate and the certificate is free of errors.

Council Director/Secretary's and Office of the General Counsel's Response to OFI #1

Management Response / Corrective Action Plan

Agree Disagree Partially Agree

It is always responsible and appropriate to take all reasonable measures to ensure that public forms and documents are accurate.

OFI #2 *Make-up training requirements*

Chapter 15 of the Municipal Code does not address when make-up training should occur for those Council Members and ECAs who are unable to attend the group Sunshine training session.

Recommendation to OFI #2

We recommend that language be added to Chapter 15 to provide guidance on make-up training requirements and establish a reasonable timeframe for completion to ensure make-up training is received by all Council Members and ECAs within an appropriate timeframe.

Council Director/Secretary's and Office of the General Counsel's Response to OFI #2

Management Response / Corrective Action Plan

Agree Disagree Partially Agree

Amending the Ordinance Code is a legislative issue that falls outside the realm of the Office of the Director. Nonetheless, the Office of the Director believes that the Council auditor's Office perceives a problem where none exists as make-up training for all Council Members and ECAs has not been problematic and has been accomplished with relatively little prompting from the Office of the Director or the Office of General Counsel.

Amending the Ordinance Code is a legislative issue that falls outside the realm of the Office of General Counsel. Nonetheless, the Office of General Counsel believes that the Council auditor's Office perceives a problem where none exists as make-up training for all Council Members and ECAs has not been problematic and has been accomplished with relatively little prompting from the Office of General Counsel.

We appreciate the assistance and cooperation we received from the Council Secretary/Director, 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

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*.