

Jacksonville Sunshine Law Compliance Review

May 31, 2013

Special Report #734

Released on: May 31, 2013

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 of the Council and Council committees and meetings initiated by Council Members with other Council Members. (See Attachment A for the Office of General Counsel's written legal guidance.) 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 508 Council Public Meetings which occurred between May 1, 2012 and April 30, 2013 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>

We reviewed all the meetings initiated by Council Members with other Council Members. We also reviewed meetings of the Council and Council committees on a sample basis.

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, on May 30, 2013.

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. 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.

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. However, the City Ethics Officer did approve one meeting that was held at a hotel.
3. Overall, minutes were written, maintained in the filing system, and available for retrieval. We noted two instances in which minutes were not posted and available for retrieval on the City Council's website.
4. Based on signed Compliance Attestation forms for the 2012 Sunshine Training, all Council Members and Executive Council Assistants were in compliance with the training component of Chapter 15 of the Municipal Code.

OBJECTIVE #3

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

Finding #1 *Meeting Minutes Not Available*

In our testing, we noted that two out of 149 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.”

Recommendation to Findings #1

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 #1

Management Response / Corrective Action Plan

Agree Disagree Partially Agree

The Director/Council Secretary acknowledges the recommendation as set forth by the Council Auditor and is committed to maintaining the high standard of accuracy as presently documented.

The Office of the Council Director/Council Secretary appreciates the ongoing efforts of the Council Staff as well as Executive Council Assistants in their support of promoting accuracy, efficiency, and transparency in records keeping, management, and retention.

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 dated May 3, 2013

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MEMORANDUM

TO: Kirk Sherman, Council Auditor

FROM: Margaret M. Sidman, Deputy Legislative Affairs & Managing Deputy *MMS*

RE: Chapter 15 (Jacksonville Sunshine Law Compliance Act), *Ordinance Code.*

DATE: May 3, 2013

Applicable Law

Sec. 15.102. - Applicability; Public Meeting defined.

The Jacksonville Sunshine Law Compliance Act shall apply to the Jacksonville City Council and those public meetings of the Council that are contemplated by F.S. Ch. 286, including meetings of the Council and Council committees, and meetings between and amongst Council Members. These meetings shall hereinafter be identified in this Chapter as "Council Public Meetings." Since other agencies are already obligated to comply with Florida's Sunshine Law, F.S. Ch. 286, even if Council Members serve thereon or attend, the Jacksonville Sunshine Law Compliance Act shall not be applicable to the noticed meetings of the various other commissions and agencies established by law, ordinance or executive order.

Sec. 15.107. - Annual review and report on council notices, meeting locations and minutes.

- (a) The Council Auditor shall review information provided by the Legislative Services Division regarding:
- (1) The notices of Council Public Meetings;
 - (2) The location of such public meetings; and
 - (3) Written minutes of such public meetings, and prepare an annual report thereon.

The Auditor shall file such report with the Council committee to which audit matters are referred, the Council President, the City Ethics Officer, and the Ethics Commission, who may comment thereon.

- (b) The report, as required by subsection (a) above, shall include confirmation, through methods and means developed by the Council Auditor, that:

- (1) Notices were public and timely, and not less than 24 hours exclusive of weekends and holidays, and accessible to the public by internet;
 - (2) That meetings were located in appropriate public rooms, with a list of all meetings held in Council Members' offices;
 - (3) That minutes were written, maintained in the filing system, and available for retrieval; and
 - (4) That all Council Members and Executive Council Assistants have received annual continuing education and training on the Sunshine Law; and shall provide recommendations, as appropriate to improve compliance, as authorized by Section 15.109 below. The report shall be based upon a review of that information collected and provided by the Council Secretary/designee, and any other information that is known to the Council Auditor.
- (c) The Council Auditor's review shall commence annually on May 1st, 60 days prior to installation of a new Council President, and the report shall be provided no later than June 1. The Council Auditor's review shall be based upon complete data for the first year of each term, but may be based upon statistically significant samples in any other year if the previous year's success rate has been at least 95 percent.

Inquiry

The Council Auditors Office has inquired as to the scope and applicability of the Chapter 15, The Jacksonville Sunshine Law Compliance Act, *Ordinance Code*, specifically whether it applies to the regular meetings of City Council and City Council committees including standing, special and select committee meetings. The nature of the inquiry is to facilitate the proper annual review by the City Council Auditors Office as is required by §15.107, *Ordinance Code*.

Short Answer

The Jacksonville Sunshine Law Compliance Act as found in Chapter 15, *Ordinance Code*, applies to “those public meetings of the Council that are contemplated by F.S. Ch. 286, including meetings of the Council and Council committees, and meetings between and amongst Council Members”, §15.102, *Ordinance Code*. The regular City Council meetings and the City Council Committee meetings are included in the above referenced definition and would therefore be considered Council Public Meeting that should be considered by the Council Auditor’s Office in the annual review. Likewise any sub committees of Standing Committee, Special and Select (also known as Ad Hoc) Committees or any other meeting that involve more than 2 council members that are established by the Council President pursuant to Council Rules would also be considered Council Public Meetings and thereby would be subject to the Council Auditors annual review.

Analysis

The Jacksonville Sunshine Law Compliance Act, enacted in 2007, sought to provide guidance and oversight to the Jacksonville City Council in applying the rules of the Florida Sunshine law found in Chapter 286 of the Florida Statutes. In discerning the applicability of the local act, the state law applicability must first be considered.

The Florida Sunshine Law, Chapter 286 Florida Statutes, applies to meetings of any board or commission at which official actions are to be taken. § 286.011(a), *Florida Statutes*. The Jacksonville Sunshine Law Compliance Act is outlined under §15.102 which states as follows:

The Jacksonville Sunshine Law Compliance Act shall apply to the Jacksonville City Council and those public meetings of the Council that are contemplated by F.S. Ch. 286, including meetings of the Council and Council committees, and meetings between and amongst Council Members. These meetings shall hereinafter be identified in this Chapter as "Council Public Meetings."

The regular meetings of Council, standing committee meetings of Council, special committee meetings of council and select (also known as Ad Hoc) committee meetings of council are convened to take official action of the City Council and as such are contemplated meetings of a sunshine board under §286.011, Florida Statute. Further the above reference meetings are “meetings of the Council and Council committees” and therefore should be considered “Council Public Meetings” as contemplated and defined by the §15.102, *Ordinance Code*.

It should be noted that there are numerous other boards, commissions, and committees on which two or more council members serve, which, although subject to the Florida Sunshine law, are not subject to the applicability of the Jacksonville Sunshine Compliance Act. The Council in enacting Chapter 15, noted this and exempted such boards, commissions and committees therefrom. The applicable exemption found in §15.102, *Ordinance Code*, is as follows:

Since other agencies are already obligated to comply with Florida's Sunshine Law, F.S. Ch. 286, even if Council Members serve thereon or attend, the Jacksonville Sunshine Law Compliance Act shall not be applicable to the noticed meetings of the various other commissions and agencies established by law, ordinance or executive order.

Therefore Council boards and commissions such as the Tourist Development Council, created by ordinance and codified under Chapter 70 of the Jacksonville Municipal Code or the Jacksonville Waterways Commission created by ordinance and codified under Chapter 95 of the Jacksonville Municipal Code would not be applicable boards or commission under the Jacksonville Sunshine Law Compliance Act.

We trust that this answers your question. Please let us know if we can be of further assistance.

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