



Council Auditor's Office

Jacksonville Sunshine Law Compliance Review

May 29, 2014

Special Report #750

Released on: May 29, 2014

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



May 29, 2014

Report #750

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 a biannual review commencing in even-numbered years 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 applicable Council 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 Public Meetings were located in appropriate public rooms and that all meetings held in non-public locations or Council Members' offices were properly approved 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 678 Council Public Meetings which occurred between May 1, 2013 and April 30, 2014 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 meetings initiated by Council Members with other Council Members. We also reviewed meetings of the Council and Council committees on a sample basis. In total, we reviewed 220 meetings.

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 have been inserted after the respective finding and recommendation. We received responses from the Council Secretary/Director, Cheryl Brown, on May 27, 2014.

OVERALL CONCLUSIONS

By Objective, we concluded the following:

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

1. Council 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. However, we noted one meeting notice that was not available and one meeting notice that lacked all the required elements of a notice.
2. Overall, Council Public Meetings were located in appropriate public rooms. However, we noted one meeting that was held in a non-public location had not been approved in accordance with Section 15.104.
3. Virtually all minutes were written, maintained in a filing system, and available for retrieval in accordance with Section 15.106. We noted three instances where minutes were not available and fourteen meetings' minutes failed to include all the information required by Section 15.106.
4. Council Members and Executive Council Assistants received annual continuing education and training on the Sunshine Law. However, four individuals did not complete the training within 60 days of the Council President taking office in accordance with Section 15.108.

OBJECTIVE #1

To verify that applicable Council 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 – 1 *Meeting Notice Not Available*

The notice for one out of 220 meetings reviewed was neither posted on the City Council Public Notice website nor available from the Legislative Services Division. This notice applied to the 22 City Council Agenda Meetings that occur throughout the year. Section 15.103 of the Ordinance Code requires that all Council public meetings be publicly noticed in a timely manner.

Recommendation to Finding 1 – 1

We recommend that all Council public meetings be properly noticed in accordance with Section 15.103 of the Ordinance Code.

Council Secretary Response to Finding 1 – 1

Agree Disagree Partially Agree

The Director/Council Secretary acknowledges the recommendation as set forth by the Council Auditor. The above mentioned recommendation is a part of the Standard Operating Procedures for documentation of meetings.

Finding 1 – 2 *Meeting Notices Lacking Required Information*

The notice for one out of 220 meetings reviewed did not include the time the notice was posted, time of the meeting, and the location of the meeting. Section 15.103 of the Ordinance Code requires all notices to include at a minimum (i) the date and time of the meeting noticed, (ii) the date and time the notices are posted, (iii) the location of the meeting, and (iv) the general subject matter of the meeting, and (v) the Council Member calling the meeting and any other Council Members who, at the time of notice, are expected to be in attendance. This notice was the memorandum notice for the 22 City Council Meetings that take place annually. The notice included all other required elements.

Recommendation to Finding 1 – 2

We recommend that meeting notices include all required elements in accordance with Section 15.103 of the Ordinance Code.

Council Secretary Response to Finding 1 – 2

Agree Disagree Partially Agree

The Director/Council Secretary acknowledges the recommendation as set forth by the Council Auditor. The above mentioned recommendation is a part of the Standard Operating Procedures for documentation of meetings.

Opportunity for Improvement 1 – 1 *Meeting Posting Errors*

When meetings are noticed, staff members of the Legislative Services Division create the meeting on the City Council Public Notice website, where the meeting notice, minutes, and other associated documents are posted online. We noted three meetings that had been created on the website under an incorrect meeting date; the meeting date shown in the notice did not agree with the meeting date shown on the website. The meetings were subsequently created on the website under the correct date. However, no documentation was posted under the incorrect meeting date showing that there was no meeting on that date or that the posting was in error. Additionally, we noted one meeting that was postponed to a later date, but a cancellation notice was not posted for the cancelled meeting as it was not prepared by the meeting initiator.

Recommendation to Opportunity for Improvement 1 – 1

We recommend that if a meeting is created on the City Council Public Notice website in error under the incorrect date and/or time, the meeting be deleted or a cancellation notice be posted by the Legislative Services Division. We also recommend that cancellation notices be completed by meeting initiators and posted to the Council Public Notice website.

Council Secretary Response to Opportunity for Improvement 1 – 1

Agree Disagree Partially Agree

The Director/Council Secretary acknowledges the recommendation as set forth by the Council Auditor. The above mentioned recommendation is a part of the Standard Operating Procedures for documentation of meetings. We are committed to reinforcing the requirement through the ongoing Annual Executive Council Assistants Training.

OBJECTIVE #2

To verify that Council Public Meetings were located in appropriate public rooms and that all meetings held in non-public locations or Council Members’ offices were properly approved in accordance with Section 15.104.

Finding 2 – 1 *Approval Not Obtained for Non-Public Location*

One out of 220 meetings reviewed was held in a non-public location (defined as a location other than Council Chambers and public conference, meeting, or committee rooms). Pursuant to Code Section 15.104, public locations shall be used for all Council Public Meetings, unless other locations are approved in writing by either the City Ethics Director or the Office of General Counsel Ethics Liaison. Per the City Ethics Director and Office of General Counsel Ethics Liaison, approval was not granted to hold a meeting in this location.

Recommendation to Finding 2 – 1

We recommend that all Council public meetings held in non-public locations receive proper approval in accordance with Section 15.104 of the Ordinance Code.

Council Secretary Response to Finding 2 – 1

Agree Disagree Partially Agree

The Director/Council Secretary acknowledges the recommendation as set forth by the Council Auditor. The above mentioned recommendation is a part of the Standard Operating Procedures for documentation of meetings. We are committed to reinforcing the requirement through the ongoing Annual Executive Council Assistants Training.

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 – 1 *Meeting Minutes Not Available*

Minutes were not available for three out of 220 examined meetings either through the City Council Public Notice website or through Legislative Services as it does not appear they were prepared. Per Code Section 15.106, minutes of Council Member Public Meetings are to be maintained in a retrievable format. Without retrievable minutes, the public cannot be informed of the discussion or action that took place at a public meeting.

Recommendation to Finding 3 – 1

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

Council Secretary Response to Finding 3 – 1

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.

Finding 3 – 2 *Minutes Lacking Required Information*

City Council Public Meeting minutes are to include (1) the location, date and time the meeting commenced and adjourned, (2) the members of the Council, other public officials and employees, and registered lobbyists in attendance, and (3) the substance of discussions and positions presented by the persons in attendance, per Section 15.106 of the Ordinance Code. During our review of the meetings’ minutes, we found the following:

- Five did not include the date of the meeting for which the minutes were prepared or included an incorrect date.
- Seven did not state the actual commencement time of the meeting, but rather the scheduled time of the meeting.
- One did not contain those individuals in attendance or have an attached sign-in sheet.
- One did not state the meeting location.

Recommendation to Finding 3 – 2

We recommend that the requirements of Public Meetings minutes be followed in accordance with Section 15.106 of the Ordinance Code.

Council Secretary Response to Finding 3 – 2

Agree Disagree Partially Agree

The Director/Council Secretary acknowledges the recommendation as set forth by the Council Auditor. The above mentioned recommendation is a part of the Standard Operating Procedures for documentation of meetings. We are committed to reinforcing the requirement through the ongoing Annual Executive Council Assistants Training.

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.

Finding 4 – 1 *Training Not Completed within 60 Days*

According to records maintained by the Council Secretary/Director, all Council Members and Executive Council Assistants completed annual training on the Sunshine Law. However, certificates of completion were dated after the required timeframe for completion for four individuals. All annual training must take place within 60 days of the Council President taking office pursuant to Code Section 15.108.

Recommendation to Finding 4 – 1

We recommend that Council Members and Executive Council Assistants complete their annual Sunshine Law training within the 60 day timeframe in accordance with Ordinance Code Section 15.108.

Council Secretary Response to Finding 4 – 1

Agree Disagree Partially Agree

The Director/Council Secretary acknowledges the recommendation as set forth by the Council Auditor. The above mentioned recommendation is a part of the Training Document which is provided to each individual for completion...informing them of the deadline in which the training document must be returned. We are committed to reinforcing the importance of this requirement through the ongoing Annual Executive Council Assistants and Council Member Training.

Final Comments:

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.

ADDITIONAL COMMENT

Ordinance 2013-285-E amended the Section 15.107 requirement for the Council Auditor to perform a review of Sunshine Law compliance from an annual report for each year ending April 30 to a biannual report for the two years ending April 30 of each even numbered year.

Our next review, for the two years ending April 30, 2016, will be the first time we perform a two-year review. The Council Auditor is given the month of May to review and issue a report on compliance to the Council. I anticipate a problem with the one-month work period due to the anticipated turnover in Council members and Executive Council Assistants effective July 1, 2015 and the doubling of the time period under review.

My office priority during the first two weeks of May is to review and report on budgetary issues for the City and its independent agencies through the first six months of the fiscal year as required by Municipal Code Sections 106.421 through 106.423.

Additional Recommendation

I recommend the Council amend Chapter 15 to give the Council Auditor a two-month time period to perform our review and issue the compliance report by changing the review scope from a time period ending April 30 to an end date of March 31 while keeping our June 1 report due date. This would allow my staff adequate time to perform this work and review our findings with newer Council members and staff before issuing our report.

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

Respectfully submitted,

Kirk A. Sherman, CPA
Council Auditor

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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 21, 2014

Applicable Law

Sec. 15.102. - Applicability; Public Meeting, Location defined.

- (a) 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, Ch. 286, F.S., 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.
- (b) Public location shall mean any government owned building.

Sec. 15.107. - Biannual (every two years) 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.

Attachment A

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 in even number years 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 statistically significant samples from the preceding two years.

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 review, pursuant to Chapter 15, *Ordinance Code*.

Attachment A

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

Attachment A

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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