

Jacksonville's Sunshine Scandal

Below are a series of edited articles published in the (Jacksonville) Florida Times-Union this summer, exposing Jacksonville City Council's pattern of violating the letter and spirit of Florida's quite strict Sunshine Law (which is inscribed in both state constitution and statute). I'll talk a bit about this episode and its aftermath in my talk. The articles offer a nice narrative that may remind you of local governments you've seen, heard about, or even served.

1. [Unsigned front-page article], "How City Council's culture kept you clueless about hundreds of public meetings among members," *Florida Times-Union*, June 16, 2007.

They've been leaving you out of your own public business for years.

Florida's Government-in-the-Sunshine Law dictates Jacksonville City Council members alert you to meetings about public affairs.

But they failed you repeatedly.

A *Times-Union* review of 18 months of council member calendars, meeting announcements and minutes depicts an ingrained council culture of apathy, carelessness and arrogant disregard for the law.

Council members left you out by posting notices you typically had no chance of seeing about hundreds of meetings between two or more council members that sometimes included city staff.

They left you out of talks about neighborhoods, growth, budgets and other important topics.

They left you out by infrequently writing meeting accounts as law requires, or by being so sketchy you would never know what happened.

And they left you out by not announcing some meetings at all.

Welcome, at last, to City Council's lost episodes.

State Sunshine Law experts say they've never heard of anything quite like this in Florida. The *Times-Union's* findings alarmed council leaders and the city's top lawyer so much that they crafted a new Jacksonville Sunshine Law Compliance Act to correct several problems before this newspaper could report them.

"Quite frankly, the work done by The Florida *Times-Union* has directly contributed to this legislation," General Counsel Rick Mullaney said before the report was published.

"I think it is a significant improvement over the current system."

It's a disgrace it took this long.

Meeting notices to nowhere

The public's right of access to council meetings is guaranteed in the state constitution and further defined through the Sunshine Law. It requires meetings between two or more council members on items that could come up for foreseeable action to be open to the public, announced and minutes kept.

In at least 183 cases from June 2005 into December 2006, council members generated notices on their one-on-one meetings. You had to be an ace detective to find them.

Some put them on a city e-mail list that only some city employees can view. Some dropped them in a press box in a council mailroom behind two checkpoints of security. Occasionally, some pinned them on a bulletin board on City Hall's first floor.

Meanwhile, 10 council members offered no evidence of minutes taken from their scheduled meetings as law requires during the *Times-Union* survey period. Those cases amounted to a two-step knockout blow to public access: Practically no hope of finding out about a meeting and no chance of seeing an account of it.

"The arrogance and disregard that shows to the public is just stunning," said Barbara Petersen, president of the First Amendment Foundation in Tallahassee. "I haven't heard of anything anywhere near like it. That doesn't mean it isn't happening, but this just blows me away."

Council members scheduled most of the meetings for their own offices, a practice Mullaney said he has advised against because of its chilling effect on public attendance. Pat Gleason, special counsel with Gov. Charlie Crist's new Office of Open Government, and a statewide authority on the subject, said she knows of no other city or county commission in Florida that routinely holds noticed one-on-one meetings in council members' own offices.

"It's unprecedented," said Gleason, a former assistant attorney general. "It's so bizarre. Why would anybody think you could have an open public meeting in an office? An office is generally a private area."

One law, two standards on meetings

Since 2001, the council secretary's office has posted notices about regular council meetings and various committees on the city's Web site. Agendas and minutes for them are often found there, too.

But council members are responsible for announcing their one-on-one meetings and taking minutes. And they have kept those off the Internet; out of sight and mind.

"It's not because we're trying to hide it," said two-term council member Suzanne Jenkins. "It just never occurred to us. It's like the old church committee: We do it this way because it's the way we've always done it."

Added council member Art Shad: "I would hate for people to think there was some devious scheme behind why it wasn't done better."

Regardless, could the process have been more effective in shutting people out?

Four-year councilman Kevin Hyde said he can't recall anyone from the public attending one of the noticed meetings.

"I think that's the common experience of most of us," said Hyde, council president last year.

Is there any wonder why?

Surely council members and their aides must have asked themselves how anyone might ever find out about these meetings unless they called or asked to be notified.

Tony Bates, president of the Concerned Taxpayers of Duval County, said he or his group's members likely would have attended several of the meetings about city finances - if they only had the chance.

Ironically, some council members drop in on their colleagues' meetings that they see posted from time to time.

"If I'm not getting all the scoop I want at a committee meeting, sometimes the only way you get it is to stick your head in another noticed meeting," said Ronnie Fussell, the council's incoming vice president.

How shameful that the public has rarely enjoyed the same privilege.

No custom 'carve out' for law

Council members have carved their own customized exemption to the state's Sunshine Law, which Mullaney says is not acceptable. "There is no carve out for what the Florida Statutes require," he said.

Mullaney stressed the new ordinance would address several problems identified by the *Times-Union* investigation, including no Internet posting for meetings of one or more council members, lack of noticing, faulty notices, neglected minutes and no monitoring for compliance.

After the *Times-Union* shared the extent of the problems, Mullaney moved quickly with Council President Michael Corrigan to develop a sweeping response that council is likely to implement before its 10 new members take office next month.

We applaud the effort and the swift action. But it's inexcusable that the council as a whole followed the law so poorly over the years that it required this remedy. It will take time and far better behavior for members to repair their credibility on this crucial front. And lingering questions remain about how far the council may have crossed the lines.

2. [Unsigned front-page article], "Why the grand jury should investigate Sunshine Law violations and a lack of oversight of the City Council," *Times-Union*, June 17, 2007.

As many City Council members tell it, government in the sunshine couldn't get much sunnier for them: Nobody lobbies a colleague when they shouldn't. Nobody makes secret deals with colleagues on legislation. Any violations of the Sunshine Law are accidental or unintentional.

If that is so, they should be willing to share their practices with a grand jury under oath and reassure the public their Sunshine Law lapses are not criminal in nature. A *Times-Union* investigation uncovered serious problems with council meeting practices that left the public out of hundreds of important meetings and showed a flagrant disrespect for the law.

A grand jury is considering a probe. The public needs its help.

Clearing the air

The grand jury can provide something the council and the community has sorely lacked regarding open government and related council issues: oversight.

A general lack of oversight of City Council impedes local government from being more accountable to the people as we near the 40th anniversary on Aug. 8 of the vote that consolidated Jacksonville's city and county governments. In that regard, the grand jury should write a separate presentment addressing the need for more independence of the groups that could provide oversight of City Council, such as the Charter Revision Commission, Ethics Commission and council auditor.

As for the Sunshine Law, council members have been living in a loose culture of lip service. A *Times-Union* review of council calendars, notices and minutes revealed a flawed system and widespread disregard among council members regarding basic meeting requirements.

Hundreds of meetings involving two or more council members were noticed so poorly that the public had no chance to know about them. And at least 10 council members - including Councilman Kevin Hyde during his year as council president in 2005-06 - could produce no minutes at all as required by law when the newspaper requested them.

And various council members participated in questionable unnoticed meetings that the grand jury should explore more thoroughly, along with others that possibly happened that the newspaper had no way to discover.

Depending on the degree of intent, violations of the law can result in fines, suspensions, removal from office or jail time. While the city General Counsel's Office advises council members on the Sunshine Law, it is not an investigative or enforcement agency for violations, nor will it report them to the State Attorney's Office if it sees them, said Rick Mullaney, the city's general counsel.

He said his office does bring potential Sunshine Law problems to the attention of the council leadership or members involved. If so, his office has been strikingly ineffective in obtaining compliance.

Mullaney acknowledged his office has heard of isolated City Council Sunshine problems. "You would hear that on occasion, in which case, you would always try to bring to the attention of the leadership and individual council members: 'I am advising you what the requirements of law are as a matter of law, and I am also advising you this isn't legal ... I am also advising you that the consequences for this are serious and you don't want this in your future.' I have had those conversations."

Mullaney said he had advised council members to avoid scheduling meetings for their private offices because it could intimidate people who might want to attend. Yet, they've had meeting after meeting in their private offices for years, records show.

It's also clear that various council members bypassed the legal advice they received on noticing and keeping minutes. If council members disregard their own general counsel's advice, why should the public believe they aren't engaging in even more sinister violations or backroom deals?

Part of a pattern

As serious as these problems are, they illustrate a culture of disregard for open government.

For instance, an environmental group sued the council last year over a lack of disclosure about conversations leading to a vote on approval of a new housing development for Black Hammock Island in Northeast Jacksonville. The suit was settled and never went to court.

Retired city resident Martha Shirko is a faithful follower of council meetings. She has seen plenty of council members leaving at once to meet with lobbyists or chatting among themselves before, during and after main council and committee meetings. "I've personally talked to about five of them that the perception is they are breaking the Sunshine Law. Whether they are or not, I can't say," Shirko said. "But I've tried to impress upon them that my perception is my reality, and it just doesn't look good."

The *Times-Union's* review of calendars captured only a small snapshot. Council members can talk to one another in all sorts of ways, from phone calls, dropping into one another's offices, attending the same events, taking trips together or meeting for breakfasts, lunches or dinners.

No doubt, many conversations among council members are harmless. And most of them are likely good for the public. The community benefits when council members work in harmony for the common good - provided they stay within the law.

In response to a *Times-Union* investigation of council Sunshine practices, City Council President Michael Corrigan introduced legislation to improve meeting practices and accountability in anticipation of the newspaper's report last week. It should make a difference.

But it does not dispel concerns about how far council members may have ventured beyond the lines. And it does not revamp a broader council culture that often has proved incapable of monitoring itself.

City Council needs permanent oversight that doesn't depend on its hollow track record. The grand jury can help find the answers.

3. Beth Kormanik, "Council admits meeting 'mistakes,'" *Times-Union*, June 13, 2007.

Jacksonville City Council President Michael Corrigan introduced a sweeping measure Tuesday to ensure compliance with Florida's Sunshine Law. The ordinance is in response to *Times-Union* inquiries into widespread flouting of the law by members of the council—especially its leaders.

The investigation, which will be published Thursday, uncovered a deeply flawed system of public notification, dozens of meetings held without public notice or written minutes in which public business was discussed and several meetings in private places, a violation of the city's ethics code.

Made aware of the *Times-Union*'s findings, State Attorney Harry Shorstein said Tuesday that he will bring the matter before a grand jury. The panel, whose next meeting is Thursday, will then decide whether to investigate.

Florida's Sunshine Law requires that every meeting about public business involving two or more council members be announced and open to the public. Afterward, someone must file a written account of what happened. Punishments for breaking the law range from fines to removal from office. Public officials also can face civil lawsuits. "If there have been criminal violations, the passage of any new ordinance would not prohibit the prosecution of existing or past violations," Shorstein said.

After months of offering explanations for the questionable meetings, Corrigan acknowledged Tuesday his own "mistakes" and said his new proposal provides a remedy. Corrigan said city General Counsel Rick Mullaney advised him that the council's actions "could be suspect."

The proposed Jacksonville Sunshine Law Compliance Act calls for:

- Posting notice of all meetings between council members on the council's Web site and on bulletin boards in City Hall where other groups announce their meetings.
- Announcing all meetings at least 24 hours in advance, except in emergencies.
- Holding all meetings in public places such as conference or meeting rooms.
- Requiring the filing of written minutes, ensuring they contain relevant information and checking that system monthly.
- Auditing the council's compliance annually.

When initially interviewed by the *Times-Union*, neither Corrigan nor Mullaney mentioned the need for a new ordinance. But Corrigan said Tuesday that the need became more apparent. He said the proposed ordinance was influenced by *Times-Union* inquiries. "It got us all talking about it," he said.

Corrigan added that the council members care about public perception of how they do business. "Confidence in us will go down when the article comes out," he said. "But I think it [the compliance act] is going to help."

Mullaney said Tuesday that change is needed. "There appeared to be significant shortcomings in the system that we have with regard to compliance with the Sunshine Law," he said.

The council's Rules Committee will consider the proposal next week and a final vote could come as early as June 26, the last meeting with the current council. Ten new members join July 1, and Corrigan said that group should start with the new rules "as their guiding principles."

4. Beth Kormanik, "Council's Sunshine could cost you: Jacksonville City Council members hire attorneys; public might pay the bills," *Times-Union*, July 12, 2007.

Jacksonville taxpayers may be forced to foot the bill for City Council members who hire private attorneys to deal with allegations of violating the state's open meetings law.

A grand jury meets today to decide whether to pursue an investigation into the council's practices. State Attorney Harry Shorstein told the council at a meeting last month that he would push for the inquiry because of the council's "culture of blatant disregard" for open meetings laws.

An investigation could result in indictments, a report of its findings or nothing at all.

A *Times-Union* report last month uncovered a deeply flawed system of public notification, dozens of meetings about public business held without public notice or written minutes and several that took place in private locations, a violation of the city's ethics code. Violations could result in up to 60 days in jail or fines of up to \$500. . . .

5. Unsigned *Times-Union* editorial, "Play by the rules," July 13, 2007.

[. . .] In an earlier interview, Davis said the city benefits from good relationships among council members.

And they have plenty of chances to develop them in person, by phone and e-mail. Their offices sit side-by-side on City Hall's fourth floor. They may go to church together, attend the same parties and chat or meet legally about practically anything they want without public notice - as long as it does not involve council business.

Even unintentional violations have brought fines elsewhere in Florida, and intentional violations can also mean suspension from office or even jail time.

"I think everybody should stay above board (on the Sunshine Law), but I don't preclude opportunities to go fishing or go see a ball game or things like that," Davis said. One council member Davis is sure to see outside his council role is Vice President Ronnie Fussell, whose wife is Davis' first cousin.

But council members who meet for social breakfasts, lunches or dinners risk giving the wrong impression and "undermining some public confidence," said Rick Mullaney, the city's general counsel whose office serves as the council's attorney.

"So sometimes, you might be better advised not to do that," Mullaney said. . . .

Some council members say bad perceptions are unavoidable.

"You are going to have a perception of a Sunshine Law violation as long as there is one elevator and one hallway from here to the council chambers," Council member Michael Corrigan said. "Unless you have 19 elevators that go drop you in your seat, there's going to be a perception of a Sunshine problem."

But negative perceptions are supersized when there's a disturbing track record fueling them.

The council created its own credibility crisis on sunshine issues. The public deserves a "sunshine" culture at council that leaves little room for doubt.