

CITY OF JACKSONVILLE



JOSEPH ROGAN
CHAIR

ELLEN SCHMITT
VICE CHAIR

IMANI A. BOYKIN
GEORGE CANDLER
CARLTON DEVOOGHT
J.J. DIXON

DARCY GALNOR
LATONYA LIPSCOMB SMITH
MARY BLAND LOVE

ETHICS COMMISSION MEETING MINUTES

Monday, October 7, 2019
Don Davis Room
City Hall – First Floor

The meeting was called to order by Joseph Rogan, Chair of the Ethics Commission, at 5:05 p.m. A quorum was present.

Commission Attendees: Joseph Rogan, Carlton DeVooght, Imani A. Boykin, LaTonya Lipscomb Smith, Dr. George Candler, Mary Bland Love, Ellen Schmitt and Darcy Galnor. Excused Absence: J.J. Dixon. Other attendees: Carla Miller, Director, Office of Ethics, Compliance and Oversight (“OECO”); Kirby Oberdorfer, Deputy Director, OECO; Cherry Shaw Pollock, Assistant General Counsel, Office of General Counsel (“OGC”) and Sandy Homrighouse, Executive Assistant, OECO.

Public in Attendance:

Council Member Garrett Dennis, Executive Council Assistant Taryn Roberts and David Bauerlein-Florida Times-Union.

The meeting began with Mr. Rogan leading the attendees in the Pledge of Allegiance and Ms. Miller shared the Ethics Thought.

Minutes Approval:

June 20, 2019 Ethics Commission Meeting minutes: Mr. DeVooght made a motion to approve the minutes. Ms. Boykin seconded the motion. There being no discussion, the motion to approve the minutes passed unanimously with a vote of 8-0.

June 20, 2019 Legislative Committee Meeting minutes: Ms. Lipscomb Smith made a motion to approve the minutes. Ms. Schmitt seconded the motion. There being no discussion, the motion to approve the minutes passed unanimously with a vote of 8-0.

Staff Reports:

OECO: Ms. Miller began with an introduction of Sandy Homrighouse, the new Executive Assistant for the OECO, and the Ethics Commission members introduced themselves. Ms. Miller advised that City Council approved the budget for the OECO. Ms. Miller mentioned OECO has been working with several City Council members regarding conflict of interest inquiries. Additionally, the OECO, the Inspector General and the City Council Auditor provided a presentation on their respective offices to the Charter Revision Commission. Ms. Miller then summarized the recent training activities of the OECO, including developing a prototype for City departments and training GlobalJax participants. She also reported she recently attended the Society of Corporate Compliance and Ethics annual conference. Ms. Oberdorfer has done an excellent job writing requests for ethics opinions.

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OGC: Ms. Pollock did not have a report for OGC.

Committee Reports:

Complaints Committee: Ms. Schmitt reported the Complaints Committee met on October 7, 2019. There were six pending cases which were all dismissed. There were three new cases which were reviewed and recommendations were presented.

Legislative Committee: Ms. Galnor reported on the status of the Florida Commission on Ethics proposed rule interpreting Amendment 12 on which the Ethics Commission previously issued a resolution. Chris Anderson, Executive Director of the Florida Commission on Ethics, advised that the Florida Commission on Ethics adopted its proposed rule for Amendment 12 at the meeting on July 26, 2019. In January, the Florida Legislature will work on a statute for the penalty for violating the prohibitions in Amendment 12. Ms. Galnor distributed a copy of the Florida Commission on Ethics' adopted rule interpreting Amendment 12.

Internal Operations Committee: No report

Open Government Committee: No report

New Business:

The Ethics Commission next considered proposed changes to Jacksonville Ethics Code sections 602.411 regarding the process for granting a waiver of post-employment restrictions and 602.401 misuse of position provisions. Mr. Rogan summarized the recent grant of a waiver of the post-employment prohibition in section 602.411 by the City's current Chief Administrative Officer to the former Chief Administrative Officer. Mr. Rogan noted that the waiver language in section 602.411(c) is ambiguous and the Ethics Commission discussed ways to correct the ambiguity. Mr. Rogan suggested that the Ethics Commission recommend to City Council that the waiver provision for post-employment prohibition in section 602.411 be changed to provide approval of the waiver by City Council. Ms. Miller advised she discussed this issue with General Counsel Jason Gabriel and the need to redraft the waiver provision in section 602.411 to provide clear guidance on what contracts are acceptable.

Next, the Ethics Commission discussed whether to apply the misuse of position provisions in section 602.401 to independent contractors. Mr. Rogan suggested that the Ethics Commission recommend to City Council that section 602.401 be applied to independent contractors. He further noted that the Legislative Committee should consider whether other provisions of the Jacksonville Ethics Code should apply to independent contractors.

Mr. Rogan then granted Council Member Dennis's request to address the Ethics Commission. Council Member Dennis first spoke regarding his concerns with the cone of silence restrictions regarding the solicitation of strategic alternatives for JEA. He summarized his support for City Council to hire independent counsel for this process and distributed a copy of Ordinance 2014-664 that permits City Council to hire its own legal counsel. He also discussed his concerns relating to the retention of seven law firms as outside counsel to JEA and distributed the engagement letters for each law firm that was executed by General Counsel Jason Gabriel. Ms. Miller clarified that the Ethics Commission cannot provide advice on policy issues like this. Council Member Dennis subsequently discussed his concerns regarding a sole source contract awarded to the former Chief Administrative Officer and the process for awarding the contract. He distributed copies of the sole source contract, a check to the former Chief Administrative Officer reflecting payment under the sole source contract and an e-mail from the current Chief Administrative Officer answering Council Member Dennis's questions regarding the sole source contract.

Thereafter, Ms. Love made a motion for Mr. Rogan to work with OGC to draft and submit to City Council proposed legislation that would allow City Council by resolution, rather than the head of the concerned unit of government, to approve any grant of a waiver of post-employment restrictions in section 602.411 and include

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independent contractors in the misuse of position provisions in section 602.401. Ms. Boykin seconded the motion. Mr. Rogan restated the motion, which Ms. Love and Ms. Boykin confirmed. There being no further discussion, Mr. Rogan opened the floor to public comment. No public comment was provided. There being no further discussion, the motion passed unanimously with a vote of 8-0.

Next, the Ethics Commission discussed current requirements for lobbyists in the Jacksonville Ethics Code. Ms. Miller expressed a need to revisit the current lobbyist laws and examine whether they make sense. This issue was referred to the Legislative Committee.

Transparency in Procurement (JEA): Ms. Miller summarized the current process JEA has instituted regarding recapitalization and the authorization for the Ethics Commission to examine matters in ethics in procurement, which includes ensuring no conflicts of interest. Ms. Miller expressed the need to ensure the process is transparent and fair. Ms. Miller explained two concerns regarding the current process. The first is that some of the information related to the Invitation to Negotiate is being kept confidential by JEA, such as the names of the evaluation and negotiation team members and bidders, which is different than any previous bidding processes in the City. Ms. Miller noted that Inspector General Lisa Green wrote a letter to JEA advising that she and Ms. Miller will attend the JEA evaluation and negotiation meetings, the first of which is the bid opening on October 7, 2019. Ms. Miller further noted that JEA and OGC have cooperated with the Inspector General and Ms. Miller in regards to their attendance at the meetings. Mr. Rogan commended the Inspector General's letter dated October 4, 2019 and added it is in everyone's best interest to get the JEA process correct.

The second concern Ms. Miller expressed was about the uncertainty by Council Members about whether they are prohibited by the cone of silence from discussing the JEA potential sale and process with their constituents. Ms. Miller advised that OGC has previously issued two memoranda on the cone of silence, but it is not clear what Council Members can and cannot discuss about JEA. She will follow up with Mr. Gabriel to create a one page document for City Council on what they can and cannot talk about to encourage Council Members to speak with their constituents. Ms. Miller advised it is important to safeguard the public interest during the JEA recapitalization process.

Process and Schedule for Forthcoming Vacancies on Ethics Commission and Potential Waiver of Internal Operating Procedures Rule VII: Ms. Miller advised there are three members whose initial terms are expiring and are eligible for reappointment, including Ms. Boykin who was previously appointed by the Ethics Commission for a partial term as a result of a vacancy. Ms. Miller explained that the Ethics Commission Internal Operating Procedures Rule VII requires a nominating committee to recommend reappointment of members by the Ethics Commission and she recommended a waiver of Rule VII. Mr. DeVooght made a motion to waive Internal Operating Procedures Rule VII. Mr. Rogan clarified the motion. Ms. Love seconded the motion. There being no further discussion, Mr. Rogan opened the floor to public comment. No public comment was provided. Ms. Oberdorfer clarified the rule the motion proposed to waive. Mr. Rogan again opened the floor to public comment, but none was provided. There being no further discussion, the motion passed unanimously with a vote of 8-0.

Ms. Love then made a motion for the Ethics Commission to reappoint Ms. Boykin for a first full term beginning January 1, 2020. Ms. Schmitt seconded the motion. There being no further discussion, Mr. Rogan opened the floor to public comment. No public comment was provided. There being no further discussion, the motion passed unanimously by a vote of 8-0. Mr. Rogan asked Ms. Pollock to prepare legislation and she agreed.

Process for Selection of Chair and Vice Chair for 2020: Ms. Miller explained the process and term limits for Chair and Vice Chair. A brief discussion followed between Ms. Love and Ms. Miller. Ms. Love made a motion for Mr. Rogan to serve as Chair for a second term. Ms. Boykin seconded the motion. Mr. Rogan opened the floor to public comment. No public comment was provided. After brief discussion between Commission members and Ms. Miller,

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the motion passed unanimously with a vote of 8-0.

Thereafter, Mr. Rogan asked for volunteers to be considered for Vice Chair. Ms. Schmitt advised she would serve as Vice Chair for a second term. Ms. Love made a motion for Ms. Schmitt to serve as Vice Chair for a second term. Ms. Boykin seconded the motion. Mr. Rogan opened the floor to public comment. No public comment was provided. There being no further discussion, the motion passed unanimously by a vote of 8-0.

Update on Office of Ethics, Compliance and Oversight Budget and Review and Approval of Ethics Director Compensation: Ms. Miller reported the budget for the OECO increased by \$42,000. The previous budget was \$373,000 and is now \$415,000. The increase was due to compensation for additional part-time hours for Ms. Miller so she does not have to work for free at the end of the fiscal year. Mr. Rogan encouraged OECO to continue to request additional funds to support two high caliber Ethics Officers for Jacksonville. A brief discussion between Commission members followed. Ms. Miller then explained that the Ethics Commission is required to approve the compensation in her contract each year and that she is not requesting an increase in her hourly rate of \$93.00. Ms. Galnor made a motion for approval of Ms. Miller's hourly compensation of \$93.00. Ms. Schmitt seconded the motion. Ms. Oberdorfer offered a clarification to the motion. Mr. Rogan asked Ms. Miller to confirm Ms. Oberdorfer's clarification. Mr. Rogan asked Ms. Pollock whether a vote approving this motion is all the Commission needed to do consistent with Ms. Miller's contract, who responded affirmatively. Mr. Rogan asked Ms. Galnor and Ms. Schmitt whether Ms. Galnor's motion included Ms. Oberdorfer's clarification, both of whom responded affirmatively. There being no further discussion, Mr. Rogan opened the floor to public comment. No public comment was provided. There being no further discussion, the motion passed unanimously with a vote of 8-0.

Scheduling of Ethics Commission Meetings and Events for Remainder of 2019: The next Ethics Commission meeting is scheduled for November 6, 2019, at 5:00 p.m. subject to Ms. Pollock's calendar. Mr. Rogan will look into having the holiday dinner at The River Club either December 11, 17, or 18, 2019.

Public Comment:

Mr. Rogan requested public comment, but none was provided.

Announcements:

Mr. Rogan requested announcements, but none were provided.

Adjourn:

There being no further business to discuss, the meeting was adjourned at 6:23 p.m.

Sandy Homrighouse

November 6, 2019

Sandy Homrighouse, Executive Assistant, OECO

Date of Approval

This is a summary of the meeting and not a verbatim transcription. A recording of these proceedings is available at <http://www.coj.net/departments/ethics-office/notices,-agendas-minutes> .

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