

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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**CITY COUNCIL ORIENTATION PROGRAM DAY 1 MINUTES**

**June 5, 2019**

**8:15 a.m.**

**Location:** Lynwood Roberts Room, 1st floor, City Hall – St. James Building; 117 West Duval Street

**In attendance:** Council Members Randy White, Scott Wilson, Reginald Gaffney, Terrance Freeman, Ju’Coby Pittman, Al Ferraro, Sam Newby, Danny Becton

Council Members-elect Randy DeFoor, Ron Salem, Michael Boylan, Matt Carlucci, Brenda Priestly Jackson, Rory Diamond

**Excused**: Council Members Aaron Bowman, Bill Gulliford, Joyce Morgan, Garrett Dennis, Tommy Hazouri

**Also**: Tax Collector Jim Overton; Property Appraiser Jerry Holland; Inspector General Lisa Green; Cheryl Brown – Council Secretary/Director; Jeff Clements – Council Research Division; Kristi Sikes – Council Administrative Services Division; Carla Miller and Kirby Oberdorfer – Ethics Office; Jason Gabriel, Peggy Sidman and Paige Johnston – Office of General Counsel; Mike Clark – *Florida Times-Union*

**Meeting Convened**: 8:23 a.m.

Council Secretary/Director Cheryl Brown convened the meeting and welcomed the attendees. Council President-elect Scott Wilson welcomed the group and asked all the elected officials present to introduce themselves.

Cheryl Brown introduced the City Council staff and described the divisions of the council staff. Jeff Clements, Chief of the Research Division, described his division’s functions and introduced the Research Assistants. Kristi Sikes, Chief of Administration, described her division’s functions and introduced the division staff. Ms. Brown introduced the other staff members involved in information technology, database management and the Council’s web page and IT functions. She cautioned the attendees to always be aware that the council’s meeting rooms are all equipped with audio and video recording and broadcast equipment, so urged caution about speaking in those rooms even when meetings are not in session. Ms. Brown introduced Heather Pelegrin, administrator of the Value Adjustment Board and Katrina Fisher, her administrative assistant, and gave an overview of the orientation training for the next 3 days.

Council Member Wilson urged the attendees to be very aware of the requirements and restrictions of the Government in the Sunshine Law and gift reporting requirements in order to avoid embarrassment and unnecessary bad publicity for themselves and for the council as a whole.

General Counsel Jason Gabriel introduced Mac Heavener, III, Chief Assistant State Attorney, who gave the State Attorney’s perspective on Sunshine Law application and violations. He urged the members covered by the Sunshine Law to always err on the side of greater application of the law and holding meetings in open, noticed sessions rather than in private. He stated that all forms of communication can constitute a “meeting” if done without proper notice. The local grand jury can commence an investigation of potential Sunshine Law issues, and complaints are also made to the Sheriff’s Office, state officials, and the State Attorney’s telephone hotline which goes to a team of public corruption experts. The City’s Inspector General Office also gets complaints. Grand jury investigations may or may not end in an indictment, but may result in reports, media coverage, or potentially state law changes.

City Ethics Officer Carla Miller gave a PowerPoint presentation on Government Ethics. The presentation reviewed Jacksonville’s history of ethical challenges, investigations and indictments through the years. As a result, Jacksonville has adopted a series of ethics standards and training requirements that are equal to or surpass any in the nation. She described her “three dogs” theory of ethics training programs – lap dog (cute but ineffective), attack dog (based on fear and intimidation), and watch dog (alert and protective). She cautioned against being overconfident in one’s ethical standards and unwilling to recognize challenges and shortcomings. Don’t take a casual outlook about ethics and overlook the complexities of situations and of the ethics laws. She explained the difference between law (what you can do) and ethics (what you should do). “Corruption” is not always a matter of law, but of public opinion about how an action looks. She described recent psychological and sociological research into human motivation that sheds light on why otherwise good people make mistakes and do bad things. Ms. Miller noted that public confidence in elected officials and government performance is at a very low level in recent years, and that bodes ill for the future of democratic government. She thinks that the restoration of trust in government begins at the local level with confidence in city government.

Mr. Gabriel and Deputy Ethics Officer Kirby Oberdorfer made a presentation on the Top 10 Danger Areas in the area of ethics. Those 10 danger areas are: 1) gifts, 2) asking for things, 3) going places, 4) not filing disclosures, 5) conflicts of interest, 6) voting conflicts, 7) misuse of position, 8) sunshine meetings, 9) public records, and 10) not asking questions. She reiterated the difference between what is legal and what is ethical and urged everyone to ask questions first before doing anything that might be ethically questionable. Ms. Miller and Mr. Gabriel reviewed a variety of scenarios in these danger areas and described the application of the ethics laws to those scenarios. Ms. Oberdorfer explained conflicts of interest and described various scenarios, how the law applies, and when persons with conflicts must abstain from voting. She reiterated the earlier comments about every case being very fact-specific and requiring detailed analysis by the Ethics Office and General Counsel’s Office. Ms. Miller once again reiterated the council members should always ask questions whenever there is any situation that is at all unclear so that the Ethics Office and General Counsel can investigate and provide the best possible interpretation of the law and its application.

Paige Johnston of the OGC’s Legislative Division made a presentation on Florida’s Government in the Sunshine Law. The three fundamental factors to remember are the definition of “meeting” and the requirements to post reasonable “notice” and take appropriate “minutes”. The definition of meeting includes any sort of communication between two or more members of a collegial body about any matter that is now or may potentially come before the body, including face-to-face, by telephone, in writing, or via social media. Meetings must be open and accessible to the public in appropriate locations. One-way communication is permissible as long as no response is invited or made. Ms. Johnston described the prohibition against using third parties as liaisons to convey information between regulated persons outside of a noticed meeting. She also noted that the public may have negative perceptions if they see members of a body speaking together either outside of a noticed meeting or privately (outside of the meeting room or whispering together at the dais) during a meeting. There are differing penalties for intentional versus unintentional violations. Ms. Johnston gave the criteria for “open” and “accessible” meeting places and for “reasonable” notice. Jacksonville has adopted an ordinance providing very specific requirements that supplement the state’s Government in the Sunshine Law requirements.

Managing Deputy General Counsel Peggy Sidman reviewed the state’s public records law and the Florida Constitution article on which it is based. The law is very broad and covers almost every possible form of record relating to public business unless specifically exempted. She noted that the law applies to public records stored or transmitted on private computers or cellphones. Documents produced electronically (text messages, Facebook posts, tweets, etc.) must be preserved for public access. The law does not apply to personal notes not intended to perpetuate knowledge (kept for the purpose of maintaining a file on an issue).

The program was in recess from 12:35 to 1:31 p.m.

General Counsel Jason Gabriel moderated the afternoon session, introducing the variety of practice areas of the General Counsel’s Office. The staff of 69 includes 43 attorneys who represent 32 elected officials, the city’s independent authorities and the school district. The City Charter gives the General Counsel the ultimate authority to issue opinions that are binding on all entities of City government.

Mr. Gabriel gave an overview of the history of consolidated government, the development of the consolidation charter, and discussed the separation of powers between the branches of government. He described the four means by which the City Charter can be amended – Council ordinance, ordinance ratified by voter referendum, special act of the Florida Legislature, and citizen petition-initiated referendum.

Attorney John Sawyer discussed his division’s support for the City’s two economic development agencies – the Office of Economic Development and the Downtown Investment Authority. The OED operates citywide except in the downtown area where the DIA has authority. He described the “fast-track” one-cycle approval mechanism for economic development legislation. The City’s primary economic incentives are the Recapture Enhanced Value (REV) grant based on the amount of new ad valorem taxes produced by a project and the state’s Qualified Targeted Industry (QTI) program that incentivizes new full-time employment at salaries exceeding the state or county average wage. The City pays 20% of the QTI incentive to match the state’s 80% grant.

Deputy General Counsel Lawsikia Hodges discussed procurement issues and processes. She noted that City Council does not approve the vast majority of city contracts, which are processed through standard Procurement Division authority and procedures. The key principles of government procurement are open competition, transparency and integrity of the selection process, fairness, and achieving the best pricing/ services for the taxpayer’s dollars. Council Member-elect Boylan asked if there was any way the City could speed up processing of Public Service Grant and Cultural Service Grant contracts since for many years they have not been issued until 4 or 5 months into the fiscal year. Ms. Hodges said that improvements have been made in the last year or two that have sped up the process and further improvements are being considered.

Deputy General Counsel Jon Phillips discussed sovereign immunity policy and general litigation issues. His division represents all of City government, the independent authorities and the School District in all sorts of litigation issues ranging from torts and personal injury to labor law to environmental cases to public records and employment discrimination and many others. The City has limited immunity from lawsuits (not involving federal rights claims) and damages are capped in most cases at $200,000 per individual and $300,000 per occurrence cumulatively. In rare cases the City could be ordered by the Florida Legislature (via claims bill) to pay additional damages above the $200,000/$300,000 limit. Liability is not capped in federal law cases. The OGC is authorized to settle cases without City Council approval up to $50,000; larger settlements require legislation. In response to a question from Council Member White, Mr. Phillips said that the largest liability pay-outs are in the area of worker’s compensation. He said that aside from the Sunshine Law and Public Records Law cases, City Council members have little to no involvement in lawsuits. The OGC defends City employees for actions they commit in the course of their duties unless the employee is at fault.

Lenae Voellmecke, the Duval Legislative Delegation Coordinator), described the City’s service to the state representatives and senators representing the City in the Florida Legislature. Jacksonville’s delegation has 2 senators and 6 representatives. The delegation office supports the 8 delegation members, tracks state legislation of interest to the City, coordinates scheduling of local delegation meetings, coordinates communication between the City and the delegation on state legislation and processes the filing of local bills. Local bills (called J-bills in Jacksonville) typically request changes to the City Charter and can be requested by anyone but need a Duval Delegation sponsor to carry the bill to Tallahassee. Local bills aren’t done in Tallahassee if the issue can be accomplished locally without a referendum. J-bills are not processed at the state level without a City Council resolution supporting or opposing the bill, supporting it with conditions (i.e. a recommended amendment), or expressing no opinion on the bill. The City Council President appears at the delegation’s bill hearing to express the City’s opinion on the J-bills. Two state representatives and Congressman Al Lawson have office space in City Hall. Ms. Voellmecke said that she is happy to track bills in specific topic areas for individual council members.

Deputy General Counsel Sean Granat described the work of the labor and employment section. The City has over 8,700 employees and therefore a large number of labor and employment issues. Florida is an at-will employment state except for federally and state-protected classes of persons. Appointed officials and employees serve at-will; other employees have protections under the City’s civil service system and union collective bargaining agreements. All employees of the City Council are excluded from civil service and serve at-will. The City has employees in 6 collective bargaining units. Under state law the City must negotiate wages, hours, and terms and conditions of employment with these employees and agree on contracts (no longer than 3 years) that must be approved by City Council. All 6 union contracts are going into their last year, so will be re-negotiated in the coming year. City Council has two roles in collective bargaining – to approve contracts that are mutually agreed between the unions and the City administration and to settle impasses when the two parties cannot reach mutual agreement after a mediation process. The City Council also acts as the legislative body to approve the contracts between the JEA and its 5 unions. Mr. Granat and Peggy Sidman responded to questions about the appointment and discharge authority for the City Council staff.

Attorney Shannon Eller, Chief of Regulatory and Constitutional Law, discussed quasi-judicial proceedings and the responsibilities of council members to act in a judicial capacity based on competent evidence, which is very different from decisions made as policy makers in a legislative context. She noted that bill titles include a “Q” notation by the bill number to indicate that the matter is quasi-judicial. Quasi-judicial decisions entail four fundamental requirements: proper notice and public hearing; don’t take a position in advance of public hearings; disclosure of *ex parte* communications; and decisions must be based on substantial competent evidence. Council members are permitted to attend Planning Commission meetings and listen to the proceedings, but should not make any statement taking a position on the item that might later disqualify them from voting on the matter at the City Council meeting. Council Member-elect Boylan suggested that zoning and land use sign postings be placed perpendicular rather than parallel to the roadway to be more readable and suggested posting notices on the Nextdoor web site to be more readily accessible.

Paige Johnston gave examples of the various types of land use and quasi-judicial actions that the Council deals with, including: rezonings (conventional and PUD), waivers, exceptions, and variances. She drew a distinction between the discussion earlier in the day during the Sunshine Law discussion regarding sending out position statements and the prohibition being discussed now about taking positions on quasi-judicial items before all evidence has been presented.

Ms. Eller gave more examples of what constitutes *ex parte* communication and why it might sometimes be helpful. She reviewed the *ex parte* disclosure requirements, which include that it must be made verbally at a noticed meeting and must include who the member met with, when, and what was discussed. She reviewed the requirements for what constitutes “substantial competent evidence” and described when citizen testimony qualifies as substantial competent evidence. The fact that large numbers of people oppose a project is not competent evidence unless they have some specific expertise to offer, which can include knowledge of the character of a neighborhood, the effect of a proposed project on their quality of life, or specific changes that have occurred in a neighborhood over time.

Jason Teal, Deputy of the Regulatory and Constitutional Law Division, described his division’s portfolio of activities, which is very diverse. He invited council members to contact him and his division with any particular areas of interest or problems to ask for assistance. He described the civil enforcement process, including civil citations (like a traffic ticket for one-time occurrences), Municipal Code Enforcement Board special magistrate hearings (daily rolling fines can accrue for continuing violations), civil lawsuit filed in court (usually reserved for chronic violators or immediately dangerous situations), and City remediation of public nuisance violations with a lien of costs on the property. Mr. Teal described the limitations on Code Enforcement imposed by the Fourth and Fifth amendments to the U.S. Constitution regarding protection from illegal search and seizure and due process. Warrants for searches cannot be issues for homesteaded properties in Florida so some complaints cannot be investigated by Code Enforcement. He described the lien enforcement process, which must follow correct procedures to be found valid in court and allow the City to remediate the problem situation. Mr. Teal discussed the code enforcement functions of various City departments. On the regulatory side of the division, the goal of the General Counsel’s Office is to help council members achieve their desired goals in legally defensible, sustainable, enforceable ways.

Cheryl Brown outlined the order of events for tomorrow’s events, which include the legislative process and a mock council meeting in the Council Chambers, followed by lunch, a discussion of the City budget, and introductions to the City’s department heads.

**Meeting adjourned:** 4:57 p.m.

Minutes: Jeff Clements, Council Research Division

6.5.19 Posted 6:00 p.m.

Tape: City Council Orientation Program 6.5.19 – Legislative Services Division