# MEETING MINUTES

**Noticed Meeting JEA and City Council Roles**

**Council Member Priestly Jackson, Council DeFoor and Council President Wilson**

Monday, September 30, 2019, 1:00 p.m. – 2:00 p.m.

City Hall, 117 W. Duval Street, Suite 425 City Council Conference Room A

**Attendance:** Council Member Priestly Jackson, Council President Scott Wilson, Council Members Randy DeFoor, Michael Boylan, Danny Becton, LeAnna Cumber, Randy White, Ron Salem, Garrett Dennis, Council Auditor Kyle Billy, Brian Parks-Council Auditor’s Office, General Counsel Jason Gabriel, Deputy General Counsel Peggy Sidman-Legislative Affairs, Deputy General Counsel Lawsikia Hodges-Government Operations, Kirby Oberdorfer-Ethics Office, Lynne Rhode-JEA Vice President & Chief Legal Officer, Jackie Lee-ECA to the Council President, Kendra Mervin-ECA District 10. All other attendees are listed on the attendance sign-in sheet.

Council Member Brenda Priestly Jackson convened the meeting at 1:05 p.m.

CM Priestly Jackson stated that she called the meeting to get a formalized response clarifying the roles of Council Members relative to the JEA Invitation to Negotiate (ITN) and advised attendees to reference her email dated September 24, 2019 to General Counsel Jason Gabriel. She then asked General Counsel Gabriel whether the Council could request the JEA Board to amend the ITN to include the unfunded pension liability. General Counsel Gabriel affirmed that the Council can ask the JEA Board to amend the ITN to include the pension liability because doing so would not affect the ITN process. Additionally, all Council Members have the right to communicate, but must be careful to ensure a fair bid process. CM Priestly Jackson asked General Counsel Gabriel to explain the interplay between the elected Council Members and the appointed JEA Board along with the authority, if any, that the General Counsel has that permits Council Members to ask for specific language to be included. General Counsel Gabriel referenced Article 21.04(p) in the Charter and explained that it lists all of the actions that the JEA Board can take. He added that Council is the governing control and has ultimate legislative discretion.

General Counsel Gabriel stated that JEA has opted to choose a procurement process to evaluate and accept bids. The deadline is October 7 to submit bids and page 19 in the ITN lays out the main points of the deal. He further stated that the memo he prepared for Council Members was advice on the process and is not binding. Council will play an active role during the “second half” or “back end” of the procurement process (approving, amending, not approving); therefore, as the legislative body for the City and JEA, Council cannot be involved in negotiations (on the front end). CM Priestly Jackson inquired whether Council has the authority to require the JEA Board to amend the ITN to include specific language recommended by the Council Auditor’s Office that the unfunded pension liability be the responsibility of JEA. General Counsel Gabriel responded that Council has the authority to do nearly anything regarding JEA with a two-thirds vote. Referendums are involved concerning some elements, but Council has the right to change the rules and JEA’s provision on procurement for future actions outside the current ongoing ITN.

CM DeFoor asked General Counsel Gabriel whether City Council would have to submit approval if an RFP had been issued rather than an ITN, to which he replied in the negative. She further inquired whether JEA should have come before Council before creating the ITN. General Counsel Gabriel maintained that the charter does not require it to do so, however, in the future, Council has the authority to change the charter. CM Priestly Jackson asserted that the procurement process is not her concern. Rather, it is ensuring Council has a voice because the sale of JEA will impact the City as a whole. General Counsel Gabriel established that Council Members cannot move forward with any changes to the ITN at this time because the procurement process is mid-stream. Once it closes, Council can move forward with effectuating its desired changes.

CM Dennis asked whether Council had the ability to pull the ITN at any time, like an RFP. Deputy Counsel Lawsikia Hodges answered that there is a provision in JEA’s ITN that allows the ITN process to be rejected or stopped by the JEA Board. However the heart of CM Priestly Jackson’s interest is whether Council can change the process. CM Priestly Jackson announced that she would like to make an amendment to the ITN, to which Deputy Counsel Lawsikia stated that JEA is a separate entity that controls its procurement. Thereby, Council has the authority to change the charter to allow Council to be more involved, but at this time, the entire procurement process is under the control of the independent authority. CM Dennis deduced from the Office of General Counsel’s responses that Council should not attempt to do anything until October 7, 2019 when Council receives a complete package.

CM Salem contended that since the greatest concern is the pension provision, could Council move forward with separate legislation to utilize proceeds from any sale to cover the pension liability. CM Priestly Jackson added that she wanted clarification as to her role as a Council Member in relation to interaction with the JEA Board so that she knows how much she should or should not be involved. General Counsel Gabriel responded that each body (authority) is different and JEA is not an advisory board to City Council; it is a board of its own entity capable of making independent decisions with finality regarding a host of items. Council is the ultimate governing body with the authority to “re-scriven” the charter that governs independent authorities, including their procurement processes in the future. He asserted that Council does not have the authority to amend or stop the procurement process in its tracks, but Council can communicate with JEA to request its board to make changes. At the request of CM Priestly Jackson, General Counsel Gabriel explained the “deal points” to which entities are bidding and stated that Council Members have to be careful not to communicate directly with anyone involved in the bidding in a way that could influence the ITN.

CM DeFoor asked General Counsel Gabriel what steps Council should take moving forward, to which he advised Council Members to keep a running list of items of concern and direct them to his office. He also advised Members to direct questions and concerns to JEA so that they can provide answers as well. CM Salem asked whether Council will be told who will evaluate the proposals at some point. Lynne Rhode-JEA assured him that it would be public record. General Counsel Gabriel affirmed that Council also has the right to hire its own outside counsel to advise its members.

CM Becton clarified that October 7, 2019 is a qualifying activity. Anyone interested in bidding has to submit documentation to determine if minimum qualifications are met to engage in the process. CM Dennis asked how many outside attorneys have been hired by JEA. General Counsel Gabriel confirmed that the two lead firms are Pillsbury, Winthrop, Shaw, Pittman and Foley & Lardner LLP and he can pull the engagements to provide the names of the others.

CM Becton excused himself so that he could attend the TEU Committee meeting. He asked all attending Council Members to coordinate with his office for all future meetings regarding JEA. He is the JEA Council Liaison and wants to participate in and attend any related meetings. CP Wilson acknowledged that his interpretation of the comments during the discussion is that City Council wants to have an independent lawyer to help it through this process. General Counsel Gabriel said that he will help identify attorneys and meet with CP Wilson to determine the best selection method. CM Priestly Jackson emphasized that she still wanted something in writing that

details the roles of City Council Members and she would also like to receive the engagement letters from outside counsel. The meeting ended with CM DeFoor thanking CP Wilson for this leadership.

*Written minutes for this meeting represent an overview of the discussion.*

**Meeting Adjourned:** 2:01 p.m.

*Minutes prepared by Kendra Mervin, Executive Council Assistant – District 10, 904-255-5146,* *mervink@coj.net**. The following items were submitted for public record and can be accessed by contacting the Legislative Services Division: minutes, attendance sheets, handouts, audio recording).*

BPJ/km

cc: Council Members/Staff

 Cheryl L. Brown, Director/Council Secretary

Jessica Matthews, Chief of Legislative Services

Jeff Clements, Chief of Research

 Kristi Sikes, Chief of Administrative Services

 CITYC@COJ.NET

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