# MEETING MINUTES

**Noticed Meeting JEA ITN Emergency Resolution 2019**

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

Friday, December 6, 2019, 10:00 a.m. – 11:00 a.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 Tommy Hazouri, Randy DeFoor, Matt Carlucci, Garrett Dennis, Joyce Morgan (call-in), Council Auditor Kyle Billy, General Counsel Jason Gabriel, Deputy General Counsel Lawsikia Hodges, Deputy General Counsel Peggy Sidman, Chief Administrative Officer Brian Hughes, Director of Intergovernmental Affairs Jordan Elsbury, President & Chief Operating Officer Melissa Dykes-JEA, 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 10:05 a.m.

**Background of Resolution 2019-894**

CM Priestly Jackson shared the background of resolution 2019-894 that she has been working on for the past month. She was disturbed that the JEA ITN was advertised without Council members being made aware. During the JEA workshops, led by Council Member Boylan, she took particular interest that the ITN is authorized as a procurement process under the Charter Section 21.04(p). Upon review of Section 21.04(p), she realized that JEA was clearly obligated to provide written notice to the Council Auditor no less than 30 days prior to entering into the commencement of any activity. She referenced a memo dated November 26, 2019 from Council Auditor Kyle Billy specifying that he had not received notice 30 days prior to the commencement of the JEA Board moving forward with the ITN. CM Priestly Jackson had serious concerns about the JEA Board’s failure to notice the Council Auditor and lack of reasonable notice to the public of the action to vote on the ITN during its July 23, 2019 meeting.

**Notice to Council Auditor’s Office**

CM Priestly Jackson asked Council Auditor Billy to verify whether he received notice from the JEA Board 30 days prior to July 23, 2019, as prescribed in the Charter. She also asked him to elaborate on his knowledge of the JEA Board’s agenda that day. He confirmed that he did not receive a 30 day notice and that the July 23 agenda was incomplete when his office attempted to access it online in advance of the meeting. His office contacted JEA via email to request a complete agenda package and it was received the morning of the meeting. CM Priestly Jackson asked whether the JEA Agenda Operations and Discussion-Strategic Planning items 2a, 2b and 3 were on the agenda the morning of July 23 when his office accessed the agenda package online. Council Auditor Billy responded that they were not and those items were added after the actions of the meeting. CM Priestly Jackson asked what he would have done had he received the appropriate 30 day notice, to which Council Auditor Billy confirmed that he would have drafted a memorandum to all Council Members notifying them of the pending action that was before the JEA Board. He would have given Council as much time as possible to respond with any questions or contact JEA directly. It is his standard to put all notifications in writing via email and place a hard copy in Council Members’ mailboxes.

CM Priestly Jackson asked Council Auditor Billy to explain his opinion of the repercussions of not receiving proper notice. He restated that he would have immediately notified the Council Members and he would have devoted more of his resources to researching the matter from the start. CM Hazouri asked what additional expectations would he have anticipated to have come forth within the 30 days and would the notice have triggered the procurement process. Council Auditor Billy responded that there are not any other specific requirements to be fulfilled other than to notify the Council Members as quickly as possible and it would be expected that JEA would refrain from initiating the ITN until the 30 days expired. CM Priestly Jackson inquired whether it would be an accurate inference that a memo from the Council Auditor regarding JEA’s plans for recapitalization through an ITN would have fostered engagement between Council Members and his office. Council Auditor Billy responded affirmatively.

CM Priestly Jackson stressed that Sunshine is in tandem with reasonable notice of actions that will be taken up and items to be discussed during a public meeting. The JEA Board’s July 23 meeting agenda items were altered after the meeting took place and the Council Auditor’s Office was not properly noticed. She also emphasized that JEA’s board meeting coincided with the first City Council meeting of the 2019-2020 schedule (9 new Council Members and 10 returning), which meant that Council could not have been involved. CM Priestly Jackson maintained that the trigger for Council involvement would have been a notice to Council from the Council Auditor’s Office. Those actions taken on July 23 are not aligned with or supported by the Charter.

**Guidance of Office of General Counsel**

CM Priestly Jackson referenced a memo dated February 13, 2018 from the OGC to the Mayor, City Council Members and the JEA Board of Directors regarding the evaluation process for potential JEA privatization. She asked Deputy Counsel Sidman to expound upon the purpose and guidance of the memo. Deputy Counsel Sidman explained that in 2018, JEA was exploring options and the OGC advised that a report was given to the board by the consulting firm, PFM Asset Management LLC/Public Financial Management, Inc. The memo outlined the option to have the City Council and JEA Board evaluate the PFM final report and decide whether to further support any additional exploratory consideration of the action (or not). The collaboration could be accomplished through a Council resolution to proceed with further exploration. CM Priestly Jackson asked Deputy Counsel Sidman to verify whether the memo specifically stated that there should be collaboration, to which she answered “yes” and read the portion of the February 13, 2018 memo advising there should be a cohesive, collaborative and cooperative approach by the entire consolidated government while the market is tested for such a comprehensive transaction. CM Priestly Jackson then asked her if the OGC ever changed or rescinded any guidance that was given via the memo. She was not certain because the memo was in response to a specific question, but acknowledged that it would be deemed that City Council should have engagement in advance of the ITN being issued. CM Priestly Jackson asked attending Council Members whether they were engaged to collaborate prior to July 23. None replied that they had been engaged.

**City Council Involvement and Awareness**

CM Priestly Jackson restated that the JEA Board decided to vote on the recapitalization of JEA on the same day (July 23, 2019) of the first Council meeting of the 2019-2020 calendar year. Council Members were addressing the DCPS ½ sales tax, the millage rate and were assigned to new committee assignments. Moreover, Council was not made aware of the actions that the JEA Board planned to take. She asserted that the entire process was tainted from its inception and resolution 2019-894 was filed to encourage the JEA Board to withdraw or rescind the ITN. Standard language in the ITN states that the JEA Board can do so at any time.

CM DeFoor added that everyone should be mindful that a citizen could possibly bring a class action suit in opposition to the sale of JEA. The process is corrupt, which will lead to a corrupt result. She contended that the process should be ended immediately.

CM Carlucci said that he learned about the ITN from the newspaper and believes the integrity of the process has been lost and should be rescinded. He asked that his name be added to the bill as a co-sponsor and thanked CM Priestly Jackson for the incredible amount of work that she did researching.

CP Wilson shared that he learned about the JEA Board’s intent to vote on the ITN the Friday before its July 23 meeting. He had communications with Mr. Zahn and he believes several mistakes were made (i.e. the public was not well informed and the City Council was not engaged). He is, however, interested to know the value of JEA because the topic seems to resurface with each new administration. He agreed with all of CM Priestly Jackson’s concerns, however, he stated that he will need to deliberate to determine if the resolution should be an emergency. CM Priestly Jackson explained that it should be an emergency because the next JEA Board meeting is scheduled to occur on January 17 and if the resolution passes City Council on January 14, the JEA Board will understand City Council’s recommended directive to rescind the ITN during its meeting.

General Counsel Gabriel advised that the resolution encourages the JEA Board to rescind the ITN. He clarified that JEA does not have authority to sell itself; only the City Council has the power to vote for its sale.

CM Dennis asked whether or not all actions taken by the JEA Board could be negated since it did not follow the Charter. General Counsel Gabriel answered that there are various penalties and consequences for Charter violations, but it is not applicable in this case because the language in Section 21.04(p) is not interpreted to substantiate that the JEA Board violated the Charter. Deputy General Counsel Hodges expounded on the language of Charter Section 21.04(p).

CM Hazouri commented that the Charter gives clear guidelines and asked how JEA could begin the process without providing notice to the Council Auditor, even though it was a procurement activity. General Counsel Gabriel explained that the notice to the Council Auditor, as a legal matter, does not apply. The appropriate channel to convey Council’s sentiment is through the resolution. CM Priestly Jackson declared that she will recommend Charter changes immediately if Resolution 2019-894 passes in City Council and the JEA Board fails to rescind the ITN.

CM DeFoor stated that the workshops should continue and reiterated that the ITN should be withdrawn because the entire process has been corrupt.

CM Dennis requested to be added to the resolution as a co-sponsor and agreed with CM DeFoor that Council Members should not be involved in a corrupt process. He suggested JEA withdrawing the ITN and Council passing legislation to hire an appraisal of all City assets, including JEA.

CM Priestly Jackson closed the meeting by noting that the actions of the JEA Board were inconsistent with the Charter for the aforementioned reasons and thanked everyone for attending the meeting.

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

**Meeting Adjourned:** 11:04 a.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

 Office of General Counsel

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