

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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**CITY COUNCIL FUTURE OF JEA WORKSHOP MEETING MINUTES - amended**

**~~Lynwood Roberts Room, 1~~~~st~~ ~~floor, City Hall~~**

**Virtual meeting via Zoom platform – no physical location**

**May 11, 2020**

**11:30 a.m.**

**Location:** ~~City Council Chamber, 1~~~~st~~ ~~floor, City Hall – St. James Building; 117 West Duval Street~~

Virtual meeting via Zoom platform

**In attendance:** Council Members Michael Boylan (Chair), Al Ferraro, Danny Becton, Tommy Hazouri, Ron Salem, Aaron Bowman, Randy DeFoor, Garrett Dennis, Terrance Freeman

**Also**: Peggy Sidman, Paige Johnston, Lawsikia Hodges and Jody Brooks – Office of General Counsel; Kyle Billy, Kim Taylor and Phillip Peterson – Council Auditor’s Office; Jeff Clements and Yvonne Mitchell – Council Research Division; Steve Cassada, Melanie Wilkes and Eric Grantham - Council Support Services; Paul McElroy, Nancy Veasey and Jordan Pope - JEA

**Meeting Convened**: 11:05 a.m.

Council Member Boylan called the meeting to order and made brief opening remarks welcoming today’s meeting participants. He said that the City Council’s Special JEA Investigatory Committee is looking back at what happened with the JEA, while these workshops are intended to look forward to the future in order to develop an omnibus JEA Article 21 Charter amendment and possibly other relevant stand-alone bills. He wants to have all legislation reviewed in committee before the end of President Wilson’s term at the end of June and give the results to JEA to have while they are searching for a new CEO. The JEA board needs to know exactly what powers JEA has and how they are to be exercised, particularly with regard to new lines of business, privatization, relation to the City government, etc. The workshops will hear from a wide variety of current and former JEA employees and board members and from representatives of the Office of General Counsel.

Council Member DeFoor said that the Special Investigatory Committee learned that one of the Invitation To Negotiate proposal responses was for more of a management contract than a privatization or sale, and she believes that a change of control provision should be included in the Charter as well. She volunteered to work on that element of the omnibus bill. Council Member Salem said that two items have stood out to him during the JEA investigation: 1) employee contract issues; and 2) the utility’s short-term incentive plan has gotten much less attention than the long-term incentive plan. He is introducing an ordinance to require the short-term incentive plan to be regulated by the City which would require approval by the voters via referendum; the plans are currently under the sole control of JEA’s CEO and the City Council and Council Auditor don’t see anything about that plan in their budget reviews. Council Member Ferraro said that he is working on amendments to the Procurement Code. Council Member Hazouri asked Paul McElroy if the recommendations he intends to make today have been discussed with the JEA Board; he said they have not yet. Mr. Hazouri asked how the proposed JEA omnibus bill will interface with the other stand-alone bills proposed by individual council members or by the Special JEA Investigatory Committee, particularly if they are not ready for introduction before the end of President Wilson’s term as President. Mr. Salem said the omnibus bill should be considered a refinement bill to clarify the JEA’s powers and duties and make a few substantive changes. It could incorporate proposals by individual council members if they want to use that mechanism, or they could file them individually. He said that at the end of the process he would ask for general consensus of the council members participating to approve the introduction off the omnibus bill.

Chairman Boylan introduced JEA Interim CEO Paul McElroy who said that JEA exists for the benefit of the public and he intends to restore the public’s confidence in JEA’s employees and operations. He currently sees 4 main areas of emphasis: 1) leverage JEA’s fiber optic assets; 2) holistic participation in the solar energy industry, production and distribution; 3) incentive compensation programs; and 4) the 10% limitation on sale of assets needs some refinement for smaller lines of business and assets – 10% of a small number is a very strict limitation on small business line.

Council Member Becton asked about the potential interest of JEA in the liquefied natural gas industry; Mr. McElroy said it is an area of interest but it would depend on what else is happening in the local marketplace. Mr. Becton agreed with the need to refine the “10% of assets” definition for privatization purposes and believes that still needs some work. Council Member DeFoor thanked Mr. McElroy for his willingness to come back to JEA on an interim basis and provide stability and leadership. She asked him for clarification of his earlier comments about the implications of the 10% of assets limitation on larger versus smaller business lines. Council Member Dennis commended Mr. McElroy on his strong history of paying down debt in his previous tenure at JEA and asked if a system should be developed for the City and JEA to be equal partners in sharing the financial benefits of new business lines because JEA is a City asset. Mr. McElroy said that a two-step process will be necessary: 1) exploring a new business plan and its growth potential, and then 2) determining the financial relationship between the City and JEA with regard to revenue sharing on those new initiatives.

Chairman Boylan said that he will welcome public comment via emails to his City Council address throughout the workshop process and during Zoom meetings as time may allow.

Table of Changes discussion

Deputy General Counsel Lawsikia Hodges led a discussion of the proposed changes she has compiled to Charter Article 21, the JEA’s charter. A fundamental change throughout is the insertion of language intended to make it clear that JEA is operating its business lines for the benefit of the City. Many of the changes to the JEA board appointment method are going to be accomplished via Council Member Dennis’ filed bill, not the omnibus bill. Ms. Hodges asked for Council input with regard to Council Member Bowman’s previous suggestion to provide some compensation for JEA board members. Mr. Bowman said his proposal was intended to attract at least some board membership from persons with a national reputation in utility operation, but he now understands that it might become expensive to get that expertise and that the monthly meetings of the board would be problematic for a non-local board member. He is withdrawing that suggestion but does believe that the JEA board should be composed of people with relevant expertise in finance, management, and other relevant fields who have run large organizations, developed budgets and managed large numbers of employees. Paul McElroy said that one possibility might be to expand the City residency requirement to include the neighboring counties served by JEA, which would expand the potential talent pool for board appointments.

Ms. Hodges said a section adds specific requirements and encouragements to JEA to improve the transparency of its meetings by providing agenda materials in advance to the public and the Council Auditor’s Office. Council Member Salem requested the addition of language about when the JEA board is appointed. Ms. Hodges said that JEA’s board policy manual has that detail, not the Charter. Mr. Salem felt that was satisfactory. A section has been added regarding restrictions on post-service employment or contracting by JEA board members and management, but further conversation is needed with the Council. Mr. McElroy asked that the conflict language specifically exempt regular utility customer status from that prohibition. A change encourages the JEA board to adopt a formal real estate disposition policy that would involve board knowledge at some level. Another change attempts to address concerns expressed by council members about JEA’s exercise of powers incident to its listed powers and requiring notice to the Council and the Auditor’s Office. There is a reporting requirement for JEA to convey information about its various lines of business and any new lines it wishes to enter; if the Council wants to have something more stringent than just a reporting requirement that can be added.

Ms. Hodges said that one change reduces the percentage of JEA’s annual gross revenues that could be applied to public education about the efficient use of JEA services from 1.5% to 0.5%. Mr. McElroy said that the development of new business lines might require more educational expenditures and didn’t want expenditures on new business lines to impact negatively on the amount that can be spent on traditional conservation messages if the gross revenue figure is reduced to only 0.5%. Council Member Salem suggested the need to more clearly define what those promotional expenditures can be used for and Council Member DeFoor recommended a specific prohibition against expenditures to promote the sale or privatization of JEA.

Ms. Hodges said that the JEA’s powers and duties section should be amended to match up with the 10% sale of assets limitation to be very clear about what the JEA can and cannot do at different percentages. An important decision will regard whether Article 21 is to be interpreted liberally (current case) or strictly in the future.

Council Auditor Kyle Billy said that his staff has been working with Ms. Hodges throughout the development of the revised article and he has no comments on the proposed changes at this time.

Council Member Salem advocated for making the CEO the only employee of the authority with an employment contract. He also discussed JEA’s long-standing short-term incentive plan and believes that it is problematic in that it is completely controlled by the CEO without any board participation since the board delegated that power to the last two CEOs. The JEA budget presented to the City does not contain any information about that plan and be believes it should be approved by Council and subject to Council Auditor review. Mr. Salem believes that additional controls are necessary if the board wants to continue the plan. A change to JEA’s power in this regard would require voter referendum approval. Council Member Hazouri felt that the decisions on the incentive plan should be the purview of the JEA board, perhaps with some Council Auditor review, and believes that City Council review and approval amounts to overreach by the Council. Mr. Salem said that the last two JEA boards delegated authority over the incentive programs to the CEOs who were benefitting from the programs, which he believes is a clear conflict of interest. Mr. Salem said he has introduced that change as a stand-alone bill (2020-245). Jody Brooks of the Office of General Counsel suggested the need for two clarifications with regard to its application to appointed employees and to apprentice classifications.

Ms. Hodges said that the language for the new Article 21.12 on public engagement comes from Council Member Becton’s recent resolution on that subject. She noted that language was added in 21.08(d) to attempt to close any loopholes and prevent questionable interpretations of terms with regard to definition of deferred compensation plans so as to prohibit programs like the Performance Unit Plan. With regard to procurement and award of contracts, Council Member Ferraro said that JEA has used a very closed system that does not seem to utilize open competitive bidding to the degree he believes it should. Ms. Hodges noted that the Charter gives JEA the right to have its own procurement process, which is a basic decision the Council needs to make. She noted that there is outdated language in Article 21 referring to a minority business program which is no longer permitted under federal court rulings. Article 21.09 was substantially rewritten to distinguish procurement processes from other contracting processes. Another change makes the procurement process subject to control by the JEA board, not just the CEO. Council Member DeFoor asked for the addition of language clarifying that JEA cannot offer to sell itself by means of a procurement process. Ms. Hodges said that cross-references will be added to the sections that currently deal with future sale or privatization processes.

Council Member Ferraro asked that language be developed to provide for a procurement oversight committee at the City to review JEA’s actions. Ms. Hodges recommended against placing JEA’s procurement code in its charter because of its length and complexity, but felt that broad-stroke principles of fairness, competitiveness and transparency are appropriate for the charter. The proposed amendment does include several procurement reporting requirements from JEA to the City Council along with more provisions regarding transparency of records, providing clear authorization for Council Auditor reviews and strongly discouraging confidentiality agreements for employees or managers. Council Member DeFoor recommended more specific language stating when confidentiality agreements are permitted.

Ms. Hodges noted that the ethics provision (who is covered by conflicts of interest and post-service contracting prohibitions) is part of a larger discussion of a rewrite of the City’s Ethics Code.

Ms. Hodges asked to work with Council Members Becton and Salem on provisions related to their pending bills.

Chairman Boylan announced that the committee will meet again virtually in two weeks.

Council Member Ferraro said he’s been very frustrated with JEA about getting procurement and contracting information that he has requested.

Chairman Boylan expressed his thanks to the Office of General Counsel for their outstanding assistance throughout this process and to the Council staff for making the virtual meeting run so smoothly.

**Meeting adjourned:** 1:06 p.m.

Minutes: Jeff Clements, Council Research Division

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5.12.20 Posted 2:00 p.m.