

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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

**Virtual meeting via Zoom.us – no physical location**

 **June 8, 2020**

**11:00 a.m.**

**Location:** Virtual meeting – no physical location

**In attendance:** Council Members Michael Boylan (Chair), Ron Salem, Sam Newby, Al Ferraro, Brenda Priestly Jackson, Scott Wilson, Randy DeFoor, Joyce Morgan, Garrett Dennis, Terrance Freeman, Reggie Gaffney

**Also**: Peggy Sidman, Paige Johnston, Lawsikia Hodges, Jody Brooks, Chris Garrett – Office of General Counsel; Kyle Billy, Kim Taylor, Jeff Rodda, Heather Reber – Council Auditor’s Office; Cheryl Brown – Council Secretary/ Director; Jeff Clements and Yvonne Mitchell – Council Research Division; Steve Cassada, Melanie Wilkes and Eric Grantham - Council Support Services; Steve Busey – Smith Hulsey and Busey law firm; Paul McElroy, Kurtis Wilson, Joe Orfano - JEA; Carla Miller and Kirby Oberdorfer – Ethics Office

**Meeting Convened**: 11:00 a.m.

Council Member Boylan called the meeting to order and made brief opening remarks welcoming today’s meeting participants, thanking everyone for their hard work to date throughout the workshop process. He said his goal is to have a nearly complete report by the end of June, with an overview report of the work to be given at the last Council meeting in June. Legislation will be filed with Council in July for the omnibus JEA Charter enhancement bill. He noted that he had sat in on this morning’s meeting of the Special Investigatory Committee on JEA and hopes to coordinate the work of the two bodies to get legislation filed as comprehensively as possible.

JEA procurement

Council Member Al Ferraro thanked JEA interim CEO Paul McElroy and others for being much more cooperative than the former JEA management in providing him with requested information on JEA’s procurement policies and practices. He said he is interested in JEA getting the best products/services at the best price and supporting local companies to the greatest extent possible, and removing self-imposed restrictions that work against those other goals. He said he has heard numerous stories from local businesses about the failures of JEA’s procurement processes, often due to outdated or outmoded policies or restrictive specification requirements. Especially problematic are bid specifications that specify particular manufacturers or parts that prohibit anyone else from competing for the sale. He wants more information provided to failed bidders to explain to them why they didn’t qualify to bid or why their bid was unsuccessful. Mr. Ferraro said next year’s city budget will be very difficult due to the financial effects of the COVID-19 pandemic and every source of savings will be important to pursue. He and Lawsikia Hodges will meet later this week to deal with some final items that have not yet been wrapped up.

In response to a question from Chairman Boylan about what JEA can do to address Mr. Ferraro’s concerns, JEA interim CEO Paul McElroy said he understands Mr. Ferraro’s concerns and thinks there are ways to get where he wants to go. JEA has committed to reviewing and benchmarking its procurement code to national governmental standards. He is working with his new board on board-driven policies the board is responsible for approving and periodically reviewing. They plan to review 2 policies at every board meeting as a standing agenda item and procurement will be one of those reviews. Mr. Boylan suggested that JEA board review of its procurement policies, process and standards be required annually as part of the omnibus amendment bill.

Summary of table of proposed Charter changes

Deputy General Counsel Lawsikia Hodges reviewed the 6 consensus comments agreed to at the previous workshop: #1 – ethics issues will be dealt with globally through Ordinance Code Chapter 602 – Ethics Code; legislation will be filed by the end of 2020; #2 – reduce the limit on spending on public education efforts from 1.5% to 1% of JEA budget, excluding public education on new business lines. #3 – Council Member Priestly Jackson will work with the Council Auditors to refine proposed language regarding required notice to the Auditor’s Office of certain JEA actions; #4 – discussion on deferred compensation, bonuses and incentive programs to be discussed later in the meeting; #5 – procurement policy reform with more opportunities for local companies, procurement policy periodic review (Mr. McElroy prefers bi-annual review with annual reports), continued work with small and emerging businesses; #6 – new proposed prohibited privatization Section 21.11 to include the following points:

* New Definitions:
* “systems” (will include all current systems)
* “net capital assets” net capital assets based on the latest available JEA annual financial statements for a system – will reset every 5 years
* “entity” person or entity, public or private
* “service territory” JEA geographically defined areas as utility provider
* Prohibition on transfers of management - JEA shall not explore, investigate or consummate a privatization or transfer to an entity by sale, lease, or assignment of the management, function, or operation of any portion of a system which comprises more than ten percent of the net capital assets of such system without approval of the Council
* Prohibition on reorganization - JEA shall not explore, investigate or consummate a reorganization of JEA’s governance structure in a manner that would affect JEA’s ownership or management control of more than ten percent of the net capital assets of a system without approval of the Council
* Upon approval by the Council for JEA to explore or investigate a privatization, transfer, or reorganization of JEA, Council may in its discretion prescribe by ordinance budget restrictions related to professional consultants, legal engagements, promotional expenses, and other expenses anticipated by JEA during such exploration or investigation.
* Any sale, transfer or other conveyance of JEA’s electric, water and wastewater, district energy, natural gas or fiber optic and telecommunications service territory to any entity that totals 1% or more of the service territory or any sale, transfer, or other conveyance of 1% or more of JEA’s electric, water and wastewater, district energy, natural gas or fiber optic and telecommunications customer accounts based on the latest available JEA monthly financial statements shall require council approval
* Include a carve-out for fiber telecom leasing opportunities and natural gas opportunities from the 1% threshold; also include a carve-out for operating transfers/territory swap transfers up to 2% gross of customers

Lawsikia Hodges also indicated that CM DeFoor was willing to sponsor any necessary referendum legislation.

Council Member Dennis said one of the motivating factors for exploring JEA privatization was the money it could have produced for the City (which gets approximately $118 million per year now from the JEA annual contribution). Is it time to discuss potentially increasing the JEA contribution to the City and are these workshops the appropriate venue for that discussion, or should there be a separate process to consider that topic? Jody Brooks of the OGC said the latest City/JEA agreement runs through September 2023 and the contribution is set in that agreement. The JEA board would have to agree to reopen that agreement early to make a change. Paul McElroy said changing the contribution is a long and involved process and he thinks this Charter amendment process should be wrapped up first and then a new discussion begun separately on the contribution agreement. Council Member Priestly Jackson asked if any changes were made in the contribution agreement at the time of the Great Recession of 2008-09. Mr. McElroy said no changes were directly related to the recession, but substantial changes to the contribution were made just before the Great Recession hit. Council Auditor Kyle Billy said that traditionally the JEA contribution agreements have been inviolate during their term. Wall Street will take a dim view of changing the terms in the middle of the contract because the bond markets like stability and change makes them nervous. Mr. McElroy asked that the City ethics provisions be rewritten in terms of minimum, particularly with regard to remedies, so that JEA could go above and beyond what the City requires. City Ethics Officer Carla Miller agreed with that proposal.

Transparency (21.03(e))

Council Member Priestly Jackson said this section adds a requirement for the Council Auditor to receive the board member meeting packet at the same time and same manner as the JEA board gets it for all meetings, regular, special called, or otherwise. It also requires that the JEA board member meeting packet be published to the general public at the same time the board gets it.

Adequate meeting notice 21.04(p)

Council Member Priestly Jackson said this section adds “any activity” back in to cover any type of board consideration or action; prohibits the board from delegating certain approvals to the JEA CEO; provides for a minimum 60 days notice to the Council Auditor of proposals to privatize, recapitalize or transfer parts of the JEA; requires notice to the Mayor and City Council as well as Council Auditor;

Powers 21.04(v)

CM Priestly Jackson explained the existing 21.04(v) provision. Ms. Hodges clarified that the proposed change to the existing provision would add similar notice requirements to the Council Auditor as provided in Section 21.04(p) and that JEA would be required to provide the notice no less than 60 days prior to filing legislation pursuant to this section. Ms. Hodges also stated that consensus was needed from the committee as to whether new business expansions such as fiber optics would be added to the charter as a part of this committee’s work or be presented to the City Council pursuant to the process set forth in in 21.04(v).

Employee compensation and incentive programs Section 21.08

Council Member Salem thanked the OGC for their work over the weekend to revise and perfect his proposal. He wants to find a way to put adequate controls in place in the JEA board policy manual without the need for referendum approval by the voters. He would require notice to City Council but not Council approval, which would avoid triggering the referendum requirement. Employee incentives will be a line item in the JEA budget approved by City Council. JEA is going to reexamine it incentive programs and study national best practices. Mr. McElroy said he senses from his board that they want to reduce the range of incentive opportunities to equalize what is available to all classes of employees.

Pension and deferred compensation Section 21.08

Mr. Salem said JEA may only have one compensation plan that must comply with all IRS requirements. Jody Brooks of OGC said there are 2 deferred compensation plans; she will provide further details.

Privatization Section 21.11

Jody Brooks described the proposal she’s been working on. Is the territory sale/transfer percentage trigger (1%) meant to be cumulative or one-time? Council Member DeFoor thinks it should be cumulative. MR. McElroy wanted to exclude operating transfers from that 1% limit. In response to a question from McElroy asks about the impact of this provision on JEA’s interlocal agreements with adjoining counties, Ms. Brooks says they’re excluded by existing language. Ms. Hodges asked for clarity about the intended application of the 10% limit to smaller business lines. Mr. McElroy said he still thinks the 10% limit could be problematic for district energy and potential new business lines. In response to a question from Council Member Dennis about what makes the 10% problematic, Mr. McElroy said 10% of a $2 billion divestiture is very different than 10% of a $500,000 divestiture. The limit could be very restrictive on a small transaction.

Miscellaneous

Ordinance 2020-185-E unlawful contract language: Ms. Hodges suggested adding it into this bill in the appropriate sections.

Referendum: Council Member DeFoor will take the lead on sponsoring any necessary referendum legislation.

Mr. McElroy’s list of new business lines from last meeting: Ms. Hodges asked if there was consensus to address new businesses like fiber optics in this bill or under the new and improved process that will be set forth in 21.04(v). Chairman Boylan said he prefers to leave specifics out of the Charter and just have a process, not specific business references if there were no other objections from the committee.

Mr. Boylan asked for a new redline version of Article 21 to be produced with all of the latest changes. He will make a presentation to City Council on June 23rd to explain the changes. The next meeting of the Workshop will be on June 22nd.

Deputy General Counsel Peggy Sidman described how the omnibus bill was drafted, which is a combination of insertions and deletions in some sections and 3 sections of complete repeal and replacement. She described the adoption calendar of introduction on July 28 (the first Council meeting after the summer break), then 30 days before a public hearing can happen, then 60 days after that hearing before Council can take final action. There will be plenty of opportunity for public participation before final action happens. The Supervisor of Elections has provided deadlines for Council approval of referenda in order to get them on upcoming ballots. For the August 2020 primary the deadline is tomorrow, for the November 3, 2020 general election it’s July 28th. In response to a question from Council Member Salem about whether this bill will go through a regular committee process, Mr. Boylan said it would, in addition to the extra steps the Charter requires specifically for a JEA Charter change.

Council Member DeFoor said it appear there is no way the work of this committee can get on the November 2020 ballot for a referendum. Ms. Sidman said July 28th is the Supervisor of Elections’ deadline for Council action for getting an item on the November ballot. Anything that doesn’t require a referendum (which is almost everything in the omnibus bill) can be done independent of that date. Ms. DeFoor wants to introduce legislation for the item that requires referendum approval (the privatization regulation provisions in 21.11) on the Charter change next week so it can get on the November ballot. Council Member Priestly Jackson asked what separation of powers are we talking about – City Council vs. Mayor or City Council vs. JEA? Ms. Sidman said it is the City Council vs. JEA’s powers. Ms. Priestly Jackson said she will be requesting a legal memorandum from OGC about City Council vs. JEA separation of powers – that’s not her understanding of the traditional separation of powers because JEA is a subsidiary of the City, not an equal body to the Council. Council Member Dennis said any council member can file legislation and no one needs to wait on the work of the completion of the JEA Workshops to submit what they want to submit. Unless there’s a request for emergency action, the referendum item won’t get done this November. Ms. Sidman said that a bill filed on June 23rd could be approved on July 28th as a one cycle emergency and can get on the November ballot if processed quickly after passage. The rest of the 30 pages of the bill that don’t require referendum approval will go through the process discussed earlier with the 30 and 60 day holding periods. Ms. Hodges said that Stephen Durden of the OGC had raised concerns regarding separation of powers in Section 21.11 because of the new proposed language that would prohibit the JEA from “exploring or investigating” a privatization. Ms. Hodges stated that the OGC is meeting this week to discuss and clarify that issue and confirm the necessity of a referendum. Assistant Council Auditor Kim Taylor asked if a referendum fiscal impact statement will be required. If so, the timing of that process also needs to be taken into account.

Council Member DeFoor said her primary interest from day one has been getting City Council a role in approving or preventing any JEA privatization effort. If we pull out the “explore or investigate” language and file it as a separate bill for the next meeting, are we guaranteed to get it on the November ballot? Ms. Sidman said that’s her understanding of the Supervisor of Elections’ timeline, assuming the Mayor will sign the bill immediately after approval and it gets to the SOE’s office quickly. She will reconfirm with the Supervisor the exact timing requirements in writing. Ms. Taylor asked that the confirmation with the SOE include whether a fiscal impact statement is required or not; the fiscal impact statement committee has to get a notice from the SOE before it can be appointed and do its work, so that timing is important as well. Ms. DeFoor said if the “explore or investigate” language is taken out then Council is right back where it started – JEA can start doing what it wants without Council having a role until a final approval is requested. Ms. Priestly Jackson asked for a “flow chart” of the separation of powers between City Council and JEA. What makes them equal or superior to the Council and prevented the City Council from intervening in the ITN process when it wanted to several years ago?

Future issues

* Confirmation from OGC regarding referendum necessity and final language for Section 21.11 referendum.
* Ms. Sidman to confirm with SOE the referendum deadline and fiscal impact statement requirement.
* Redline version of all of Article 21 changes.
* Summary table of all changes.
* First draft of legislation for the next meeting on June 22.
* Analysis of separation of powers of City Council and JEA board (per CM Priestly Jackson).

Next meeting: June 22nd.

**Meeting adjourned:** 12:57 p.m.

Minutes: Jeff Clements, Council Research Division

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6.10.20 Posted 12:00 p.m.