

**OFFICE OF THE CITY COUNCIL**

**RESEARCH DIVISION**

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**CITY COUNCIL SPECIAL INVESTIGATORY COMMITTEE ON JEA**

**MEETING MINUTES**

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

 **September 28, 2020**

**8:00 a.m.**

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

**In attendance:** Council Members Brenda Priestly Jackson (Chair), Randy DeFoor and Scott Wilson

**Also**: Council Members Ron Salem, Garrett Dennis, Al Ferraro, Joyce Morgan; Jason Gabriel, Peggy Sidman, Paige Johnston, Chris Garrett, Sean Granat, Jon Phillips – Office of General Counsel; Kim Taylor, Heather Reber – Council Auditor’s Office; Cheryl Brown –Council Secretary/Director; Steve Cassada, Melanie Wilkes and Eric Grantham – Council Support Services; Jeff Clements and Yvonne Mitchell – Council Research Division; Steve Busey – Smith, Hulsey and Busey law firm; Kurtis Wilson – JEA; Sandra Homrighouse – Ethics Office

**Meeting Convened**: 5:00 p.m.

Chairwoman Priestly Jackson convened the meeting and the attendees were introduced for the record. Council Member DeFoor gave the invocation and led the Pledge of Allegiance.

Special Committee membership and term

Chairwoman Priestly Jackson read into the record a memo from Council President Tommy Hazouri extending the term of the Special Committee to December 31, 2020 and accepting the resignation of Council Member Rory Diamond from the committee. The charge of the special committee otherwise remains unchanged.

Outside counsel update

Steve Busey of Smith, Hulsey and Busey said he had provided written updates to the committee on September 10th and 25th. Four of the last five interview transcripts have been posted to the Special Committee’s web site and the last one (Tim Baker) is awaiting his signature before posting. Mr. Busey said he thinks nine more witnesses deserve be interviewed. Six have voluntarily agreed to appear (former City Council President Anna Lopez Brosche, Alan Morris with the Holland and Knight law firm, Michael Mace with FPM, Jody Brooks with the Office of General Counsel, former JEA Vice President Michael Hightower, and JEA former and now interim CEO Paul McElroy). Deno Hicks, formerly of the Southern Group, will be asked to appear voluntarily to discuss his firm’s lobbying efforts with the City Council during the “cone of silence” after the JEA Invitation to Negotiate was issued. City CFO Joey Greive was involved in a 2017 RFP process in the early stages of what became the privatization effort and has not yet been approached about testifying. Presumably he will appear voluntarily as other City employees already interviewed have done. Tim Baker, a political consultant and pollster, during his previous testimony declined to produce documents and answer some questions and asserted certain Constitutional privileges with regard to his consulting agreement with Florida Power and Light and that needs to be further explored. Mr. Busey wants to subpoena Mr. Baker’s two corporations (Target Data Research and Bold City Partners), not him personally. He thinks the process is nearing the end with the testimony of these final nine witnesses and that a report could be completed by the end of the year.

Council Member DeFoor agreed with the need to hear from the nine witnesses and do what it takes to get their testimony. Mr. Busey said he thinks they are relevant to the Council’s legislative purpose but wanted to know if the committee thinks it’s worth the additional time, expense and effort to seek their testimony. He will ask for the six to give voluntary testimony with transcripts. The other three will be asked to voluntarily appear, then subpoenas could be sought if they refuse. Chairwoman Priestly Jackson asked for clarity on the Tim Baker testimony. Mr. Busey said he would recommend subpoenas for both documents and testimony on behalf of the corporations. Council Member Salem asked that Camille Johnson, former JEA board member, also be interviewed because of her role in the Performance Unit Plan process. Regarding Tim Baker, Mr. Salem asked for clarity on the areas of interest with regard to Mr. Baker. Mr. Busey said he had previously requested information on his company’s polling (if any) with regard to a potential JEA sale, his contract with JEA, and other communications. Ms. Priestly Jackson deferred that discussion until later in the meeting in the discussion of witnesses and subpoenas. She said she is reluctant to interview one JEA board member and not others as a matter of fairness. She thinks Ms. Johnson’s testimony might be relevant to other investigations and not so much to the work of the Special Committee.

General Counsel update

General Counsel Jason Gabriel said they’re still working with Mr. Busey on reviewing the last tranche of documents and will have further comments in the upcoming discussion on witnesses and subpoenas.

Witnesses, subpoenas and documents

Steve Busey discussed the Council’s legislative authority relevant to compelling Tim Baker’s testimony. He said the City Council needs to get to the bottom of what happened in order to determine how to amend the Charter and Ordinance Code to prevent a similar situation from happening again. Mr. Baker was under contact to FPL when he attended JEA’s management retreat at Club Continental, raising the question of who was paying him and why he was there during the “cone of silence” period; his role, if any, in the ITN process; and the circumstances surrounding his attendance at an Atlanta Braves game with the Mayor and then-Council President. These are items that can be legitimately inquired into and his claims of Constitutional privilege could be challenged if the Special Committee feels his testimony is relevant and wants to go down that road. Council Member Priestly Jackson felt it was important to determine whether Mr. Baker’s previous voluntary testimony was “responsive”. Jason Gabriel said it would be appropriate to ask Deno Hicks and Joey Greive to appear voluntarily. The SIC should review the existing Tim Baker transcript to assess what Mr. Baker said before determining if more is needed and whether the need meets the Council’s legislative purpose. The question of Council’s legislative purpose is twofold: 1) is the testimony being sought within the President’s charge and the purpose of the committee? And 2) is the testimony sought within the scope of an area in which the Council can legislate? The right to seek testimony is limited by what areas the Council can legislate over. Subpoenas need to be narrowly drawn to meet these tests and to seek information that can’t be obtained in other ways. There is also a need to consider the time, effort and expense to be expended if the subpoena is challenged and whether it is worth the information being sought.

Council Member DeFoor asked about the timeframe for getting Mr. Baker’s signature on the transcript before it is released. Jon Phillips of the General Counsel’s Office said interviewees have the right to read and sign the transcript; it was delivered to Mr. Baker’s attorney last Friday and passed on to him immediately thereafter. The interviewee has the right to submit corrections of transcription errors and to correct any errors in their testimony. He thinks the allowable review period is 10 or 15 days. Mr. Gabriel said he understands from Mr. Baker’s attorney that they will turn it around in the next couple of days. Mr. Busey said the Special Committee has previously released transcripts without signatures and then added errata sheets thereafter when the interviewee asked for it.

**Motion** (DeFoor/2nd Wilson): the Special Committee requests issuance of a subpoena to the companies with which Tim Baker was engaged (BCSP LLC and Target Data Research) for the requested documents and corporate testimony not provided to Mr. Busey during Mr. Baker’s earlier interview – **approved 3-0.**

Ms. DeFoor said she has no problem with asking for voluntary testimony from several previous JEA board members to get whatever relevant information they might have. Council Member Wilson agreed with asking for voluntary testimony. Chairwoman Priestly Jackson also agreed with asking for voluntary testimony but opposed issuing subpoenas to former board members. Mr. Busey said he will ask for voluntary testimony from former JEA board members and will report back on their response next time.

Ms. Priestly Jackson asked for written legal memoranda from both the Office of General Counsel and from Mr. Busey about the legislative authority and interest of the Council to ask for the testimony from the corporations mentioned above for the next meeting.

Ms. Salem said he thinks Camille Johnson’s testimony could really add information and context on the PUP and he thinks she should be subpoenaed if she doesn’t appear voluntarily. Council Member Dennis asked for an explanation of how the subpoena process works. Jason Gabriel said the Special Committee has asked for the Rules Committee to issue the subpoenas. Chairwoman Priestly Jackson said she wanted the legal memos from Mr. Busey and the OGC before the request goes to Rules Committee. Mr. Gabriel said they will provide those, then the SIC will determine if subpoenas are needed, which would to go to the Rules Committee. Once the Rules Committee approves the issuance of the subpoena, then the Council Secretary issues the subpoena with a date to respond and service of process follows. If the subject refuses to comply, then the full City Council decides how to proceed. Ms. Priestly Jackson said she wants the legal memos from OGC and Mr. Busey to establish a very clear record on why the subpoenas are justified so they can’t be challenged later at a cost in time and court proceedings. The legal memos will help the subpoenas to be narrowly tailored and very enforceable.

Council Member DeFoor said she thinks public transparency and understanding would be served by a better discovery process. Nixon Peabody submitted an invoice for privatization consulting services in 2018 that would have opened the door to the whole privatization issue had it been disclosed then. She thinks there needs to be better disclosure from the OGC about what they knew and when they knew it and asked Mr. Gabriel to do that. Mr. Gabriel said he produced a memo for former Council President Anna Brosche on the JEA privatization process in 2018 and he’s happy to gather and provide to the committee all of the office’s memos, documents and any other public record on the subject that’s not protected by attorney-client privilege. The Nixon Peabody invoice was identified and disclosed by the document search system developed by OGC and Smith, Hulsey and Busey and nothing is being hidden. He said he happy to publicly disclose the OGC’s role and documentary record throughout the process.

City Council member disclosures

The Chairwoman read into the record the names of the council members who have submitted disclosure forms to date: Council Members Becton, Boylan, Carlucci, DeFoor, Dennis, Diamond, Ferraro, Gaffney, Hazouri, Morgan, Newby, Pittman, Priestly Jackson, Salem, White, and Wilson. She encouraged those council members who have not submitted disclosures to please consider doing so. Ms. Priestly Jackson asked Mr. Busey to cross-reference the disclosures with the timeline of events and the testimony received to date to determine if there are any areas of concern with any council members and if so, to share that with those council members.

Council member individual meetings with outside counsel

Mr. Busey said he’s received a number of requests for private meetings with council members and is happy to make himself available at any time to hold discussions and answer questions.

Outside counsel budget extension

Peggy Sidman said the City has paid Smith, Hulsey and Busey $1,075,572.68 and has one outstanding invoice. The $1.15 million “not to exceed” cap is being approached and the special committee’s deadline has been extended to December 31st, so the committee may wish to consider raising the cap. Council Member Priestly Jackson suggested adding $300,000 for a new cap of $1.45 million.

**Motion** (DeFoor/2nd Wilson): increase the not-to-exceed cap for outside counsel to $1.45 million – **approved 3-0**.

Ms. Priestly Jackson said Mr. Busey will report at the next meeting on the costs incurred by JEA and other parties to date in the proposed privatization process, which will demonstrate that the spending by the City Council on special counsel to assist this important investigation pales in comparison to what other parties have spent.

Other business

Council Member Dennis said he has received a letter from Aaron Zahn’s attorney informing him that he may be subpoenaed in circuit court as a material witness in Mr. Zahn’s civil case with JEA. His Ordinance 2020-528 regarding advance notice of legal fees is pending before the Council and he will be hiring private counsel to represent him. Ms. DeFoor said she got a similar letter today. Jason Gabriel said that probably all council members got or will get the same letter; he asked that they please forward them to him so they will be aware of what’s happening and they will provide any further guidance that’s needed. Council Members Morgan and Priestly Jackson said they got the same letters. Mr. Gabriel asked that council members please forward the letters to him so he can understand in what context they are being notified before hiring outside counsel, as the General Counsel’s Office may be involved if it involves their capacity as public officials.

Chairwoman Priestly Jackson thanked the Council staff for their yeoman’s efforts in posting all of the Special Committee’s documents on the web site, but added that a bit more uniformity in dating and indexing the mass of data posted to the SIC web page would be helpful in making it clear when items arrived.

Next meeting: October 12, 8 a.m. The Chairwoman asked for the OGC and Steve Busey memos on legislative purpose and the committee’s scope of action to be provided before 12 noon on October 9th for distribution to the members in advance of the meeting.

**Meeting adjourned:** 6:17 p.m.

Minutes: Jeff Clements, Council Research Division

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9.30.20 Posted 1:30 p.m.