

**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**

 **October 12, 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 Garrett Dennis, Michael Boylan, Ron Salem, Joyce Morgan, Terrance Freeman; Jason Gabriel, Peggy Sidman, Paige Johnston, Chris Garrett – Office of General Counsel; Kim Taylor and Jeff Rodda – 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; Carla Miller – Ethics Office

**Meeting Convened**: 8:00 a.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.

Future meeting dates and times

October 26 – 8:00 a.m.; November 16 – 5:00 p.m.; November 30, 5:00 p.m.; December 7 – 5:00 p.m.

Chairwoman Priestly Jackson said that some meeting dates have been changed due to conflicts with Council Chamber availability. The November meetings in the evening will both be specific opportunities for public comment. The December meeting will review the outside counsel’s draft report that will be submitted by November 30th. Council President Hazouri said he anticipates receiving the special committee’s report in January, but is open to further changes if that becomes necessary.

Outside counsel report

Special counsel Steve Busey said his staff has reviewed 600,000 documents and they have 6 more witnesses to formally interview. He also intends to have informal telephone interviews with 5 former members of the JEA board and up to 10 former City Council members, which will be completed in October. Thereafter he will complete the formal witness interviews in November and have a draft report ready for presentation in December. Last Friday he issued the memorandum requested by the special committee at its last meeting outlining the legislative authority and committee charge that justifies the subpoena to Tim Baker for his testimony, and that memorandum has been posted on the special committee’s web site. He is requesting that City Council issue a subpoena to 5 companies with which Tim Baker was affiliated and to him personally because of his and his companies’ contractual relationship with FPL while he was also consulting with JEA about a sale process and was a presenter at a JEA board retreat during that time. Mr. Baker has declined to answer questions about his activities with JEA and FPL during that period. Mr. Baker’s testimony is material to determining what happened and how legislation could be drafted to prevent that situation from happening again.

Council Member DeFoor asked if Mr. Busey was advising that these subpoena are necessary to get to the bottom of the facts of the case. He said he believes it is in order to understand the connection between JEA and FPL during the privatization bidding process, but it’s a policy call for the committee to make if the testimony is worth the time and expense to pursue. In response to a question from Chairwoman Priestly Jackson about whether Mr. Busey said the committee could fulfill its charge without issuing subpoenas for Mr. Baker’s testimony, but he believed the committee could be subject to criticism for failing to follow up on what has been revealed by previous testimony about this relationship between the two companies via Mr. Baker. In response to another question from Ms. Priestly Jackson, Mr. Busey said that it was his understanding the Mr. Baker was a campaign consultant to several City Council members elected at the last election. Ms. Priestly Jackson felt that Mr. Baker’s testimony might lead some legislation with regard to the use by City Council candidates of campaign consultants that may later impact on their actions on the council as a result of those previous relationships. The council needs to avoid any perception of pre-determined outcomes in its decisions as a result of pre-existing relationships with political consultants.

Council Member Salem said he met with Mr. Busey last week and asked that he outline a scenario they discussed that could cause the special committee’s process to run out for another year depending on Baker’s actions. He also asked if the desired documents could be obtained from FPL without Mr. Baker’s cooperation. The Chair asked that the first question be covered in the General Counsel’s presentation later in the meeting. Mr. Busey said that the Council could subpoena FPL for documents but felt that Mr. Baker’s central role in the process makes his testimony very important.

**Motion** (DeFoor) – move to issue, for appropriate legislative purposes within the special committee’s charge, subpoenas to BCSP LLC, Coventus LLC, Data Targeting Research LLC, Timothy Baker Consulting LLC, Baker Law Group PLLC, and Tim Baker individually – **approved 3-0**.

Office of General Counsel report

General Counsel Jason Gabriel said he issued a memo dated October 5th citing basically the same case law outlined by Mr. Busey in his memo on the proper legislative purpose and parameters of investigation of the Special Committee. The limit of the authority of the committee is marked by the power to legislate; the limit of the special committee’s power is where the authority of the City Council to legislate ends. Questions to be considered are: 1) how much does the council need the information it is seeking? 2) Is the information being sought in furtherance of a legitimate task (legislation) of the Council? The request must be narrowly drawn and very particular to the information needed. Consideration also must be given to whether the information is available from other sources. Finally, the effort and expense of obtaining the contemplated information should be weighed against the value that information would provide to the process.

Mr. Gabriel reviewed the subpoena process. The Special Committee makes a recommendation to the Rules Committee to issue the subpoena; the Rules Committee considers the request and, if it approves, the Council Secretary signs and issues the subpoena and it is served with a deadline and date certain for production of the testimony. If the subpoena is not adhered to then the SIC needs to determine how to proceed. It could make a report to Council via filing a resolution and the Council then determines what to do. It could vote to issue another subpoena and see if there’s a response; if there is still no satisfactory response the matter could be either referred to the State Attorney for action or the City could petition the circuit court for civil relief. In response to a question from Council Member Wilson about when legislation would be drafted to approve a second subpoena, Mr. Gabriel said the OGC would draft a reporting order and a resolution for the Rules Committee to consider in time for the Council bill filing deadline the next day for introduction at the next week’s Council meeting. The Chair reviewed the timeline of SIC meetings and Rules Committee meetings for purpose of timing of subpoena consideration. She said there may be concerns about the cost of enforcing the subpoena if there is non-compliance and asked if there any additional costs anticipated in the short term before the 24th of November when the second subpoena could be issued in the issue of non-compliance on the original subpoena. Mr. Gabriel said he knew of nothing beyond the normal course of OGC actions where a subpoena is involved – just the cost of preparing the documents, although there may be some consultation with Mr. Busey that would be additional billable time on his contract.

Council Member Dennis asked if some council members will have to recuse themselves from voting on items relating to Mr. Baker because he was hired to work on their campaigns. Do conflicts of interest or ethical issues come into play for these council members when determining if they should vote on the issuance of a subpoena to their former campaign advisor? If council members are not prohibited from voting, is there a way to compel council members to declare their prior relationship with Mr. Baker before they cast votes? Mr. Gabriel said he does not have any knowledge of CAO Brian Hughes (mentioned earlier by Mr. Busey) having any consulting relationship with council members since he came to work for the City. Conflicts of interest must be about pecuniary gain in the present time (or the near future), so what happened in years past would probably not be a conflict. He will consult with council members on a case-by-case basis if they have questions or concerns about particular circumstances. Ms. Priestly Jackson thanked the 17 council members who have submitted their disclosure forms to date. She suggested that consulting with Ethics Officer Carla Miller and perhaps adding Tim Baker contracts to previously submitted disclosure forms as a supplement would be a good idea.

Witnesses and related documents

Mr. Busey said that he had nothing to mention beyond what he reported at the start of the meeting. He expects to be completed with interviews by the end of the month, except for the Tim Baker process. Mr. Gabriel had nothing additional to add.

Council member disclosures

The Chairwoman said that 17 disclosures have been made to this point. In response to a question she noted that Council Members Bowman and Cumber have not submitted the disclosure forms. She encouraged council members to contact Carla Miller with any questions or potential issues that might merit a supplement to the disclosure.

Council member one-on-one meetings with special counsel

Mr. Busey said he continues to be available to meet with any council members about his work or to answer any questions they may have. He has met with probably less than half of the council members to date.

Deputy General Counsel Peggy Sidman asked for clarity on the response date for the subpoenas authorized earlier. The date is November 16th to the Special Investigatory Committee.

Council Member Boylan requested that council members, Mr. Busey and others involved in the committee’s work to review pending Ordinance 2020-419 (the JEA Charter amendment bill) to make any more comments or recommendations for additional safeguards to be incorporated into the bill. He wants to be as comprehensive as possible with that legislation. Ms. Priestly Jackson said the bill will be workshopped at the next Rules Committee meeting.

In response to a question from Council Member Wilson about who remained to be formally interviewed, Mr. Busey listed Michael Mace (PFM – consultant to JEA), Alan Manes (Holland and Knight), Joey Greive (City CFO), Mike Hightower (former JEA senior manager), Jody Brooks (JEA attorney), Paul McElroy (JEA Interim CEO).

The Chairwoman reviewed the revised special committee meeting schedule: October 26 – 8:00 a.m.; November 16 – 5:00 p.m.; November 30, 5:00 p.m.; December 7 – 5:00 p.m. The 5:00 p.m. meetings are specifically designed for public input.

**Meeting adjourned:** 8:50 a.m.

Minutes: Jeff Clements, Council Research Division

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10.13.20 Posted 3:30 p.m.