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RESEARCH DIVISION**

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**CITY COUNCIL WORKSHOP
CURRENT STATUS AND FUTURE NEEDS OF THE OFFICE OF GENERAL COUNSEL**

Meeting Minutes

**March 24, 2023
9:00 a.m.**

Location: Lynwood Roberts Room, 1st floor, City Hall

In attendance: Workshop Members Terrance Freeman and Brenda Priestly Jackson

Also: Council Members Matt Carlucci, Ju' Coby Pittman, Randy DeFoor; Maritza Sanchez – Legislative Services Division; Jeff Clements – Council Research Division; Steve Cassada – Council Public Information Division; Jason Teal, Mary Staffopoulos - Office of General Counsel; Kim Taylor – Council Auditor's Office; Paige Johnston – Ethics Office

Meeting Convened: 9:10 a.m.

Chairwoman Priestly Jackson convened the meeting and described the format of the workshops. Former general counsels and current and former constitutional officers, independent authority representatives and School Board officials will be invited to future meetings to share their perspectives on the work of the Office of General Counsel (OGC). The aim of the workshops is to consider what improvements, if any, are needed to the General Counsel chapter of the Ordinance Code. CM Carlucci said the review process will be helpful to understand the workings of the OGC and what might be improved. CM DeFoor said the OGC is sometimes placed in a position of conflict with its multiple clients who have competing interests. Now is the right time to consider the structure and operations of the office and perhaps look at how other consolidated governments arrange their legal offices. CM Pittman said she is here to learn about the many operations of the OGC and how they relate to council members and other agencies.

General Counsel Jason Teal said that most of the OGC's clients don't realize the breadth of the office's operations. The OGC is divided into 4 departments: 1) general litigation (breach of contracts, eminent domain, constitutional claims, etc.); 2) tort and regulatory (personal injury and damage claims against the City, employment law, regulatory prosecution and enforcement, Sheriff's Office legal advisor); 3) government operations (transactional contracts, economic development agreements, real estate, boards and commissions support); and 4) legislative affairs and land use (City Council and its committees,

legislation, land use and zoning matters). The OGC has 46 attorneys including several assigned to JEA and the School Board as in-house attorneys to serve their specialized needs. Many client agencies are assigned designated attorneys to serve their needs but there is crossover among the OGC's departments to share information and expertise and provide the best protection for the City's interests overall. The office functions best as a collective body sharing wisdom and expertise. The OGC's clients include the City's legislative branch, the executive branch, the 6 independent authorities, the School Board, and the 5 constitutional officers.

Mr. Teal recalled the importance of legal services in the effort to consolidate the former city and county governments. Those governments had many legal issues and conflicts and the creation of a single General Counsel for the entire government was intended to deal with that. The OGC represents several multi-billion dollar enterprises and has to have a wide range of expertise.

Chairwoman Priestly Jackson asked how the OGC resolves conflicts among its various clients. Mr. Teal said the General Counsel is the ultimate decider who can issue a legal opinion binding on all parties, but that formal process is rarely used. The more usual practice is a less formal process that gets the appropriate decision-making parties in a room together to work through the differences, with the General Counsel often acting as a mediator. He prefers that the OGC not be heavy-handed or prescriptive, since the client agencies are the ones that ultimately have to live with the decision. The OGC advises on the legalities and the potential ramifications of various options (the "can we" questions) but leaves the policy-making (the "should we" questions) to the policymakers whose job that is. CM DeFoor asked how the process really works in practice since there are so many political factors in play. Mr. Teal said OGC attorneys deal with determining the factual matters in play so that decisions can be made on a sound basis but tries to stay out of politics to the greatest extent possible. They maintain client confidentiality. Outside counsel is sometimes hired when conflicts become too difficult to manage in-house.

CM Carlucci said the OGC has always been supportive of the work of the City Council and done its best to provide the best representation and advice possible, but then lets the Council make the final decision and defends it afterward as best they can. Mr. Carlucci said the city has a huge number of boards and commissions that the OGC has to staff and said it may be time to look at how many there are and whether they are all still serving useful functions or not.

Chairwoman Priestly Jackson asked Mr. Teal if he feels his office is adequately staffed to handle the volume of work. Mr. Teal said it is not fully staffed at the moment because they are having difficulty finding sufficient qualified candidates at the salaries that can be offered. They raised the minimum support staff salary to deal with a retention problem there. Some employees have left because they want a hybrid work-from-home option. He thinks the office could use 5 more attorneys and gets frequent requests from the independent authorities for more legal assistance in areas like employment law and contracts. President Freeman asked if there is a hierarchy of obligations to particular clients, as is sometimes the perception. What determines when an issue is important enough for the General Counsel himself gets involved? Mr. Teal said there is no real hierarchy other than informal rules about sharing workload and giving the best representation to clients. Individual attorneys have to determine if they are being put in an untenable position by having multiple clients. Clients have the right get the good quality legal service they deserve and have the right to confidentiality about their issue.

Chairwoman Priestly Jackson said the recent incident involving the filing of identical bills points out a problem with the informal process and potentially the need for a more formal process or change in the rules to address that situation. CM Carlucci said the rule for filing legislation during his tenure on the Council has always been "first come, first served", with the council member making the first request for drafting earning the right to have it introduced first. Ms. Priestly Jackson said that some council members in the past have been told that they can't file certain legislation, which she disagrees with. The client's

voice should prevail, not the General Counsel's voice. It should be made very clear what specific authority the General Counsel is invoking when he makes decisions about what does and does not get done. Every council member should know the process for circulating bills for co-introducers to help cut down on confusion.

CM DeFoor said the OGC is the most powerful office in the City and therefore has the potential to go off the rails in a dangerous way. She feels the OGC has not been challenged enough by the City Council and other clients about their interpretation of law. She cited the JEA "cone of silence" mandate to the City Council during the JEA "invitation to negotiate" process several years ago that numerous private attorneys felt was a complete misinterpretation of the law. Had there not been several attorneys serving on the Council who challenged that mandate, the JEA ITN process may have turned out very differently. She asked how an OGC client could challenge something like that pronouncement with which other attorneys vigorously disagree. Mr. Teal said he was not involved at all in that decision by a previous General Counsel so doesn't have a basis for judging how that decision was made. His philosophy is that the OGC is trying to help clients reach the most legally defensible position, so the underlying legal research is fundamentally important. Some areas of law are not well settled in the courts so then the office has to assemble the best research it can find and advise the client that the matter is unsettled and there are no guarantees about success if challenged. He believes that attorneys have to give the client the full picture of all possibilities and then let the client make the best-informed decision possible. Sometimes outside counsel is needed to provide more expertise and nuanced understanding in particular subject matter areas. CM DeFoor saw a need to consider what to do about an intentional action by the General Counsel to obstruct or misdirect the City Council. What safeguards could be put in place to deal with that situation?

Chairwoman Priestly Jackson asked Mr. Teal about the OGC budget, outside counsel expenses and a financial "wish list". Mr. Teal said that he will gather that information and bring it to a future workshop meeting. When asked about other proposed changes he would like to see for his office, and Mr. Teal said that would be a part of the budget conversation. He noted that the majority of the OGC budget is devoted to salaries.

CM Pittman asked about staff retention and how to build and retain institutional knowledge. She asked about the tenure of OGC attorneys and how to recruit new talent and be competitive in the job market. She also noted that the incoming council members would benefit from an overview of the OGC's responsibilities and structure at the beginning of their terms.

Mr. Teal reiterated that OGC touches all parts of the consolidated government. He said that institutional knowledge is essential in his office, especially in light of administration and leadership transitions every 4-8 years. Regarding staff tenure, he said that there is a gap in the middle ranks, wherein they have a number of attorneys who are new to the profession and attorneys who are more senior but fewer in the mid-range. He said that seasoned attorneys from the private sector come in with legal experience but need to acclimate and learn the mechanics of the public sector. He mentioned cross training and the impact to the office when an attorney is specialized in one area or agency and then they leave. He talked about pathways of mobility and how that affects retention, and how the office has job tiers (attorney I, II, III, IV) that enable internal promotions.

CM Pittman talked about employment contracts, staff training with experienced mentor, continuing education to increase staff knowledge, and possibilities to ensure smooth transitions during new administrations.

Chairwoman Priestly Jackson wrapped up the meeting and said at an upcoming workshop the group will discuss the OGC binding legal opinion process.

Public Comment

Carnell Oliver talked about a bipartisan City government modernization assessment. He extended his support for OGC, the Planning Department and Public Works, noting they all need more staff. With no further business, the Chairwoman adjourned the meeting. The next workshop will be on March 31st at 9:00 am.

Meeting adjourned: 10:40 a.m.

Minutes: Jeff Clements, Council Research Division

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3.30.23 Posted 3:00 p.m.