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**CITY COUNCIL SPECIAL INVESTIGATORY COMMITTEE ON JEA  
MEETING MINUTES**

**May 11, 2023  
8:30 a.m.**

**Location:** Lynwood Roberts Room, 1<sup>st</sup> floor, City Hall

**In attendance:** Council Members Rory Diamond (Chair), Nick Howland, Sam Newby, Michael Boylan

**Also:** Council Member Matt Carlucci; Rita Mairs and Jon Phillips – Office of General Counsel; Merriane Lahmeur and Maritza Sanchez – Legislative Services Division; Jeff Clements and Cory Armstrong – Council Research Division; Kim Taylor – Council Auditor

**Meeting Convened:** 8:31 a.m.

Vice Chair Howland convened the meeting and the attendees introduced themselves for the record. Mr. Howland read the committee’s charge from the Council President. He reviewed the special committee’s action at the last meeting to refer the first two items in the President’s charge to the Ethics Commission for investigation. This was done via letter on March 22<sup>nd</sup>, after which the Ethics Commission declined to hear the matter.

Deputy General Counsel Jon Phillips reported that the Ethics Commission was advised at their meeting that the matter had been referred to them in an improper form and beyond the statute of limitations on the matter, and they declined to hear it. The Office of General Counsel has since determined that the Commission was incorrectly advised and could have heard the matter. The Commission has jurisdiction but is not required to consider it. The Ethics Commission has asked General Counsel Jason Teal to attend their meeting next Monday afternoon to discuss the OGC opinion. The Special Committee’s options remain what they were before: do nothing; ask the Ethics Commission to reconsider and take up the matters referred by the Special Investigatory Committee; ask the City Ethics Officer to refer the matter to the Inspector General; refer the matter directly to the Inspector General; or make legislative recommendations without further investigation.

Chairman Howland asked for clarification about the Ethics Commission’s grounds for saying they did not have jurisdiction to consider the matter. Mr. Phillips said they were advised incorrectly about the definition of and requirement for a “sworn complaint” and about the application of a statute of limitations

to Subsection 602.921(c) actions. He said the plain language of the Code authorizes the Ethics Commission to broadly investigate “any circumstance or situation of which the Commission may become aware that appears to violate or may potentially violate an acceptable standard of ethics conduct for City officers and employees as delineated in Section 1.202(d) of the Charter.” The suggestion that the Commission should not take up the matter because it was politically motivated was irrelevant to the commission’s authority to perform an investigation when it is justified. Mr. Phillips said the Ethics Commission was erroneously advised and does have jurisdiction to take up the matter if it chooses, but it is not obliged to do so.

Chairman Diamond said there is an issue about who should be advising the Ethics Commission on what it can and can’t do and how that relates to Subsection 602.921(c) matters and asked who advises the Ethics Commission. Mr. Phillips said the City’s Ethics Officer and an attorney from the OGC assigned to the Ethics Office. Mr. Diamond asked why the matter wasn’t referred to the State Ethics Commission. Mr. Phillips said he didn’t see any state relevance to this local matter. Anyone who thought it was relevant could have made a sworn complaint to the State Ethics Commission without any involvement from the Special Investigatory Committee.

CM Carlucci said he served on the State Ethics Commission some years ago and his recollection was that a complaint had to be referred to that body by an individual, not a corporate entity such as a council committee. Mr. Phillips confirmed that is still the case. Mr. Carlucci said that he sponsored the legislation to create the City’s Ethics Commission as a result of several council members being investigated in the early 1990s and some compromises had to be made about the extent of its power to investigate individuals in order to get it enacted into law. Section (c) was inserted to give the Ethics Commission some ability to investigate problems or situations of which it became aware, but not individuals, and to propose legislation to remedy the problems identified. It was never intended to authorize investigations of individual council members. He recommended that the email sent to the Special Committee member from former Ethics Director Carla Miller regarding her recent advice to the Ethics Commission be read into the record of the committee. He also recommended that a legitimate course of action of the Special Committee would be to deal with the broader situation to which this matter relates and not about the actions of a particular council member.

CM Boylan asked Mr. Phillips for his reaction to Mr. Carlucci’s historical perspective on the adoption of the Code section. Mr. Phillips said there is no ability in Subsection (c) to find probable cause about an individual’s action and that is why there are no punitive teeth to that section. The plain language of the section makes it clear that the Ethics Commission can look at any problem that falls under its charge and does not exclude individuals from that jurisdiction. Mr. Boylan said the Special Committee’s referral of the matter to the Ethics Commission was intended to look at the general situation and seek general legislative remedies. The Ethics Commission will meet next Monday and decide what it wants to do. Mr. Boylan said the committee previously decided not to refer the matter to the Inspector General because that would have made it a more accusatory situation and he would still contend that that is the not a course of action the Special Committee should take.

CM Newby said the Special Committee has a duty to find out what happened to fulfill the President’s charge and there is nothing politically motivated about it.

Chairman Howland asked for clarification from Mr. Phillips about whether the Ethics Commission dealt with the interpretation of Subsection (c) and whether it did or didn’t apply to an individual. Mr. Phillips said he did not recall whether they particularly addressed it because they were advised on 2 other grounds that they couldn’t receive the referral – the expiration of the 2-year statute of limitations and the fact that the referral was done in the form of a letter and not a sworn complaint. Mr. Howland read the Ethics

Commission's motion declining to accept the referral from the SIC and Mr. Phillips said both of the reasons offered were legally incorrect.

CM Carlucci read Carla Miller's email to the Council President and the Special Committee regarding the OGC's legal interpretation into the record.

Chairman Howland identified 4 potential actions for the committee to proceed: do nothing; ask the Ethics Commission again to accept the referral of items #1 and 2 of the Council President's charge to the SIC under the authority of Subsection 602.921(c); ask the Ethics Commission again to accept the referral given the OGC's clarifying opinion on their authority; or refer the matter directly to the City Inspector General. Chairman Diamond recommended sending the request back to Ethics Commission to consider it and see what they do. The SIC could then look at 602.921(c) and see what improvements need to be made there to clarify the intent. CMs Newby and Boylan agreed with sending the matter back to Ethics Commission. Chairman Diamond said he hoped that the Ethics Commission would make a substantive yes or no decision. Jon Phillips suggested adding language to the referral referencing the OGC's opinion on their ability to take up the referral and respectfully requesting reconsideration.

**Motion** (Diamond/2<sup>nd</sup> Newby) – in light of the guidance provided by the OGC, the Special Committee respectfully re-refers its original request to the Ethics Commission to investigate items 1 and 2 of the Council President's charge to the Special Committee.

Mr. Phillips said the Ethics Commission can choose to take up the matter or not, and doesn't need to give a reason to the SIC for why they do or don't.

CM Carlucci recommended asking the Ethics Commission to examine the general circumstances of the Council President's request to council members to make disclosures regarding the JEA privatization issue and recommend legislative changes rather than investigate a specific individual's actions. He said they are more likely to take up the bigger picture circumstances than an investigation of a specific individual. That was why Subsection (c) was drafted the way it was. CM Howland said the SIC specifically decided not to refer Council President's charge #3 regarding potential legislative changes to the Ethics Commission when it made its motion at the March meeting, thinking that it could deal with that charge after getting a response from the Ethics Commission. Chairman Diamond said he would be open to amending the motion to add a request to the Ethics Commission to make recommendations about proposed legislative changes. Mr. Howland noted that the SIC's charge did not include opining on the merits of Subsection (c) in the future. He said he was open to adding Council President's charge #3 to the motion regarding proposal of legislative changes to ensure that the work of future special committees is not impeded.

**Motion** (Diamond/2<sup>nd</sup> Boylan) – amend the previous motion to add President's charge 3 to the referral to the Ethics Commission – **approved unanimously**.

**Motion** (Diamond/2<sup>nd</sup> Boylan) – adopt the motion as amended to refer President's charges 1, 2 and 3 to the Ethics Commission – **approved unanimously**.

CM Boylan offered an idea for the committee's consideration. In the event a future City Council committee or its leadership requests any form of disclosure of information by council members, apart from existing standard disclosures, the OGC should review and set clear parameters for the disclosure. He recommended amending the Council Rules to specify that requirement. Mr. Phillips said he would want the General Counsel to have the opportunity to review that suggestion and provide advice on how that might work. CM Carlucci suggested that Mr. Boylan could attend Monday's Ethics Commission meeting and possibly present that idea to the commission if the opportunity arises. CM Howland said the OGC had previously suggested considering amendment of Section 602.1205 (Cooperation in official

investigations) to clarify who is required to comply with requests to specifically include council members. Chairman Diamond said there may be justification for coming up with more robust procedures for special committees to run significant investigations like the SIC undertook. It may be worthwhile to look at other jurisdictions and see how they run investigations so our process can be improved for the future. Perhaps the next Council President would appoint a committee to examine that issue.

CM Howland said the special committee's final report will await a response from Ethics Commission so there is no need to take action yet.

Public Comment

None

**Meeting adjourned:** 9:42 a.m.

Minutes: Jeff Clements, Council Research Division

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5.17.23 Posted 3:00 p.m.