

CITY COUNCIL SPECIAL COMMITTEE ON THE FUTURE OF JEA
Council Member Michael Boylan, Chair

Proposed Changes to Article 21 (JEA) of the City of Jacksonville Charter

Prepared by Office of General Counsel

4/29/2020

Attachments

Attachment 1: Redline copy of proposed Article 21 (JEA) vs. existing Article 21 (JEA)

I. SUMMARY TABLE OF CHANGES

*(*Please see attached redline copy for exact language proposed*)*

ARTICLE 21 CHARTER SECTION #	EXISTING LANGUAGE	PROPOSED CHANGE, ADDITION OR DELETION AND REDLINE PAGE#	RATIONALE FOR CHANGE - REQUIRED ACTION <i>(charter/referendum)</i>
<p>21.01</p> <p>JEA CREATED AND CONTINUED</p>	<ul style="list-style-type: none"> Establishes JEA as a body politic and corporate Authorizes JEA to own, manage and operate a utilities system (electric, water, sewer, natural gas) within and without the City of Jacksonville 	<p>Adds following new references:</p> <ul style="list-style-type: none"> Creates new subsections (a) and (b) <u>21.03(a)</u>: New subsection (a) includes existing creation language and adds multiple new references to a “fiber optic and telecommunications system” (new business line); reference that JEA operates the utilities system for the City of Jacksonville <u>21.03(b)</u>: New subsection (b) references the council auditors right to audit JEA’s records (consistent with Article 5 of the charter) <p>Redline Page(s): 1</p>	<ul style="list-style-type: none"> <u>21.03(a)</u>: As to fiber optic and telecommunications system, JEA would like to explore providing fiber optic and telecommunications offerings. If approved by the City Council, revisions will be needed in several sections of Article 21 (<i>see list of open topics below; need to discuss JEA’s business plan; revenue sharing; secondary vs. primary purpose of JEA. OGC is reviewing research provided by JEA on this topic</i>); minor clarification of JEA’s role in consolidated government to indicate that JEA operates, owns, manages utilities systems for the City of Jacksonville <u>21.03(b)</u>: New subsection (b) makes the auditor’s authority to audit records very clear in Article 21. This reference to the auditor’s authority to audit records is also consistent with other independent agency special acts (i.e., JAA and JPA). <p>REQUIRED ACTION: Charter change only via Council action</p>
<p>21.02</p> <p>DEFINITIONS</p>	<p>Includes the following definitions:</p> <ul style="list-style-type: none"> “utilities system” “member” “managing director” “utility system” “sewer utility system” and “wastewater utility system” 	<p>Adds the following changes to existing definitions:</p> <ul style="list-style-type: none"> <u>21.02(b)</u>: “member”- clarified that member refers to a member of the governing body of JEA (i.e., board) <u>21.02(c)</u>: “managing director” – clarified that managing director means chief executive officer <u>21.02(d)</u>: “utility system”- clarified that utility system includes any other additional utility systems as may be designated as part of the utilities systems operated by JEA <p>Added <u>new</u> definition:</p> <ul style="list-style-type: none"> <u>21.02(f)</u>: “fiber optic and telecommunications system” shall mean the separate system owned, managed and operated by JEA providing fiber optic and telecommunications offerings. <u>21.02(g)</u>: “governing body of JEA” shall mean the appointed and confirmed members <p>Redline Page(s): 1-2</p>	<ul style="list-style-type: none"> Minor clean up only to the terms “member”, “managing director” and utility system were minor clean-up <u>21.02(f)</u>: “fiber optic and telecommunications system” would need to be a separate system apart from the utilities system <p>REQUIRED ACTION: Charter change only via Council action</p>

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<p>21.03</p> <p>COMPOSITION; COMPENSATION; OFFICERS; MEETINGS</p>	<ul style="list-style-type: none"> • <u>Appointments</u>: 7 members appointed by the mayor and confirmed by council • <u>Qualifications</u>: Must have been a resident and elector of the city for at least 6 consecutive months prior to such member's appointment • <u>Removal</u>: Members removed by mayor at any time with or without cause, but a removal must be approved by two-thirds of the council • <u>Compensation</u>: Permitted compensation to members and employees for reasonable expenses • <u>Meetings</u>: JEA required to generally meet once a month 	<ul style="list-style-type: none"> • <u>Appointments</u>: <ul style="list-style-type: none"> ○ 4 members nominated by council president and confirmed by council ○ 3 members appointed by the mayor and confirmed by council • <u>Qualifications</u>: Same residency and elector requirements. <p>Adds <u>new</u> qualification requirement - 1 member appointed by council through open application, the council president shall nominate an applicant who has one of the following qualifications:</p> <ul style="list-style-type: none"> ○ Was a former JEA employee <u>OR</u> ○ Was a person recommended by an employee, union or group of current or former JEA employees • <u>Removal</u>: Members appointed by the mayor may be removed by the mayor at any time with or without cause with 2/3s council vote; members nominated by the council may be removed by the council at any time with or without cause with 2/3s council vote <p>Adds <u>new</u> subsections:</p> <ul style="list-style-type: none"> • <u>Compensation; applicable laws</u>: removes reference to compensation; references general laws applicable to JEA (ethics, public records, sunshine law) • <u>Officers; meetings; quorum; governing documents</u>: requires no less than 8 regular meetings; requires JEA to adopt bylaws, board policy manual, etc. • <u>Office-holding; oath</u>: references dual office holding; requires JEA members to take an oath of office • <u>Transparency in meetings</u>: requires JEA to adopt procedural rules regarding meeting agendas and materials, minutes and providing meeting materials to auditors • <u>Post-member restrictions</u>: prohibits JEA member for 2 years following expiration of office from being employed or having a contractual relationship with JEA <p>Redline Page(s): 2-3</p>	<ul style="list-style-type: none"> • <u>Appointments</u>: 2020-100-E; Council has input in JEA appointments • <u>Qualifications</u>: 2020-100-E; Adds employee perspective on the board • <u>Removal</u>: Necessary change to removal section to match new mayor/council appointments • <u>Compensation</u>: Clean-up changes; makes clear that JEA is subject to certain state laws (ethics, public records, sunshine law) • <u>Meetings</u>: Dictates minimum number of regular meetings each year • <u>Oath</u>: Other public officers on city boards and commissions are required to take oaths under the City's ordinance code; adds consistency • <u>Transparency in meetings</u>: Addresses council concerns regarding transparency issues related to agendas, meeting materials and dissemination of information to auditors • <u>Post-member restrictions</u>: Addresses council concerns regarding board members leaving public office and subsequently being employed by JEA or having a contractual relationship with JEA; Need to discuss family members and corporate entities in the context of this restriction. <p>REQUIRED ACTION: Charter changes only via Council action EXCEPT FOR new appointment structure (Ordinance 2020-100-E), which requires a referendum</p>
<p>21.04</p> <p>POWERS</p>	<p>JEA has the following powers:</p> <ul style="list-style-type: none"> • <u>21.04(a)</u>: To construct, own, acquire, operate and promote the utilities system (electric, water and wastewater, natural gas) • <u>21.04(b)</u>: To acquire by gift, devise, condemnation for the use of the utilities system (electric, water and wastewater, 	<p>Adds the following:</p> <ul style="list-style-type: none"> • <u>21.04(a)</u>: Adds reference to fiber optic and telecommunications system • <u>21.04(b)</u>: Adds reference to fiber optic and telecommunications system in new subsection 21.04(b)(1) 	<ul style="list-style-type: none"> • <u>21.04(a)</u>: Necessary change if council approves • <u>21.04(b)</u>: Necessary change if council approves; customary to only record memorandum of leases in real estate transactions; obtaining appraisals on certain property in lieu of property appraiser value is not uncommon

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	<p>natural gas) any real or personal property Requires actual lease agreement to be recorded in the public records Requires JEA to not sale any property that is less than the appraised value determined by Duval property appraiser</p> <ul style="list-style-type: none"> • <u>21.04(n)</u>: To enter into joint projects under Chapter 361, FS • <u>21.04(p)</u>: To provide, sell, finance or lease services or products or by-products developed or used by JEA incident to the exercise of the powers conferred in Article 21; must provide the council auditor with not less than 30 days notice of new activity entered into by JEA under this subsection • <u>21.04(q)</u>: To collect donations from customers and ratepayers regarding various programs • <u>21.04(u)</u>: To enter into contracts with governmental bodies; JEA is prohibited from giving funds to non-profit whose primary purpose does not directly involve electric, water and wastewater and natural gas • <u>21.04(y)</u>: To expend up to one and one half (1.5%) of the prior year's gross revenues to promote efficient use of JEA's services through public education; permits use of funds for meals, hospitality and entertainment 	<p>Requires memorandum of lease to be recorded in the public records Requires JEA to get an MAI certified appraisal for property over \$50,000</p> <ul style="list-style-type: none"> • <u>21.04(n)</u>: Requires that notice be given council auditor and council secretary; cross-references new privatization section 21.11 regarding transfers • <u>21.04(p)</u>: Clarifies language by using terminology "new services or products" instead of "new activity"; clarifies notice to council auditor and contents of the notice • <u>21.04(q)</u>: Requires that a report of donation amounts are given to council annually on July 1st like other two giving programs • <u>21.04(u)</u>: Adds reference to fiber optic and telecommunications system • <u>21.04(y)</u>: Reduces spend to one half (.5%) of the prior year's gross revenues to promote efficient use of JEA's services through public education; limits funds to snacks or meals and NO • New 21.04 (ff) – Authorizes JEA to transfer certain assets less than "x" <p>Redline Page(s): 3-13</p>	<p>practice at City</p> <ul style="list-style-type: none"> • <u>21.04(n)</u>: Keeps auditor and council informed about joint projects • <u>21.04(p)</u>: Clarifies language by using terminology "new services or products" instead of "new activity"; clarifies notice to council auditor and contents of the notice • <u>21.04(q)</u>: Consistent with other two giving programs • <u>21.04(u)</u>: Necessary change if council approves • <u>21.04(y)</u>: Reduces spend to one half (.5%) of the prior year's gross revenues to promote efficient use of JEA's services through public education; eliminates better any possibility of inappropriate expenditures • New 21.04 (ff) – Consistent with prohibition language in Section 21.11 that will prohibit certain transfers, this provision will authorize the transfers that do not exceed the limit or threshold. OGC and auditors finalizing this provision. <p>REQUIRED ACTION: Charter changes only via Council action</p>
<p>21.05</p> <p>CONSTRUCTION</p>	<ul style="list-style-type: none"> • Construction: LIBERAL <p>"The powers of <u>JEA</u> shall be construed liberally in favor of <u>JEA</u>."</p>	<ul style="list-style-type: none"> • Construction: STRICT <p>"The express powers granted to JEA in this article <u>shall be strictly construed for purposes of determining JEA's authority pursuant to this article. ... However, any such implied power of JEA shall be strictly construed</u> in relation to the relevant and applicable expressed power or expressed purpose granted to JEA in this article."</p> <p>Redline Page(s): 13</p>	<ul style="list-style-type: none"> • Liberal construction enables a liberal or broad interpretation of JEA's powers and authority under Article 21 • Strict construction enables a strict interpretation of JEA's powers and authority under Article 21. Note that JEA would continue to have expressed and implied powers under Article 21. Need to review legal pros/cons of strict vs. liberal construction. <p>REQUIRED ACTION: Charter change only via Council action</p>
<p>21.07</p> <p>FISCAL AND BUDGETARY FUNCTIONS.</p>	<p>This section included subsection 21.07(j) which addressed the following in regards to JEA employees:</p> <ul style="list-style-type: none"> • Governing body's power to employ a managing director • Duties, qualifications, and compensation of the managing director • JEA appointment of 48 staff assistants to the managing director • Exclusion from civil service of certain employees (i.e., managing director, department heads, deputy directors, staff assistants, division chiefs and assistant division 	<ul style="list-style-type: none"> • Strike Section 21.07(j) and move to existing Section 21.08 entitled "Employees" • Adds new Section 21.07(n) – CM Diamond bill 2020-040-E requires prompt response from JEA regarding council auditor request for information 	<ul style="list-style-type: none"> • Seems more appropriate for the provisions of Section 21.07(j) to be in the JEA Charter section regarding employees (21.08) • Addresses council concern regarding JEA's response to council auditor questions/request for information

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	chiefs) <ul style="list-style-type: none"> Employee participation in city pension plan Option of JEA to establish an employee deferred compensation program separate from the city's employee deferred compensation employees 	Redline Page(s): 16-17	REQUIRED ACTION: Charter change only via Council action
21.08 EMPLOYEES	<ul style="list-style-type: none"> Provides that all JEA employees are subject to Articles 16 and 17 JEA has full and independent authority to hire, transfer, promote, discipline, terminate and evaluate employees JEA may establish employment practices related to hiring, promotion, etc. 	Adds existing language from Section 21.07(j) in the fiscal and budgetary section to the employees section and creates the following new subsections: <ul style="list-style-type: none"> <u>21.08(a)</u>: General employment matters (existing language) <u>21.08(b)</u>: Managing director – clarifies that managing director serves at the pleasure of JEA board <u>21.08(c)</u>: Other employees (existing language) <u>21.08(d)</u>: Pension and deferred compensation plan – clarifies that JEA only has one deferred employee compensation plan known as “JEA 457 Deferred Compensation Plan” <u>21.08(e)</u>: New - Limitation on CEO’s employment contract; CEO will be the only employment contract that the JEA board is permitted to enter into (see redlined copy for details regarding CEO contract limitations) <u>21.08(f)</u>: New – Prohibits JEA from creating an employee bonus or incentive program pursuant to Section 215.425(3), FS, for appointed employees without annual council approval (CM Salem bill will address this section) 	<ul style="list-style-type: none"> More appropriate for the provisions of Section 21.07(j) to be in the Section regarding employees in the JEA charter <u>21.08(d)</u>: Prevents a program like the Performance Unit Plan (PUP) from being characterized as a deferred compensation plan pursuant to Section 112.215, FS, and requires any new deferred compensation plans to obtain council approval. Need to discuss Council approval of additional deferred compensation plans established by JEA. Council approval may require referendum – OGC reviewing. <u>21.08(e)</u>: Prevents future CEO from having a contract like the former CEO’s contract; disallows any future SLT members to have contracts similar to the template that was used by the former CEO <u>21.08(f)</u>: Prevents a program like the Performance Unit Plan (PUP) from being characterized as a employee bonus plan or incentive plan pursuant to Section 215.425(3), FS and requires any plan for appointed JEA employees to be annually approved by council REQUIRED ACTION: Charter change only via Council action EXCEPT FOR new Section 21.08(f) will require a referendum
21.09 AWARDS OF CONTRACT	<ul style="list-style-type: none"> Provides that JEA is not subject to the requirements of Chapter 126 (City Procurement Code) Authorizes JEA to establish rules, regulations and procedures JEA contracts for construction, supplies, equipment, professional services, etc. Authorizes JEA to implement a minority business enterprise program to remedy discrimination or the present effects of discrimination suffered by minority business enterprises Provides that JEA can reject all bids in the best interest of JEA Prohibits JEA members, officers, employees from having financial interest in any contract or agreement with JEA for any matter 	Added new subsections: <ul style="list-style-type: none"> Subsection 21.09 (a) – Procurement <ul style="list-style-type: none"> (1) Applicability – subsection (a) will only apply to contracts that are awarded through JEA Awards Committee (2) Open and fair competition – provides that to the greatest extent reasonably practicable, JEA should engage in open and fair procurement methods; provides that JEA should adhere to all applicable state procurement laws (3) Procedures; board approval – requires JEA board to approve procurement procedures and any amendments thereto (4) Jacksonville Small Emerging Business; Minority Business Enterprises-(existing language); adds a provision that requires JEA to use the City’s JSEB program 	<ul style="list-style-type: none"> Subsection 21.09 (a) – Procurement <ul style="list-style-type: none"> (1) Applicability – clearly delineates the type of contracts this subsection (a) applies to (2) Open and fair competition – statement to encourage JEA to use procurement methods that allow for most open competition. Need to discuss different procurement methods (e.g. ITN vs. RFP vs. ITB) and JEA’s use of these methods. The Strategic Alternatives procurement was pursuant to an ITN which permits closed door discussions. (3) Procedures; board approval – requires JEA board to be engaged in approval of procurement procedures instead of all control over the procurement procedures residing with the CEO (4) Jacksonville Small Emerging Business; Minority Business Enterprises- currently JEA’s procurement code requires JEA to use the City’s JSEB program; by adding a requirement to the charter a board or CEO could not remove this requirement from JEA’s procurement code. Need to discuss pros/cons of limiting JEA to City’s JSEB program vs. JEA establishing its own similar program.

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		<ul style="list-style-type: none"> ○ (5) Certain solicitation specifications and standards prohibited; rejection of bids, proposals and replies- Adds provisions that JEA should not narrowly develop solicitation or standards that prevent qualified bidders/vendors/respondents from participating; adds that JEA can reject “proposals and replies” ○ (6) Annual bidders/respondents/vendors survey – Requires JEA to obtain a survey from bidders/respondents and vendors regarding JEA procurement process to get feedback ○ (7) Biennial review; annual report – Requires the JEA board to review its procurement code every two years and provide a report to the council, mayor every year regarding its procurement contract. <ul style="list-style-type: none"> ● Subsection 21.09(b) – Contracts generally <ul style="list-style-type: none"> ○ (1) Applicability – this subsection (b) applies to all contracts entered into by JEA pursuant to Article 21 ○ (2) Maximum indebtedness – requires a maximum indebtedness in all contracts entered into by JEA pursuant to Article 21 ○ (3) Public records; ethics training – requires public records provisions in all contracts and ethics training of senior management ○ (4) Access to and examination of records- requires contracts to include a provision pertaining to access and examination of records ○ (5) Confidentiality agreements – discourages use confidentiality agreements ○ (6) No financial interest- prohibits JEA, officer or employee from having a financial interest in contracts (existing language) ● Subsection 21.09(c) – No limitation – nothing in this section shall limit JEA’s power to construct, repair, or improve the utilities system (existing language) <p>Redline Page(s): 19-23</p>	<ul style="list-style-type: none"> ○ (5) Certain solicitation specifications and standards prohibited; rejection of bids, proposals and replies- Prevents disallowed procurement practices ○ (6) Annual bidders/respondents/vendors survey – Allow for vendor input on JEA’s procurement process ○ (7) Biennial review; annual report – Requires the JEA board to review its procurement code every two years; keeps mayor and council informed about JEA procurement <ul style="list-style-type: none"> ● Need to legal related services and subconsultant contracts and procurement of these services ● Subsection 21.09(b) – Contracts generally <ul style="list-style-type: none"> ○ (1) Applicability – clearly delineates that this section applies to <u>ALL</u> JEA contracts ○ (2) Maximum indebtedness – consistent with City contracts and City code ○ (3) Public records; ethics training – public trust in senior management ○ (4) Access to and examination of records- transparency ○ (5) Confidentiality agreements – transparency <p>REQUIRED ACTION: Charter changes only via Council action</p>
<p>21.11 (NEW)</p> <p>PROHIBITED TRANSACTIONS</p>	<p>NONE except for the prior reference in 21.04(p):</p> <p>“Nothing in this article shall authorize or be construed to authorize JEA to transfer any function or operation which comprises more than ten percent of the total of the utilities system by sale, lease or otherwise to any other utility, public or private without approval of the council; provided, however, that no</p>	<p>Language to be provided by OGC and auditors, but will entail:</p> <ul style="list-style-type: none"> ● Definitions of “assets”, “net capital assets” and “entity” ● Prohibitions on transactions related to the following: <ul style="list-style-type: none"> ○ Assets (capital assets) ○ Service territory area ○ Existing Duval customers 	<p>Language to be provided by OGC and auditors</p>

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	approval by the council shall become effective without subsequent referendum approval of the terms and conditions of the sale.”	<ul style="list-style-type: none"> ○ Reorganization, privatization or sale Redline Page(s): 23	REQUIRED ACTION: May require a referendum depending on Council’s preferred limitations regarding “exploration” in this section. OGC is reviewing this entire section for legalities..
21.12 (NEW) PUBLIC ENGAGEMENT	NONE.	<ul style="list-style-type: none"> ● Encourages JEA to seek to fully engage and inform its ratepayers, the general public, interested stakeholders and other interested parties in any strategic planning discussions regarding the future of JEA. See Ordinance 2020-42-A (Becton Bill) Redline Page(s): 23-24	<ul style="list-style-type: none"> ● Adds language from council approved resolution 2020-42-A (Becton Bill) REQUIRED ACTION: Charter changes only via Council action

COMMITTEE DISCUSSION TOPICS:

1. **Prohibited transactions** (i.e., privatization, reorganization, sale, certain transfers related to assets, customers, territory service area)

2. **Expansion**

- Fiber optics and telecommunications system (*OGC reviewing JEA research on this topic*)

- Section 21.07(e) – revenue sharing
- 21.04(v) – process in charter for adding new systems
- JEA’s business plan (primary vs. secondary business)

- New services, products and by-products under existing Section 21.04(p)
- Geographic limitations, if any
- Natural gas franchise

3. **Procurement**

4. **Employment matters** (new 21.08)

- Senior management contracts limitations
- Bonus or incentive plans
- New deferred compensation plans

5. **Advertisements/promotions** (21.04(y))