

## CITY OF JACKSONVILLE

ELLEN SCHMITT  
*CHAIR*

J.J. DIXON  
*VICE CHAIR*

ERICH FREIBERGER  
DARCY GALNOR  
LATONYA LIPSCOMB SMITH



WILLIAM MAULE  
JUDGE LINDA MCCALLUM  
SCOTT SIMPSON

### ETHICS COMMISSION SPECIAL MEETING MINUTES

City Hall, Mezzanine Level, Exam Rooms 1 and 2  
Monday, May 15, 2023

The meeting was called to order at 4:46 p.m. by Ms. Schmitt. Attendees in person: Chair Ellen Schmitt, J.J. Dixon, Darcy Galnor, LaTonya Lipscomb Smith, William Maule, Linda McCallum and Scott Simpson. Attendee via phone upon approval of Ethics Commission: Erich Freiberger.

Others in attendance: Kirby Oberdorfer, Director of the Office of Ethics, Compliance and Oversight (OECO); Paige Johnston, Ethics Counselor (OECO); Andrea Myers, Program and Training Manager (OECO); Carla Miller, Senior Ethics Advisor (OECO); Cherry Shaw Pollock, Office of General Counsel (OGC); and Sandy Homrighouse, Executive Assistant (OECO).

Public In Attendance: Daniel K. Bean, Matt Lascell, Rick Samples, News 4 Jax cameraperson, David Bauerlein, Council Member Matt Carlucci, Council Member Nick Howland, General Counsel Jason Teal, Deputy General Counsel Jon Phillips, Amber Lehman, and Stacy Scaldo.

#### Confirmation of Quorum:

A quorum of seven (7) Ethics Commission members present in-person for the meeting was established. The Ethics Commission members and staff introduced themselves for the record.

Dr. Freiberger requested to attend the meeting telephonically due to extraordinary circumstances preventing him from attending the meeting in person. Ms. Schmitt stated the Ethics Commission needs to determine whether Dr. Freiberger's inability to attend the meeting in person constitutes an extraordinary circumstance. Dr. Freiberger explained his reason for being unable to attend the meeting in person due to being out of town on a previously scheduled trip for his son's college graduation that was planned long before the Ethics Commission scheduled its special meeting last week. Judge McCallum made a motion that Dr. Freiberger be able to attend the meeting telephonically due to his extraordinary circumstances. Ms. Lipscomb Smith seconded the motion. With no further discussion, the vote was 7-0 in favor (vote by Ethics Commission members physically present in the room).

Office of Ethics, Compliance & Oversight  
117 W. Duval Street, Room 225  
Jacksonville, FL 32202  
Phone: (904) 255-5510    HOTLINE: 630-1015

Ms. Galnor declared a conflict due to her relationship with Daniel Davis and left the meeting at 4:50 p.m. Following the departure of Ms. Galnor, the quorum was confirmed with six (6) Ethics Commission members present in-person for the meeting.

Minutes Approval:

April 4, 2023, Ethics Commission Special Meeting minutes: Ms. Dixon made a motion to approve the minutes. Ms. Lipscomb Smith seconded the motion. There being no discussion, the motion to approve the minutes passed unanimously with a vote of 7-0.

New Business:

Letter sent to the Ethics Commission from General Counsel Jason Teal dated April 21, 2023, and Letter sent to the Ethics Commission from the City Council Special Investigatory Committee on JEA Matters (“SIC”) dated May 11, 2023 (see attachments #1 and #2): Ms. Schmitt stated that she would like to hear feedback and discussion from the Ethics Commission members regarding the letter sent to the Ethics Commission from General Counsel Jason Teal dated April 21, 2023. She opened the conversation by stating her concerns that the SIC request to the Ethics Commission blends two subsections of the Ethics Code, subsections 602.921(a) and 602.921(c) (see attachment #3). Ms. Schmitt was also concerned with Mr. Teal’s guidance in the letter to the Ethics Commission regarding the SIC request for the Commission to initiate an investigation. Ms. Schmitt pointed out that the language of subsection 602.921(c) does not appear to include the same language that Mr. Teal suggested the Ethics Commission could rely upon to initiate an investigation as requested in the March 22 letter from the SIC and she asked for clarity from Mr. Teal. Judge McCallum discussed that she also saw a conflict between subsections 602.921(a) and 602.921(c) in terms of due process and constitutional protections, but from Mr. Teal’s letter, it appears that OGC does not agree. A discussion occurred about the perceived conflict between subsections 602.921(a) and 602.921(c), including the due process and confidentiality protections provided to individuals in subsection (a) that are not permitted under subsection (c) per the opinion of OGC.

Ms. Schmitt’s next concern is that OGC’s interpretation of subsection 602.921(c) could be used as a workaround to undermine the protections afforded to individuals in the complaint process in subsection 602.921(a). Dr. Freiburger said due process is key for individuals subject to a complaint. Judge McCallum added that subsection 602.921(c) was never intended to allow a complaint or investigation against an individual.

Mr. Teal stated: (1) OGC is not taking a position on the SIC request to the Ethics Commission; (2) in his opinion, the Ethics Commission took incorrect information into consideration at the April 4, 2023 meeting; and (3) every Code section has a meaning – under subsection 602.921(a), the Ethics Commission has power to punish an individual while under subsection 602.921(c) the Ethics Commission is to advise the Mayor and City Council. A discussion occurred regarding the three charges in the SIC May 11, 2023 letter re-referring this matter to the Ethics Commission.

Mr. Phillips stated that the language in subsection 602.921(c) is very broad. He stated that the Ethics Commission erroneously based its decision on information that the statute of limitations applied and it had no jurisdiction to initiate the investigation requested by the SIC.

Ms. Schmitt commented on the fact that letters between OGC and SIC involving the Ethics Commission were not shared with the Ethics Commission. She asked Mr. Teal about how OGC's representation of both the SIC and the Ethics Commission functions practically when there appears to be a conflict of interest. A discussion occurred whether OGC should have shared correspondence it received and sent regarding the Ethics Commission. Ms. Oberdorfer stated that clarification was needed as to ECO communications with OGC and presented a chronology of events she prepared as a handout for the meeting (see attachment #4).

Ms. Miller provided background information on the creation of the Ethics Code and Ethics Commission. Ms. Miller provided recommendations to the Ethics Commission on actions it could take moving forward: (1) change the Ethics Commission Complaint Procedures to clarify that no complaint or request to investigate an individual can be made under subsection 602.921(c); (2) suggest that City Council create due process procedures for investigating its own members; and (3) eliminate subsection 602.921(c) from the Ethics Code.

Judge McCallum made a motion to not take any further action on Charges 1 and 2 that the SIC re-referred to the Ethics Commission in its letter dated May 11, 2023. Mr. Maule seconded the motion. A discussion occurred regarding Judge McCallum's motion. Ms. Oberdorfer read Dr. Freiberger's written statement (see attachment #5).

Ms. Schmitt then requested public comment on Judge McCallum's motion.

Mr. Phillips stated his opinion that at the April 4, 2023 Ethics Commission meeting, the Ethics Commission received inaccurate information regarding the request from the SIC to initiate an investigation, including that the Ethics Commission had no jurisdiction over the matter and the statute of limitations applied.

Mr. Teal stated that OGC and the Ethics Office need to communicate better.

Council Member Carlucci stated that he agreed with Judge McCallum's motion.

Ms. Schmitt called for a vote on Judge McCallum's motion. The motion passed unanimously with a vote of 7-0.

Upon Ms. Schmitt's request, the Ethics Commission discussed Charge 3 referred by the SIC to the Ethics Commission in its May 11, 2023 letter regarding the Ethics Commission proposing legislation to City Council. Judge McCallum made a motion to send the following recommendations to the Legislative Committee for consideration: (1) recommend legislation to delete subsection 602.921(c); (2) propose a clear time limit on filing complaints during an election cycle; and (3) amend the Ethics Commission Complaint Procedures to clarify that the

Ethics Commission can only initiate an investigation against individuals under subsection 602.921(a). A discussion occurred regarding the recommendations by Judge McCallum. Ms. Lipscomb Smith seconded the motion. Ms. Schmitt then requested public comment on Judge McCallum's motion. No public comment was given.

Ms. Schmitt then called for a vote on Judge McCallum's motion and Ms. Pollock restated the motion as requested. The motion passed unanimously with a vote of 7-0.

Judge McCallum stated that she would like to respond to subsection 602.921(c) in greater detail. She stated that if City Council wanted to investigate its own members, it should create a City Council process to do so. Judge McCallum made a motion to have the Ethics Commission assist and support the City Council in the creation of rules to ensure confidentiality and due process should City Council choose to adopt a procedure regarding investigations by Council of its own members. Dr. Freiburger seconded the motion. A discussion occurred regarding specifics. Ms. Schmitt then requested public comment. No public comment was provided. Ms. Schmitt called for a vote on Judge McCallum's motion. The motion passed unanimously with a vote of 7-0.

General Public Comment:

Ms. Schmitt requested general public comment. No public comment was provided.

Announcements:

No announcements were made.

The meeting was adjourned at 6:58 p.m.

Sandy Homrighouse  
Sandy Homrighouse, Executive Assistant, OECO

6-13-23 \_\_\_\_\_  
Date of Approval

This is a summary of the meeting and not a verbatim transcription. A recording of these proceedings is available at <http://www.coj.net/departments/ethics-office/notices,-agendas-minutes> .



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April 21, 2023

Ms. Ellen Schmitt  
Chair, Jacksonville Ethics Commission  
c/o Kirby Oberdorfer  
117 West Duval Street, Suite 225  
Jacksonville, FL 32202

RE: Ethics Commission Response to City Council SIC Referral

Dear Chair Schmitt:

On March 22, 2023, the Ethics Commission was requested by Council Member Howland, on behalf of the SIC committee, for a review of Council Member Cumber's conflicts disclosure submitted during the original SIC process and the information that recently came to light that called into question the accuracy of her disclosure. The Commission's review was requested pursuant to its powers under section 602.921(c), Ordinance Code. Inherent within, and separate from the SIC's request, is the Commission's independent authority to investigate suspected violations of Chapter 602, Ordinance Code pursuant to section 602.921(a), Ordinance Code and respond accordingly.

On April 4, 2023, the Commission declined to conduct the review for two reasons, as expressed in its April 12, 2023 letter. According to the letter, the Commission decided to take no action on the requested review because: (1) the SIC request was not submitted as a sworn complaint under section 602.921(a) and (2) the events related to the SIC's request occurred outside the two-year statute of limitations found in section 602.939, Ordinance Code.

In listening to the April 4<sup>th</sup> discussion of this item, it is clear that the Commission was provided inaccurate and unauthorized legal guidance from Kirby Oberdorfer and Carla Miller, which served as the erroneous underpinnings for the Commission's actions on this item. **The purpose of this response is not to opine on the merits of the SIC's request or to guide the Commission toward any particular outcome regarding the SIC's request. The purpose is to provide accurate information concerning the proper rule of law and to fully explain the powers and duties assigned to the Commission by the City Council in section 602.921.**

Section 602.921 provides various ways/purposes for why an issue can come to the Ethics Commission. Under that section, the Ethics Commission is empowered to exercise five enumerated powers and duties:

- a) to receive, and to investigate and issue findings with regard to any sworn written complaint alleging a violation of this Chapter or by a complaint initiated by a minimum vote of six members of the Commission alleging a violation of this Chapter.
- b) to provide assistance and input into the management and coordination of the training and education of local officers and employees in state and local ethics, including the City's Ethics Education Program as set forth in Section 602.1001, as well as all public records and sunshine law training throughout the government.
- c) upon employee or citizen complaint, or upon its own initiative, may seek information and gather facts for the purpose of reviewing 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. Based upon such review the Commission may make such recommendations to the Mayor and the Council as it deems appropriate.
- d) to levy those civil fines or penalties authorized in this Chapter 602 for violations of the City's ethics code.
- e) to Act as the hiring committee, subject to Council confirmation, for the executive director of the Ethics Oversight and Compliance office.

Each of those 5 enumerated powers stands separately and alone. The March 22, 2023 SIC letter from Council Member Howland clearly states the matter was being referred for investigation under 602.921(c), not (a). The letter states:

As Vice Chair of the Committee and as authorized by the Committee, we respectfully request that the Commission, pursuant to its authority under Jacksonville Ordinance Section 602.921(c), seek information, gather facts, and otherwise investigate the relevant facts concerning the two charges referenced above, including, but not limited to, whether there was a violation of Section 602.1205 (or any other section) of Chapter 602 of the Ordinance Code.

This intent was confirmed in the Office of General Counsel's March 29, 2023 response to the question posed by Ms. Oberdorfer to OGC and which was presented to the Commission by Ms. Oberdorfer as the "time-sensitive legal opinion," which states:

However, because the letter was submitted as a request for investigation under Section 602.921(c) of the Ordinance Code, the letter would not qualify as a sworn complaint within the meaning of the Code. For example, sub-section (c) allows for the Commission to "seek information and gather facts for the purpose of reviewing 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," but there is no provision under (c) for the Commission to take punitive actions such as imposing a fine. Rather, the Commission "may make such recommendations to the Mayor and the Council as it deems appropriate."

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While this statement was made in response to Ms. Oberdorfer's question concerning the necessary level of confidentiality in the Commission's proceedings (and was not offered to directly answer the question of under what explicit authority was the SIC asking for the Commission's involvement), it nevertheless clearly denotes that the SIC was asking the Commission to perform its duty under subsection (c) and not subsection (a). Unfortunately, the Commission was erroneously directed to proceed under enumerated power (a). However, those two provisions are fundamentally different powers for which fundamentally different procedures are required.

The Commission's authority under subsection (a) is to investigate a sworn written complaint or a Commission initiated complaint alleging a violation by anyone of Chapter 602 to determine whether any such Code violation was committed. If a violation is deemed committed under this subsection, the Commission may administer a punishment. Because determinations are made pursuant to this enumerated power (a) that may result in a "conviction" that may be punished by civil penalties, public censure or potential employee disciplinary action, allowances for due process and other procedural safeguards for the "accused" during the course of those proceedings are paramount.

Conversely, the Commission's authority under subparagraph (c) is limited to fact and information gathering regarding conduct of City officers and employees to determine whether it appears there is a violation or a potential violation of "an acceptable standard of ethics conduct" under section 1.202(d) of the Charter – not the whole of section 1.202, but specifically limited to 1.202(d). Section 1.202(d) is expressly limited to a recommendation regarding **"changes in legislation to City Council in the areas of ethics laws and administration, conflicts of interests, hotline policies, ethics education, ethics in procurement, campaign ethics, and lobbying."** The outcome of a subsection (c) review is limited to potentially making recommendations to the Mayor or the Council as may be appropriate for legislative fixes or to have the discretion to self-initiate a complaint under enumerated power (a). There is no authority under enumerated power (c) to punish the City officer or employee who is the subject of the enumerated power (c) information and fact gathering process. There is simply no authority under enumerated power (c) to punish violations of Chapter 602. Pursuant to enumerated power (c) the Ethics Commission, after concluding its information and fact gathering, may make recommendations to the Mayor or the City Council concerning only the subjects in section 1.202(d) of the Charter. And contrary to Ms. Miller's opinion at the Commission meeting, there is also no provision in the law that prohibits the subject of an enumerated power (c) investigation being an individual. The actions of one individual may lead to the conclusion that laws or administrative policies need to be strengthened regarding any of the listed subject matter areas. Concluding otherwise would lead to the absurd result of being prohibited from investigating a loophole in the City's procurement ethics or ethics education programs, for example, because only one individual has benefitted from it. That cuts completely against the policy behind section 1.202(d) of the Charter.

The Ethics Commission's Complaint Procedures were quoted extensively and repeatedly by Ms. Oberdorfer and Ms. Miller as being relevant to the manner in which the Ethics Commission was required to consider the SIC referral. However, because the matter was referred to the Ethics Commission pursuant to enumerated power (c), there is no requirement for a sworn complaint, the statute of limitations is not applicable, the 30-days before an election provision is inapplicable,

and the goal of confirming a violation of the Code is not required. It may be tempting to fixate on the fact that the word “complaint” is used in both enumerated power (a) and in enumerated power (c) and erroneously conclude that both instances should be governed by the Commission’s officially adopted Complaint Procedures. However, even though the same word was used to convey the manner in which a particular subject is brought to the Commission’s attention, it must be concluded that enumerated powers (a) and (c) were enacted as two completely different powers. As stated earlier, because of the ability to administer punishment as a result of a violation of Chapter 602, complaints being pursued under subsection (a) must be afforded special procedural protections that simply are not required (nor legally authorized) when the Commission’s jurisdiction has been invoked under subsection (c).

It is extensively clear from the document itself that the Complaint Procedures are only meant to establish the procedures to be followed as solely related to enumerated power (a) complaints, not to enumerated power (c) fact gathering matters. For example, Rule 1 (a) of the Complaint Procedures (page 5) expressly states,

- (a) **Enabling Law.** These Complaint Procedures (“Procedures”), pursuant to the Code, *shall govern the receipt and disposition of all Complaints to the Commission concerning violations of the Code.* These Procedures shall become effective as of the date of adoption by the Commission. As of the date these Procedures are adopted, *they shall govern disposition of all Complaints regardless of date of filing.*

Emphasis added. As clearly stated, the Complaint Procedures only pertain to a “Complaint” of violations of the “Code.” Pursuant to Rule 1 (c), “Code” means Chapter 602 of the City of Jacksonville Code of Ordinances, and “Complaint” (page 6) means an alleged violation of the Code which has been brought to the attention of the Office of Ethics, Compliance and Oversight or the Commission. Additionally, the definition of Complaint specifically references section 602.921(a) only – not (c), and the definition of Confidentiality in the Complaint Procedures references only 602.921(a) – not (c). According to these definitions, the Commission’s Complaint Procedures only govern complaints made pursuant to enumerated power (a). Chapter 602 violations are not a part of a subsection (c) review. If, during a subsection (c) review a violation of Chapter 602 is suspected, the Commission may self-initiate a subsection (a) complaint using the procedures outlined in that subsection, which would trigger the due process protections for the individual suspected of a violation.

Regarding the provision relating to Complaints made within 30 days of an election (Rule 5 (f), page 11), that provision is found in Rule 5, which is entitled “Procedures Upon Receipt of a Complaint of Violation of the Code.” As demonstrated above, requests submitted under enumerated power (c) are not Complaints of violations of the Code, and this limitation is inapplicable to requests for information and fact gathering. Also, pursuant to Rule 6 (a) of the Complaint Procedures (page 12), in determining whether the Commission has jurisdiction over a Complaint, the Ethics Director is supposed to determine whether the Complaint “is one concerning a violation of the Code that occurred within the statute of limitations . . .” Again, the Commission does not have jurisdiction to determination violations of the Code under enumerated power (c).



Finally, the Ethics Commission's own on-line Complaint Form, attached hereto as Exhibit A, requires the complainant to list the alleged violation of Chapter 602 (with a link to Chapter 602 for reference). Also, and most telling, on the Complaint Form's Instructions and Procedures on page 3, the complainant is informed that "Per Ordinance Code section 602.921 (a), the Jacksonville Ethics Commission 'is authorized to receive, . . . investigate and issue findings' relating to" . . . "a violation of the Jacksonville Ethics Code (Chapter 602 of the Jacksonville Ordinance Code)." It is this Complaint Form that constitutes a Sworn Complaint under the Complaint Procedures. Much discussion was held by the Commission regarding Council Member Howland's familiarity with the Commission's complaint procedures and its Complaint Form in particular. However, as the Commission should have been informed by Ms. Miller and Ms. Oberdorfer, the Complaint Form is not applicable to this type of referral. It expressly states on its face (in the Instructions and Procedures section no less) that the Form is only meant to be used for submitting a complaint under section 602.921 (a). The SIC clearly intended the referral to be pursuant to section 602.921 (c), thereby making consideration of the Complaint Form useless.

The Complaint Procedures are only applicable to enumerated power (a) complaints. They have no relevance or applicability to matters referred to the Ethics Commission pursuant to enumerated power (c).

One of the reasons for the Commission's declination to consider the SIC's referral was because the request was made outside the 2-year statute of limitations period. Again, the Commission was erroneously advised by Ms. Miller that the statute of limitations applies in this matter. The Commission's statute of limitations originates in section 602.939, Ordinance Code, which states,

**No action may be taken on a complaint filed more than two (2) years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation.** Where the allegations are the subject of a personnel, criminal or administrative proceeding or where the complainant is required to exhaust his or her administrative remedies prior to filing a complaint, the statute of limitations shall be tolled until the termination of said proceeding or the exhaustion of administrative remedies. *Emphasis added.*

First and foremost, the statute of limitations only applies to a complaint alleging a violation. Statutes of limitations set limits upon the filing of lawsuits or the institution of criminal charges, or the like. As stated above, enumerated power (c) investigations can result in no fines, penalties or other punishments. Moreover, statutes of limitations are merely procedural in nature in that—when applicable—they restrict only the remedy available to a particular plaintiff; they do not operate as a limitation on the underlying substantive or moral right of action. As a matter of black letter Florida law, statutes of limitations are **not** jurisdictional. (See the Florida Supreme Court case of *State v. Smith*, 241 So.3d 53 (Fla. 2018)). Therefore, the statute of limitations in the Code is completely irrelevant to the request made by the SIC. Furthermore, the statute of limitations—when applicable—is an affirmative defense, which is a factual issue under most circumstances. Even if the statute of limitations applied in the current context – which it does not – the Commission would have had to make a factual determination whether anyone prevented discovery by the City of the possible violation. The Commission failed to make the necessary factual inquiry

and, instead, improperly concluded the statute of limitations applied and incorrectly treated it as a jurisdictional bar to consideration of the SIC's request.

Finally, Ms. Miller spent a significant amount of time describing her recollection of the legislative history surrounding the enactment of this section of the Code. It is a basic principle of statutory interpretation that legislative history is only consulted if the plain language of the ordinance is ambiguous. For the above reasons, the legislation is not ambiguous and there is no need to consult the legislative history. However, in light of the fact that Ms. Miller spent a significant amount of time detailing her recollection of the debate and manner in which this provision was adopted in 2011, it is necessary to consult the legislative history to again demonstrate that Ms. Miller was improperly directing the Commission to consider the SIC request as an enumerated power (a) complaint versus under the enumerated power (c) analysis as would have been proper.

Ms. Miller instructed the Commission that the Commission's ability to accept complaints was first authorized in 2007. Then, in 2011, that ability to accept complaints was examined during the City Council's discussion of pending legislation (2011-167-E). It was here, Ms. Miller explained, that the Council expressed concerns regarding the amount of due process that was provided during the Commission's investigation of complaints. She indicated that it was of particular concern that the Commission would be politicized, that individual's reputations would be dragged through the mud, that the Commission would be asked to engage in "fishing expeditions" or "witch hunts". As a solution to this parade of horrors, Ms. Miller testified, the Council amended the legislation to require sworn written complaints. Ms. Miller then stated that the Council removed a provision that served to allow any kind of investigation against an individual from section 602.921 and the Council clarified that investigations against an individual be conducted in the shade so as to not publicly drag someone through the mud.

Attached as Exhibit B is a comparison of the portion of 2011-167 which addresses section 602.921 as filed versus as amended. In reviewing the comparison, it is clear that nearly all of Ms. Miller's comments are reflected in the amendments made to section 602.921(a) exclusively. By way of explanation, the ~~strike-throughs~~ in Exhibit B represents language that was removed from the original bill by the amendment and language underlined is language that did not exist in the original bill, but was added as a result of the amendment. Exhibit B, first of all, shows the Council's intent that the Ethics Office should not be involved in any investigations conducted under enumerated power (a). Second, one can see the Council's addition of "sworn written" complaints was only made to enumerated power (a). There is no requirement for a sworn written complaint for referrals under enumerated power (c). Interestingly, there is no evidence of any removal of language authorizing an investigation of an individual as mentioned by Ms. Miller. Also of interest is the fact that the Council replaced the word "investigate" with the word "review" in two places in enumerated power (c) to clarify the Commission's jurisdiction under this subsection is not an investigation, but is merely a review. Furthermore, and most compelling, the Council amended enumerated power (c) to specifically add language to limit the Commission's jurisdiction to "as delineated in Section 1.202(d) of the Charter," i.e. "changes in legislation to City Council in the areas of ethics laws and administration, conflicts of interests, hotline policies, ethics education, ethics in procurement, campaign ethics, and lobbying." So, at best, Ms. Miller's recitation of her recollection concerning the changes to this section is irrelevant. As worst, it

April 21, 2023

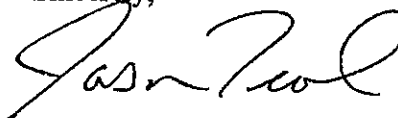
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served to confuse the Commission concerning the appropriate requirements and limitations for an enumerated power (c) review. While consideration of the legislative history concerning this language is not appropriate, when one does so, it strengthens the conclusion that the Council intended that only subsection (a) investigations require sworn complaints, and that subsection (c) reviews are limited to a situational review (not investigation) of acceptable standards of ethics conduct as delineated in Section 1.202(d) of the Charter and not finding and punishing violations of Chapter 602.

Several Ethics Commissioners expressed concerns regarding the “politization” of the Commission through the SIC request. However, it is not the Commission’s role to evaluate the intention of any complaint made. There is no provision under section 602.921, Ordinance Code to allow the Commission to reject the consideration of any complaint based on the motives of the complainant. It is likely that many complaints to the Commission are made because of some level of animosity, desire for personal benefit or other perceived ill motive. The Commission’s role is to investigate each complaint or request on its face without consideration of the motive behind how it was made.

In conclusion, the purpose of this memorandum is not to offer any opinion on the merits of the SIC’s request or to guide the Commission toward a particular outcome. It is only intended to advise on the Commission’s role in response to a request made pursuant to section 602.921(c), Ordinance Code as distinguished from the investigation of a complaint made pursuant to section 602.921(a) and to correct the inappropriate legal advice offered at the Commission’s April 4, 2023 meeting.

Sincerely,



JASON R. TEAL  
General Counsel

Encs.

cc: J.J. Dixon, Vice Chair  
Dr. Erich Freiburger  
Darcy Galnor  
Latonya Lipscomb Smith  
William Maule  
Hon. Linda McCallum  
Scott Simpson  
Kirby Oberdorfer  
Cherry Pollock, Asst. General Counsel

**CITY OF JACKSONVILLE ETHICS COMMISSION**

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**COMPLAINT FORM**

**PLEASE NOTE: IF YOU WISH TO REMAIN ANONYMOUS, YOU SHOULD CALL THE ETHICS HOTLINE AT (904) 630-1015.**

**1. PERSON BRINGING COMPLAINT (Complainant):**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Information (e-mail; phone #s): \_\_\_\_\_

**2. PERSON AGAINST WHOM COMPLAINT IS MADE (Respondent):**

State the name, address and contact information of the person whom you believe may have violated the City of Jacksonville Code of Ethics

**\*\*Per Complaint Procedures Rule 5(b), only one (1) person/Respondent may be named in each Complaint**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

City position or title: \_\_\_\_\_

Contact Information (e-mail; phone #s): \_\_\_\_\_

Have you also filed this complaint with the State Attorney's Office, law enforcement or any other agency?  Yes  No. If yes, please list all agencies (on separate sheet of paper attached).

**3. ALLEGED VIOLATION(S):**

The Ethics Commission has jurisdiction to address only violations of Chapter 602, the Jacksonville Ethics Code. The Ethics Commission cannot address general complaints of unethical behavior. Your Complaint must allege a specific violation of the Jacksonville Ethics Code that you believe was violated by a specific person. You can review Chapter 602, the Jacksonville Ethics Code, on the Ethics Office webpage using the following link: [http://www.coj.net/departments/ethics-office/ethics-code-\(current\).aspx](http://www.coj.net/departments/ethics-office/ethics-code-(current).aspx).

**EXHIBIT "A"**

## CITY OF JACKSONVILLE ETHICS COMMISSION

In a separate attachment, please describe in detail each alleged offense, including the following information:

- √ The provision(s) of the Jacksonville Ethics Code (Section 602) that you believe the person named above may have violated;
- √ The facts and action(s) that you believe support the violation(s) you allege, including the dates when the action(s) occurred;
- √ The names and contact information (e-mail address and telephone numbers) of persons you believe may be witnesses to the facts;
- √ A copy of the documents you mention in your statement or would assist in the investigation of this complaint; and
- √ Other evidence that supports your allegations.

### 4. OATH

State of Florida

County of \_\_\_\_\_

I swear or affirm that the above information is true and correct to the best of my knowledge.

\_\_\_\_\_  
Original signature of person bringing complaint

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature of Officer Authorized to Administer Oaths or Notary Public

\_\_\_\_\_  
(Print, type or stamp commissioned name of Notary Public)

Personally know \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

# CITY OF JACKSONVILLE ETHICS COMMISSION

## COMPLAINT FORM: INSTRUCTIONS AND PROCEDURES

### **BACKGROUND**

The Jacksonville Ethics Commission was established by the Jacksonville City Council in Jacksonville Ordinance Code section 602.911. Per Ordinance Code section 602.921(a), the Jacksonville Ethics Commission "is authorized to receive, . . . investigate and issue findings" relating to any sworn written complaint alleging a violation of the Jacksonville Ethics Code (Chapter 602 of the Jacksonville Ordinance Code). The Ethics Commission has jurisdiction to address complaints related to the following circumstances:

- (1) Misuse or abuse of city position;
- (2) Conflicts of interest and secondary employment;
- (3) Prohibited gifts; and
- (4) Registration of lobbyists

Upon submission of a Complaint Form, the Director of the Office of Ethics, Compliance & Oversight shall review the Complaint Form to determine compliance with the following requirements:

- (1) only one person has been named as a Respondent in the Complaint Form;
- (2) the Complaint Form has been properly signed under oath by the person submitting the complaint and notarized; and
- (3) the Complaint Form sufficiently alleges facts which, if true, would constitute a violation of the Jacksonville Ethics Code (Chapter 602).

### **INSTRUCTIONS:**

PLEASE read the Ethics Commission Complaint Procedures prior to completing and submitting this Complaint Form to ensure compliance with the procedures. The Complaint Procedures can be found on the Ethics Office webpage at the following link:

<http://www.coj.net/departments/ethics-office/complaint-form>

**THIS COMPLAINT FORM MUST BE SIGNED UNDER OATH AND NOTARIZED (SEE PG 2).** For additional information or instructions on filing this complaint form, please contact the Ethics Office at (904) 255-5510 or via e-mail at [ethics@coj.net](mailto:ethics@coj.net)

<p>The Ethics Commission's records and proceedings in a case are confidential until the Ethics Commission rules on probable cause. However, a copy of the complaint will be provided to the person against whom the complaint is brought within ten (10) days of receipt of the complaint.</p>
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### **SUBMISSION OF COMPLAINT FORM:**

Please deliver your completed Complaint Form either in person or by U.S. Mail to the Ethics Office at the address at the top of the Complaint Form. Mark the envelope "confidential." You may also e-mail the Complaint Form to the Ethics Officer at [ethics@coj.net](mailto:ethics@coj.net) or bring it to a regularly scheduled Ethics Commission meeting (see Ethics Commission webpage at the following link for meeting dates: [http://www.coj.net/departments/ethics-commission/notices.-agendas-minutes-\(1\)](http://www.coj.net/departments/ethics-commission/notices.-agendas-minutes-(1)))

Ordinance 2011-167 As Filed versus As Adopted

(a) The Commission, ~~in coordination with the Ethics Office,~~ is authorized to receive, and to investigate and issue findings with regard to any sworn written complaint alleging a violation of this Chapter or by a complaint initiated by a minimum vote of six members of the Commission alleging a violation of this Chapter. All complaints and records shall be confidential as allowed by Section 112.324, Florida Statutes, or any other applicable state law. In support of this power, the Commission, ~~in coordination with the Ethics Office,~~ is authorized to establish an ethics "hotline" to receive tips and ~~complaints information,~~ each of which shall be treated as a complaint with ~~its related~~ confidentiality as authorized by Florida law. The General Counsel, with the assistance of all appropriate and available offices of the City, shall assist the Ethics Commission and ~~Ethics Office~~ in the investigation of complaints. The Ethics Commission may refer matters brought to its attention to the State Attorneys' Office or the Florida Commission on Ethics if it determines jurisdiction is vested in, and action is more appropriate if taken by said agencies.

\* \* \*

(c) The Commission may, upon employee or citizen complaint, or upon its own initiative, seek information and gather facts for the purpose of ~~investigating~~reviewing 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. Based upon such ~~investigation and findings~~review the Commission may make such recommendations to the Mayor and the Council as it deems appropriate;

\* \* \*

**EXHIBIT "B"**

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**OFFICE OF THE CITY COUNCIL**

**NICK HOWLAND**  
COUNCIL MEMBER AT-LARGE, GROUP 3  
OFFICE: (904) 255-5217  
FAX: (904) 255-5230  
E-MAIL: NHOWLAND@COJ.NET

117 WEST DUVAL STREET, SUITE 425  
4TH FLOOR, CITY HALL  
JACKSONVILLE, FLORIDA 32202

May 11, 2023

Ms. Ellen Schmitt  
Chair, Jacksonville Ethics Commission  
117 W. Duval Street, Suite 225  
Jacksonville, FL 32202

Ref A: Letter Reopening the Special Investigatory Committee on JEA Matters, 2 February 2023  
Ref B: OGC Report to the Special Investigatory Committee on JEA Matters, 7 March 2023

Dear Ms. Schmitt:

Today, the City Council's Special Investigatory Committee on JEA Matters (the "Committee") voted to rerefer the first two of its three charges to the City Ethics Commission ("EC") for further investigation and recommendation. In the same motion, it also voted to refer the third of its three charges to the EC. This action was an option presented to the Committee by the Office of General Counsel ("OGC") in its report included in this letter as Reference B, in its meeting on March 9, and again in its meeting on May 11.

Per Reference A, the three charges are:

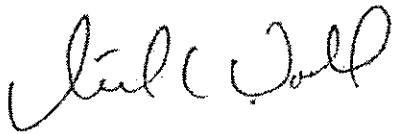
1. Investigate whether the Committee was deceived or misled by Council Member Cumber or JEA Public Power Partners responding to subpoenas or making disclosures;
2. Ascertain whether Council Member Cumber attempted to use her official position to influence the ITN process for personal gain; and,
3. Propose legislation to ensure such deceptions, if any, do not impede the work of any further investigatory committee.

As Vice Chair of the Committee and as authorized by the Committee, we respectfully request that the Commission, pursuant to its authority under Jacksonville Ordinance Section 602.921 (c), seek information, gather facts, and otherwise investigate the relevant facts concerning the three charges referenced above, including, but not limited to, whether there was a violation of Section 602.1205 (or any other section) of Chapter 602 of the Ordinance Code.

Documents obtained by the Committee during its investigation are posted on our website at: [www.coj.net/city-council/standing-committees/jea-matters-special-investigatory-committee](http://www.coj.net/city-council/standing-committees/jea-matters-special-investigatory-committee).

Thank you in advance for your cooperation.

Best regards,

A handwritten signature in black ink, appearing to read "Nick Howland". The signature is written in a cursive, flowing style.

Nick Howland

Cc: Members of the Special Investigatory Committee on JEA Matters  
Mr. Jon Phillips, Office of General Counsel  
Ms. Cherry Shaw, Office of General Counsel  
Ms. Kirby Oberdorfer, Director of Ethics, Compliance and Oversight



**Terrance Freeman**  
City Council President  
At-Large, Group 1  
E-Mail: TFreeman@coj.net

117 West Duval Street  
City Hall, Suite 425  
Jacksonville, Florida 32202  
Office (904) 255-5215

## **OFFICE OF THE CITY COUNCIL**

February 2, 2023

2:15 P.M.

### **MEMORANDUM**

**TO:** Honorable City Council Members

**FROM:** The Honorable Council President Terrance Freeman

**SUBJECT:** Council Members Named for Special Investigatory Committee on JEA Matters

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In response to multiple Council members' requests, the Council will reopen the Special Investigatory Committee on JEA Matters. The potential sale of the JEA through the invitation to Negotiate (ITN) process and the alleged attempt to profit off that sale by a certain JEA executive has embroiled our community in scandal for the last five years. In an effort to ascertain the truth about the ITN process and to restore the public's confidence in our city government, then Council-President Scott Wilson announced the Special Investigatory Committee on JEA Matters (SIC). On February 4, 2019, then-President Wilson created the SIC and charged the members with restoring the public trust in JEA.

The SIC began work immediately and interviewed dozens of witnesses under oath and reviewed millions of documents. Notably, for the first time in the history of consolidated Jacksonville, the SIC issued a series of subpoenas that were affirmed by the Council Rules Committee. Those subpoenas were issued to private individuals and to all the ITN bidders. One of those bidders, JEA Public Power Partners responded to the SIC subpoena and stated that it considered hiring the husband of Jacksonville City Council Member Leanna Cumber but did not due to an actual or perceived conflict of interest. Correspondingly, the SIC requested all sitting Council Members declare the contacts they had with JEA officials and any actual or perceived conflicts they might have related to the aborted sale of JEA. City Council Members made their disclosures in September 2020.

The SIC completed its work in December 2020 and issued a 138-page report providing the Council's fullest and best understanding as to what occurred during the ITN. The SIC and related committees proposed legislative fixes such that nothing akin to the scandal surrounding the ITN could ever happen in our community again. Following the release of the SIC's official report, two

JEA executives were indicted by a federal grand jury on fraud and conspiracy charges related to the failed sale of JEA.

On March 2, 2021, Council Member Leanna Cumber made her disclosures regarding the ITN stating: "I have no conflicts regarding JEA and ITN."

Documents have come to light, including emails and text messages, that contradict responses given by JEA Public Power Partners and the disclosure provided by Council Member Cumber.

In order to ensure to the people of Jacksonville that their City government was not deceived by any bidders or elected officials during the investigation into the attempted sale of JEA, I hereby renew and recharge the Special Investigatory Committee on JEA Matters. The Committee is charged solely with the following:

1. Investigate whether the Committee was deceived or misled by Council Member Cumber of JEA Public Power Partners responding to subpoenas or making disclosures.
2. Ascertain whether Council Member Cumber attempted to use her official position to influence the ITN process for personal gain; and
3. Propose legislation to ensure that such deceptions, if any, do not impede the work of any future investigatory committee.

**Members:**

Council Member Rory Diamond, Chair  
Council Member Nick Howland, Vice Chair  
Council Member Sam Newby  
Council Member Michael Boylan

**Deadline:**

**The Special Investigatory Committee (SIC) will hold its first meeting on:  
Wednesday, February 8, 2023, at 8:30 a.m., City Council Chambers.**

Thank you to each of the Council Members and the staff who made the commitment to serve on this important committee.

cc: Council Members/Staff  
Margaret M. Sidman, Director/Council Secretary  
Merriane G. Lahneur, Chief, Legislative Services Division  
Kim Taylor, Council Auditor  
Jeff Clements, Chief, Research Division  
CITYC@COJ.NET  
Media Box  
File Copy

**Office of General Counsel**  
**117 W. Duval Street, Suite 480**  
**Jacksonville, FL 32202**  
**(904) 255-5100**

**MEMORANDUM**

**To:** Members of the JEA Special Investigatory Committee  
**From:** Office of General Counsel *CG*  
**Re:** OGC Report to the Committee [Updated to include additional responses received to the Committee's inquiries]  
**Date:** 7 March 2023

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This office was asked to prepare a report describing, in writing, the materials submitted for the JEA Special Investigatory Committee's (the "Committee" or "SIC") consideration because of the re-opening of the Committee's investigation. The initial meeting of the Committee took place on 8 February 2023. At that meeting the Committee requested that new and additional information relevant to the Committee's charge be gathered and submitted to the Committee directly or via an email address established for this purpose. The Committee tasked the Office of General Counsel ("OGC") with conducting an initial review of the information submitted to confirm its relevance to the Committee's charge and to not burden the Committee with wholly irrelevant information. As a result of the Committee's call for new information, several items were submitted as follows:

- 1) The City submitted 171 pages of documents—mostly emails—not counting the attachments to the emails the attachments, many of which were multiple duplicates, amounted to over 4000 pages. This trove of documents has been maintained intact for review by whomever wishes to do so. None of the submitted material was

relevant to the Committee's charge and virtually all of it was old information that had already been made available to the previous iteration of the Committee. For example, much of the material was comprised of emails from attorney Steve Busey and Chief General Counsel Chris Garrett to Council Secretary Cheryl Brown for publication on the SIC website, along with reply emails from Cheryl Brown acknowledging receipt of the material with an indication it would be posted on the website. The 171 pages was examined in hard copy form by hand. The attachments were searched electronically using the key word "cumber." There were 140 hits, including many instances of the word "encumbered." Nothing new was discovered.

- 2) A search of the original SIC final report dated December 2020 did not reveal information that was newly relevant to the current Committee's inquiry.
- 3) A letter from JEA describing their search efforts and stating that no new information was found.
- 4) An email from the attorney for the parent company of JEA Public Power Partners ("JEA-PPP") reporting that the company would not be providing further information than that which was contained in its previous disclosure. The email also noted that the company had previously disclosed in June 2020 that a JEA-PPP consortium member had performed due diligence about potentially retaining Husein Cumber but did not retain him due to an actual or perceived conflict of interest.
- 5) Several submittals from CM Cumber's lawyer indicating no new or additional information or disclosures would be provided.
- 6) A packet of material submitted by attorney Charles Jimerson on behalf of his client, Erin Isaac/Isaac Communications, Inc. This packet was submitted to the Committee in its entirety without redaction or alteration.

- 7) An email response from Michael Weinstein dated 1 March 2023 to Vice Chairman Howland's request for authentication of certain emails submitted by attorney Charles Jimerson, in which Mr. Weinstein stated that he has no way to compare them to emails received years ago, but has no reason to believe that they are not authentic redacted versions.**
- 8) An email response from attorney Stephen Busey dated 3 March 2023 to Vice Chairman Howland's question as to whether Mr. Busey or the original SIC was aware of Husein Cumber's involvement with JEA Public Power Partners, in which Mr. Busey stated that neither he, Smith Hulsey & Busey, or, to his knowledge, the SIC, were aware of any participation by Mr. Cumber in the JEA ITN bidding process.**
- 9) An email response from the FBI dated 6 March 23 to Vice Chairman Howland's request for confirmation that CM Cumber was asked to conceal her husband's involvement with JEA Public Power Partners in her March 2021 disclosure, in which the FBI declined to confirm or deny the existence or status of any investigation.**

**At this point in the investigation the Committee has several options with respect to official Committee action, each of which would require the concurrence and approval of a majority of the Committee's membership (3 members). These three options are not presented in any particular order and do not reflect any preference on the part of OGC.**

- A) The first option would be to close the investigation and take no further action.**
- B) The second option would be to continue the Committee's investigation. This could include issuing subpoenas in accordance with previous practice and precedent. This would require the appointment and retention of outside counsel to assist the Committee with its investigation.**

**C) The third option would be to refer the matter to an independent agency such as the City Ethics Commission, the State Ethics Commission, the Office of the Inspector General, or the State Attorney's Office. Should this option be chosen, the Committee's final report (and any proposals for development of new legislation) could be deferred pending the outcome of any investigation by the appropriate agency(ies).**



TITLE XVI - JUDICIAL CODE  
Chapter 602 - JACKSONVILLE ETHICS CODE  
PART 9. JACKSONVILLE ETHICS COMMISSION

**PART 9. JACKSONVILLE ETHICS COMMISSION**

**SUBPART A. CREATION AND ORGANIZATION**

**Sec. 602.911. Jacksonville Ethics Commission; Creation.**

There is hereby created, pursuant to Section 1.202 of the Charter of the City of Jacksonville, the Jacksonville Ethics Commission, the purpose of which is to provide a local forum for consideration and investigation of ethical problems and issues.

**Sec. 602.912. Membership, terms, appointment.**

- (a) *Number; terms.* The Commission shall be composed of nine members each of whom shall be registered voters of Duval County for six months prior to the introduction of their nomination for confirmation, and who shall be appointed to serve for fixed January 1 to December 31 three-year terms. The terms of the members shall be so staggered that the terms of no more than three members shall expire in any one year. No person shall serve more than two consecutive full terms. If, because of a delay in appointment, a member serves less than two years during the term, then in that event, the term shall not have been considered a full term for purposes of reappointment. A member made ineligible by reason of service of two consecutive full terms may be appointed for another term following a waiting period of three years.
- (b) *Qualifications.* Except as provided for in subsection (d) below, each member shall have one or more of the following qualifications: an attorney; a certified public accountant with forensic audit experience; a former elected official; a former judge; a higher education faculty member or former faculty member with experience in ethics; a former law enforcement official with experience in investigating public corruption; a corporate official with a background in human resources or ethics; a former board member of a City of Jacksonville independent authority; a former government executive with ethics experience.
- (c) *Limitations.*
- (1) No member shall be an elected or appointed official, or an employee of the City of Jacksonville or any of its independent agencies, or of any governmental agency subject to the authority of the Commission. No member shall be an active judge, an assistant state attorney or assistant public defender, or an officer of a political party.
  - (2) Ethics Commission members shall not use their position in any manner that decreases public trust or gives the appearance of impropriety. The Ethics Commission shall establish internal operating rules or bylaws to effectuate this provision.
  - (3) Any Commission member who files to be a candidate for public office shall immediately resign from the Commission and their position shall be deemed vacant upon filing.
  - (4) No individual while a member of the Commission shall allow his or her name and title as a commission member to be used by a campaign in support of or against any candidate for public office. Nothing herein shall preclude a member from signing a petition in support of or against any referendum, ballot question or candidate. This rule does not prohibit any campaign contributions by a member, or a member supporting any candidate in his or her own name.

- (d) *Selection.* Each of the following persons or entities shall make an appointment of one of six Commission members whose qualifications are set forth above, to wit: the Mayor, the President of the Council, the Sheriff, the Chief Judge for the Fourth Judicial Circuit, the State Attorney for the Fourth Judicial Circuit, and the Public Defender for the Fourth Judicial Circuit. Three Commission members whose only qualifications are that they have been registered voters in Duval County for six months prior to the introduction of their nomination for confirmation, shall be appointed by the Ethics Commission. All appointments should be made within 30 days of a vacancy occurring. All appointees shall be confirmed by Council but shall serve until Council confirmation or denial.

## *SUBPART B. POWERS AND DUTIES*

### **Sec. 602.921. Duties and powers.**

The Jacksonville Ethics Commission (Commission) shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The Commission shall be empowered to review, interpret, render advisory opinions and enforce Chapter 602, *Ordinance Code*; and, in accordance with Section 1.202 of the Charter, to exercise the following powers and duties:

- (a) The Commission is authorized to receive, and to investigate and issue findings with regard to any sworn written complaint alleging a violation of this Chapter or by a complaint initiated by a minimum vote of six members of the Commission alleging a violation of this Chapter. All complaints and records shall be confidential as allowed by Section 112.324, Florida Statutes, or any other applicable state law. In support of this power, the Commission is authorized to establish an ethics "hotline" to receive tips and information, each of which shall be treated with confidentiality as authorized by Florida law. The General Counsel, with the assistance of all appropriate and available offices of the City, shall assist the Ethics Commission in the investigation of complaints. The Ethics Commission may refer matters brought to its attention to the State Attorneys' Office or the Florida Commission on Ethics if it determines jurisdiction is vested in, and action is more appropriate if taken by said agencies.
- (b) Provide assistance and input into the management and coordination of the training and education of local officers and employees in state and local ethics, including the City's Ethics Education Program as set forth in Section 602.1001, as well as all public records and sunshine law training throughout the government.
- (c) The Commission may, upon employee or citizen complaint, or upon its own initiative, seek information and gather facts for the purpose of reviewing 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. Based upon such review the Commission may make such recommendations to the Mayor and the Council as it deems appropriate;
- (d) Have jurisdiction to levy those civil fines or penalties authorized in this Chapter 602 for violations of the City's ethics code;
- (e) Act as the hiring committee, subject to Council confirmation, for the executive director of the Ethics Oversight and Compliance office.

## *SUBPART C. PROCEDURES AND DUE PROCESS*

### **Sec. 602.931. Process for the imposition of sanctions and penalties.**

In accordance with Section 602.921(d), and the Charter, the Commission shall perform the following duties in association with the enforcement of Chapter 602 and the imposition of sanctions and penalties including the imposition of public censures and civil penalties.

- (a) The Commission shall establish and post rules and procedures to provide for the investigation of citizen, hotline, employee and self-initiated complaints of violations of Chapter 602.
- (b) The Commission shall establish and post rules and procedures to provide for due process in the charging and prosecution of violations of Chapter 602.
- (c) Meetings of the Commission exempted from the provisions of section 286.011 Florida Statutes, shall be recorded and such recording shall become public upon the conclusion of the investigatory matter, by either a finding of no probable cause to proceed or a final determination by the Commission.

### **Sec. 602.932. Documents and testimony.**

The Commission is authorized to exercise and utilize all procedures and processes available to City agencies, which are authorized by ordinance, the Charter, or Chapter 119, Florida Statutes, to secure the production of documents and testimonial evidence relevant to the investigation and prosecution of complaints and charges authorized by this Chapter; except that, the issuance of a subpoena to compel the production of documents or testimony shall be authorized by a circuit or county judge of the Fourth Judicial Circuit upon a facial demonstration of the relevancy of the documentation or testimony to the enforcement of a provision of Chapter 602, Ordinance Code, the City of Jacksonville's Ethics Code.

### **Sec. 602.933. Cooperation of other City agencies.**

The services of other departments, boards and agencies of the City shall be made available to the Commission at its request, subject to their ability and capacity to provide them. Other City agencies shall cooperate with the Commission in the exercise of the Commission's responsibilities.

### **Sec. 602.934. Dismissal of complaints.**

Notwithstanding any other provisions of this Part, the Commission may, at its discretion: (a) dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, or (b) dismiss any complaint at any stage of disposition and issue a letter of instruction to the respondent when it appears that the alleged violation was inadvertent, unintentional or insubstantial. In the event the Commission dismisses a complaint as provided in this subsection, the Commission shall issue a public report stating with particularity its reasons for the dismissal. The Commission, at the request of the state attorney or any other law enforcement agency, shall stay an ongoing proceeding. The Commission shall not interfere with any ongoing criminal investigation of the state attorney or the U.S. Attorney for the Middle District of Florida.

### **Sec. 602.935. Frivolous or groundless complaints.**

In any case in which the Commission determines that the complaining party filed a frivolous or groundless complaint as defined in Florida Statutes, § 57.105, or a complaint filed with malicious intent or with knowledge that the complaint contains one or more false allegations, or filed with reckless disregard for whether the complaint contains material false allegations, the Commission may, upon proper notice and hearing, order the complaining party to pay any costs and attorneys' fees incurred by the Commission and/or the alleged violator. Such order may be enforced by the Circuit Court, as are other board orders of the City.

**Sec. 602.936. Effect on other laws.**

The provisions of Chapter 602 shall be deemed supplemental to any other applicable county ordinance or state or federal law and are not intended to replace or repeal any provision of state or federal law, or of this Code.

**Sec. 602.937. Prospective jurisdiction.**

The Commission shall be empowered to consider alleged violations within its jurisdiction committed on or after the effective date of this Subpart.

**Sec. 602.938. Personnel or other regulatory proceedings.**

Where an officer or employee subject to the jurisdiction of this Chapter is alleged to have violated an ordinance within the jurisdiction of the Commission, and, based upon the same set of facts, is subject to an ongoing disciplinary, regulatory administrative, or criminal action initiated by the officer or employee's agency or employer, or by any other governmental entity with jurisdiction over the officer or employee, the Commission shall stay consideration of a complaint under this Part applicable to said officer or employee until the conclusion of the administrative, civil, or criminal proceeding. Nothing herein shall abridge employees' constitutional right to collective bargaining.

**Sec. 602.939. Statute of limitations.**

No action may be taken on a complaint filed more than two (2) years after the violation is alleged to have occurred unless a person, by fraud or other device, prevents discovery of the violation. Where the allegations are the subject of a personnel, criminal or administrative proceeding or where the complainant is required to exhaust his or her administrative remedies prior to filing a complaint, the statute of limitations shall be tolled until the termination of said proceeding or the exhaustion of administrative remedies.

**Sec. 602.940. Advisory opinions.**

Any person within the jurisdiction of the Commission, when in doubt about the applicability or interpretation of any provision within the Commission's jurisdiction to himself or herself in a particular context, may submit in writing the facts of the situation to the Commission with a request for an advisory opinion to establish the standard of public duty, if any. A person requesting an advisory opinion may withdraw the request at any time up to ten days before the Commission convenes a public meeting to consider the request. An advisory opinion shall be rendered by the Commission on a timely basis, and each such opinion shall be numbered, dated and published.

**Sec. 602.941. Review.**

Any final order of the Commission imposing civil penalties, censure, or costs or attorneys' fees may be reviewed by the Circuit Court, in such manner as is authorized for review of quasi judicial board decisions.

## ***PART 12. GENERAL PROVISIONS***

### **Sec. 602.1205. Cooperation in official investigations.**

- (a) All officers, employees, and independent contractors of the City or an independent agency, as a condition of employment, retention, and receipt of City funds, shall agree to cooperate truthfully, honestly, and completely with official government investigations including but not limited to, investigations by the Ethics Commission, Ethics Officer, State Attorney's Office, or United States Attorneys' Office, concerning his or her official duties or matters related to City government or business. Employment discipline of employees for violating this subsection — but not for recourse pursuant to sections 602.1101 and 602.1208 — must comply with collective bargaining requirements, if applicable. For independent contractors, this subsection applies to contracts executed or amended after the effective date of Ordinance 2020-104.
- (b) It shall be a violation of this Chapter for any officer, employee, or independent contractor of the City or any independent agency to violate any provision of this Section.



**3-08-2023 Request from Office of General Counsel ("OGC")**

I was asked by an attorney in the OGC to attend the SIC meeting the next morning 3-09-2023 to answer questions about the Ethics Commission because OGC anticipated that the SIC would make a referral to the Ethics Commission.

Later that day, I confirmed that the request to attend the meeting was from Mr. Teal and out of the 4 independent agencies that OGC previously advised the SIC it could refer this matter, I was the only person from those agencies that was asked to attend the SIC meeting on 3-09-2023. I then advised the attorney in OGC that I would not attend the SIC meeting to protect the independence and impartiality of the Ethics Commission as required by City of Jacksonville Charter Section 1.202.

I also advised OGC and SIC that Ethics Commission Complaint Procedures Rule 5(f) prevented the filing of a complaint against a candidate in an election within 30 days of the election and any complaint filed with the Ethics Commission within this timeframe would be required to be returned. In response to a ?, I confirmed that Rule 5(f) would not prohibit the filing of a complaint on March 22, the date after the first local election because the election had ended and the next election was schedule on May 16, more than 30 days after the end of the first election. I never made any recommendation of whether and when the filing of a complaint should be made because Complaints Procedure Rule 5(c) prevents me as Ethics Director from soliciting or discouraging the filing of a complaint to protect the independence and impartiality of the Ethics Commission as required by City of Jacksonville Charter Section 1.202.

**3-21-2023 Request from OGC**

I received a request from Deputy General Counsel Jon Phillips to contact him when I was available to talk. I called Mr. Phillips per his request. During our telephone conversation, Mr. Phillips asked for my interpretation of whether the SIC could file a request for an investigation with the Ethics Commission under Jacksonville Code section 602.921(c) instead of filing a sworn complaint under section 602.901(a). After reading these Code sections, I advised Mr. Phillips that it did not appears to me that section 602.921(c) permitted this. Most importantly, I advised Mr. Phillips that I did not have any legal authority under Ordinance Code Chapter 602 Part 9 (Ethics Commission chapter) to interpret the duties of the Ethics Commission and section 602.921 because the Code explicitly provided this power to the Ethics Commission. I recommended that SIC or OGC request the Ethics Commission to opine on this question and its duties at the next Ethics Commission meeting.

Very shortly after my telephone call with Mr. Phillips, I received an unexpected telephone call from the Executive Assistant to General Counsel Jason Teal asking to schedule a meeting the following day with me, Mr. Teal and Mr. Phillips. I advised that I could potentially meet, but I did not think the meeting was necessary because there was nothing else I could say or add that I had not already told Mr. Phillips.

I then received another telephone call from Mr. Phillips pertaining to the purpose of the requested meeting with Mr. Teal and Mr. Phillips and I agreed to mee with them the next afternoon.

**3-22-2023 Email to Mr. Teal and Mr. Phillips**

Upon further reflection about these conversations, I determined that to protect the independence and impartiality of the Ethics Commission required by the Charter, it was best that I not meet with General Counsel Jason Teal and Mr. Phillips in a private meeting about a filing to the Ethics Commission. I did not

want to be in a position where it appeared that I may be either soliciting or discouraging a complaint as prohibited by Complaint Procedures Rule 5(c). I emailed Mr. Teal and Mr. Phillips to advise that I was not able to meet with them to protect the impartiality of the Ethics Commission.

At 4:36 p.m., the Ethics Commission received a letter from SIC requesting the Ethics Commission “. . . investigate the relevant facts concerning the two charges [of the SIC], including, but not limited to, whether there was a violation of Section 602.1205 (or any other section) of Chapter 602 of the Ordinance Code.”

**3-27-2023      Email from WJCT News, Request for OGC Legal Opinion and Request for Legislative History of Ethics Commission Duties in Section 602.921(c)**

The Ethics Commission received an email from WJCT News reporter Dan Scanlan advising he had received the 3-22-2023 letter from SIC to the Ethics Commission and asking whether the Ethics Commission would meet to discuss the SIC letter and whether the meeting would be a public meeting.

That same date, per the request of Ethics Commission Chair Ellen Schmitt, I emailed General Counsel Jason Teal requesting a legal opinion by OGC on whether the Sunshine Law and Public Records exemptions in Florida Statutes section 112.324(2)(a) applied to the letter from the SIC.

Also on this date, at my request, Paige Johnston of the Ethics Office requested the City Council legislative history, documents and recordings related to Ordinance 2011-167, which was the legislative bill passed by City Council that established the current duties of the Ethics Commission under section 602.921. I requested the legislative history, documents and recordings for this bill because I recalled from my time of service on the Ethics Commission that City Council extensively discussed whether and how the Ethics Commission could investigate individuals as part of its duties during 2011 when City Council considered this bill.

Upon receipt of the legislative history, documents and recordings of Ordinance 2011-167, I asked Carla Miller to prepare a summary of the legislative history of section 602.921(a) and 602.921(c) because the request from the SIC in its 3-22-2023 asked the Ethics Commission for an action that was not part of the plain language in section 602.921(c).

**3-29-2023      OGC Legal Opinion to Ethics Commission**

The Ethics Commission received the legal opinion from OGC Deputy General Counsel Jon Phillips advising that the SIC letter dated 3-22-2023 was not currently subject to the exemption for public records and Sunshine Law in Florida Statutes section 112.324(2)(a). Additionally, in his legal opinion, Mr. Phillips provided 5 options the Ethics Commission could take regarding the 3-22-2023 letter of the SIC, including Option # 1:

“The Commission could hold a public discussion and vote to take no further action.”



## Homrighthouse, Sandra

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**From:** Oberdorfer, Kirby  
**Sent:** Thursday, May 25, 2023 10:00 AM  
**To:** Homrighthouse, Sandra  
**Subject:** FW:

Here is Dr. Freiberger's statement for the 5-15-2023 Ethics Commission meeting

Sincerely,

Kirby Oberdorfer

Kirby G. Oberdorfer  
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City of Jacksonville Ethics, Compliance & Oversight Office  
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-----Original Message-----

**From:** Oberdorfer, Kirby  
**Sent:** Monday, May 15, 2023 1:37 PM  
**To:** Oberdorfer, Kirby <KOberdorfer@coj.net>  
**Subject:**

Kirby, This is a revised version, taking your suggestions for rewording into account. Unless you have a suggestion for further changes, I may ask you to read this out during today's meeting.

Thanks!  
Erich

I propose a response to the SIC that includes the following language:

"While the Ethics commission is concerned about any member of city government who might engage in ethically questionable conduct, we are equally troubled that SIC announced a public referral to the Ethics commission within 30 days of an election.

Based on the OGC's expansive interpretation of 602.921 subsection c, the commission finds itself to required to respond that, lacking the subpoena power of the SIC, the commission is not in a position to investigate individuals, but we will consider recommendations to require disclosure and prevent such matters from arising in future, as per the SIC's request. Furthermore, in accord with the OGC's interpretation of our wide ranging charge under 609.921 subsection c, the commission will also consider recommendations to prevent the ethically inappropriate referral to investigate an individual within 30 days of an election, and we will recommend legislation to explicitly forbid that kind of political exploitation of the ethics commission's investigative role."

Sent From iPhone

