

CITY OF JACKSONVILLE

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JUDGE LINDA MCCALLUM
SCOTT SIMPSON

ETHICS COMMISSION SPECIAL MEETING MINUTES

City Hall, Mezzanine Level, Exam Rooms 1 and 2
Tuesday, June 13, 2023

The meeting was called to order at 4:34 p.m. by Ms. Schmitt. Attendees: Chair Ellen Schmitt, J.J. Dixon, Darcy Galnor, LaTonya Lipscomb Smith, Erich Freiberger, and Scott Simpson (arrived at 4:37). Judge Linda McCallum and William Maule were excused.

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

Public In Attendance: Daniel K. Bean, Council Member Matt Carlucci, Council Member Nick Howland, Council Member Randy DeFoor, General Counsel Jason Teal, Chief, General Litigation Department, Chris Garrett, Amber Lehman, Richard Reichard, Danielle Arnwine, Ethan Katz, and Richie Mullaney.

Confirmation of Quorum:

A quorum of five (5) Ethics Commission members present in-person for the meeting was established (Mr. Simpson had not yet arrived). The Ethics Commission members and staff introduced themselves for the record.

Minutes Approval:

May 15, 2023, Ethics Commission Special Meeting minutes: Dr. Freiberger made a motion to approve the minutes. Ms. Dixon seconded the motion. There being no discussion, the motion to approve the minutes passed unanimously with a vote of 5-0 (Mr. Simpson arrived after the vote).

New Business:

Final Report to the City Council Special Investigatory Committee ("SIC") on JEA Matters from the Office of General Counsel (the "Report") (see attachment #1): Ms. Schmitt stated that there were Council Members present who had to leave for an upcoming Council meeting and asked if

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any of the Council Members would like to speak to the Commission prior to the beginning of the Council meeting.

Council Member Carlucci indicated he would like to speak. He thanked the Commission for its service to the City. He noted the vital role of the Commission and the importance of its independence. He stated that he does not support legislation to require the Commission to investigate referrals from the City Council outside the authority of the Commission. As someone who sponsored the original legislation outlining the Commission's duties, he opined that section 602.921(c) of the Jacksonville Ordinance Code was intended for circumstances to be investigated and not people.

Ms. Schmitt then recognized Council Member DeFoor, who echoed Council Member Carlucci's comments about the Commission's service to the City. She stated she does not agree with the recent legal interpretation of section 602.921(c). As a Council Member and a citizen, she would like to see the Commission work with the Council to come up with solutions to work together to fix the process and create procedures. She also would like to see the Commission have subpoena power.

Ms. Schmitt asked for comments from Commission members and then highlighted the importance of the Commission's collaboration and cooperation with the City Council and the Office of General Counsel, which was discussed at the last meeting. She noted her disappointment that while she was shown as receiving a copy of the Report, she did not receive a copy from the Office of General Counsel directly.

Ms. Schmitt shared that Judge McCallum was not able to be in attendance today because she was traveling, but she prepared a statement that Ms. Miller read regarding her concerns as to Report recommendations pertaining to the Commission (see attachment #2).

Dr. Freiburger stated that he agreed with Judge McCallum's concerns, particularly the recommendation in (d) of the Report pertaining to the statute of limitations.

Ms. Lipscomb Smith stated that in reading the Report, she felt like the recommendations were retaliation against the Commission for not taking action on the SIC referrals. She agreed with Ms. Schmitt that after the last Commission meeting in May, she felt good about moving forward with collaboratively, but the Report seems to box the Commission into an enforcement role for the Council. She felt strongly that the Commission should respond in some way today prior to the SIC meeting tomorrow.

Dr. Freiburger observed that the Commission can self-investigate, but it chose not to investigate the SIC referral and that determination is within the Commission's authority.

Ms. Schmitt stated that she was very concerned about the recommendation in the Report to alter the statute of limitations in the Report because of due process considerations. She worried that some people might try to leverage the reporting timeframe in section 602.939, Jacksonville

Ordinance Code, to get around the protections set forth in section 602.921(a), Jacksonville Ordinance Code.

She further stated that she prepared some language she wants to share with the Commission for consideration. The draft language was distributed to the Commission (see attachment #3).

Dr. Freiburger stated that he disagreed with the interpretation of section 602.921(c) by the Office of General Counsel. He explained that the Commission deals with complaints under section 602.921(a) to ensure that the Commission can operate fairly.

Ms. Dixon expressed her concerns that the Commission is having to address a situation that is not really a Commission issue.

Mr. Simpson suggested that the Commission use this situation as an opportunity to clarify language in the Ethics Commission's duties set for in the Jacksonville Ordinance Code.

Ms. Oberdorfer shared her concern as a former Ethics Commission member and as the Ethics Director regarding recommendation (b) in the Report to amend section 602.921(c) to require the Ethics Commission to act upon requests by Council, which could potentially impact the Commission's independence. She explained the history of the Commission's fight for independence, including the Council's support for the independence of the Commission and creation of the Ethics Office.

Ms. Miller also shared the history of the fight for the Commission's independence. Ms. Miller opined that the Report does not reflect an understanding of the history of the Commission and its independence, which was supported by Council.

Ms. Schmitt agreed that she was also concerned about recommendation (b) in the Report and how acceptance of this recommendation would impact the Commission's independence and affect citizens. She thought it important to share a letter or communicate to SIC the Commission's thoughts and concerns.

Dr. Freiburger said he also agreed that the Commission should send a letter urging that SIC not propose any legislation without the input of the Commission.

Ms. Miller agreed that any potential changes to the Ethics Code by the Council should be in collaboration with the Commission. She stated that the Ethics Office would ensure that a letter from the Commission to SIC could be prepared for the meeting tomorrow. She also suggested that the Commission could come up with language today to amend the Commission's Complaint Procedures to make clear that the Commission does not take cases under section 602.921(c) that are of an individual nature and the Commission could act on the language at its next meeting.

Dr. Freiburger offered a motion on Ms. Miller's suggestion and Ms. Lipscomb Smith seconded the motion.

Ms. Oberdorfer pointed out that Judge McCallum made a similar motion at the May meeting, which is reflected in (page 3 of the May meeting minutes) and that the Commission may want to model Dr. Freiberger's motion on that language.

Following discussion on the prior language offered by Judge McCallum in May, Dr. Freiberger agreed to the language from Judge McCallum's May meeting, as read by Ms. Oberdorfer, that the Commission amend the Ethics Commission Complaint Procedures to clarify that the Ethics Commission can only initiate an investigation against individuals under section 602.921(a).

A discussion ensued on the procedural requirements for adopting an amendment to the Complaint Procedures, particularly Rule 1(d) (page 8 of the Complaint Procedures), which requires that the change be proposed in writing prior to adoption at a Commission meeting at least 10 days later.

Ms. Schmitt suggested that the language in the motion be put in writing tonight at the meeting so that proper procedure is followed. Ms. Schmitt wrote out the language in Dr. Freiberger's motion on the recommendation of Ms. Pollock.

Ms. Pollock suggested that this language, if approved, should be inserted into Rule 1(a) as a new paragraph (see page 5 of Complaint Procedures).

The motion was restated. Ms. Schmitt then requested public comment on the motion. There was none.

There being no discussion, the motion passed unanimously with a vote of 6-0.

A discussion occurred regarding Ms. Schmitt's draft letter to the SIC and minor grammatical edits were noted.

Dr. Freiberger made a motion that the Commission adopt the letter with the revisions noted and Ms. Lipscomb Smith seconded the motion.

Ms. Schmitt then requested public comment on Dr. Freiberger's motion. There was none.

The motion passed unanimously with a vote of 6-0.

A discussion occurred regarding the next steps for scheduling meetings of the Legislative Committee and Ethics Commission to take up the matters discussed.

This concluded the section on New Business.

General Public Comment:

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

Announcements:

Ms. Miller requested that the Commission members review their Commission notebooks and discard duplicative documents such as minutes, agendas and meeting handouts as the Ethics Office maintains this information. She advised that if there were documents with the Commission member's notes, these are public records that must be saved. She explained that the Ethics Office will scan those notes as Ethics Office records when the Commission members roll off the Commission.

Ms. Schmitt affirmed that she agreed with Council Member DeFoor's statements earlier and that Ms. Schmitt did not believe that the Commission received bad guidance from the Ethics Office.

Ms. Oberdorfer recognized the contributions of the Ethics Office staff.

Ms. Oberdorfer invited the Commission members to the annual training for public officials on June 15. She noted that their attendance is not required.

Ms. Oberdorfer also reminded the Commission members that they were invited to the investiture of the new Council Members on Thursday, June 22 and Mayor Deegan's inauguration on Saturday, July ,1 that is open to the public.

The Chair adjourned the meeting at 5:49 p.m.

Paige Johnston

7-27-23

Paige Johnston, Ethics Attorney, OECO

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> .



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

MEMORANDUM

To: The JEA Special Investigatory Committee
From: Office of General Counsel *CK*
Re: Final Report to the SIC on Ethics Commission Referral
Date: 5 June 2023

This office was asked to prepare a final report to the SIC on the status of its follow-up request to the Ethics Commission, as determined at the SIC's meeting on 11 May 2023. The Office of General Counsel's initial report to the SIC was made on 11 March 2023. Based on discussion in an open meeting of the perceived benefit of having the matter reviewed by a body that was perceived to be unbiased, and on guidance from OGC in its memo of 11 March, the SIC voted to refer two of its three charges to the local Ethics Commission. The Ethics Commission then declined to take up the matter.

Following the 11 May 2023 meeting, CM Howland sent a letter re-referring the first and second of its charges to the Ethics Commission and referring its third charge to the Ethics Commission for the first time. (It should perhaps be noted that the Ethics Commission had at the time, and still has, independent jurisdiction to take up the question raised in the third charge even if there had been no request or referral from the SIC.) The letter requested that the Ethics Commission, pursuant to its authority under Section 602.921(c), Ordinance Code, seek information, gather facts, and otherwise investigate the relevant facts concerning the three charges.

The Ethics Commission discussed the SIC's request at its meeting on 15 May 2023. Before and during the meeting, the Ethics Commission was informed by the General Counsel that its previous refusal to take up the matter was apparently, at least in part, the result of an erroneous belief that the Commission had no jurisdiction because the statute of limitations had expired. The General Counsel again explained that the statute of limitations did not apply to Section 602.921(c), and thus the Commission manifestly had jurisdiction. The General Counsel also confirmed that, although the Commission had jurisdiction, the Commission retained the discretion to decline to take up the matter. The Ethics Commission then voted again to take no action with respect to the first two charges referred to them. However, the Ethics Commission determined that it would refer the third charge to its Legislative Committee for consideration of possible legislative changes to address the issues raised by the SIC or issues raised by others.

At the time of this writing, no meeting of the Legislative Committee has been noticed and it is unknown when it may take up the matter or whether the Ethics Commission will ultimately make any findings or propose any legislative changes to future Councils and Committees. However, as noted above, the Ethics Commission has independent authority to consider this matter and make recommendations on legislative changes to the City Council without the need for further involvement by the SIC.

The SIC has several options at this point:

First, the SIC could discuss potential legislative changes and vote to issue a report or otherwise make whatever recommendations the SIC chooses to make. Potential items for discussion could include:

- a) Whether to amend Section 602.1205 of the Ethics Code to include "City Council and City Council Committees" on the list of delineated entities in Section 602.1205(a), such that the list would be expanded from the current list of the Ethics Commission, Ethics Officer, State Attorney's Office, or United

States Attorneys' Office. (Another possible addition could be the
OIG.)

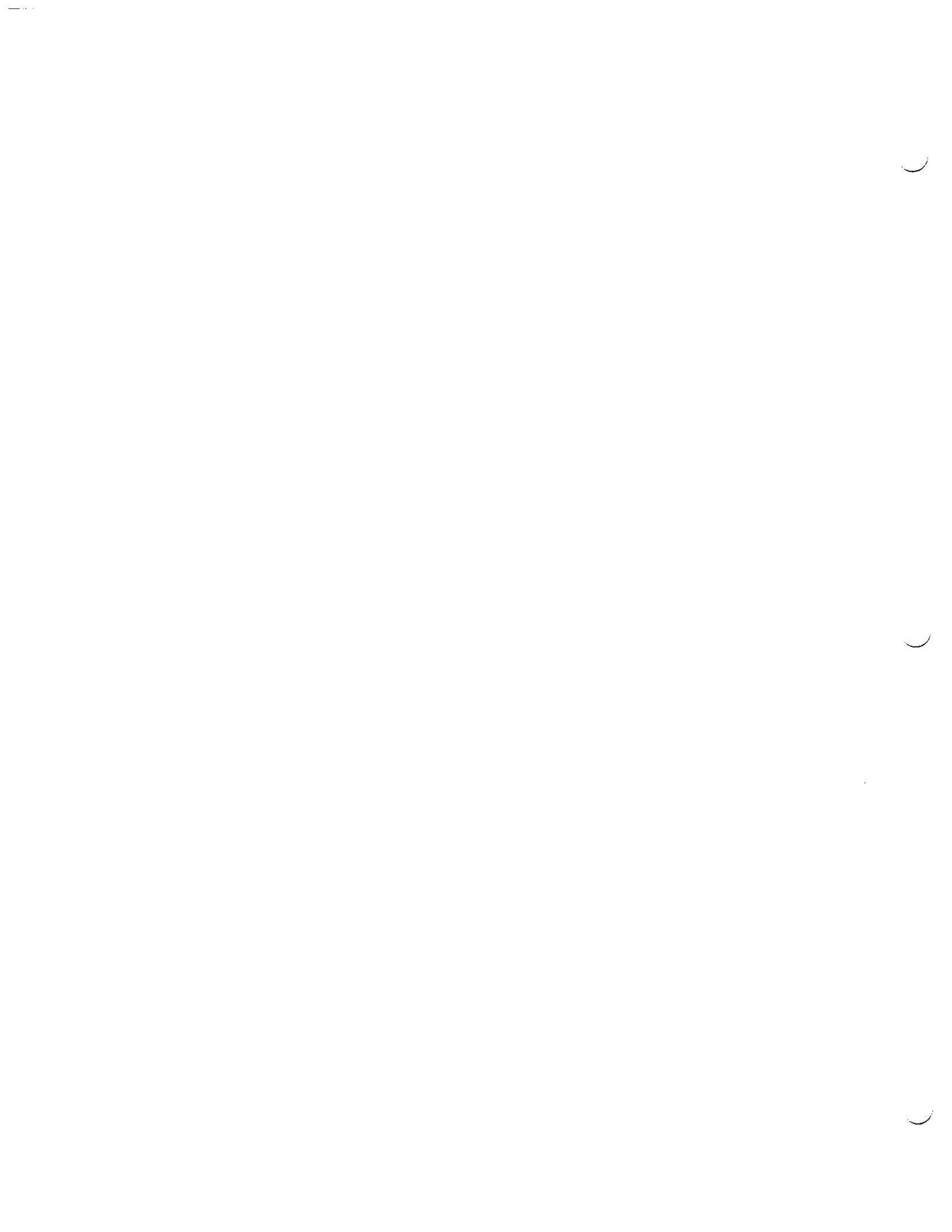
- b) Whether Section 602.921(c) should be amended to remove all doubt as to the Ethics Commission's authority and duty to consider official requests from City Council or a duly constituted City Council Committee;
- c) Whether the Ethics Code should be amended to make it an offense to file a false disclosure requested by City Council or a City Council Committee;
- d) Whether to alter the length of the current two-year statute of limitations in Section 602.939;
- e) Whether to change the Council Rules so as to provide a more clearly delineated process for use by City Council Committees or the Council itself if a future need arises for inquiry or investigation into the conduct of a member of the City Council.

Second, the SIC could refer the instant charges for consideration to the OIG.

Third, in light of the fact that a change in the make-up of the Council and a transition to a new mayoral administration is imminent, the SIC could elect to defer any further action regarding these items and close out the SIC.

Fourth, the SIC could simply vote to take no further action or discussion and close out the SIC.

cc: Ellen Schmitt, Chair, Jacksonville Ethics Commission
c/o Kirby Oberdorfer, Director of Office of Ethics, Compliance and Oversight



Homrighouse, Sandra

From: Linda McCallum <lmccityethics@gmail.com>
Sent: Tuesday, June 13, 2023 12:45 PM
To: Oberdorfer, Kirby; cmiller@cityethics.org; Homrighouse, Sandra
Subject: Regarding the meeting on June 13

EXTERNAL EMAIL: This email originated from a non-COJ email address. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Although I had hoped to make the meeting Tuesday, the time frame of the meeting is such that with the time difference and my limitation on internet calls it would make it very difficult to attend the meeting from an island in Greece.

I have some initial thoughts on the issues presented in the final report to the SIC by the Office of the General Counsel.

A) The OGC makes a recommendation to add other commission members, specifically one representing the CC and even OIG. I see no rationale for this addition other than the desire to dilute and influence the Ethics Commission. There is no expressed purpose for the change, other than displeasure with the EC's decision to take no action previously. I would strongly recommend we oppose this change.

B) This suggestion is essentially to force the EC to investigate and act as an attack dog for the City Council. I can imagine no suggestion more abhorrent than forcing, what is to be an independent and neutral agency, to investigate individuals at the behest of some members of a politically indebted City Council. Considering the toxic political environment that currently exists, depending on whoever is in power or who has a motive totally unrelated to actual wrongdoing, this could cause significant injustice. I am totally opposed to this recommendation-it completely destroys any notion of our neutrality and independence

C) I have no opinion on this. If the council wants to make truthful, mandatory disclosures a part of their process, of course they have the right to do so. There may, however, be legal consequences for requiring a mandatory disclosure--in that it may not be admissible in any proceedings against that individual. This should be fully explored and researched prior to enacting such a proposal.

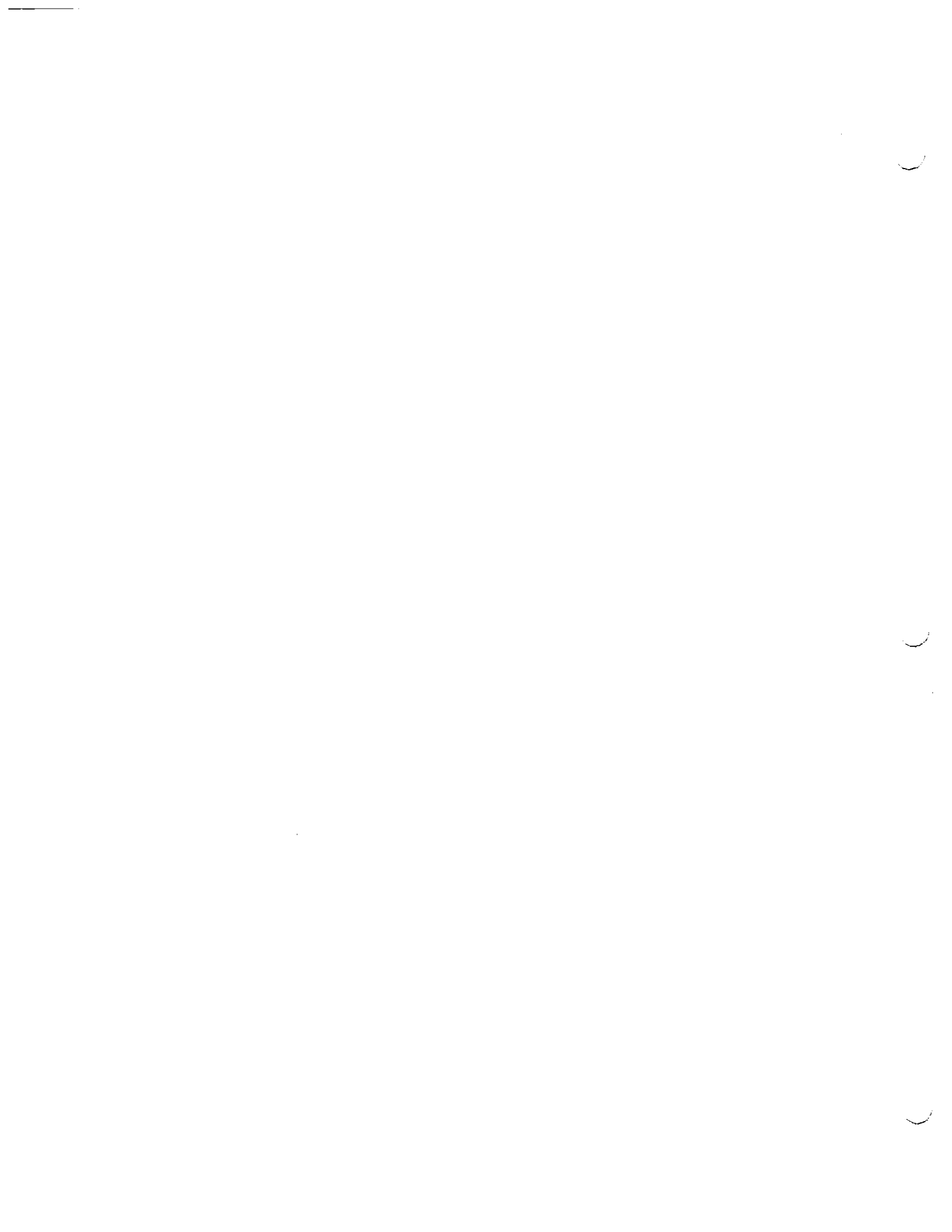
D) My only concern with lengthening the two year statute of limitations is that we should insure individuals who knew or should have known of the misconduct are not be allowed to sit on the information until it's convenient, or politically expedient to present it to the Ethics Commission. In order to protect against this, as previously stated, the Ethics Commission should propose legislation that would prohibit the filing or initiating an investigation of any wrongdoing within 90 days of an election.

E) I fully support the proposal that the City Council create rules and procedures that would govern any investigation of members. This benefits the community and the members. It ensures the due process rights of all members are protected and that there are clear and unambiguous guidelines to which all must adhere.

As with all politically driven issues, political influences on these types of independent bodies are important and very consequential. The integrity of the Ethics Commission matters and thus these decisions should not be taken lightly. I ask each of you to think long and hard before agreeing to changes that would impact our role and value to our community. As to the other recommendations that do not impact the EC, I have no position.

I appreciate your consideration of my thoughts.

Sincerely,
Linda F. McCallum



Historically, the Ethics Commission and the City Council have collegially worked together to establish the duties of the Ethics Commission and Ethics Code provisions as set forth in the City of Jacksonville Charter Article I Chapter 2 and Jacksonville Ordinance Code Chapter 602. The City Council through enactment of Charter Section 1.202 mandated the independence and impartiality of the Ethics Commission, which the citizens of the City of Jacksonville overwhelming approved by referendum in 2011. The collaboration between the Ethics Commission and the City Council and the Commission's independence have been fundamental to the success of the City's ethics program. The Ethics Commission desires to continue collaborating with City Council regarding any legislative action that impacts the Ethics Commission and the Ethics Code.

On June 5, 2023, the Office of General Counsel issued its Final Report to the SIC on Ethics Commission Referral, which included potential legislative changes that, if enacted, would negatively impact the duties of the Ethics Commission and other Ethics Code provisions. The Ethics Commission objects to any potential changes that would result in diminishing the objectivity, independence, and impartiality of the Ethics Commission.

Following its review of the OGC's Final Report to the SIC on Ethics Commission Referral, the Ethics Commission makes the following recommendation: any potential legislative changes to the Ethics Commission duties and Ethics Code provisions should only be done after collaboration between the City Council and the Ethics Commission, as has always been done in the past.

Additionally, the Ethics Commission fully supports the Office of General Counsel's recommendation that the Council Rules be changed "to provide a more clearly delineate process for use by City Council Committees or the Council itself if a future need arises for inquiry or investigation into the conduct of a member of City Council."

