

MINUTES OF ETHICS COMMISSION

DATE: September 30, 2008

Call to order: The Ethics Commission was held in City Hall-St. James Building, Jacksonville, Florida on September 30, 2008. The meeting convened at 6:02 p.m.

Attendees:

Jay Williams, Chair

Gene Filbert, Vice-chair

Pat Sher

Pat Plumlee

Mary Swart

Bill Wilkens

Braxton Gillam

Kirby Oberdorfer and Mary Alice Phelan (excused absences)

Carla Miller, Ethics Officer, Christine Lyle, Ethics Coordinator, Jon Phillips, General Counsel's office were also in attendance.

The Chair called the meeting to order. The Pledge of Allegiance was recited.

The September 22, 2008 Commission meeting minutes were reviewed and a motion was made by B. Wilkens to approve the minutes and Pat Sher seconded the motion. The motion carried unanimously. Introduction of the Commission members.

The Ethics thought was given by Carla Miller.

The Chair opened the meeting to guest speaker Cindy A. Laquidara of the General Counsel's office. Ms. Laquidara explained to the Commission that there is transparency in the procurement services. The Code requires publications, public hearings and the hearings are noticed and are held in the Sunshine. Contracts not done through the "Procurement Code" procedures are done through the City Council. The Administration brings it to the Council via legislation, which goes through Committees, which are noticed meetings and in the Sunshine. Following passage of the Committees, the bill goes in front of City Council to be debated and is noticed as well. The process is a five or six week process. At the meetings, the public is invited and allowed to speak. Each Committee reports to the City Council. The bill in question (Trail Ridge) will go before City Council and be debated in public and the Council will decide. Thus, there is nothing wrong with waiving the Procurement Code, as doing so is legal and is a call that the legislative body gets to make. Mr. Filbert stated that he thought the General Counsel's office was there to explain the process, which is in his opinion difficult and frustrating to understand and he appreciates the explanation of the process but wants information on this particular contract since it's a large amount of money and given the newspaper article regarding the contract, inquired as to why this one was without the bid process.

Ms. Laquidara stated that it is the Council's job, as elected officials to decide and it's dangerous for unelected Commissions to have a "justify to me" meeting on the decisions of elected officials. She stated the City Council is making good decisions and through the process of their Committees they are discussing this contract at length in comparison to the alternative method of the bid process.

Pat Plumlee asked Ms. Laquidara if there is any consistent pattern or basis that the City Council makes decisions on large contracts that they have been request to waive.

Ms. Laquidara stated that this contract is different because it's a franchise. She stated the process is first the Mayor's office/Administration will have a contract expiring and they will determine what needs to be done. The Administration then makes a recommendation to City Council and it is moved then through the chain of command. The City drafts the legislation and it begins the process in the Council Committees.

Mr. Filbert asked that if the contract is good for another seven years then what problem would the Administration be referring to?

Ms. Laquidara stated that the life cycle on the present dump may be over before the contract is and it takes a number of years to site a landfill and that it is beneficial to the City not to wait until the last minute. She deferred this topic to the Administration.

Ms. Swart inquired as to the bid process at the birth of this contract back in 91 or 92 and did the Mayor's office at that time make a recommendation? Mr. Chris Pearson, Solid Waste Division, City of Jacksonville, stated the contract was "RFP" which is the bidding process.

Ms. Sher stated that the Commission, in her opinion, sees their inquiry as the general public inquiring and thanked the newspaper for seeing the concerns we (Commission) has on this contract due to the amount of money, the waiver process and while the ordinance is clear that it is waiving the bid process, its financial impact is not known yet. Ms. Laquidara responded that this is not the best forum for citizens to say the Council is making bad decisions, that citizens need to contact their Council members.

Ms. Sher stated that she had been to a few City Council meetings and the public cannot understand what's going on during the deliberation and discussions. Ms. Laquidara responded that the issues are debated in a public meeting, televised, and that is the correct forum for debate with Council Members. Braxton Gilliam added that he is concerned about the Commission's fact finding mission regarding transparency, it appears to be the process with City Council and the Council would be burdened with contract negotiation discussions if that were the case and since the process is transparent issues need to be addressed by voting. He stated he doesn't feel like it's the Commission's place to debate the contract. Pat Plumlee stated it doesn't make much difference its 1 or 2 billion dollars; it's about the process, not so much the money.

Council Member Webb took the floor of the meeting. He stated that he is the Chair of the Rules Committee and a practicing attorney. He stated that this bill came before the Rules Committee on a referral which keeps legislation moving in the process. He pulled the bill and brought issues to the Rules Committee about the bill. He was not satisfied with the language and the bill was directed to the Office of General Counsel. He stated this bill will receive due diligence and that it is an important issue for the future residents and that is the Council's role, to protect the future as well. As for the questions regarding the process, the process worked. The bill came in, there concerns and they are being worked on and the concern will be run through the Administration, the Office of General Counsel, and the Council Auditor. He further stated that the process is visible to the public and it's the job of the elected officials to decide. He assured the Commission that due diligence would occur and that the Council would be as thoughtful and as thorough as the bid process would have been.

Mr. Filbert inquired as to the next Rules Committee meeting and if approved, how long will it take to pass the bill. Council Member Webb said there a lot of questions to be answered before Rule and Finance and the bills that require more scrutiny take longer. Ms. Sher asked Council Member Webb why the City should be held hostage on threats from a lobbyist. Council Member Webb responded that we should not be held hostage; however, his first reaction is to bring it on. He stated that he did not want to get off focus and not sure of the merits of the threat. Ms. Sher asked who is the lobbyist that goes before City Council on this particular contract? Council Member Webb stated that he had received calls from Karen Sterns but has not spoken to her, and Paul Harden.

Pat Plumlee asked Mr. Webb if it is his opinion that City Council will not rubber stamp the contract without a thorough review of what might be involved in negotiations before passing the bill and knowing what's the best result for the City. Council Member Webb responded that there will have to be a compelling case made on all questions regarding the contract obligations and they will sort through them all with the help of the Office of General Counsel. He further stated that it is the Council Member's job to keep the future of the City's best interest in his mind.

Ron Mallet, Chair of the TRUE Commission, spoke on behalf of his Commission, stating that his Commission was formed 20 years ago and is made up of a volunteer body, members selected by the Mayor, City Council and CPACS. Their purpose is to provide advice to the City of Jacksonville. The TRUE Commission was involved in a large study for 2 years on procurement, contract practices and policies throughout the City of Jacksonville and after multiple meeting with various organizations throughout the City, produced a report on their findings. He stated the City has made improvements since that time in these areas but he recognizes there is room for more improvement. He stated that this contract and its issues will be discussed at TRUE's next meeting and that it may be a good idea for the Ethics Commission to do a joint meeting with the TRUE Commission on this subject. He also thanked the Times Union for their article which brought this issue to the public's attention.

Mr. Filbert asked Chris Pearson if he saw the Contract and are you aware of the issues? Mr. Pearson responded that the issue is the capacity of Trail Ridge and filling up so quickly with a million tons coming in from ash sites and we are rapidly approaching the point of sending garbage out of the county which would cost a considerable amount more and that in the initial contract it was unknown that the ash site stuff would be filling out the existing operation on site. Mr. Filbert followed by saying you (Pearson) saw the problem and addressed the issue by currently recommending this option (waiver) based on some of the prices we got?

Mary Swart quoted some of Mr. Pearson's quotes in the November 18, 2008 Times Union article and stated he was saying 2 different things within the one article regarding the City's position. Cindy Laquidara spoke for Mr. Pearson stating that because of the threat of litigation, Mr. Pearson would not be responding to the comment as his answers could be admissible in Court; but that there may consideration of a Shade meeting and that the City will not be threatened. Council Member Webb added that the Council depends on in-house experts and he has respect for Chris Pearson and that the Council will ask questions. He is favorable to Ms. Laquidara's idea to have a Shade meeting.

The Chair asked for comments from Carla Miller. Ms. Miller stated she is okay with the City Council decisions and responsibilities, that there has been discussion about the process but have not talked about the public's right to clarity and suggests the Commission to look at Fla. Stat.

2008-538, and added that as a former prosecutor, she finds it hard to be alerted to the issues and feels the citizens are not able to be alerted to the issues either. She stated that in the bill's description, the title is abbreviated and that if the average citizen typed "procurement" in a search, this bill and others like it would not show up due to the abbreviation. She stated there is no standard abbreviation pattern and feels like there should be a better way, particularly, a waiver of code. She suggested that would be more transparent and more democratic way, in plain English, which is a national standard. She offered that a google search of "procurement+ethics" reveals thousands of sites and that Florida law (F.S. 287.001) states fair and openness, reduces bad appearance, effective monitoring, public confidence. Ms. Miller stated that she was not in favor of hearing that "this is the way it's always been done" with technology today and we can use technology to be creative in the access of procurement and to ensure integrity. She is hoping for suggestions in this regard. She suggests the Commission analyze the process to revise the standards to the national standards that ensures the integrity of the City. Pat Sher shared that she feels it is relevant for the Commission to ask questions given the Times Union article and questions from the public and then being told that its dangerous to ask questions when it is in the public's interest for the Commission to ask questions and she apologizes for sounding combative under these circumstances. Braxton Gillam stated that this issue is clearly being brought to the public via the article and the process is transparent therefore it is not the Commission's place to judge the City Council. He also stated that if the transparent process was not working then the Commission and public wouldn't know about the contract to begin with. Ms. Swart added that this meeting was for educational purposes and that Ms. Sher was not combative in her opinion. Mr. Plumlee added that he liked the suggestion of "plain English" on the bill and the bill description.

The next speaker is a guest, Diana Melendez. She congratulated the Commission for taking this issue on. Ms. Melendez stated that she was offended, etc. She plugged her website and made a few comments about her dissatisfaction with the City government. Ms. Melendez stated that the City of Jacksonville process is as transparent as a mud puddle and that what happens in Waste Management happens over lunch, private cell phone calls and kids' birthday parties and that is why you are asked to look into this $\frac{3}{4}$ billion dollar contract. She stated there is a red flag here and we have seen waivers of ordinances go through this city with no bid process again and again and sometimes when there is a lower bid, the lower bidder does not get the job, one of the good ole boys does. Ms. Melendez stated that Paul Harden, the City lobbyist crossed all boundaries to serve his needs to special interests. She said that Ms. Laquidara stated they get threats for lawsuits all the time and don't get scared; however, Ms. Melendez stated that we pay millions in settlements to avoid litigation so it must mean something and that the City will roll over anytime a lobbyist tells the City Council what they are going to do and what they are going to vote. She further stated that the citizens in this City are concerned and do not trust the City government and she knows that via her website that is approximately one year old and she gets 12 thousand hits a day. She said she has personally been threatened herself and feels that employees have the same threats for their jobs, positions, lives and careers.

Speaker Tony Bates from Concerned Taxpayers stated to the Commission that competitive bidding is essential for ethics and efficiency in the City's process and a subject that everyone should be considering. He stated that there is enough experience in the past to know it does not serve the City well in appearance, perception and public trust. He stated that it is in the best interest of the City from an ethical standpoint.

Speaker David Thomy also mentioned that the City should follow the rules of parliamentary procedure.

The Chair closed the meeting stating that the Commission wants to explore the process and thanked the community and guests for their input and the Commission would take it all under advisement. He stated that the Legislative Sub-Committee will review the minutes and report to the Commission.

Adjourned 7:25 pm.

Next meeting scheduled: October 20, 2008 at 3:30 p.m.

/s/ Christine Lyle
Christine Lyle
Ethics Commission Coordinator

10/20/08
Date of Approval