

JACKSONVILLE CITY COUNCIL

SPECIAL COMMITTEE ON
CONDUCTING JACKSONVILLE'S BUSINESS

FINAL REPORT

JULY 31, 2006



Lad Daniels, Chair
Gwen Yates, Vice-Chair
Richard Clark
Art Graham
Suzanne Jenkins

**REPORT OF THE SPECIAL COMMITTEE
ON CONDUCTING JACKSONVILLE'S BUSINESS
Revised July 31, 2006**

Committee Charge: To review existing rules and processes on purchasing, surplus property, contract administration and use of public monies in public projects, or those where a public-private partnership is created. Report findings and propose legislation, if necessary, by June 15, 2006.

On June 12, 2006, Former Council President Kevin Hyde extended the charge of the committee to review the issues regarding selection of the General Counsel as raised by the debate over 2005 J-bill #1 (Resolution 2005-1356-A).

The Committee was reestablished by current Council President Michael Corrigan.

Committee Organization: The committee is composed of Lad Daniels (Chair) and council members Suzanne Jenkins, Gwen Yates, Richard Clark and Art Graham. The 5-member committee initially subdivided into two, 2-member subcommittees, one to examine the legislative underpinnings of the Council's operations (Florida Statutes, City Charter, Ordinance Code, Council Rules) and the other to examine the application of those legislative authorizations and regulations in practice. The committees quickly concluded that separating legislative authority from actual practice was a difficult task and so recombined to work as a committee of the whole for the remainder of their term.

Issue Areas, Findings and Recommendations:

During the course of discussion over several meetings the special committee identified the following major issue areas:

1. Required legal considerations that cannot be waived, such as the following: State Constitution, Florida Statutes, bond covenants, etc.
2. Completeness and timeliness of legislative filings and supporting materials
3. Process for disposing of City assets (real property, vehicles, equipment, etc.) that are no longer needed and are therefore surplus to the City
4. Appropriate use of bond funds for originally specified purposes
5. Transparency of Council actions, including justifications for emergencies and waivers
6. Delegation of City authority/funding to third parties
7. Conduct by council members
8. Fundamental philosophy of running government as a "business" vs. as a "charity"; public purpose analysis and finding

A fundamental finding of the committee is that a number of legislative and administrative regulations and procedures already exist to govern both the legislative process of the City Council and the intended outcomes of City actions in general. These regulations and procedures are intended to foster order, accountability, efficiency and fairness in procurement, contracting, funding, service provision, and the general conduct of the public's business. To the extent that these regulations and procedures safeguard the process and outcome of the public's business, waivers of the standard rules and procedures and actions taken on an emergency basis without the full legislative review process have the potential to produce undesirable outcomes or diminished

public confidence. These actions should only be used on rare occasions when clearly justified by unusual circumstances.

1. Required legal considerations – State Constitution, Florida Statutes, bond covenants, etc. that cannot be waived

Findings:

- Legislative subject matter otherwise prohibited by ordinance or law can sometimes be made legal by waivers of the Ordinance Code, Council Rules, or other regulation; whether that action is thereby “right” or a matter of good judgment is a policy question for decision by the Council as a whole.
- By its action the Council may waive provisions of the Ordinance Code, the Council Rules, or prior ordinances to make some prohibited actions possible; it may not waive provisions of the United States or Florida Constitution, Florida Statutes or various Federal Statutes, federal and state administrative rules that may be applicable, or the City Charter.
- Potential legal concerns have not been fully disclosed to all council members because of the attorney-client relationship between individual council members and the drafting attorney. Legal opinions analyzing possible legal issues with legislation are only given at the specific request of a council member, Mayor or administrative department.
- Council needs to be made aware of legal “concerns” that are identified either during the drafting or the hearing stages of the legislative process. The decision whether to abandon or to pass and defend contentious (as opposed to patently illegal) legislation is one for the elected policy makers. However it is only just and right that each and every council member be fully informed as to all legal concerns, possibly by means of a notation to that effect on agendas on which the bill appears. A mechanism would need to be developed to flag these concerns.

Recommendation: Though each council member has an attorney-client relationship with the OGC attorneys he or she speaks with, the OGC also has a duty to the council as a whole to allow all council members to be completely informed regarding legal concerns. Respecting principles of “separation of powers”, the OGC should develop and implement practices that will ensure the no council member is privy to legal “concerns” that have not been shared with all council members, and that all legal concerns are addressed. The decision to communicate legal concerns privately, at committee meetings, or at council meetings shall be left to the discretion of the OGC, keeping in mind the City’s obligation to comply with the Sunshine Law.

2. Completeness and timeliness of legislative filings and supporting materials

Findings:

- Bills are sometimes filed with blanks in place of dollar amounts and account numbers, with blank attachments or references in the text to non-existent attachments, or with provisions in the text referring to documentation “on file with the Legislative Services Division” that is not, in fact, on file.
- Bills are accepted for introduction with the understanding that attachments will be produced, backup documents filed, and blanks completed by the time the bills are ready for consideration in committee. This can lead to situations where a bill file is never fully completed until immediately prior to final reading, thus depriving council members, the media and the general public of the ability to read and fully understand the bill’s intentions

and potential ramifications, and of the ability to properly question and debate the bill in committee.

- The optimum solution is for council members to strictly adhere to the policy of not filing incomplete legislation. The Council President should direct staff not to accept any legislation that is not complete in accordance with the Council Rules.
- An alternative is to allow such legislation to be accepted for introduction and given first reading, but be clearly labeled as “INCOMPLETE” and prevented from receiving second reading until such time as the bill meets all of the applicable requirements. This would permit floating “trial balloons” and refining a concept through the committee process as feedback is received.
- Specific criteria for what constitutes “complete” vs. “incomplete” legislation will need to be developed, and someone assigned the task of reviewing each submitted bill for its completeness. A review will need to be done of the legislative process to determine when bills attaining a status of “complete” can be re-entered into the legislative pipeline, taking into account the deadlines for required advertising of ordinances before second reading and for preparing and disseminating council and committee meeting agendas.
- On occasion the fact sheets, required as a matter of policy to be attached to all bills filed by the Council President at the request of the Mayor, are so brief or cryptically worded as to be practically indecipherable, or have listed as contact persons employees who are not familiar with the content of the legislation. Fact sheets are not required to accompany bills filed by Council Members or by entities other than the City administration.
- One major source of incomplete legislation submitted for introduction is the addendum to the agenda, particularly when items are proposed for inclusion on the addendum at the Council’s agenda meeting. Bills submitted by council members or by the administration via this mechanism “just for introduction” are frequently the product of hurried last minute drafting by attorneys who have little factual information from the introducer with which to work, which frequently leads to a need for substantial amendment in committee to flesh out the rough concept.
- The timing of the Mayor’s Budget Review Committee (MBRC) meetings was discussed in this context. MBRC meets on the Monday of Council meeting weeks in order to provide time for the items approved by MBRC for introduction to Council to be drafted by the Office of General Counsel over the course of the next week and introduced by the Council’s legislative deadline of 5:00 p.m. on the Wednesday of committee weeks. It has become common practice for the administration to request introduction on the addendum of numerous items approved the previous day by MBRC and hastily drafted by the OGC.
- Council members do not realize the burden placed on staff by last minute introductions. A great deal of administrative processing, copying and computer programming must take place to assemble the agenda, and late introductions on the addendum at the agenda meeting places serious time pressure on staff to prepare the items within a few hours.

Recommendation: *Amend the Council Rules to permit bills to be accepted for introduction in an incomplete state and to receive first reading by title only, but then to be marked as “INCOMPLETE” and prevented from appearing on an agenda or receiving any other action until such time as the Legislative Services Division receives all necessary documentation, certifies that all deficiencies have been corrected and releases the bill for placement on the agenda for action. Specify criteria for determining completeness and establish a time frame for re-incorporating legislation into the legislative pipeline when it is determined to be complete.*

Recommendation: *Amend the Council Rules to require that fully completed and explanatory fact sheets (as determined by the Chief of Legislative Services) be submitted along with all bills from*

introduction by the Council President at the request of any other party, and to require that similar fact sheets be submitted along with any legislation introduced by council members which appropriates funds, approves contracts or contract amendments, or which is related in any way to personnel matters.

Recommendation: *Council Presidents should restrict placement of bills on the addendum to the agenda to true emergencies or for other legitimate reasons, and restrict the practice of loading the addendum with hastily drafted bills “purely for introduction” that could easily wait until the next legislative cycle.*

3. Process for disposing of City assets (real property, vehicles, equipment, etc.) that are surplus

Findings:

- The waiver of the provisions of Chapter 122 – Public Property – that require surplus property to be sold at auction to the highest bidder deprives the City of the ability to recoup the largest return on the sale of the property. On the other hand, a case may be made that waivers may be justifiable in some limited situations on the grounds that the land being surplus and conveyed to an adjacent property owner has no practical value to any other party and the waiver therefore saves the time and expense of going through a process whose outcome is practically pre-determined.
- The waiver of the chapter provision that requires the proceeds from the sale of surplus lands to be deposited into the Recreation Lands and Park Acquisition and Maintenance Trust Fund deprives that fund of resources to apply to the acquisition of new lands for park and recreational purposes.
- Many bills that surplus and dispose of property contain no values for the property or item being surplus, either in the text of the bill or in the attached documentation. The Council is therefore placed in the position of disposing of property without knowing how much it might be worth in a competitive sales process.
- The committee also learned that there have been instances of questionable surpluses, particularly in the case of vehicles, where the vehicle in question may not have fully gone through the administrative surplus process and therefore may have been declared surplus and disposed of while there may still have been uses for that vehicle elsewhere in City government.
- Some committee members suggested that, instead of surplus real or personal property to a recipient at no cost, the Council should instead appropriate the amount of the surplus value of the personal property or the assessed or appraised value of real property as a grant to the intended recipient, who would then use the funds to purchase the property from the City. This would provide ultimate transparency about the value of the transaction and the identity of the property recipient. A sales contract would also provide a vehicle by which the City could negotiate terms and conditions with the intended recipient, including limitations on the use of the property, a reverter clause, etc.
- There already exist administrative mechanisms to accomplish the surplus of both real and personal property to particular parties, so special case Ordinance Code waivers are not needed in many cases.

Recommendation: *Amend the Council Rules to require that all legislation declaring real or personal property to be surplus be accompanied by supporting documentation indicating the actual, assessed or appraised value of the property, and documenting that the property has been fully processed through the City’s surplus determination procedures and has no utility to any City*

department or agency. Require written verification by the appropriate City official(s) that the property has been properly declared surplus and is truly of no further use to the City.

Recommendation: *Council should adhere to the rules and only declare surplus and dispose of property that is truly surplus – useful life exhausted, of no further use to any City department or agency, and appropriate surplus declaration process completed and documented.*

Recommendation: *The administrative surplus mechanisms and procedures should be documented and disseminated to the council members and their staffs and parties interested in obtaining surplus real or personal property should be directed by the Council to the appropriate administrative office for processing through existing procedures and not via Ordinance Code waivers.*

4. Appropriate use of bond funds for originally specified purposes

Findings:

- Concerns were expressed by the committee that some expenditures of district bond funds do not comply with the intended purposes for which the bonds were issued (and general statements of waivers of “any conflicting provision” may not suffice to legally justify the actions should they ever be challenged).
- The committee was sharply divided over the value and advisability of district bond funds as a general concept. Some saw great value in the district council members having a source of funds from which relatively small scale capital improvements can be made at a district level responsive to specific needs in a timely manner and address issues that may not rise to a level of sufficient importance in the workings of the city bureaucracy to ever be addressed. Others saw great potential for misuse on inappropriate projects and for favoritism in distribution of the funds.

Recommendation: *Amend Ordinance Code Chapter 106 – Bonds – to specifically prohibit the use of district bond funds or any other funding for the purchase of artwork which includes the likeness of any living person, except for normal office identification portraits, or random decorative art not intended as recognition of any particular person.*

5. Transparency of Council actions, including justifications for emergencies and waivers

Findings:

- The committee members were unanimous in believing that one of the most important goals in improving the perceptions of the Council’s business practices is improving its “transparency”, which could be defined as: actions being taken in full view of the public and media; full and adequate justification being given for proposed emergencies and waivers; and Council carefully considering each item in a timely manner and making findings on the record to support its eventual decision.
- Waivers of various provisions of the Ordinance Code, Council Rules and other binding authorizations are frequently waived by means of general statements waiving “any conflicting provision” of entire code chapters. This practice is not specific enough to permit the Council or the interested public to know what exactly is being waived, why the waiver is necessary, and what are the potential ramifications of such a waiver.

- Waivers should be specific as to what is being waived and why, and should be spelled out explicitly in the legislation and the title of each bill containing a waiver.
- Three of the most common types of resolutions adopted as emergencies are those appointing citizens to advisory boards or commissions, honoring or commending an individual or organization, or declaring a commemorative day, week or month. The committee felt that the council regularly approves these emergencies with fewer than the three required readings because the actions are innocuous enough not to require a full-blown three reading cycle, and are typically approved with little or no debate.

Recommendation: *Amend the Council Rules to establish specific criteria for the wording of waivers and emergencies that requires specific enumeration, both in the bill title and text, of what specific Code sections are being waived and why, or why emergency action is requested.*

Recommendation: *Adopt a Council Rule or establish a council policy requiring that when a Council committee votes to waive an Ordinance Code provision, Council Rule, or other legislative authority, a representative of the department or division responsible for administering the authority being waived (i.e. the Department of Procurement for waivers of the Purchasing Code, the Real Estate Division for waivers of the Disposition of Surplus Property code, etc.) must provide written documentation to the committee to explain what Code section(s) or subsection(s) are being waived and what impact the waiver will have on City operations.*

Recommendation: *Amend the Council Rules to require that all proposed ordinances waiving any Ordinance Code provision, rule, policy, etc. be referred, in addition to the committees of substantive jurisdiction, to the committees responsible for auditing and performance measurement and for the calendar, agenda, rules and laws.*

Recommendation: *Amend the Council Rules to permit resolutions that recognize or commend an organization or individual, establish a commemorative day, week or month, or appoint a citizen to an advisory board or committee to be approved on only two readings by Council.*

Recommendation: *By ordinance or Council Rule require a quarterly tabulation and report by district council members to the Council Auditor's Office of the expenditures from and remaining balance in each council district bond fund. Publish the report by placement of the document as an item of information on the agenda of the Council committee responsible for parks and recreation issues, by placement of the document as a Miscellaneous Communications item on the next City Council agenda, and by placement as a linked document on the City Council's web page.*

Recommendation: *Amend the Council Rules to require that all bills proposing to waive any portion of the Ordinance Code, Council Rule, established policy, etc. or that are requested to be enacted as an emergency be subjected to an analysis by the Council Auditor's Office, the Office of General Counsel and the Council Research Division utilizing the waiver/emergency flow chart and criteria attached as Exhibit 1.*

6. Delegation of City Council authority/funding to third parties

Findings:

- On occasion the City delegates some of its control over public facilities to third parties, often with funding attached to provide public services or to make capital improvements in lieu of the City doing so. Question: to what extent do normal City policies, procedures, procurement

practices, etc. carry forward to these third parties, and to what extent are they waived or not contractually applicable to the other parties?

- The Council also delegates some of its authority to the City administration to perform certain functions without further Council approval. This is exemplified by the withdrawal of recent bills 2006-375 (conveying surplus property to Wealth Watchers, Inc.) and 2006-433 (Trinity Rescue Mission tree planting) after it was determined that there were administrative processes in place that could accomplish the intent of the bills without the need to waive the Ordinance Code.

Recommendation: *Disseminate to all Council Members information outlining the administrative procedures in place to handle directed disposition of surplus property and other functions for which Ordinance Code waivers are most commonly sought, where such mechanisms exist.*

7. Conduct by council members

Findings:

Legislative bodies have deliberated their codes of conduct over the centuries. Certain common rules and courtesies have emerged. Among these are:

- 1) Respect for office—Formal titles are used by elected officials when addressing each other during official meetings. The purpose is to show respect for the office held by an individual. It also reduces the tone of rhetoric during heated debate. Too often in our Council deliberations, we do not use formal titles. The consequence of this is that the public and even fellow council members may interpret this as a lack of respect. It also leads us to a more emotional level of debate than should otherwise occur. Lastly, it conveys to the public the sense that if we do not respect each other, why should the public be expected to act any differently in appearing before the Council.
- 2) Respect for the public—Elected officials address members of the public by a formal title. Again, this is to convey respect for the public at large and also allow for a more dispassionate discourse on specific topics. Often in our Council meetings we convey the impression that we are not as respectful of the public, and we do not give sufficient consideration to their issues. As council members, often we use the technique of asking questions of the presenter to inject our own views in issues presented by the public.
- 3) Respect for time limits—Rules of debate usually limit the amount of time that speakers may use to present their argument. Rules also limit the number of times that individuals may speak. Custom usually dictates that speakers rise to address the assembled body. Our Council Rules and our adherence to these rules is very good.
- 4) Parliamentary rules—Our Council Rules coupled with Roberts’ Rules of Order govern our actions. However, we are hesitant to invoke points of order or clarification toward each other or toward the public. The consequence is to heighten the emotional level of debate and to show the Council as being not respectful of each other or our own rules.
- 5) Censure—While censure of a council member by the Council as a whole might be appropriate in limited circumstances, after thorough discussion, the Committee recognized that the Council has inherent power to do so, by resolution, should it be necessary, and no further legislation is required.

Recommendations: Use formal titles when addressing each other or the public in any Council or Committee meeting. This will heighten the respect that we publicly demonstrate to each other and to the public. And it conveys the seriousness that we ascribe to each issue.

Recommendation: Continue to adhere to our established rules of debate whether within the discussion among Council Members or in receiving comments from the public.

Recommendation: Use parliamentary procedure such as raising points of order to reduce the likelihood that public debate or public comments will violate the rules of common courtesy as well as our own Council Rules.

8. Fundamental philosophy of running government as a “business” vs. as a “charity”; public purpose analysis and finding

Findings:

- Several committee members raised the issue of differing concepts among Council Members over what the fundamental role of the Council should be in the city’s governmental system. All Council Members share the common belief that the city government in general and the City Council in particular can be powerful mechanisms for doing good in the community. Where they may differ is in the degree to which they view the mechanisms, policies and procedures of government as needed guides and checks on the legislative authority of the Council versus unnecessary impediments to the Council’s ability to serve the needs of its constituents.
- To the extent that they believe as a matter of fundamental philosophy that government should be “run like a business” with accountability and fiscal prudence as a paramount objective, some Council Members will prefer a legislative system based on codified rules, standard administrative procedures and established criteria. They will prefer that Council, as the governing board of the organization, set broad policy and delegate to the administrative mechanism the authority to process individual cases. Exceptions to the rules should be few and far between, and only granted when a clear case can be made that the standard rules do not apply and the greater good requires a limited exception.
- To the extent that they believe as a matter of fundamental philosophy that government exists to serve the particular needs of individual citizens; that the circumstances of individuals, neighborhoods and districts vary greatly across the city; and that rigid and rule-bound procedures that cover every situation are realistically impossible to achieve, some Council Members will prefer a legislative system where exceptions and variances are sometimes necessary to allow government’s power to do good to be exercised to its fullest extent. They may believe that district Council Members are the preeminent experts in the needs of their districts and citizens, and that their proper role should be to mediate with the City administration in cases where standard city policies and programs don’t sufficiently meet the real needs at the grass roots level of communities.

Recommendation: *The committee suggests that it would be helpful for the Council to determine the correct action in specific cases by defining the fundamental charge of the city government to be providing services to the public and meeting the taxpayers’ needs and expectations in an efficient and accountable way. The Council needs to recognize that everything (even unneeded surplus real and personal property) has a value; that it must account for that value through the appropriation of real dollars; and that it must “make whole” any budget accounts, departments or agencies affected by the Council’s proposed action.*

Recommendation: *The committee recommends that the use of surplus real estate for purposes of fostering the development of affordable housing is a special circumstance meeting a clearly identified public purpose, and that in these cases the use of the property for that purpose outweighs the general rule that surplus property should be sold to the highest bidder or directed to the adjacent property owner for its assessed or appraised value.*

Recommendation: *The committee recommends that Ordinance Code Chapter 118 – Miscellaneous Appropriations – be amended to establish a procedure and criteria for declaring real and personal property of the City to be surplus and directing its conveyance to a particular person or entity. The ordinance should require, at a minimum: 1) a clear statement of the use to which the property will be put and the public purpose to be achieved by the directed disposition of the property; 2) designation of an appropriate City department or agency to monitor the actual use of the property and achievement of the stated public purpose after the transfer of the property; and 3) a reverter clause requiring the property to be returned to the City should the surplus property be put to a use other than the state public purpose for which it was conveyed.*

Recommendation: *The committee recommends that the Council President annually appoint one or more Council Members serving on the Finance Committee to act as liaisons to the administration's Public Service Grant review process to observe the proceedings and become familiar with the agencies being funded and the public services they are contracting to provide.*