



Ethics Advisory Panel

Report of Recommendations

July 10, 2013

Mission Statement

The mission of this Ethics Advisory Panel is to review matters of ethics in view of best practices as they affect Elected Officials and City staff. The purpose of this review is to evaluate existing City policies and procedures, seeking to ensure that policies are adequate to serve their purpose, understood by those who are to abide by them, and accessible to the public. The Panel will recommend improvements to the City Commission for consideration and action addressing, but not limited to, a Code of Ethics, financial disclosure, and transparency.

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July 10, 2013

Dear Mayor and City Commissioners:

On behalf of the Ethics Advisory Panel, it is my pleasure to submit this Report, with Recommendations, on the City of Tallahassee policies, procedures and practices relating to ethics, financial disclosure and transparency of government.

The Panel began with a thorough review of current state laws, the City Charter, City Ordinances, and policies. The City Manager and the other Appointed Officials tirelessly participated in all of our meetings. Each official provided her or his unique insights into the operations of the City, especially as to the ways that all City employees, including the Elected Officials, fulfill their public trust responsibilities. Their assistance was invaluable. We also benefited from the wisdom of a number of invited experts in the field and from a dedicated group of interested citizens.

The Panel realized early on that a "Culture of Ethics" exists at every level of City government and is a core value of all City employees. The Panel's Recommendations are intended to build on this existing foundation and to position Tallahassee -- the Capital of the fourth largest state in the country -- for the challenges and opportunities in the future.

After many hours of focused deliberation, the Panel unanimously approved a series of recommendations, with the exception of one item, for the City Commission's consideration and implementation. The proposals include, among many others, the adoption of a comprehensive Code of Ethics, the creation of an Ethics Officer with responsibility for all ethics compliance, including oversight, training, and public education, and the establishment of a citizen's ethics advisory board. Other recommendations would create a confidential Ethics and Fraud Hotline, enhanced financial disclosure and conflicts of interest requirements for Elected Officials, and an expanded Ethics Training Program for Elected Officials as well as City employees.

Many of the Panel's recommendations relate to changes in administrative or Commission policies and procedures. Others will require the adoption of appropriate Ordinances, and one will require a Charter amendment. We encourage you to address all of the recommendations in a time sensitive manner.

I want to thank the Commission for its foresight in making ethics a continuing priority for the City of Tallahassee. The Panel had the luxury of addressing these issues during a period of stability, unlike some local governments that have had to act in a time of crisis. Your action sends a strong message, not just to City employees, but to all of our citizens that you are firmly committed to the integrity of our government.

It has been a privilege to work with the City Manager, the Treasurer-Clerk, the City Auditor, the City Attorney, and others such as Matt Lutz, Michelle Bono, and Hetal Desai, to name just a few, who epitomize the best of public service. It has also been an honor to chair a Panel of the finest and most dedicated citizens I have ever known.

Respectfully Submitted,

Martha W. Barnett
Ethics Advisory Panel Chair

Members of the Panel - The Ethics Advisory Panel consisted of the following persons:

Martha W. Barnett (Chairperson)
Retired Chief Justice Harry Lee Anstead
John Calhoun
Brant S. Copeland
Lila A. Jaber
Joseph 'Jay' Landers, Jr.
Andrea Valencia Nelson
Howard Rasmussen (alternate member)
Marilynn Wills (alternate member)

Glossary

The following terms are defined for the purposes of this Report:

"Advisory Board Member" means a member of an advisory board, as defined by section 112.312, Florida Statutes, who is appointed by either the City Commission or an Appointed Official.

"Appointed Official" means any of the four officials established by the City Charter and appointed by the City Commission. Specifically, the following:
City Manager,
City Attorney,
City Treasurer-Clerk, and
City Auditor.

"City" means the City of Tallahassee.

"City Employee" unless otherwise indicated, means all persons employed by the City of Tallahassee other than Elected Officials.

"Code of Ethics" means a single, comprehensive document outlining the ethical expectations and regulations governing conduct of Elected Officials and City employees.

"Commission" means the Tallahassee City Commission.

"Elected Official" means any of the City Commissioners or the Mayor.

"Florida Ethics Law" means Florida Statutes Chapter 112, Part III, *Code of Ethics for Public Officers and Employees*, (2013).

"Lobbyist" a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity (*definition per Section 2-338 of the City Code*).

"State or Federal Lobbyist" means a lobbyist hired to lobby on behalf of the City of Tallahassee at the State or Federal levels.

"Vendor" means any contractor or person, association, or business entity which has a contractual relationship with the City of Tallahassee.

EXECUTIVE SUMMARY

On September 19, 2012, the City Commission authorized the creation of a citizen's Ethics Advisory Panel to "examine the existing policies, procedures and practices relating to ethics, financial disclosure and transparency" of the City of Tallahassee and where appropriate to make recommendations for improvements. On November 7, 2012, drawing from a pool of interested citizens who were willing to serve, the City Commission appointed a nine member Panel. The Panel began its work immediately, holding its first meeting the next day. Over the following eight months, the Panel held eighteen meetings, including two public hearings to allow citizens first to suggest changes and second, to react to the Panel's proposals before those recommendations were finalized.

The Panel's work was facilitated by substantive input from a variety of sources and individuals, including members of the public. A proposed draft ordinance submitted by a local citizen was discussed at length during the meetings. The Panel reviewed Chapter 112, Florida Statutes, and other relevant state law; the Tallahassee City Charter and Ordinances; Commission policies; Administrative policies and procedures; and other documents, listed in Exhibit B. It took into consideration changes adopted during the 2013 Regular Legislative Session impacting the Florida Commission on Ethics and state campaign finance and ethics laws.

Detailed substantive presentations were made by various representatives from the City, including the four Appointed Officials, the Director of Communications, the Purchasing Director, the Director of Equity and Workforce Development and former City Commissioners. Additionally, the Panel heard from the former Executive Director of the Florida Commission on Ethics and other invited experts, listed in Exhibit A.

The Panel identified ten areas for an in-depth review. In January 2013, a public hearing was held to gather input regarding possible amendments to the City's policies and procedures. Each member researched and presented a topic and, where appropriate, made recommendations. After much discussion and analysis, the Panel developed a consensus position on each of the topics. A second public hearing was held on May 29, 2013, to solicit comments from citizens.

During meetings on May 30th and June 10th, the Panel considered and adopted a series of proposed recommendations dealing with a Code of Ethics, Training, Financial Disclosure and Transparency. All of the recommendations were adopted unanimously, with the exception of the "Oversight Authority/Ethics Officer" proposal. While there was no dispute as to the need for an Ethics Officer, two members did not feel the position should be a fifth Appointed Official.

The Panel officially adopted this Report and Recommendations to the City Commission on June 26, 2013.

Summary of Recommendations

Code of Ethics

- Adopt a comprehensive *Code of Ethics* that is easily accessible, with a Preamble to include a commitment to ethical behavior; expand the Oath of Office for Elected Officials and all City employees to uphold the *Code of Ethics*.
- Create the position of City Ethics Officer, appointed by the City Commission. The City Ethics Officer would have overall responsibility for the City's Ethics Program, including an annual report to the City Commission. The majority of the Panel recommends amending the City Charter to add the Ethics Officer as a 5th Appointed Official. A minority supports the creation of an Ethics Officer but did not recommend that the position should be an Appointed Official.
- Appoint an advisory board to monitor the implementation of the Panel's recommendations and to advise the Ethics Officer in his or her responsibilities.
- Expand the existing Fraud Hotline specifically to include ethics complaints and rename it the "Ethics and Fraud Hotline;" provide complaint procedures including provisions for anonymity and confidentiality.

Financial Disclosure

- Require Elected Officials and candidates to disclose, in addition to Form-1, business and community relationships as follows:
 - Relationships with City vendors.
 - Relationships with City employees.
 - Membership on Corporate Boards.
 - Membership on Not-for-profit Boards.
 - Ownership interest in land (in any form, regardless of location).
- Make all financial disclosure information accessible on-line to the public.
- Although the Panel discussed campaign finance for municipal elections, it recommended no changes in this area. The municipal campaign contribution limits, however, will increase from \$500 per election to \$1,000 per election starting November 1, 2013.

Transparency

- Adopt an ordinance similar or with reference to section 112.3143, F.S., but which adds language that requires the Elected Official abstain from voting if he or she, under a duty of reasonable inquiry, knew or should have known that the item would inure to his or her special private gain or loss. The ordinance should establish the below requirements to any measure presented to the Commission for any vote.
 - Once an Elected Official declares a conflict under this requirement, he or she shall not engage in discussion about the measure and must leave the chambers until the item is concluded.

- Require an Elected Official declare a voting conflict and abstain from voting due to relationships existing for any time prior to the vote on an item when said relationship personally involved the Elected Official and specifically involved the item under consideration.
 - Disclose, at the time the item is presented and before it is voted upon, any past business relationship within the past (3) three years with a person or company identified in an agenda item, even if there is no special private gain or loss and the Elected Official was not personally involved in the item. The Elected Official may still vote on the item.
 - Establish violations and penalties.
- Repeal the Charitable Contribution preference points program in the competitive bidding process.
 - Mandate that City contracts and agreements include standard language advising vendors of their obligation to comply with the City's ethical standards.
 - Expand the process for employing lobbyists and consultants who represent the City to:
 - require disclosure, and maintenance, of current lists of clients,
 - develop or codify the process for the City to waive (at its discretion) any conflicts of interest, and
 - create an interactive page on the City's web site where lobbyists may post and update their list of clients as they change and allow for public review.
 - Amend the City's Lobbyist Registration Ordinance to strengthen and clarify penalties.
 - Prohibit Appointed Officials, in addition to the current requirement for Elected Officials, from appearing before the City Commission for compensation for a 2-year period after the official leaves the employ of the City.
 - Require Elected Officials, in addition to the current requirement for Appointed Officials and certain City Employees, to disclose offers of employment extended by a person or organization that has a financial interest in a matter in which the employee has been participating on behalf of the City.

Training

- Continue with current practice and expand and enhance the recruitment, selection, initial orientation, appointment, and promotional procedures and processes to ensure that only the most ethical individuals are employed, appointed, and/or promoted.
- Conduct a systematic and annual climate survey to assess the City's Ethics environment. Report the results to the City Commission and use the results to enhance the City's ethics training program.
- Conduct an annual citywide evaluation of the effectiveness and impact of the ethics training program.
- Require mandatory, comprehensive and continuing ethics training for all City Employees, including the Elected Officials, Appointed Officials, and Advisory Board members, commensurate their level of responsibility.
- Require Elected Officials, Appointed Officials and advisory board members to participate in an initial comprehensive ethics training course within 60 days of taking office, with refresher ethics training conducted on an annual basis thereafter.

- Require all other City employees to complete ethics training within 180 days of being hired, and every year thereafter.
- Offer Ethics and Campaign Finance training to candidates for City Commission office.

Explanation of Recommendations

Code of Ethics

City’s Policies and Procedures

Lead Panelist: Retired Chief Justice Harry Lee Anstead

Current Conditions:

There is currently no centralized, single “*Code of Ethics*” document that contains all of the City’s policies or State requirements relating to City Elected Officials, Appointed Officials, Advisory Board members, City employees, or City vendors. Rather, standards are located in various documents such as City Commission policies, administrative manuals, departmental policies and State statutes.

Discussion:

Early discussions of the Panel focused on obtaining model Codes from other municipalities or from organizations such as the Florida League of Cities. After further research, it was found that existing Codes widely varied due to the uniqueness of each of Florida’s 600+ municipalities.

The primary concern of all the Panel members was that Elected Officials needed to have clear guidelines specifying what conduct was acceptable. Clear guidelines for the Elected Officials served to show general employees that the Elected Officials are also bound by a set of regulations. In addition, clear-cut rules would also send a message to citizens and voters that there is honesty in government. Ultimately, Chief Justice Anstead expressed support for a formal recommendation that the City draft a comprehensive “Code of Ethics” and specifically reference that Code in the oaths of office taken by Elected Officials, Appointed Officials and City employees.

Recommendations:

Recommendation 1 - Adopt a formal and comprehensive *Code of Ethics* one place that is easily accessible to citizens including references to:

- All State law requirements related to ethical performance by elected or appointed municipal officials;
- All existing City Code and policy provisions; and any other rules submitted to and approved by the City Commission related to ethics and professionalism;
- Recommendations of the City Ethics Advisory Panel adopted by the City Commission; and
- Incorporate the following Preamble (listed below) into the *Code of Ethics*:

Preamble

Whereas the citizens of Tallahassee have determined that they will be best served by adopting a municipal form of local government; and whereas the citizens have vested in the public officials and employees of that municipal government the responsibility and trust for operating that government for the benefit of its citizens; and whereas those citizens are entitled to a government

that is open, ethical, responsive and accountable to the highest degree possible; now, therefore, the following ethics code is adopted:

Recommendation 2 – Create a handbook to help citizens and employees understand the City’s *Code of Ethics*.

Recommendation 3 – Require all officials and employees to swear an Oath of Office, in addition to the current language as follows:

Section 876.05, F.S.

I, _____, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida.

Additional Proposed Language

I further solemnly swear or affirm that I have a commitment to the public trust, the highest standards of professionalism and ethics including a commitment to the constant appearance of propriety, always putting public trust first and never allowing personal benefit to affect my decisions and service as a public servant.

Ethics Oversight/Ethics Officer

Lead Panelist: Lila A. Jaber

Current:

Currently, the four Appointed Officials each play distinct roles related to City ethics policies and procedures. The City Manager is responsible for Ethics training, through the Equity and Workforce Department (EWD) and Human Resources (HR) departments. The Treasurer-Clerk’s Office coordinates advisory boards, financial disclosure forms, and lobbyist registration. The City Auditor’s Office manages a Fraud Hotline that has received ethics complaints, and has audited the City’s ethics procedures. The City Attorney’s Office fields most questions regarding voting and conflicts of interest, gift ban regulations, financial disclosures, and other ethics issues from Elected Officials, City departments, and staff. Additionally, employees may ask their supervisors or Department heads ethics questions.

Discussion:

As outlined below, there were two primary topics discussed under Oversight:

- (1) Creation of an Ethics Officer/Advisor/Investigator, and
- (2) Creation of a local-level Commission on Ethics.

City Ethics Officer/Advisor:

The Panel members agreed that a single “point person” should be responsible for coordinating Ethics advice, policies/procedures, compliance, training, and ensuring transparency. The City Auditor, City Attorney, a non-City advisor under contract, and a separate Appointed Official were mentioned as possible ethics point persons. The majority position reflects a desire to send a message to the public that the culture of ethics is so critical that it rises to the level of a separate Appointed Official. A minority position supports the culture of ethics and the creation of an Ethics officer, but does not recommend that the position be a separate Appointed Official; instead, the designated Ethics officer would be housed in the City Attorney’s Office without need of an amendment to the City Charter. While two members expressed a minority position, the entire Panel was in full agreement that a dedicated person be tasked with the role of Ethics Officer.

The Panel also discussed formation of a Citizens' Ethics Advisory Committee to support the position of Ethics Officer. Discussion considered makeup of such a committee, with general consensus that a small board similar to the existing Audit Committee be created. There was also consensus that this advisory committee would provide an implementation report to the City Commission regarding implementation of other adopted recommendations. A majority of the Panel supported such a Committee serving beyond the presentation of an implementation report; however, the term of service of such a committee was not incorporated into the Panel's recommendation.

Recommendations:

By a 5-2 vote (members Jaber and Landers opposed), the Panel recommended:

Recommendation 4– Create an Ethics Officer position as an Appointed Official.

The 2 members opposed to this recommendation supported the creation of an Ethics Officer, but disagreed that the position be at the Appointed Official level.

By unanimous vote, the Panel recommended:

Recommendation 5 – Create an appointed Citizens' Advisory Committee on Ethics, to monitor the implementation of the Panel's recommendations; and to present a report to the City Commission one year from City Commission adoption of recommendations.

The 2 Panel members opposed to Recommendation 4 proposed the following:

- Create a formal "Ethics Officer" that is not an Appointed Official, and
- Contract with an outside expert consultant on a retainer basis to provide legal expertise outside of the government to address complaints or issues related to actions of the City Commission. This consultant would provide formal ethics training to the Elected Officials and would be selected by the City's four Appointed Officials. The contract for services would specify that this person be independent and would have full access to City records and employees.

City Ethics Commission:

During the January 10, 2013 public hearing, a citizen proposed establishing a local-level City Ethics Commission, with members appointed by various community organizations such as the Chamber of Commerce. The Panel discussed whether there was a need for an independent body to respond to ethics complaints. Such a local-level ethics commission could be a remedy for the shortcomings of the Florida Commission on Ethics (FCOE). Additionally, there was discussion about the ability of the Appointed Officials to independently advise and investigate the City Commission. Concerns surfaced that the Appointed Officials serve at the pleasure of the City Commission.

Some Panel members and guest speakers noted that an appointed citizen's committee would not be more "independent", and that such a committee would not be accountable to the electorate. There were also concerns that local-level ethics regulatory bodies served to create two sets of regulations – and that having two sets of regulations could make it more difficult for Elected Officials to stay in compliance if officials must be concerned with abiding by several sets of regulations. Another proposal suggested hiring a third party—who would be independent-- to serve as educator (trainer) and recipient of reports of misconduct. Moreover, it was noted that the Panel was not tasked to fix the FCOE, and that many of the shortcomings of the FCOE were addressed by the 2013 Ethics Legislation.

Recommendations:

The Panel recommended no changes in this area. The Panel did not recommend a local-level Ethics Commission.

Complaint Reporting Procedures

Lead Panelist: Brant S. Copeland

Current:

Currently, there is not a codified or official procedure for reporting City ethics complaints, concerns and issues. Citizens and employees have reported their concerns to the Florida Commission on Ethics, the City Attorney's Office or City Manager, and individual departments. The City does have a Fraud Hotline maintained by the City' Auditor's Office, which has received Ethics complaints.

Discussion:

The City Auditor briefed the Panel on the existing City Fraud Hotline. The City Auditor, on several occasions, noted his Office's purpose was to audit the operations of the City to guard against fraud and abuse, and that any reports of suspected ethical misconduct or mismanagement placed to the Hotline were forwarded to the appropriate Appointed Official(s) for review and resolution. Panel members advocated for increased public disclosure of any non-compliance with the Ethics regulations of the City, and a formalized process to address ethics concerns and how to report them.

The Panel members raised concerns as to whether Hotline callers' identities could remain anonymous. Members stressed the importance of an absolute guarantee of anonymity – as allowed by law – for those who place calls to the Hotline, in order to encourage employees to report their concerns. Florida law, however, only allows the identity of complainants to be exempted from public disclosure during the initial investigative phases of the process. At the conclusion of an investigation and final action, the public would have access to all records pertaining to complaints, including the name or identity of the original complainant. For this reason, members suggested that Hotline callers wishing to remain anonymous not be required to identify themselves.

Although not codified, the City Attorney indicated that the Auditor's Fraud Hotline occasionally receives ethics-related inquiries, in which case the City Auditor consults with the City Attorney. Many members expressed support for a dual Ethics-Fraud Hotline. Members discussed having documented, written procedures dictating how calls were to be received, processed, and referred to the appropriate official for response. The Panel believed that all reports should be tracked and documented.

The Panel also discussed 2013 amendments to Chapter 112, F.S. that increased the authority of the FCOE. FCOE complaints can be made by any citizen and, additionally, now can be made by written referral from the Governor, Florida Department of Law Enforcement (FDLE), and State Attorney or a United States Attorney.

Recommendation(s):

Recommendation 6 - Expand the existing Fraud Hotline to include Ethics and rename as the "Ethics and Fraud Hotline."

6.1 Establish clearly defined written procedures for the Hotline and intake of concerns including:

- (a) Intake procedures for ethics concerns and questions including via the Hotline.
- (b) Rules for confidentiality.
- (c) Compilation and tracking of resolution of Ethics concerns and questions.
- (d) Process for handling concerns and reporting results.

6.2 - Create an easily accessible link to information about the Ethics and Fraud Hotline on the www.talgov.com website.

- 6.3 – Provide transparency of the Ethics and Fraud Hotline and create a webpage on Talgov.com that is a one-stop shop for Ethics Information (e.g. City of Jacksonville’s “Ethics in a Nutshell” guide).

Financial Disclosures

Disclosure of Financial Interest

Lead Panelist: City Staff & Panel

Current:

Section 112.3145(1)(a), Florida Statutes, requires elected City officials, specified City employees, certain appointed quasi-judicial board members, and employees having the authority to make any purchase on behalf of the City exceeding \$20,000 to submit a Florida Commission on Ethics’ *Statement of Financial Interests* form (commonly known as “Form-1”) annually, as well as within 30 days of appointment, and within 60 days of leaving such position or function. Pursuant to Florida law, it is the individual’s responsibility to ensure timely filing of any and all such statements.

The City Treasurer-Clerk’s Office is responsible for providing a listing to the Florida Commission on Ethics each year listing each required filer. Currently, 67 City personnel (including the Elected Officials) file Form-1. This figure demonstrates that the City of Tallahassee has significantly more filers than most other local governments. In comparison, Leon County had only 13 filers: 6 employee filers in addition to the 7 County Commissioners.

Discussion:

The Panel discussed Forms 1 and 6. Form-6, filed by State and Constitutional Officials, provides a more extensive snapshot of officials’ financial interests. Some Panelists expressed that Form-1 did not require enough disclosure and should include additional disclosures related to lists of current clients; clients who have any business relationship with the City; officials’ participation or service on other boards, committees, or collegial bodies; and land interests regardless of jurisdiction. There was discussion as to whether the City Commissioners should file the Form-6 disclosure form, which County Commissioners file.

Unlike Form-1, Form-6 requires reporting “net worth” and specific dollar amounts of income sources or holdings valued at \$1,000 or more. Concerns were voiced that use of the more-detailed Form-6 may have a chilling effect and may discourage potential candidates from running for City Commission. Moreover, Form-6 did not address other information that the Panel thought should be disclosed, such as service on non-profit boards of directors.

The Panel also responded to concerns that the financial disclosures were not easily available or searchable. Staff noted that completed disclosure forms are publicly accessible via the Leon County Supervisor of Elections’ website. Members suggested that the City create a database to track and disclose financial disclosure data on the City website and/or provide a link to the Supervisor of Elections’ website.

Additional discussion occurred relative to the Florida Gift Ban law.

Recommendation:

Recommendation 7 - Continue use of the Florida Commission on Ethics’ “Form-1” *Statement of Financial Interests* form. In addition, require Elected Officials to disclose additional information, but not specific dollar amounts, for a certain time period including the following:

- Business relationships with City vendors.

- Business relationships with City employees.
- Membership on Corporate Boards.
- Membership on Non-for-profit Boards.
- Land Ownership (in any form, whether located in Florida or another jurisdiction).

Campaign Finance Restrictions

Lead Panelist: Andrea Valencia Nelson

Current:

The City has no specific financial contribution limits for municipal elections, but rather follows state law. Section 7-1 of the General Code of Ordinances, Applicability of State election laws, requires that all municipal primary elections, runoff elections and special elections of the City be held according to the election laws of the State except as amended by City ordinance.

Discussion:

The Panel discussed the positive and negative impacts of contribution limits lower than state law. Advocates for lower contribution limits felt that without additional limits wealthy candidates had a potential advantage because they could draw from their own personal financial resources. The Panel was concerned with the rising costs of conducting an election campaign. In their discussion, the Panel considered that Leon County amended its Charter in 2010 to reduce the campaign finance limit to \$250 per election for County offices.

Members differed in opinion on whether to follow the County and lower the limits or retain the limits specified in state law. Speakers indicated that the County lowered its limit in order to encourage candidates to go door-to-door and meet their constituents rather than advertising on television. Others noted that lower limits could potentially shift the source of contributions away from individuals and towards political committees and/or candidates' personal finances. Political action committees (PAC) have fewer reporting requirements than individual contributors. Ultimately the Panel concluded that transparency in the campaign financing process was more important than the limit imposed on individual contributions.

There was discussion of requiring campaign donors to disclose if they have a business relationship with the City of Tallahassee. There was concern, however, that such a requirement could face a Constitutional challenge.

The Panel also recognized that 2013 state legislation raises the amount any person or entity can contribute to a candidate to \$1,000 per election. This is an increase from the previous maximum contribution of \$500 per candidate, per election. The new \$1,000 cap will become effective November 1, 2013.

Recommendation:

The Panel recommended no changes in this area. The municipal campaign contribution limits will increase from \$500 per election to \$1,000 per election, effective November 1, 2013.

Transparency

Voting Conflicts

Lead Panelist: Joseph "Jay" Landers

Current:

The City Administrative Policies & Procedures Manual sets forth various standards for conflicts of interest relating to employees, such as nepotism and other conflicts of interest. Elected Officials are also regulated by Florida Ethics Laws.

Discussion:

The Panel focused on the requirements of §112.3143, Florida Statutes, and discussed the strict construction and interpretation by State Courts and the FCOE. The Panel discussed supplementing State law with a City ordinance requiring officials to make reasonable inquiries to discover any potential conflicts of interest prior to casting votes. There was also discussion about situations where a reasonable person “should have known” a conflict existed.

The Panel discussed that the City expand its definition of Voting Conflicts to also include any conflicts that existed for a period of time prior to any official action. Largely, this was a concern to Panelists because the current statute only takes into account conflicts of interest that existed, or did not exist, on the date of a particular vote. Relationships that were terminated as little as one day *prior* to a vote, or were entered into as little as one day *after* a vote was cast are not considered a conflict of interest under State law.

The Panel distinguished between making an oral *disclosure* during an open meeting from *abstaining* from voting. City Commissioners customarily do not participate in the discussion of an item on which they have declared a voting conflict, but the Panel contemplated official articulation of the practice in a written policy in order to facilitate government transparency and public trust. The Panel emphasized the importance of an internal process establishing the difference between the two terms and educating City Commissioners and constituents on that process.

The Panel also discussed clarifying the terms in the Florida Ethics Laws, but the 2013 legislation achieved some of that clarification by better defining key terms, such as “principal” and “special private gain or loss.”

Recommendations:

Recommendation 8 - Adopt an ordinance similar to (or with reference to) State law, but which requires Elected Officials to abstain from voting if, under a duty of “reasonable inquiry,” the Official knew or should likely have known that the measure would inure to his or her special private gain or loss.

8.1 Once an Elected Official declares a conflict under the above requirement, the Official shall:

- (a) not engage in discussion about the measure, and
- (b) leave the Chambers until the item is concluded.

8.2 - Continue to follow the statutory requirement that an Elected Official with a voting conflict on the day of the vote must abstain from voting. Add a requirement that an Elected Official must declare a voting conflict and abstain from voting due to a business relationship which existed at any time when said relationship personally involved the Elected Official and specifically involved the item under consideration.

8.3 - If there is no special private gain or loss and the Elected Official was not personally involved in the item under consideration, but the Official had a past business relationship with a person or company identified in an agenda item within the past 3 years, the Elected Official may participate and vote, but the relationship shall be disclosed at the time the measure is presented and prior to any vote being cast.

8.4 - The above requirements apply to any measure presented to the City Commission for a vote.

8.5 - Penalties shall be established for violations of this ordinance.

Procurement Policy

Lead Panelist: John Calhoun

Current:

- a. City Ordinance, Sec. 2-357 - Prohibited communications, regulates interaction between potential bidders on City contracts and any City Commissioner or City Commissioner's staff, or any City employee authorized to act on behalf of the City Commission to award a particular contract.
- b. City Commission Policy No. 242 – Procurement Policy
- c. Administrative Policies & Procedures Manual – Procurement Manual

Discussion:

The Panel discussed the City's "Cone of Silence" provisions in the procurement policies and focused on how City vendors were disciplined for violating the City's procurement policies.

Based on citizen and speaker input, the Panel also discussed a prohibition against full-time City employees or contract employees from seeking additional business from the City. There was concern that a firm involved in many City projects was hired as a subcontractor on other major capital contracts. It was noted this was a difficult area to regulate and that the City did not want to create a chilling effect that discouraged firms from pursuing City contracts if it also meant the firms could not service private land developers. The Panel concluded that it was essential that contracts be disclosed, but not necessarily prohibited.

There was also discussion of the City's Charitable Contributions program based on public comments. This program awards points for bidders on City contracts if the bidder contributes to certain charities. The Panel concluded that this program has little benefit for local charities, minor impact on vendor choice and can be misperceived as a method for gaining favor by donating to causes favored by decision makers.

Recommendations:

Recommendation 7.1 - Repeal the Charitable Contribution preference points program in relation to the competitive bidding process.

Recommendation 8 - Include standardized "boilerplate" language in City contracts to put vendors on notice that they must adhere to the City's ethics policies.

Recommendation 9 - Require lobbying firms who are engaged to lobby on behalf of the City of Tallahassee at the State or Federal level to disclose - on a continuing basis - a complete list of their clients.

9.1 Codify or provide procedures for the City to waive the presence of a conflict of interest.

9.2- Post Lobbyist information to the City's website.

Lobbyist Registration

Lead Panelist: Marilyn Willis

Current:

Tallahassee's Lobbyist Ordinance found in Article VIII, Chapter 2, of the Municipal Code regulates lobbyists. Since adoption of the Lobbying Ordinance in 2011, eight (8) firms registered in 2011, seven (7) firms registered in 2012, and six (6) firms have registered to date in 2013.

Discussion:

The Panel commended the City of Tallahassee because it is one of the only Florida local governments that require lobbyists to disclose the amount of compensation received; most other governments only require

disclosure of the amount of monies spent lobbying its officials. It was also noted that Tallahassee's registration forms were much more detailed than other governments.

The Panel felt the current registration was sufficient, but focused on the Lobbyist Ordinance's penalties and enforcement. There was consensus among the Panel that the penalties in the ordinance were not easy for readers to follow; does not list specific fines or penalties for violations, but rather refers the public to Section 1-7 of the City's General Code of Ordinances, which then references the Florida Statutes. Additionally, the Panel also expressed that the amount of the fines should be high enough to discourage noncompliance.

The Panel also was concerned with enforcement of the registration requirements. Although Lobbyists generally filed their required reports on time, there have been some instances where staff had to 'hound' filers to submit the required reports or forms. The Panel suggested rather than repeatedly reminding Lobbyists to file the required documents, the Lobbyists should be barred from lobbying as a penalty for such conduct.

There was also discussion of requiring non-compensated persons and non-profit entities to formally register as Lobbyists. Some members expressed concern of requiring non-paid persons or those representing non-profit entities to register as Lobbyists.

Recommendations:

Amend the City's Lobbyist Registration Ordinance to:

Recommendation 10 - Specify associated fines and penalties in the text of the ordinance, and expand penalties for violation of ordinance as follows:

- 10.1** Set a daily monetary penalty for failure to comply (i.e. \$50 per day for non-compliance);
- 10.2** - Provide that a Lobbyist will be barred from any activity and not be allowed to meet with City Commissioners until he/she has registered with the Treasurer-Clerk;
- 10.3** - Provide that a Lobbyist will be barred from any activity and not be allowed to meet with City Commissioners or address the City Commission until all fines are paid; and
- 10.4** - Provide progressive fines for repeat offenders and bar lobbying for a given period of time (i.e. 90 days for a first offense) for all violations.

Revolving Door

Lead Panelist: Martha Barnett (Chairperson)

Current:

Elected Officials are regulated by State law and cannot lobby the City for 2 years after their term ends. Additionally, City Administrative Policy requires disclosure of negotiations for future employment by some Appointed Officials and certain City employees with prospective employers. These employees currently are:

<u>Department</u>	<u>Title</u>
City Commission.....	Aide to the Mayor
.....	Administrative Aide to the City Commission
Economic Development.....	Minority Business Enterprise (MBE) Administrator
Planning	Planning Manager - Current Planning
Public Works.....	Property Agent
.....	Right of Way Agent
.....	Supervisor Right of Way

Discussion:

The Panel recognized the distinctions between Elected Officials, Appointed Officials, and different levels of City employees relating to post-employment or post-term employment. The Panel also discussed the need to regulate post-term regulating non-City employment in various scenarios:

- **Post-Employment/Term:** There are no current restrictions against an Elected Official, Appointed Official, or City employee leaving the City workforce and going to work for a City vendor; no restriction against a City employee from immediately registering to lobby the City on behalf of clients; and no restriction barring City employees from leaving the City workforce and going into the employ of a City vendor. Certain City employees such as City Commission Aides, Senior Managers, and Executives are required to disclose if they are offered employment - or are considering an offer of employment – from an entity that interacts with the individual in their official capacity as a City employee.
- **Secondary Employment:** The Panel discussed possible prohibitions against City employees and Elected Officials who may have non-City employment or businesses from doing business with the City, or its sister governments such as the County. Conflict of interest laws and rules currently address most of these scenarios.
- The Panel also considered possible limitations on Elected Officials attempting to use their public office to influence the City management and the appropriate use of their official title and position when addressing another governmental body. It was determined that the existing conflict of interest rules and the City Charter address most of the possible scenarios that would create a conflict.
- There was discussion about the impact of new employment restrictions on current City employees, Appointed Officials and Elected Officials. The Panel recommended “grandfathering” clause.

Recommendations:

Recommendation 11 - Prohibit future Appointed Officials (in addition to Elected Officials) from appearing before the City Commission for compensation for a 2-year period after the official leaves the employ of the City.

Recommendation 12 - Keep current disclosure pursuant section 706.06(D) of the City’s Personnel Policies & Procedures Manual (relating to disclosing offers of employment extended by City vendors) for Appointed Officials and selected City employees, and expand the disclosure requirement to Elected Officials.

Training

Lead Panelist: Howard Rasmussen

Current:

There are training requirements for all City employees but none for Elected or Appointed Officials.

The City’s mandatory ethics training course, which was instituted approximately 10 years ago by the City Manager, requires employees to attend a 2-hour training course at the time of hire and to repeat said course once every 3 years thereafter.

Monthly senior and executive management Leadership Team meetings include an “Ethical Elucidations” segment to keep ethics in the limelight.

Discussion:

After being informed of the City’s current ethics training course taught by upper-level management, the Panel felt employee training was commendable but could be broadened in the scope of what was taught. Suggestions were made that a single point-of-contact be designated to coordinate training and that the training

courses include specific training on how to address and report ethics violations. The Panel also discussed having supervisors complete higher levels of training based upon increased levels of responsibility or authority. It was also noted that certain employees – based upon professional standards for their field of work – are required to complete additional ethics-related courses as part of their licensing or certification requirements. The Panel contemplated the annual Critical Policies acknowledgement (completed each year by all employees) should include a reminder about the City's ethics policies.

Training for Elected Officials

The Panel was primarily concerned about training for City Commissioners. Although newly elected Commissioners receive an initial orientation and training on ethics and other issues upon being sworn in to their first term of office, there is no requirement to complete any refresher or subsequent ethics training. The Panel suggested Elected Officials be required to receive refresher updates on an annual basis and such training be documented. In addition to the State and City ethics requirements, training should include campaign financing, prohibitions on campaigning while on duty, and soliciting contributions within government buildings. Such information should also be provided to candidates. Many Panelists advocated for expending resources up-front to train and educate Elected Officials.

The Panel's discussion about oversight included suggestions that City Commissioners participate in ethics training conducted by a third-party Ethics Officer.

It was noted that State and County constitutional officers are now required by statute to complete a minimum of 4 hours of training relating to the following topics:

- (1) Florida Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes)
- (2) Florida Sunshine Amendment (Article II, Section 8, Florida Constitution) (3) Florida Public Records Law (Chapter 119, F.S.)
- (3) Florida Open meetings laws (Chapter 286, F.S.)

Again, no similar requirements exist for municipal officials.

Recommendations:

Recommendation 13 - Require the Elected Officials to participate in an initial comprehensive ethics training course within 60 days of taking office, with refresher ethics training conducted on an annual basis and documentation of attendance and completion of all courses in the Official's personnel file.

13.1 - Incorporate training on the Voting Conflicts and the "reasonable inquiry" expectation into the Ethics Training Program for Elected Officials.

13.2 - Provide training to Elected Officials and their Aides relative to the Florida gift ban law and gift reporting requirements.

13.3 - Incorporate training on Florida election laws relating to campaign contributions, prohibitions on campaigning while performing official duties, and prohibitions on collecting campaign contributions within government buildings.

Recommendation 14 - Require the Appointed Officials and Advisory Board members to complete ethics training within 60 days of appointment, with refresher ethics training conducted on an annual basis and documentation of attendance and completion of all courses attended to be documented in the Official's personnel file.

Recommendation 15 – Require City employees to complete a 3-4 hour ethics training within 180 days of being hired and then every 3 years thereafter, and with a 1-2 hour refresher ethics course during those years in which they are not required to attend the full three to four (3-4) hour course.

15.1 - Incorporate training to include instruction/discussion of case studies and the various mechanisms available to employees to report suspected wrongdoing (e.g. waste, fraud and abuse and ethics complaints/violations, etc.).

15.2 - Analyze the data collected via the Fraud/Ethics Hotline and utilize that data to tailor future Ethics training course content to address trends or patterns in Hotline calls, if any and base content of courses on the annual agency-wide ethics assessment, comprehensive evaluation of previous training, Ethics/Fraud Hotline analysis/information, state of the art/best practices, etc.

15.3 - Expand the Ethics Training program to require progressively increasing ethics training requirements for supervisors, senior managers, and executives/Appointed Officials.

15.4 - Utilize both classroom and web-based online training.

Recommendation 16 – Evaluate (results/impact, learning retention and knowledge), on an annual basis, of the City’s Ethics Training Program to monitor effectiveness; with a report submitted annually to the City Commission.

Recommendation 17– Offer Ethics and Campaign Finance training to candidates for City Commissioner and Mayor.

Recommendation 18 – Continue with the current practice and expand and enhance the recruitment, selection, initial orientation, appointment, and promotional procedures and processes to ensure that only the most ethical individuals are employed, appointed, and/or promoted.

Exhibit A

Meeting Schedule and Guest Speakers

Panel meetings were held on:

November 8, 2012
November 29, 2012
December 18, 2012
January 10, 2013 (Public Hearing)
January 24, 2013
February 5, 2013
February 14, 2013
March 5, 2013
March 26, 2013
April 11, 2013
April 18, 2013
April 25, 2013
May 7, 2013
May 21, 2013
May 29, 2013 (Public Hearing)
May 30, 2013
June 10, 2013
June 26, 2013

The following guest speakers addressed the Panel:

November 29th:

City Attorney James R. English
Assistant to the City Manager/Director of Communications Ms. Michelle Bono

February 5th:

City Manager Anita Favors Thompson

February 14th:

Director of Equity & Workforce Development, Ms. Angela Hendrieth

December 18th:

Mr. Daniel Krasner, Executive Director, Integrity Florida
Dr. Carol Weissert, Florida State University / LeRoy Collins Institute
City Auditor Sam McCall

March 5th:

Mr. Talbot "Sandy" D'Alemberte, President Emeritus, Florida State University
Former Mayor-Commissioner Deborah "Debbie" Lightsey (served 1989-2010)

March 26th:

Mr. Phil Claypool, former Executive Director, Florida Commission on Ethics
Director of Management & Administration, Mr. Raoul Lavin
Interim Purchasing Director, Dept. of Management & Administration, Mr. Andre' Librothe

Exhibit B

List of Documents & Materials Reviewed

- A. City's Administrative Policies & Procedures, Section 706.06 (Conditions of Employment)
 - a. Nepotism
 - b. Conflict of Interest
 - c. Employment Disclosure
 - d. Acceptance of Gratuities
 - e. Political Activities
 - f. Use of City Property
- B. City's Administrative Policies & Procedures, Section 706.07 (Personal Conduct)
- C. City of Tallahassee *Code of Ethics* statement
- D. List of Annual Critical Policies Reminders
- E. Ordinance No. 11-O-03AA (Lobbyist Registration Ordinance), Registration Forms, and Section 1-7 of the City Code of General Ordinances
- F. *Ethics of a Modern Workforce* booklet – Employee Ethics Training Course Materials
- G. Audit Report Nos. 09-12 & 10-04 – Audit of the City's Ethics Training Program
- H. FY2011 *Citizen Centric Report* – published by the City Auditor's Office
- I. FY2011 *Performance Report to Citizens* – published by the City Auditor's Office
- J. City Charter – Section 10, Powers Granted; Manner of Exercising; Commissioners Dictating Appointment of Employees
- K. Excerpt of Florida Statutes, Chapter 112; Code of Ethics of Public Officers & Employees
- L. Form-1; Statement of Financial Interests (Financial Disclosure Form)
- M. Form-6; Full and Public Disclosure of Financial Interests (Financial Disclosure Form)
- N. Section 286.012, Florida Statutes – Voting Requirements and Meetings of Government Bodies
- O. Form-8B; Memorandum of Voting Conflict (Abstention Form)
- P. Form-9; Quarterly Gift Disclosure (Gifts Over \$100)
- Q. City Auditor's Pamphlet – Fraud Hotline / Overview of Audit's Functions
- R. 2012 Florida Commission on Ethics Sunshine Law Guide & *Code of Ethics*
- S. List of City of Tallahassee Advisory Boards & Committees
- T. List of City Employees required to file Form-1
- U. City of Tallahassee employee Oath of Office
- V. Advisory Board New Member Training slideshow
- W. City Charter – City of Jacksonville, Florida – Sections 1.201-1.205
- X. Excerpts of City of Jacksonville, Florida Code of Ordinances, Chapter 602
- Y. City of Jacksonville, FL "*Ethics in a Nutshell*" guide
- Z. Letter from Orlando Mayor T. Jacobs to the Florida Commission on Ethics
- AA. 2010 Leon County Charter Amendment election return results by precinct
- BB. LeRoy Collins Institute / Integrity Florida Report
- CC. Citizen-submitted draft ethics ordinance
- DD. League of Women Voters of Tallahassee "Know Your Public Officials" pamphlet

The Panel also reviewed other documents, correspondence, and reference materials not specifically listed herein.

Exhibit C

List of Public Speakers

January 10th (Public Hearing):

Mr. Mark Daniel, 1517 Wekewa Nene
Mr. Curtis Baynes, 1323 East Tennessee Street
Dr. Erwin Jackson, 1341 Jackson Bluff Road
Mr. Bob Fulford, 231 Westridge Drive
Mr. Dale Weeks, 3041 Shamrock North
Mr. Steve Stewart, 1210 Waverly Road
Ms. Linda Marshall, 3108 Livingston Road (representing *Robert "Mike" Seeders Plumbing, Inc.*)
Mr. John Lorenz, 2517 Arthurs Court Lane
Ms. Cheryl Brockman, 536 West Fifth Avenue

The following persons submitted written comments:

Ms. Rosemary Palmer, 5260 Pimlico Drive
Mr. William 'Bill' Zuna, 3789 Wentworth Way
Mr. Bill Lowman
Ms. Sarah 'Tippy' Amick, Ph.D., 3681 Loma Farm Road
Mr. Ray Marky (Killearn Lakes Tae-Kwon-Do), 6808 Thomasville Road, #107
Mr. Dale F. Weeks (Global Leadership & Benchmarking Associates), 3041 Shamrock North
Mr. Jerry Chesnutt, Audit Director, FL. Dept. of Children & Families
Ms. Judy Rice Goldman
Mr. Robert Wechsler, Director of Research, City Ethics, Inc.
Mr. Mark S. Daniel, 1517 Wekewa Nene

May 29th (Public Hearing):

Ms. Penny Herman, former Mayor-Commissioner (1992-1996), 1596 Marion Avenue
Mr. Curtis Baynes, 1323 East Tennessee Street
Mr. Jack Quillman, 1900 South Barn Way
Dr. Erwin Jackson, 5002 Glenrose Court
Ms. Kathy Stewart, 1210 Waverly Road
Mr. Steve Stewart, 1210 Waverly Road
Mr. Ben Girtman, Esq., 2907 Abbotsford Way

The following persons submitted written comments:

Dr. Erwin Jackson, 5002 Glenrose Court
Mr. Curtis Baynes, 1323 East Tennessee Street
Mr. Ken van Assenderp, Esq.