

1 Introduced by Council Member Shad and substituted by the Rules
2 Committee and amended on the Floor of the Council:
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4

5 **ORDINANCE 2011-167-E**

6 AN ORDINANCE REGARDING CHAPTER 602 (ETHICS
7 CODE), PART 9 (ETHICS COMMISSION), *ORDINANCE*
8 *CODE*, REPEALING THE EXISTING PART 9 OF CHAPTER
9 602; CREATING A NEW PART 9 (ETHICS COMMISSION)
10 OF CHAPTER 602 (ETHICS CODE) TO IMPLEMENT
11 SECTION 1.202, CHARTER OF THE CITY OF
12 JACKSONVILLE AS AMENDED BY ORDINANCE 2010-616-
13 E; PROVIDING FOR TRANSITION; PROVIDING AN
14 EFFECTIVE DATE.
15

16 **WHEREAS**, Ordinance 2010-616-E amended the Charter of the City
17 of Jacksonville to provide for an Ethics Code and an Ethics
18 Commission; and

19 **WHEREAS** the Council is responsible for establishing the Ethics
20 Code and the Ethics Commission; and

21 **WHEREAS**, the Council is committed to an Ethics Commission
22 selection process that encourages decision makers to consider the
23 cultural and ethnic diversity of the community in their selections;
24 and

25 **WHEREAS** the Council finds that addressing the Chapter 602
26 generally (Ethics Code) and Part 9 (Ethics Commission)
27 specifically, in separate ordinances, will provide for more
28 thoughtful and focused consideration of each; and that the
29 amendment of the structure of the Ethics Commission as set forth in
30 Part 9 (Ethics Commission) of Chapter 602 will establish a proper
31 predicate for the review and amendment of the Ethics Code

1 generally, now therefore

2 **BE IT ORDAINED** by the Council of the City of Jacksonville:

3 **Section 1. Part 9 (Ethics Commission) of Chapter 602**
4 **(Ethics Code) Repealed.** Part 9 (Ethics Commission) of Chapter
5 602 (Ethics Code) is hereby repealed. A copy of the existing
6 Part 9, Chapter 602 is **on file** with the Legislative Services
7 Division.

8 **Section 2. A new Part 9 (Jacksonville Ethics**
9 **Commission) of Chapter 602 (Ethics Code) Created.** A new Part 9
10 (Jacksonville Ethics Commission) of Chapter 602 (Ethics Code) is
11 hereby created to read as follows:

12 **CHAPTER 602. ETHICS CODE**

13 * * *

14 **PART 9**

15 **JACKSONVILLE ETHICS COMMISSION**

16 **SUBPART A**

17 **CREATION AND ORGANIZATION**

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

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

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

24 (a) *Number; terms.* The Commission shall be composed of nine
25 members each of whom shall be registered voters of Duval County for
26 six months prior to the introduction of their nomination for
27 confirmation, and who shall be appointed to serve for fixed January
28 1 to December 31 three-year terms. The terms of the members shall
29 be so staggered that the terms of no more than three members shall
30 expire in any one year. No person shall serve more than two
31 consecutive full terms. If, because of a delay in appointment, a

1 member serves less than two years during the term, then in that
2 event, the term shall not have been considered a full term for
3 purposes of reappointment. A member made ineligible by reason of
4 service of two consecutive full terms may be appointed for another
5 term following a waiting period of three years.

6 (b) *Qualifications.* Except as provided for in subsection (d)
7 below, each member shall have one or more of the following
8 qualifications: an attorney; a certified public accountant with
9 forensic audit experience; a former elected official; a former
10 judge; a higher education faculty member or former faculty member
11 with experience in ethics; a former law enforcement official with
12 experience in investigating public corruption; a corporate official
13 with a background in human resources or ethics; a former board
14 member of a City of Jacksonville independent authority; a former
15 government executive with ethics experience.

16 (c) *Limitations.*

17 (1) No member shall be an elected or appointed official,
18 or an employee of the City of Jacksonville or any of its
19 independent agencies, or of any governmental agency subject to the
20 authority of the Commission. No member shall be an active judge, an
21 assistant state attorney or assistant public defender, or an
22 officer of a political party.

23 (2) Ethics Commission members shall not use their
24 position in any manner that decreases public trust or gives the
25 appearance of impropriety. The Ethics Commission shall establish
26 internal operating rules or bylaws to effectuate this provision.

27 (3) Any Commission member who files to be a candidate
28 for public office shall immediately resign from the Commission and
29 their position shall be deemed vacant upon filing.

30 (4) No individual while a member of the Commission shall
31 allow his or her name and title as a commission member to be used

1 by a campaign in support of or against any candidate for public
2 office. Nothing herein shall preclude a member from signing a
3 petition in support of or against any referendum, ballot question
4 or candidate. This rule does not prohibit any campaign
5 contributions by a member, or a member supporting any candidate in
6 his or her own name.

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

20 **SUBPART B. POWERS AND DUTIES**

21 **Sec. 602.921. - Duties and powers.**

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

29 (a) The Commission is authorized to receive, and to
30 investigate and issue findings with regard to any sworn written
31 complaint alleging a violation of this Chapter or by a complaint

1 initiated by a minimum vote of six members of the Commission
2 alleging a violation of this Chapter. All complaints and records
3 shall be confidential as allowed by Section 112.324, Florida
4 Statutes, or any other applicable state law. In support of this
5 power, the Commission is authorized to establish an ethics
6 "hotline" to receive tips and information, each of which shall be
7 treated with confidentiality as authorized by Florida law. The
8 General Counsel, with the assistance of all appropriate and
9 available offices of the City, shall assist the Ethics Commission
10 in the investigation of complaints. The Ethics Commission may refer
11 matters brought to its attention to the State Attorneys' Office or
12 the Florida Commission on Ethics if it determines jurisdiction is
13 vested in, and action is more appropriate if taken by said
14 agencies.

15 (b) Provide assistance and input into the management and
16 coordination of the training and education of local officers and
17 employees in state and local ethics, including the City's Ethics
18 Education Program as set forth in Section 602.1001, as well as all
19 public records and sunshine law training throughout the government.

20 (c) The Commission may, upon employee or citizen complaint,
21 or upon its own initiative, seek information and gather facts for
22 the purpose of reviewing any circumstance or situation of which the
23 Commission may become aware that appears to violate or may
24 potentially violate an acceptable standard of ethics conduct for
25 City officers and employees as delineated in Section 1.202(d) of
26 the Charter. Based upon such review the Commission may make such
27 recommendations to the Mayor and the Council as it deems
28 appropriate;

29 (d) Have jurisdiction to levy those civil fines or penalties
30 authorized in this Chapter 602 for violations of the City's ethics
31 code;

1 (e) Act as the hiring committee, subject to Council
2 confirmation, for the executive director of the Ethics Oversight
3 and Compliance office.

4 **SUBPART C. PROCEDURES AND DUE PROCESS**

5 **Sec. 602.931. - Process for the imposition of sanctions and**
6 **penalties.**

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

12 (a) The Commission shall establish and post rules and
13 procedures to provide for the investigation of citizen, hotline,
14 employee and self-initiated complaints of violations of Chapter
15 602.

16 (b) The Commission shall establish and post rules and
17 procedures to provide for due process in the charging and
18 prosecution of violations of Chapter 602.

19 (c) Meetings of the Commission exempted from the provisions
20 of section 286.011 Florida Statutes, shall be recorded and such
21 recording shall become public upon the conclusion of the
22 investigatory matter, by either a finding of no probable cause to
23 proceed or a final determination by the Commission.

24 **Sec. 602.932. - Documents and testimony.**

25 The Commission is authorized to exercise and utilize all
26 procedures and processes available to city agencies, which are
27 authorized by ordinance, the Charter, or Chapter 119, Florida
28 Statutes, to secure the production of documents and testimonial
29 evidence relevant to the investigation and prosecution of
30 complaints and charges authorized by this Chapter; except that, the
31 issuance of a subpoena to compel the production of documents or

1 testimony shall be authorized by a circuit or county judge of the
2 Fourth Judicial Circuit upon a facial demonstration of the
3 relevancy of the documentation or testimony to the enforcement of a
4 provision of Chapter 602, Ordinance Code, the City of
5 Jacksonville's Ethics Code.

6 **Sec. 602.933. - Cooperation of other City agencies.**

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

12 **Sec. 602.934. - Dismissal of complaints.**

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

27 **Sec. 602.935. - Frivolous or groundless complaints.**

28 In any case in which the Commission determines that the
29 complaining party filed a frivolous or groundless complaint as
30 defined in Florida Statutes, § 57.105, or a complaint filed with
31 malicious intent or with knowledge that the complaint contains one

1 or more false allegations, or filed with reckless disregard for
2 whether the complaint contains material false allegations, the
3 Commission may, upon proper notice and hearing, order the
4 complaining party to pay any costs and attorneys' fees incurred by
5 the Commission and/or the alleged violator. Such order may be
6 enforced by the Circuit Court, as are other board orders of the
7 City.

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

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

13 **Sec. 602.937. Prospective jurisdiction.**

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

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

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

29 **Sec. 602.939. - Statute of limitations.**

30 No action may be taken on a complaint filed more than two (2)
31 years after the violation is alleged to have occurred unless a

1 person, by fraud or other device, prevents discovery of the
2 violation. Where the allegations are the subject of a personnel,
3 criminal or administrative proceeding or where the complainant is
4 required to exhaust his or her administrative remedies prior to
5 filing a complaint, the statute of limitations shall be tolled
6 until the termination of said proceeding or the exhaustion of
7 administrative remedies.

8 **Sec. 602.940. - Advisory opinions.**

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

20 **Sec. 602.941. - Review.**

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

25 **Section 3. Transition.** For the purposes of providing an
26 orderly transition from the former Jacksonville Ethics Commission
27 to the Jacksonville Ethics Commission approved by this ordinance,
28 all former commissioners shall continue to serve until the
29 expiration of their terms. As terms expire, appointments shall be
30 made by and in the order of the selectors set forth in Section
31 602.912, with initial terms staggered for one, two, or three year

1 terms in order to facilitate the staggering required therein. All
2 initial one or two year terms shall not be considered full terms
3 for purposes of the term limit provisions contained in this
4 ordinance.

5 **Section 4. Effective Date.** This Ordinance shall become
6 effective upon signature by the Mayor or upon becoming effective
7 without the Mayor's signature.

8
9 Form Approved:

10
11 /s/ Steven E. Rohan

12 Office of General Counsel

13 Legislation Prepared By: Steven E. Rohan

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