ANNUAL REPORT—July 2008
ETHICS OFFICE
CITY OF JACKSONVILLE
(Required by Executive Order 07-11)

"These are the times that try men's souls."

Thomas Paine, 1776, in a pamphlet calling for a government based on ethics principles of truth, honor and justice.

DEFINITIONS

There are three key definitions essential to the understanding of the functions of the "Ethics Officer".

1. **ETHICS**: The philosophy of morals; a standard of character; the basic principles of right action; derived from the Greek "ethikos", <u>character</u>. (Examples of ethical principles: truthfulness, courage, respect, responsibility, fairness, caring, citizenship; transparency, respectability.) Example: a person who reports a situation to the city's Ethics Hotline, even though it would be safer to remain silent. There is no "law" that you must do this; you choose to do it to increase the survival of the group.

2. **LAW**: A rule of conduct established and enforced by the authority, legislation, or custom of a community. Derived from Old English "legu", <u>laid down</u>. There are many "ethics laws" at the state and local level. One example of an ethics <u>law</u> is that an elected official cannot receive a gift from a lobbyist over $100. Laws usually have penalties attached to them such as monetary fines or jail terms.

3. **COMPLIANCE**: To act in accordance with another's command or rule. Derived from Middle English, "complien" <u>to carry out, fulfill.</u> Example: The lawyer made sure everyone filed their tax returns by April 15th so they were in compliance with the law.

For thousands of years there has been a historical debate over the "law" versus "ethics". Aristotle stated "*I have gained this from philosophy: that I do <u>without</u> being commanded what others do only from fear of the law*". While ethics is about <u>should</u>, laws are about <u>must</u>.[i] The position of Ethics Officer in Jacksonville, as established in our code, is a combination of both of these concepts. It has been set up as an Ethics/Compliance Officer. This dual function requires training and monitoring for <u>compliance</u> with established laws but states that the Ethics

Officer should <u>encourage</u> people to aspire to high ethical standards. One cannot force someone to be "ethical"; one <u>can</u> enforce actual laws. The Ethics Officer is not a law enforcement position—if there are suspected violations of the law, they are turned over to existing investigative or prosecution authorities.

HISTORY OF THE ETHICS OFFICE

The city of Jacksonville has had an ethics program since 1999, when the city's first ethics code was passed. Initially, the position of "Ethics Officer" was handled by two Ethics Officers, one a citizen volunteer (Carla Miller), and the other, an attorney liaison from General Counsel's office (John Jolly/Steve Rohan). The office was staffed from 2001-June 2007 by an "Ethics Coordinator" who assisted the two Ethics Officers. At the request of Mayor John Peyton, the Jacksonville City Council approved funding for a part-time Ethics Officer and Carla Miller was hired the end of November, 2007. The funding for the position of "Ethics Coordinator" was eliminated. Therefore, there is now a funded position focused solely on the development of the ethics program as intended by the Jacksonville Code.

MISSION AND DUTIES OF THE ETHICS OFFICE

The role of the Ethics Officer was outlined in an Executive Order of the Mayor, Number 07-11, and lists the duties of the office which are also reflected in our local Ethics Code, section 602.1102.[ii] The Mayor stated in that order that it was his intention to implement the highest ethical standards and an environment consistent with the Code's aspirational goals—"Ethics is more than the avoidance of criminal behavior. It is a commitment for public servants to take individual responsibility in creating a government that has the trust and respect of its citizens. Even actions that could create the appearance of impropriety should be eliminated."

In the last 8 months, the Ethics Officer has been focused on fulfilling the Mayor's goals as quickly as possible with the use of existing resources -- not with any additional staff.[iii] It has been essential to build a strong foundation for a comprehensive program. Therefore, it has been necessary to become familiar with all departments and meet with all executives of the city to assess the state of the ethical culture and develop appropriate programs. These are the main areas being addressed:

1. Promotion of an ethical culture for all city government officials and employees, done primarily with training. This is based upon national standards; [iv]
2. Systems to promote 100% compliance with all state and local ethics laws.[v]
3. Primarily through the "hotline", the prevention, detection and handling of misconduct, including referrals to law enforcement;

4. Implementation of all duties of the Ethics Officer as stated in the Jacksonville Code.

ACTIVITIES OF THE ETHICS OFFICE, November 2007-- July, 2008

The activities of the Ethics Office are numerous. It has been a challenge to prioritize everything that <u>can</u> be done in a way that allows a focus on the most important issues.

The Code states that the Ethics Officer shall report independently to <u>both</u> the Mayor and the City Council President. Additionally, the Ethics Officer is also the liaison with the Ethics Commission, a group of volunteer citizens, and receives Hotline calls from employees and local citizens. Therefore, it is predictable that all groups could have separate expectations of the Ethics Officer. It is unusual for an Ethics Office to be set up in this fashion. Usually an Ethics Officer reports to a Mayor, in the capacity of a legal advisor <u>OR</u> they report to an independent citizen Ethics Commission (Miami/ Atlanta/ Los Angeles/ New York). These independent Ethics Commissions usually employ investigators and have an ability to hold hearings and issue sanctions. We do not have this type of system in Jacksonville at this time.

This is pointed out because it is hard to achieve everyone's objectives and/or desires in a system that requires the Ethics Officer to work with internal and external bodies at the same time. What is most crucial to the Ethics Office is loyalty, transparency and truthfulness to the <u>citizens</u> of Jacksonville. This could only become problematic if there is pressure on the Ethics Officer to compromise issues based on competing interests. That is why many cities have chosen to make the Ethics Officer and Commissions independent and removed as much as possible from any political process. I am optimistic that there is a real interest in promoting ethics in our city government and I have experienced much proof of that. The Ethics Office will resolve issues in a transparent manner and in the interests of the citizens of Jacksonville.

I pledge to do everything possible to move the ethics program forward, based solely on ethical principles, the law and the facts.

The activities I have worked on will be listed under each Code requirement. (Note that the activities below were completed in the last 8 months, part time.)

Sec. 602.1102. Mission and duties of the City Ethics Officer.

The duties of the City Ethics Officer include, but are not limited to the following:

(a)   Implement, in coordination with the Office of General Counsel…, a confidential "Hotline" for the discovery of government waste, fraud, and ethics violations.

A hotline has been set up in the Ethics Office. Initially, it was thought that it would be best for the Ethics Officer to handle the incoming calls to be able to correctly categorize the topics and write intake procedures. (Most cities outsource their hotlines to outside companies. This is an expense that we do not need to incur at this time.) It is manned during business hours by either the Ethics Officer or one trained paralegal in General Counsel's office. Calls relating to an ethics matter are reviewed by the Inspector General and the Ethics Officer to determine appropriate actions, which have included: audits, referrals to law enforcement agencies, and internal investigations. Confidentiality has been maintained for these calls, per Florida law. Currently, there is work to coordinate these cases with the Ethics Commission and a Hotline Sub-committee of the Commission has been formed. The Hotline procedures have also been coordinated with the City's Call Center^vi and eventually, 2 of their top personnel will assist in screening and handling the incoming calls. This is because a high percentage of the calls coming into the Hotline are not "ethics" related calls and are more appropriately handled by the Call Center.

(b)   Proactively develop and implement systems for:
(1)   The timely and accurate preparation of disclosures required by the state and the city;
The initial project was to accurately determine, by reference to state and local laws, exactly who had to file financial and gift disclosures. A complete review was done of all relevant laws to make an accurate determination of who had disclosure requirements. This generated a spreadsheet of all those required to file at the state and local levels. Next a training memo was developed and distributed which summarized the law—"Ethics in Nutshell #2—Disclosures". All of this was posted on the Ethics webpage on www.coj.net (Ethics Dept.). Over 100 questions were handled on the above legal requirements. Reminders were sent out to all "filers" as to deadlines and procedures in December, March and June. There was coordination with the State of Florida Ethics Commission on all of these procedures.

(2)   Orienting candidates for boards and commissions of their obligations under the state and city ethics codes;
* Several ethics training sessions were conducted for boards and commissions (for example, Housing Boards, True Commission; CPACs^vii). Since there are close to 100 city boards and commissions, with constant turnover, it was decided to put all training online. The first training information was developed: "Ethics in a Nutshell: #3: Government in the Sunshine: A Guideline for Boards and

Commissions". This is now posted online and is being distributed to all boards and commissions of the city.

> (3) Informing elected and appointed officers and employees of their obligations under state and city ethics codes;

*See (1) and (2) above. Additionally, all local ethics laws that became effective January 1, 2008, were summarized and distributed to all elected officials and city employees. The state and local laws on ethics are quite complex, that is why there needs to be a continual project in this area to simplify and train.

(c)   Facilitate and enhance programs for the ethics training of, at a minimum, every director, chief, manager, mayoral aide, and procurement employee of the Executive Branch of the City.

*Over 1000 city employees and officials have personally been trained by the Ethics Officer. This was considered to be a major project and was important to establish relationships in all of the departments and to promote the use of the Hotline. The city's new ethics laws were summarized into "Ethics in a Nutshell #1: Ethics Code Summary". Training sessions were held with the following groups/departments: City Council Executive Assistants (2 sessions); Information Technology Dept. (ITD); Recreation Department, Chiefs.; Central Ops, division chiefs; Sustainable Communities, division chiefs; Housing and Neighborhoods Department (50); Public Works, Division heads; Children's Commission (90); Public Information Division; JEDC (entire department); Finance Department; Environmental Quality (100); all employees of Human Resources; Fire Chiefs; and the Behavioral Science Department. The entire Procurement Division was trained on ethics and ethics laws..

Sessions on "Ethics 101" will continue for the next few months. A makeup session for any directors, chiefs or mayoral aides was held on June 26. Additional makeup sessions will be scheduled again in August.

(d)   Create informational brochures, pamphlets, notices and bulletins necessary to alert all candidates for appointment to boards and commissions of the ethics laws that govern their official behavior after appointment; (Done: *see b) 2) above.*

(e)   Meet regularly but independently with the Mayor and Council President to discuss the status of the ethics programs;

*This was done, but should be done on a more frequent basis. National best practices emphasize that it is essential that the Ethics Officer have access to the highest levels of administration on a regular basis for input on decisions that require an ethical analysis. Without meaningful interaction, the effectiveness of the office is diminished. Federal Sentencing Guidelines (FSGO), the model for corporate best practices in ethics programs, also states that the Ethics Officer "shall be given adequate resources, appropriate authority and direct access to the governing authority".[viii]

(f)   Work to integrate ethics into procurement, hiring, retention and promotion policies;

This is in progress. Initial research on national best practices in these areas (Human Resources and Procurement) has been completed. As to hiring, all new employees are now trained in a new ethics training module, developed by the Ethics Officer. Several of the new employee orientation training sessions have been personally conducted by the Ethics Officer.

(g)   Coordinate with the City's procurement officials in the development and implementation of outreach programs to city vendors on ethics policies and the city's hotline.

This is in progress; meetings have been initiated by the Ethics Officer with the head of the Procurement Division and the Ombudsman of Central Operations and the outline of an ethics outreach program to all vendors has been completed. This will be implemented in the next few months.

(h)   Develop policies, programs and strategies to deal with all ethics-related matters;

An example of work in this area is lobbyist registration. It was discovered that our city's 20 year old law on lobbying registration was not being enforced as lobbyists were not actually registering their clients and issues, as required by the law. After two letters to the lobbyists, most complied with the law and filed a new online registration form[ix] designed by the Ethics Officer and approved by General Counsel's office and the Ethics Commission. This form requires a lobbyist to register their clients and issues and is posted on the City Council website. This provides more transparency for local citizens. Additional work needs to be done in this area to provide more disclosure as to the lobbyist's "issues". Revisions were proposed to the lobbying law by the Ethics Officer and these were passed into law in July 2008; these revisions included procedures for striking the registrations of lobbyists if they did not comply with the law and increased penalties for non-compliance.
Research on lobbying reforms nationwide was conducted and posted on the ethics website. The Ethics Office is continuing to work with the Ethics Commission (legislation sub-committee) on additional legislation.

(i)   Develop training and education programs in coordination with the General Counsel and the Jacksonville Ethics Commission;

Training materials have all been coordinated with General Counsel's Office and the Ethics Commission. The first major training session, Ethics 101, was on the new Ethics laws. Additionally, Sunshine Law training for Boards and Commissions was coordinated with the above offices.
A training program was also attended in July, 2008 on "The Speed of Trust" by F. Covey. The Ethics Office obtained 6 free registrations. This program will be rolled out to all Division and Department heads in the next few months.

(j) Approve the selection and retention of departmental ethics officers;

All department heads were contacted about the requirements for their DEO (departmental ethics officers) and all DEOs were appointed by mid-February. This system of having an ethics "point person" in each department has been highly successful in training efforts and in resolving problems. The Ethics Officer has met with each DEO separately and has also conducted a group DEO meeting to discuss citywide ethics issues and training priorities. The DEOs have been most helpful in facilitating the ethics training sessions.

(k)   Assist departmental and agency ethics officers in training and education;

Special training sessions have been created for certain departments, as requested. For example, a seminar was developed for the Children's Commission. There have been numerous consultations in all departments as ethics issues and questions come up.

(l)   Conduct meetings with any or all of the departmental and agency ethics officers as well as senior management to discuss or provide advice on ethics issues;

This is being done on a continual basis, as described above.

(m)   Obtain copies of all reports and disclosures made pursuant to State law by persons subject to this Code if such reports and disclosures are substantially similar to reports and disclosures required under this Code;

State of Florida gift and financial disclosures are in digital format and copies have been requested of the July, 2008 state filings. These will be linked to the Jacksonville ethics webpage.

(n)   Maintain a directory of where all reports and disclosures filed pursuant to this Code may be obtained;

This is done and on the ethics webpage on the city's website..

(o)   <u>Encourage</u> compliance with the spirit and letter of ethics laws;

The Ethics Officer does encourage this on a daily basis with all levels of elected officials and city employees, but it is truly up to each individual to work towards the aspirational goals of our city's ethics code. There has been much success in this area but work remains to be done.

(p)   Review periodically this Code and other applicable laws and regulations and recommend to the Ethics Commission appropriate changes to this Code;

Legislation was proposed on secondary employment requirements; lobbying requirements and gift disclosures. Revisions on gifts and lobbying passed in July, 2008. The purpose of these proposed revisions was to simplify requirements of the law and eliminate ambiguities. Many other areas of the local ethics code have to be simplified or eliminated. There are also areas where additional legislation should be considered.

(q)   The City Ethics Officer shall be the liaison between the Ethics Commission and the officers and employees of the City;
The Ethics Officer has attended all of the Ethics Commission meetings and most of the sub-committee meetings; all Ethics Commission members have been trained by the Ethics Officer.
(r) (s) *have not yet been utilized.*

Other Tasks Accomplished:

1. A website for Ethics Office was created which includes: ethics research, audits, Frequently Asked Questions (FAQs), and training materials.
2. All Constitutional Officers and Executive Directors of the Independent Agencies were contacted about the city's ethics program so as to <u>coordinate</u> with their Ethics representatives. (Note, the Ethics Officer does not have jurisdiction over the Independent Authorities. There is proposed legislation to make changes in this area.)
3. Outreach has been made to citizen groups and online forums. I believe the opinions of the community are invaluable as the ethics program expands and that the internet will obviously become more and more significant in the relay of communication in the future between citizens and their government.
4. There has been continued cooperation with COGEL, the Council on Governmental Ethics, the leading body for governmental ethics officials in the U.S. (The Ethics Officer currently is Global Affairs Chair of COGEL and has been on the governing board.) This has been quite useful as other ethics offices have been helpful in sharing ethics legislation and programs with the city of Jacksonville.
5. I have met with law enforcement officials to discuss investigative strategies and procedures for the Hotline.
6. I have met numerous times with the City Council Auditor on ethics related issues to develop plans for possible legislation or programs.
7. There have also been meetings with the Northeast Florida Ethics and Compliance organization—a group of all of the local corporate ethics officers (example: Blue Cross).This has also been helpful in obtaining information on best practices in developing ethics programs. I also coordinate with ECOA, the national corporate ethics organization and have been asked to participate in a panel in their national conference. I also work with the OGE, Office of Governmental Ethics of the United States in Washington, D.C. and they have invited me to attend their ethics training sessions and have waived tuition costs.

SUMMARY

The Ethics Resource Center of Washington, D.C. states in their report "*Leading Corporate Integrity: Defining the Role of the Chief Ethics Officer"* that:

"A champion of ethics and integrity must have the strength and willingness to take risks in order to confront wrongdoing, even at the highest levels. This is an enormously difficult and intimidating task. While most days for an ethics person are spent implementing and maintaining the program—training, drafting materials, reviewing company activities, investigating hotline calls, etc. –the decisive moments in the life of any ethics program come in test of strength. These are the moments when a powerful interest or manager wants something done a certain way and the Ethics Officer stands alone in challenging improper conduct. It can be a very lonely experience, when otherwise respected leaders…are challenging the Ethics Officer's judgment and even loyalty to the company. The Ethics Officer must have the fortitude to stand her ground." The Ethics Officer must be able to raise matters of concern, be heard, and not have any fear of retaliation.

I am optimistic from the initial work completed in the last several months that continued progress will be made in all aspects of the city's Ethics program, thereby increasing the citizen's trust in their local government. There is nothing more crucial than transparency, truthfulness and trust. I will do everything in my power to establish a strong ethics office for the citizens of Jacksonville.

Respectfully submitted,

Carla Miller
Ethics Officer
City of Jacksonville, Florida
July 31, 2008

[i] Michael Josephson of the Josephson Institute (Character Counts).

[ii] ***Sec. 602.1101. City Ethics Officer position established. (Duties of the Office)***

The position of City Ethics Officer is hereby established. The City Ethics Officer shall be appointed by the Mayor and confirmed by the Council. The Ethics Officer shall serve during the term of the Mayor, except that he or she may be removed by the Mayor with the approval of the Council. The Ethics Officer shall not be entitled to Charter Article 17 civil service protections and shall report independently to the Mayor and Council President or their designees. The Ethics Officer may serve in a compensated full or part time employment position with the City or may be an independent contractor.

Sec. 602.1102. Mission and duties of the City Ethics Officer.

The mission of the City Ethics Officer is to encourage and assist each of the officers and employees of the City to act ethically in all actions. This mission requires that the City Ethics Officer not only encourage compliance with various laws, but more importantly, encourage each employee and officer to adhere to the highest standards of ethical behavior as set forth in aspirational goals of Section 602.101 of this Code. In pursuing that broad mission, the duties of the City Ethics Officer include, but are not limited to the following:

(a)   Implement, in coordination with the Office of General Counsel, and with the voluntary support of the Council Auditor's Office, a confidential "Hotline" for the discovery of government waste, fraud, and ethics violations;

(b)   Proactively develop and implement systems for:

(1)   The timely and accurate preparation of disclosures required by the state and the city;

(2)   Orienting candidates for boards and commissions of their obligations under the state and city ethics codes;

(3)   Informing elected and appointed officers and employees of their obligations under state and city ethics codes;

(c)   Facilitate and enhance programs for the ethics training of, at a minimum, every director, chief, manager, mayoral aide, and procurement employee of the Executive Branch of the City.

(d)   Create informational brochures, pamphlets, notices and bulletins necessary to alert all candidates for appointment to boards and commissions of the ethics laws that govern their official behavior after appointment;

(e)   Meet regularly but independently with the Mayor and Council President to discuss the status of the ethics programs;

(f)   Work to integrate ethics into procurement, hiring, retention and promotion policies;

(g)   Coordinate with the City's procurement officials in the development and implementation of outreach programs to city vendors on ethics policies and the city's hotline.

(h)   Develop policies, programs and strategies to deal with all ethics-related matters;

(i)   Develop training and education programs in coordination with the General Counsel and the Jacksonville Ethics Commission;

(j)   Approve the selection and retention of departmental ethics officers;

(k)   Assist departmental and agency ethics officers in training and education;

(l)   Conduct meetings with any or all of the departmental and agency ethics officers as well as senior management to discuss or provide advice on ethics issues;

(m   Obtain copies of all reports and disclosures made pursuant to State law by persons subject to this Code if such reports and disclosures are substantially similar to reports and disclosures required under this Code and if a person may rely on such State report or disclosure pursuant to Section 602.455 to eliminate filing similar information under this Code;

(n)   Maintain a directory of where all reports and disclosures filed pursuant to this Code may be obtained;

(o)   Encourage compliance with the spirit and letter of ethics laws;

(p)   Review periodically this Code and other applicable laws and regulations and recommend to the Ethics Commission appropriate changes to this Code;

(q)   The City Ethics Officer shall be the liaison between the Ethics Commission and the officers and employees of the City;

(r)   The City Ethics Officer may seek formal opinions from the Jacksonville Ethics Commission on interpretation of his or her duties or of this Code; and

(s)   Accomplish other duties as requested by the Mayor or Council President.

[iii] *The budget of the Ethics Office is approximately $90,000 per year, which includes the salary of the Ethics Officer (budgeted for $75,000 per year at an hourly rate of $85). The Ethics Officer waived any health insurance, pension benefits or salary increases.*
This should be compared with the budgets of Ethics Offices in other cities, which include staff, including investigators, and are budgeted from $500,000 to 2-3 million. In one city, the budget of the Ethics Office is tied to a percentage of the city's budget. The city of San Diego, with a comparable overall city budget similar to Jacksonville, allocates over 1 million for its Ethics activities.(Fiscal Year 2007 Final Budget - $ 1,194,683**)**

[iv] FSGO, Federal Sentencing Guidelines for Organizations; an outline of best practices in establishing ethics programs.

[v] See City of Jacksonville ethics website, Ethics in a Nutshell #2: disclosures.
http://coj.net/NR/rdonlyres/ernnmrh6qtq7iz3p4jqnodvsqbwj6rbca6qdm2r42slezcswqrgiym4oznptg roubb4xaazukmgbkswbyqmm32chdxb/NUTSHELL+2008-2++Disclosures.pdf

[vi] 904-630-CITY; the Call Center handles various citizen complaints and inquiries.

[vii] Jacksonville's six Citizen Planning Advisory Committees (CPACs) promote communication between city government and the residents it serves.

[viii] USSC, section 8)b)2).

[ix] http://www.coj.net/City+Council/Lobbyist+Information.htm