



CITY OF GAINESVILLE OFFICE OF THE CITY ATTORNEY

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TO:	Mayor and City Commissioners
FROM:	Daniel M. Nee, Interim City Attorney
DATE:	May 13, 2022
SUBJECT	FY 2021-22 Mid-year Performance Report of the Office of the City Attorney

This memorandum is provided in response to the City Commission's request for a 6-month update since my appointment as Interim City Attorney, and also as a mid-year snapshot of the accomplishments of a high-functioning, municipal law office. It is intended that this memorandum will provide an overview of the office's recent activities, and highlight noteworthy events and activities. It is by no means comprehensive of all of the day-to-day work performed by the attorneys and staff in representation of the City of Gainesville. We remain available at all times for more specific inquiries.

ROLE, RESPONSIBILITIES, AND PROFESSIONAL OBLIGATIONS OF THE OFFICE OF THE CITY ATTORNEY

It is important to understand the role and responsibilities of the Office of the City Attorney. This office serves as in-house corporate counsel to the City of Gainesville, including both General Government and Gainesville Regional Utilities sides of the organization, and all of their various departments and divisions. These are our "Clients." The Office of the City Attorney has long adhered to a "One Gainesville" concept, recognizing that all aspects of our organization are focused on serving our neighbors, utility customers, visitors, and other stakeholders.

As with many analyses performed by this office, it is best to begin the evaluation by looking to the Charter. City Charter 3.03 provides,

The city attorney must be admitted to the practice of law in the state, and shall be the legal advisor to and attorney for the city. The city attorney shall serve at the will of the commission. The city attorney shall prosecute and defend all suits, complaints, and controversies for and on behalf of the city, unless otherwise directed by the commission, and shall review all contracts, bonds and other instruments in writing in which the city is to be a party, and shall endorse on each approval as to form and legality.

The description is succinct, but broad in responsibility.

This office has an integral, but supporting, role in many of the functions and business activities of our Clients. The characterization as a supporting role does not minimize the importance or necessity of our services, but emphasizes that it is not the function or role of this office to set or implement policy, to enforce the City Code, or to manage City contracts. For the most part, this office does not self-generate our workload. We are a service provider with two primary roles, advisor and advocate. The value of our services are generally reflected in the usefulness to our Clients in achieving their goals.

It is also important to understand the professional obligations that govern our conduct as attorneys licensed by the Florida Bar. In particular, we are each personally responsible for observing the Rules of Professional Conduct, and may be disciplined for failure to do so. The Rules of Professional Conduct require that, as advisor, we must exercise independent professional judgment and render candid advice to our Clients and, as advocate, we cannot bring or defend a proceeding, or assert or controvert an issue therein, on behalf of our Clients, unless in our opinion there is a basis in law and fact for doing so. These professional obligations require occasionally difficult, but necessary, conversations that, in the long run, best serve the organization as a whole.

OBJECTIVES AND PERFORMANCE CRITERIA

The longstanding primary objective for this office is to provide timely, competent and diligent legal counsel to our Clients in an efficient and cost-effective manner, thereby assisting and supporting our Clients in bringing projects and programs to fruition, in running the business units they manage and in achieving their objectives and strategic initiatives and in defending and pursuing claims and litigation on behalf of the City. Traditionally, we review the performance of this office in terms of the following core objectives:

Core Objective	Notable Achievements
The Office of the City Attorney must zealously advocate in all levels of court and administrative proceedings , including the preparation of documents and oral arguments before the judicial bodies. We will work effectively with Risk Management and other involved departments to investigate and evaluate all claims as necessary to determine those that warrant settlement and those that should be litigated in the best interest of the City.	<p>The Office of the City Attorney actively monitors and represents our Clients in approximately 274 open claims and cases. Primarily these involve:</p> <ul style="list-style-type: none"> • Labor and employment issues; • Personal injury and other torts; • Police liability; and • Construction and other contract disputes. <p>Cases are currently being litigated at all levels of state trial courts, at the state District Court of Appeal, and in the federal Northern District of Florida, as well as before state DOAH hearing officers and the EEOC.</p>
The Office of the City Attorney must perform as advisor in public meetings held by our Clients. We strive to provide meaningful responses to legal questions from our Clients,	The Office of the City Attorney provided legal counsel at regular and special meetings and workshops held by the City Commission, standing committees of the City Commission, the Utility Advisory Board, the City Elections Canvassing Board, Development Review Board, City Plan Board, Parking Board of Appeals, Human Rights Board,

without disclosing attorney-client privileged information or legal strategy. Our goal is to adequately prepare, through experience and anticipatory research, to address the matters that are on the agenda or likely to arise at meetings.	Fire Safety Board of Adjustment, and Boards of Trustees for Pension Plans.
The Office of the City Attorney must perform as advisor in transactional and regulatory matters , including our availability for meetings with our Clients, responding to requests for legal guidance, review/preparation of contracts and other legal documents and preparation of ordinances.	<p>The Office of the City Attorney prepared and submitted 45 ordinances and 11 resolutions during the first half of this fiscal year.</p> <p>We also reviewed and/or drafted numerous agreements and responses to requests for legal services, and assisted our Clients with contract negotiations and disputes, including agreements with the County, Constitutional Officers (Supervisor of Elections, Sheriff, State Attorney, Public Defender), the University of Florida, utility customers (individually and large-scale developers), and a multitude of vendors.</p> <p>The office assisted staff and several City boards, including the City Commission, in updating Board Rules.</p>
The Office of the City Attorney must clearly communicate our independent legal opinions and concisely frame legal issues to assist our Clients in evaluating particular courses of action and understanding the consequences of such action. Our opinions should be based on current law and should advise how changes in the law affect our Clients' operations.	<p>The Office of the City Attorney provided legal opinions to staff and the City Commission on matters such as traffic regulations on county-maintained roads; decennial redistricting and elections law; First Amendment and other Constitutional concerns, including signage and homeless issues; equal opportunity, including discrimination and hiring and purchasing practices; and public records, public meetings and ethics laws; along with necessary opinions related to bond issuances.</p> <p>We also conducted training and provided legal guidance on topics of interest, including: new Commissioner orientation; public records and Sunshine Law training; provided GPD training; advised City staff of changes in the law and developing court cases.</p>
The Office of the City Attorney must at all times provide legal services in a professional and ethical manner by practicing law in accordance with our Code of Professional Responsibility, the Code of Ethics for Public Officers and Employees, and the City's	Four attorneys (including the Interim City Attorney) maintained Florida Bar Board Certification in City, County and Local Government Law. As such, we are recognized as "Specialists" or "Experts" in this area of law. Three legal assistants maintained professional legal assistant/paralegal certifications. Attorneys maintain membership in relevant Florida Bar practice sections, including: City, County, and Local Government Law; Labor and Employment Law; Administrative Law; and

<p>Personnel Policies and Procedures. We should actively participate in educational events and associations to stay informed of developments in the law and maintain a network of professional relationships.</p>	<p>Civil Litigation. Continuing legal education and collegial networking is ensured through participation in conferences and email listservs sponsored by the Florida Bar, the Florida Municipal Attorneys Association, the International Municipal Lawyers Association, the Energy Bar Association, the Florida Association of Police Attorneys, and others. Most recently, such events have been virtual, but we are returning to in-person attendance and involvement. Members of this office maintain professional and productive working relationships with officials in the judiciary, attorneys with the State Attorney and Public Defender Offices, and other local Constitutional Officers, including the Clerk of Court, Supervisor of Elections, Property Appraiser, and Tax Collector.</p>
<p>The Office of the City Attorney must provide proper management of the Office by operating within budget and by maintaining a professional staff (and retention of outside counsel) to provide legal services that meet our Clients' needs.</p>	<p>The Office of the City Attorney has been blessed with long tenures served by accomplished attorneys and staff. Presently the office has 6 attorneys with in excess of 20 years' of practice experience each (some <i>much</i> more than 20!). We have 5 attorneys who have served the City of Gainesville for over 8 years. 2 legal assistants have served our Clients for over 20 years. The institutional knowledge and dedication is invaluable to providing efficient, cost-effective counsel and service to our Clients. We are presently working with Human Resources to ensure effective ways to continue making career development and advancement a priority within the office. Additionally, we have recently welcomed a newly-hired attorney to the office to replace a valued retiring attorney. Through dedication to professional transition and succession planning, the retiring Senior Assistant City Attorney developed and is conducting an intensive program of training and introduction for the newly-hired attorney.</p> <p>In addition to the experienced in-house staff, the office retained and oversaw outside counsel to respond to excess workload demand or handle specialized matters for our Clients for which we lack sufficient in-house expertise.</p>

SIGNIFICANT ACCOMPLISHMENTS AND CHALLENGES PER PRACTICE AREA

Another way to view the responsibilities and accomplishments of the Office of the City Attorney is by general practice area. While the office is structured to cross-train and provide back-up assistance among the various attorneys, the scope of services offered is extremely broad for a staff of 8 to 9 attorneys. Consequently, while we are all generalists in the larger sense, each attorney also has a particular focus. It is difficult to capture the day-to-day counsel provided on

numerous issues, but the following highlights should provide a representative sampling of the work performed in the first half of this fiscal year.

Utilities

The Office of the City Attorney dedicates a Sr. Assistant City Attorney with specialized experience to matters involving Gainesville Regional Utilities. Additionally, other attorneys are often called upon to support and assist when needed. The first half of this fiscal year was demanding and eventful from a legal perspective, but, to be fair, it always is. An overview of the legal services provided to the utility include:

- Reviewed, edited, and approved approximately 300 simple contracts and amendments;
- Negotiated 3 complex IT contracts to assist in the new CIS and AMI systems (most were moving from on-premises to the cloud. When moving to cloud based services, there are additional data security measures that need to be addressed in a contract);
- Retained outside counsel and assisted in the review and submission of GRU's statement of qualifications to UF for the Central Energy Center project;
- Reviewed and approved approximately 100 easements and real estate transactions for GRU;
- Provided legal review and advice regarding interconnection agreement with City of Alachua;
- Provided legal review and advice regarding potential transmission substation to other utility provider;
- Worked with CRA and GRU to combine programs and resources for weatherization with CWC and use of funds for LEEP program;
- Reviewed and provided advice on GRU's Request for Proposal for banking services;
- Reviewed and assisted in response to Auditor General report;
- Reviewed Magellan Broadband Report and provided legal guidance to staff regarding report. Interviewed and retained outside counsel to assist with business plan;
- Provided construction contract review and advice for: 138kV Ring Bus Contract (Engineer Procure and Construct agreement); Preliminary Planning phase of the Progressive Design Build Agreement for Main Street Wastewater plant; Reviewed and advised draft Progressive Design Build contract for new Groundwater Recharge Wetland Project;
- Reviewed, revised and approved various "emergency" contracts for work needed after the Cooling Tower fire;
- Reviewed TEA Agreements and TEA Electric Guaranty;
- Provided guidance to Procurement regarding ARPA funding; and
- Assisted and liaised with outside counsel, financial managers, and internal financial professionals to close on refunding bonds and establish lines of credit totaling over \$500,000,000.

Litigation

Coming out of the lockdown phase of the pandemic has posed particular challenges in the area of litigation during the first half of this fiscal year. The courts have transitioned from limited, often remote, trials to reopening at an accelerated pace. Presently, the Office of the City Attorney is handling 274 claims against the City, primarily involving tort claims, but also employment, contractual, land use and other types of claims. There are 30 open and active cases that are presently being litigated in the state and federal courts. A dozen cases have been resolved in this time period, and 3 cases have been tried to juries. The jury trials and respective City Clients involved were:

- *Mark Larry v. City of Gainesville*, Case No. 2020-CA-346 [RTS]
- *Annette Williams v. City of Gainesville*, Case No. 2020-CA-857 [GFR]
- *Richard Jensen v. City of Gainesville*, Case No. 2020-CA-3379 [GRU]

Public Safety

The City's police and fire departments often need prompt, reliable legal counsel, as well as seasoned transactional and litigation representation. A sampling of this office's efforts to support GPD and GFR during the first half of this fiscal year include:

- Reviewing and drafting contracts for the acquisition of equipment, medical supplies, training, and those related to grants and special projects;
- Providing review, interpretation, and amendments to the City's Noise Ordinance;
- Providing review, interpretation, and amendments to the City's Alcohol-related and Open Container Ordinance;
- Researching and drafting legislative updates for GPD;
- Researching and answering frequent legal questions for GPD;
- Pursuing and litigating a Contraband Forfeiture case related to drug trafficking, with \$12,000, an AR15 rifle, a shotgun, and a pistol at issue; and
- Pursuing and litigating two Risk Protection Orders requiring the temporary surrender of firearms. RPOs were granted in both cases. One case was appealed, the City prevailed, and is currently handling post-appeal issues.

Planning, Development, and Neighborhood Improvement

As is evident from a perusal of the twice-monthly City Commission agendas, the Office of the City Attorney actively works with the Department of Sustainable Development and other City departments in the formulation and drafting of ordinances and resolutions. These ordinances and resolutions are the essential means through which the policies of the City Commission are carried out, and they often help define our neighbors' interactions with the City. During the first half of this fiscal year, the Office of the City Attorney has presented 45 Ordinances and 11 Resolutions. Many of these ordinances have been land use and zoning actions affecting particular parcels of property. Other items will have more widespread and

lasting effects. Among some of the noteworthy actions that have been presented are the following:

- Prepared amendments to the City's Land Development Code related to FEMA-mandated updates, sidewalk regulations, right-of-way vacations, and the allowance of agricultural uses within certain zoning districts;
- Prepared amendments to the City's Comprehensive Plan related to transportation mobility and property rights;
- Provided counsel during hotly-contested land use decisions including Seminary Lane, St. Michaels, and South Main Street items;
- Assisted in negotiating and drafting agreements related to ARPA-funded projects and subrecipients including grants to not-for-profits and the tri-party Eastside Urgent Care Center project; and
- Reviewed and provided counsel regarding the UF Campus Development Agreement.

Labor and Employment

The City of Gainesville has over 2300 employees; approximately 70% of those employees are represented by one of 5 unions under 7 separate labor agreements. The Office of the City Attorney provides counsel and representation in a wide range of interactions between the City and its community builders. The first half of this fiscal year provided many opportunities for this office to assist in forging, repairing, or improving these relationships in several ways.

- Assisting with the Hiring Practices and Background Checks – The office's experienced labor and employment lawyer worked in support of researching the backgrounds of applicants for employment or promotions where the general background check disclosed potential issues and engaged in an interactive process when the decision for hiring or promotion was undecided. We made recommendations to the Human Resources Department regarding hiring or promotions relying upon objective criteria and past practice helping to ensure consistency throughout the organization.
- Immigration Work – This office worked in conjunction with outside counsel to petition the United States Citizenship and Immigration Services ("USCIS") for an H-1B Visa for a specialty occupation that was hard to fill. An H-1B Visa was obtained, and now we are moving forward for a Permanent Resident Card for the employee. Similarly, the office petitioned the USCIS for an H-1B Visa for two additional specialty occupation positions that were hard to fill. An H-1B Visa for one position was obtained, and the other is still outstanding. Both employees who hold those positions are currently employed with the City. Finally, the office facilitated the employment of an individual holding an F-1 Visa.
- General policy creation, review, and counseling – This office provided general day-to-day labor and employment counseling to Charter Officers and Department Heads on areas including, but not limited to, the Law Enforcement Officer's Bill

of Rights, grievances, Employee Notices, performance improvement plans, FMLA leave, reasonable accommodations under the ADA, the City's EAP program, the City's Drug-Free Work Place Policy, Internal Affairs investigations, Veteran's Preference application in hiring decisions, public records requests and the interpretation of the City's policies, procedures, ordinances and each union's Collective Bargaining Agreements. Also, the office's labor and employment attorney assisted GPD in drafting and modifying their General Orders. On an ongoing basis, the office is working with the City Manager's office and MB Listings, TeensWork Alachua and the Children's Trust to implement a summer internship program for Alachua County Youth ages 14-18 funded by the Children's Trust. Of course, counsel has also been provided in response to the various personnel actions and interim appointments that have occurred over the first half of this fiscal year.

- Human Rights Board – We provided representation to the City's Human Rights Board, including drafting training materials regarding the Board's administrative procedures, jurisdiction and powers; conducted HRB training with the Office of Equity and Inclusion; attended all HRB monthly meetings; and coordinated administrative hearings after the HRB endorsed a finding of reasonable cause for two complainants.
- Labor and Employment Litigation – The Office of the City Attorney provided in-house representation and supported outside counsel in litigating a variety of matters in several different forums. We are actively defending and engaged in discovery in 3 cases in the U.S. District Court for the Northern District of Florida. Position Statements have been filed seeking no reasonable cause rulings in 3 separate proceedings before the EEOC. The City prevailed and was granted summary judgment in one arbitration proceeding, and resolved another arbitration related to IAFF holiday pay. Finally, the office is defending a claim of unfair labor practice over the IAFF's opposition to the City's short-lived vaccine requirement, where the Hearing Officer has recommended dismissal, and the issue is now before the Public Employee Relations Commission panel for a determination.

Necessary Government Services

The City is the governmental body that is closest to the people. As such, the City provides services that impact our neighbors on a daily basis. The City's community builders are instrumental in providing these services and this office is dedicated to supporting the consideration and resolution of the many issues that arise in providing these services.

- Contract Negotiation, Drafting, and Review. Virtually all contracts for goods, equipment, and professional services are vetted for form and legality by the Office of the City Attorney, but many, especially the more complex contracts, involve attorney negotiation and drafting. The office is enhancing focus on a relatively recent influx of IT contracts, which require special terms related to data breach.

- Public Records Guidance and Responses. The office regularly provides training and counsel regarding public records and open government issues.
- Solid Waste (4 ordinances). The Office of the City Attorney dedicated an enormous amount of time over the first half of this fiscal year researching and assisting with drafting four consequential ordinances in the area of Solid Waste disposal. In response to the Zero Waste Subcommittee, and in collaboration with internal staff and involved neighbors and advocates, this office drafted and presented ordinances related to allowing an exclusive franchise agreement with a solid waste hauler, comprehensive changes to the solid waste code, new regulations regarding food waste, and requirements that commercial establishments follow a food diversion hierarchy.
- Elections. The first half of this fiscal year was particularly active with regard to elections and the future of elections in the City of Gainesville. The City conducted a special election on November 16, 2021 and a special runoff election on January 25, 2022 to elect a commissioner to fill the remainder of a term vacated by resignation. Both elections required a considerable amount of consultation and coordination by this office working in conjunction with the Supervisor of Elections. Attorneys advised and counseled the City Elections Canvassing Boards in both elections, and helped ensure that the elections were fairly and fully conducted. The office remains grateful to the ongoing collaborative and respectful relationship with the Alachua County Supervisor of Elections and her professional staff. Additional to the actual elections conducted, this office researched, drafted, and presented an ordinance regarding future candidate qualifying fees and petition process. Less fruitful, but no less challenging, was the work devoted to a proposed Charter amendment to change the way in which the City fills unexpected vacancies in office. The current Charter provision generally requires a special election to be held within 60 days, which is impracticable at best, and impossible in most instances. This matter will continue to be addressed. Finally, the office led the City's required efforts to undergo a decennial redistricting based on the results of the 2020 census. The redistricting process was arduous and rife with urgencies due to timing elements that were out of our control. The Office of the City Attorney, with incalculable cooperation from the City Clerk's office and the Supervisor of Elections Office, ensured public outreach and involvement while complying with the law and logistical and demographic requirements. The redistricting effort will help ensure fair, equitable City elections for the next decade.

cc: Charter Officers
Interim Human Resources Director