

FROM RUMBLINGS TO REALITY: ONE CITY'S STORY OF ETHICS REFORM

Julie Meadows-Keefe*

I. INTRODUCTION

We will never bring disgrace on this our City by an act of dishonesty or cowardice. We will fight for the ideals and Sacred Things of the City both alone and with many. We will revere and obey the City's laws, and will do our best to incite a like reverence and respect in those above us who are prone to annul them or set them at naught. We will strive unceasingly to quicken the public's sense of civic duty. Thus, in all these ways, we will transmit this City not only, not less, but greater and more beautiful than it was transmitted to us.¹

Thousands of years after the authorship of the Athenian Oath, this Article tells one City's story of the evolution of its ethics program and reflects my experience as the first Ethics Officer in the City of Tallahassee.² It provides both a history of Tallahassee's Independent Ethics Board³ and a framework of sorts for other local governments to consider as they enhance or develop their own ethics programs.

* © 2017, Julie Meadows-Keefe. All rights reserved. Independent Ethics Officer, City of Tallahassee. J.D., Florida State University, 1993; B.A., Stetson University, 1990. Phi Beta Kappa; Florida State Law Review; Florida State Moot Court Team. The Author would like to thank the "original six" Independent Ethics Board Members, Chair Lila Jaber (Stetson, B.A. and J.D.), co-chair Richard Herring, Cecil Davis Funmi Ojetayo, Tom Friedman, and Renee McNeill for actively helping to build this Board from the ground up. The Author would like to dedicate this Article to retired Stetson faculty member Dr. T. Wayne Bailey, who influenced her and so many others to pursue careers in law and government.

1. The ATHENIAN OATH, NAT'L LEAGUE OF CITIES, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-factoids/the-athenian-oath> (last visited Apr. 18, 2017).

2. *Taking the Lead on Ethics*, CITY OF TALLAHASSEE (Sept. 30, 2014), <https://www.tal.gov.com/main/news/4393.aspx>. My perspective on being the Ethics Officer provided fodder for a talk, which I gave at a TEDx event at Florida State University. Julie Meadows-Keefe, *Exiting the Echo Chamber to Enter Civic Engagement* (TEDx Talk Video June 29, 2016), <https://www.youtube.com/watch?v=qzDwygnrDsc>.

3. *Ethics Board: Background Information*, CITY OF TALLAHASSEE, available at <https://www.tal.gov.com/main/ethics.aspx> (last visited Apr. 18, 2017).

The media, polls, and widely expressed citizen attitudes would seem to indicate that, overall, people lack high levels of trust in government.⁴ However, Florida's Constitution declares that "[a] public office is a public trust."⁵ In 1968, Florida was one of the first states to adopt an ethics code. It went on to establish the Florida Commission on Ethics in 1976.⁶ The Florida Ethics Code contains standards of ethical conduct and disclosures applicable to all public officers, employees, candidates, lobbyists, and others involved with Florida's state and local government. The Code, however, does not apply to judges.⁷

The "ethics law[s] rest[] upon a triad of provisions: an understandable and comprehensive Code, . . . sensible disclosure, and a reasonable enforcement mechanism."⁸ Issues to grapple

4. See, e.g., *Beyond Distrust: How Americans View Their Government*, PEW RES. CENTER (Nov. 23, 2015), <http://www.people-press.org/2015/11/23/1-trust-in-government-1958-2015/> (providing a survey sample of citizens' concerns regarding the ability of the government to solve important national problems); but see Justin McCarthy, *Americans Still Trust Local Government More Than State*, GALLUP (Sep. 22, 2014), <http://www.gallup.com/poll/176846/americans-trust-local-government-state.aspx> (indicating that citizens tend to have more trust in local government than in national government).

5. FLA. CONST. art. II, § 8. See also *History*, FLA. COMMISSION ON ETHICS, <http://www.ethics.state.fl.us/AboutUs/History.aspx> (last visited Apr. 18, 2017) (describing the implementation of Florida's ethical standards for public officials in order to protect the public trust against abuses); *Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees*, FLA COMMISSION ON ETHICS 1 (2016), <http://www.ethics.state.fl.us/Documents/Publications/GuideBookletInternet.pdf> (describing the purpose of the Code of Ethics as "to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law").

6. FLA. COMMISSION ON ETHICS, *supra* note 5, at 1.

7. FLA. STAT. § 112.311(5) (2016).

8. Mark Davies, *Keeping the Faith: A Model Local Ethics Law—Content and Commentary*, 21 FORDHAM URB. L.J. 61, 68 (1993) [hereinafter *Keeping the Faith*]. See also *Wyzykowski v. Rizas*, 626 A.2d 406, 414 (N.J. 1993) (citing the "Pane Principles," which identify the various circumstances requiring disqualification for ethical challenge). These include:

- (1) "Direct pecuniary interests," when an official votes on a matter benefiting the official's own property or affording a direct financial gain;
- (2) "Indirect pecuniary interests," when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member;
- (3) "Direct personal interest," when an official votes on a matter that benefits a blood relative or close friend in a non-financial way[;] . . . and
- (4) "Indirect Personal Interest," when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies.

Id. (quoting Michael A. Pane, *Conflict of Interest: Sometimes a Confusing Maze, Part II, New Jersey Municipalities* at 8–9 (Mar. 1980)).

with in government ethics include using public office for private gain; recusal, gifts; conflicts of interest; disclosure; political solicitation; improper influence of officials by private persons; outside employment; and revolving doors, which speaks to leaving a public-sector job and going into the private sector utilizing connections made in public service.⁹ “Appearances and public perception play an enormously important role in the effectiveness of officials and in the well-being of their communities.”¹⁰ Adding complexity to this situation is that conduct, which presents poor optics to the public, does not always violate any federal, state, or local ethics law—it simply fails to pass “the smell test.”¹¹ As one court noted, “Whether conspicuously or not, the co-mingling of business and legislative interests to date has resulted in a Darwinian hybrid where it is difficult to discern where the legislative responsibilities separate from . . . business responsibilities.”¹²

The public legitimately expects public officials and employees to be impartial, responsible, honest, trustworthy, and independent of outside influence.¹³ Indeed, most public servants

9. *Keeping the Faith*, *supra* note 8, at 69–71; see also Vincent R. Johnson, *Ethics in Government at the Local Level*, 36 SETON HALL L. REV. 715, 728 (2006) (identifying a similar list of concerns to be addressed in an effective local government ethics code); Deborah Markowitz, *A Crisis in Confidence: Municipal Officials Under Fire*, 16 VT. L. REV. 579, 597 (1992) (listing a similar group of ethical concerns faced by municipal officials); Robert Wechsler, *Revolving Door Provisions in Local Government Ethics Codes*, CITYETHICS.ORG (Mar. 23, 2010), <http://www.cityethics.org/content/revolving-door-provisions-local-government-ethics-codes> (discussing specific ethical issues involved in allowing public officials to move between the public and private sector).

10. *Keeping the Faith*, *supra* note 8, at 66; see also John M. Carbone, *Ethics: More Than Not Being Indicted*, N.J. LAW., December 2006, at 29 (stating that a public official, independently of his good intentions, will be judged by his acts).

11. See, e.g., Patricia E. Salkin, *Ethics in Land Use: Using Ethical Allegations as a Sword Rather as a Shield*, 33 REAL EST. L.J. 100, 100–01 (2004) [hereinafter *Ethics in Land Use*] (discussing courts’ findings of ethical misconduct in land use cases in which there has not been a particular violation of state or federal law); Patricia E. Salkin, *Ethics Allegations in Land Use Continue to Fill the Court Dockets*, 26 ZONING & PLAN. L. REP. 1, 1–3, 6–7 (Apr. 2003) (providing a sample of land use cases, some of which were decided by the courts upon considerations of appearance of improper ethical conduct); Patricia E. Salkin, *Municipal Ethics Remain A Hot Topic in Litigation: A 1999 Survey of Issues in Ethics for Municipal Lawyers*, 14 BYU J. PUB. L. 209, 210 (2000) (discussing legal ethics considerations for municipal lawyers, including the concept of “community standards,” which have the potential to make conduct unacceptable behavior).

12. *Ethics in Land Use*, *supra* note 11, at 107.

13. “Procedural fairness’ is the ethical responsibility of municipal officials both to conduct proceedings and to fulfill their other duties with openness and objectivity and to treat all that come before them equally.” Markowitz, *supra* note 9, at 603–04. It encompasses such things as “conflict[s] of interest . . . and discrimination.” *Id.* at 604.

display these characteristics.¹⁴ “However, . . . the very structure of some local government functions cause ethical conflicts for elected and appointed officials which exacerbates the difficulty of conducting assigned responsibilities [openly] and [equitably].”¹⁵ “[F]requent incidents of unethical behavior by municipal officials have a clear deleterious effect on the public’s trust in local government.”¹⁶ There is a strong argument that ethics in government should start at the local level because actions of local officials most directly impact citizens.¹⁷ Additionally, many elected officials begin their careers at the local government level and if ethics are inculcated at the beginning of a career, chances increase that as the individual moves to a higher office, the high ethical standards will travel with them. Local governments must also strike a delicate balance between ensuring that ethical standards are followed, while simultaneously avoiding overly burdensome requirements that would cause hardship and possibly discourage good people from entering public service.¹⁸

Often, county or city ethics initiatives spring up after major corruption scandals.¹⁹ For example, in 2009, Palm Beach County was named the “Capital of Florida Corruption” by *Time* magazine.²⁰ However, there are numerous other instances of

14. Mark Davies, *Governmental Ethics Laws: Myths and Mythos*, 40 N.Y.L. SCH. L. REV. 177, 178 (1995) [hereinafter *Governmental Ethics Laws*]; see also Patricia E. Salkin, *Failure to Articulate Clear Ethics Rules and Standards at the Local Level Continues to Haunt Local Land Use Decision Makers*, 43 URB. LAW. 757, 773 (2011) (recognizing that public servants for the most part act honestly and ethically, and discussing the need for clear ethical rules in land use to encourage this conduct).

15. Douglas Larson, *A Model Ethical Code for Appointed Municipal Officials*, 9 HAMLIN J. PUB. L. & POL’Y 395, 395 (1989).

16. Markowitz, *supra* note 9, at 605.

17. Johnson, *supra* note 9, at 716–17.

18. *Id.* at 752–53. See FLA. STAT. § 112.311(2) (2016) (establishing that conflict of interest rules should be designed in a way not to unnecessarily prevent the hiring of those best qualified to serve as public servants); *Governmental Ethics Laws*, *supra* note 14, at 181 (“[E]thics regulations must encourage, not discourage, good citizens from serving in government. If they do not do that, they have failed and belong in the rubbish heap.”).

19. See Michael Josephson, *The Peculiar Concept of Ethics Laws*, CITY OF JACKSONVILLE, <http://www.coj.net/departments/ethics-office/docs/the-peculiar-concept-of-ethics-laws.aspx> (last visited Apr. 18, 2017) (“Historically, legislative bodies have been reactive rather than proactive, doing only what they absolutely must. Thus, existing laws often are a hodgepodge of regulations designed to prevent reoccurrence of specific past improprieties. That’s a big part of the problem.”).

20. Hector Florin, *Palm Beach: The New Capital of Florida Corruption*, TIME (Jan. 10, 2009), <http://content.time.com/time/nation/article/0,8599,1870853,00.html>. See also Opinion Staff, *Does Palm Beach Still Deserve Moniker, ‘Corruption County’?*, PALM BEACH POST, available at <http://opinionzone.blog.palmbeachpost.com/2014/11/25/does-palm-beach-still-deserve-moniker-corruption-county/> (last updated Nov. 25, 2014) (discussing

corruption in Florida and other states dating back decades.²¹ To address local concerns, counties and municipalities are permitted under the Florida Ethics Code to enact local ethics codes or ordinances that are stricter than the Florida Ethics Code.²² Twelve counties have adopted ethics codes that are stricter than the state's ethics code.²³ The focus of the stricter codes and ordinances tends to be in the area of voting conflicts, gifts, and financial disclosures.²⁴

Generally, county ethics boards come first and fold into their coverage participating municipalities. Tallahassee did not follow that pattern—there is no county ethics board covering or addressing Leon County where Tallahassee is located. So how did Tallahassee's rather unique structure come to pass? Part II of this Article sets the scene and describes how citizen perception of the ethical climate in Tallahassee came to a tipping point, which led to the formation of an Ethics Advisory Panel. Part III discusses the activities of the Ethics Advisory Panel and its findings. Part IV sets forth how the City Commission responded to the report. Part V relates to continued citizen engagement and

some of the problems with the structure of the Palm Beach County Commission created to combat corruption in the City); OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENT ACCOUNTABILITY, PALM BEACH COUNTY COMMISSION ON ETHICS WAS CREATED USING SEVERAL BEST PRACTICES; SOME PROCESSES COULD BE ENHANCED, REP. NO. 13–10, at 1 (Fla. 2013) (providing a review of the Palm Beach County Commission on Ethics, which emerged out of recommendations from a May 2009 grand jury created to propose changes to provide oversight, transparency, and accountability for county and municipal government); *Comm'n on Ethics E-Book*, PALM BEACH CNTY. COMMISSION ON ETHICS, www.palmbeachcountyethics.com/pdf/Ethics_eBook.pdf. (last visited Apr. 18, 2017) (providing an overview of the Palm Beach County Commission ethics program).

21. See, e.g., Selwyn Raab, *Inspectors Seized in Wide Extortion from Restaurants*, N.Y. TIMES, Mar. 25, 1988, at A1 (reporting that “[t]wenty-eight . . . health inspectors . . . were charged . . . with extorting hundreds of thousands of dollars from restaurants by threatening to close them or to cite them for sanitation violations”); see also Markowitz, *supra* note 9, at 579–80 (citing different examples of unethical conduct by state officials around the country).

22. See FLA. STAT. § 112.326 (2016) (“Nothing in this act shall prohibit the governing body of any political subdivision, . . . from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in this part . . .”).

23. *Tough Choices: Florida Counties Bridge the Ethical Policy Gap*, LEROY COLLINS INST. 1, 2 (Nov. 2012), http://www.integrityflorida.org/wp-content/uploads/2013/03/Integrity_Florida_and_LeRoy-Collins-Institute-Tough-Choices-Florida-Counties-Bridge-the-Ethics-Policy-Gap-11.29.12.pdf. These counties include Broward, Clay, Duval, Escambia, Indian River, Lake, Miami-Dade, Orange, Palm Beach, Sarasota, Seminole, and St. Johns. *Id.*

24. *Id.* at 2, 5, 9–10, 13–14.

activism on ethics reform, which ultimately led to the formation and activities of Tallahassee's Independent Ethics Board. Part VI serves to give an overview of the Independent Ethics Board's progress during its first eighteen months. Finally, Part VII covers lessons learned and recommendations for other municipalities seeking to implement or enhance their ethics compliance programs.

II. BACKDROP FOR CHANGE: CLIMATE AND CONTROVERSIAL VOTES

Tallahassee internally audited its ethics program in 2008 and determined that "the City's ethics program indicated that the program includes many of the components recommended for a strong ethics and compliance program."²⁵ The audit also found that the program was working effectively to encourage ethical behavior.²⁶ Suggestions included:

- Centralizing resources and directing employees where to obtain ethics assistance;
- Asking employees during department meetings to share ethical dilemmas and how they handled them;
- Cultivating an atmosphere where violation reporting is encouraged and retaliation for reporting is discouraged;
- Improving identification and notification of those required to file ethics disclosure forms.²⁷

Of most concern was the lack of a central point of contact on ethics matters. Employees generally relied on the City Attorney's office or supervisors to guide them.²⁸ However, this structure had arguably served the City well. From 2002–2012, eleven complaints against City officials had been filed with the Florida

25. Sam M. McCall, *Audit of the City's Ethics Program, Audit Report # 0912*, CITY OF TALLAHASSEE, intro page (Apr. 9, 2009), <https://www.talgov.com/Uploads/Public/Documents/auditing/pdf/0912-ethics.pdf>.

26. *Id.* at 1. The City of Tallahassee had a comprehensive ethics and character course for employees. Employees are required to think beyond what the law requires by keeping things like discretion, justice, alertness, tolerance, boldness, responsibility, cautiousness, and wisdom.

27. *Id.* at intro page.

28. *Id.* at 37–38.

Commission on Ethics.²⁹ In no case was it found that a violation was committed by an elected official. Additionally, no elected official in Tallahassee has ever been arrested for a criminal act.³⁰ Against this rather benign history, what tipped the balance?

Mayor John Marks was first elected in 2003 and served three terms—making him Tallahassee’s longest serving mayor.³¹ The incumbent Democratic Mayor was challenged in 2010 by a Republican opponent.³² Amid the economic downturn in Tallahassee, the election produced acrimony and increased scrutiny of elected officials.³³ The Mayor won a third term in August 2010.³⁴ However, acrimony continued. City Hall critics then focused on the past, 2007 and 2008, when Mayor Marks voted four times on matters involving a company represented by his law firm.³⁵ Then, on September 15, 2010, Mayor Marks voted to approve a \$1.2 million federal grant involving the City and grant partners Alliance for Digital Equality (“ADE”)³⁶ and the Go Beyond Foundation, while he was a paid member of ADE’s board of advisors.³⁷

Some citizens were critical of these votes and actions.³⁸ One particularly vocal citizen, who unsuccessfully ran for City Commission, habitually came to City Commission meetings and

29. Ethics Advisory Panel, *Regular Meeting Minutes*, at 5 (May 30, 2013), available at <http://www.tal.gov.com/Uploads/Public/Documents/treasurer/pdf/eap/130530-eap-min.pdf>.

30. *Id.*

31. City of Tallahassee, *Celebration Planned to Say Farewell and Thank You to Mayor John Marks*, TALLAHASSEE DEMOCRAT (Oct. 18, 2014, 9:22 PM), <http://www.tallahassee.com/story/life/chronicle/2014/10/18/celebration-planned-say-farewell-thank-mayor-john-marks/17527875/>.

32. Matthew Isbell, *The Spectacular Self-Destruction of Steve Stewart*, MCI MAPS (Sep. 13, 2014), <http://mcimaps.com/the-spectacular-self-destruction-of-steve-stewart/>.

33. *Id.*

34. Liza Park, *John Marks Captures Third Term as Tallahassee Mayor*, WCTV (Aug. 25, 2010, 7:16 AM), <http://www.wctv.tv/home/headlines/101446819.html?site=mobile>.

35. Jeff Burlew, *Settlement Unlikely as Court Date Nears in Mayor Marks Case*, TALLAHASSEE DEMOCRAT: STAFF BLOGS (Sep. 12, 2012), <http://blogs.tallahassee.com/settlement-unlikely-as-mayor-marks-court-date-nears/>; see also Lanetra Bennett, *More Ethics Complaints Filed Against Tallahassee Mayor*, WCTV (May 24, 2011, 5:54 PM), http://www.wctv.tv/home/headlines/Two_Ethics_Complaints_Filed_Against_Tallahassee_Mayor_120677539.html.

36. James Taylor, *Tallahassee Mayor Verbally Attacks Citizen Who Filed Ethics Charges*, MEDIA TRACKERS (June 28, 2012), <http://mediatrackers.org/florida/2012/06/28/tallahassee-mayor-verbally-attacks-citizen-who-filed-ethics-charges>.

37. Burlew, *supra* note 35.

38. Sean Rossman, *City Commission Gets Rid of ‘Kill Switch,’* TALLAHASSEE DEMOCRAT (July 3, 2014, 11:16 AM ET), <http://www.tallahassee.com/story/news/local/2014/07/02/city-commission-gets-rid-of-kill-switch/12116797/>.

was highly critical of the Mayor, other commissioners, and City staff.³⁹ The comments became so inflammatory a kill switch was installed in the Commission chamber microphone used during public comment, but after outcry about that practice, it was quickly discontinued.⁴⁰ This same citizen filed multiple complaints with the Florida Commission on Ethics based upon the Mayor's votes in 2007, 2008, and 2010 to approve the City of Tallahassee's participation in the Federal Broadband Technology Opportunity Program in partnership with the ADE, and his votes on matters that inured to the gain of a company that was a client of his law firm.⁴¹ The Florida Commission on Ethics ultimately exonerated Mayor Marks on all complaints.⁴²

However, on September 19, 2012, in spite of the Mayor's exoneration and amid additional criticism from members of the public, "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."⁴³ "On November 7, 2012, drawing from a pool of interested citizens who were willing to serve, the City Commission appointed a nine member Panel."⁴⁴ It was asked to prepare and submit a report to the City Commission by April 1, 2013.⁴⁵

III. PANEL MEETINGS AND FINDINGS

The Ethics Advisory Panel ("Panel") conducted its first meeting on November 8, 2012.⁴⁶ The Panel then held eighteen

39. Isbell, *supra* note 32.

40. Rossman, *supra* note 38.

41. See Final Order at background, disposition, *In re John Marks* (Jan. 25, 2013) (No. 13-004), <http://www.ethics.state.fl.us/Documents/Orders/2011/11-053fo.html> (explaining how it was alleged that "Respondent voted to approve the City of Tallahassee's participation in the Federal Broadband Technology Opportunity Program in partnership with the Alliance for Digital Equality, a business entity for which the Respondent served in a compensated position, and that he voted on matters which inured to the gain of Honeywell, a principal by which the Respondent was retained").

42. *Id.*

43. Ethics Advisory Panel, *Report of Recommendations*, CITY OF TALLAHASSEE (July 10, 2013), available at <https://www.tal.gov.com/uploads/public/documents/treasurer/pdf/eap/eap-final-report.pdf> [hereinafter 2013 *Report of Recommendations*].

44. *Id.*

45. *Id.* at 9.

46. *Id.* at Exhibit A.

meetings in eight months, including two public hearings.⁴⁷ The first public hearing allowed citizens to suggest a direction for the Panel.⁴⁸ During this first public hearing, a citizen proposed establishing a local city ethics commission, with members appointed by various community organizations.⁴⁹ “The Panel discussed whether there was a need for an independent body to respond to ethics complaints.”⁵⁰ The Panel did not ultimately recommend a city ethics commission.⁵¹ The second public hearing was to gauge public reaction to the Panel’s proposals before the recommendations were finalized.

The Panel’s stated Mission was

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.⁵²

The Chair and board members commented that the actions of the Panel were not in any way related to allegations against the Mayor, and the Panel instead focused on improving an already-strong ethical foundation and culture within the City government.⁵³ The Ethics Advisory Panel Chair, Martha W. Barnett, ultimately thanked the City 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.”⁵⁴

47. *Id.* at 4.

48. *Id.*

49. *Id.* at 9.

50. *Id.*

51. *Id.* at 10.

52. *Id.* at title page.

53. City Ethics Board, *Special Meeting Minutes*, CITY OF TALLAHASSEE (Nov. 20, 2013), available at <http://www.talgov.com/Uploads/Public/Documents/ethics/131120.pdf> [hereinafter Nov. 20, 2013 *Special Meeting*].

54. 2013 *Report of Recommendations*, *supra* note 43, at 2.

The Report examined the City's Code of Ethics, oversight, training, complaint reporting procedures, financial disclosures, voting conflicts, procurement policy, lobbyist registration, campaign finance, and revolving doors. The Panel reviewed numerous documents⁵⁵ and heard from numerous speakers.⁵⁶ The key preliminary recommendations of the Ethics Advisory Panel included:

- Rename and promote an existing hotline as an Ethics and Fraud Hotline to make it easy for citizens and employees to share potential concerns[;]⁵⁷
- Establish a "one-stop shop" of ethics information on the City's website to promote additional transparency and easy access to information[;]⁵⁸
- Maintain the existing financial disclosure requirements for employees, appointed officials and advisory boards[;]⁵⁹
- Identify a way for elected leaders to disclose additional information beyond State-mandated disclosure, such as membership on boards, land ownership,⁶⁰ and business relationships with current or prospective City vendors or employees[;]⁶¹
- Eliminate awarding points to vendors in the bid process for making charitable contributions[;]⁶²
- Strengthen the City's lobbyist registration ordinance, including fines and penalties for noncompliance[;]⁶³
- 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[; and]⁶⁴

55. *Id.* at Exhibit B.

56. Speakers included the City Attorney; the City Manager; the Executive Director of Integrity Florida; the City Auditor; Mr. Talbot "Sandy" D'Alemberte, President Emeritus of Florida State University; and Mr. Phil Claypool, former Executive Director of the Florida Commission on Ethics. *Id.* at Exhibit A.

57. *Ethics Panel Seeks Citizen Comments*, CITY OF TALLAHASSEE (May 24, 2013) (on file with *Stetson Law Review*).

58. *Id.*

59. *Id.*

60. "It is not uncommon for allegations of conflicts to arise where a board member or other public official lives in close proximity to the parcel or area subject to review or action." Salkin, *supra* note 14, at 765.

61. *Ethics Panel Seeks Citizen Comments*, *supra* note 57.

62. *Id.*

63. *Id.*

64. 2013 *Report of Recommendations*, *supra* note 43, at 13. More specifically, once an elected official declares a conflict under the above requirement, the official shall not

- Prohibit elected and appointed officials from appearing before the City Commission as a paid employee or representative for two years after their term ends.⁶⁵

All recommendations of the Panel were accepted unanimously, with the exception of the oversight authority.⁶⁶ The majority of the Panel members agreed, after reviewing emerging best practices from other progressive communities, the trend was the creation of an ethics officer.⁶⁷ However, some members believed an ethics officer should be an appointed official, while others felt this officer needed to report to an individual or individuals other than the City Commission.⁶⁸ Some Panel members noted that any ethics officer could not be totally independent because the ethics officer would be a City employee.⁶⁹ However, the Chair pointed out that the Ethics Officer's independence would stem largely from transparency and public involvement, and the public's knowledge of what was occurring within the government.⁷⁰ It was envisioned that the Ethics Officer could serve as an advisor to the elected officials regarding ethical issues, augment the advice officials currently received from the City Attorney, provide advice to employees, establish standards, create a collection of case studies or examples for training purposes, function as ombudsman to the community, monitor the fraud/abuse hotline, provide whistleblower protection, and conduct an annual ethics assessment.⁷¹ The Panel was unanimous in its vote to establish

engage in discussion about the measure and leave the chambers until the item is concluded. They would also continue to follow the statutory requirement that an elected official with a voting conflict on the day of the vote must abstain from voting. It was also suggested that 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. 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 three 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. *Id.*

65. *Ethics Panel Seeks Citizen Comments*, *supra* note 57.

66. 2013 *Report of Recommendations*, *supra* note 43, at 4.

67. *Id.* at 8–9.

68. *Id.*

69. *Id.* at 4–5.

70. Ethics Advisory Panel, *Regular Meeting Minutes*, CITY OF TALLAHASSEE 8 (Apr. 18, 2013), <http://www.talgov.com/Uploads/Public/Documents/ethics/130418.pdf>.

71. *Id.*

an ethics officer and stressed that it was up to the will of the City Commission to determine the specifics of the position.⁷² Many citizens appearing at meetings wanted an independent ethics officer reporting to a board.⁷³ However, the Panel did not recommend an independent board.⁷⁴ “The Panel officially adopted this Report and Recommendations to the City Commission on June 26, 2013.”⁷⁵

IV. COMMISSION ACTION

The City Commission accepted the final Panel report on July 10, 2013. Subsequently, two separate City Commission workshops were held. The first workshop occurred on November 20, 2013, and over half of the Panel’s recommendations were approved and adopted. However, at the outset, Mayor Marks indicated that the Panel’s process was “a solution in search of a problem,” and that none of the allegations against him were substantiated.⁷⁶ In contrast, another Commissioner indicated that the Panel’s purpose was the pursuit of the best local government operation possible, and not aimed at any particular individual.⁷⁷

The City Commission unanimously accepted the recommendation to adopt a formal, centralized, and comprehensive Code of Ethics that is easily accessible to citizens and includes reference to state law, city code, and policy provisions. They also agreed to incorporate a preamble, which states:

72. *Id.* at 5.

73. Ethics Advisory Panel, *Town Hall Meeting Minutes*, CITY OF TALLAHASSEE (Jan. 10, 2013), <http://www.talgov.com/uploads/public/documents/treasurer/pdf/eap/130110-eap-min.pdf>.

74. 2013 *Report of Recommendations*, *supra* note 43, at 4.

75. *Id.*

76. Nov. 20, 2013 *Special Meeting*, *supra* note 53, at 7. Mayor Marks was not alone in his assessment. Member of the Ethics Advisory Panel and pastor of First Presbyterian Church in Tallahassee, Brant Copeland, later said that the Panel was “impressed with the ethics in city government, by the amount of training in ethics, by the level of ethics found throughout city government . . . [They] found no smoking gun. There was no ethics problem in city government.” Gerald Ensley, *Ethics Proposal is Wrong and Unnecessary*, TALLAHASSEE DEMOCRAT (Oct. 24, 2014, 12:30 PM ET), <http://www.tallahassee.com/story/opinion/columnists/ensley/2014/10/24/gerald-ensley-ethics-proposal-wrong-unnecessary/17833971/> (internal quotation marks omitted).

77. Nov. 20, 2013 *Special Meeting*, *supra* note 53, at 19.

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[.]⁷⁸

The Commission also unanimously agreed to require all officials and employees to swear an Oath of Office, as follows:

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.⁷⁹

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.⁸⁰

Other recommendations unanimously adopted included:

- Crea[ti]on of] a handbook to help citizens and employees understand the City's *Code of Ethics* . . . [;]⁸¹
- Expan[sion of] the . . . Fraud Hotline to include Ethics . . . [;]⁸²
- Repeal [of] the Charitable Contribution preference points program in relation to the competitive bidding process[;]⁸³
- Inclu[sion] of standardized "boilerplate" language in City contracts to put vendors on notice that they must adhere to the City's ethics policies[;]⁸⁴

78. *Id.* at 5.

79. FLA. STAT. § 876.05(1) (2016).

80. Nov. 20, 2013 *Special Meeting*, *supra* note 53, at 5.

81. *Id.* (emphasis added).

82. *Id.*

83. *Id.* at 6.

84. *Id.*

- Prohibit[ion of] future Appointed Officials (in addition to Elected Officials) from appearing before the City Commission for compensation for a [two]-year period after the official leaves the employ of the City;⁸⁵
- [Expansion of requirement to disclose job offers extended by City vendors to Elected Officials as well as for Appointed Officials and selected City employees;]⁸⁶
- Require the Elected Officials to participate in an initial comprehensive ethics training course within [sixty] 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[;]⁸⁷
- Incorporate training on the Voting Conflicts and the "reasonable inquiry" expectation into the Ethics Training Program for Elected Officials[;]⁸⁸
- Provide training to Elected Officials and their Aides relative to the Florida gift ban law and gift reporting requirements[;]⁸⁹
- 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[;]⁹⁰
- 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 items.⁹¹

Items requiring further Commission discussion related to the role and reporting structure for the Ethics Official, enhanced disclosure for elected officials, reasonable inquiry prior to voting, City lobbyist reporting requirements, adopting fines for violations, and evaluation of ethics training.⁹²

The second workshop was held on March 12, 2014, when these additional provisions were discussed.⁹³ The Commission

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 6, 15, 19.

93. City Ethics Board, *Special Meeting Minutes*, CITY OF TALLAHASSEE 2, 5 (Mar. 12, 2014), available at <http://www.talgov.com/Uploads/Public/Documents/ethics/140312.pdf> [hereinafter Mar. 12, 2014 Minutes].

discussed how the Ethics Officer would take office—either (1) the Ethics Officer would be an appointed official, or (2) the Ethics Officer would be jointly interviewed and hired by the City Auditor and City Attorney, and housed in the City Auditor's Office.⁹⁴ Ultimately, the Commission decided that the Ethics Officer would jointly report to the City Auditor and City Attorney.

The Commission then voted to adopt recommendations to create an appointed five-member Citizens' Advisory Committee on Ethics to monitor the implementation of the Panel's recommendations and to present a report to the City Commission after one year.⁹⁵

Next, the Commission took note of the Ethics Code provision in section 112.3143(3)(a), Florida Statutes, which states that:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained⁹⁶

The Commission then adopted an ordinance "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."⁹⁷ Once a conflict is declared, the Official "shall not engage in discussion about the measure, and must leave the chambers until the item is concluded."⁹⁸ Whereas state ethics law only examines the day a particular vote was cast to determine if a conflict existed on that particular day, the Commission accepted the Panel's recommendation requiring that officials exercise due diligence and make additional disclosures.⁹⁹

Further, the Commission mandated lobbyist registration and enacted requirements for lobbyists to disclose clients.¹⁰⁰ A process

94. Nov. 20, 2013 *Special Meeting*, *supra* note 53, at 21.

95. *Id.* at 8–9.

96. FLA. STAT. § 112.3143(3)(a) (2016).

97. Mar. 12, 2014 Minutes, *supra* note 93, at 3.

98. 2013 *Report of Recommendations*, *supra* note 43, at 5.

99. *Id.* at 15–16.

100. *Id.* at 14.

was also put in place for barring lobbyists and fining noncompliant lobbyists.¹⁰¹ The Commission also adopted enhanced disclosure for elected officials, including business relationships with City vendors, business relationships with City employees, membership on corporate boards, membership on not-for-profit boards, and any land ownership.¹⁰² The Commission then passed a comprehensive ethics ordinance reflective of those votes.¹⁰³

The City widely advertised to fill the position of Ethics Officer, who would report to the City Auditor and City Attorney—over 150 applicants applied.¹⁰⁴ I was jointly interviewed by the City Auditor and City Attorney. The second-round interview was with the City Auditor and City Attorney, joined by the City Manager and Treasurer Clerk. I started working on October 1, 2014.¹⁰⁵ However, these actions were unsatisfactory to some community members. Many had wanted the Ethics Officer to be an appointed official, while others wanted an Independent Ethics Officer reporting to a Board.¹⁰⁶ This dissatisfaction led to further citizen action.

V. CITIZEN ACTION

An amendment to the City Charter was presented and promoted by Citizens for Ethics Reform and a national organization, Represent Us.¹⁰⁷ The Referendum's purpose was to

101. *Id.* at 15.

102. *Id.* at 5; see also City of Tallahassee, *Financial Disclosure For Elected Officials* (FORM EB1), (June 2015), available at <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/eb-financial-disclosure-elected-officials.pdf>.

103. CITY OF TALLAHASSEE, FLA., ORDINANCE NO. 14-0-44AA (Sept. 22, 2014).

104. Jeff Burlew, *City Ethics Post Attracts 150-Plus Applicants*, TALLAHASSEE DEMOCRAT (Sept. 13, 2014, 11:39 AM ET), <http://www.tallahassee.com/story/news/politics/2014/09/13/tallahassee-searches-ethics-officer/15578639/>; see also Job Description: Ethics Officer, City of Tallahassee, available at <http://www.talgov.com/Uploads/Public/Documents/hr/hr/specs/791.pdf> (last updated Oct. 1, 2015) (describing the functions, duties, and qualifications necessary to become the Ethics Officer).

105. TaMaryn Waters, *Julie Meadows-Keefe Hired as New Ethics Officer*, TALLAHASSEE DEMOCRAT (Sept. 30, 2014, 11:34 PM ET), <http://www.tallahassee.com/story/news/local/2014/09/30/julie-meadows-keefe-hired-new-ethics-officer/16516757/>.

106. See Jeff Burlew, *Ethics Board Facing Criticism from Amendment Backers*, TALLAHASSEE DEMOCRAT (July 25, 2015, 1:26 PM ET), <http://www.tallahassee.com/story/news/politics/2015/07/24/ethics-board-facing-criticism-amendment-backers/30628291/>.

107. Sam Shanky, *Anti-corruption Movement Scores Major Victories at the Polls*, BULLETIN.REPRESENT.US (Nov. 5 2014), <http://bulletin.represent.us/anti-corruption-movement-scores-major-victory-polls/>.

amend the City Charter on ethics and campaign finance matters, including a provision for partial public funding of elections.¹⁰⁸ The Charter Amendment Referendum read as follows:

Shall the Charter of the City of Tallahassee be amended to establish an ethics and anti-corruption policy; require the enactment of an ethics code, establishment of an independent ethics board with broad powers, creation of an ethics office and officer; limit campaign contributions to City Commissioners to \$250 per contributor per election and establish a citizen campaign finance program with refunds from city funds for contributions and provide for severability.¹⁰⁹

The Charter Amendment required:

- “Enact[ment of] an ethics . . . code with jurisdiction over the officers and employees of the City of Tallahassee, whether elected or appointed, paid or unpaid, and over the members, officers and employees of any boards, commissions, or committees thereof. The ethics code may, as allowed by law, supplement state ethics laws”;¹¹⁰
- Creation of an ethics Board with appointments by “the City Commission, the Chief Judge for the Second Judicial Circuit, the State Attorney for the Second Judicial Circuit, the President of Florida State University and the President of Florida A&M University. Two Board members shall be appointed by the Ethics Board.”¹¹¹ The Board would, in part, make recommendations to the City Commission on various matters, including proposed ethics ordinances and employ an Ethics Officer;¹¹²
- “[E]stablishment of a citywide Ethics Office . . . reporting to the independent Ethics Board” with sufficient City Commission funding to function “at a level sufficient to discharge the Office’s responsibilities”;¹¹³

108. *Referendum Amending City of Tallahassee Charter*, available at https://www.tal.gov/uploads/Public/Documents/ethics/pdf/referendum_150210.pdf (last visited Apr. 18, 2017) [hereinafter *Referendum*].

109. *Id.*

110. *Id.* at Section 2a.

111. *Id.* at Section 2b.

112. *Id.*

113. *Id.* at Section 3.

- Reduction of “campaign contributions from any contributor, including a political committee . . . [to] \$250”,¹¹⁴ and
- Establishment of a Campaign contribution refund program to refund city electors a maximum of \$25 for contributions to city candidates.¹¹⁵

Some believed that the ethics proposal was going too far.¹¹⁶ The most significant bone of contention was the proposal to establish the campaign contribution refund program. The local organizers of the initiative, Citizens for Ethics Reform, partnered with United Republic and Represent Us, two Massachusetts-based organizations committed to undoing *Citizens United* and instituting campaign finance reform.¹¹⁷ United Republic contributed over \$120,000 to assist with signature collection.¹¹⁸

Nine thousand signatures were required to place the measure on the ballot. Citizens for Ethics Reform, through a petition drive, was able to collect more than twenty thousand signatures.¹¹⁹ However, the City believed that the ballot title and summary did not fairly inform voters of its chief purpose and was misleading. Of particular concern was that the proposal for the \$25 campaign contribution rebate program did not fit within the single subject of ethics reform.¹²⁰ The City challenge made it uncertain whether the measure would make the September 5, 2014, deadline for placement on the ballot. An expedited hearing was conducted, and the Circuit Judge decided that the measure

114. *Id.* at Section 4.

115. Ensley, *supra* note 76.

116. *Id.*

117. *Id.* See Represent Us, *The Truth About Citizens United*, REPRESENT US, <https://act.represent.us/sign/Citizens-United/> (last visited Apr. 18, 2017) (describing Represent Us' commitment to overruling *Citizens United* and ending political corruption on a broad scale).

118. Jeff Burlew, *City Ethics Amendment Passes by Wide Margin*, TALLAHASSEE DEMOCRAT (Nov. 5, 2014, 8:12 AM ET), <http://www.tallahassee.com/story/news/politics/2014/11/04/voters-decide-city-ethics-proposal/18459015/>.

119. Jeff Burlew, *Ethics Proposal Gets Enough Signatures for Ballot*, TALLAHASSEE DEMOCRAT (Aug. 5, 2014, 2:47 PM ET), <http://www.tallahassee.com/story/news/local/2014/08/05/ethics-proposal-gets-enough-signatures-for-ballot/13625497/>.

120. TaMaryn Waters, *Ethics Initiative Proponents Seek Quick Resolution to City Challenge*, TALLAHASSEE DEMOCRAT (Aug. 20, 2014, 10:11 PM ET), <http://www.tallahassee.com/story/news/politics/2014/08/20/ethics-initiative-proponents-seek-quick-resolution-to-city-challenge/14370451/>.

should be placed on the ballot because the language was not confusing, deceptive, inflammatory, or misleading.¹²¹

The Commission decided not to instruct the City Attorney to appeal the ruling so that the measure could go before voters.¹²² The Charter Amendment passed on November 4, 2014, with sixty-seven percent of the vote. Represent Us touted the victory in a marketing video designed to instruct and motivate other communities to enact similar measures.¹²³

VI. A NEW BOARD IS FORMED

The Charter amendment requires that the City of Tallahassee's Independent Ethics Board consist of the following appointees:

- One appointed by the City Commission;
- One appointed by the State Attorney;
- One appointed by Florida State University;
- One appointed by Florida A&M University;
- Two board-appointed members; and
- One member Appointed by Chief Judge (unfilled).¹²⁴

121. Jeff Burlew, *City Charter Amendments Will Go on November Ballots*, TALLAHASSEE DEMOCRAT (Aug. 29, 2014, 11:13 PM ET), <http://www.tallahassee.com/story/news/politics/2014/08/29/city-charter-amendment-will-go-november-ballots/14839761/>.

122. *Id.*

123. *First Anti-Corruption Act in US History Passes* 1:13–3:30 (Represent Us video Nov. 6, 2014), <https://www.youtube.com/watch?v=LhEFehRWApM>.

124. Members of the first full board included City appointee, Lila Jaber, who served as first Chair; FAMU appointee, Funmi Ojetayo; FSU appointee, Richard Herring; State Attorney appointee, Cecil Davis, Jr.; Thomas J. Friedman, at-large; and Renee McNeil, at-large. Jeff Burlew, *City Ethics Board Meets for First Time*, TALLAHASSEE DEMOCRAT (Feb. 10, 2015, 4:49 PM ET), <http://www.tallahassee.com/story/news/2015/02/10/city-ethics-board-meets-for-first-time/23181609/>. Chief Judge Francis declined to make an appointment after reviewing Florida Supreme Court Judicial Ethics Advisory Committee Opinion 2009-14. See *Ethics Board Agenda*, CITY OF TALLAHASSEE ETHICS BOARD 2 (Mar. 12, 2015), available at <https://www.talgov.com/uploads/public/documents/ethics/pdf/ethics-board-agenda-150312.pdf> (showing an email from Lew Shelley to Jim Cooke); see also Florida Judicial Ethics Advisory Committee, Formal Op. 2009-14 (Aug. 31, 2009), available at <http://www.jud6.org/legalcommunity/legalpractice/opinions/jeacopinions/2009/2009-14.html>. The Board wrote to the Chief Judge succeeding Judge Francis, Judge Sjostrom, asking if he would be willing to make an appointment. City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE 9 (Aug. 20, 2015) available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/ethics-board-minutes-150820.pdf> [hereinafter Aug. 20, 2015 Minutes]. However, he declined. Letter from Johnathan Sjostrom to Lila Jaber, *Ethics Board Appointment* (Sep. 3, 2015), available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-skm-150916.pdf>. The Board will most likely not ask again based on the legal opinion from Board counsel. Letter from

The first meeting occurred on February 10, 2015, with the City Commission, Florida State University, Florida A&M University, and the State Attorney's Office appointees.¹²⁵ Both Chief Circuit Judges that have presided during the Board's existence have declined to make appointments based on a Florida Supreme Court Judicial Ethics Advisory Committee opinion.¹²⁶ The Board received various briefings and instructed the City's assistance in securing two additional members.¹²⁷ At their second meeting on March 12, 2015, those members appointed two additional citizen members drawn from a pool of qualified applicants.¹²⁸ The first full board meeting occurred on March 23, 2015,¹²⁹ and the Chair and Vice Chair were elected.¹³⁰ At the first several meetings, it was necessary for City staff to be present and

Gerald B. Curington to Lila Jaber, Chair, Tallahassee Independent Ethics Bd., *Re: Tallahassee Ethics Opinion 2015-3* (Sept. 24, 2015), <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-addmem-151014.pdf>. See also Sean Rossman, *Ethics Board Completes Year of Building: Panel Labored Over Authority, Bylaws, Complaints, Penalties*, TALLAHASSEE DEMOCRAT, Jan. 20, 2016, 1A. Board members file form 1 and form 9 if gifts are received. See City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD 2 (Feb. 10, 2015), available at <https://www.talgov.com/uploads/public/documents/ethics/pdf/ethics-board-minutes-150210.pdf> [hereinafter Feb. 10, 2015 Minutes]. Currently, Richard Herring serves as Chair and Ms. Sunny Phillips has replaced Ms. Jaber as the City Commission appointee. City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD 1, 4 (Jan. 19, 2016), available at <https://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160216-minutes-160119.pdf> [hereinafter Jan. 19, 2016 Minutes].

125. Burlaw, *supra* note 124; see also February 10, 2015 Minutes, *supra* note 124, at 1 (“The City of Tallahassee Ethics Board held its first regular session on February 10, 2015 in the City Hall Commission Chambers. Present were Board members Davis, Jaber, Herring, and Ojetayo.”).

126. *Supra* note 124; see also Florida Judicial Ethics Advisory Committee, *supra* note 124, at 2 (“For the foregoing reasons, this Committee recommends that the chief judge respectfully decline to appoint members of the Board of Ethics.”). See also Rossman, *supra* note 124, at 1A, 6A.

127. See February 10, 2015 Minutes, *supra* note 124, at 1 (noting that the Board requested the Treasurer-Clerk to solicit applications for the remaining seats on the Board).

128. See City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD 1 (Mar. 12, 2015), available at <https://www.talgov.com/uploads/public/documents/ethics/pdf/ethics-board-minutes-150312.pdf> (noting that applicant qualification consists of being a registered City Tallahassee elector, with appropriate subject matter expertise, none of whom may be an officer or employee of local government); Referendum, *supra* note 108, at Section 2b (“There is hereby created an independent, appointed, ongoing citizens Ethics Board of seven members, whose membership shall consist of registered City of Tallahassee electors who have appropriate subject matter expertise none of whom may be an officer or employee of local government.”).

129. City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD 1 (March 23, 2015), available at <https://www.talgov.com/uploads/public/documents/ethics/pdf/ethics-board-minutes-150323.pdf>.

130. *Id.*

to assist the board in becoming established, staffed, supported, and functional;¹³¹ however, the public clamored for the Board to quickly demonstrate independence.¹³² As each meeting occurred, City staff became less visible. Currently, staff is invited to meetings to provide education to Board members about various City functions, and they may choose to attend because the meetings are public.¹³³

One of the Board's first tasks was to adopt a mission statement, which states: "To promote the actual and perceived integrity of our city government and to prevent unethical conduct before it occurs."¹³⁴ The mission statement recognized that the overall aim of the Ethics Board was to improve both the perception and reality of integrity in local government and to encourage public participation.¹³⁵ Another urgent task for the Board was to establish an operational budget.¹³⁶ The Charter Amendment requires that the City "shall be funded by the City Commission within its discretionary budgetary authority at a level sufficient to discharge the Board's responsibilities."¹³⁷

131. See Feb. 10, 2015 Minutes, *supra* note 124, at 2.

132. Rossman, *supra* note 124, at 6A (noting that at the first Board meeting, City Attorney Lew Shelley advised the board that they were independent and that they should "feel free at any point in time, if it's the will of the majority, to ignore what any of us say").

133. See, e.g., *Procurement Overview: Department of Management and Administration*, CITY OF TALLAHASSEE, <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-151112-11d-presentation.pdf> (last visited Apr. 18, 2017) (providing a presentation on "Procurement Overview").

134. Independent Ethics Board, *Bylaws of the City of Tallahassee* 1 (Jan. 19, 2016), <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160216-bylaws-ethics-board-proposed-technical-amends.pdf>. Indeed, there is additional support for the proposition that the purpose of any ethics board is to promote the reality and the perception of integrity in government. See *Governmental Ethics Laws*, *supra* note 14, at 186 ("[E]nforcement actions and fines are not an ethics commission's successes; they are its failures.").

135. *Governmental Ethics Laws*, *supra* note 14, at 119.

136. See, e.g., *Funds Available FY15*, CITY OF TALLAHASSEE ETHICS OFFICE (Feb. 28, 2015), <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/ethics-budget-150219.pdf> (delineating the various expenses and budget considerations the board has encountered during 2015).

137. Referendum, *supra* note 108, at Section 2b. See also Feb. 10, 2015 Minutes, *supra* note 124, at 2–3 (discussing how the allocation of certain costs is contingent upon the Board's decision to hire employees or independent contractors); *Updated Budget*, CITY OF TALLAHASSEE ETHICS BOARD (Mar. 31, 2015), <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/ethics-board-budget16.pdf> (outlining projected expenses for the 2016 fiscal year). Furthermore, it became necessary to ask the City Commission for a supplemental appropriation for fiscal year 2016. *Supplemental Appropriation for Independent Ethics Board*, CITY OF TALLAHASSEE INDEPENDENT ETHICS OFFICE (Feb. 24, 2016), <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160119-draft-cc-suplmt-appr-req-011416.pdf>; see also Jan. 19, 2016 Minutes, *supra* note 124, at 3–4

Further, the Charter Amendment requires the Independent Ethics Board to undertake the following tasks:

- Review and develop a City Ethics Code;¹³⁸
- Adopt bylaws and due process procedures;¹³⁹
- Manage existing ethics and fraud hotline;¹⁴⁰
- Manage and coordinate training;¹⁴¹
- Recommend resolutions, ordinances, or charter amendments;¹⁴²
- Investigate complaints and levy civil penalties;¹⁴³
- Employ staff and supervises the ethics officer;¹⁴⁴
- Administer campaign contribution refund program;¹⁴⁵
- Ensure independence and impartiality;¹⁴⁶ and
- Provide for the maximum practicable input from citizens and community organizations.¹⁴⁷

The Board's attention to these tasks will now be examined in a bit more detail. Functions that are similar will be grouped together.

(noting that the Board unanimously agreed to request a supplemental appropriation from the City Commission covering various expenditures such as startup costs and legal fees). Annual costs for the Board were initially approximately \$137,000 annually. A budget request for approximately \$344,000 has been submitted for FY 2017–2018. The increase is largely due to having to retain outside counsel and to budget for investigators and court reporters that the Board may or may not need depending on the number of complaints received.

138. Referendum, *supra* note 108, at Section 2a.

139. *Id.* at Section 2b.

140. *Id.*

141. The Ethics Officer trained the City Commission and executive team in January 2015 and January 2016, partially based upon the requirement in section 112.3142(2)(b). See Mark Davies, *Enacting a Local Ethics Law—Part III: Administration*, 22 MUN. LAW. 11, 12 (2008) (“[O]ne municipal ethics ordinance subjects high-level officials to a \$500 fine if, within 120 days of assuming their position and every four years thereafter, they fail to attend an ethics education seminar offered by the ethics board.”).

142. Referendum, *supra* note 108, at Section 2b.

143. City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD (Nov. 12, 2015), available at <https://www.tal.gov/uploads/public/documents/ethics/pdf/eb-151215-Minutes.111215.pdf> [hereinafter Nov. 12, 2015 Minutes]; *Draft of Agenda Item Details*, CITY OF TALLAHASSEE ETHICS BOARD (Mar. 23, 2016), [http://www.tal.gov/uploads/public/documents/ethics/pdf/eb-160315-penalties-\(2\).pdf](http://www.tal.gov/uploads/public/documents/ethics/pdf/eb-160315-penalties-(2).pdf).

144. *Id.*

145. City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD 2–3 (July 13, 2015), available at <https://www.tal.gov/uploads/public/documents/ethics/pdf/ethics-board-minutes-150713.pdf> [hereinafter July 13, 2015 Minutes].

146. Referendum, *supra* note 108, at Section 2b.

147. *Id.*

A. Review and Development of City Ethics Code and Recommendations of Resolutions, Ordinances, and Charter Amendments

In 2015, the City passed an Ethics Ordinance in response to the Panel's report. The Board carefully reviewed and discussed those provisions.¹⁴⁸ Subsequently, an ordinance was passed to establish the Independent Ethics Board and set Board terms.¹⁴⁹ The Board counsel later made recommendations for revisions to the City Ethics Code, which the Board advanced to the City Commission for passage.¹⁵⁰ In May 2016, Board counsel opined that the Charter Amendment does not allow the Board to exercise concurrent jurisdiction with the Florida Commission on Ethics and the Board's sole jurisdiction is for violations of the City's Ethics Code.¹⁵¹ This has increased the Board's sense of urgency to recommend additional provisions for passage by the City Commission.

B. Adoption of Bylaws and Due Process Procedures

The Board was deliberative as it "slogged" through the adoption of bylaws and procedures such that one reporter described it as "laboring."¹⁵² However, preliminary bylaws and

148. City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD (May 21, 2015), available at <https://talgov.com/uploads/public/documents/ethics/pdf/ethics-board-minutes-150521.pdf> [hereinafter May 21, 2015 Minutes].

149. TALLAHASSEE, FLA., ORDINANCE § 2-13 (2015).

150. Letter from Gerald B. Curington to Lila Jaber, Chair, Tallahassee Independent Ethics Bd., *Recommendations to City Commission Regarding Ethics Board 2-3* (Aug. 6, 2015), available at <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/eb-recommendations-150820.pdf>; see also Memorandum from Julie Meadows-Keefe, Independent Ethics Officer, to Lewis Shelley, City Attorney, *Ethics Board Recommendations for Modifications to City Ethics Ordinances* (Aug. 17, 2015), available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-rec-ec-signed-memo-150916.pdf>.

151. May 21, 2015 Minutes, *supra* note 148.

152. Rossman, *supra* note 124, at 1A; see also, e.g., City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD (June 4, 2015), available at <https://www.talgov.com/uploads/public/documents/ethics/pdf/ethics-board-minutes-150604.pdf> ("After completing a page-by-page review of the proposed bylaws, Ms. Jaber stated that she understood the Board's concerns, and that she, along with Ethics Officer Meadows-Keefe, would make the requested changes to the proposed bylaws."); Nov. 12, 2015 Minutes, *supra* note 143 ("A motion was made by Mr. Herring and seconded by Mr. Ojetayo that the Bylaws be amended as presented."); *Ethics Board Agenda*, CITY OF TALLAHASSEE ETHICS BOARD (April 6, 2015), <https://www.talgov.com/Uploads/Public/Documents/ethics/pdf/apr6-agenda.pdf> (stating that there was a "[d]iscussion of draft Bylaws"); May 21, 2015 Minutes, *supra* note 148 ("City Ethics Officer Meadows-Keefe

processes were stood up in short order so that the Board had a structure in place for governance.¹⁵³ Later, when the Board counsel was hired, he was tasked with examining the existing bylaws and making recommendations that were discussed and in most cases adopted.¹⁵⁴ A hallmark of this Board is that because it is relatively new, it is a continuous work-in-progress and seeks to consistently improve and adopt the best practices.¹⁵⁵ Additionally, due process procedures were examined in 2016 through a Committee process to ensure the fairest process for both the citizens and officials.¹⁵⁶ There is also an interest in moving complaints expeditiously through the process. Therefore, the bylaws allow for probable cause committees to process complaints between meetings and for contested matters to be adjudicated at the Department of Administrative Hearings (“DOAH”).

C. Management and Coordination of Ethics Training

Noting that ethics commissions in other local governments have been criticized for insufficiently training board members,¹⁵⁷ Tallahassee’s Independent Ethics Board has first emphasized educating itself.¹⁵⁸ The Board receives annual ethics training each April.¹⁵⁹ Current Board Chair, Richard Herring, has also instituted “Ethics Moments” at the beginning of each Board meeting, where recent decisions by the Florida Ethics

reported that the proposed draft bylaws provided to the Board were patterned after Robert’s Rules of Order”); *Draft Bylaws of the City of Tallahassee Independent Ethics Board*, CITY OF TALLAHASSEE ETHICS BOARD, <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/ethics-board-bylaws-draft.pdf> (last visited Apr. 18, 2017).

153. See, e.g., May 21, 2015 Minutes, *supra* note 148, at 1–2 (addressing each article and section of the proposed bylaws and agreeing to establish a hearing process).

154. See Feb. 10, 2015 Minutes, *supra* note 124, at 1 (discussing City Attorney Shelly’s briefing on the City Commission’s enactment of the Ethics Advisory Panel’s recommendations).

155. See Rossman, *supra* note 124, at 1A (discussing the Board’s development throughout its first year of existence).

156. May 21, 2015 Minutes, *supra* note 148, at 2 (discussing the Board’s decision to establish a hearing process).

157. Office of Program Policy Analysis and Government Accountability, *Palm Beach County Commission On Ethics Was Created Using Several Best Practices; Some Practices Could Be Enhanced*, Report No. 13-10, at 8–9 (Oct. 2013).

158. E.g., Julie Meadows-Keefe, *PowerPoint on Government Ethics*, CITY OF TALLAHASSEE ETHICS OFFICE (May 21, 2015), available at <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/pp.pdf>; see also May 21, 2015 Minutes, *supra* note 148, at 4 (proposing to obtain the services of independent counsel to advise the Board on various matters).

159. Meadows-Keefe, *supra* note 158.

Commission or relevant items of interest and applicability are brought to the Board and discussed to enhance Board understanding of ethics issues.¹⁶⁰

Even before passage of the Charter Amendment, the Ethics Officer's role was envisioned to be the central point of contact for ethics matters within the City. I provided annual ethics training to the City Commission, staff, and executive management in January 2015¹⁶¹ and January 2016.¹⁶² I have also personally provided ethics education to city advisory boards and councils, and provided general staff training.

Additionally, from Board inception, outside speakers have come to educate the Board about the Sunshine and Public Meeting Laws, the role of the Florida Commission on Ethics, and the role of the Florida Elections Commission.¹⁶³ City staff has also regularly made presentations to the Board, so that members may understand such functions as procurement, communications, and City management and organization.¹⁶⁴ The Board also reviewed the ethics training provided to all City employees and heard from the staff member who organizes general employee ethics education.¹⁶⁵

160. See, e.g., *Ethics Board Agenda*, CITY OF TALLAHASSEE ETHICS BOARD (July 19, 2016), available at [http://www.boarddocs.com/fla/talgov/Board.nsf/files/ABVK4U4F4E26/\\$file/Ethics%20Board%20Agenda%20July%202016.pdf](http://www.boarddocs.com/fla/talgov/Board.nsf/files/ABVK4U4F4E26/$file/Ethics%20Board%20Agenda%20July%202016.pdf) (reserving time at the beginning of the meeting for the "Ethics Moment").

161. See Feb. 10, 2015 Minutes, *supra* note 124, at 3 (noting that Ms. Meadows-Keefe assumed the responsibility of providing ethics training).

162. Rossman, *supra* note 124, at 6A.

163. See *Ethics Board Agenda*, CITY OF TALLAHASSEE ETHICS BOARD (Apr. 19, 2016), available at [http://www.boarddocs.com/fla/talgov/Board.nsf/files/A8ZGAP42A1F8/\\$file/Agenda.pdf](http://www.boarddocs.com/fla/talgov/Board.nsf/files/A8ZGAP42A1F8/$file/Agenda.pdf) (Hon. Simone Marstiller); *Ethics Board Agenda*, CITY OF TALLAHASSEE ETHICS BOARD (Nov. 12, 2015), <https://www.talgov.com/uploads/public/documents/ethics/pdf/eb-151112-agenda.pdf> (Pat Gleason); City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD (Oct. 14, 2015), available at <https://www.talgov.com/uploads/public/documents/ethics/pdf/eb-151112-02-minutes.pdf> [hereinafter Oct. 14, 2015 Minutes] (Elections Commission Director); Aug. 20, 2015 Minutes, *supra* note 124 (Ethics Commission staff).

164. *Ethics Board Agenda*, CITY OF TALLAHASSEE ETHICS BOARD (Feb. 16, 2016), <https://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160216-agenda.pdf>.

165. E.g., *Ethics for a Modern Workforce*, CITY OF TALLAHASSEE DEP'T OF EQUITY & WORKFORCE DEV. 3–4, <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-151215-Ethics%20Training%20Presentation.pdf> (last visited Apr. 18, 2017); City of Tallahassee, *Ethics Meeting December 15, 2015* (YouTube video Dec. 15, 2015), <https://www.youtube.com/watch?v=kf0RIIFjXw&feature=youtu.be>.

D. Management of the Existing Ethics and Fraud Hotline, Investigation of Complaints, and Assessment of Civil Penalties

I began staffing the Ethics and Fraud Hotline as of October 1, 2014, and this continues as of this publication.¹⁶⁶ All calls to the hotline and inquiries received via email¹⁶⁷ or other means are tracked and reported to the Board monthly. There have been approximately seventy-eight calls and inquiries between October 1, 2014, and September 2016.¹⁶⁸ Many times, callers have general questions or believe that they have reached someone who can assist them with issues unrelated to City Ethics violations. It enhances community trust in the Board to try to assist those callers in reaching the appropriate venue for resolution of their issues.

Once the Board was empaneled, it discussed over several meetings the desired format for complaints. The Florida Ethics Commission requires sworn complaints,¹⁶⁹ as do other jurisdictions such as Palm Beach and Jacksonville.¹⁷⁰ However, the Tallahassee Board decided to not require sworn complaints, but to make many means available to initiate complaints.¹⁷¹ Much public comment and discussion took place to assure that

166. See Feb. 10, 2015 Minutes, *supra* note 124, at 3 (stating that Ms. Meadows-Keefe directly receives and responds to calls made to the Ethics and Fraud hotline); see also *Ethics Hotline Tracking Spreadsheet*, CITY OF TALLAHASSEE ETHICS BOARD, <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/ethics-board-tracking.pdf> (last visited Apr. 18, 2017) (listing details of complaints made to the Ethics and Fraud Hotline).

167. The Board adopted an easy-to-remember email address for ethics inquiries, ethics@talgov.com.

168. It is likely that some complaints will be deemed invalid. See Johnson, *supra* note 9, at 758 (explaining that even when there are penalties for making frivolous reports, there will still be some unfounded complaints).

169. See Complaint Form, FLA. COMMISSION ON ETHICS (CE FORM 50—EFF. 4/2008), available at <http://www.ethics.state.fl.us/Documents/Forms/Complaint%20Form.PDF?cp=2017412> (last visited Apr. 18, 2017) (requiring that complaints are “sworn before a notary or other official authorized to administer oaths”).

170. See Complaint Form, JACKSONVILLE ETHICS COMMISSION, <http://www.coj.net/departments/boards-and-commissions/docs/ethics-commission/complaint-form-april-2010-ext.aspx> (last visited Apr. 18, 2017) (requiring complaint forms to be sworn before a notary or other authorized person); Complaint Form, PALM BEACH COUNTY COMMISSION ON ETHICS, available at http://www.palmbeachcountyethics.com/pdf/Forms/Complaint_Form_and_Instructions.pdf (last visited Apr. 18, 2017) (requiring complaint forms to be sworn and notarized).

171. See Letter from Richard Herring to Members of the Ethics Board, *Interim Interaction with the City* 1 (March 30, 2015), available at http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/interim_complaint_process.pdf (explaining that filed complaints may be sworn or unsworn, and permitting anonymous complaints).

the complaint process would be accessible to all, simple and transparent, easy to obtain and locate, and clearly understandable.¹⁷² The form is available online.¹⁷³ Another distinguishing characteristic is that the Board, unlike the Florida Ethics Commission, can self-initiate complaints and investigations.¹⁷⁴ It has not yet done so.

Generally, when a complaint or inquiry is relayed to the ethics office, the Ethics Officer determines whether the accusation would violate state or local ethics codes if it were to be found true. If it would be a violation, he or she turns all investigatory materials over to the Board along with a recommendation. The Board then convenes in a closed meeting to determine whether or not there is probable cause to believe a violation has been committed. No matter the outcome, all documents related to the case are made public following the closed-door meeting. If they do determine probable cause, the Board notifies the alleged violator in writing. That person is entitled to a public hearing in front of the Board—complete with witnesses and testimony—or they could settle. At the end of the hearing, the Board will make a written decision or refer the case to proper authorities. If the person is found in violation of the City's Ethics Code, the Board may levy civil penalties.

The Board also has a process for appropriate referral of matters to other entities inside and outside the City. One example occurred following an unsubstantiated ethics complaint alleging that energy auditors were utilizing their positions to gain clients for their personal heating and air conditioning businesses. Subsequently, after meeting with the concerned citizens, the City Auditor conducted a system-wide audit of the

172. Aug. 20, 2015 Minutes, *supra* note at 124, at 4–5; *see also* Complaint Form, INDEPENDENT ETHICS BOARD FOR THE CITY OF TALLAHASSEE COMPLAINT FORM, <https://www.talgov.com/uploads/public/documents/ethics/pdf/eb-complaint-form.pdf> (last visited Apr. 18, 2017) (providing clear and simple directions to make a complaint and specifically stating that complaints may be anonymous).

173. Complaint Form, *supra* note 172.

174. *Keeping the Faith*, *supra* note 8, at 113; *see also* Letter from Gerald B. Curington, Counsel at Ausley McMullen, to Lila A. Jaber, Chair, Tallahassee Independent Ethics Bd., *Board Initiated Complaints* (Nov. 4, 2015), <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-151112-12-initiation-legalopinion.pdf> (discussing that it was intended by the legislature that the ethics board be self-regulatory).

City energy audit program.¹⁷⁵ Although there were no findings of ethics violations in the audit, there were recommendations made that served to enhance the controls present in the program to prevent real or perceived conflicts of interest.¹⁷⁶

The first complaint that wound its way through the probable cause process was one involving the police chief who had developed a personal relationship with another member of the police department.¹⁷⁷ The Board examined the matter to determine if the Chief had misused his position in the course of the relationship. The Board did not believe the conduct rose to that level and closed the complaint. This required the Board go into a “shade” meeting as required by sections 112.324(2)(a), (c), (e), Florida Statutes, which provides in pertinent part:

The complaint and records relating to the complaint or to any preliminary investigation held by . . . a Commission on Ethics and Public Trust established by any . . . municipality . . . are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. . . . Any . . . proceeding conducted by . . . a Commission on Ethics and Public Trust, . . . pursuant to a complaint or preliminary investigation, is exempt from [the provisions of] s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525. The exemptions in paragraphs (a)-(d) apply until: 1. The complaint is dismissed as legally insufficient; 2. The alleged violator

175. Memorandum from T. Bert Fletcher, City Auditor, to Mayor and Members of the City Commission, *Inquiry into Potential Conflicts of Interest Regarding City Energy Auditors and Their Secondary Employment* (Nov. 12, 2015), available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-151215-EA.pdf>; see also *Final Audit Follow up: Inquiry into Potential Conflicts of Interest Regarding City Energy Auditors and Their Secondary Employment* (Report #1611), CITY OF TALLAHASSEE 1–2 (Nov. 12, 2015), <https://www.talgov.com/Uploads/Public/Documents/auditing/pdf/fy16/1611.pdf> [hereinafter *Final Audit Follow-Up*] (detailing the concerns of the accusations and then outlining the investigation launched as a result of the accusations).

176. *Final Audit Follow-Up*, *supra* note 175.

177. See Rossman, *supra* note 124, at 6A (noting that the complaint about the police chief was the only complaint that rose to the level of triggering the Board to discuss a possible ethics violation); see also Jeff Burlew, *Ethics Complaint Dropped Against TPD Chief DeLeo*, TALLAHASSEE DEMOCRAT (Oct. 15, 2015, 7:38 AM ET), <http://www.tallahassee.com/story/news/2015/10/14/ethics-complaint-dropped-against-tpd-chief-deleo/73944636/> (explaining the background of the complaint and the procedures followed after receiving the complaint); Jeff Burlew, *City Ethics Board Taking Up First Complaint*, TALLAHASSEE DEMOCRAT (October 13, 2015, 10:15 PM ET), <http://www.tallahassee.com/story/news/2015/10/13/city-ethics-board-taking-up-first-complaint/73877788/> (issuing that the Board had received its first ethics complaint and describing the procedure through which the Board would respond) [hereinafter *Taking Up First Complaint*].

requests in writing that such records and proceedings be made public; 3. The commission determines that it will not investigate the referral; or 4. [A] Commission on Ethics and Public Trust . . . determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.¹⁷⁸

The Board explained the reasoning for the “shade” session prior to it taking place.¹⁷⁹ At the conclusion of the session, all documents pertaining to the investigation and the final order were immediately provided to the public and news reporters. Additionally, after the session, the Board held a public debrief at the following meeting to refine its complaint investigation process.¹⁸⁰

The second complaint that required the Board to go into a “shade” session involved the amount and ongoing payment of a retired Commissioner’s deferred compensation.¹⁸¹ Again, a clear explanation was given to the public for the “shade” session.¹⁸² The Board found that the complaint was legally insufficient and closed it.¹⁸³ As in the first complaint, a public debrief was held regarding the complaint and the Board received additional information from City staff regarding how deferred compensation had been calculated for this Commissioner.¹⁸⁴

The Board also recommended penalties for ethics violations that were passed by the City Commission in 2016.¹⁸⁵

178. FLA. STAT. §§ 112.324(2)(a), (c), (e) (2016).

179. Oct. 14, 2015 Minutes, *supra* note 163, at 17.

180. Nov. 12, 2015 Minutes, *supra* note 143, at 6.

181. Jeff Burlew, *City Ethics Board Drops Lightsey Complaint*, TALLAHASSEE DEMOCRAT (June 21, 2016, 9:29 PM ET), <http://www.tallahassee.com/story/news/2016/06/21/city-ethics-board-drops-lightsey-complaint/86213840/> (explaining the nature of the complaint and why the Board voted to toss out the complaint).

182. *Notice of Executive Session*, CITY OF TALLAHASSEE ETHICS BOARD (June 6, 2016), [http://www.boarddocs.com/fla/talgov/Board.nsf/files/AAWH57453AFF/\\$file/Notice%20of%20Executive%20Session%20060616.pdf](http://www.boarddocs.com/fla/talgov/Board.nsf/files/AAWH57453AFF/$file/Notice%20of%20Executive%20Session%20060616.pdf).

183. May 21, 2015 Minutes, *supra* note 148, at 3.

184. *Independent Ethics Board Agenda*, CITY COMMISSION CHAMBER 1 (July 19, 2016), available at [http://www.boarddocs.com/fla/talgov/Board.nsf/files/ABVK4U4F4E26/\\$file/Ethics%20Board%20Agenda%20July%202016.pdf](http://www.boarddocs.com/fla/talgov/Board.nsf/files/ABVK4U4F4E26/$file/Ethics%20Board%20Agenda%20July%202016.pdf).

185. “Enforcement mechanisms may include: disciplinary action, liability for damages or injunctive relief, civil fines, perjury prosecution for perjury or other crimes; voiding of a contract; disqualification from contracting with the city; and forfeiture of improper financial benefits.” Johnson, *supra* note 9, at 759–60 (footnotes omitted); see also ROBERT F. WECHSLER, LOCAL GOVERNMENT ETHICS PROGRAMS: A RESOURCE FOR ETHICS COMMISSION MEMBERS, LOCAL OFFICIALS, ATTORNEYS, JOURNALISTS AND STUDENTS, AND A MANUAL FOR ETHICS REFORM 723–820 (2d ed. 2013) (providing ideas on establishing a

E. Employment of Staff and Ethics Officer

At the Board's inception, I was the only employee.¹⁸⁶ At the third Board meeting, the Board received a report of my activities since commencing the role.¹⁸⁷ The Ethics Officer's job description was also modified to track the new reporting structure for the position and modified responsibilities.¹⁸⁸ Throughout the first few Board meetings there was ongoing tension over whether the new Board would re-open a hiring process, do a national search and interview a range of candidates, or decide to allow me to continue to function in the role without going through another hiring process. The concern expressed by critics was whether an ethics officer hired by the City could serve citizens objectively.¹⁸⁹ This was the subject of discussion at meetings and by the media.¹⁹⁰ However, the Board's first hiring decision came in the form of retaining outside legal counsel.¹⁹¹ Although I am an attorney and several Board members are attorneys, the consensus of the Board and best practices indicate that an attorney is necessary to represent the Board, whereas the Ethics Officer function is more of an Executive Director role. Soon after the Board counsel was

disciplinary policy for violations of ethics rules); Memorandum from Julie Meadows-Keefe, Independent Ethics Officer, to Independent Ethics Board, *Penalties for Ethics Violations* (Oct. 28, 2015), available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-151112-10-penalties-memo.pdf> (establishing the penalties the Board is authorized to impose for ethics violations); TALLAHASSEE, FLA., DRAFT OF ORDINANCE NO. 16-O-07, (Mar. 2016), available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160315-16-o-07.pdf> (codifying the penalties for ethics violations).

186. Feb. 10, 2015 Minutes, *supra* note 124, at 2.

187. See *Report on Ethics Activities*, CITY OF TALLAHASSEE ETHICS ADVISORY BOARD (Mar. 19, 2015), available at <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/ethics-officer-report.pdf> (outlining, by month, the duties performed by Ms. Meadows-Keefe).

188. See *Job Description: Ethics Officer*, CITY OF TALLAHASSEE, available at <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/ethics-officer-job%20description.pdf> (last visited Apr. 18, 2017) (establishing the duties of the ethics officers as well as the knowledge, abilities, skills, and training an ethics officer must possess).

189. Aug. 20, 2015 Minutes, *supra* note 124.

190. July 13, 2015 Minutes, *supra* note 145; see also Jeff Burlew, *Ethics Board Facing New Round of Criticisms*, TALLAHASSEE DEMOCRAT (Sept. 15, 2015, 4:58 PM ET), <http://www.tallahassee.com/story/news/politics/2015/09/15/ethics-board-facing-new-round-criticism/72314558/> (citing conflict of interests concerns regarding the Boards' members).

191. July 13, 2015 Minutes, *supra* note 145; see also Burlew, *supra* note 106 (discussing that the Board hired Jerry Currington as outside counsel to advise the Board); May 21, 2015 Minutes, *supra* note 148, at 3–4 (providing background on the Board's decision to retain outside counsel, the purpose hiring outside counsel would provide, and the compensation structure for said outside counsel).

retained, he opined that the Board could establish its own hiring process, which could include retaining me.¹⁹² I was officially hired as the Independent Ethics Officer at a spirited meeting on August 20, 2015.¹⁹³ I commenced written monthly reporting to the Board in November 2015.¹⁹⁴

Currently, these reports include the office's monthly activities, the budget, the number of complaints received, and, during the election season, a report of the number of contribution requests received.¹⁹⁵ There is now one, part-time staff member to provide administrative support to the Ethics Officer and the Board.¹⁹⁶ There is also a mechanism to retain investigative services and to hire an advocate to prosecute matters that require a formal hearing.¹⁹⁷

F. Administration of Campaign Contribution Refund Program

The Charter Amendment included a provision for a Campaign Contribution Refund program.¹⁹⁸ The program allows an individual registered as a City of Tallahassee elector to receive a one-time-per-election-cycle refund of up to twenty-five dollars

192. Letter from Gerald B. Curington, Counsel at Ausley McMullen, to Lila A. Jaber, Chair, Tallahassee Independent Ethics Bd., *Hiring Protocol for Ethics Officers* (July 30, 2015), available at <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/eb-hire-opinion-150820.pdf>.

193. Aug. 20, 2015 Minutes, *supra* note 124, at 7–10.

194. Nov. 12, 2015 Minutes, *supra* note 143, at 1.

195. See, e.g., *Ethics Board Agenda*, CITY OF TALLAHASSEE ETHICS BOARD (Aug. 16, 2016), [http://www.boarddocs.com/fla/talgov/Board.nsf/files/ACQKSG5241FF/\\$file/Ethics%20Board%20Agenda%20August%202016%20081016.pdf](http://www.boarddocs.com/fla/talgov/Board.nsf/files/ACQKSG5241FF/$file/Ethics%20Board%20Agenda%20August%202016%20081016.pdf) (noting what is included in the Ethics Officer's report).

196. City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD 7–8 (Sept. 16, 2015), available at <https://www.talgov.com/uploads/public/documents/ethics/pdf/ethics-board-minutes-150916.pdf> [hereinafter Sept. 16, 2015 Minutes].

197. May 21, 2015 Minutes, *supra* note 148, at 3.

198. Sean Rossman, *Contribution Rebate Program Off to Slow Start*, TALLAHASSEE DEMOCRAT (May 11, 2016, 4:42 PM ET), <http://www.tallahassee.com/story/news/2016/05/11/contribution-rebate-program-off-slow-start/84224062/>; see also *Refund Program: Tracking Language and Identifying Board Role*, CITY OF TALLAHASSEE (Jun. 4, 2015), available at <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/eb-refund-program-150604.pdf> [hereinafter "Refund Program PowerPoint"] (summarizing the charter amendment campaign contribution program); *Modified Campaign Contribution Refund Process PowerPoint*, CITY OF TALLAHASSEE (Feb. 16, 2016), <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160216-board-pres-re-modified-process.pdf> (explaining the steps to be taken for a donor to complete the campaign contribution refund process).

donated to a Mayoral or City Commission candidate.¹⁹⁹ The Board is charged with administration of the program and the refunds are paid by the City from general revenue.²⁰⁰ Budgeting presented a challenge because the popularity of the program was an unknown. Twenty thousand dollars was allocated for fiscal year 2016.²⁰¹ The initial process was revised to streamline for both donors and candidates.²⁰² The program has been controversial and not particularly popular, and it has received only eighteen refund requests as of September 9, 2016.²⁰³

G. Ensuring Independence and Impartiality

There is an inherent strain in the relationship between the Board and the City because the City funds the Board, including the salary of Board staff and provision of space.²⁰⁴ However, many similar boards are funded by the entity over whom they oversee.²⁰⁵ The Board strives to be independent and impartial, providing maximum practicable input from citizens and community organizations in spite of the fact that it is funded by the City Commission. Proponents of the Charter Amendment were consistent in their pressure to see the Board stand up as an

199. Refund Program PowerPoint, *supra* note 198; *see also* Jan. 19, 2016 Minutes, *supra* note 124, at 4 (showing that the City Ethics Board discussed the measure and passed a motion to move forward unanimously).

200. *Process PowerPoint*, CITY OF TALLAHASSEE ETHICS BOARD, available at <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/eb-process-150604.pdf> (last visited Apr. 18, 2017); *see also City of Tallahassee Ethics Board Campaign Contribution Refund Application 2016 Election Cycle*, CITY OF TALLAHASSEE (Sep. 16, 2016), available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-cc-refund-app-150916.pdf> (identifying the Ethics Board as the recipient of applications for campaign contribution refunds).

201. *Budget*, CITY OF TALLAHASSEE ETHICS BOARD, available at [http://www.boarddocs.com/fla/talgov/Board.nsf/files/A9W38573B89E/\\$file/Copy%20of%20Ethics%20Working%20File%20051016.pdf](http://www.boarddocs.com/fla/talgov/Board.nsf/files/A9W38573B89E/$file/Copy%20of%20Ethics%20Working%20File%20051016.pdf) (last visited Apr. 18, 2017).

202. *City of Tallahassee Independent Ethics Board Campaign Contribution Refund Claim Form 2016 Election Cycle*, CITY OF TALLAHASSEE, available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160216-ccrefund-pkg-021016.pdf> (last visited Apr. 18, 2017).

203. Rossman, *supra* note 198.

204. Aug. 20, 2015 Minutes, *supra* note 124, at 7–8.

205. New York's Conflict of Interest Board has sought for several years to obtain a Charter Amendment to provide it with an independent and protected budget. *See Report on the Fiscal Year 2015 Executive Budget for Conflicts of Interests Board*, COUNCIL OF THE CITY OF NEW YORK (May 22, 2014), available at <http://council.nyc.gov/downloads/pdf/budget/2015/15/eb/coib.pdf> (highlighting a goal to amend the charter to provide the Board with an independent budget to keep the Board looking independent to the public).

independent entity to the greatest extent possible.²⁰⁶ Additionally, the Board has demonstrated independence by implementing a process for preparing advisory opinions after the Board counsel opined that this was within Board authority.²⁰⁷ The City expressed disagreement with this opinion.²⁰⁸ Although there have been times when the Board's independence has been questioned, at the end of 2015, Ben Wilcox of Citizens for Ethics Reform stated that the Board had a "good sense of its independence" and that "we have to celebrate the fact that we now have an ethics board where citizens can bring complaints."²⁰⁹

H. Provision for Maximum Practicable Input From Citizens and Community Organizations

The Board was fortunate that its first chair, Lila Jaber, had served on the Ethics Advisory Panel and had a strong commitment to civic engagement and consensus building. She acknowledged that although civic engagement can be difficult and at times may feel like a personal attack, it was vital to the building process for the Board and the building of public trust.²¹⁰

The Board imposed no time limits on speakers and would often take public comment throughout the meeting. Citizen suggestions were often incorporated into Board practices and procedures. Specifically, the Board received and incorporated

206. Aug. 20, 2015 Minutes, *supra* note 124, at 3.

207. See *Taking Up First Complaint*, *supra* note 177 (noting that the Ethics Board is in the process of dealing with complaints); see also *Keeping the Faith*, *supra* note 8, at 117 (outlining how ethics boards generally offer advisory opinions upon request of municipal employees or officers); Johnson, *supra* note 9, at 764–65 (opining that cities should have ethics officers and a process for requesting written ethics opinions); Letter from Gerald B. Curington, Counsel at Ausley McMullen, to Richard Herring, Chair, Tallahassee Independent Ethics Bd., *Tallahassee Ethics Opinion 2016-1* (Jan 14, 2016), available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160119-legal-opinion-011416.pdf> (summarizing that the Ethics Board has the authority to render advisory opinions when requested); *Advisory Opinion Flow Chart*, CITY OF TALLAHASSEE (Feb. 16, 2016), available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160216-advisory-opinion-flow-chart-020416.pdf> (outlining the process to create an advisory opinion); see also *Draft Bylaw: Article XI – Issuance of Advisory Opinions*, CITY OF TALLAHASSEE ETHICS BOARD, available at <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160315-advisor-opinion-bylaw-draft-3-4-all-edits.pdf> (last visited Apr. 18, 2017) (identifying potential authority of the Ethics Board to create an advisory opinion, and outlining the process by which it would be created).

208. Jan. 19, 2016 Minutes, *supra* note 124, at 2.

209. Rossman, *supra* note 124, at 1A, 6A.

210. Sep. 16, 2015 Minutes, *supra* note 196, at 7.

public input regarding the complaint process.²¹¹ Additionally, the Board received consistent input from citizens regarding the mindset of board members.²¹² Related to this, a member of the public supported by other interested persons proposed a pledge to be executed by Board Members.²¹³ The Board counsel determined that the Charter Amendment language did not allow for a mandatory pledge,²¹⁴ but that Board members could execute a voluntary document—the Board approved a form for a voluntary pledge in August 2016.²¹⁵

In September 2015, the Board began broadcasting its meetings on a City TV channel and YouTube.²¹⁶ The Board also seeks to engage with citizens and community organizations. I have spoken at general meetings of these community organizations, such as the League of Women Voters, the Florida Government Bar Association, and local candidate forums, to educate citizens about the Board and items such as the Campaign Contribution Refund Program.

211. See, e.g., Aug. 20, 2015 Minutes, *supra* note 124, at 1–2 (outlining a request for anonymous ethics complaints).

212. E.g., Sep. 16, 2015 Minutes, *supra* note 196, at 5–6.

213. *Taking Up First Complaint*, *supra* note 177. Sean Rossman, *Ethics Board Approves Self-Initiation*, TALLAHASSEE DEMOCRAT (Jan. 20, 2016, 6:43 AM ET), <http://www.tallahassee.com/story/news/2015/10/13/city-ethics-board-taking-up-first-complaint/73877788/>; Oct. 14, 2015 Minutes, *supra* note 163; *Pledge*, CITY OF TALLAHASSEE ETHICS OFFICE, <http://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160216-pledge-pkg-021016.pdf> (last visited Apr. 18, 2017) (identifying the different pledges for board members, city officials, and others involved with the Ethics Board); City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD 5 (Dec. 15, 2015), available at <https://www.talgov.com/uploads/public/documents/ethics/pdf/eb-160119-minutes-121515.pdf> (requesting that the pledge issue be discussed at the January 2016 meeting).

214. Letter from Gerald B. Curington, Counsel at Ausley McMullen, to Richard Herring, Chair, Tallahassee Independent Ethics Bd., *Proposed Ethics Board Member Pledge 1* (June 3, 2016), available at [http://www.boarddocs.com/fla/talgov/Board.nsf/files/AAWH4D4509BE/\\$file/Informal%20Opinion%20re%20Pledge%20060316.pdf](http://www.boarddocs.com/fla/talgov/Board.nsf/files/AAWH4D4509BE/$file/Informal%20Opinion%20re%20Pledge%20060316.pdf).

215. July 19, 2015 Minutes, *supra* note 124, at 2–3.

216. See Markowitz, *supra* note 9, at 606 (stating that in order to be successful, “[p]rinciples of representative democracy require policy to be made in the shadow of public accountability”) (footnotes omitted); City of Tallahassee, *Ethics Meeting August 16, 2016* (YouTube video Aug. 17, 2016), <https://www.youtube.com/watch?v=3k8O2MajJkU> (presenting the full ethics meeting that was held on August 16, 2016); City of Tallahassee, *COTNews Featuring WCOT*, YOUTUBE, <https://www.youtube.com/user/WCOT> (last visited Apr. 18, 2017) (providing a channel to watch videos posted by the city of Tallahassee).

**VII. MOVING FORWARD WITH ETHICS REFORM AND
TIPS FOR OTHER LOCAL GOVERNMENT ETHICS
PROGRAMS.**

Lila Jaber, who also served as the First Board Chair, resigned in December 2015.²¹⁷ The Board elected Florida State University's appointee, Richard Herring, as Chair in 2016.²¹⁸ The Chair has continued the practice of robust citizen engagement. He also initiated Board committees to look at issues such as Board procedures and due process, budget, city policies and procedures, transparency, and investigatory techniques.²¹⁹

What lessons can be learned by looking at the City of Tallahassee's experience that may be applied to a local government seeking to create or enhance a local government program?

1. Initiating a discussion at the local government level about enhancing ethics compliance is not an indictment on anyone. It is instead a best practice to be proactive and think about your program during a time when there is no glaring issue. If you reside in a community where things are quiet on the ethics front, this is the perfect time to look at processes that can ensure it continues. Having to respond to a crisis with rushed ethics reform will not yield the most desirable effect. Even if we believe we only elect good and moral individuals in our communities, human beings cannot always be relied upon to use good judgment. Rules and guidelines serve as guardrails for public officials and employees. People are even willing to forgive government officials from misconduct if those individuals are generally likeable and committed to reforming their behavior.²²⁰

217. Jeff Burlew, *Jaber Resigning from Ethics Board*, TALLAHASSEE DEMOCRAT (Oct. 14, 2015, 10:31 PM ET), <http://www.tallahassee.com/story/news/2015/10/14/ethics-complaint-dropped-against-tpd-chief-deleo/73944636/>. There were also concerns expressed by some about her law firm's prior representation of the City. See Rossman, *supra* note 124, at 1A, 6A (discussing some of the hurdles the Ethics Board overcame during its first year). See also Sept. 16, 2015 Minutes, *supra* note 196, at 1 (providing statements by Jaber that her firm did not undertake any representation of the City of Tallahassee while she served on the Ethics Board).

218. Jan. 19, 2015 Minutes, *supra* note 124.

219. City Ethics Board, *Regular Meeting Minutes*, CITY OF TALLAHASSEE ETHICS BOARD 5 (Feb. 16, 2016), [http://www.boarddocs.com/fla/talgov/Board.nsf/files/ASZGBX42DC29/\\$file/Minutes%20021616.pdf](http://www.boarddocs.com/fla/talgov/Board.nsf/files/ASZGBX42DC29/$file/Minutes%20021616.pdf).

220. It can be argued that the main objective of ethics laws is to achieve compliance rather than exact penalties.

2. Citizens want a system of accountability within local government. When an ethical lapse happens, people are often surprised that their city or county does not have its own, coherent ethics codes that are clearly communicated to officials and staff.²²¹ Localities often presume that state ethics codes are sufficient to address community concerns, only to find out later that the community wants higher standards. Hallmarks of a good local ethics program impart consistency, predictability, and fairness.²²²

3. When initiating a new ethics program, it can be helpful to get a panel of outside experts, as occurred with Tallahassee's Ethics Advisory Panel. Those experts should review current state ethics laws, charter documents, existing ordinances or codes and policies, and consider how a program may be enhanced or improved.²²³ Additionally, experts should obtain buy-in of leadership and encourage citizen engagement that is inclusive of and respectful of critics. Do not reinvent the wheel. Look to other jurisdictions and model codes for help.²²⁴

What we need is nonpartisan statesmanship and visionary leadership willing to face up to the fact that relying on the individual judgment of each elected official is a failed strategy that guarantees a continuous flow of scandals that discredits their institutions and even the enterprise of democratic government itself. While I wish more emphasis was placed on character rather than compliance, the raw reality is that voters do not consistently demand scrupulous integrity as evidenced by the re-election of people severely stained by scandal.

Michael Josephson, *The Peculiar Concept of Ethics Laws*, COJ.NET, <http://www.coj.net/departments/ethics-office/docs/the-peculiar-concept-of-ethics-laws.aspx> (last visited Apr. 18, 2017).

221. See Johnson, *supra* note 9, at 725 (finding that few municipalities have a code of ethics to guide their officers and employees).

222. See *id.* at 726–27 (observing that while the Ethics Code has a limit in being able to cover the ethical conduct for all situations, a well-drafted code can help overcome those limits).

223. See, e.g., Wechsler, *supra* note 9 (discussing the use of revolving door provisions in cities' ethics codes); Georgia Municipal Association, *Ethics in Government: Charting the Right Course*, GMA LEGAL REPORT (July 2010), available at <http://gmanet.com/GMASite/media/PDF/publications/ethics.pdf> (providing a sample ethics ordinance and encouraging cities to modify it to fit their specific circumstances).

224. *Keeping the Faith*, *supra* note 8, at 61, 66; see also, e.g., *Complaint Procedures*, CITY OF JACKSONVILLE ETHICS COMMISSION (June 2, 2014), <http://www.talgov.com/uploads/public/documents/treasurer/pdf/ethics/florida-examples.pdf> (showcasing examples of programs in Jacksonville and Palm Beach County, Florida).

4. Realize that an ethics program costs money.²²⁵ Hiring someone on a full- or part-time basis to serve as the single-point-of-contact for ethics matters in a local government is probably the most cost-effective method and is a practical solution for localities where an ethics program has not been a point of concentration or has limited resources. In larger local governments, a community may opt for an Inspector General's Office. Offices of Inspectors are commonly known as "watchdog" agencies and are found at all levels of local, state, and federal government.²²⁶ This becomes a more expensive solution.

5. A local ethics program must have enforcement authority to have credibility.²²⁷ Although one hallmark of a successful ethics compliance program is a paucity of enforcement actions,²²⁸ there will be some community members who will not be satisfied until someone is led from City Hall or Commission Chambers in handcuffs. There must be tools in place to penalize violators.

In summation, it is vital for local governments to set out clear principles to help public officials know their proper boundaries, understand the long term implications of their decisions and conduct, and consider how the public will perceive them. Local ethics laws, officials, and boards are not just an academic or window-dressing exercise. Their purpose is not to require more disclosure forms or prohibit officials' actions merely for the sake of public perception. Instead, communities grappling with local ethics issues should consider the impact of ethics laws

225. See *Governmental Ethics Laws*, *supra* note 14, at 187 ("Training, education, and quick advice to government employees, all of which cost money, mean fewer ethical lapses."). See also Johnson, *supra* note 9, at 765 (establishing a robust ethics program at the local level may be costly).

226. *Mission Statement*, MIAMI-DADE COUNTY: OFFICE OF THE INSPECTOR GENERAL, <http://www.miamidadeig.org/whatwedo2.htm> (last visited Apr. 18, 2017).

227. Marie Louisa Victor, *Enforcement: An Indispensable Component in the Success of Municipal Ethics Boards*, 18 MUN. LAW. 4, 6 (2004). This stated as follows:

Ethics boards without full and effective enforcement power have often been criticized as toothless tigers—and worse. Such boards raise and then dash hopes of prompt and fair adjudication of ethics complaints and thus only increase the public's cynicism about the honesty and integrity of our public servants. Therefore, municipalities that adopt new ethics laws should do so *only* if they are prepared to grant their ethics boards the powers and duties outlined above. Anything less may well reap a whirlwind of censure and derision.

Id.

228. *Governmental Ethics Laws*, *supra* note 14, at 186.

on the officials elected to serve their communities.²²⁹ Ethics codes should embody service orientation, procedural fairness, and the ethics of democratic responsibility.²³⁰ They should be simple for everyone to understand—officials and citizens alike.²³¹ Rules should be easily accessible for everyone and be the result of collaborative efforts with citizens.²³²

As the first Board Chair, Lila Jaber, noted at the conclusion of her term, “Even though [the Board] was hard to create and not always a pleasant experience for the [C]ity, it was an example of citizen engagement making a difference and then seeing the fruit of their effort.”²³³ Localities seeking to enhance or establish an ethics program should expect a similar experience. As it was in Athens, so it is today. Difficult things are worth doing well and have lasting value for years to come.

229. *Keeping the Faith*, *supra* note 8, at 66.

230. MIAMI-DADE COUNTY: OFFICE OF THE INSPECTOR GENERAL, <http://www.miamidadeig.org/> (last visited Apr. 18, 2017).

231. See generally Conflicts of Interest Board, *Basis, Structure, and Administration of Conflicts of Interest (Government Ethics) Laws and Annual Financial Disclosure (Asset Declaration) Laws*, CITY OF NEW YORK CONFLICTS OF INTEREST BOARD (Mar. 2003), available at <http://www.nyc.gov/html/conflicts/downloads/pdf/visitors.pdf> (discussing how to make an effective government ethics program that works); see also *Governmental Ethics Laws*, *supra* note 14, at 177–80 (“[E]thics regulations must always be written and interpreted in light of reason, common sense, and everyday experience” and drafters should “know their customer[s]. . . . An ethics provision that is good for a state or major city may devastate a small municipality.”).

232. See *Governmental Ethics Laws*, *supra* note 14 (finding that easy access to ethics laws is required for their purpose to be achieved).

233. Rossman, *supra* note 124, at 6A.