

Office of  
City Attorney


City of  
**Pensacola**



*America's First Settlement  
Established 1559*

MEMORANDUM

TO: Mayor and City Council

FROM: William D. Wells   
City Attorney

DATE: September 1, 2009

RE: Charter Review

The Charter Review Commission has incorporated many of the changes suggested by the City's consultant and the City Attorney's Office and, I believe, has proposed a much improved Charter. However, there are two significant issues that the CRC declined to change that, in my view, should be closely considered by Council at its special Committee of the Whole meeting. These two issues are:

1. Who judges Council candidate qualifications? Section 6.03(a) of the proposed Charter provides that a candidate for Council must be a resident of the City, must be qualified as a Florida elector, must be assigned a voter registration number by the Supervisor of Elections to vote in a city precinct for not less than one year prior to the end of qualification, and must be a resident of a declared district for at least one year prior to the end of qualification.

From time to time, a candidate for a Council seat has executed an affidavit with the Supervisor of Elections, attesting to his or her qualifications, when there is a strong basis to question the qualification of that candidate. What is the process that should be followed to have this issue resolved prior to an election? The current Charter provides a definitive answer in Section 14, which states, "The council shall be the judge of the election and qualification of its members and of the mayor . . ." The proposed Charter has no such provision,

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and the CRC has suggested that an after-the-fact prosecution for perjury is a satisfactory solution. The issue comes up more frequently than has been publicized through the years, and the current Charter's language has been an effective means of enforcing the candidate qualification criteria.

Therefore, I recommend that the following language be continued into the proposed Section 6.03(a): "The City Council shall be the judge of the election and qualification of its members and of the Mayor and, in such cases, shall have power to subpoena witnesses and compel the production of all pertinent books, records and papers; but the decision of Council, in any case, shall be subject to review by the courts."

2. Who enforces the prohibition on interference by Council? Section 4.04(a) and (b) of the proposed Charter prohibits an individual City Councilmember from dictating the appointment or removal of City employees, or from giving orders to any officer or employee except through the Mayor. The current Charter provides that if this type of provision is violated by a Councilmember, it shall be a misdemeanor, conviction of which shall immediately forfeit the office of the member so convicted. (Section 20, current Charter). Under that process, the City Council itself is not involved in sanctioning the individual Councilmember who violates that particular section of the Charter. The CRC's proposal, however, is for the removal from office of the interfering Councilmember to be accomplished by the Council itself. Section 6.03(a) of the proposed Charter states, "If . . . he or she violates any express prohibition of this Charter, he or she shall forthwith forfeit the office, and the Council shall remove him or her from office."

Although the criminal penalty provided by the current Charter is not found in the National League of Cities' model, experience over many years has indicated that the provision has served as a strong and effective deterrent and, in addition, it removes the Council itself from the difficult chore of applying the ultimate sanction to one of its members.

cc: Alvin G. Coby, City Manager  
Ericka L. Burnett, City Clerk