


MEMORANDUM

TO: Mayor Mike Wiggins

FROM: William D. Wells   
City Attorney

DATE: November 25, 2009

RE: New Charter

This memorandum was prepared at your request and it is intended to provide an overview of the actions and decisions that will need to be considered by City Council as a result of the referendum approval of the new City Charter. I will be providing a more lengthy memorandum of my assessment and recommendations, which will be on the agenda for discussion at the Committee of the Whole meeting scheduled for December 14, 2009. However, to provide a brief roadmap of the path that lies before us, the following summary is provided:

1. The new Charter becomes effective on January 1, 2010 (Section 10.1). The new Charter will immediately replace the provisions of the prior Charter, with the exception of those few provisions that are not covered by the new Charter or that are not inconsistent with the new Charter, which will be preserved as ordinances of the City, subject to modification or repeal as Council may choose (Section 10.03). Therefore, the prior Charter must be reviewed in detail in order to determine which provisions of it may survive unimpaired by the new Charter, that Council may wish to continue in force and effect as an ordinance. In my memo to the Committee of the Whole for the December 14, 2009 meeting, I will identify any provision that meets the criteria of the new Charter that Council may wish to continue as an ordinance.

2. The new Charter has several provisions which will facilitate an orderly transition. It preserves all current ordinances that are not inconsistent with the new Charter (Section 10.02), it expressly states that it does not affect or impair the relationship with City officers and employees at the time it becomes effective (Section 10.05), and it expressly provides that the current elected officers shall continue to hold their office until their successors are elected (Section 10.05). It provides that all contracts and legal administrative proceedings involving the City shall continue (Section 10.06(a)), and it authorizes the current City Council to adopt such ordinances and resolution as may be required to implement the transition (Section 10.07). Council is authorized to adopt ordinances facilitating the transition as emergency ordinances, requiring only one reading, during January and February 2010 (Section 10.07). Relying upon these provisions, it will not be necessary for the Council to take any action with such haste that there will not be any meaningful opportunity for deliberation and consideration. For example, although the provision of the old Charter creating the position of City Manager will be abolished effective January 1, 2010, the Council's contract with the interim City Manager and the various City Code provisions

defining the scope of his authority and responsibility can remain in effect and intact, if it is Council's desire to do so.

3. An additional task for Council to undertake is to make a determination regarding which of the new Charter provisions will be in force with no further actions required, effective January 1, 2010, and which provisions will take effect at a later time. For example, the new Charter requires the adoption of a Code of Ethics and it requires the establishment of compensation for the independently elected Mayor and the new Council following the next Council election. These are obviously responsibilities which Council will need to discharge well in advance of the election in August 2010, but they are not provisions which will require treatment as emergency matters in January or February.

4. The memorandum which I will be distributing in advance of the December 14 Committee of the Whole meeting will contain a review of the new Charter and recommendations regarding the identification of provisions which take effect immediately in January and which provisions will require some Council action at a later time in order to effectuate them.

5. Finally, it may be necessary for Council to request staff to commence a review of all existing ordinances that compose the City's Code of Ordinances for the purpose of identifying which of them may conflict with provisions of the new Charter and which of them may require amendments in order to conform them to the new City Charter.

Council will have the opportunity to discuss these issues at the Committee of the Whole on December 14, 2009.

cc: Alvin G. Coby, City Manager