

MEMORANDUM

To: Council President Ann Hill
Council Vice President Delarian Wiggins
Councilmember Jennifer Brahier
Councilmember Teniade Broughton
Councilmember Casey Jones
Councilmember Sherri F. Myers
Councilmember Jared Moore
Don Kraher, Council Executive

From: Charles V. Peppler, City Attorney *CVP*

Date: June 24, 2022

Re: Charter Review Commission Recommendations

For the benefit of Council Members in the upcoming workshop, I have taken the liberty of inserting footnotes to cite where there was reference to charters or other source documents. Much of the discussion was prompted by review of proposed charter changes prepared by Antonio Bruni, a Commissioner. Mr. Bruni submitted proposed changes based upon prior Commission discussions and his own research and cited references to source documents as authority for the changes. His document became a springboard for many of the discussions held by the Commission. I also assisted with adopting the changes proposed by Susan Woolf in her memorandum dated July 29, 2021, for Articles VII and VIII. I composed the additional language in Sections 5.01 and 5.03 under Article V based on the Escambia County Administrative Code.

Please understand that the document attached has not been approved by the Commission, but is merely my explanation of particular written authority underlying some of the recommendations. It is only a guide to help you in your deliberations.

cc:

Grover C. Robinson, Mayor
Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator
Amy Miller, Deputy City Administrator

RECOMMENDATIONS

PREAMBLE

No amendments recommended

ARTICLE I – GENERAL POWERS OF THE CITY

Section 1.01. General Powers and Corporate Existence.

The City of Pensacola ("City"), located in Escambia County, Florida, shall have all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except when expressly prohibited by law or this charter.¹

Section 1.04 Public Utilities

The City shall not renew or enter into a new franchise agreement, contract, lease, purchase agreement or memorandum of understanding for provision of utility services without securing a study on the feasibility of municipalizing that utility as well as securing a full and independent audit of the prior agreement by a certified public accountant or firm of such accountants who have no direct or indirect interest in the fiscal affairs of the City or any of its officers or elected officials. For municipalized utilities, the City shall secure a study on the feasibility of privatizing that utility no less than once every 30 years. The City shall not create or dispose of any public utility without referendum.²

Section 1.05. Computation of Time.

In computing any period of time prescribed or allowed by this charter, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or City observed holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or City observed holiday.

When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and City observed holidays shall be excluded in the computation.³

ARTICLE II – CORPORATE BOUNDARIES

No amendments recommended

ARTICLE III – ELECTED CITY POSITIONS

¹ Apopka City Charter, p.1 of 7.

² Hialeah City Charter, p. 2 of 23.

³ Florida Rules of Civil Procedure 1.090 (a) Computation. Consistent with Florida Rules of Judicial Administration 2.514(a)(1)(B) and (a)(3). See Bonita Springs Code Chapter 1, Sec. 1-2.

Section 3.01. Form of Government.

~~With the exception of the initial transition period pursuant to Section 10.07 below,~~
The City shall have a Mayor-Council form of government. There shall be a City Council, which shall be the governing body of the City with all legislative powers of the City vested therein, consisting of seven (7) Council Members, one (1) to be elected from each of the seven (7) election districts of the City. There shall also be a Mayor who is elected at large and who shall not be a member of the City Council.

Section 3.02. Election and Terms.

The nonpartisan primary and general election of the Council Members and the Mayor shall be held in the manner provided in Article VI of this Charter and the terms of office for Mayor and Council Members shall be four (4) years and will commence on the fourth Tuesday in November after his or her election at 12 o'clock noon.

The base year for elections for Council Members for districts 2, 4, and 6, and the Mayor shall be 2010, and shall be for a four-year term. The base year for elections for Council Members for districts 1, 3, 5, and 7 shall be 2012 and shall be for a four-year term. These base year dates are established only for the purpose of scheduling elections and staggering terms, and do not impact the term limit requirements of Section 3.03. ~~Council Members for districts 1, 3, 5, and 7 elected in 2010 shall serve a two-year term. Terms served by the Mayor or a Council Member immediately preceding the base year dates shall not be counted in applying Section 3.03.~~

Section 3.03. Limitations of Terms for Mayor and Council Members; Effective Date.

(a) **Mayor.** No person shall be elected to serve as Mayor for more than ~~three~~ two consecutive terms. ~~on and after the general election in November 2010.~~

(b) **City Council Members.** No person shall be elected to serve as a Council Member for districts 1, 3, 5, and 7 for more than three consecutive terms. ~~on and after the general election in November 2012. No person shall be elected to serve as a Council Member for districts 2, 4, and 6 for more than three consecutive terms on and after the general election in November 2010.~~

ARTICLE IV – MAYOR AND CITY COUNCIL

Section 4.01. Mayor.

(a) **Powers and Duties.** The Mayor shall be the Chief Executive Officer of the City, shall exercise the executive powers of the City, and shall be responsible for the

administration of all City affairs placed in their charge pursuant to this Charter.⁴
The Mayor, who shall serve in a full-time capacity, and shall exemplify good citizenship and exhibit a cooperative spirit, shall have the following powers and duties:

(1) ~~To exercise the executive powers of the City and~~ To supervise all departments, including, but not limited to, the power to appoint, discipline, and remove all officers and employees, unless otherwise provided in this Charter.

(4) To appoint a City Administrator, who shall serve at the pleasure of the Mayor, and who shall have the power to appoint and remove all officers and employees not otherwise provided for in this Charter.⁵

(8) To suspend, discipline, or remove a department head with or without cause. ~~and without the consent of City Council Members, unless otherwise provided for in this Charter.~~ Such department head may appeal any such action to the City Council who may overturn the action by an affirmative vote of a majority plus one (1) of the City Council Members.⁶

(11) To attend, or designate a representative to attend, all meetings of the City Council with authority to participate in discussions, but without the power to vote.

(16) To cooperate with and in no way obstruct an inquiry into the conduct or dealings of any municipal office, department, agency or officer as permitted under 4.02(a)(3).

Section 4.02. City Council.

(a) ***Powers and Duties.*** City Council Members shall exemplify good citizenship and exhibit a cooperative spirit. All powers of the City shall be vested in the City Council, except as otherwise provided by law or this Charter, including but not limited to ~~The City Council shall have the following powers and duties:⁷~~

(2) To adopt the annual budget and all other appropriations necessary for efficient City government. Any modification of specific appropriations in the budget by greater than an amount set by ordinance, including but not limited to reallocating greater than said amount between departments, shall require consent of the City Council by an affirmative vote of a majority of City Council Members.

(6) The City Council shall establish an Office of the City Council and shall have as its staff the following who shall be responsible to the City Council through the President of the Council: (a) Budget Analyst. The City Council is authorized to employ a Budget Analyst or an individual with similar qualifications, pursuant to the City's position classification code, to

⁴ Apopka City Charter, p. 3 of 7; and memorandum from former City Attorney Susan Woolf dated 7/29/21. Charters of West Palm Beach (p. 5-6 of 95) and Tampa (p. 6 of 19) specifies powers and duties of the mayor.

⁵ Don Kraher memo and the Charters of West Palm Beach (p. 5-6 of 95) and Tampa (p. 6 of 19).

⁶ Don Kraher memo and the Charters of West Palm Beach (p. 5-6 of 95) and Tampa (p. 6 of 19).

⁷ Apopka City Charter, p. 3 of 7.

assist the budgetary matters of the City Council. The City Council, by ordinance, shall define the qualifications, pay and responsibilities of said employee in accordance with the City's position classification code. The employee shall be subject to termination by a majority vote of the City Council; (b) Legal Aide. The City Council may appoint one assistant city attorney, whose salary shall be in accordance with those established for other assistant city attorneys. Said assistant city attorney shall (1) serve only in an advisory capacity to the City Council, and shall perform only such duties of a technical nature, including drafting of ordinances, legal research and providing advisory opinions, as requested by the City Council through its President, (2) perform such other duties required of ~~him~~ them by the city attorney with the concurrence of the President of the City Council, (3) be subject to termination by a majority vote of the City Council; and (4) be responsible to the City Council through the President of the Council. Said assistant city attorney shall not file suit or bring or defend any action in court on behalf of the City Council, Mayor, the several departments, officers, and boards of the City government except with written authorization of the City Attorney. No action or opinion of said assistant city attorney shall be construed to be the official legal position of the City, and such official legal positions and actions shall be solely within the scope and powers and duties of the City Attorney; (c) Council Executive. The City Council is authorized to hire a Council Executive. The City Council shall define the qualifications, pay and responsibilities of said employee in accordance with the City's position classification code. The employee shall be subject to termination by a majority vote of the City Council; (d) Executive Assistant. The City Council is authorized to hire an Executive Assistant. The City Council shall define the qualifications, pay and responsibilities of said employee in accordance with the City's position classification code. The employee shall be subject to termination by a majority vote of the City Council; and (e) Other Staff. The City Council may create and fill other staff positions for the purpose of assisting it in the performance of its legislative function. Such positions shall be subject to termination by a majority vote of the City Council.

(a) Vacancies.

(1) If a vacancy on the Council is caused by death, resignation, refusal of any Council Member to serve, removal of any Council Member, the moving of a Council Member from the district from which the Council Member is elected, or for any other reason, the vacancy

shall be filled for the unexpired term of the vacated seat by a majority vote of the remaining Council Members, and such vacancies shall be filled within thirty (30) business days after the vacancy occurs. The appointed Council Member shall serve the unexpired term of the previous Council Member unless the unexpired term of the previous Council Member is twenty-eight (28) months or longer. If the unexpired term is twenty-eight (28) months or longer, a person shall be elected at the next general election to fill the unexpired portion of such term.

(2) The Council Member appointed by the Council must meet the qualifications for office as set forth in 6.03 of this Charter at the time of appointment. The Council Member appointed by the Council may seek election to the Council position at the next election.

Section 4.03. City Council Procedures.

- (a) **Meetings.** The City Council shall meet ~~regularly~~ at least once every month at such times and places as the City Council may prescribe. Special meetings may be held on the call of the City Council president or the Mayor or at the request of three (3) of the City Council Members to the City Clerk and, whenever practicable, upon no less than ~~twelve (12)~~ seventy-two (72) hours notice to each Council Member and the public, or such shorter time as the City Council president, Mayor, or three (3) City Council Members deems necessary in the event of an emergency.

ARTICLE V – APPOINTED CITY POSITIONS

Section 5.01. City Clerk.

There shall be a City Clerk who shall be appointed by the Mayor with the consent of the City Council by an affirmative vote of a majority of Council Members, and whose duties and responsibilities are as provided for by this Charter. Although an appointee of the Mayor, the Clerk shall serve the entire City government. The Clerk shall keep and have the care and custody of the books, records, papers, legal documents and journals of proceedings of the City Council and shall carry out such additional duties as may be required by the Council or the Mayor. The City Clerk may be removed from office with the concurrence of the Mayor and a majority of the City Council. Nothing in this Charter shall authorize or permit the Mayor or City Council to suspend, discharge, remove or otherwise discipline any Deputy City Clerk, Assistant City Clerk or administrative staff hired and supervised by the City Clerk. It is the intent of this section that the Deputy City Clerk, all Assistant City Clerks, and all administrative personnel under the supervision of the City Clerk perform their duties and serve at his or her pleasure without interference from the Mayor or City Council.⁸

Section 5.03. City Attorney.

The City Attorney shall serve as the chief legal adviser to, and shall represent, elected or appointed officials, boards and commissions, and employees in the course and scope of their official duties or employment, respectively. The City Attorney shall represent the City in legal proceedings and shall perform any other duties prescribed by State law, by this Charter, or by ordinance or resolution. The Mayor shall appoint the City Attorney, with the consent of the City Council by an affirmative vote of a majority of City Council Members. The City Attorney may be removed from office with the concurrence of the Mayor and a majority of the City Council. Nothing in this Charter shall authorize or permit the Mayor or City Council to suspend, discharge, remove or otherwise discipline any Deputy City Attorney, Assistant City Attorney or administrative staff hired and supervised by the City

⁸ Adapted from the Administrative Code of Escambia County.

Attorney. It is the intent of this section that the Deputy City Attorney, all Assistant City Attorneys, and all administrative personnel under the supervision of the City Attorney perform their duties and serve at his or her pleasure without interference from the Mayor or City Council.⁹

ARTICLE VI -- ELECTIONS

ARTICLE VII – RECALL, INITIATIVE, AND REFERENDUM

Section 7.02. Power of Initiative.

City electors shall have the power to propose ordinances to the City Council. If the City Council fails to adopt an ordinance so proposed without any change in substance, the electors have the power to adopt or reject the proposed ordinance at a City election. The electors are not empowered to propose ordinances that extend to providing an annual budget, levying taxes, or setting salaries of City officers or employees, expending LOST funds, or compelling government speech in a particular manner.¹⁰

Section 7.03. Power of Referendum.

No later than ~~Within~~ sixty (60) days following the effective date of a measure passed by City Council, City electors shall have the power to require reconsideration by the City Council of any measure passed by City Council. If the City Council fails to repeal a measure so reconsidered, the electors shall have the power to ~~approve~~ adopt or reject the reconsidered measure by petition as specified in Section 7.05 following. ~~at a City election.~~ The electors are not empowered to reconsider measures that extend to providing an annual budget, levying taxes, ~~or~~ setting salaries of City officers or employees, the expenditure of LOST funds, or government speech.¹¹

Section 7.04. Commencement of Proceedings.

Within sixty (60) days of a measure passed by City Council either adopting or rejecting the proposed ordinance or adopting or rejecting the proposed repeal of a measure, ~~A~~ any ten (10) electors may commence initiative or referendum proceedings by filing with the City Clerk an affidavit stating that they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form. The affidavit shall further provide their names and addresses, specify the mailing address for notices to be sent to the committee, and fully set forth the proposed initiative or identify the measure sought to

⁹ Adapted from the Administrative Code of Escambia County.

¹⁰ Susan Woolf memorandum, 7/29/21

¹¹ Susan Woolf memorandum, 7/29/21

be reconsidered. Promptly after the petitioners' committee's affidavit is filed, the City Clerk, at the committee's request, shall issue the appropriate petition forms to the committee at the committee's expense.

Section 7.05. Initiative or Referendum Petitions.

(c) Statement of Circulator. When filed, petitions shall have attached an affidavit-statement executed and sworn by a member of the petitioner's committee that by the circulator or circulators of the petitions that he, she, or they personally circulated the petitions. The statement shall further state the number of signed petitions submitted and that the circulator petitioner's committee believes them to be the genuine signatures of the persons whose names they purport to be.¹²

(d) Filing Deadline. All initiative and referendum petitions must be filed with the City Clerk within sixty (60) days of the commencement date of the initiative or referendum proceedings as specified in Section 7.04 above. The City Clerk shall submit the petitions to the Supervisor of Elections within three (3) business days of receipt of the petitions.¹³

Section 7.06. Verification of Petitions.

The petitioner's committee shall submit with the petitions ~~the completed petitions to the Escambia County Supervisor of Elections for verification as to the number of registered electors whose valid signatures appear thereon, along with any fee required by general law.~~ The Supervisor of Elections shall make a good faith effort to verify the signatures within ten (10) days of receipt of the petitions. The Supervisor of Elections shall record the date each form is received by the Supervisor of Elections, and the date the signature on the form is verified as valid. The Supervisor of Elections may verify that the signature on a form is valid only if (i) the form contains the original signature of the elector; (ii) the elector has accurately recorded on the form the date on which he or she signed the form; (iii) the form accurately sets forth the elector's name and address; and (iv) the elector is, at the time he or she signs the form, a duly qualified and registered elector of the City.¹⁴

ARTICLE VIII – CHARTER REVIEW AND CHARTER AMENDMENTS

Section. 8.01. Charter Review Commission.

(a) Charter Review Commission Established. During the month of January 2022 2031 and every ten (10) years thereafter, there shall be established a Charter Review Commission ("CRC"); provided, however, that the City Council shall have the power to establish a CRC more often in the event it so chooses.

¹² Susan Woolf memorandum, 7/29/21

¹³ Susan Woolf memorandum, 7/29/21

¹⁴ Susan Woolf memorandum, 7/29/21

(b) **Composition.** Every ten (10) years, the Mayor and City Council shall appoint nine members to the CRC. The Mayor shall appoint two (2) members and each Council Member shall appoint one member residing in their Council District. The CRC shall be composed of nine members, with at least one (1) member from each of the seven (7) Council districts of the City and no more than two (2) members coming from any one Council District. No members of the CRC shall be elected officials. Each member of the CRC shall be a City resident and elector. Vacancies shall be filled within 30 days in the same manner as the original appointments.

(c) **Procedures.** The CRC shall meet prior to the third week in January 2022 2031, and every ten (10) years thereafter, for the purposes of organization. The CRC shall elect a Chair and Vice Chair from among its membership. Further meetings of the CRC shall be held upon the call of the Chair or any three members of the CRC. All meetings shall be open to the public. A majority of the members of the CRC shall constitute a quorum.

Section 8.02. Charter Amendments.

(b) **Initiation by Petition.** The electors of the City may propose amendments to this Charter by petition. Each petition proposing amendments to this Charter shall be commenced in the same manner as an ordinance proposed by initiative in Article VII of this Charter. Initiative petitions must be signed by City electors equal to at least ten percent (10%) of the total number of registered electors in the City, as shown by the compilation by the Supervisor of Elections for the most recent general election of the City Council. The City Council shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the City or at a special election called for such purpose.¹⁵

ARTICLE IX -- MISCELLANEOUS

No amendments recommended

ARTICLE X – SCHEDULE

Section 10.06. Existing Rights, Obligations, Duties and Relationships.

~~(d) **Commencement of Terms for Year 2010 Elections.** The terms for the Council Members and Mayor elected in the 2010 general election shall commence at noon on the second Monday of January 2011 as provided for in the former City Charter, or on such earlier date as the office becomes vacant after the 2010 general election. This provision shall be effective solely for the purposes of transition from the former City Charter to Section 3.02 of this Charter.~~

Section 10.07. Transition.

~~The City Council shall adopt such ordinances and resolutions as are required to effect the~~

¹⁵ §166.031, Fla. Stat. and Susan Woolf memorandum, 7/29/21.

~~transition from a nine (9) member City Council with two (2) at large elected seats to a seven (7) member City Council with no at large elected seats upon the expiration of their current respective terms. Ordinances adopted within sixty (60) days of the first Council meeting under this Charter for the purpose of facilitating the transition may be passed as emergency ordinances following the procedures prescribed by law.~~