



# City of Pensacola

222 West Main Street  
Pensacola, FL 32502

## Memorandum

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**File #:** 20-00172

City Council

7/16/2020

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### **LEGISLATIVE ACTION ITEM**

**SPONSOR:** City Council Member Sherri Myers

**SUBJECT:**

REQUEST FOR CITY ATTORNEY LEGAL OPINION - CHARTER AMENDMENT PROCESS

**RECOMMENDATION:**

That the City Council ask the City Attorney to provide a legal opinion addressing three (3) issues:

First, does the language within the City of Pensacola Charter Section 8.02(c) - Consistency - which states, "Except as additionally provided herein, the method for Charter amendments shall be consistent with State Law," potentially impose additional charter amendment process requirements which may be inconsistent with Florida law; Second, to determine if the second sentence in the Charter Section 8.02.(b) Initiation by Petition that reads - "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." - is preempted by Section 166.031 Charter Amendments, Florida Statutes. Finally, does the language in Section 8.02(b) impose any limitations that may be contrary to state law.

**HEARING REQUIRED:** No Hearing Required

**SUMMARY:**

The first sentence of the Florida Constitution's Article VIII Local Government, Section 2 Municipalities provides, "Municipalities may be established or abolished and their charters amended pursuant to general or special law." In Florida, only the Florida Legislature may adopt a "general or special" law. However, the city Charter's Section 8.02.(c) Consistency provides, "Except as additionally provided for herein, the method for Charter amendments shall be consistent with State law." Inclusion of the phrase - "Except as additionally provided for herein...." - may impose additional charter amendment process requirements that may be inconsistent with F.S. §166.031.

In AGO 88-30 Amendments and Conflicting Provisions in Charter, Attorney General Robert Butterworth addressed how F.S. §166.031 adopted by the Florida Legislature in 1973 and as amended from time to time governs the process for the amendment of municipal charters - "A legislative directive as to how a thing shall be done, is in effect, a prohibition against it being done in any other way. This office has previously concluded that any charter provision adopted or readopted subsequent to the effective date of the Municipal Home Rule Powers Act, Ch. 166, F.S., can only be amended in accordance with the provisions of s. 166.031, F.S."

Section 8.02(b) may impose limitations that prove contrary to state law, including the creation of unique City of Pensacola charter amendment subject matter limitations, limits to 60 days the validity of all City of Pensacola charter amendment petition signatures and the prohibition of individual electors from proposing a charter amendment.

The goal of this legal opinion is to ensure that Section 8 of the City Charter, as written and interpreted, is consistent with the Florida Constitution and State Statute.

**PRIOR ACTION:**

None

**FUNDING:**

N/A

**FINANCIAL IMPACT:**

None

**STAFF CONTACT:**

Don Kraher, Council Executive

**ATTACHMENTS:**

- 1) None

**PRESENTATION:** No