

ATTEST: 
 SCARLET SWOBODA, City Secretary

**VICTORIA CITY COUNCIL
 and
 CHARTER REVIEW COMMITTEE
 January 8, 2009**

CALL TO ORDER

A special meeting of the Victoria City Council and Charter Review Committee was called to order by Mayor Will Armstrong at 3:30 p.m. Thursday, January 8, 2009 in the Council Chambers, 107 W. Juan Linn, Victoria, Texas.

MEMBERS PRESENT

Will Armstrong, Mayor
 Philip Guittard
 Lewis Neitsch
 Paul Polasek
 David Hagan - *absent*
 Jim Wyatt
 Tom Halepaska

COUNCIL ADVISORS PRESENT

Jan Scott
 Terry McGowan
 Sharon Steen
 Gary Middleton
 Jack A. Mullins – *sat out in the audience*
 Joseph Capers
 Bill Russell

STAFF PRESENT

Charles Windwehen, City Manager
 Miles Riskey, City Attorney
 Linda Champion, Assistant City Attorney
 O. C. Garza, Public Information Officer
 Scarlet Swoboda, City Secretary

Review of City Charter and Proposed Revisions

Discussion on the following proposals continued from the last meeting:

- Change the Uniform Election Date to November from May for City Council Elections.
- Set term limits for all elected city officials to no more than two terms.
- City Council shall not spend tax dollars on behalf of any indicted City Official unless approved by the voters.
- Provide that the City Attorney be elected at large instead of appointed by the City Council.
- Change petition signature requirements from ten percent to five percent for Initiative, Referendum, and Recall petitions.
- Victoria Elections Administrator to certify petitions instead of the City Secretary.

Mayor Armstrong expressed concern that if a Police or Fire officer were told that they are on their own to defend themselves until it is voted on by the public; the officers could be forced into a Union.

Mr. Russell commented that there would be a real problem getting people to be servants of the City if the Council was not willing to support them. He agreed with comments from the last meeting that it was very difficult to get people to run for Council. He commented that it was financially harmful to every Council Member, it takes away from family and business time, and it takes a lot of dedication. Citizens need to let the elected officials make the decisions and judgments as to whether or not they deserve to be supported.

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Cm. Polasek commented that the way the proposed amendment reads it does not say "for legal fees" so that would include everything. Does that include salary of an officer that had been indicted years ago and found not guilty? He was concerned about the ramifications of that. Mr. Pruitt responded that their proposals would be interpreted in the liberal sense instead of verbatim. Cm. Polasek commented that someone could tie the City up in the courts because of the specific language.

Mr. Russell advised that these are a subject matter of statutory construction; it is not a contract, so it is not a function of the intent of the drafters when legislation is written, and it is the function of what is the statutory construction of that. Sometimes legislative intent becomes important, but when you read "appropriate or expend any public funds," that does not mean just legal defense. The way this is written, he did not see any basis for any discretion for anything.

Ms. Scott wanted to know what evil was trying to be addressed, so the Committee could recommend an alternate to the proposed amendment that would specifically address their concerns and those of the Committee.

Mr. Mullins commented that they were talking about the mischief approach interpretation of something that could be read in more than one way. If it ever went to a court you would have to present whatever that mischief was that was perceived that lead to the language involved and that is pretty easy to address.

Cm. Wyatt commented that his concern was consistency and the voters having choice. The public needed to know that this is bad for the City and bad for the employees, and he would encourage them to not vote for this particular item.

Mr. Pruitt advised that the expenditure of public fund for indicted officials was the most popular item on the petition, and they spent a lot of time explaining it to those signing the petition.

Mr. Caper asked for an overview of the intent of each of the proposed amendments on the petition. He wished to understand the principle of their points, opposed as the people that it was pointing towards.

Mr. Pruitt stated that his group felt it was unethical and possibly illegal for the Council to appropriate money for legal defense of cohorts. It was a conflict of interest in a sense and it was their opinion that tax money should not be used for legal defense on any type of charges.

Mr. Middleton commented that this appeared to be a knee jerk reaction to a City Council decision that people in the community did not like. The City Council probably had less involvement in activities that would get them in trouble than the Police, Fire, EMS, or a garbage truck driver. If the circumstances are such that it was questionable whether or not that individual was guilty or not, he felt like the Council owed those public servants the right to defend them until such time that it was obvious they could not. If you do not, quality people would not be applying for the positions, nor would you be able to retain the quality employees currently employed. Furthermore, the case could be over before an election could be held, meanwhile the officer would be on his own until after the election.

Cm. Polasek commented that he had kids to put through college, a mortgage, taxes, and a small business. He would not be able to pay legal fees, so May 10, 2009 would be decision day for him on whether to resign from Council. As much as he liked being on Council, he did not know if it would be worth the risk, especially with the current climate. If a particular District Attorney or Assistant District Attorney had a vendetta against him, they could wipe him out.

Ms. Scott asked what citizens were told for the reasoning on each of the amendments. Mr. Pruitt advised that changing the May election date to the November Uniform election date would allow for better representation because there would be a larger voter turnout, and there would be a cost savings.

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Cm. Halepaska commented that it looked more like retribution and that was why he was concerned about that point of view. He too felt the language in the proposed amendments were not clear enough and could cause a lot of problems in the future.

Mr. Mullins suggested that the public could initiate an initiative or referendum in a few months to give their approval for certain classes of employees that tax money could be spent on.

Mr. Pruitt advised that an elected City Attorney was prompted because of problems with the former City Attorney. He said that he told people the former City Attorney left because of misdealings and the good ole boy system. His group wanted to change the petition requirements from 10% to 5% of qualified voters for Initiative, Referendum, and Recall petitions and eliminate the affidavit requirement on petitions.

Ms. Scott questioned whether changing recall petitions to 5% of the voters would cause more petitions, and if that were the case, why not just run for Council. Concerns were also expressed that without an affidavit provision a petition could be left unattended in any location and anyone could sign their name or anyone else's name.

Mr. Pruitt advised that they were also proposing to change the certification of petitions from the responsibility of the City Secretary to the Elections Administrator. Their concern was that pressure could be placed on the City Secretary by the City Council and they wanted to protect that individual. It would then fall under State guidelines instead of the City Charter.

Several Members of the Charter Review Committee expressed concern that the City may not have the authority to make the Elections Administrator certify City petitions. The City has no authority to pass a law to direct that person to do something with which the City does not have control over. The Elections Administrator is not a City employee, the City Secretary is. Another concern was how much the City would be charged to certify elections by the County Elections Administrator.

Regarding an elected City Attorney, Mr. Russell advised that city municipal law was a narrow area of law and very specialized. There may not be any attorneys in town who were qualified to be a city attorney. There were attorneys in Victoria who could get elected, but were not qualified to be city attorneys. The City Attorney needs to protect the City from liability more than anything; there are narrow areas that if you impose obligations on owners of real estate or citizens that you can not legally impose or you may get yourself sued.

Ms. Scott commented that the City Attorney acts as the in-house counsel for their client the City. A City Attorney does not serve in the same capacity as a District Attorney because they serve different functions. The District Attorney defends, prosecutes, and manages cases that are violations against peace and dignity of the State, which are laws written by someone other than the District Attorney. A City Attorney is involved in law making which is a big difference. She did not think one can parallel those two as those are completely different types of practices.

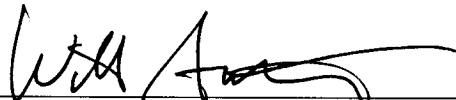
Mr. Pruitt advised that his group's reason for wanting an elected City Attorney was because of the actions of a former City Attorney and he needed to answer to the public. If the City Attorney were subject to a vote he would not have advised the Council to adopt the tax rate or appropriate money for legal defense.


Cm. Polasek inquired whether an influential person sued the City, would that City Attorney work on behalf of the Council or that individual. Ms. Scott commented that would put an elected attorney in conflict immediately because they would have to decide either what was best for their client or what was politically in the best interest for them. In their second term they would be a lame duck and could tell the City just about anything, she questioned if that would be in the best interest of the client. They would also be looking for a job in their second term. The City Attorney needed to be able to give impartial advice. Cm. Halepaska questioned whether someone running for the City Attorney position would have to be a licensed attorney or could anyone run.

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Mayor Armstrong thanked Mr. Pruitt for representing his group and explaining their proposals. He announced that the next meeting would be on January 20, 2009 at 3:30 p.m. With no further business, the meeting was adjourned at 5:47 p.m.

APPROVED: 
WILL ARMSTRONG, Mayor of the City of
Victoria, Texas

ATTEST: 
SCARLET SWOBODA, City Secretary
