


M E M O R A N D U M

TO: The Honorable Chair and Members of City Council

FROM: John C. Wolfe, City Attorney 

DATE: January 21, 2009

RE: Item D-1

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I have attached a revised version of the Ordinance providing for an appointment to the District 5 Council position. It has the following changes:

- Correction of typographical errors.
- Modification to reflect that the resignation of the Council member from District 5 has already been submitted.
- A new paragraph 10 in Section 1 expressing Council's intent to bring forth a Charter amendment for the November, 2009 election which provides for the selection of a replacement Council Member by election when a Council Member resigns to run for another elected office. This new paragraph 10 has been placed in this revised ordinance for your consideration at the request of a Council Member.

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Attachment

c: Mayor Rick Baker
Tish Elston

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AN ORDINANCE PROVIDING AN APPOINTMENT PROCESS, BY ELECTION OF THE VOTERS, FOR THE REPLACEMENT COUNCIL MEMBER FOR DISTRICT 5 SINCE A RESIGNATION HAS BEEN SUBMITTED BY THE DISTRICT 5 COUNCIL MEMBER PRIOR TO TEN (10) DAYS BEFORE THE BEGINNING OF THE QUALIFYING PERIOD FOR THE CITY GENERAL ELECTION TO BE HELD IN 2009 WITH AN EFFECTIVE DATE OF RESIGNATION OF 12:01 PM ON DECEMBER 30, 2009; PROVIDING FOR SEVERABILITY; PROVIDING FOR FINDINGS; PROVIDING FOR THE SUNSETTING OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

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THE CITY OF ST. PETERSBURG DOES ORDAIN:

SECTION 1. That this Council finds as follows:

- 1. The Councilmember for District 5 has indicated that he intends to run for Mayor in the next municipal election.
- 2. The term of the Council Member for District 5 does not end until January 2, 2012.
- 3. Because the Council Member represents an odd numbered district rather than an even numbered district, in order to run for Mayor, pursuant to State law he must resign from his current office with an effective date as provided for by State Statutes.

4. The Council Member from District 5 has submitted a letter of resignation more than ten(10) days before the qualifying period begins for the City General Election to be held in 2009 with an effective date of resignation of 12:01 PM on December 30, 2009.

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5. The Council Member from District 5 has indicated that he wishes his successor to be elected by the voters in the upcoming municipal election as normally would occur if he represented an even numbered district.

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6. The City Charter in Section 3.04(a)(1) provides that if the vacancy occurs after May 30, 2009, such vacancy shall be filled by the City Council within forty-five (45) days after such vacancy occurs and the appointment shall be for the remainder of the unexpired term of the Council Member who resigned.

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7. This City Council desires an election be held for the unexpired term regardless of whether or not the Council Member from District 5 vacates the office before or after May 30, 2009 and believes that to be the intent of Florida Statute 99.012 (Resign to Run Law).

8. Florida Statute 99.012(3)(f) states that;

1. With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer's term were otherwise scheduled to expire.

2. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

9. Since the vacancy does not occur until the effective date of the resignation, F.S. 99.012(3)(f)(2) suggests that the vacancy may be filled by appointment as provided by the City Charter, although F.S. 99.012(3)(f)(1) suggests that it could be filled by election.

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10. This Council intends to place on the November, 2009, ballot for consideration by the voters, a Charter amendment which would allow, when possible, Council Members to be replaced by election when, in an odd numbered year, they resign to run for another elected position while they still have at least two years remaining of the term to which they were elected.

SECTION 2. That since the Council Member from District 5 has submitted a resignation more than ten (10) days before the beginning of the qualifying period for the City General Election to be held in 2009 with an effective date of resignation of 12:01 PM on December 30, 2009 the following shall apply:

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A. That this City Council hereby interprets the term "vacancy" as used in 3.04(a) of the City Charter to mean the date the resignation is effective as is provided by state law.

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B. That this City Council wishes to proceed under the provisions of Florida Statute 99.012(3)(f)(1) and provide for the replacement of the Council Member for District 5 for the remainder of the unexpired term of the District 5 Council Member by election.

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- C. Because the State Statutes are not entirely clear, in the event that Section B might be found to be inappropriate because of Florida Statute 99.012(3)(f)(2), then the appointment process for the remainder of the term of the Council Member from District 5 shall be as follows:
1. Applicants shall qualify by becoming a candidate for nomination for District 5 in the primary election in accordance with Section 5.04 of the City Charter.
 2. Those candidates for nomination who qualify shall appear on the ballot and participate in the primary election as provided in Section 5.05(a) of the City Charter.
 3. Those persons who are declared primary nominees as a result of the primary election pursuant to 5.05(a) of the City Charter shall appear on the ballot and participate in the general election as provided in Section 5.05(b) of the City Charter.
 4. The candidate who is declared elected as a result of the general election shall be deemed to be the person appointed by City Council with such appointment to be effective at 12:01 a.m. on January 1, 2010 and such person shall be sworn into office at 12:00 noon on January 2, 2010 to fill the remainder of the unexpired term of the Council Member from District 5.

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Except for the effective date of appointment, the election process contained in this Section C is intended to mirror the normal election process for a Council Member and any ambiguity shall be resolved in a manner consistent with that intent.

SECTION 3. If any provision of this Ordinance is determined to be invalid, illegal, unenforceable, or otherwise prohibited; or if any federal or state governmental agency shall establish or interpret any law, rule or regulation by which any material or substantial provision hereof becomes invalid, illegal, unenforceable or otherwise prohibited, then, in either event, such holding shall in no way affect the validity of the remaining portions of this ordinance; provided, however, if the City Council for the City of St. Petersburg finds the invalidated provision to be essential to the Ordinance as a whole, the City Council may declare the entire Ordinance to be terminated.

SECTION 4. In the event this Ordinance is not vetoed by the Mayor in accordance with the City Charter, it shall become effective upon the expiration of the fifth business day after adoption unless the Mayor notifies the City Council through written notice filed with the City Clerk that the Mayor will not veto the Ordinance, in which case the Ordinance shall become effective immediately upon filing such written notice with the City Clerk. In the event this Ordinance is vetoed by the Mayor in accordance with the City Charter, it shall not become effective unless and until the City Council overrides the veto in accordance with the City

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Charter, in which case it shall become effective immediately upon a successful vote to override the veto.

SECTION 5. This ordinance shall not become part of the City Code and shall expire on January 5, 2010. However, any appointment which occurs as a result of this ordinance shall not be invalidated by such expiration.

Approved as to form and content:

City Attorney (designee)

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