

# Suggested Recommendations for Changes to the Charter Regarding the Office of General Counsel

The suggestions of Steve Rohan and Judge Chuck Arnold are combined in this document. Judge Arnold's suggestions are labeled as such and in *italics*. Steve Rohan's are all others. Strikethroughs indicate deletions and underlined portions indicate additions.

## Location Within Charter

It is recommended that Part 1 of Article 7 be moved to Article 6 and that Part 2 be renamed as its own General Counsel article.

### Section 7.201. Office established; general responsibility.

There is established a ~~department~~ an independent Office of the City of Jacksonville to be known as the office of general counsel, which shall have the responsibility for furnishing legal services to the city and its independent agencies, ~~except that the council may create an office of legislative counsel within the legislative branch whose purpose shall be to advise and assist the council and its committees and members in the achievement of a clear, faithful and coherent expression of legislative policies and to perform such other related duties for the council as the council may by ordinance direct.~~ For purposes of utilization of central services by the city and its independent agencies, the services of the office of general counsel shall be deemed to be central services or services of the central service department, as the case may be. The general counsel shall provide to any member of the Duval County legislative delegation who resides in Duval County upon request an opinion on any matter relative to the government of the City of Jacksonville or any of its independent agencies.

The council may create an office of legislative counsel within the legislative branch whose purpose shall be to advise and assist the council and its committees and members in the achievement of a clear, faithful and coherent expression of legislative policies and to perform such other related duties for the council as the council may by ordinance direct; and independent agencies may hire in-house counsel to assist with the core mission issues of the agency; except that the general counsel's opinions shall be controlling on all legal issues related to the charter and all legal interrelationships between the divisions, departments, dependent and independent agencies, offices and elected officials of the city.

The engagement of private counsel for the city shall be in accordance with procedures set forth by council. The engagement of private counsel for the independent agencies shall be in accordance with their charters.

#### **Judge Arnold:**

*Section 7.201, line 15 change it to read: "council as the council by ordinance direct; and independent agencies may hire in-house counsel, with the approval of the General Counsel, to*

### Section 7.202. General counsel.

The head of the office of general counsel shall be the general counsel who shall be the chief legal

officer for the entire consolidated government, including its independent agencies. The general counsel shall devote his/her entire time and attention to the business of the office, ~~and shall not engage in the private practice of law, and shall not engage in any other legal or non-legal activities to supplement income except for private investments.~~ Any legal opinion rendered by the general counsel shall constitute the final authority for the resolution or interpretation of any legal issue relative to the entire consolidated government and shall be considered valid and binding in its application unless and until it is overruled or modified by a court of competent jurisdiction or an opinion of the Attorney General of the State of Florida dealing with a matter of state involvement or concern.

**Judge Arnold:**

*In section 7.202 change the last line to read: the State of Florida dealing with a matter of exclusive State Law.*

**Section 7.203. Selection and term of general counsel.**

The general counsel shall be an attorney licensed to practice law in the State of Florida and shall have at least 5 years' experience in the practice of civil law. The general counsel shall be selected according to the following procedure. Upon the commencement of each mayoral term of office, the mayor shall ~~appoint a selection committee comprised of five attorneys licensed to practice in the State of Florida. No more than two of the members of this committee shall be former general counsels of the city. The mayor shall endeavor to appoint two former general counsels to the committee, but in the event either or both refuse to serve, then the mayor shall appoint an attorney licensed to practice in the State of Florida to serve in the stead of either or both. The selection committee shall receive applications and may consider applicants of its own choosing. The committee shall select three qualified and available candidates to serve as general counsel and shall recommend these three to the mayor who shall select one to serve as general counsel. In the event that the mayor refuses to select one of the three as recommended, then the committee shall conduct another search and recommend an additional three candidates to the mayor. This procedure shall continue until the mayor has made his selection~~ , giving due consideration for the needs of all city branches, agencies, and offices, appoint a general counsel for that mayoral term. The person selected to serve as general counsel by the mayor shall immediately commence service but shall be confirmed by resolution approved by no less than 12 members of the council elected for that mayoral term. No person appointed general counsel shall serve for longer than 60 days without council confirmation. The term of the general counsel shall coincide with the term of the appointing mayor that appointed him.

**Judge Arnold:**

*Change Section 7.203 to read as follows:*

*7.203. Selection and Term of General Counsel.*

*The general counsel shall be a member of the Florida Bar with atleast 10 years of experience as a practicing attorney or Judge. The General Counsel shall be selected according to the following procedure. Upon commencement of each Mayoral term of office, the mayor shall, giving due consideration to the needs of all city branches, agencies, and offices, appoint a general counsel for that mayoral term. The person appointed shall be subject to confirmation by atleast 12 members of the city council elected to serve for the same term as the Mayor. Prior to confirmation the council may seek the advice of the Jacksonville Bar Association and all former General counsels as to the qualification of the appointee to serve as General Counsel. Within 60 days following the appointment the council shall approve or disapprove the appointment.*

#### **Section 7.204. Reappointment.**

A general counsel may be reappointed by a newly elected mayor or by a mayor elected to serve a succeeding term of office. The reappointment of a general counsel shall be confirmed by resolution approved by no less than 12 members of the council elected for the succeeding mayoral term. Any general counsel who is reappointed by the mayor ~~but who fails to receive the confirmation of council~~ may, at the option of the mayor, continue to serve for a period of ~~6 months~~ 60 days pending reconfirmation subsequent to the refusal of the council to confirm him. ~~The mayor may resubmit the general counsel to the council for confirmation at any time during this 6-month period.~~ In the event the general counsel is not confirmed by the council, then the position of general counsel shall become vacant and shall be filled according to the provisions of section 7.203.

#### **Section 7.205. Vacancy.**

Vacancies in the position of general counsel shall be filled as provided for in Section 7.203; except that vacancies occurring 1 year or less but more than six months before the expiration of the mayoral term shall be filled by appointment of the mayor confirmed by resolution of the council approved by no less than ten council members; and appointments for vacancies of six months or less before the expiration of the mayoral term shall not require council confirmation.

In the event of a sudden and unexpected vacancy in the position of the general counsel, the mayor may immediately appoint an acting general counsel, without council confirmation for a period not to exceed 30 days, unless a longer period is approved by council for good cause.

~~A vacancy occurring 1 year or less before the expiration of the mayoral term shall be filled by an acting general counsel appointed by the mayor and confirmed by the council. A vacancy occurring more than 1 year before the expiration of the mayoral term shall be filled in the manner provided in section 7.203.~~

No resigning or retiring general counsel shall remain on the payroll of the city beyond the time he or she discontinues performing the official duties of the general counsel.

#### **Section 7.206. Removal.**

The general counsel may be removed by the mayor, but such removal shall be only for ~~cause-~~ misfeasance, malfeasance or criminal conduct. The removal of a general counsel by the mayor ~~for~~ cause shall be concurred in by a majority of the membership of the council.

#### **Section 7.207. Assistant counsels.**

The general counsel shall appoint assistant counsels and fix their compensation, subject to the approval of the mayor. The assistant counsels shall devote their entire time and attention to the business of the office and shall not engage in the private practice of law, and shall not engage in any other legal or non-legal activities to supplement income except for private investments.

### **Section 7.208. Corporation secretary.**

Subject to applicable civil service laws and rules, the general counsel shall designate one of his employees as corporation secretary.

### **Section 7.209. Duties of corporation secretary.**

The corporation secretary shall be responsible for the custody and safekeeping of such records of the executive office of the mayor as the mayor shall designate and for the performance of such additional duties as may be delegated to him by the mayor. The corporation secretary is authorized and entitled to keep in his possession a duplicate official seal of the city and to affix the seal on all papers and documents necessary to be executed by the mayor and on all certified copies of public records of which he has custody.

### **Section 7.210. Litigation imprest fund.**

There is authorized to be established in the office of general counsel, in the custody of the general counsel, a litigation imprest fund of not exceeding ~~\$500~~ 1,000, which shall be available, without regard to fiscal years, for the expenses of litigation conducted or defended by the office of general counsel, including filing fees for actions commenced by the city or an independent agency in a state or federal court and for appeals taken by the city or an independent agency, witness fees required to be tendered to persons subpoenaed on behalf of the city or an independent agency, fees for service of process for designated agents within the city and for the several sheriffs of designated agents in other counties of the state or elsewhere, the reproduction or acquisition of necessary documentary evidence not in the official possession of the city or an independent agency to be used at a deposition, hearing, or trial, and similar expenses directly related to cases in litigation, but not including fees for special counsels or the payment of a monetary judgment against the city or an independent agency. The litigation imprest fund shall be maintained as a checking account in a bank located in the city and the general counsel shall prescribe rules for the withdrawal of funds from this checking account, including a requirement that checks be signed by at least two individuals in the office of general counsel. Periodically, as determined by the general counsel, a statement of the disbursements from the litigation imprest fund shall be presented to the city accountant, with such supporting documents as the city accountant requires, for reimbursements of the fund. Bank service charges shall be a proper expense item of the litigation imprest fund.