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**MEMORANDUM**

**TO: MAYOR AND CITY COUNCILORS**

**FROM: WILLIAM H. MORGAN, JR.,  
CITY ATTORNEY**

**RE: HOLD OVER POSITIONS ON COUNCIL**

As you know, I was tasked during the last Council Meeting with determining the steps we could take to amend our Charter to establish a procedure for handling hold over positions on Council. We would like to establish a procedure under which all possible scenarios are addressed. Any procedures we might establish must conform to established Federal and State law.

On Tuesday of this week, I met with the City Clerk and City Manager to discuss this situation. We called Robert Joyce with the School of Government and sought his guidance. When I explained to him what we are seeking to do (revise the Charter to address how to handle all possible situations which could arise regarding hold overs), his initial response was "Good Luck!". He was not attempting to make light of our situation or to be sarcastic. He was merely commenting on the fact that it would be extremely difficult, if not impossible, to address in advance every possible situation which could arise.

We asked if the U.S. Department of Justice would have to approve any Charter change which addresses the situation. He advised that Justice Department approval would be required, since Elizabeth City is one of the Cities covered by Section 5 of the Voting Rights Act. I have not sent a formal request for approval to Justice Department

officials, as it typically takes several weeks to get a written response from that Agency.

A question was posed to me yesterday by a Councilor as to whether Council could establish a policy to handle hold over situations without having to change our Charter. I am comfortable recommending that we follow again the advice we received from the Attorney General's Office following the last election, if that scenario should arise again. As you will recall, in that case both current Councilors (Brooks and King) wished to be considered the hold over Councilor pending the outcome of the voter eligibility challenge. We were advised that Mr. Brooks should be allowed to serve as hold over since he had chosen to seek re-election and Mr. King had not. We would, in view of the Attorney General opinion we received, be on firm ground legally if we handled that situation the same way in the future.

Any other situation which might arise should be considered at that time on its own merits, in my opinion. If we were to encounter an unusual situation (i.e. one which has not arisen before or for which there is no established procedure to resolve), we should again seek the guidance of the Attorney General's Office.



William H. Morgan, Jr., City Attorney