

# REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

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**SUBMITTED TO:** HB Charter Review Commission

**SUBMITTED BY:** Mark D. Bixby, Charter Review Commissioner *MDB*

**SUBJECT:** Amend charter section 802 (Charter Violations) to require forfeiture of office for elected officials.

**Statement of Issue:** Improves accountability by requiring elected officials to forfeit office for willful charter violations.

**Recommended Action: Motion to:**

Amend Huntington Beach charter section 802 as follows:

The violation of any provision of this Charter shall be a misdemeanor and shall be punishable upon conviction by a fine not exceeding Five Hundred Dollars (\$500) or by imprisonment for a term of not exceeding six months or by both such fine and imprisonment, and each day that any such violation continues shall constitute a separate violation.

Notwithstanding the criminal and civil procedures and penalties provided for herein, an elected official shall forfeit office pursuant to this Charter if a court of law has found, after the judgment has become final and all appeals exhausted, that the elected official has willfully violated this Charter or any provision thereof, or willfully failed to carry out any provision of this Charter.

**Analysis:**

The charter is the very foundation of city government, and the consequences of a willful violation should be severe. The consequences should be especially severe for elected officials who serve as direct representatives of the people.

Granted, the city is willfully violating several sections of the current charter for various reasons, more out of necessity rather than any ill intent, and largely as a side-effect of not updating the charter more frequently as conditions change.

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For these kinds of technical violations it seems extremely unlikely that the city attorney, the district attorney, or the attorney general would move to prosecute such violations. It is also extremely unlikely that any private citizen would commit the money and time required to pursue a civil lawsuit over such violations.

Thus I don't expect forfeiture of office to occur for any but the most egregious of violations. And note that forfeiture only results if a court has found that a willful violation has occurred and all appeals have been exhausted. So that is a very high bar indeed.

This amendment is derived from Exeter charter section 5.3 and Woodlake charter section 5.3 (these two neighboring Central Valley cities share nearly identical charters) but made more generalized to include all elected officials instead of just the city council.

## **References:**

- Exeter charter - <http://www.bixby.org/charter/charters/Exeter.pdf>
- Woodlake charter - <http://www.bixby.org/charter/charters/Woodlake.pdf>