



Section 2

James “Jim” M. Messer

*Fort Pierce City Attorney
Candidate Report*

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Resume

JIM MESSER

125 S. Alcaniz Street, Suite 1
Pensacola, Florida 32502
(850) 266-4641 (cell)
Email – messerlaw@att.net

CAREER SUMMARY / LEGAL PHILOSOPHY

More than fifteen years of local government experience representing both city and county governments with expertise in the following areas:

- The economical and efficient operation of private and public sector law offices and teams of multiple attorneys, multiple paralegals and multiple support staff
- The successful co-ordination of department heads in order to resolve both legal and policy issues in a manner consistent with the goals of the public sector organization
- The economical and efficient management of budgets ranging from a quarter of a million dollars to over a million dollars per year
- The institution of both accessibility and transparency protocols to ensure that elected officials and Department heads received timely legal counsel, feedback and cooperation
- The ultimate authority in public sector organizations to ensure compliance with the Public Records and Sunshine laws
- Able to render advice on high level, complex policy decisions in a politicized atmosphere that is subject to public discourse and reporting by an increasingly fractious press and public

My leadership philosophy is to ensure that whatever goal policy the political entity desires is obtained thru a harmonious relationship with the City Manager and the Department heads. As a leader with demonstrated legal, organizational, analytical and communications skills, I believe that public sector initiatives can only be successfully achieved if the attorney is accessible, involved and committed to the City Manager and Department heads. The City attorney must be productively involved on a daily basis with the diverse group of people that make up the work force, achievement-oriented with experience, judgment and integrity and a dedicated team player who is able to work independently as well as within an organizational framework.

My litigation philosophy is to control the outcome and costs of litigation. I work very diligently to ensure that the position of the political entity is clearly acknowledged at the outset of the case and that a theory is developed that will lead to either a successful litigation or settlement. I understand that the continual stress of litigation and the resultant publicity can take an enormous toll on the morale of elected officials and adversely affect their ability to conduct public business. I also understand that the City needs to provide services to the taxpayer and that every penny spent on litigation is a penny that cannot be directed to the provision of City services.

My legal philosophy on policy issues is to ensure that I include all interested parties in the discussion, am transparent in my reasoning and accessible to anyone who has a legitimate stake in the outcome. I make every effort to reach out to knowledgeable attorneys and managers in other jurisdictions and ensure that every reasonable step is taken to avoid potential pitfalls in both the Implementation of the policy as well as any potential legal challenge. I consider it part of my job to support the City Manager and Department Heads in every reasonable way possible.

DIRECTLY RELEVANT LEGAL EXPERIENCE

- City Attorney, Pensacola, FL** 2010 - 2014
Served as the contract City Attorney for Pensacola, Florida for the first Mayor elected under a new charter and also handled municipal litigation on behalf of the City. Acted as legal counsel and advisor for the City and all of its elected officials in all matters relating to their official powers and duties. Attended all regular and special meetings of the City Council. Prepared and reviewed all City contracts, ordinances and resolutions. Provided legal opinions to the Mayor and Council. Represented the CRA.
- Chief Litigation Attorney, Escambia County Attorney's Office, Pensacola, FL** 1993 – 2001
Represented Escambia County in the prosecution and defense of lawsuits brought by or against the County including torts and contracts, labor and employment, construction contracts, civil rights, insurance and workers' compensation matters.

OTHER PROFESSIONAL LEGAL EXPERIENCE

- Messer Law Firm, P.A.** 2005 – Present
Plaintiffs' attorney for personal injury litigation, construction law, commercial law, county/municipal government law, Federal criminal defense. Also served as City Attorney for the City of Pensacola.
- Trial Attorney, Levin, Papantonio Law Firm, Pensacola, FL** 2001 – 2005
Plaintiffs' attorney for mass torts and personal injury litigation.
- U.S. Staff Attorney Department of Justice, Criminal Division, Washington, D.C.** 1991 – 1993
Prosecution of complex drug conspiracy and continuing criminal enterprise cases.
- Associate Attorney, Markel, McDonough & O'Neal, Orlando, FL** 1988 – 1991
Defense of construction, personal injury and product liability litigation.
- Judge Advocate Attorney, United States Marine Corps** 1974 – 1988
Prosecution of felony cases and defense of employment discrimination cases for the Department of the Navy with national media interest.

BAR MEMBERSHIPS

State Bar of Florida	United States Court of Appeals for the First Circuit
State Bar of Alabama	United States Court of Appeals for the Eleventh Circuit
State Bar of West Virginia	United States District Court for the Northern District of Florida

CERTIFICATIONS/APPOINTMENTS

Florida Board Certified in Civil Trial	1997 - Present
County Rezoning Hearing Examiner	
Special Magistrate for Code Enforcement	

LEGAL EDUCATION

Juris Doctor, West Virginia University	Master of Law (Labor), George Washington University
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UNDERGRADUATE EDUCATION

Bachelor of Arts, Political Science, West Virginia University

SOME OF MY REPORTED CASES

Bernal, Inc. v. Greystone Property Management, LLC, 2011 WL 1087485 (Alabama Supreme Court), Commercial real estate dispute.

Simms v. Meredith, 967 So. 2d 393 (Fla. 1st DCA 2007).

Status of Writ of Garnishment as an initial nonenforceable civil process pursuant to section 48.021, Fla. Stat.

Frankenmuth Mutual Insurance Co. v. Ernie Lee Magaha, et al., 769 So. 2d 1012 (Fla. 2000). Contract ratification, effect of a non-substitution clause in a multi year lease agreement.

GJR Investments, Inc. v. County of Escambia, Florida, 132 F.3d 1359 (11th Cir. 1998). Successfully defended 42 U.S.C. §1983 suit brought following denial of permit for RV Park; qualified immunity.

Paedae v. Escambia County, 709 So.2d 575 (Fla. 1st DCA 1998). Successfully defended 42 U.S.C. §1983 and state tort claims.

Junior v. Reed, 693 So.2d 586 (Fla. 1997).

Successfully defended 42 U.S.C. §1983 action alleging slander and the consequent economic loss to a business.

Sears v. Department of the Navy, 680 F.2d 863 (1st Cir. 1982).

Precedent setting case limiting a public sector union employee's right to representation.

Candidate Introduction

EDUCATION

Bachelor of Arts
Juris Doctorate
Master of Law (Employment)

RELEVANT EXPERIENCE

Self Employed	2005 – Present
City Attorney, Pensacola, Florida (Contract with Messer Law Firm)	2011 – 2015
Chief Litigation Attorney, Escambia County, Florida	1993 – 2001
Board Certified Civil Trial Attorney	1997 – Present
Honorable Discharge USMC	

BACKGROUND

Escambia County, Florida is the westernmost county in the state of Florida. The population is about 300,000 people. The county has a total area of 875 square miles of which 656 square miles is land and 218 miles is water. A five member Board of County Commissioners, each commissioner representing one of five districts, leads the government.

I commenced my legal career in the City of Pensacola, Florida, the county seat of Escambia County, Florida in November of 1993 as the Chief Litigation Attorney of Escambia County and have consistently practiced law there up to the present date. I served Escambia County in that capacity for about a decade, moved to a large Plaintiff's firm and then formed my own solo practice. I also opened an office in Birmingham, Alabama in order to expand my market. Currently, I am licensed to practice law in the states of Florida, Alabama and West Virginia. Neither my law firm nor myself have ever been the subject of a malpractice claim, ethics complaint or client complaint.

The County Attorneys office consisted of a County Attorney, six assistant County Attorneys and myself as Chief Litigation Attorney. At all times there were about two paralegals, eight legal secretaries, a receptionist and a budget analyst. In the absence of the County Attorney, I was appointed as acting County Attorney to manage the office. The office was a diverse office.

I supervised the paralegals, a legal secretary and the assistant County attorneys when they were assigned either a litigation project or a project that involved a complex issue of state or Federal statutory or constitutional law. I was the lead attorney on all complex litigation involving the County, including tort, contract, state and Federal constitutional law claims workers compensation, land use and employment issues.

James M. Messer

Several of the reported cases I handled on behalf of the County are set forth on my resume. Those cases were eventually resolved, in favor of the County, in either the Eleventh Circuit Court of Appeals, on the Federal level or the First District Court of Appeals, on the state level.

Some of those cases involved serious constitutional law issues that exposed a sitting Commissioner to personal legal liability in the form of damages and attorney fees. I take particular pride in the fact that in each and every case where a Commissioner was exposed to personal liability, that Commissioner had the faith and confidence in my legal abilities to select me to personally represent him or her, rather than seek outside counsel. Those same elected officials, as well as some of them who were subsequently elected to fill their seats, have continued to seek my legal counsel and representation.

The City of Pensacola, Florida is the westernmost city in the Florida panhandle. The city has a total population of about 50,000 people. Pensacola is a seaport on Pensacola Bay, which is protected by the barrier island of Santa Rosa and connects to the Gulf of Mexico. A Naval Air Station is located southwest of Pensacola and the main campus of the University of West Florida is situated north of the city center. The city is located on the north side of Pensacola Bay, and has a total of 40.7 square miles of land, consisting of 22.5 square miles of land and 18.1 square miles of water.

The City of Pensacola owns and operates an international airport, an international seaport and a natural gas company.

The City is governed under a brand new charter that the voters approved in order to establish the executive office of a strong Mayor. Prior to the new Charter the Mayor was a voting and sitting member of the City Council. The new Charter realigned most of the powers of the City Council to the office of the Mayor. The City Council remains the legislative body of the City, with the Mayor having a veto power over all ordinances, resolutions and line items in the budget.

As a direct result of the new Charter, the City of Pensacola outsourced the office of the City Attorney and my firm was selected to represent the City, as City attorney, by the first strong Mayor. The new Charter radically transformed the structure of government in Pensacola. I was privileged to serve in the capacity of City Attorney pursuant to a four-year contract, while at the same time I retained my private practice.

As City attorney, I handled, with the occasional assistance of outside counsel, all the city's legal matters. My staff was composed of two assistant city attorneys, one paralegal and a receptionist. I was responsible for supervising several outside attorneys that the City had previously retained to handle bond matters, environmental matters and labor matters.

For the most part, my office faced the same challenges that many cities in Florida face, growth and development, code enforcement, tort litigation, contract litigation, personnel issues and constitutional law. The one exception in Pensacola was the almost daily allegation of violations

of the Public Records Act and the Sunshine law, as well as continual legal challenges to the implementation of the new Charter. Most of those challenges were either from a group of citizens that had actively, vociferously and endlessly campaigned against the new Charter or a group of citizens who were displeased in the manner in which the Charter was implemented.

The Courts rejected each legal challenge to the Charter and the Mayor's executive powers, including the veto power. Steering the City thru the tangled mess of legal challenges to the Charter and the Mayor's authority required me to review issues with an open mind and apply the law aggressively in order to accomplish what was best for the City under the terms and conditions of the new Charter. I had to think outside the box, research new ways to resolve situations and work hard to find a solution to challenges under what was, essentially, a new contract between the citizens and their government.

The most difficult aspect of the job involved maintaining the ethical and legal balance between the Mayor, who hired me, and the City Council, who I had a Charter duty to advise. As a result of my recommendations, as well as the virtual impossibility of serving two clients with adverse interests, the City Council now has the power to hire its own attorney.

During my four-year term, I successfully defended the new City Charter in several lawsuits and appeals. Additionally, I successfully defended the City against a Federal lawsuit filed by Occupy Pensacola. Occupy Pensacola took the position that all public property belonged to the people and that they could occupy public land for an indefinite period of time. At one point, there were over four hundred people camped outside City Hall. The issue involved complex First Amendment and Federal procedural issues that were favorably resolved for the City after two trips back and forth between the trial court and the Eleventh Circuit Court of Appeals.

GENERAL, MANAGEMENT STYLE AND EXPERIENCE

In my opinion, the City of Fort Pierce needs a City Attorney who has an excellent litigation skill set, the ability to create and lead an office, contribute in a positive manner to the organization, understands the importance of diversity and can be an Ambassador of the City to the taxpayers. I would submit that my certification as an expert civil trial attorney, demonstrated leadership ability and success at every level of public and private endeavor fits the bill.

I believe the chief responsibility of a City Attorney is to represent the City in a timely, efficient, professional manner in order that the City can obtain the best legal or policy result possible in any given situation. A city attorney must render advice on high level, complex policy decisions in a politicized atmosphere that is subject to public discourse and reporting by an increasingly fractious press. Implicit in the role is the necessity to ensure that the advice and counsel are digested, coordinated and accepted by the various staff and departments that may be affected.

My management style is to remain calm in the face of adversity, think and act reasonably and responsibly, be open and approachable and have a can do attitude. It is imperative to keep all Commissioners equally informed, say the same thing to each member, as well as communicate regularly with both the City Manager and the City Commission. I would hope that the City Manager would take advantage of my experience and seek my professional advice on policy and management decisions. My door is all ways open to any Department Head. I firmly believe that government wins and loses as a team.

My approach to lawsuits is to make recommendations and decisions based on the law, as well as what is the right thing to do. There is a tremendous amount of discretion in the actions of the City and I would hope that discretion would be utilized to make Fort Pierce the best city to live, work and play in the State of Florida. If something cannot be done legally, I will ensure that the appropriate advice is rendered in a manner that does not undermine the position of the City, should the Council decide it wishes to pursue a different course. I am an advocate of the speak softly, but carry a big stick approach. My courtroom experience is a big stick. On the other hand, the City is not in the business of litigation and the taxpayer's money can be spent for numerous worthy municipal purposes. I believe in the prompt, fair resolution of all lawsuits brought against the City. Settlement is my paramount aim in order to save time, money, expense and eliminate adverse publicity to the City. On the other hand, sometimes it is necessary to go to the Courthouse in order to ensure that other attorneys understand that the City is not low hanging fruit to pick at their leisure.

In order to keep elected officials informed, I prefer either office meetings or out of office coffee on a regular basis. Should there be an important addition or change in the law that affects the City, I would communicate that via e-mail to all concerned.

In the first six months, I would envision the creation of a legal office of at least one or two assistant city attorneys and one paralegal/receptionist. The size of the office is a delicate balance between over lawyering and providing accurate, responsive legal support and is really determined by how much legal service is needed by the City. I would hope that the majority of the litigation and settlement of lawsuits could be handled in house.

The only qualification for employment in my office is merit. Everyone is given clear direction on the job requirements from both an ethical and business standpoint. Follow up management is provided on a daily basis. I have never had to fire an employee, but I have been involved in numerous termination lawsuits and decisions on behalf of clients.

My strengths are organization, judgment, integrity and experience. I am able to work with and motivate staff, am a good listener, cooperative and have common sense.

I have never really dwelled on my weaknesses but I suppose my biggest weakness would be my assumption that everyone is motivated to do the right thing for the right reasons.

James M. Messer

My greatest achievement is the creation of my own law firm and the consequent ability to make a living, create jobs for other people and contribute to the community.

I would prefer that the public affairs department handle the media in order to ensure that a consistent message is portrayed; however, I am not averse to speaking with the media in order to advance the interests of my client. I believe the key in dealing with the media is to educate the media on the issues in order to ensure accurate, quality coverage for the City and maintain the integrity of the process.

I don't believe there is any "dirt" on anything or me that would embarrass the City. There are consistent Pensacola bloggers who either don't understand the powers and duties of the Mayor under the new Charter or believe that the Charter provided that I work exclusively for the Mayor, but I would hope those are philosophical differences and not personal.

In my leisure time I stay physically fit and enjoy reading fiction.

SIX ADJECTIVES OR PHRASES I WOULD USE TO DESCRIBE MYSELF

Experience, Integrity, Judgment, Common Sense, Approachable, Accessible, Dedicated.

I believe that any City Manager or County Administrator would say they considered me their best friend in the workplace.

RECENT SALARY

I was paid a fee of \$155,000.00/year to act as City Attorney with a separate litigation contract at \$255/hr.

CB&A Background Checks

**Background Check Summary for
JAMES "JIM" M. MESSER**

Criminal Records Checks:

Nationwide Criminal Records Search No Record Found

County

Escambia County, FL No Record Found

Jefferson County, AL No Record Found

Federal

Florida No Record Found

Alabama No Record Found

Civil Records Checks:

County

Escambia County, FL No Record Found

Jefferson County, AL No Record Found

Federal

Florida No Record Found

Alabama No Record Found

Motor Vehicle

Florida No Record Found

Credit

Excellent

Bankruptcy

No Record Found

Education

Confirmed

Employment

Messer Law firm (2005 – Present)

Escambia County (1993 – 2001)

Confirmed

Levin Papantonio Law Firm (2001–2005)

Verifications Pending

Bar Certification/License

Member in Good Standing

Bar #655880

**Background Check Summary for
JAMES "JIM" M. MESSER**

THE FLORIDA BAR

ABOUT THE BAR
NEWS & EVENTS
FOR THE PUBLIC

MEMBER SERVICES
LOG IN
FIND A LAWYER

THE FLORIDA BAR
Find A Lawyer
Profile

James Michael Messer

Member in Good Standing **Eligible to Practice Law in Florida**

Bar Number:	655880				
Mail Address:	Messer Law Firm P. C. Messer Law Firm P A 125 S Alcaniz St Ste 1 Pensacola, FL 32502-6004 United States Office: 850-266-4641				
Email:	messerlaw@att.net				
Personal Bar URL:	www.floridabar.org/mybarprofile/655880				
vCard:	 ?				
County:	Escambia				
Circuit:	1				
Admitted:	05/18/1987				
10-Year Discipline	None				
History:					
Law School:	West Virginia University College of Law, 1974				
Board Certifications:	<table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Area</th> <th style="text-align: left;">Year</th> </tr> </thead> <tbody> <tr> <td>Civil Trial</td> <td>1997</td> </tr> </tbody> </table>	Area	Year	Civil Trial	1997
Area	Year				
Civil Trial	1997				
Firm:	Messer Law Firm P. C.				
Firm Size:	One				
Firm Position:	Partner/Shareholder				

The Find a Lawyer directory is provided as a public service. The Florida Bar maintains limited basic information about attorneys licensed to practice in the state (e.g., name, address, year of birth, gender, law schools attended, admission year). However, through this directory The Florida Bar allows individual attorneys the opportunity to provide for public information certain expanded personal and professional data. It is the attorney's responsibility to routinely review and update those expanded listings. The information contained in those expanded listings is presented by the Bar "as is" with no warranty of any kind, express or implied. The Florida Bar, its Board of Governors, employees, and agents thereof are not responsible for the accuracy of that additional data. Publication of attorneys' contact information within this listing should not be construed as their consent to receive unsolicited communications in any form. Certain unauthorized uses of this data may result in civil or criminal penalties. The Find a Lawyer directory is not a lawyer referral service.



**Background Check Summary for
JAMES "JIM" M. MESSER
Personal Disclosure**

02/05/2016 10:52

2058684369

THE UPS STORE 3425

PAGE 03

Personal Disclosure Questionnaire

Name of Applicant: JAMES M MESSER

The following questions are designed so that we will be able to make full disclosure to our client concerning your background. Please answer them honestly. Cutting corners or misrepresenting your past will result in you being eliminated from all further searches conducted by this firm. We understand that frivolous charges are sometimes made and that charges do not mean you were guilty. We also understand that you may have been wronged and needed to seek compensation. The bottom line is that we want to be certain that our client is fully informed. If you have any questions, please contact us for clarification.

Please explain any yes answers on a separate sheet of paper.

- 1. Have you ever been charged or convicted of a felony?
Yes No
- 2. Have you ever been accused of or have been involved in a domestic violence or abuse incident?
Yes No
- 3. Have you ever declared bankruptcy or been an owner in a business that did so?
Yes No
- 4. Have you ever been the subject of a civil rights violation complaint that was investigated or resulted in a lawsuit?
Yes No
- 5. Have you ever been the subject of a sexual harassment complaint that was investigated or resulted in a lawsuit?
Yes No
- 6. Have you ever been convicted of driving while intoxicated?
Yes No
- 7. Have you ever sued a current or former employer?
Yes No
- 8. Do you have a personal My Space, Face Book or other type of Web Page?
Yes No
- 9. Do you have a personal Twitter Account?
Yes No
- 10. Is there anything else in your background that, if made public, would cause you, our client or our firm embarrassment if it came to light through the press or any other mechanism?
Yes No
- 11. Please provide a list of any lawsuits in which you are or have been a party either as plaintiff or defendant.
N/A

Attested to: 
Signature of Applicant

Please email this form via PDF DOCUMENT to Kknutson@cb-asso.com or via fax to (888) 539-6531 **no later than 5:00 PM CST 02-08-2016.**
(Note: Please be sure to sign the form with your actual signature if you are sending Fax or PDF Document)

Property of Colin Decker & Associates

CB&A Reference Notes

**Reference Notes
James M. Messer**

Kris Elliott - Attorney, Gulf Breeze, FL 850-346-8177

Mr. Elliott is a military and maritime attorney. He bonded with Mr. Messer in 2005 because of their service as marines. Mr. Messer also represented Mr. Elliott in a medical lawsuit. Mr. Messer is an outstanding lawyer. His knowledge of the law is extensive enough that the majority of questions posed to him, he is able to answer. If he is not completely confident about the answer he does not pretend to know, but will research to find the answer.

Mr. Messer is extremely responsive. He is the type of attorney that other attorney's go to for advice. He is especially good at determining whether a conflict of interest is present in different situations. When his clients come to him wanting to do something that could potentially be illegal or at least ill advised, he quickly offers alternative solutions to help them meet their goal. He is open minded and does what he can to find other avenues for his client to be successful.

Working with the public is not a big deal for Mr. Messer because he has done it for so many years. He has worked cases at the federal level, where he did not show any intimidation but fought for his client. While in Pensacola he developed a positive relationship with the elected officials. He was responsive to their questions and gained their respect. At times they did not follow his advice, but he never took it personally.

The areas of the law that Mr. Messer has experience in, but not limited to, are: contracts, environmental law, land use and labor/personnel matters. In Pensacola a business owner wanted to build a facility at the maritime park. Unfortunately, due to environmental laws requiring a certain distance between structures and the water, the plans could not go forward. However, he provided them with an alternative location. Within land use, he developed options on how to expand the airport, which included purchasing more land to extend the runway and run off.

Towards the end of his time at Pensacola, Mr. Messer began having problems with the City Council. Due to the strong mayor form of government he worked for the mayor, but the Council wanted him to listen to them. He did not do anything to embarrass himself or the elected officials, but it became increasingly more difficult to stay out of the fray.

Mr. Messer is a terrific lawyer. He would do a great job as City or County Attorney, in fact it would be difficult to find anyone who could do it better.

Words or phrases used to describe Jim Messer:

- Family oriented,
- Physically active,
- Outgoing,
- Self-deprecating humor, and
- Straightforward.

**Reference Notes
James M. Messer**

Strengths: Honest, hardworking, dedicated, knowledgeable and ethical.

Weaknesses: Works too hard.

**Rob Larkin - Employment Attorney, Allen, Norton & Blue, P.A., Tallahassee, FL
805-519-1428**

Mr. Larkin occasionally did work for Escambia County, which is when he first met Mr. Messer in 1998. They worked together until Mr. Messer left the County in 2001. From 2010 to 2014 Mr. Messer contracted Mr. Larkin on labor and employment issues for the City of Pensacola. Mr. Messer is a bright attorney. He has never been wrong in his advice or recommendations in all the time Mr. Larkin has known him.

Mr. Messer is technologically capable. He uses all forms of technology to communicate with clients, colleagues, staff, etc. He always responds promptly and never leaves issues to fester. He gives legal advice that will help keep his client out of trouble. When he served as City Attorney for Pensacola, it was not uncommon for the elected officials to not listen to his advice. Luckily they did not do anything illegal. He built a solid relationship with the Council and Mayor, so that even if they did not like what he told them, they still respected him.

The biweekly Council meetings were televised. Mr. Messer handled himself professionally during those meetings. He is comfortable speaking with the public in all types of forums. His interactions with his employees are positive as well. He mentors his staff and runs an organized office.

Mr. Larkin works all over the state and Pensacola is the most challenging municipality to work in as an attorney because of the switch to strong mayor form of government. Mr. Messer survived for four years in that environment. He was the first attorney after the change and most people in the organization did not know how the new system worked. He was constantly required to educate and interpret the charter.

One of Mr. Messer's best attributes is his negotiating skills. He negotiated with several collective bargaining units. He is able to see the big picture, so when he compromised with the unions he was able to identify how the changes impacted other negotiations and the general employee population. Due to the poor economic conditions at the time, the Mayor wanted to discontinue pensions, which were a \$116 million unfunded liability for the City. Mr. Messer was insightful and provided potential outcomes for the entire organization.

Mr. Messer has experience with constitutional law, contracts, land use and labor/personnel matters. He may have experience in other areas that Mr. Larkin is not aware of. Mr. Messer did such a great job for both Escambia County and Pensacola that Mr. Larkin referred him to other cities, but at the time Mr. Messer was not willing to leave his position. Any organization he goes

Reference Notes
James M. Messer

to will not have as many problems as Pensacola and he was successful there. He will be a great asset to any organization.

Words or phrases used to describe Jim Messer:

- Smart,
- Speaks well,
- Outgoing,
- Personable,
- Affable, and
- Nice.

Strengths: Negotiations, litigation, ability to see the big picture, and cuts down to the heart of the matter.

Weaknesses: None identified.

Recho Bell - Private Investigator, Milton, FL 850-982-7600

Mr. Bell occasionally assists Mr. Messer on investigating cases. They have worked together since 1993. Mr. Messer is thorough in his research. He makes good recommendations based on his experience and research. He understands the political nature of a municipality and when the elected officials decide to not listen to his advice he is not offended.

Mr. Messer has overseen both large and small cases. He represents his clients as best he can, no matter what the issue may be. He tries to reason with those he represents, but does not force his opinion on them. In most cases he provides more than one option for the client to choose from.

The majority of Mr. Messer's experience has centered on contract law. However, some other areas he has dealt with include utilities, land use regarding landfills and constitutional law.

Mr. Messer has always been responsive and timely. He will make a fantastic City or County Attorney.

Words or phrases used to describe Jim Messer:

- Speaks opinion,
- Intelligent,
- Direct,
- Honest, and
- Prompt.

Reference Notes
James M. Messer

Strengths: Straightforward, articulate, demanding and does not get side tracked.

Weaknesses: None identified.

Rusty Wells - Former City Attorney, Pensacola, FL 850-512-4657

Mr. Wells worked for the City of Pensacola for over thirty years, the last four as the City Attorney. Mr. Messer took over for Mr. Wells in 2010, but Mr. Wells continued to do some contracted law work for the City. They initially met however, when Mr. Messer worked for Escambia County in 1993. Mr. Messer has an extremely good reputation in the state. When he worked for Escambia County he made more money than the County Attorney because the County Attorney felt Mr. Messer's work was worth more than his own.

Mr. Messer has a smooth, cool style. He does not get worked up, no matter how tense or important a case/situation may be. He negotiated high profile contracts without overreacting to the other party's demands. A local restaurant is built on City owned land and the owner leases the property for a fee. When the lease contract was about to expire he advised the City to begin negotiations before it lapsed. Once he began researching the payments and possible conditions of the new lease, he discovered that the business had not been paying their rent for quite some time. He sent a demand for the money owed, which was over one million dollars. The owner refused to pay and the City filed a lawsuit. A loud but small group in the community started a campaign stating that the City was anti-business. Mr. Messer was unflappable however and did not get sidetracked by responding to accusations. He was finally able to get the owner to sit down and negotiate.

The elected officials enjoyed working with Mr. Messer. They listened to his advice because they knew he was not trying to steer them in any one direction. He clearly explained a situation and advised them on how to continue, but often they did not follow his advice. They let political pressures get in the way, but they never did anything illegal. To an outsider, when a council rejects their attorney's advice it looks as though they are rejecting the attorney's wisdom and expertise. However, lawyers in those positions learn to expect it and do not take it personally.

Mr. Messer builds strong relationships with his office staff and colleagues within the organization. He is able to get the most out of people without them even realizing they are working hard. He was able to accomplish all of his duties with a smaller staff than he typically would have had as a City Attorney.

The "occupy" movement hit Pensacola while Mr. Messer was City Attorney. Over 300 homeless, young and well-meaning individuals camped out on the City Hall grass for three months. During times of inclement weather they came into City Hall, cooking and washing their clothes in the bathrooms. Following the direction of the Mayor and the majority of the Council Mr. Messer drafted new codes and zoning ordinances to prevent such long term protests. It

**Reference Notes
James M. Messer**

became a fight over whether their actions were supported by the first amendment or not. Ultimately he won the battle for the City.

The only negative regarding Mr. Messer is that initially he comes off as aloof or over confident. However, within ten minutes it becomes apparent that he is in fact the opposite. He has a self-deprecating humor and the ability to connect with people.

Mr. Wells thinks very highly of Mr. Messer and recommends him for a City or County Attorney position.

Words or phrases used to describe Jim Messer:

- Sarcastic sense of humor,
- Problem solver,
- Charming,
- Respected, and
- Qualified.

Strengths: Smart, analytical skills, widely read and litigation.

Weaknesses: First impression is that he is aloof, but one quickly realizes that is not the case.

John Jerralds - Councilmember, Pensacola, FL 850-433-1749

Mr. Jerralds worked with Mr. Messer from 2011 to 2014. Mr. Messer's knowledge of the law is outstanding. Often times he could quote the law word for word. He does his research before making presentations or recommendations.

Mr. Messer was accessible to the elected officials. He was easy to talk to and provided good information. His recommendations were always based on facts and the law. With any given situation he offered the Council and Mayor multiple options and identified the consequences of each action. In general their decisions followed Mr. Messer's guidance, but occasionally they went a different direction, but never to the detriment of the organization.

With the new format of government, a new city manager, and the confusion that accompanied those changes, Mr. Messer was extremely busy. He was very helpful in making the transition and went through a careful reading of the charter with the Council and Mayor to determine how to proceed. On rare occasions he was unable to answer questions and was given time to research the issue.

Mr. Messer is well spoken and intelligent. When he made presentations he did not stumble over his words or say "um" very often. He was not involved in anything controversial.

**Reference Notes
James M. Messer**

Mr. Messer will serve a municipality well as their Attorney. His skills and background will be an asset.

Words or phrases used to describe Jim Messer:

- Level headed,
- Intelligent,
- Likeable,
- Good reputation,
- Open door, and
- All around good person.

Strengths: Easy to talk to, aware of law, detail oriented and makes references to the law when making recommendations.

Weaknesses: None identified.

Mike Motes - President/Owner, Mike Motes Builders, LLC, Milton, FL 850-626-3471

Mr. Motes has known Mr. Messer since about 1998. Mr. Messer is a phenomenal lawyer. He gives excellent advice and guidance regarding the law.

A little known fact about Mr. Messer is that he is a highly decorated combat Vietnam veteran. He went into the marines as a grunt and retired a Colonel. In fact, he is in several books for his brave service. His experience in the military shaped him and just as he was always there to help his fellow marines, he is always there to help his clients.

Mr. Messer has always been extremely responsive. He does not allow clutter and his office reflects that quality. His employees respect and admire him. He is a well-spoken public speaker and has even argued in front of the US Supreme Court.

The elected officials know that Mr. Messer is a professional. Even when they do not follow his advice, they still recognize his expertise. He understands his role as an advisor, not a policy maker. He also understands who his boss is, and in Pensacola it was the Mayor. During his time with the City the Mayor was threatened with being indicted for what some had perceived as unethical conduct. The Mayor was accused of giving landscaping projects to his friends. Mr. Messer was able to prove that the Mayor was not guilty of any wrong doing. He fearlessly but calmly faced those who made the accusations.

Mr. Messer is a great negotiator. However, he is not willing to compromise right for wrong. He is honest and has the highest integrity. Not long ago he was selected as a county attorney and had even signed a contract. Unfortunately a commissioner thought he could go behind closed

**Reference Notes
James M. Messer**

doors and try to change the terms of the contract by asking Mr. Messer to take less money that had been agreed upon. He saw this action as a sign of poor judgment and did not want to work for that type of group, so he backed out of the position.

Mr. Motes is a general contractor. At one point he felt that Florida A&M University was being biased about who they hired. He went to Mr. Messer for advice, hoping the advice would be to sue the University. However, Mr. Messer was able to calm Mr. Motes down and convinced Mr. Motes to allow him to write a letter to the college regarding the situation. In the end the school invited Mr. Motes to a sit down meeting and made it clear that he would be given multiple opportunities in the future. Had Mr. Motes sued he would have won, but Mr. Messer chose the higher road and it was a win-win for both parties.

Mr. Messer is a great asset. Any organization would be happy with him as their Attorney.

Words or phrases used to describe Jim Messer:

- Integrity,
- Genuine,
- Professional,
- Disciplined,
- Driven,
- Motivated, and
- Dedicated to family.

Strengths: Follows through, ethical and able to work with people from all walks of life.

Weaknesses: None identified.

Nancy Stuparich - Attorney, Clermont, FL 786-246-0635

In 1995, Ms. Stuparich was the Assistant County Attorney for Escambia County, and Mr. Messer was the Chief Litigation Attorney. They worked together until Mr. Messer left in 2001. Since that time they have remained in contact. Mr. Messer is the person Ms. Stuparich goes to for guidance because he is able to separate which queries are legal questions, fact questions or common sense questions. He is then able to help lead her through the process of determining what action should be taken based on the type of question.

During Mr. Messer's time with Escambia County four of the five Commissioners were removed. They were accused of accepting bribes and violating the sunshine law. Employees throughout the organization were being subpoenaed and were afraid of what to expect. He was a steady and helpful advisor to the entire group. He educated the staff on the process and alleviated some of the fear.

**Reference Notes
James M. Messer**

Mr. Messer knows his role as City Attorney. He is a counselor and advisor to the elected officials, not a policy maker. Some attorneys cross the line and try to involve themselves in policy making, but he never does. He provides the Council with the information they need to make decisions but allows them to be the voice of the people. If they choose to not follow his advice he makes them aware of what the consequences will be for their decision.

Part of Ms. Stuparich's time at Escambia County she served as the Director of Growth Management. She discovered that the director had approved construction of condominiums that violated specific laws. The County was sued and the case went to litigation. Luckily, the County had Mr. Messer on its side. He headed the litigation and found a resolution that satisfied everyone involved.

Mr. Messer runs a high performance office. He is widely respected by those employees that report to him and those that do not. He took Ms. Stuparich's secretary and paralegal from her. He knows how to get what he wants and goes about doing it without creating bad feelings between colleagues.

People easily open up to Mr. Messer. He has an open door policy, which people took advantage of when they wanted to speak to him. The elected officials appreciated his accessibility and honesty.

Mr. Messer has experience in a wide variety of areas. He dealt with the Occupy Pensacola movement, which became a first amendment issue. He worked with contracts and labor matters as well. He has been involved in eminent domain land use cases and utility franchise litigation. In the private sector he also worked on product liability.

In Pensacola Mr. Messer was faced with major legal issues surrounding the change in the form of government. He was a stable force in the organization and helped the employees and elected officials understand their new roles. If he can survive in that type of situation, he can survive anywhere. He would do well as a City or County Attorney and Ms. Stuparich highly recommends him.

Words or phrases used to describe Jim Messer:

- Accessible,
- Physically active,
- Committed,
- Family oriented,
- Stable force, and
- Good values.

**Reference Notes
James M. Messer**

Strengths: Provides good advice, listens, dedicated and punctual.

Weaknesses: None identified.

Ron Townsend - Former Councilmember, Pensacola, FL 850-450-3257

Mr. Townsend was on the Council during Mr. Messer's tenure with Pensacola, from 2010 to 2014. Mr. Messer is confident in his knowledge of the law because he has thoroughly researched it and in most cases already dealt with similar situations.

Mr. Messer did a superb job of keeping the elected officials informed. If they had questions for him he made himself available. His recommendations were well founded and accurate. Mr. Townsend was unable to recall whether or not the Council ever went against Mr. Messer's advice.

When Pensacola switched to a strong mayor form of government it created a great deal of confusion. Mr. Messer was stuck in the middle between the Mayor and Council. He knew he had to follow the direction of the Mayor, which left the Council sometimes feeling disgruntled. Despite the many disagreements between the Mayor and Council, Mr. Messer provided the best legal advice he could.

Mr. Townsend is pleased to hear that Mr. Messer is interested in becoming a municipal attorney again because he did such a great job for Pensacola. He will never do anything to create controversy or bring a negative light on any organization he works for. Mr. Townsend would hire Mr. Messer if he were in a position to do so.

Words or phrases used to describe Jim Messer:

- Gets along with everyone,
- Sense of humor,
- Outgoing,
- Honest, and
- Open communicator.

Strengths: Thorough, professional and ethical.

Weaknesses: Gave opinion but could not guide the Council because he worked for the Mayor.

Prepared by: Emilee Anderson
Colin Baenziger & Associates

CB&A Internet Research

Internet Research
MESSER, JAMES "JIM"

Articles are in reverse chronological order

inweekly.net
September 16, 2015

Outtakes- Game of Thrones

Author: Rick Outzen

The Pensacola City Council is once again looking at amending the city charter. Councilwoman Jewel Cannada-Wynn wants the council to schedule a workshop for next February to discuss possible amendments for the 2016 election cycle. At that workshop, she wants an amendment to give the council the power to approve the city administrator. Currently, the mayor has that power, and the council has no say in the administrator's hiring or firing. Councilman Charles Bare wants the council to approve an election for the citizens to vote on an amendment that would give to the city council the power of organizing city government and establishing the departments and their duties. Currently, the mayor has that power, too. The "strong mayor" charter was passed in November 2009 with the understanding that the mayor and the council would have a cooperative nature toward governing the city. Cooperation has been difficult to find in City Hall.

Mayor Ashton Hayward has tinkered with the charter to his advantage. The charter assumed the mayor would appoint department heads on a timely basis. There is no mention of how long the interim status is permitted. The fire department has had an interim chief since 2010. The airport has had an interim director since August 2014. The charter gives the council the power to approve all department head appointments. The mayor labels his department heads "directors" to avoid council review.

The charter makes the city clerk the custodian of city records. At considerable expense, Mayor Hayward moved public records out from under the clerk and created the "Sunshine Center." The public records function now falls under the city attorney. Yes, the state attorney's office found issues with the city's handling of public records back in July 2013. However, the problem was interference from the mayor's office. Prior to 2011, the city clerk had no trouble handling public record requests professionally and on a timely basis.

The city attorney can only be hired or fired with council approval. However, the mayor unilaterally made the decision not to renew the contract of City Attorney **Jim Messer**. His replacement is no longer independent and works under the city administrator. Are amendments the only way to resolve these charter conflicts? No. The council could seek rulings from a judge or seek remedies through stricter ordinances. However, the quickest venue in the past has been the ballot box. The charter amendments that were placed on ballots in 2013 and 2014 passed. So until the mayor's office and council can resolve the disputes over the charter peacefully, we can expect more amendments.

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Articles are in reverse chronological order

inweekly.net
August 6, 2015

A Question of Ethics

When the Pensacola Planning Board considered a request to vacate the right of way along a section of the bygone Bay Boulevard in the East Pensacola Heights neighborhood, questions were raised about the appropriateness of a board member, architect Scott Sallis, participating in the discussion and voting on the issue. Sallis' clients, Paul and Laura Austin, were the ones requesting the vacation. Dean Dalrymple, Sallis' partner at Dalrymple Sallis Architecture, made the presentation on July 14 to the board. Without hesitation, Chairman Paul Ritz replied to a question about Sallis's status on the issue. Ritz said, "Point of order, he is the architect on the board whose position allows him to vote on items that his own office brings. He's the one board member who can, in fact, vote on items that his office has before this board."

Florida law prohibits public officials, including city board members, from participating in discussions and voting on matters that benefit themselves, family members, business associates or clients. In this case, Sallis' clients saw their request rejected on a 3-2 vote by the planning board. Still, his participation in the discussion and vote raised some eyebrows and some questions. "I've asked the city staff to look into that," Ritz said in late July, explaining that he was relying on information from city staff when he cleared Sallis for participation. The chairman also said he could not remember a similar scenario presenting itself: "In my recollection," he said, "I don't believe it's come before the board."

Sallis said he was told by staff in the city planning department that he was allowed to discuss and vote on issues his firm was involved in. And while he said he thinks this month was the first time he actually did so, the opportunity for such isn't rare. "This comes up regularly," Sallis said, adding that he typically chooses to recuse himself "just to keep the drama down and the reporters from asking."

In this vote, the architect said he ultimately decided to weigh in because he felt strongly about the issue—"because of the awkwardness of the public coming into private property just to enjoy the view"—and, without a full board present, felt his voice was valuable. "Because I saw there was really not a good, clean representation on the board there and I wanted the applicant to have a fair vote," Sallis said. Those in opposition to the vacancy request weren't the only ones surprised that Sallis was participating. Beverly Pica, who was joining the Austins in the request to vacate, was also caught off guard. "I was surprised he was allowed to do that," Pica said. "In fact, I mentioned to my husband, 'I'm surprised that he would be allowed to vote, because it'd be an appearance of conflict of interest.'"

Request for interviews with the city attorney and the planning administrator were denied. Hayward's Public Information Officer Vernon Stewart told the Inweekly reporter. "No one will be speaking with you."

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Attorney **Jim Messer**, who served as city attorney from 2011 until March 2015, said he was unfamiliar with any exemption from Florida ethics laws for the planning board. The attorney noted that ethics issues were usually fairly easy. "Ethics is your gut reaction," **Messer** said. "We really shouldn't have to struggle with these issues."

While the State of Florida Commission on Ethics cannot offer an official opinion, it's communications office did point to a 2004 opinion the commission issued. The opinion pertained to Pensacola specifically, and essentially said the city's Architectural Review Board could have designated architects on it whose firms or clients brought matters before the board without violating the conflicting employment portion of the Code of Ethics. "That's the upshot of the opinion," said Kerrie Stillman, the commission's spokesperson.

The opinion pertained specifically to the Architectural Review Board, not the planning board. However, Stillman also pointed out that the opinion only pertained to the conflicting employment portion of the code and did not cover that the voting conflict portion. She said, "The voting conflict statute is always in play with officials who have issues that come before the board."

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inweekly.net
April 1, 2015

Coffee with the City Attorney
A Candid Interview with Jim Messer
Author: Rick Outzen

Jim Messer strolled into Seville Quarter. After an exchange of text messages, the former city attorney had agreed to talk about his four years in the Hayward administration. I didn't expect any bombshells, but I knew he would be candid and open. Openness has been sorely lacking in Pensacola City Hall over the past few years. A Marine Corps officer who earned a Purple Heart, Silver Star and Bronze Star while serving in the Vietnam War, **Messer** has always had a "don't give a damn" attitude when it comes to criticism. He is a damn good attorney and that is what he wants you to know.

His tenure as Mayor Ashton Hayward's first appointed city attorney began with controversy. Council President Maren Deweese and blogger Derek Cosson worked hard to derail the appointment, waging a four-week campaign trying to convince the Pensacola City Council to vote against the mayor's recommendation to hire **Messer**. In her memorandum to the council, Deweese criticized the proposed contract because it was with **Messer's** law firm and not an individual. She believed the city should have advertised for law firms that offered a "broader range of talents." Deweese also questioned whether the **Messer** law firm had adequate malpractice insurance to cover the city.

Despite her protests, the council approved an interim agreement with the **Messer** law firm. Later in the year, they voted for a three-year contract for **Messer**, which expired in December 2014. "I didn't seek out the job," **Messer** told me as the waitress brought us coffee. **Messer** drank his black, of course. It was the mayor's chief of staff, John Asmar, who had first broached the idea. **Messer** and his family lived in Birmingham, Alabama at the time. "I told John, 'I'll come down one time. I'll send you my resume. If it works, it works, but I'm not interested.'" Laughing, he said, "I had to come down three times, as you know, and all of sudden Cosson is publishing all these wild-ass conspiracy theories on his blog, trying to make me look like some criminal."

Later in the summer of 2011, Mayor Hayward hired Cosson as his public information officer. In 2013 when the PIO got in trouble for lying to the media and criticizing council members and promoting the mayor's agenda using fake names on area websites, Cosson was made the mayor's press secretary. That appointment was short-lived when Cosson was charged two months later with a non-criminal violation of the state's public records law. He was reassigned to the IT department. He would get in trouble yet again when he launched in 2014 an anonymous blog that accused reporters and others of being homosexuals and attacked council members and the mayor's political opponents. Despite reports to the contrary, the city still has him drafting press releases for the mayor and the Pensacola International Airport.

Internet Research **MESSER, JAMES “JIM”**

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In his first two years as city attorney, **Messer** defended the mayor in two lawsuits brought forth by council members. Councilwoman Sherri Myers filed suit following Hayward’s May 2012 memorandum, which directed council members to channel their communications with city staff through the mayor’s office. Judge J. Scott Duncan issued a ruling that had both sides declaring victory—essentially ruling that the mayor could institute such a policy, except in the case of “inquiries.”

In December 2012, DeWeese filed a lawsuit alleging, among other things, that the mayor’s line item veto of the council’s changes to the Fiscal Year 2013 Budget was illegal and a violation of the separation of powers and the charter. Circuit Judge Terry Terrell eventually dismissed the case. After those suits, **Messer** faded into the background, other than attending council meetings. Mayor Hayward became more dependent on outside legal advice, spending more than \$1 million annually for legal help.

In December 2014, Hayward’s chief of operations, Tamara Fountain, announced **Messer’s** days working for the city were done. In an email, Fountain told the city council that his contract would not be renewed. The mayor would not be hiring another law firm to serve as city attorney, but he intended to “bring the position in-house and will conduct a statewide search for a city attorney with a strong background in Florida law and municipal experience.” **Messer** served as city attorney on a month-to-month basis until his replacement was hired. When asked why his contract wasn’t renewed, **Messer** said, “Who knows why I’m not the city attorney anymore? I understand, I didn’t always tell the mayor what he wanted to hear, and that became a closer question toward the end of my tenure. I couldn’t tell the mayor, just like I couldn’t tell the city council that they were right or wrong when they weren’t.” His replacement, Lysia Bowling, was approved in March by the council.

Three Powers

After the council vote for Bowling, **Messer** agreed to have breakfast. He wanted to make it clear that he had no “sour grapes” about his contract not being renewed. He considered Hayward a friend and enjoyed working with him. We did talk about the city charter and how he saw his role as city attorney. According to **Messer**, the city charter gives the city council only three powers: to appropriate, to legislate, and to investigate. He argued that the city council is primarily ceremonial in many ways but still sees itself with the same powers, duties and responsibilities it had under the city-manager form of government under the old charter. “Let me ask you this question,” he said, “can they never not approve the budget?” No. They have to approve the budget. “In a realistic sense, their approval of the budget is largely ceremonial,” said **Messer**. “Here’s why. Everyone talks about five votes. Mayor doesn’t need five votes. The mayor needs three votes.”

Yes, it takes five council votes to approve the budget, but the mayor can veto any changes made to his budget. To prevent the council from overriding his veto, he only needs three votes to stop it because the charter states that such a vote requires a super-majority, six votes. “We had this lawsuit (filed by former Councilwoman Maren Deweese) that, in my opinion, established exactly

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how the budgetary process works," he said. The judge ruled in favor of the city. The waitress brought us more coffee and a platter of beignets.

Messer said, "There's a two- or three-page memo that I wrote that's the basis of our case. It's the law of the case now. Forever and a day, that cannot change." "The case clearly establishes that funds do not move back and forth like people doing the salsa on 'Dancing with the Stars,' just because the city council makes a motion. It established the mayor's line item veto." In essence, the mayor really controls the budget as long as he has three votes. "The old days are over," said **Messer**, "The old days were really over the minute that they passed the new charter establishing the strong mayor." He said, "You don't have to contort the charter. It says the mayor can veto, you don't have to go any further."

He sipped his coffee and took a bite of a beignet. "I think that goes back to a fundamental misunderstanding of the people who either voted for the charter, or the cleverness of the people that drafted it," said **Messer**. "The reality is, we can sit and have beignets or we can write blogs and bitch about it, but think about this," he said. "Every time that charter has been subjected to an objective analysis by a legally trained mind, and I'm talking about two circuit court judges, the first circuit court of appeals, and the 11th circuit, they have always upheld the city attorney's interpretation of the charter and always upheld the mayor's executive privilege vis-a-vis council." "We decided to ask for summary judgment on the cases," said **Messer**. "I hate it when I read this crap about the motion, there was no motion to dismiss. Each judge looked at the facts in the law and said this isn't going any further. These challenges are so absurd, the city's position is so strong, it's a waste of my energy to talk about. They gave us a judgment."

He said there is no conspiracy to subvert the new charter. The charter set this up and all the complaining in the world won't change it, "as long as the mayor is savvy enough to have three votes," according to **Messer**. "This charter legally changed how the executive and the legislative branches operate," he said, "It, in essence, changed the entire past structure of this city. It's something some council members have failed recognize." He said the charter language is clear and unambiguous. "One of the best covers of your paper, cause I love your covers, was 'Dysfunction Junction,'" **Messer** said, sipping his coffee. "I went, 'This guy gets it.'"

He got frustrated sitting in council meetings and hearing council members say: "We don't support the charter, we were lied to." "It's not the intent of the charter." "I can't believe this is true." "I was betrayed." He said. "The point that they failed to grasp is no one cares about the intent of the charter. Because when you look at the charter as a law, under the light of the law, intent doesn't matter."

On the council's power to legislate, the attorney said the body has yet to grasp fully its role in governance, but he added it might not matter because the mayor can veto any law they pass. "Name three significant pieces of legislation that passed," said **Messer**. "Listen to me carefully, I don't give a damn what their legislative powers are because they can't stop the mayor in any significant activity that he wants to undertake." He said, "Why? Cause the only thing important

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is downtown beautification and jobs. Anybody who votes against that's going to be run out of office."

Messer paused to eat another beignet. "My point being not to make fun of them, but to say they have no choice. They can fiddle around, are chickens going to be allowed to lay eggs in East Hill? The significant decisions in the cities, where the grant money goes, how you get the grant money, what do you do with development, do you bring in new business? That's all executive stuff." He added, "When I say they have no choice, literally they can vote against it. Can you imagine a city councilman voting against getting 300 jobs or 100, even 25 jobs—I don't want 25 jobs in the city, not going to vote for it.' They may be pissed off, they may be resentful, they may go bully the staff, but they're going to vote for it."

The one power the council has that mayor can't compromise is its power to investigate, according to **Messer**. The charter states the council has the power to "inquire into the conduct of any municipal office, department, agency or officer and to investigate municipal affairs, and for that purpose, may subpoena witnesses, administer oaths and compel the production of books, papers, or other evidence." **Messer** said the council came close several times to invoking this power, particularly in the case of former City Administrator Bill Reynolds leaking a confidential employee complaint. "They have never been able to mount the political will to vote for an investigation," **Messer** said.

The attorney said that while the charter lists duties and powers of the mayor, it has few penalties. The mayor went six months before naming a replacement for City Administrator Colleen Castille. To side-step council approval of his new department heads, the mayor has renamed the positions as directors or officers. The city has a code of ethics that hasn't been enforced by the mayor or council. **Jim Messer**, "I'm saying, don't blame the city attorney for that."

The Role of City Attorney

Did **Messer** believe he worked for the mayor? Or did he work for the council? Or did he work for the city? "Let's talk about that, because that was always frustrating," said **Messer**. "I worked for the city of Pensacola. City of Pensacola's a municipal corporation. I used to ask people all the time and then I got worn out and said screw it. You've probably figured out the advice I've given the mayor, which had been validated by the judiciary." He said, "What if I'd given the opposite opinion? I'd be incompetent."

Leaning forward, **Messer** said, "My point being, like the mayor, don't like the mayor, the fact of the matter is, the city of Pensacola is now represented in most, if not close to all things, by the mayor." He said, "When you ask who did I represent? I represented the city of Pensacola, and you have to figure out who is that. You can't represent a piece of paper. In the issues that came before the judiciary and the state attorney, the mayor's position has to be correct. You flip it and say how could I possibly represented the city council because they were legally incorrect. " The charter states that the city attorney will represent the City in legal proceedings. Why was he not

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supervising all the city's litigation? He smirked, "Cause I'm an incompetent, board certified civil trial attorney with two law degrees, with an unparalleled record of success."

I hit a sore spot. "Employment law, civil litigation, bankruptcy, code enforcement, some environmental, labor, all that stuff, in my opinion, should be handled by the city attorney's office," said **Messer**. His fee structure was based on his office handling all that work with two assistant attorneys. Instead the mayor's office made the decision to take most litigation outside of the city hall. He said the city is paying over \$1 million in legal fees annually.

What would have been the value of keeping the legal services in house? "First of all, that gives you control of the litigation," said **Messer**. "It gives you accountability for the litigation. It gives you a reasonable rate of return. It's not about ripping anybody; it's about responsibly analyzing how much does it cost to handle the legal affairs of this city, on a yearly basis and how do you want to do it? He reminded me that the city attorney's office at one time had four or five attorneys. He said his contract made sense if the mayor had brought all the litigation in-house. He would have had one assistant attorney to do the municipal law and handle the council and city boards and another to help him with the litigation.

"It would have been a fabulous office, run very efficiently and economically, when you look at what's it become now," said **Messer**, shrugging his shoulders. "That again ... I never complained about that." Overall, he is proud of his work for the city and in establishing the case law for the new charter. He said, "I took the charter, gave it what I thought was a clear, plain meaning, and subjected it to judicial scrutiny."

He admitted that he has been stunned at how some keep beating up the charter, even after the court rulings. "Why do we keep gnawing on this same bone?" he said. "That goes back to my original theory that there are a group of people that either thought the charter was sold to them as a bill of goods, and they take it personally and simply aren't going to live with it. Or you have a group of people who are simply ignorant, and you have to respect that. Because people who devote their life to being ignorant, I think they have the same respect as people who devote their life to being smart." Setting down his coffee and getting up to leave, **Messer** said, "I think that is the almost singular explanation for the dysfunction that we have."

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Studer Community Institute
January 8, 2015

**Senior living center project will go on without tax break
\$16 million project will go on despite Property Appraiser Chris Jones' rejection of request
for a 10-year property tax exemption**

Author: Carlton Proctor

Construction of a \$16 million senior living facility in Pensacola will continue despite Property Appraiser Chris Jones' rejection of the developers' request for a 10-year property tax exemption. Ground for the 89-unit facility was broken last month at the site of the former Pensacola Racquet Club. Once completed, the facility is expected to add 60 new jobs to the workforce. Jones said earlier Thursday that he and acting City Attorney **Jim Messer** met this week to discuss the legality of the application. After a review of state statutes setting criteria for Economic Development Ad Valorem Tax Exemptions, Jones and **Messer** agreed the request from Hardcourt Development LLC did not qualify as a "targeted industry."

Despite the setback project spokesman John Myslak said the loss of a \$46,000 a year tax exemption would not halt or delay construction. Myslak said he had heard the application had been rejected and sent back to the city, but as of late Thursday he had not been officially notified of the decision. "I know meeting with (Chris) Jones and city staff a couple of weeks ago there was confusion over the city's application form for EDATES," Myslak said. "If you look at the city's application and the evaluation form, it clearly includes assisted living facilities."

However, Jones said the state statute clearly identifies three categories of commercial projects that meet EDATE standards: 1) Manufacturing; 2) professional offices; and 3) businesses that produce products. "The city attorney agreed with us that Hardcourt Development was not a targeted industry and at that point the city asked us to send the application back," Jones said.

The Hardcourt saga began late last year when developers, which include City Councilmen Larry B. Johnson and Brian Spencer, applied for an EDATE with City Hall. City staff provided Hardcourt with the application and evaluation form, and, subsequently, sent it to city council with a recommendation for approval. Jones said he first learned about Hardcourt's EDATE application directly from Pensacola City Councilwoman Sherri Myers, and at that point intervened, notifying all parties that his office approval was necessary prior to the EDATE being green-lighted by City Council. Myslak said the application for a tax break would not be resubmitted. Both Spencer and Johnson did not participate in the council vote on the tax break.

Pensacola Mayor Ashton Hayward, who had supported the Hardcourt application, said in December he would withdraw that support if Jones determined the project did not meet state guidelines. As a result, Hayward has ordered city staff to accept no additional EDATE applications until they are pre-approved by Jones' office.

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Pensacola News Journal
December 18, 2014

Next Pensacola city attorney will be city employee

Author: Rob Johnson

In the wake of recent criticism about hiring outside attorneys and running up legal bills, the city of Pensacola has decided that its next lead lawyer will be on salary as an employee. The three-year contract of **James Messer**, a private attorney who has represented the city since 2011 and been paid in the range of \$120,000 to \$130,000 a year, with additional fees for litigation, expired last Sunday. **Messer**, 67, who couldn't be reached for comment on Thursday, had an occasionally uneasy relationship with the Pensacola City Council, some of whom expressed dissatisfaction with his answers to legal questions posed at their meetings. His main experience is in business law, which is important at City Hall. "I think Jim did a good job. But I also think the next city attorney should have a background in municipal law," Council Member P.C. Wu said.

Tamara Fountain, chief operations officer for Mayor Ashton Hayward, wrote a memo to the council members earlier this month in which she said her boss "will bring the position in-house and will conduct a statewide search for a city attorney with a strong background in Florida law and municipal experience." To council members, **Messer's** pay and his perceived loyalty to Hayward underscored their unhappiness with the city's hiring of dozens of outside attorneys and fees that totaled hundreds of thousands of dollars in recent years. "I like **Jim Messer**. But he always sided with the mayor on legal issues," Council Member Sherri Myers said.

Some on the council have complained that city funds haven't been budgeted to hire an attorney who works directly for them to represent their positions on various city issues, including the awarding of city contracts to vendors. Putting the city attorney on salary, as opposed to paying hourly fees, could save money, said Council Member Brian Spencer: "I believe it will result in a significant cost savings to the citizens of Pensacola" on contract negotiations and legal analysis, among other matters. Fountain said **Messer's** law firm will remain on a month-to-month contract until a new city attorney is hired, which she expects will happen within 90 days.

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Pensacola Daily News
June 24, 2014

Pensacola City Council to consider no confidence vote

Author: T.S. Strickland

Mayor Ashton Hayward's decision to fire Lila Cox — the Pensacola City Council executive — has not been well received by the city's legislative branch. Council President Jewel Cannada-Wynn has called a special meeting for Tuesday morning to discuss the decision. Also Thursday, the council will consider taking a vote of no confidence in City Attorney **James Messer** and asking voters to consider amending the city charter to allow for mayoral recall.

Cox, who served as the council's only dedicated staff member, was fired suddenly and without explanation Thursday afternoon and replaced by former city attorney William "Rusty" Wells. The city charter gives the mayor the unilateral authority to fire the council executive. However, the decision was not without repercussions. City of Pensacola fires Cox, rehires Wells
Councilwoman Sherri Myers called it the "last straw" on the back of Hayward's strained relationship with the council.

In an internal memo announcing the decision Thursday, Hayward cited the desire among many council members for more staff support, especially with legal matters, as one reason for Cox's termination. In recent years, council members have repeatedly expressed their desire for independent legal counsel. Council members have accused City Attorney **James Messer**, who serves at the will of the mayor, of failing to adequately represent their interests. In particular, some have criticized **Messer's** interpretation of the city's fledgling charter and the respective powers and duties of the city's executive and legislative branches.

The council has cited these concerns as justification for hiring their own legal staff. However, up until now, **Messer** has advised the council that doing so would not be permitted by current city law. In the memo sent Thursday, Hayward said he hoped Wells' appointment would help address the council's need for more legal expertise. However, Cannada-Wynn noted that the council executive position was supposed to be distinct from that of a council attorney. Councilwoman Sherri Myers has said she can have no confidence in Wells' independence, so long as he serves at the will of the mayor.

The council could take steps to address these issues Thursday. Cannada-Wynn has asked her fellow council members to consider taking a vote of no confidence in Messer and to ask that voters consider amending the city charter to allow the council to hire their own attorney and additional staff. The council will also consider rehiring Cox and asking voters to amend the charter to allow for mayoral recall. Under current city law, council members can be recalled by voters, but the mayor cannot. The council will meet at 10 a.m. Tuesday in Council Chambers at Pensacola City Hall, located at 222 W. Main Street.

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inweekly.net
March 27, 2014

Winners and Losers

Author: Administrator

Winners

North Hill Preservation Association

When the residents in one of Pensacola’s oldest neighborhoods learned the state was relocating its Parole and Probation office to the old Coca-Cola bottling plant on North Palafox Street, they organized and made appeals to Mayor Ashton Hayward, Pensacola City Council and Governor Rick Scott. When the governor was in town, they picketed the event. The next day the Department of Corrections announced it was not moving to North Palafox—another grassroots victory for another city neighborhood.

IMPACT 100 Pensacola Bay Area

The local women’s philanthropy group announced that its 2014 Membership Drive successfully concluded with 1,025 members. The organization will give back to the community by awarding 10 grants of \$102,500 each to non-profit agencies in Escambia and Santa Rosa Counties in October. Since its inception in 2004, IMPACT 100 Pensacola Bay Area has awarded 47 grants to 39 different non-profit agencies for a total of \$5.151 million.

The Arc Gateway

The organization is celebrating 60 years of serving children and adults with intellectual and developmental disabilities in the greater Pensacola area. With the support of its members and volunteers, The Arc Gateway has provided a variety of programs—from pediatric therapy and recreation to residential support and vocational training—to help the people they serve realize their dreams.

Losers

City Consultant Addiction

One of the biggest criticisms that the Independent News had of the city manager form of government was its love for hiring consultants, completing studies and then ignoring the recommendations. The “addiction” has not gone away. The city paid Robert Marbut, the expert on the homeless, \$3,000 plus travel expenses not to exceed \$1,413 for two days of basic research and to conduct its community forum on the issue. It also picked up the tab for Carol Johnson, another consultant, to speak at the joint workshop of the Pensacola City Council and Escambia County Board of County Commissioners.

Jim Messer

The attorney for the city of Pensacola has opined all city leases must go before the Pensacola City Council for approval. That is until Mayor Ashton Hayward lost the vote to give the airport food concessions contract to OHM Group. We’re not sure the city charter envisioned the city attorney being only the mayor’s attorney.

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Pensacola Daily News
March 18, 2014

Hayward vetoes Pensacola council action on airport contract

Author: T.S. Strickland

Pensacola Mayor Ashton Hayward on Tuesday vetoed the Pensacola City Council's decision to extend the current concessions agreement at Pensacola International Airport with Robert de Varona. The council had authorized the extension Thursday after the mayor pulled a recommendation that the council award a 10-year, multimillion-dollar contract for airport concessions to Missouri-based OHM Foods when de Varona's contract expires March 31. The council initially rejected Hayward's recommendation of OHM in January.

City Attorney **James Messer** had advised council members before the vote that he did not believe they had the authority to extend the contract unilaterally. A separate, third-party opinion by Tallahassee-based law firm Allen, Norton and Blue — secured by the mayor earlier this year — came to the same conclusion. In a statement issued Tuesday afternoon, Hayward said he did not make the decision to use his veto power lightly. "While I believe council took an improper action, I have exercised my executive veto power out of an abundance of caution," the mayor said. "My city administration went above and beyond to conduct an extremely fair competitive bidding process that remains uncontested by any of the (request for proposal) participants. I am disheartened that some City Council members continue to try to undermine and circumvent the fair process, and continue to act in a way that subjects the city to legal liability."

Last year, OHM was ranked the highest among four companies that bid for the contract by a five-member selection committee. The second-highest ranked bidder was Creative Food Group of New York, which partnered with de Varona and several other local restaurateurs to offer Pensacola brands at the airport. Since then, representatives of Creative Food Group and several council members have expressed concerns with what they said were flaws in the selection process and called for a new request for proposals to be issued. Hayward, however, has stood by the committee's recommendation and accused de Varona and his associates of trying to subvert the selection process.

Last week, Airport Director Greg Donovan told the council that two temporary vendors were prepared to begin operating at the airport once de Varona left — leaving open the possibility that Hayward might issue a new request for proposals. There was no mention of those temporary vendors in Tuesday's statement. In fact, Hayward said he planned to award the concessions contract to OHM, without the consent of the council. **Messer** had told council members last week that he felt the mayor had the authority to do so, though several council members objected to his interpretation of the City Charter.

According to the charter, "a veto may be overridden only by an affirmative vote of a majority plus one," or six council members. Five of the eight council members present at Thursday's meeting voted to extend the contract. Only council members Andy Terhaar, Larry Johnson and

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Jewel Cannada-Wynn opposed the extension. Councilman P.C. Wu, who did not attend the meeting, has supported de Varona during previous votes. It is not clear whether the council would have the authority to overturn the veto. **Messer** has told council members he believes the mayor has sole power to award the contract — a legal interpretation that was not mentioned when the mayor first asked the council to approve the contract in January.

On Tuesday, Hayward said he felt the decision was in the best interest of taxpayers and travelers. "OHM Group's minimum annual guarantee translates into an additional \$1,038,720 over and above the current vendor during the 10-year contract," Hayward said. "OHM brings over 100 jobs to the local economy. OHM ensures 60 percent of goods and services purchased will be made with local vendors. ... This is clearly the best business decision for the airport and the traveling public. "There will be no interruption in service, and no further action by council is necessary to ensure continued service." The City Council will consider the mayor's veto at its agenda conference Monday.

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Pensacola News Journal
January 28, 2014

No consensus on airport concessions

Author: T.S. Strickland

Five days after the Pensacola City Council rejected Mayor Ashton Hayward's recommendation to award a 10-year, multimillion-dollar contract to Missouri-based OHM Foods, there appears to be no consensus on a path forward. The council was split 4-4 on the decision, with Councilman Brian Spencer abstaining because of a conflict of interest. In a statement issued through his press office Monday, Hayward was highly critical of the council's decision. "Our City Council is charged with wearing several different hats," he wrote. "One of those hats is board of directors of city enterprises. With that role comes a fiduciary responsibility to the bottom line of the enterprise and an obligation to get the best deal for the taxpayers. The council members who voted against awarding OHM the concessions lease at the airport failed to meet this obligation as well as the requirements of our competitive bidding process."

The current airport concessions agreement — held by local restaurateur Robert de Varona — expires March 31, and the future of the airport's concession services after that date is uncertain. De Varona, along with fellow local restaurateurs Collier Merrill and Rob Mackey, joined forces last year with Creative Food Group of New York to offer well-known Pensacola brands, including The Fish House, as dining options at the airport. Their proposal was ranked second by a five-member selection committee last year —narrowly outscored by OHM.

In his statement, Hayward said the city was considering issuing a new request for proposals in coming months. Councilman Charles Bare has estimated that process would take six months to a year. Bare has said the contract with De Varona includes a "holding over provision" that would allow the mayor to extend the contract on a month-by-month basis during the request process. The mayor, however, has expressed no appetite for the idea. On Monday, Hayward said the city was considering finding "temporary concessions vendors" to operate at the airport in the interim. On Tuesday, Tamara Fountain, communications administrator for the city, said De Varona was not among the vendors being considered.

At least one council member was puzzled by the statement. "To me it seems like going to a temporary vendor over going with someone who has been there ... seems almost vengeful," Councilman P.C. Wu said Tuesday. "I don't understand the logic." The idea also has stoked simmering tensions between Hayward's office and the council over the division of powers under the city charter. Bare said Tuesday that he did not believe the mayor would have the authority to contract with a temporary vendor without the council's approval. However, Fountain said that temporary service contracts — such as would be executed at the airport — were solely within the mayor's purview and would not have to go before the council.

"The city attorney (**Jim Messer**) has opined that this would be in the mayor's jurisdiction," Fountain said Tuesday. **Messer** could not be reached by deadline to confirm the statement. The

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city charter also was invoked, with differing interpretations, during last week's council discussion. After council members rejected the OHM proposal, Bare brought forward a proposal to extend for 12 months the contract with De Varona. That proposal was defeated 6-3, with only Bare, Wu and Sherri Myers in support. Bare has said he was not in favor of awarding the contract to Creative Food Group, preferring, rather, to see an entirely new RFP. However, he also said it was unfair to De Varona to extend the contract on a month-by-month basis –without some guarantee that his business would not be shut down on 30 days' notice. Wu said he thought extending the contract was "the logical thing to do." However, the mayor said he did not believe the council had the authority to extend the contract.

When the question was referred to **Messer**, he called it "an interesting issue of executive versus legislative power that I'm not prepared to opine on." Though, he later added, "I think the stronger argument is that it is an executive power (i.e. within the mayor's purview)." On Tuesday, Fountain said **Messer** had requested a third-party opinion on the matter to avoid the appearance of a conflict of interest. That opinion was not available. Speaking Tuesday, Wu said he was "shocked" that no clear plan had been articulated by the mayor's office, though he expected that the administration would present a plan to the council at next month's meeting. "I was surprised that there wasn't a backup plan in place," Wu said. "It doesn't seem like there was even any thought given to it."

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Inweekly.net
May 8, 2013

Council's CMPA Divide
Author: Jeremy Morrison

Pensacola City Attorney **Jim Messer** seemed unclear on exactly what City Councilman Brian Spencer was wanting of him during last night's Committee of the Whole meeting. "They're on certain grounds to remove trustees," **Messer** told the councilman. "In order to establish a process or deviate from 'em, the Community Maritime Park Associates is going to have to amend their bylaws." Spencer had requested that the attorney provide a legal memorandum outlining a process by which council could remove the sitting CMPA board, and replace trustees with either themselves or their appointees. It was a continuation of an ongoing discussion concerning the composition of the CMPA board, which oversees the Community Maritime Park. "I guess my question is, what's the reason behind this?" asked Councilman Gerald Wingate. "We're not getting the answers we want from the CMPA is the reason we want to replace them? We're not satisfied with what they're doing? What's the reason?"

Spencer noted recent issues concerning the CMPA— "certainly, it's no secret that Mr. Gunther has been the headliner, stealing a lot of ink lately"—and said that council members had needed to engage in "spirited, lengthy discussions, as though we were sitting as the CMPA." Over the last few months, questions have arisen as interested parties—first the YMCA, then Beck Property Company—have sought parcels at the Community Maritime Park. Both Spencer and Councilman Larry B. Johnson have pushed for reassessing the CMPA's composition.

While several members seemed up for engaging **Messer** in an academic legal exercise, they also voiced concern about the impacts of the direction Spencer was laying out. Members raised concerns about cutting loose trustees who have put in countless volunteer hours and about how much control council actually held over the CMPA due to the involved New Market Tax Credits. Council President P.C. Wu warned members to "be careful what you wish for," noting how many hours of service were required of CMPA trustees.

Ultimately, council was split 4-4 on requesting a memorandum from **Messer**. Councilpersons Sherri Myers, Andy Terhaar, Wu and Spencer were in favor, while Charles Bare, Megan Pratt, Vice President Jewell Cannada-Wynn and Wingate were opposed. Councilman Johnson was absent for the vote.

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inweekly.net
April 10, 2013

A Day at the Park with Jim Reeves

Author: Jeremy Morrison

In the wake of the YMCA’s walkaway amidst a procedural nosedive, city of Pensacola Attorney **Jim Messer** has issued a memorandum outlining the legal relationship between the city and the Community Maritime Park Associates. The attorney describes the CMPA as an “alter ego” of the city, and indicates that the entity “has no right to deviate from whatever basic concepts are transmitted to it for negotiation.” With the intention of building a new YMCA on parcel 8 at the Community Maritime Park, Y representatives approached Mayor Ashton Hayward late last year. When he brought the organization before the Pensacola City Council for consideration—with a lease hammered out with **Messer** in hand—questions arose about process. Council members wondered why the Y had not come through the CMPA board.

After approving the Y lease—in “concept”—the city council left it to the CMPA board to work out the lease. The park board then decided to direct the YMCA away from the waterfront parcel, which resulted in the organization leaving the negotiating table. As a result, the city council requested that **Messer** provide an opinion on how the city and CMPA were to function when dealing with the park. He informed them they could remove all of the CMPA trustees and replace them with members of council or their designees. In addition, the city recently commissioned an assessment of park finances and operations from former Escambia County Administrator Randy Oliver. The city has also brought aboard a firm to market the park, a job that has been left to the Parks and Recreation Department.

CMPA Treasurer Jim Reeves took a few moments recently to enjoy some sun at the park’s Hunter Amphitheater and talk about the recent issues surrounding the Community Maritime Park.

IN: Let’s dive into the middle of it. What’s your opinion on **Messer’s** most recent opinion?

REEVES: Well, **Messer’s** most recent opinion is absolutely wrong.

IN: Why?

REEVES: Because there’s four documents that control the Community Maritime Park Board’s involvement in this particular park and, and he really asked, in my opinion, the wrong kind of questions to the New York firm, but when you’re a lawyer and you want a specific answer, and you’re paying for it, you usually can get whatever answer you want.

IN: What do you think we will have learned on the other side of the YMCA issue?

REEVES: What I think we have to work together in the spirit of unity, harmony and cooperation. And the problem is, you have the executive branch, you have the legislative branch, and then you have this group that was set up primarily in order to get the New Market Tax Credits, and so we just all have to work together. I mean, nobody can dominate necessarily.

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IN: What are your thoughts on the paths **Messer** laid out going forward?

REEVES: First of all, I've asked for public records, I've made a public records request concerning the writing of the opinion from the exterior lawyers. Those lawyers do not represent the Community Maritime Park Board. Those lawyers represent either the mayor or the city. And so I kind of want to see the background of how that got generated and what the instructions were prior to that opinion being written. Haven't gotten that request other than an acknowledgement that I asked for it.

IN: In your view, how does it work?

REEVES: Well, how it works, is simply we're the landlord of the park, meaning the Community Maritime Park board is the landlord. Nobody, no lawyer—I'm a real estate lawyer—no lawyer would be happy without having a joinder of the landlord. And we are the landlord, it's just that simple. All you have to do is look at the title evidence for the Studer piece and you will see that it requires a joinder of the Community Maritime Park Board. So, he's just wrong.

IN: In this Y deal, where in the process do you think it went wrong?

REEVES: In the process. And that's not to be a smart answer. It would have been so much easier if we had all worked together and kind of not have excluded anybody. Don't exclude council, don't exclude the mayor and don't exclude the Community Maritime Park board.

IN: What do you think of Randy Oliver's report?

REEVES: [Laughter] He works for the city. He was instructed by the chief of staff that he was not to make negotiate any deals or what-have-you. That report was to go through the mayor. Period.

IN: Do you like any of his recommendations?

REEVES: Oh sure I do, sure I do, but we're all in this together and, look, if the Community Maritime Park board was broke, who do you think is gonna pick up the tab? The city. So, we just gotta work together and work this situation out, both for the city's sake and for the park's sake. And it can be done.

IN: Isn't the Community Maritime Park broke?

REEVES: Sure, yeah sure. But, understand, our biggest bill comes from the city of Pensacola. For police, for Parks and Recreation, cutting the grass, it all comes from the city of Pensacola. So, it's one of those things, they can't collect the rent from everything that goes down here, and we have all the expenses. It's that simple.

IN: Do you see any of these issues being resolved anytime soon?

REEVES: I hope so.

IN: How do you think this park should be marketed?

REEVES: I'm going to keep from being presumptive. You know, the mayor's hired a marketing firm, and so I'm gonna kind of wait and see what they say. I wouldn't be surprised if there were

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other people looking to locate here, but they know a better way to do it than the last try with the Y. That's a rhyme.

IN: What do think of the Park and Rec's job so far?

REEVES: Well, let me put it this way. It's hard for, in my opinion, government to do what the private sector could probably do better. I don't want to be critical. I think they've done the best they can with what they've had to do with. Is that tender enough?

IN: That is tender enough.

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Studer Community Institute
September 27, 2012

Whose line-item: defining the mayor's veto and purchasing powers

Author: Joe Vinson

The Pensacola City Council will determine at Thursday's meeting how to respond to Mayor Hayward's line-item veto of their budget amendment, which removed \$220,000 appropriated for the city's marketing campaign and applied it to the council's own budget. If the council can't garner the six votes needed to override the mayor's veto (or even if they can), they are expected to challenge the mayor's asserted authority to veto an amendment rather than an actual budget line-item. But will it even matter?

In exercising his line-item veto power, Mayor Hayward declared that he was not only removing the extra funds that council appropriated for itself, but also restoring those funds to their originally allocated purpose. In other words, rather than striking a line-item from the amended budget adopted by council, he was treating the council's amendment itself as a line-item. On her blog, Councilwoman Maren DeWeese questioned this ability. "Someone needs to explain to the mayor that he does not have the power in the use of a line-item veto to reallocate the funds back to the previous location in the budget," she wrote. "It's not called a line-item reallocation. Does the mayor now have more power than any governor in America?"

City Attorney **Jim Messer** later issued an opinion explaining why he believes the mayor's action was consistent with the city charter. "The adoption of the City budget is a continual process that begins and ends with a balanced budget," he wrote, saying that the budget must remain balanced throughout the process. He added that the council may "propose changes" as "an expression of their intent that the Mayor alter his budget," but that ultimately, the council's actions "cannot effectuate the movement of appropriations." So, if the mayor's veto power only removes appropriations without reallocating them, the budget would be unbalanced, because there would be more revenue than expenditures. **Messer** says that can't happen.

But wait a minute: isn't that exactly what happens in the state's budgeting process? Florida has a balanced budget obligation at both the statutory and constitutional levels, but the purpose is clearly to avoid a deficit. According to Florida Statute 216.221, the governor must "ensure that revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund." According to Article 7 of the Florida Constitution, "Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period."

If the legislature passes a balanced budget and the governor vetoes certain line-items, that money simply isn't spent. The unappropriated surplus — \$142.7 million vetoed by Governor Rick Scott in the current budget, for example — is effectively added to the state's reserves. Indeed, Florida Statute 216.179 actually forbids the governor from reallocating appropriations from vetoed programs.

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Councilwoman Sherri Myers asked attorney Alistair McKenzie — who is also representing her in the council communication lawsuit — to provide a legal opinion about the mayor’s veto power. According to McKenzie, “There is no basis whatsoever in the law or the City Charter for the proposition that a veto can be an affirmative act which moves, alters, amends, or reallocates funds.” He says that the city charter uses the terms “veto” and “line item veto” without any definition that would “broaden or alter the common understanding of those words as expressed by the Supreme Court of Florida,” and therefore the mayor’s veto power should be construed in the same context as the Florida governor’s veto power.

McKenzie cites the 1980 case *Brown v. Firestone*, in which the Florida Supreme Court ruled that the governor’s veto “is intended to be a negative power ... It is not designed to alter or amend legislative intent ... the veto must, in effect, destroy the fund.” Furthermore, the court’s 1985 ruling in *Thompson v. Graham* said, “The governor may not reassign vetoed moneys to other uses; he can neither create projects nor require the legislature to do so. The funds vetoed in this appropriation remain unexpended rather than being used for a different purpose.” Aye, but here’s the rub. Even if council succeeds in its assertion that the mayor can’t use his veto to reallocate funding, it’s an empty victory. The mayor will still be able to fund the marketing campaign in largely the same way he has already funded it: with a memo.

Gaining purchase. Earlier this year Mayor Hayward contracted with the Tallahassee-based Zimmerman Agency for two major projects: a branding campaign worth \$82,500 and a three-year marketing contract with a base fee (i.e. retainer) of \$474,000 a year. Neither project was budgeted for FY 2012, and neither project was brought to the council for discussion or approval. For all the talk of the new charter, it’s surprising how little that document has to say about purchasing. It’s the City Code of Ordinances, rather, that grants the mayor his purchasing power. Section 3-3-2 of the city code says the mayor may purchase commodities and services up to \$25,000 without council approval or even a competitive bidding process. If a vendor is a certified Small Business Enterprise (SBE), the limit jumps fourfold to \$100,000. Anything beyond that, though, “must be approved by council prior to purchase or contract,” unless it was “specifically adopted in the annual budget or appropriated by council.”

How, then, do we explain the two Zimmerman contracts? They’re both in excess of \$25,000 — one of them is in excess of \$100,000 — and the Zimmerman Agency, a subsidiary of the corporate conglomerate Omnicom Group, is definitely not an SBE vendor. The answer can be found in a memorandum, entitled “Mayor’s Purchasing Authority,” authored last year by Finance Director Dick Barker. It describes a February 17, 2011 meeting where Barker met with Mayor Hayward, Assistant City Administrator Al Coby, City Attorney Rusty Wells, and Assistant City Attorney Susan Woolf to interpret the city code and determine the mayor’s purchasing authority. “At the conclusion of the meeting, all were in agreement of the interpretations and the purchasing authority granted to the Mayor,” Barker wrote.

One of the key determinations in the memo relates to this portion of the city code: “The purchase of commodities and services that have been specifically adopted in the annual budget or appropriated by council may be contracted for or purchased by the mayor without further action

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of council.” “Therefore,” the memo states, “as long as the commodity or service has been appropriated, the Mayor may purchase it without going back to council regardless of cost.”

It goes on: “The glossary of the City’s annual budget states that specific appropriations are at the department, program and/or line item level.” That last part’s the real kicker. Because the budget’s glossary defines department-level funds as “specific appropriations,” the memo asserts, the mayor can unilaterally contract for any commodity or service in the budget, “regardless of cost.” Combine that with an innocuous-seeming power granted by the city council’s policy manual (“The Mayor shall have the authority to transfer appropriations between expenditure categories and between departments or programmatic activities”) and you’ve got the mother of all loopholes. To wit: if there’s unspent money somewhere in the budget, it can be reallocated by the mayor to a different department and for practically any purpose, all without council approval.

Take the city’s marketing contract, for example. While part of the Zimmerman retainer was covered by existing enterprise appropriations (e.g. the airport’s advertising budget), most of it — \$20,000 per month — had to come from the general fund. Since this program wasn’t in the FY12 budget, money was moved around from various departments: \$11,667 per month from MIS, \$4,167 per month from the City Administrator, and \$4,167 per month from Neighborhood Services. In the budget passed by council, that money was allocated to line-items identified as professional services, salaries, and advertising for those three departments. Under the standing interpretation of the mayor’s purchasing authority, however, those funds were repurposed — again, without approval by the city council — and sent to an advertising agency in Tallahassee.

Councilwoman Megan Pratt and others have brought up this issue in the past and are increasingly frustrated with how easily the budget can be changed after its passage. “In theory, we’ll soon have a budget for the city,” Pratt said at Monday’s Committee of the Whole meeting. “We need to ask ourselves if it’s worth the paper it’s printed on.” “If we decide to fund somebody in MIS, which we’re hearing was lacking in performance, that money could then turn around and be used for advertising,” she continued. “That’s really not what I read the charter as intending when the pro-charter group said that all projects must be in the budget and approved by council.” Councilwoman DeWeese echoed those remarks, criticizing the “interdepartmental moves” used to fund the Zimmerman contract with unfilled staff positions. “Obviously it worked from the accounting standpoint,” she said, “but that was a completely different use of funds than what was contemplated and approved in our budget.”

Dr. Pratt made a motion asking **Mr. Messer** to draft an ordinance based on recommendations she had discussed. “I certainly have no objection to drafting the ordinance, but I’d just appreciate another two weeks,” **Messer** said. “I want to coordinate with Mr. Barker. It’s sort of, ‘you want it bad, you get it bad.’ I’d like to give a little more thought than the next council meeting, but I don’t have to take all year.” Because the mayor’s purchasing authority is not set out in the charter, but is based a combination of ordinances and policies — indisputably the realm of council — it would be relatively easy for council to make alterations. Until they do, the significance of any particular line-item veto is negligible.

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Inweekly.net
Sept 26, 2012

The Buzz

AG Snubs City's Audit Process The selection process for an accounting firm to audit the city of Pensacola's financial statements was filled with controversy—council challenges, tie votes, protests, a motion to reconsider and now this opinion from the attorney general. In a Sept. 19 letter to the city, Florida Attorney General Pam Bondi informed officials that the original request for proposal (RFP) for an audit firm that was created by City Finance Director Dick Barker and found to be defective could not be made valid by an approval by the council's audit selection committee. By law, the audit committee is required to create the RFP for the annual financial audit. Instead, Barker created the factors to be used in evaluating the audit services, thus invalidating the RFP. Once the RFP was issued, the audit committee couldn't simply make it valid by approving it after the fact.

The audit issue came to light during the Pensacola City Council's May 7 Committee of the Whole meeting when Councilwoman Maren DeWeese brought up the audit committee. She argued that the committee—not solely city staff—should have input into the RFPs and also felt that the committee's composition should be reevaluated. "It's for us to appoint the entire committee, it is our decision," the councilwoman said. "This is a legislative function."

In February, the city council had approved selecting an external auditor and the RFP process. It voted that the audit selection committee was to be comprised of: a council member, the city's chief financial officer, a member of city staff and a citizen appointed by the mayor. The RFP was similar to the one used in 2007. Prior to the May 7 meeting, DeWeese had laid out her argument in a series of letters to city administration. She contended that the current committee composition could potentially present a "taint to the auditor selection process" and requested that the RFP process, which began at the end of March and wrapped up earlier this month, be reassessed. "If the process moves forward before council takes up the issue, I consider this to be an example of management override of internal controls ..." DeWeese wrote.

In a May 7 letter to the council, City Administrator Bill Reynolds confirmed that the "audit selection committee should have input into the requirements of the RFP per state law," but said "all substantive elements that the statute outlines are included in the RFP. The procedural defect in the action as outlined by the councilwoman can be easily cured by having the constituted committee ratify the actions previously taken."

Although City Attorney **Jim Messer** agreed with Reynolds and said the situation could be remedied by ratifying past actions, several members of the city council were hesitant to bless the already-commenced RFP process. They instead favored starting the process over with a new RFP. "Basically, we did not follow our policy, is that correct?" said Councilman Larry B. Johnson. "Most of the requirements of the law have been followed," **Messer** said. "However, if you're asking me if all the requirements of the law have been followed, then no." "If we don't

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ratify it as you just said, we're really setting ourselves up for a legal challenge," Johnson said, anticipating responses from firms already engaged in the RFP process.

To support his May 7 advice to the city council, City Attorney **Messer** had cited the case *Frankenmuth Mutual Insurance v. Magaha*. In that case involving Escambia County Clerk of Court Ernie Lee Magaha, the Florida Supreme Court considered whether the county commission could ratify a contract that Magaha had executed without authority. The Court determined the Escambia County Commission had the power to approve the agreement after it was executed. Bondi determined the Frankenmuth ruling didn't apply because of the special statutory requirements placed on the audit committee. She wrote, "It is questionable, moreover, whether the audit committee's statutorily prescribed functions may be delegated to the financial officer. Absent statutory authority, the discretionary authority of a public official or entity may not be delegated to a subordinate."

The Long Search

The Pensacola City Council may be a bit closer to finding its long-awaited executive staff person. After meeting recently to discuss three finalists for the position, Council President Sam Hall and Councilwoman Sherri Myers decided to present the candidates to the entire board. The most recent twist in the council's search for a council executive was the body's decision to turn to an employment agency for a supply of qualified applicants. Hall and Myers had both interviewed the top three from the agency's pool, which made it awkward when the council president threw a fourth candidate on the table during the pair's Sept. 21 meeting. "It's been two years," protested Myers, "and this would just be changing the process again."

The process of finding a suitable executive has flailed in the past, with pools of candidates being ditched. The meeting to discuss the top candidates had been set up after Myers requested that the council move the process along. "And now we're bringing up someone named David Bailey and I have a feeling there's a little bit of backdoor politicking going on here," Myers said. Hall said that he had recently spoken with Bailey—currently the city manager in Seaside and formerly Pensacola's CRA head—and thought he'd be a good fit for the position. "There is no hidden agenda here," the president said. "I just don't want to miss the opportunity to put the very best candidate in."

Myers said that she, too, had been approached by people interested in applying for the council executive position. Though she considered them to be "highly, highly qualified" for the post, she turned them away because the selection process had already begun. "The process is closed," she said. "It's too late." Members of the public also took issue with adding Bailey to the mix. They complained that the process had gone on too long and singled Hall out as delaying it on prior occasions. "I don't remember clogging it up three times, just twice," he told them. "And I apologize for that."

Councilwoman Megan Pratt, who attended the Hall-Myers meeting as a member of the public, told her fellow council members that she had heard of the Bailey possibility "through the

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grapevine” and considered him to be a “straight shooter.” She said she could support a six-month trial stint, and maybe more. Pratt rejected Hall’s suggestion that a decision be delayed until newly elected council members are seated. “They get on in the middle of November, then there’s Christmas, the there’s blah, blah, blah,” she said. “I don’t want to wait. I want to get this person here.”

Another council member in the gallery, Brian Spencer, said Bailey—who he previously had a working relationship with—had a “level of experience that is hard to replicate,” as well as “institutional knowledge,” but then argued for the sake of the process. Charles Bare, who will soon take Hall’s council seat, said he was “flabbergasted” with the executive search thus far and also suggested that the council stick with the current process due to the “terrible message” altering from that course would send to citizens. He noted that if council didn’t accept any of the three finalists, it could then reopen the pool for anyone—including Bailey—who wished to apply.

The three finalists for the council executive position are Dr. Lila Sams Cox (who works with the SRIA), David J. Murzin (a former state legislator) and Dana L.S. Williams (former Clerk of Court in Destin). Hall had whittled that list out of a five-candidate pool provided by the Landrum employment agency. Hall and Myers will have an expanded conversation on the subject with the full city council soon.

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Studer Community Institute
September 22, 2012

City auditor selected illegally, says Florida attorney general

Author: Ann Regan

The City of Pensacola failed to follow state law for selecting its auditor, according to Florida Attorney General Pam Bondi, and therefore illegally contracted with accounting firm Saltmarsh, Cleaveland and Gund this past July. The likely result of the attorney general's opinion, which she issued on September 19, is that the city council must start the auditor selection process over again in order to comply with state statutes.

"The Legislature has provided a template which must be followed by a municipality before the municipality may choose an auditor," Bondi said in her opinion. "Where the Legislature has prescribed the manner in which something is to be done, it is, in effect a prohibition against its being done in any other manner." The template referred to by Bondi is state statute 218.391, "Auditor selection procedures," which provides a detailed step-by-step procedure for a city council to use to select an independent auditor.

Chief among the state-mandated procedures is that the city council's audit committee must establish factors to be used in evaluating potential auditors and must issue a request for proposals (RFP). Furthermore, the audit committee's RFP process must be open to the public. The city failed to follow these steps, Bondi determined.

The city's troubles began back on February 20, when the mayor's office placed a discussion item, "External Auditor Selection," on the council's agenda and recommended it follow the selection process detailed in the city's Financial Planning and Administration Policy. Neither City Attorney **Jim Messer** nor other top-level staff (nor anyone on council for that matter) was aware that the state had its own procedures which supersede the city's. As a result, the RFP for a city auditor was issued by Dick Barker, the city's chief financial officer, instead of by a council-appointed audit committee, as mandated by statute. The attorney general called the RFP issued by Barker "defective" and "contrary to the requirements of the law."

Councilwoman Sherri Myers was first to point out that Barker's RFP contained paragraph after paragraph of legally non-compliant language. When **Messer** repeated to the council that the RFP could be ratified with the existing language, Myers, an attorney herself, challenged his legal reasoning and successfully got the council to back her request to obtain the attorney's general's opinion. Myers said that as a result of Messer's actions, the city will probably be faced with rescinding Saltmarsh's contract, and she wants **Messer** to pay for any resulting financial damages to the city. "Either **Messer** should pay for his legal inability out of his own pocket, or his malpractice insurance should pay for it," Myers said.

On May 7, the city council became aware of the state statutes and selected a new audit committee, chaired by Diane Mack, whose first task was to bring the city back into compliance

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with state law regarding the RFP. At the committee's first meeting on May 17, Barker presented the committee with two options, both of which he said had been confirmed by **Messer**. The first option, which Barker strongly advocated, was for the committee to ratify Barker's RFP. The second option would be for the committee to begin again and issue a new RFP.

Chairwoman Mack sought the opinion of **Messer** regarding the validity of ratifying Barker's RFP. In a written opinion to the audit committee dated May 21, 2012, **Messer** assured the committee, "Ratification will validate the RFP and enable the Committee to continue with the selection of an auditor." Wrong again, said Attorney General Bondi. "An audit committee's statutorily prescribed function to create a request for proposals may not be delegated to a subordinate or other entity," Bondi wrote. "The committee may not, therefore, ratify a defective request for proposals which was created by the county's [sic] financial officer contrary to the requirements of the law."

By ratifying the faulty RFP, the option of starting the RFP process anew was taken off the table. The audit committee reviewed the proposals of the four accounting firms, ranked Warren, Averett, O'Sullivan and Creel as the number one firm, and sent its recommendation to city council. The accounting firm of Saltmarsh, Cleaveland and Gund protested the committee's ranking process to the city council. The city council eventually accepted Saltmarsh's protest and decided that the city's auditing service contract should be awarded to Saltmarsh.

To complicate matters, Council President Sam Hall suggested that the council simply renew Saltmarsh's contract from 2007, rather than negotiating a new contract. That contract had been negotiated, not by the city council, as required in state statute 218.391, but by city staff. Again, **Messer** said nothing to council members about the illegality of signing the amendment to the 2007 contract. With no objection being heard from the city attorney, the council went along with Hall's suggestion.

Saltmarsh has been the city's independent auditor for decades. When Saltmarsh was awarded the last five-year contract in 2007, state statute 218.391 had already been on the books for two years. Councilwoman DeWeese said that Hall was aware of that when he recommended amending the 2007 contract, yet no one — Hall, **Messer**, Barker, or anyone at Saltmarsh — spoke up. Both DeWeese and Myers said that in order to comply with the attorney general's opinion, the entire selection process will need to be restarted. Incoming Councilman Charles Bare, who will take over Hall's at-large seat in November, said the selection process had been "rammed down the audit committee's throat by Dick Barker and the executive branch of the city government," and that he would work with council to resolve the issue. "The city council's duty to select an outside accounting firm to audit city operations is an important check and balance on the power of the executive branch that cannot be taken lightly," Bare said.

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Studer Community Institute
September 18, 2012

Hayward vetoes budget amendment

Author: Joe Vinson

On Monday afternoon, Mayor Ashton Hayward issued the first veto of his administration and the 2010 charter, but it's not yet clear if the veto will have the effect he intended. Last Wednesday, Councilwoman Sherri Myers kicked off the second public hearing for the FY 2013 budget with a motion to remove a large chunk of funding from the ongoing (and increasingly embattled) marketing contract with the Tallahassee-based Zimmerman Agency, valued at \$1.2 million in the proposed budget with appropriations split between several departments. Myers singled out advertising line items in two departments: the mayor's office, which increased from \$200 to \$50,200, and MIS, which increased from \$2,500 to \$172,500. She proposed reducing those line items to their FY 2012 levels and applying the \$220,000 difference to the council's own professional services budget.

"I want you to remember that the mayor has many other resources at his disposal to promote himself and his office," Myers said. "We need to increase our budget, and this is how we do it." A long discussion ensued about the value and purpose of the marketing campaign, with several council members arguing that it was not a good use of city money. Councilwoman Megan Pratt pointed out that part of Mayor Hayward's campaign platform was to eliminate government duplication by collaborating with other agencies focused on economic development. "Going alone on advertising doesn't really seem to mesh with that, and we're duplicating the efforts of the TDC, the chamber, and local businesses," Pratt said, noting that the proposed budget would spend \$400,000 more on advertising than the previous year. "Just to put it in a context, that's more than we spent for the entire Westside Library."

Councilman Larry Johnson made the point that a marketing campaign is only as good as its product. He recounted meeting a woman on a recent trip who said she had considered moving to Pensacola, but changed her mind after reading articles online about the rash of drive-by shootings in the area. "It wasn't because we didn't have an adequate rebranding effort, or we weren't slickly advertised, or we didn't have a cool slogan," Johnson said. "It was crime." Councilwoman DeWeese asked about the possibility of defunding the entire Zimmerman contract and allowing the individual enterprises to continue their marketing efforts through supplemental budget resolutions. She had made a similar inquiry at the first budget hearing, but city staff still wasn't sure if it would be a breach of the contract executed by the mayor's office. "I have not examined the terms and conditions of the contract, so I'm not able to answer that question," said City Attorney **Jim Messer**. "I certainly can get the information and we can take a look at it," said City Administrator Bill Reynolds, "but I don't have any specifics on the Zimmerman contract itself that I can offer."

City CFO Dick Barker strongly cautioned the council against defunding the entire advertising budget, saying that it would be extremely disruptive to the city's enterprise operations.

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Ultimately, the council approved Councilwoman Myers’ amendment 5-3, removing \$220,000 from the mayor’s office and MIS budgets and adding it to the council’s professional services budget. Councilmen Hall, Spencer and Wu were opposed. Councilman Johnson proposed a second amendment, which redirected \$120,000 from the mayor’s office budget — not coincidentally the same amount as Chief of Staff John Asmar’s contract — into the Pensacola Police Department’s training fund. That amendment passed 7-1 with Councilman Wu as the lone dissenter. The amended budget was adopted by an identical 7-1 vote.

On Monday afternoon, Mayor Hayward announced that he was using his line-item veto power on the council’s first amendment. “Creating economic opportunities for our City remains one of my top priorities,” he said in a statement. “To do so, we need the right tools. Let’s build on the momentum of the past 20 months and tell Pensacola’s story not only to ourselves but to the rest of the world. Now is the time to continue to move our City forward, not to place obstacles that may thwart our progress. It is time to elevate our efforts.”

The mayor did not veto the second amendment, but rather “took issue” with it, noting that Police Chief Simmons had received all the training dollars he had requested and did not seek out additional funding. “I am concerned about the process in which this budget amendment came about, which I will discuss further at a later date,” Hayward said. However, it’s not entirely clear what power the mayor’s veto actually has. According to the charter, “The Mayor may veto any ‘line item’ in a budget or appropriation ordinance or resolution within five (5) days of adoption by City Council.” That seems to state that the mayor can only veto a line-item of the amended budget as adopted by council — not the amendment itself. While this may seem a minor distinction, it would mean that the mayor could keep the council from giving itself \$220,000, but he wouldn’t be able to reallocate that money back to the marketing campaign.

According to the PNJ’s Nate Monroe, City Attorney **Jim Messer** has since given the opinion that “the effect of the veto is to reverse Council’s action, placing those dollars back where originally budgeted prior to the line-item change that was made.” In other words, the mayor expects to keep his marketing campaign fully funded — unless the council can come up with the sixth vote needed to override his veto. It’s worth noting that the line-item veto power in Pensacola’s charter was inspired by the St. Petersburg charter. That document offers a bit more information on the veto power: “If the total effect of all vetoes of the Mayor would be to cause expenditures to exceed revenues as projected and contained in the adopted budget, then all vetoes of the Mayor with respect to line items of the budget shall be null and void and all items vetoed by the Mayor shall remain in the budget.”

Interestingly, St. Petersburg’s own Charter Review Commission considered an amendment just last year that would have unequivocally answered this exact question: “each amendment to the Mayor’s recommended budget shall be in the form of a line item and subject to the veto provision of Section 4.04(c).” However, that amendment didn’t make it to the St. Petersburg ballot to amend the charter — and it definitely isn’t part of Pensacola’s charter as approved by voters in 2009.

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Messer's opinion brings up the old question about who the city attorney represents in conflicts between the mayor's office and the council. Indeed, one of the reasons why Councilwoman Myers sought to increase council's appropriations was to contract legal counsel when necessary; she has retained her own attorney in a lawsuit against the mayor related to his memo directing council members not to communicate directly with city staff. Without a clear precedent to settle the matter, this too may need to be resolved in court.

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Inweekly.net
August 8, 2012

Dysfunction Junction
What's Your Malfunction, City Hall?
Author: Jeremy Morrison

There's a rift at Pensacola City Hall. It's a contentious chasm that has suffered from both nurture and neglect. "Clearly, there are some issues between the council and the mayor right now," Pensacola City Councilwoman Megan Pratt said recently. The rift has existed for more than a year. Ever since Mayor Ashton Hayward took office as Pensacola's first strong mayor. It is often referred to as the "growing pains." "One might also call it 'maturation of a process,'" offered Councilman Brian Spencer, explaining that he feels the awkward evolution should be "anticipated and tolerated." "I think the discussions regarding the dynamic of the relationship of the council and the mayor are necessary and productive," he said.

When the city of Pensacola switched from a mayor-council form of government to a strong mayor system, it was a big shift. It was a shift in both logistics and mentality. Whereas the mayor had previously been a largely ceremonial position—best suited for riding to ribbon cuttings in the backseat of a parade-route convertible—this new model puts the mayor squarely in the driver's seat. City Council, likewise, has had their grip loosened from the steering wheel.

This shift in governance model has resulted in dramatics, theatrics and legitimate questions as the two branches—executive and legislative—struggle to arrive at a symbiotic existence. City council has tended toward exhaustive discussions and public displays of discontent. While some members have lobbied for a calm, quiet and perhaps unquestioning transition, others squawk, squabble and tirelessly search for the boundaries of their new home within local government. "Let's sit down and have us a little powwow and get it together so we can look more intelligent to the public," Councilman John Jerrals has suggested.

The mayor, meanwhile, appears content to play a confident ostrich. It's a neat trick—head held high, but buried in the sands of denial. "I'm not gonna engage in it, I don't need to engage in it," Hayward said, effectively cranking the radio to drown out council's grumbling in the backseat. "I try not to look in the rearview mirror and focus on what I'm doing."

The Growing Pains

The contention between Pensacola's city council and its mayor is played out in a variety of venues—the budget, the Community Redevelopment Agency, economic incentives and personnel issues. One way or another the rift becomes evident at nearly every council meeting. Back in May, the matter blew up in spectacular fashion when Mayor Hayward issued a memorandum informing council members that all communication with city staff would need to be channeled through the mayor's office. "I have not decided yet how I'm going to address the

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mayor’s memo, but I am not taking this sitting down,” Councilwoman Sherri Myers told her fellow board members at the time.

Soon thereafter, Myers filed a lawsuit against Hayward. While the mayor contended he was simply enforcing a longstanding rule that would allow for more efficient operations and prevent political influence, the councilwoman felt Hayward had overreached his authority. “In a nutshell, this is about the separation of powers,” Myers said a few hours after filing her suit. “One branch cannot interfere with the powers of the other—that’s illegal.”

Like most of the disagreements between council members and the mayor, this lawsuit is rooted in questions about the city’s new charter. Each side of the equation usually uses the document to back up their position. “It’s not going to get better unless everybody lives by the charter,” Myers said in July. But there are varying views of the charter. Councilman Jerralds has repeatedly requested that city council “go page by page” in an effort to wrap their heads around the new model of government laid out in the document. He has pushed for this since before the charter’s passage. “I said, ‘hey guys, let’s look at this,’” Jerralds said. “Before you jump into it, in the water head first, let’s look at it—what does it say?”

Mayor Hayward said that he expected such growing pains. When conferring with the heads of other cities as he prepared to take office, the mayor was warned to brace for some turbulence. “Every mayor I’ve talked with, that’s a strong mayor, said that the first two years are a challenge,” Hayward said. “It’s not the same-o, same-o anymore.” He said the same thing recently when appearing on the locally-produced television program “Within Reason” with attorney and host Bob Kerrigan. “They said the first two years are going to be challenging, it’s a new form of government,” Hayward told him. The two men sat casually on the set. Hayward was dressed in his trademark business-casual—dark blazer, unbuttoned collar, dash-of-color kerchief.

Kerrigan, a supporter of the charter and Hayward, described the city’s new structure as “the perfect form of government” and provided a friendly format for Hayward to address the ever-more visible rift. “I think everyone’s heart’s in the right place,” the mayor assured. A couple of weeks earlier, up in his seventh floor office at city hall, Hayward had brushed off the rift. Questions about any fractures in his relationship with city council tended to evoke eye rolls and heavy sighs. “There is nothing to address,” he said. “It’s a minority of council. And really, I’m not sure it’s even a minority anymore, I think it’s one person.”

Though the mayor declined to “name names,” it can be assumed that “one person” is Councilwoman Maren DeWeese, who has repeatedly made contentious statements in public meetings and on her blog. While other members of council have expressed concerns, DeWeese has been, at the moment, the most vocal. However, the mayor isn’t buying into the idea that all the council is conflict with him. “I just got off the elevator and Ron Townsend hugged me,” Hayward said. It’s true, he does enjoy good relations with much of the council, and even DeWeese has repeatedly stated she is supportive of the charter and mayor’s efforts to lead the city. But everyone recognizes the rift. “I’m basically watching it as it unfolds,” said Councilman P.C. Wu. And council members who are decidedly in Hayward’s camp concede the need for

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some remedy to the rift. A characteristically exhausted Councilman Townsend recently noted as much, "I really don't need the frustration." "Communication has really got to improve between council and the mayor's office," the retiring Townsend said.

During July's marathon budget sessions, the rift was apparent throughout. The entire council weighed in at one point or another, with several expressing varying degrees of concern. Hayward termed the ongoing displays as "actually comical" and urged "unity." "It is what it is," the mayor said. "I think your real question is, 'Is council going to get on board?'" But that doesn't appear to be the lingering question emanating from council. Questions about charter specifics and each branch's role permeate council discussions. "I think that there needs to be some intervention," Pratt said in late July. "It's gotten to the level where there is enough mistrust on different levels that it's not going to resolve itself."

The Training Wheels Phase

The strong-mayor form of government did not happen overnight. Unsatisfied with a council-mayor model they considered lethargic, ineffective and unaccountable, a group of citizens, primarily from the business community, began a drive to make a switch. John Peacock, a co-chair of the group, requested in 2007 that the city council examine the city charter. "We believe our citizens should give serious consideration to a 'strong mayor' type of government in order to expedite our renaissance," wrote Peacock in a letter to the council. "An elected executive mayor would be in a position to develop a vision, then plan, lead and implement the envisioned changes."

Eventually, the council formed a charter review commission. Attorney Crystal Spencer was chosen to chair the commission and oversaw its review of the charter and consideration of possible changes to the governing model. "The city manager was, frankly, running our government and not accountable to the citizens," she said. "It goes back to the accountability. Who did we look to for not moving Pensacola forward?" The review commission conducted an extensive analysis of the city's charter. They studied governing documents of other cities and heard from experts and the public.

Recently, Spencer, whose husband was elected to the council in 2010, reflected on the old council-mayor system. "By its very nature, it makes it difficult to have a single vision in leading the city," she said. "That form of government did not allow for a person with a vision to move forward." The review commission eventually recommended a new charter based on the strong-mayor model, and city council offered it up to the voters. Spencer remained active in the process as the chair of Believe in Pensacola, a pro-charter political action committee.

The current city council members were pretty much split down the middle when it came to adopting a new system. Jerralds and Townsend opposed the charter referendum but have accepted the change and largely supported the mayor. Wu, who also opposed the switch, routinely keeps council debates dignified when weighing in as other council members begin piling on Hayward and his administration. "Of all the people sitting around the table, I'm

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probably the one that fought the charter the hardest," Wu said during the budget sessions, advising his cohorts to wait-out any issues they may have with the mayor and trust the voters. "If it doesn't work, in two years people can say, 'doggone it, I've had enough.'"

Other council members feel differently. They think the body should better define itself and its role. "For the last year, the council has said, 'we're going to be steady, not do anything,' while the mayor gets up to speed," said Pratt. "I think at this point it is important to ask 'how do we function?'" That's a question council has grappled with since Hayward took office. In extreme scenarios, like Myers' lawsuit, the brawl spills into the streets where eyes are blackened and teeth are knocked loose. "I'm sorry there's a lawsuit going on," said Pratt, before conceding that charter-related questions may be best suited for the court system. "I think at this point, the amicable discussions aren't solving it."

City Attorney **Jim Messer** has repeatedly pointed the council toward a courtroom. He did so again recently in the budget workshops when it began to "devolve back to what we've been struggling with since my first day on the job." "This is not an insolvable problem," **Messer** told the council, explaining that judicial clarification could prevent them from "chasing our tails in these meetings." Until a court said otherwise, the attorney continued, Hayward would be the final authority when it came to charter disputes with council members. "The mayor's sort of like Bruce Springsteen, at this point," **Messer** said. "He's the boss."

Myers is the only member of council to pursue the judicial path. Others, primarily Jerrals, continue to push for an internal examination of the charter via a council retreat. He's looking at January 2013. Councilman Spencer would prefer the council continue to work through the issues as they arise. While he sees some of the drama as "more disruptive than productive," the councilman is confident the body can iron out the wrinkles on their own. "As messy and cumbersome as it may appear to the public, I'd rather work through these issues in public," Spencer said.

During the budget workshops, the councilman told his fellow council members that he would be glad when the "training wheels" came off. "Once that happens," he later elaborated, "we can be more agile, we can be faster, more nimble—when I say 'we,' I mean the administration and council as a whole."

Seventh Floor Vibe

While Myers' lawsuit pertaining to Mayor Hayward's memo involves specifics, much of the unrest among some members of council seem to be based on a general vibe they perceive coming from city hall's seventh floor executive offices, where the mayor, city administrator, chief of staff and city attorney have their offices. It's like they don't feel the administration is always being square with them. Paul Jones, who heads up the city's Management Information Services (MIS) Department, is new on the job. Which explains why he seemed a little dazed by the focused line of questioning during his budget presentation. "My whole career has been IT," Jones told the board, when Councilwoman Myers asked him for some background.

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The councilwoman was asking job specific questions. Establishing that Jones supervises employees, including managers. Running down budget numbers. Council President Sam Hall took a shortcut and asked the obvious question: "Who's your department head?" It's a fine point, but important. The city council approves department heads. "Well, I run the department," Jones replied. "Oh, so you're the department head?" Hall said. Jones knew it got weird at this point, he just wasn't exactly sure why. Later, Chief Financial Officer Dick Barker would clarify—"I'm not taking anything away from him"—that Jones answers to City Administrator Bill Reynolds. "Nice cover," Hall told the CFO. "He doesn't know the shell game that they like to play," Pratt said of the new MIS head.

Earlier they had freaked out about not being able to approve the head of the Housing department, because it was not listed as a "major" department—"I just think that this is just a bit of a semantic game for us to keep in mind, because I think a \$16 million dollar budget is a major part of our city's budget," said Pratt. The rest of the council laughed, chided the department head, asked if she would take the "bait." Pratt said she found "that kind of game playing offensive in light of the intent of the charter" and asked the city attorney for a clarification on what constituted a "major" department. "I think that this council—all the laughter and nodding of heads—I think there's an agreement that \$16 million is not minor," Pratt said.

Council members have complained of the seventh floor's style, painting it as aggressive. In April, Hall said members of Hayward's staff had "threatened" him over a Pen Air deal before the council. When the final vote was taken, Councilman Larry Johnson told the council he felt "like I've got a gun held to my head tonight." Hall later said he had discussed his concerns with the mayor and been promised a "new day." The council president has declined to discuss specifics of that conversation. "Any disagreements I have with Ashton, I have behind closed doors," he said recently.

Hayward didn't recall the specific conversation, or the "new day" reference. "I think what Sam meant probably was that Ashton was going to address some of the concerns of council members," Hayward said. "I think he was probably just saying 'alright, let's take a break.'" The mayor is visibly uncomfortable discussing this discord. He bristles at the notion that his staff might "threaten" council members, and has requested the personal attacks on his staff stop. "This is the only town I know that is this vicious," Hayward said.

For some council members, the primary, and recurring, point of concern on the seventh floor is the mayor's Chief of Staff John Asmar. This concern is most often voiced by council members Johnson and DeWeese. "I think Mr. Asmar has become a tremendous distraction," said Johnson. DeWeese has taken up the issue on her blog. She's posted Asmar's emails, which, among other things, show a relationship with the publisher of The Independent News. After the Fraternal Order of Police, with whom the city is currently involved in union negotiations, announced it'd taken a 'no confidence' vote in Asmar, the councilwoman requested that Hayward address the issue.

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The mayor shot DeWeese a sharp email, calling her request “ridiculous.” He wrote the union “no confidence” vote was a negotiating tactic and everything else was a personal attack. He said Asmar was directed to share information with the Independent News, Pensacola News Journal and other media outlets. “Why are we ‘Mickey Mousing’ the little things?” he said. “It really is ‘Mickey Mousing,’ too. This is a grown up game.” Hayward shrugged off the attacks and chalked them up to personality conflicts, and noted that the national political scene is packed with hard chargers like Asmar. “When you said that,” Public Information Officer Derek Cosson said during the interview with Hayward, “I thought about Rahm Emanuel. Rahm makes John look like Tickle Me Elmo.”

Asmar has a reputation as a heavy. Effective, but blunt. “Everyone’s not going to like everyone’s personality,” the mayor said. The chief of staff is perceived in certain camps as having too great an influence on the mayor. The notion has given way to terms like ‘Puppet Master’ and ‘Darth Asmar.’ “There are no conspiracies on the seventh floor,” Hayward insisted. “This is not the John Asmar show. It’s easy to find a scapegoat when you want to find one.” The chief of staff also downplays his influence on the mayor, stressing that he is one of many advisors. “The mayor’s his own man,” Asmar said in early August. “He’s a freethinker.”

The chief of staff recalled a recent visit from Councilman Wu, during which he breached the subject with Hayward. Wu relayed the conversation to the council. “There are people under the impression that John Asmar is sprinkling pixie dust and the mayor is walking around like a zombie, not knowing what is happening,” Wu said, explaining that he had taken the issue up with Hayward. “The mayor looked at me and said, ‘I know everything that is happening.’”

While Johnson and DeWeese have waded into the conspiracy theories surrounding the chief of staff, much of the council considers Asmar an infrequent—and apparently amiable enough—acquaintance. Hayward is quick to point out that Asmar recently enjoyed an “upbeat and excited” lunch with Councilwoman Myers. “Let me clarify something, okay, there is no contention between the council and the mayor’s chief of staff,” said Myers, laying the issue at the feet of individual council members. “That should not be translated as the council, as a body, having any conflicts with Mr. Asmar.”

Townsend agrees, “I have a good relationship with him.” Whether it’s the Asmar issue, budgetary specifics or some other aspect of discontent, the mayor has chosen not to hash it out with council. He sits confidently in the driver’s seat, even as his car’s engine threatens to throw a rod. “I’m focused on producing and I’m focused on winning,” Hayward said. “Winning and producing for the city of Pensacola.”

‘Where is the mayor?’

Last fall, citizens flooded a city council meeting because they felt an ordinance proposed by the mayor would negatively target the area’s homeless. They were looking for a chance to engage the mayor, as council considered the ordinance. “One question—where is the mayor?” a woman asked President Hall. “Why can we never see the mayor?” The same question has been asked repeatedly. It’s rare to sight Hayward at a city council meeting. He showed up this summer to

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hand out certificates to citizens recently annexed into the city limits. He also made an appearance to deliver his state of the city address, and back in the spring to rescue the Pen Air deal. Hayward has not sat down with the city council to discuss the rift, the growing pains. “It’s petty and it’s small and it’s the last thing we need to be doing,” Hayward said in early August. “I didn’t run for office so I could be caught up in petty arguments with city council.”

The mayor said he considers his primary responsibility to be revitalizing the city. Selling Pensacola to the outside world. He’s concerned the constant insights into the city’s dysfunctional inner workings will turn off prospective residents and businesses. “I don’t think Pensacola wants to be known as ‘we-can’t-get-it-done,’” Hayward said. “I think people understand there’s a vibe—we’re winners, we know how to get things done.” The mayor said he is confident that any issues between his office and the council will be resolved as the new form of government progresses. “I think at the end of the day that will come to fruition,” he said on his way back from a public relations trip to New York City.

Jerrals sees it differently. He believes some healthy, in-person communication would be beneficial for the council and the mayor. “I just think it’d be a good idea to sit down and talk,” the councilman said. “It’s like a marriage. It’s amazing what a little face-time will do.” Crystal Spencer, the attorney who chaired the charter review commission, said that her group had envisioned some amount of participation. “I think it was contemplated that they mayor would be at some of the council meetings. Not all of them,” she said. “There probably needs to be some better lines of communication.” Pratt agreed, “There’s sort of a lack of communication both ways and it’s feeding on itself.”

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Studer Community Institute
June 12, 2012

Council seeks final word on audit RFP

Author: Ann Regan ·

The Pensacola City Council's Committee of the Whole (COW) voted unanimously on Monday to ask Florida's attorney general (AG) whether the council's audit committee can ratify an invalid RFP and thereby make it valid. City Attorney **Jim Messer** had told the city council and the council's audit committee in May that by ratifying an invalid RFP for an independent auditor, the audit committee could create a valid RFP. At the COW meeting on Monday, Councilwoman Sherri Myers made the motion for the council to ask the attorney general to confirm **Messer's** opinion. That motion was unanimously approved.

Prior to Monday's meeting, Councilwoman Myers explained why she wanted the city council to request the opinion of the attorney general regarding the legality of the ratification process. "The citizens of Pensacola need to be assured that the council did the right thing in selecting an independent auditor. The AG's opinion will help provide that assurance," Myers said. Myers also explained that she needs the support of the city council to obtain the attorney general's opinion because the AG's office will not provide opinions to individual council members.

Myers emphasized that requesting the AG's opinion will not delay contracting with the number one ranked accounting firm to do the audit. And it will not delay that firm's proceeding with the audit itself. The contract negotiation and the audit can move forward at the same time that the council is seeking the AG's opinion, Myers said. "What can possibly be the downside to asking for an opinion from the attorney general to assure the citizens of Pensacola that the council followed a prudent and fair process to select an independent auditor to audit the city's financial accounts?" Myers asked. "There will be no delay in getting on with the audit. But we need to know sooner rather than later that the process was legal." The consequence of the AG returning an adverse opinion regarding ratification is that the RFP process must begin anew.

Myers was prompted to make her request for the AG's opinion when she received a response to her earlier letter to David Martin, the auditor general of Florida. In his response Martin told Myers that she should seek the opinion of the attorney general to confirm **Messer's** opinion. On June 4, Myers had written the auditor general asking his advice about ratification because the auditor general was largely responsible for passing the statutes that set out the procedures for selecting an independent auditor. Among other things the statute requires that the audit committee issue the RFP for the independent auditor position. However, back in March, the finance department rather than the audit committee issued the RFP and four accounting firms responded to the proposal request.

On May 17 the audit committee met to discuss the validity of the original RFP. In response to the committee's questions about the original RFP, **Messer** provided the members with a written opinion. "At this point in time there is no valid RFP. There is no valid RFP because the

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requirement that the Committee provide the factors to use for the evaluation of audit services as set forth in Florida Statute 218.391(2)(a) was not followed in the RFP process," **Messer** wrote. "There are two ways to create a valid RFP: a) the first way is to start the process anew with a new RFP draft and issuance; b) the second way is to ratify the current RFP."

On May 22 the committee met again. At this meeting the committee members did a line by line review of the evaluation criteria of the RFP. The committee found that the criteria of the original RFP complied with the state statutes. Being satisfied with the substance of the original RFP, particularly with regard to the evaluation criteria, the audit committee ratified the RFP and, according to the city attorney's opinion, created a valid RFP.

The RFP that was ratified retained certain language that inaccurately identified the members of the audit committee and inaccurately described the role of the Mayor and administrative staff in the selection and evaluation process. However, Chair Diane Mack called that language "procedural," and at Mack's request, the head of the purchasing department, George Maiberger, informed the firms that submitted proposals, in a written memo, about the procedural inaccuracies in the RFP.

In her letter to the auditor general, Myers explained all of the circumstances surrounding the decision by the audit committee to ratify the original invalid RFP and then asked the auditor general about the ratification. Deputy Auditor General Ted Sauerbeck replied to Myers' letter.

"In your letter, you asked the question 'Did the audit committee create a valid RFP by ratifying the original RFP issued by the finance department,'" Sauerbeck wrote. "While we are not authorized to opine on legal matters, the Florida Attorney General is authorized to render opinions on legal matters pertaining to local governments." "The City's audit committee may want to review the Auditor Selection Guidelines located on our Web site," he added. "Although the Guidelines are non-mandatory, governmental entities would benefit from using them to help ensure a quality audit. By adhering to the Guidelines, entities can demonstrate to constituents that a prudent and fair auditor selection process was used."

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Studer Community Institute
May 9, 2012

Much ado about auditing

Author: Ann Regan

At Monday's Committee of the Whole meeting, the Pensacola City Council wrested back control over the selection process for the city's independent auditor — a process that had been initiated by the mayor's office and subsequently become mired in miscommunication and politics. It all started at the February 20 Committee of the Whole meeting, when the mayor's office placed Item 10, "External Audit Selection," on the agenda with a one-page memo advising the council members that the five-year contract with the current auditor, Saltmarsh Cleaveland & Gund, was set to expire after the completion of the 2011 audit. According to the committee memorandum:

In March 2007, City Council established a process to select the City's external auditor by a selection committee consisting of the Director of Finance, one staff member, one member of City Council, and one citizen. ... Should City Council not wish to extend the current external auditor contract, the Financial Planning and Administration Policy states, "The City shall utilize the Request for Qualification (RFQ) procedure for external audit services. An audit selection committee (appointed by City Council) shall present a recommendation to City Council for approval." ... To ensure we have a contract in place for a timely audit of fiscal year 2012, there should be a signed agreement no later than June 1, 2012. City Council can either extend the current contract or put out an RFQ.

This information was incomplete, however, and council members, without a staff of their own, were not informed of other important considerations for the selection process — namely, Florida Statutes 218.39 and 218.391, which provide a detailed, step-by-step procedure for selecting an independent auditor.

After a brief discussion by the council about the merits of an RFQ process and no further discussion of the membership of the audit selection committee, they voted unanimously to "establish a process to select the City's external auditor by a selection committee consisting of the Chief Financial Officer, one staff member, one member of City Council, and one citizen using the Request for Qualifications process for a full-scale competitive process for selection of independent auditors as recommended (best practice) by the Government Finance Officers Association (GFOA)." Two months passed with nothing occurring at city council regarding the auditor selection or appointments to the selection committee. Then, on April 23, the mayor's office placed an item on the agenda of that day's Committee of the Whole meeting with the following memorandum: "On March 30, 2012, the Financial Services Department posted an RFP for Professional Auditing Services for a contract period to begin June 2012. The Audit Selection Committee is comprised of the Chief Financial Officer, staff designee, a citizen to be appointed by the Mayor and a member of City Council. Responses to the Proposal are due on May 3, 2012..."

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Councilman Townsend nominated Maren DeWeese to serve as the council's representative on the selection committee, but before it went to a vote, Dr. Pratt noticed that the "one citizen" on the selection committee had been changed to "a citizen to be appointed by the Mayor." "Since the audit function falls under the council, I think it would make sense for us as a council to consider whether we should ask to appoint the citizen appointee," she said. Several other council members agreed and asked City Administrator Bill Reynolds to explain the change. "Once again we're back in old familiar territory," Reynolds said. "You have a leader of this form of government, which is the mayor. You have the council that has its role and responsibilities as well." "But it's the mayor being audited, really," Council President Hall interjected. "If this council has issues with the members of the committee, then we can restructure the committee to however the council wants," Reynolds said. "It is a function of council for the audit, but I would hope that you would want to be more inclusive as opposed to exclusive."

The council then debated which branch of government was responsible for the audit under the new charter. "I've reviewed it, and I don't think the word 'audit' is specifically in the charter," said City CFO Dick Barker. Councilman Jerrals pointed out that the charter says, "unless otherwise provided by law," the city council was responsible for committee membership. Around and around they went before moving on to the next agenda item. Yet if anyone at the meeting had just checked the Florida statutes, there would have been no question about the legal requirements. Section 218.391 clearly states, "The governing body of a ... municipality ... shall establish an audit committee." And the city charter clearly states that the "governing body" of Pensacola is the city council.

By having the Financial Services Department issue the RFP, instead of the audit selection committee, not only did the mayor's office ignore the auditor selection process that was set up by the council, but it violated the mandated procedures of the state statute. In addition, the RFP that went out to firms on March 30 stated, "The Audit Selection Committee will submit a recommendation to the Mayor, who will present his recommendation to City Council for approval."

On April 26, Councilwoman DeWeese sent a letter to the council explaining that, because of these issues and her personal friendships with partners at the Saltmarsh and O'Sullivan Creel firms, she would not accept the nomination to the auditor selection committee:

I believe that it is the role of Council to oversee the audit process of the City. In fact, the annual Comprehensive Annual Financial Report which includes the audit report is presented to Council by the Mayor. Inclusion of the City CFO and a staff member on the auditor selection committee amounts to the auditee being able to select the auditor. Additionally, the one citizen noted in the current RFP is presently a Mayoral appointment. Once again I see this as potentially problematic as the Mayor's office is also an auditee of the selected auditor. Therefore, I believe that the auditor selection process should be comprised of Council members and Council appointees only with the CFO being present only in an advisory role. At the same time that DeWeese sent her letter to the council, she requested that the discussion of her letter be postponed until the next Committee of the Whole meeting, May 7.

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The next evening, April 27, DeWeese emailed Barker, Reynolds, and City Attorney **Jim Messer**, asking them to consider repealing the RFP before the May 3 submission date. "Obviously, it would be better to repeal the RFP than have Council ask for resubmissions after it deliberates," she wrote. When Barker, **Messer** and Reynolds, failed to get back to DeWeese by May 2, DeWeese emailed them again that morning. "If the process moves forward before Council takes up the issue I consider this to be an example of management override of internal controls specifically the disregard of a Council agenda item by management that could materially change the Auditor RFP process," DeWeese wrote. "If Council does not change the process, no harm is done and the RFPs are opened next Friday. If Council changes the Committee and that Committee wants changes to the RFP then your continued movement forward with the current RFP will taint the auditor selection process. Do we really want to taint the process being followed for hiring our Independent Auditor with management override of internal control?"

Having still received no response, DeWeese forwarded her correspondence to the city clerk. The next day, Reynolds responded, "We have looked into your request. Absent specific factually-based examples of taint to the auditor selection process, we are disinclined to stop that process." According to a representative of the purchasing department, the four proposals received were opened on May 3, but the pricing remains sealed and the proposals are awaiting review by a reviewing committee.

On Monday, May 7, the Committee of the Whole met and discussed, again, the process for selection of the city's independent auditor. DeWeese suggested that the new selection committee be made up of two council members, two citizens, and a CPA to be chosen by council. DeWeese said that it was important that the selection committee have input into the RFP. At one point in the discussion DeWeese asked Reynolds about his statements that the auditor had to be selected by June 1. Reynolds said that he had checked with the finance department people and others and they all agreed that this should be done by June 1. In fact, section 218.39 states that the independent audit can be done within nine months after the city's fiscal year end, which is September 30, 2012.

Councilwoman Myers said that, in her opinion, the mayor was attempting to "usurp the power of the council in sending out an RFP on his own," and she was particularly "disturbed" by the language in the RFP that purported to give the mayor authority over the selection process. The city attorney finally responded to the criticisms by Myers and DeWeese after being asked directly by Councilman Johnson whether Myers was right in her remarks. **Messer** responded yes, the RFP process was "flawed." Without identifying the flaw in the procedure, **Messer** suggested that the auditor selection committee might be able to cure the flaw by ratifying the RFP. He conceded, however, that the language regarding the mayor reviewing the selection committee's recommendation should be deleted. **Messer** also said that if the audit selection committee membership was to be changed that the council would have to rescind its action taken on February 23, when it created the selection process. When **Messer** responded to the various council members' remarks, he sometimes referred to the pertinent state statute, but throughout the entire discussion, he never identified the statute nor recited its entirety.

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Myers made a motion to rescind the action taken by the council on February 23 regarding the external audit selection and to appoint a new audit selection committee that, per DeWeese's suggestion, would consist of two city council members, two citizens to be appointed by the council, and a CPA to be appointed by the council. The motion went on to state that all RFP responses will be supplemented by each firm for additional requirements that the council's audit selection committee requests. In addition the motion stated that all language regarding the mayor's reviewing the selection committee's recommendation would be deleted. The motion passed 6-2 with Brian Spencer and John Jerrals voting no.

Following the vote, the council then voted to appoint Sam Hall and Megan Pratt to the new audit selection committee. Nominations for the other three positions on the selection committee are due to the council by Thursday so that they can complete the membership of the committee. After the Committee of the Whole meeting, Myers learned of and reviewed the state statutes that mandate the council's audit selection procedures. An attorney herself, Myers said she found it incredible that the city attorney would have withheld "such important information from his clients that he knew they needed in order to make a decision."

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Inweekly.net
April 11, 2012

KEEP TALKING

While it appeared Pensacola City Attorney **Jim Messer** was ready to go to war over the city's natural gas franchise dispute with Gulf Breeze, city officials have chosen to stick to the negotiating table for now. Mayor Ashton Hayward sent a letter to Gulf Breeze officials April 9 expressing the city's desire to resolve the matter. "He wants to do everything he can to try to execute a contract with Gulf Breeze," said Pensacola City Administrator Bill Reynolds, adding that he thought a "45-day window would be appropriate" for working the issue out.

Pensacola and Gulf Breeze have been attempting for some time to work out differences regarding natural gas franchise rights. While Pensacola—which owns Energy Services of Pensacola—has longstanding franchise rights for all of Escambia County, Gulf Breeze officials have nonetheless begun to provide natural gas to Pensacola Beach. The Escambia County Commission recently granted Gulf Breeze franchise rights to the beach, citing the fact that Pensacola has yet to provide service to the area and stipulating that Gulf Breeze would need to relinquish franchise rights if Pensacola decided to provide natural gas to the beach in the future.

A few days prior to Reynolds' 45-day window estimation, **Messer** had been ready to take the matter to court. The attorney was dissatisfied with the mandated conflict resolution process, feeling it was going nowhere. He had planned to seek permission from the Pensacola City Council at its Committee of the Whole meeting when Gulf Breeze Mayor Beverly Zimmern raised a red flag. "They were all uptight about the agenda item," **Messer** said. Indeed, Gulf Breeze officials had expressed concern over **Messer's** request. City Manager Buzz Eddy said he thought the two entities were still engaged in talks until he saw the matter on the Pensacola City Council Agenda. He said that Pensacola was sending "mixed signals." "It's difficult to focus on offense and defense," Eddy said. Reynolds disagreed.

"There are no mixed signals," **Messer** said, referring to the notion as "nonsense." The attorney said that both paths could be pursued simultaneously, using an analogy to illustrate his point. "The best way I can think about it is a railroad track," **Messer** said. "What happens on one rail doesn't affect what happens on the other rail." According to Pensacola's attorney, it is necessary to lay the groundwork for legal proceedings while, at the same time, attempting to reach an amiable agreement outside the courtroom.

Messer said his original intent in requesting to move the show before a judge was so that he could file an injunction against Gulf Breeze. He said that because Gulf Breeze had already begun providing service, the injunction possibility was not likely. "Gulf Breeze has already turned the gas on, so that's a moot point," **Messer** said. "Once the gas is on the judge is not gonna turn it off—but now it's on the agenda and I can't get it off."

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The attorney told Pensacola City Council members last month that he wished to fast-forward into legal proceedings because he didn't think the conflict resolution process was producing any results. He said today that he did not discuss his exact injunction strategy with the council during its meetings because it would have revealed the strategy to Gulf Breeze officials—"If I talk in public I might as well just call [Gulf Breeze Attorney Matt] Dannheisser up and show him my hand of cards."—and he didn't meet with council members privately on the matter due to Sunshine Law issues. "You see, there's too many moving parts to this thing," **Messer** said. The attorney said that he didn't feel the respective legal counsels could work constructively. "I felt that the negotiations between Dannheisser and I were being affected by our respective personalities," **Messer** said.

After the weekend, Reynolds said that the mayor had contacted Gulf Breeze officials earlier via letter regarding the matter. Legal action will not be considered by the city council at this time. "We're all eagerly anticipating closing that deal with the city of Gulf Breeze," Reynolds told city council members during the Committee of the Whole.

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Inweekly.net
February 15, 2012

Viewpoint: Right to Speak

Author: **Jim Messer**

As the city attorney, I have the unique privilege of not only experiencing the right to speak firsthand at city council meetings, but also litigating First Amendment issues on behalf of the city. My recent experiences with the right to speak triggered this examination of the legal basis of the right to speak. During the last several months, speakers at the council meetings have exercised their right to speak in a manner that causes one to question the utility of the debate. Speakers have freely denounced council members as Nazis, threatened their property and limbs, scorned their morals and religious beliefs, called them out by name in "gangsta" style, held them personally responsible for the lives of the homeless, rambled in lengthy, incomprehensible diatribes on any topic of interest and, my all-time favorite, simply stood up and recited a litany of words, which if uttered anywhere else would have resulted in a trip to the emergency room.

These visceral offerings are justified under the rubric of free speech and debate. They bring to mind the references to the Lincoln-Douglas debates of yesteryear, which are held out to be exemplars of debate. To the contrary, the Lincoln historian, Harold Holtzer points out that "the encounters were brutally sarcastic, featuring highly personal attacks rather than elevated discourse." Oddly enough, the only basis for the right to speak is because the Pensacola City Council has voluntarily extended this right to the citizenry during open forum. There is no legal authority for citizens who are not a party to the proceedings to speak and be heard at council meetings.

Neither the Florida Constitution nor the so-called "Sunshine Law" bestows the right to speak. The law is, quite simply, silent as to citizen participation in meetings. Florida courts have never upheld either a right to speak or participate for a citizen who is not a party to the proceedings. In the 1993 case of *Wood v. Marston*, the Florida Supreme Court stated "nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process." More recently in *Keesler v. Community Maritime Park Associates*, our First District Court of Appeal upheld the CMPA's denial of a citizen's opportunity to speak at a meeting concerning the maritime park.

Proponents of the right to speak have introduced legislation that would ensure the public a right to speak. In an effort to avoid the diatribe, the proposed legislation would also permit reasonable rules to ensure the orderly conduct of a public meeting such as time limits on the speech, procedures or forms that indicate the desire to be heard, position on a proposition, and designation of group representative. The irony of the situation seems to be that the proponents of the right to speak to their government must defer to that same government to legislate their right to speak. By doing so, they will also have to accept government standards that act to elevate the discourse they so avidly seek.

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inweekly.net
January 11, 2012

Dancing on a Pipeline
Who Will Provide Natural Gas to Pensacola Beach?

Author: Jeremy Morrison

Pensacola City Attorney **Jim Messer** rattled off rapid-fire Spanish, before clarifying the translation: Danza de la Muerte, or Dance of Death. "It's an exhaustive process," he explained. The big dance **Messer** is referring to involves Pensacola, Pensacola Beach, Gulf Breeze and Escambia County. Nobody gets a carnation, but at the end of the night there's a natural gas pipeline to be had. Here's the lay of the dance floor: Escambia County granted Pensacola, via Energy Services of Pensacola (ESP), natural gas-rights to the entire county. Gulf Breeze, meanwhile, has set about laying pipes that will enable it to provide natural gas to Pensacola Beach, which is in Escambia County. "In simplest layman's terms," **Messer** told the Pensacola City Council Jan. 9, "it would seem that the city of Pensacola has been snookered."

Gulf Breeze City Manager Buz Eddy doesn't see a problem on the dance floor. "It's under way right now," Eddy said, predicting a summer finish for the project. "We're gonna take a pipeline from Gulf Breeze, put it under the sound and come up on the island." That plan just makes sense, Eddy explained. It will enable the beach customers currently using propane to switch to natural gas. "During Hurricane Ivan we had a lot of the propane tanks wash up over here in Gulf Breeze," he said. Gulf Breeze got the go-ahead last summer to start work on the project from the Santa Rosa Island Authority, which oversees Pensacola Beach. Now, Eddy said, it's just a matter of who gets the franchise fees. "Do we owe it to Pensacola or do we owe it to Escambia County?" he wondered.

Randy Oliver, Escambia County's administrator, said the county was unaware of Gulf Breeze's endeavors. "The City of Gulf Breeze undertook this project without the knowledge or approval of Escambia County," Oliver said in a county statement. The statement goes on to explain the county's position: "Escambia County has no interest in whether Gulf Breeze or Pensacola provides natural gas service to the Beach. Escambia County is committed to seeing Beach residents receive the best possible service at the lowest possible cost regardless of who provides the service. Escambia County will collect the same franchise fee collected in all other areas of the County in exchange for use of the right-of-way, regardless of the service provider."

Oliver said that the county will take up the issue during its Jan. 12 meeting. Staff will apparently "recommend to the Board of County Commissioners that a nonexclusive franchise be offered to the City of Gulf Breeze until and unless the City of Pensacola provides services. This will permit the businesses and citizens in the core of Pensacola Beach to receive this valuable service and protect the City of Pensacola's franchise rights." But **Messer's** in no mood to entertain alternative routes. He's ready to dance. "I just say, sue 'em," Pensacola's attorney suggested.

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But it's not that easy. Governmental entities can't simply sue one another. First, there's the dance. To that end, **Messer** introduced a resolution to city council members. The resolution will be taken up during the council's Jan. 12 meeting. If city council members choose to do so, the resolution will lead into mediation—the dance—and possibly to a courtroom. It's almost romantic. A Municipal Waltz. Or, maybe a Bureaucratic Tango. "It's like one of those old-fashioned dances, where you've got to be introduced and bow," **Messer** said. "Before you touch the girl, you've got to do a thousand different things."

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Studer Community Institute
December 13, 2011

Messer OK'd for city attorney, bonuses questioned

Author: Joe Vinson

Messer contract

In a long and often spirited Committee of the Whole meeting yesterday, the City Council gave initial approval for **Jim Messer** (or rather, the **Messer Law Firm**) to serve as the city's full-time city attorney. Messer was hired as interim city attorney several months ago while the permanent position was considered. An RFQ received responses from three firms: Messer's, Beggs & Lane, and Litvak, Beasley & Wilson. Messer's proposal was the lowest bidder at \$12,500/month (or \$150,000/year) with litigation work billed at an additional \$245/hour. Objections to the contract were raised by council members Pratt, DeWeese and Myers. Dr. Pratt asked about the charter question of whom the city attorney would represent in conflicts between the mayor and council. Messer responded that if a lawsuit were ever filed by the council, for example, the city could hire an outside attorney to represent them before a judge.

Councilwoman DeWeese noted that the contract's proposed five-year duration was potentially longer than the mayor's term of office and that, as a courtesy to his possible successor, it should not exceed the current mayoral term. City administrator Bill Reynolds, who presented the recommendation in Mayor Hayward's absence, said that the details of the contract was a separate consideration from whether or not to hire the Messer firm. However, Councilman Johnson motioned to change the terms of the contract to three years. Councilwoman Myers said she didn't believe the mayor had the right to privatize a charter-created position like the city attorney. "If you can privatize the city attorney position, you could privatize the city administrator, the clerk, and every department head," she said.

The mayor's office has maintained that hiring a city attorney through a private contract is a cost-saving measure, because the city doesn't have to make insurance or retirement contributions. One of Mayor Hayward's campaign promises was that neither he nor any of his hires would receive city benefits. Similar private contracts have been created for the mayor's chief of staff John Asmar and spokesman Travis Peterson.

In a May interview with Progressive Pensacola's Derek Cosson (who himself was since hired by the mayor as a city employee with benefits), **Messer** said that he viewed the interim city attorney contract as a "public service," not a job, but that he "would certainly submit a proposal" if the mayor decided to privatize the office permanently. The Committee of the Whole voted 6-3 to hire **Messer**, with DeWeese, Myers and Pratt opposing. It will proceed for a final vote at Thursday's council meeting.

Employee bonuses

Council members Pratt, DeWeese and Myers also questioned whether Mayor Hayward had the authority to award \$750 bonuses to each of the city's 775 employees. As reported by the PNJ's

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Jamie Page, there is a possible conflict with section 215.425 of Florida statutes, which states that “[n]o extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered.” There was also a question of whether the mayor had authority to make such a large unbudgeted expenditure (around \$600,000) without council approval. Dr. Pratt said she felt the employees deserved the raise and had no intention of trying to reverse it, but asked if the council should ratify the action to make it legal. Councilwoman DeWeese said if the mayor’s action was found to be unauthorized, it would probably be covered by the city’s insurance, but suggested there could be legal repercussions for the mayor. She motioned to request an opinion from the attorney general about the legality of the bonuses.

The motion failed to get enough votes to proceed to a vote at Thursday’s meeting, but Councilwoman Myers said she had already sent a letter to the attorney general requesting an opinion. I have obtained her letter and reprinted it below.

Dear Attorney General Pam Bondi,

I am requesting an opinion from the Attorney General’s Office in my capacity as a duly elected public official. Specifically, I am a member of the Pensacola City Council representing District 2 within the incorporated area of the city. I am submitting two questions upon which I am requesting opinions from the Attorney General.

1. The Mayor of Pensacola recently announced that he is giving \$750.00 bonuses to 775 employees in recognition of their “hard work”. The bonus is not for future work and was not budgeted, or appropriated by the City Council. My question is simple: Do such bonuses violate Florida Statute 215.245, or any other Florida statute?

2. The City Council has before it an agenda item that calls for the approval, or disapproval of a recently negotiated union contract with the American Federation of State County and Municipal Employees (AFSCME). Attached is page 31 of the contract that calls for a one-time payment of \$750.00. Does such an agreement violate Florida Statute 215.245, or any other Florida law?

Sincerely,
Sherri Myers
City Council member, District 2 &c.

Much of the afternoon’s discussion was spent on two proposed ordinances recommended by the mayor’s office that seemed designed to stop both homeless individuals and the Occupy movement from sleeping on city property or using city restrooms beyond their intended purpose. Many attendees gave impassioned speeches opposing the ordinances, as did council members Myers and Jerrals. When council members asked **Jim Messer** about the constitutionality of the ordinances, he admitted that he had neither drafted nor reviewed the ordinances. Surprised by this, the council voted unanimously to table them both until they could be reviewed. I plan to write more about the recent city and county efforts to curb homelessness.

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Councilman Sam Hall, recently voted council president, is proving to be a strict parliamentarian. At several points in the meeting he cited Robert's rules and told speakers they were "out of order," even asking some to be removed. He also alluded to at least two previous interactions with citizens which he believed violated Florida law on cyberstalking, including an email sent to council members which, Hall believed, made an implicit threat against one council member's elderly mother. (For what it's worth, I was also copied on the email in question and did not interpret any threat.) He asked all citizens to tone down rhetoric and stick to rational arguments. Other issues considered by the Committee of the Whole included a \$5 million loan to convert the city's fleet to compressed natural gas vehicles and a request to sub-lease a portion of the Long Hollow Community Center to the non-profit Open Books.

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Inweekly.net
November 30, 2011

Therapy in Crazytown Author: Jeremy Morrison

Attorney Doug Sale seemed almost relieved when the Pensacola Community Redevelopment Agency cut him loose. After listening to nearly two hours of discussions, he had apparently reached the same conclusion in regards to his future relationship with the CRA—"I just can't." "I don't want to sound like I'm taking my marbles and going home," Sale told the CRA board. "You have got some issues that must be resolved in this city before something much more serious than hiring a little ol' lawyer from Panama City comes before you." It was the attorney's first trip to town to visit with his clients. Weird as the meeting was, he seemed to think it worth the drive down Highway 98. "I couldn't resist it," Sale said as the November 28 meeting wrapped up. "It was too challenging professionally and intellectually." "Bail before the ship goes down," CRA board member John Jerralds laughed. Sale's visit to Pensacola was hardly a waste. It provided the CRA and city officials with a marathon group therapy session. What City Attorney **Jim Messer** had referred to as an "opportunity moment" before the meeting began.

Sale had come to the meeting to answer questions. But he also had a few questions of his own, such as who would be paying his bill? "You want your money back?" he asked. "I can give it to you. That's not the point." Sale was hired in June by CRA Chairman Megan Pratt and former CRA Administrator Becky Bray. The attorney has done a good bit of work for them—"clearly, less than \$20,000"—and a bulk of his tab has already been paid by the city. During its September 19 board meeting, the CRA, which is comprised of the entire city council, give a 60-day approval to an interlocal agreement for the city to run the CRA that had been proposed by Mayor Ashton Hayward. Board member Sherri Myers wanted more control on the CRA administrator and wanted Sale to offer an opinion on her thoughts at the next meeting. Others, including Pratt, expressed interest in exploring other modifications. None were voted on by the board, only the extension was approved.

Since that meeting, Bray and Pratt worked with Sale to draft an alternative interlocal agreement. The 'Administrator' morphed into an 'Executive,' with the new position reporting to the CRA chairman instead of the mayor. Then, the week before the Thanksgiving holiday, Hayward fired Bray and questions arose over the legitimacy of Sale's contract. Myers told Pratt that the CRA board members should have been involved in the discussions with Sale. "We should have had these conversations during this 60-day period and we wouldn't be sitting here now," Myers said, adding that the board shouldn't be expected to consider alternate language they had never seen before on a contract set to expire December 1—"I can't operate that way."

But these issues are symptoms to be viewed in a broader context. And so, the evening's discussions dove deeper, into a "tug of war" and a "playbook" and a "power struggle" and a "dead horse." At the crux of the matter is the CRA's relationship with the Mayor, specifically,

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who exactly should have control of staff. This particular dispute does not exist on an island. Similar struggles have played out in other council theaters since Pensacola changed to a strong-mayor form of government.

In the venue of the city council, Hayward has made it clear he intends to enjoy the newly minted strong-mayor position. But where the CRA is concerned, everyone is experiencing what Sale calls “growing pains” and **Messer** would probably refer to as a “sticky wicket.” “We don’t know what the rules are,” said board member P.C. Wu in frustration. “One side is saying it’s a touchdown. One side is saying it’s not a touchdown.” The CRA is a special taxing district within Pensacola. Its board is charged with developing a CRA plan that spends the tax revenues generated within its boundaries for the betterment of that area. While the agency is an independent entity, it does contract with the city to administer the CRA plan. Currently, some members feel the existing interlocal gives the Mayor too much power; Hayward is happy with the current agreement. “We don’t want this to have an appearance of a power-struggle of any sort,” Jerralds cautioned his fellow board members.

While this issue of a new interlocal agreement was going to take some time, most of the board seemed ready to retroactively ratify Sale’s contract—due to the fact that an actual vote was never taken on hiring the attorney—and get Pratt off the hook for any questionable procedure breakdowns and illegalities. “I’m trying to choose my words because I don’t want to jump all over the chair, who I have a tremendous amount of respect for,” said board member Sam Hall, who was recently elected as city council president. The general consensus among the board seemed to be that Pratt may have been a bit sloppy, but ultimately had the CRA’s best interest at heart. The board voted to approve Sale’s contract and pay him money owed. Pratt, Jerralds, Myers, Wu, Hall and Ronald Townsend voted to approve, while Vice Chairman Brian Spencer and Larry B. Johnson opposed the motion. Maren DeWeese was absent.

Pratt said that Bray had brought up the notion of hiring a separate attorney, and it seemed like a natural move in context of board discussions. “It seemed that there was a general consensus,” Pratt said. “I will not disagree here, we probably need to flesh out our processes and there is confusion here.” There may be a snag, however, to CRA’s retroactive move. **Messer** pointed out that he wasn’t sure the CRA had the authority to ratify the contract, but thought it might instead rest with the Mayor. “If the mayor pays it, then you apparently had the authority,” **Messer** said, adding that if Hayward opts not to pay Sale’s bill the matter will need to go before a judge.

Then there was the matter of drafting a new interlocal agreement, or not, and whether to keep Sale on the team. The CRA was less cohesive on these points. Wu suggested it might be good to keep a separate attorney. “He’s not wed to the Council’s position, he’s not wed to the Mayor’s position,” Wu said. Myers said she thought the current arrangement—extended two months ago—gave too much power to the mayor, specifically the ability to hire and fire staff that was charged with working with the CRA.

“I think the system is broken,” Myers said. “And I say that based on the firing of Thaddeus Cohen, on the firing of Becky Bray.” Hall also said the existing framework for the CRA didn’t

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seem to be working out under the new form of government. “I think we’re just asking for trouble,” he said. “I think it’s critical that we get that playbook worked out.” The new city council president said that he wanted to include Mayor Hayward in the process, thus respecting the intent of voters, but also thought it important to preserve the CRA’s individuality. “As the CRA board, I’m not willing to give that up to him,” Hall said. Sale told the board that he would work with both the CRA and the Mayor’s office to craft a new interlocal agreement everyone could work with. John Asmar, the Mayor’s chief of staff, said that they were up for conversations but that Hayward preferred the current agreement—“to be in the driver’s seat, to get it done.” “The alternative is that the CRA hires their own staff, rents their own building, do their own accounting,” Asmar said.

Myers made a motion to keep Sale on as legal advisor. Although several members had lobbied for such—notably Wu—that sentiment died on the floor for lack of a second.

Hall suggested that the group extend the agreement until the next board. Pratt asked if he meant the next “board meeting.” Hall said he had meant until a new CRA board took seats in 2013. “So, you’re asking to extend it for another year?” Pratt asked.

“Fourteen months, whatever it is,” Hall said. “I’m of the opinion, if it’s not broke don’t fix it. And it seems to be working for us.” Wu said they had a “very divided council.” Myers suggested there was an element of orchestration to the mess. Pratt argued for staying the course on drafting another interlocal. “This document isn’t about Mayor Hayward or us, it’s about the CRA,” the chairwoman said. “If we put it off until next year at this time, I think it will get brushed under the rug.”

Johnson said the issue was a “waste of time” and had him “spinning my wheels.” The CRA then voted on Hall’s motion—seconded by Wu—to extend the current arrangement until the next board formed. The chairwoman then said she had a question that had been on her mind since first taking office. “When can I quit?” Pratt laughed. She suggested that the board elect a new leader to coincide with the city council’s recent changing of the guard. Johnson asked if that meant she did not wish to be nominated for another round in the Chair. Pratt told him to ask her next month. Johnson threw Spencer’s name onto the table, but Pratt said the matter would need to be placed on the next meeting’s agenda. It was some rousing therapy, but some questioning does remain as to who’s paying the bill. “I would appreciate it if you pay me, don’t care if you don’t,” Sale told the room.

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Studer Community Institute
November 29, 2011

CRA power struggle ends in Mayor's favor

Author: Ann Regan

The Community Redevelopment Agency Board, which consists of all of the City Council members, on Monday voted 6-2 to cede all power to hire and fire the Community Redevelopment Agency staff to the Mayor of Pensacola despite the warning of the Board's attorney that giving away that power would mean that the CRA could not function. Douglas Sale, an attorney whom several CRA Board members described as an expert in CRA law, had accepted retention by the CRA Board to serve as its Special Counsel for the specific purpose of advising the Board on CRA matters — advice which 6 members of the Board ignored.

Before and at the meeting, Sale had explained to the Board that its sole purpose was to eliminate slums and blight in the CRA designated downtown area. To fulfill that sole purpose, the law required the CRA, not the City, to control the money funneled into the CRA Trust Fund from property taxes levied by the City and County. In other words, the CRA, not the City or Mayor, had a legal duty to control a huge checking account. A checking account that is being used, for example, to make payments for the work being done on the Community Maritime Park and to pay off the Park's debt service. The CRA also has completed a number of other projects in fulfilling its purpose including Seville Harbor, Downtown Palafox Street, and the Pensacola Cultural Center according to the CRA website.

The only way that the CRA can fulfill its obligations to administer all these CRA Plan projects and to control the use of Trust Fund dollars, is through a staff that's answerable solely to the CRA Board, Sale explained. Because the CRA has no staff answerable to the Board, Sale told the Board that "the CRA is not functional." CRA Board members cannot talk to one another outside of Board meetings because of the Sunshine law, Sale explained. So, Boards like the CRA Board must be able to rely on staff to get done what the CRA Board has determined is necessary to fulfill its legal obligations.

Becky Bray, the CRA Administrator, who was fired by the Mayor, is an example of why the CRA is not functioning. The CRA Board had asked Bray to do some work with Sale regarding the hiring agreement with the City that the CRA Board determined needed to be done. Bray went about doing her work for the CRA without complaint from the CRA. But Bray is a City employee who is supervised by the Mayor and may be removed by the Mayor in accordance with the new City Charter. So the Mayor, as Bray's supervisor, could put a stop to Bray's work for the CRA by firing Bray — which he did several weeks ago.

Since the renewed staffing agreement calls for CRA work to be done by City employees supervised by the Mayor, just as Bray was, the Mayor has complete control over the work of the CRA. He can stop the work, he can change the work, or as he said recently, he can go "in a different direction" from what the CRA Board decides is necessary to fulfill its legal

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responsibilities. With the CRA staff answerable to the Mayor, the Mayor, for all intents and purposes, is administering the CRA Plan and controlling the CRA's Trust Fund. And the CRA is not functioning as the CRA was legally intended to function. Clearly, prior to signing the hiring agreement with the Mayor, the CRA had control over its projects and control over the Trust Fund—its "checking account." The problem is not that the CRA did not have a checkbook, as Councilman Larry Johnson suggested at the meeting; the problem is that the CRA Board gave away its checkbook to the Mayor.

The renewed agreement creates another issue for the CRA: who will be its attorney going forward? City Attorney **Jim Messer** had declared at the September 19 CRA meeting that he had a conflict of interest in representing both the CRA and the City. According to CRA Chair Megan Pratt's memo to the CRA Board, **Messer** suggested at the September 19 meeting that, because of his conflict of interest, instead of **Messer's** representing the CRA, it would appropriate for the Chair to retain Sale, which the Chair did. Sale, representing the CRA Board, had direction from **Messer** to negotiate the hiring agreement terms with the Mayor's office, according to Sale's email to John Asmar, Counsel and Chief of staff for the Mayor. However, Asmar was not much interested in negotiating with Sale as Asmar said that the Mayor did not recognize Sale as the CRA attorney because the Mayor had not authorized the CRA Board to hire Sale. Asmar emailed that the CRA was already represented "by legal counsel of the city," presumably meaning the "conflicted" **Messer**.

At the meeting on Monday, by a 6-2 vote, Councilmen Brian Spencer and Larry Johnson voting no, the Board agreed that Sale had been retained as the Board's attorney and should so serve at the meeting. Sale's acceptance of the Board's retention was for the limited purpose of explaining CRA law to the Board and suggesting amendments to the CRA agreement that would bring the agreement into workable compliance with that law, and for Monday's meeting Sale was the CRA Board's attorney.

At Monday's meeting **Messer**, the self-proclaimed "conflicted" attorney, and Sale sat at the CRA Board's table. During the meeting, despite **Messer's** conflict of interest, several CRA Board members, among them Councilman Spencer, repeatedly directed questions to **Messer** rather than to Sale. More interestingly, and despite Councilwoman Sherri Myers' reminding **Messer** that he had a conflict of interest, **Messer** answered the questions and offered advice to the Board. After listening to Councilman Spencer toss leading questions to **Messer**, for which **Messer** appeared to have written answers at the ready, Myers observed that she recognized "an orchestration" by the Mayor to influence the CRA Board when she saw one. Later, Spencer's wife, who had been seated in the audience, rose to her husband's defense and chastised Myers for seeing what she saw. But after Monday's meeting, since Sale is no longer the Board's attorney, the issue remains as to whom the CRA Board can turn for advice on legal issues.

While very few members of the public attended the meeting, two of them did speak during the public comment period. Mike Kilmer said the process reminded him of giving more authority to a "dictator." Rebecca Heyer expressed concern about the lack of transparency in the Mayor's firing Becky Bray.

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Studer Community Institute
November 25, 2011

As city charter turns two, questions remain

Author: Joe Vinson •

On November 24, 2009, City of Pensacola voters approved a new charter that reorganized municipal government under a "strong mayor." It's been an eventful two years, but many questions about the new government remain unanswered. In particular, the city council has become increasingly polarized regarding the mayor's agenda, with no detente in sight. Here are just a few of the more contentious issues.

Separation of powers

Since Mayor Hayward took office in January, there have been several times when council members have chafed under the constraints of the new charter, or rather, how the charter is being interpreted by the mayor's office. Case in point: when the mayor released his proposed budget, it restructured several departments with new cabinet-level positions overseeing them. The charter says the mayor may "appoint the head of each department, with the consent of the City Council by an affirmative vote of a majority of City Council Members." However, none of the new positions have been confirmed by council. The mayor's office contends these positions do not require confirmation because they are not department heads as defined by the charter.

Mayor's attendance at council meetings

When the charter passed, it was widely assumed that the new strong mayor would attend city council meetings. In his first months in office, however, Mayor Hayward made it known he didn't feel obligated to be there, attending only part of one meeting. The charter says that the mayor "shall have the following powers and duties," one of which is "to attend all meetings of the City Council with authority to participate in discussions, but without power to vote. Hayward interprets this wording as a power of the mayor, not a duty. He said via a statement that he would "participate in meetings when there is an issue that I need to speak to, or when there is a decision that we need to make jointly," but otherwise would send a staff member to represent him (usually City Administrator Bill Reynolds). Councilwoman Sherri Myers has repeatedly criticized this arrangement and has asked for an independent legal opinion.

At-large City Council seats

An early draft of the new charter removed the two at-large seats, which would have resulted in seven single-district council seats. For politically expeditious reasons it was changed back to a 9-person council before the charter went to voters, but there have been subsequent efforts to re-address the issue through a city referendum. Councilman Sam Hall has called for an end to the at-large seats, one of which he now occupies. As he told the News Journal in March, "My intent would not be to kick anyone out of their seat. ... I am asking that it go away at the end of my term [in 2012]." Of course, Hall was just elected president of the city council, which carries a

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two-year term. As council president, he may bring agenda items up for discussion. Will he use this authority to press for a referendum on the at-large seats, or has that train left the station?

CRA authority

Last week, Mayor Hayward fired Community Redevelopment Agency Administrator Becky Bray. The charter gives the mayor power to remove employees "with or without cause, and without the consent of City Council Members," but the CRA is a special case with authority organized under the city council. Through a temporary interlocal agreement, the city shares responsibility for personnel and other management, meaning Bray was considered a city employee subject to removal by the mayor. (Hayward had previously fired CRA director Thaddeus Cohen for undisclosed reasons.)

Hayward told the PNJ's Jamie Page that he could not discuss the reason for Bray's dismissal, except that he "want[ed] to go in a different direction with the person running the CRA." However, reporting by the Independent News and Rick Outzen suggests that the firing stemmed from the CRA's hiring an outside legal counsel to draft a new interlocal agreement that would put authority back in the hands of the CRA (i.e. the city council) — something Outzen characterizes as a "power grab." The council will convene as the CRA on Monday, the first time since Bray's firing and other issues came to light. That should be an interesting meeting.

Legal primacy

In the cases mentioned above, who can settle the legal issues at hand? In theory it should be the city attorney, **Jim Messer**. But **Messer** was hired by and works under the mayor, which presents a conflict of interest in questions of separation of powers. **Messer** has employed the services of the Tallahassee law firm Allen, Norton & Blue for some of these questions. He and the mayor's chief of staff John Asmar recently circulated a letter of opinion from that firm to city employees saying the mayor has power to circumvent the city's Civil Service Board in personnel matters:

Since the 2010 Charter was adopted by referendum pursuant to F.S. 166.031, to the extent that the Mayor's Charter authority conflicts with or affects the rights of municipal employees, the city's home rule legislative authority will supersede the special act's conflicting language. Accordingly, our opinion remains that the Mayor has "the power to appoint, discipline, and remove all officers and employees," as well as the power to take any and all other personnel actions previously administered or undertaken by the Civil Service System/Board, as stated in Section 4.01 of the Charter, regardless of any and all conflicting language and provisions of the civil service special act. **Messer** has said that there are inevitable "growing pains" for any new government, and that if it takes a judge to settle some of these questions, so be it. Based on frictions of the last few months, that seems inevitable too.

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Naples Daily News
January 12, 2005

County attorney nominee withdraws unexpectedly

Author: Charlie Whitehead

The man Lee County commissioners had tentatively selected to be the new county attorney shocked them all late Tuesday by withdrawing. **James Messer**, a Pensacola trial attorney, had his attorney fax his withdrawal letter shortly before commissioners were to discuss his proposed contract Tuesday evening. Commissioners had belabored the proposed deal and how the contract came before them during their morning meeting, and **Messer** apparently had heard enough. Chairman Doug St. Cerny had seemed poised to vote against the contract. St. Cerny was supposed to negotiate the contract as chairman, but said he'd been cut out of the loop. "The process you asked me to be involved in has been usurped," St. Cerny told board members. Instead, St. Cerny said, **Messer** worked with hired recruiter Bob Slavin and county Human Resources Director Dinah Lewis on the contract. A contract was scheduled for last week's agenda, St. Cerny said, before he ever saw it. He said he never heard from **Messer** or Slavin until he got a letter just before the meeting that had been sent to Commissioner John Albion last week. "Obviously there's more at play here maybe than what I'm privy to," he said.

St. Cerny said he had concerns once he saw the contract, which called for a \$187,500 salary and two three-year terms. Former County Attorney Jim Yaeger made a little more than \$150,000 annually. St. Cerny said the compensation package, which also included deferred payments, a severance deal he called generous and the payment of license fees in Florida and elsewhere, was too lucrative. "I thought for not having been a county attorney or a deputy county attorney, the package he was requesting was excessive," he said.

Though Commissioner Bob Janes had moved approval of the contract, and Commissioner Tammy Hall seconded, they agreed to wait when St. Cerny explained his objections. "I made the motion because I felt we were further along," Janes said. "To find out you were not in the loop disturbs me greatly." Hall said, even before **Messer's** withdrawal, that the situation was embarrassing to the board. "We look like Keystone Kops," she said. "We're sitting here embarrassing potentially ourselves and our new county attorney." Albion, who'd argued ardently for **Messer**, said the reason he got the letter from Slavin was that he'd asked for Slavin's opinion on the proposed contract. "I thought it was sent around" to other commissioners, he said. Lewis and Assistant County Attorney Andrea Fraser said they'd both reviewed the contract and that it had been modified at their requests. "Great," Hall said. "Wonderful. But where was Doug?"

Commissioners might have approved **Messer's** contract Tuesday evening. It appeared Janes, Hall and Albion were ready to approve the deal, but they never got the chance before **Messer's** withdrawal letter arrived. The turn of events moves the county back to square one seven months after longtime legal boss Yaeger retired. Still waiting in the wings are Deputy County Attorney Bob Gray and Chief Assistant County Attorney David Owen, both of whom were considered and received support when **Messer** was chosen after a rancorous series of 3-2 votes.

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Albion tried to get commissioners to approve **Messer's** contract anyway Tuesday night, hoping apparently to change his mind. He then tried to have Owen appointed as interim county attorney -- **Messer's** terse withdrawal letter included an endorsement of Owen for the job -- but Owen himself asked him to reconsider. "Since we've come back from the holidays, we've put in a tough seven days," Owen said. "It's been a particularly tough day today. I think we all should take a deep breath, and I'd respectfully request the board take no action today." Commissioners will discuss the county attorney job again next Tuesday.

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Naples Daily News
December 15, 2004

Lee hires Pensacola lawyer as county attorney

Author: Charlie Whitehead

It took four 3-2 votes to get it done, but Lee County commissioners selected a Pensacola trial lawyer as the county attorney Tuesday after passing over two in-house candidates. **James Messer** was the chief litigator for Escambia County government from 1993-2001, and had stints with the U.S. Justice Department and as judge advocate attorney for the U.S. Marine Corps before that. "I'm flattered and honored to hear that," said **Messer**, who was in his Pensacola office while commissioners were arguing over his hiring. "I think Lee County is a wonderful place to live and you have an excellent board of county commissioners." **Messer** said he hadn't been contacted yet about the vote, so he can't discuss the probability of an agreement on terms such as his salary. He also declined comment for now on the 3-2 votes. Commission Chairman Doug St. Cerny will do the contract negotiating on behalf of commissioners.

Commissioner John Albion successfully argued for **Messer**, but his first motion to select him failed 3-2 with St. Cerny and Commissioners Ray Judah and Bob Janes voting 'no.' Judah argued for David Owen, the chief assistant attorney in the office now, while St. Cerny supported Bob Gray, who was deputy county attorney to Jim Yaeger until Yaeger retired this summer after 26 years as county attorney. Judah then made a motion to hire Owen. That motion failed 3-2, with St. Cerny, Albion and new Commissioner Tammy Hall voting 'no.' The convoluted route then had Janes making a motion to exclude Gray and Owen from consideration. That motion passed 3-2 with Judah and St. Cerny objecting. Janes' subsequent motion to select **Messer** passed by the same 3-2 vote.

Albion cited **Messer's** military background and high ethical standards, comparing him to utilities director Rick Diaz, who was hired on the strength of glowing recommendations, and County Manager Don Stilwell. Stilwell was brought to Lee County 11 years ago by the same headhunter that found **Messer**. Albion argued then for Stilwell, while other commissioners argued for other candidates. Tuesday's debate was similar. "I lean toward staying similar to the county manager's style," Albion said. Judah, however, questioned **Messer's** land-use and growth management experience. "Escambia does not have a good reputation for growth management," he said. "I was taken aback that he had absolutely no background whatever."

Both Janes and Hall said they came into Tuesday's meeting wanting to hear the debate, and both ended up voting with Albion. St. Cerny and Judah warned that commissioners could break up a winning team by bypassing the two in-house candidates. "Jim Yaeger had Bob (Gray) in the position he was in for a reason," St. Cerny said. "It's awful hard to tamper with a winning combination." "We have a heck of a team in place," Judah said. "If we bring somebody in from outside, there's going to be damage to that team. It's going to splinter and break apart." Both Gray and Owen had praise for **Messer**. "Everybody likes him, and I look forward to working for him," Gray said. "You pick your lawyer like you pick your doctor," Owen said. "It all depends

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on what you're looking for. You have to be comfortable with your lawyer, and the majority of the board had a comfort level with **Mr. Messer.**" As for breaking up the team, Gray said there are other opportunities and he has feelers out. Owen declined comment.

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The Miami Herald
August 11, 1995

Scales of Justice Tip Toward Worker

Author: Associated Press

A 454-pound heavy equipment operator, who was fired for being too heavy, has won a lawsuit to get his job back. A judge also ordered Escambia County to pay David Nickson, who stands six-foot-one, \$163,000 in back wages for the past four years in the verdict that lawyers received Wednesday. "We dropped the ball" by firing Nickson before assessing his ability to operate bulldozers and other heavy equipment, **Jim Messer**, an attorney for the county, said Thursday.

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