

EXHIBIT NO.

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City of Alexandria, Virginia

MEMORANDUM

DATE: February 4, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: CHRISTOPHER P. SPERA, ACTING CITY ATTORNEY

SUBJECT: OPTIONS FOR REDUCTION OF THE SIZE OF THE BOARD OF
COMMISSIONERS FOR THE ALEXANDRIA REDEVELOPMENT AND
HOUSING AUTHORITY

ISSUE:

The Alexandria City Charter, at Section 2.04.3, allows the City Council by ordinance to reduce the size of the board of the Alexandria Housing and Redevelopment Authority ("ARHA") from 9 to 7. At its February 2, 2009 legislative session, Council directed the City Attorney to report to Council on the methods that Council could permissibly use to make such a reduction.

RECOMMENDATION:

That City Council 1) introduce the attached ordinance for first reading and determine what schedule it would like to follow for public hearing, second reading and final passage; 2) engage in dialogue with the ARHA director and the current ARHA board about reducing the size of the board; 3) after interaction with ARHA and hearing all public comment, make a determination if Council no longer wishes to designate that a board position be filled by a member of the Alexandria Landlord and Tenant Relations Board; and 4) after making the determination regarding the designated board position referenced in Item 3, choose whether Council wishes to implement one of the options set forth in the attached ordinance to reduce the size of the ARHA board.

DISCUSSION:

Housing authorities like ARHA are creatures of state law. Accordingly, apart from any additional authority granted to the City by the General Assembly, like the authority granted to the City in its charter, the City in its dealings with ARHA must comply with the provisions of Title 36, Chapter 1, Sections 36-1 through 36-55.1 of the Virginia State Code.

Virginia Code Section 36-4 creates and allows each local government in Virginia to activate a local housing authority. Virginia Code Section 36-11 states that the board of a housing authority must have a minimum of 5 and a maximum of 9 members. While this state code section allows for the local government to increase the size of the board - in other words, increase the number of commissioners up to a maximum of 9 – there is no provision in state code allowing the local government to reduce the size of the authority's board. Accordingly, in 2002, the City sought and received a Charter amendment from the General Assembly to allow the City Council to reduce the size of the ARHA board. Specifically, City Charter Section 2.04.3 provides:

Notwithstanding any contrary provision of law, general or special, the council may, by ordinance adopted from time to time, alter from between seven and nine the number of members comprising the board of directors of the Alexandria Redevelopment and Housing Authority.

In my opinion, this Charter amendment allows the City to proceed in one of two ways: either a) allow the board to reduce to 7 members by attrition or b) have Council vote for seven commissioners from a ballot comprised of the current incumbents. Any reduction would require an ordinance, which would have to go through first reading, public hearing and second reading and final passage. Each scenario is discussed in further detail below.

Attrition:

Attrition from the ARHA board could occur in several ways. First, there is scheduled attrition, in that the terms of the various members will expire at known times. The next terms set to expire are for two members drawn from the general public and will expire in October of 2009. If previously authorized by ordinance, City Council could simply not fill the two expiring terms, reducing the board's number to 7. Alternatively, there could be non-scheduled attrition due to retirements or resignations. Again assuming prior authorization by ordinance, if there are two or more vacancies created by resignations or retirements of board members prior to the expiration of any member's term, City Council could fill the vacancies on to the extent necessary to comprise a 7-member board. (For example, if three current board members were to retire or resign, leaving 6 incumbents, Council would only authorize staff to go through the process of re-advertising for and presenting Council with candidates to fill one vacancy.) Council could engage in discussions with the ARHA director and current board to get its views about reducing the size of the board and to determine if any of the current ARHA board are considering or would consider retiring from the board, as this would give Council the simplest method of reducing the size of the board.

Reduction:

Alternatively, should Council wish to act prior to any scheduled or non-scheduled attrition, Council, if authorized by previously adopted ordinance, could vote on a slate of candidates comprised of the 9 incumbents and from that ballot select 7 pursuant to the applicable

laws and procedures governing elections to boards and commissions to comprise the smaller board.

Other Factors:

Council would have to consider several other factors in making a decision about using its Charter authority to reduce the size of the ARHA board. First, there are two ARHA board positions that Council at its election has previously filled from designated groups – one from a member of the Alexandria Resident Council and one from the Alexandria Landlord and Tenant Relations Board. It is my understanding that the United States Department of Housing and Urban Development (“HUD”) requires that an authority have a tenant representative on its board in order to be eligible to receive grants, assistance and otherwise maintain its eligibility and good standing with HUD. Accordingly, Council should not consider eliminating the member designated from the Alexandria Resident Council. However, in down-sizing the board from 9 to 7 positions, Council would have to determine if it wished to preserve or do away with the designation of a board member from the Alexandria Landlord and Tenant Relations Board. That decision would factor into how it implemented either method of reduction discussed above. For example, if one of the board members to retire or resign currently filled the designated Landlord and Tenant Relations Board position and Council chose to maintain that position as designated, that position would have to be filled and could not be used to accomplish the reduction in board size. Similarly, if Council were to take the reduction approach, Council’s choice would change depending on whether the Landlord and Tenant Relations Board position were to be retained as designated:

FIRST ALTERNATIVE - If Council elects to continue to designate the currently designated member position from the Alexandria Landlord and Tenant Relations Board, Council may vote on a ballot with a slate of candidates comprised of the current 7 ARHA board members drawn from the general public and from those 7 candidates, select 5 pursuant to the applicable laws and procedures for selection of members of boards and commissions so as to, when combined with the two designated board member positions, reduce the total number of ARHA board members to 7.

SECOND ALTERNATIVE - If Council elects to continue to designate only the designated member position from the Alexandria Resident Council, Council may vote on a ballot with a slate of 8 candidates comprised of the current 7 ARHA board members drawn from the general public and the current ARHA board member selected from the Alexandria Landlord and Tenant Relations Board and from those 8 candidates, select 6 pursuant to the applicable laws and procedures for selection of members of boards and commissions so as to, when combined with the one designated board member position that was not changed, reduce the total number of ARHA board members to 7.

In addition, Council would have to consider the terms of the board members left after any down-sizing of the board. Reducing the board from 9 to 7 will almost certainly leave the 7-member board with irregularly staggered terms. This will no longer ensure, to the extent possible, a fixed and regular sequence of re-appointments, which is the purpose of staggered terms. Accordingly, in my opinion, once the 7 member board is constituted, Council could reset the terms as if a new board were being formed pursuant to Va. Code Section 36-11, setting the terms in a staggered fashion for periods of one, two, three, four and five years to ensure an evenly spaced expiration of terms across the membership of the now-smaller board. At the expiration of these new terms, board members would again be appointed for 4-year terms, pursuant to Va. Code Section 36-11.

Prior Opinion:

I am aware that in 2002, Council was verbally advised by the City Attorney in a legislative session that he believed Council could completely reconstitute the board, essentially starting over with a candidate pool comprised of any of the incumbents who wished to be considered for reappointment plus any other qualified candidates that emerged as the result of the positions being re-advertised. I do not believe this position is strongly supported by either the Charter amendment or the applicable state code. I believe that the Charter amendment granted by the General Assembly authorizes the City Council to reduce the ARHA board by two members, which necessarily involves two incumbents losing their positions. However, I do not believe there is strong authority for City Council compelling the removal of more than two incumbents and completely reconstituting the board from a group that includes new candidates. This scenario presents the possibility, if not the strong likelihood, of more than two incumbents losing their positions. The state code is very specific about how an incumbent board member can be removed (see Va. Code 36-17, requiring a showing of cause, a public hearing and other steps before a board member can be removed) and in my legal opinion, removing more than two incumbents, as allowed by City Charter Section 2.04.3, would most likely require the City to follow the “for cause” removal process set forth in that state code section.

ATTACHMENTS:

Proposed Ordinance
Current Roster of ARHA Board

STAFF:

Christopher Spera, Acting City Attorney
Rose Williams Boyd, Director, Office of Citizen Assistance

ORDINANCE NO. _____

AN ORDINANCE to reduce the size of the board of commissioners of the Alexandria Redevelopment and Housing Authority pursuant to Section 2.04.3 of the Alexandria City Charter.

WHEREAS, the City Council of the City of Alexandria finds and determines that:

1. The General Assembly has granted the City the authority by ordinance to reduce from the current number of 9 to the reduced number of 7 the number of commissioners that comprise the board of the Alexandria Redevelopment and Housing Authority ("ARHA").

2. The existing ARHA board has as a 9-member entity served the authority, the public and the residents of the ARHA properties and is to be commended for its past service.

3. The reduction in the size of the ARHA board from 9 to 7 is appropriate at this time in order to try to improve the efficiency of its deliberative process, make fewer members necessary for a quorum and otherwise improve the ARHA board's ability to quickly and effectively respond to the needs of the authority in an weakening economic environment with lower amounts of state and federal assistance for public housing, as well as increasing demands on the City's resources.

4. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That prior to proceeding under any of the options set forth in Section 2 herein, the City Council shall determine whether it intends to continue its current practice of filling one AHRA board position from the Alexandria Landlord and Tenant Relations Board.

Section 2. That after making the determination regarding whether it will maintain the designated board position set forth in Section 1 herein, the City Council may implement one of the following options to reduce the size of the ARHA board from 9 members to 7 members:

Option 1 – The City Council may elect not to fill such vacancies that are created by either the expiration of the terms of the current ARHA board members or the resignation or retirement of the current ARHA board members so as to reduce the number of members to 7, taking into account all board positions that are to remain designated pursuant to the election made pursuant to Section 1 herein.

Option 2(a) - If Council elects to continue to designate the currently designated member position from the Alexandria Landlord and Tenant Relations Board, Council may vote on a ballot with a slate of candidates comprised of the current 7 AHRA board members drawn from the general public and from those 7 candidates, select 5 pursuant to the applicable laws and procedures for selection of members of boards and commissions so as to, when combined with the two designated board member positions, reduce the total number of ARHA board members to 7.

Option 2(b) - If Council elects to continue to designate only the designated member position from the Alexandria Resident Council, Council may vote on a ballot with a slate of 8 candidates comprised of the current 7 AHRA board members drawn from the general public and the current ARHA board member selected from the Alexandria Landlord and Tenant Relations Board and from those 8 candidates, select 6 pursuant to the applicable laws and procedures for selection of members of boards and commissions so as to, when combined with the one designated board member position that was not changed, reduce the total number of ARHA board members to 7.

Section 3. That upon completion of the selection of the 7 member board pursuant to any option set forth in Section 2, Council shall designate the terms of the 7 member board in the staggered manner described in Va. Code Section 36-11.

Section 4. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Attachment

Introduction: 2/10/2009
First Reading 2/10/2009
Publication:
Public Hearing:
Second Reading:
Final Passage:

REDEVELOPMENT AND HOUSING AUTHORITY

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The Alexandria Redevelopment and Housing Authority (ARHA) provides public housing for lower-income families in accordance with state and federal statutes and regulations of the U.S. Dept. of Housing and Urban Development. A political subdivision of the State of Virginia, ARHA does not receive any City funding; however, its nine Commissioners are appointed by the City Council.

The Board of Commissioners of the Alexandria Redevelopment and Housing Authority meets on the fourth Monday of the month at 7:30 p.m.

Approximately six hours per month are required of Commissioners.

Members: 9

4-YEAR TERM

1 Representative from the Alexandria Resident Council

(The ARC representative must be a resident of public or publicly assisted housing)

1 Representative from the Alexandria Landlord-Tenant Relations Board

7 Citizen Members

City Staff: ROY PRIEST, INTERIM DIRECTOR, 549-7115

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<u>Member</u>	<u>Phone</u>	<u>Occupation</u>	<u>Original Appointment</u>	<u>Current Appointment</u>	<u>Oath</u>	<u>Expiration of Current Appointment</u>
DIANIACIA BROOKS 433 COOK STREET ALEXANDRIA, VA 22314 ALEXANDRIA RESIDENT COUNCIL REPRESENTATIVE	Res: (703) 778-1574 Bus: (703) 299-6097 Fax: eMail dianiacia@yahoo.com	COORDINATOR ARHA FAMILY RESOURCE LEARNING CENTER	1/9/2007	1/9/2007	1/17/2007	1/9/2011
CARTER FLEMMING 1403 BISHOP LANE ALEXANDRIA, VA 22302 CITIZEN	Res: (703) 461-9099 Bus: Fax: eMail flemmtom@aol.com		10/9/2001	10/11/2005	10/19/2005	10/11/2009
8 LESLIE HAGAN 419 EAST HOWELL AVENUE ALEXANDRIA, VA 22301 CITIZEN	Res: (703) 548-4665 Bus: (703) 548-4665 Fax: eMail 73144.560@compuserve.com		1/14/2003	1/9/2007	2/5/2007	1/9/2011
DEREK HYRA 5002 B BARBOUR DRIVE ALEXANDRIA, VA 22304 CITIZEN	Res: (703) 751-2725 Bus: (202) 874-0856 Fax: eMail hyra.homet@verizon.net	COMMUNITY DEVELOPMENT EXPERT US TREASURY	1/13/2009	1/13/2009		1/13/2013
FLETCHER JOHNSTON 5340 HOLMES RUN PARKWAY, #104 ALEXANDRIA, VA 22304 LANDLORD-TENANT BOARD REP.	Res: (703) 370-8858 Bus: (202) 633-2754 Fax: eMail FX@ix.netcom.com	MUSEUM BUILDING MANAGER SMITHSONIAN	11/27/2001	3/11/2008	3/26/2008	2/26/2010

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2/5/2009

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