

COMMUNICATIONS  
FROM CHARTER  
COMMITTEE MEMBERS

Good afternoon. As discussed last meeting, here are some suggested language I believe fits in the public contracting categories of the below categories. As discussed, I think these ideas should be name free to encourage open discussion so as to not pre-judge or prejudice ultimate decisions.

Transparency:

-What was presented at last charter meeting by me or by Member McCarthy or combination thereof.

-The City is exempt from the provisions of all California statutes regulating public contracting and purchasing, except as provided by this Charter, UCCAA, City Ordinance, or by agreement of approved by majority of City Council members.

Openness:

-The city will promote fair and open competition for all City construction projects so that all contractors and workers are treated equally in the bidding and awarding of City Public Works Contracts.

-All citizens have the right to offer grievances or suggestions of for the betterment of municipal affairs at any regular meeting of the City Council.

Retention -

The City will withhold a maximum of 5% retention from public works contracts. The City reserves the right to not withhold, or reduce retention withholdings on projects it deems suitable of a non-complex nature.

Firewall -

Neither the City Council nor any of its members shall interfere with the execution by the City CEO of his or her powers and duties. No member of the City Council shall give direct order to any subordinates of the City CEO. No member of the City Council shall attempt to influence or coerce the City CEO in the administrative service of the City. The City Council shall not appoint to a salaried position under the City government any person who is a relative by blood or marriage, nor shall any department head or other officer having appointive power appoint any relative by blood or marriage.

Prevailing Wage -

The City exempts locally funded public works projects from mandated prevailing wage. Unless prevailing wage is compelled by the terms of a federal or state grant or is otherwise funded from a source that requires prevailing wage; the public work is a matter of statewide concern; or the payment of prevailing wage is separately authorized by the City Council, because the project is of a complexity and nature that the public interest would be served by requiring prevailing wage.

Misc -

The City Council may reject any and all bids presented and may readvertise in its discretion. Projects for the maintenance or repair of City Assets are exempt from Public Bidding Process if the City Council determines that such work can be performed more economically by a City department than by contracting for doing such work.

Thank you.

## COMMENTS REGARDING SUBJECTS FOR SEPTEMBER 25 MEETING

### Openness

I concur with the statements below as given us prior to the September 11 meeting:

- The city will promote fair and open competition for all City construction projects so that all contractors and workers are treated equally in the bidding and awarding of City Public Works Contracts.

-All citizens have the right to offer grievances or suggestions for the betterment of municipal affairs at any regular meeting of the City Council.

### Retention

Although many cities have no mention of retention in their charters, language about retention should be in Costa Mesa's charter. A maximum of 5% is too low. Preferred language should be similar to that found in the Newport Beach and Los Alamitos charters:

See section 1110 of the Newport Beach charter for precise language, but basically it says that if no amount is specified in the bid invitation, then an amount of not less than 10% should be withheld. Of course a different figure can be used in the bid invitation. The full second paragraph of the Newport charter is appropriate to include in the Costa Mesa charter.

### Firewall

I concur with the statements below as given us prior to the September 11 meeting:

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### Quality

No separate statement needed.

### Prevailing Wage

I concur with the statements below as given us prior to the September 11 meeting:

The City exempts locally funded public works projects from mandated prevailing wage. Unless prevailing wage is compelled by the terms of a federal or state grant or is otherwise funded from a source that requires prevailing wage; the public work is a matter of statewide concern; or the payment of prevailing wage is separately authorized by the City Council, because the project is of a complexity and nature that the public interest would be served by requiring prevailing wage.

### **Governance – Districting**

The city shall be served by five (5) city council members, each representing mutually exclusive city council districts and shall be elected by vote of the eligible voters within their respective districts. City Council candidates must have their permanent residence within the districts they represent and must continue to have their permanent residence there. Within reason, all districts shall represent numbers of voters that are roughly the same size, and specific effort shall be given to divide the city into districts that represent the current characteristic wants and needs of the voters within that given district.

Elections for City Council shall be staggered so that no more than three Council members are up for election during any regular election.

As Council terms are completed for the current 2013 City Council, a specific separate plan will be needed for how to transition from elected-at-large city council members to members who only represent a certain district.

### **Governance – Compensation**

When first becoming a charter city, the compensation for the City Council members should be continued as it was under general law and any current city ordinances, but with the understanding that it will be studied by a citizen committee examining both the needs of the city and a review of practices in other Orange County cities. After this review, current City Council compensation may be refined through future new ordinances or ordinance changes.

Some guiding principles should be.

1. Being a member of the City Council, should be viewed as a way for a resident to contribute or give back to Costa Mesa by taking actions in the best interest of the majority of the residents and optimizing the overall experience of living in Costa Mesa. The Council members' actions should strive to benefit all the residents of the city to the greatest degree possible within the city resources that are available.
2. Being a City Council member should not be considered:
  - a. Full-time employment
  - b. A long-term career
  - c. A quick stepping stone to higher political ambitions
3. Compensation should be fair and equitable, commensurate with the time and effort that has to be invested in the position.

#### Firewall –

Neither the City Council nor any of its members shall interfere with the execution by the City CEO of his or her powers and duties. No member of the City Council shall give direct order to any subordinates of the City CEO. No member of the City Council shall attempt to influence or coerce the City CEO in the administrative service of the City. The City Council shall not appoint to a salaried position under the City government any person who is a relative **by blood or marriage**, nor shall any department head or other officer having appointive power appoint any relative **by blood or marriage**.

#### Form of Government –

The municipal government established by this Charter shall be known as the Council-Manager form of government. The City Council will establish the policy of the City, and the Chief Executive Officer will carry out that policy.

The elective officers of the City shall consist of a City Council of 5 Members elected at large. The term of office shall be four years. The number of consecutive terms a member may serve on the City Council shall be limited to two terms. The Council Members terms shall be staggered in the manner existing at the time of the adoption of this Charter.

On the date of any meeting of the City Council at which time the Council receives the certification of the results of any general or special municipal election at which any member of Council is elected, the City Council, after swearing and qualifying and newly elected member, elect one of its members as presiding officer, who shall have the title of Mayor. The City Council, at the same time of electing the Mayor, shall elect one of its members as Mayor Pro Tempore. The term of service for both the Mayor and Mayor Pro Tempore shall be for 2 years. Both the Mayor and Mayor Pro Tempore shall serve in such capacity at the pleasure of the City Council.

All powers of the City shall be vested in the City Council except as otherwise provided in this Charter.

There is more to come, but this gets a start for this upcoming meeting.

Thank you.

vice mayor shall be selected by lot and/or drawing. The vice mayor's term of office shall commence upon his or her assumption of office and continue until the election, qualification and assumption of office of his or her successor following the next general municipal election. Upon the termination of a councilmember's term of office as vice mayor, he or she shall be seated as mayor. The mayor's term of office shall commence upon his or her assumption of office and continue until the assumption of his or her successor following the next general municipal election. *Roseville*

## **Eligibility/Qualifications**

### **Compensation**

The Mayor and each Councilmember shall receive the compensation heretofore fixed by Charter until changed by Charter amendment or ordinance. Such compensation fixed by ordinance shall not exceed the amount, which the City Council of a general law city, of comparable population, can prescribe under the provisions of State law. In addition, the Mayor and each Councilmember shall receive reimbursement for itemized routine and ordinary expenses incurred in official duty or such reasonable and adequate, as identified in the city's Administrative Rules, in an amount as may be established by ordinance, which amount shall be deemed to be reimbursement to them of routine and ordinary expenses imposed upon them by virtue of their office. *Vallejo, Santa Ana*

The Council may provide in the Administrative Code for reductions to such amounts by reason of absences from meetings. *Ventura*

The members of the City Council shall receive no compensation for their services as such, but shall receive reimbursement on order of the City Council for Council authorized traveling and other expenses when on official duty. In addition, members shall receive such reasonable and adequate amounts as may be established by ordinance, which amount shall be deemed to be reimbursement to them of other out-of-pocket expenditures and costs imposed upon them by virtue of their serving on the City Council. *Downey*

[I do not see any other City Council receiving health insurance benefits, but it is allowed by State government code. In light of the ACA, I recommend they purchase their own insurance.]

## **Vacancies**

An elective office becomes vacant when the incumbent thereof dies, resigns, is removed from office under recall proceedings, is adjudged insane, convicted of a felony, or of an offense involving a violation of his official duties, or ceases to be a resident of the City, or neglects to qualify within ten days following election or appointment, or shall have been absent from the State without leave for more than sixty consecutive days, or fails to attend the meetings of the body of which he is a member for a like period without being excused therefrom by said body. *Hayward*

If the unexpired term is less than one year, the remaining members of the Council shall elect a successor with requisite qualifications to fill the vacancy for the unexpired term. Vacancies shall

be filled only at a regular meeting of the Council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the Council by any Councilmember by placement on the agenda. Should the Council fail to fill any vacancy within 60 days after its occurrence, the Council shall, within 10 days, order a special municipal election, to be held not less than 60 nor more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the City not more than 180 days or less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by the Council nor by special election, but at said regularly occurring election.

If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the Council within ten days after the occurrence of the vacancy and to be held not less than 60 nor more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the City not more than 180 days nor less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, then the vacancy shall not be filled by special election, but at said regularly occurring election.

If at any municipal election the required number of Councilmembers be not elected by reason of a tie vote among any of the candidates therefor, then the Council, after the qualification of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office. In such case the person so appointed shall hold office, subject to the provisions of the Recall, to and including the (DATE) following the next general municipal election. *Berkeley*

### **Appointments/Removals/Recalls**

*Berkeley has a very detailed process.*

### **Presiding Officer**

Same as current powers.

### **Powers**

All powers of the City shall be vested in the Council, subject to the provisions of this Charter and to the Constitution of the State of California. **The Council may establish the method by which any of such powers may be exercised.** *Hayward*

### **Regular Meetings**

Stay the same

### **Special Meetings**

Stay the same

**Place**

Stay the same

**Quorum**

Quorum is 4 of 7/

**Public Participation**

Stay the same

**Adoption of Ordinances and Resolution**

Stay the same

**Interference with Performance of Duties of City Manager**

Stay the same

**Ordinances**

Stay the same

**Charter Review and Amendments**

At least every ten (10) years, the City council shall appoint a citizen commission of not less than nine (9) members whose charge shall be to review the charter and present, or cause to be presented, to the City council a written report recommending those amendments, if any, which should be made to the charter. Appointees shall be subject to confirmation by a majority of the City council.

Code of Ethics:

Create and abide by a Code of Ethics. *Santa Ana*



[dailypilot.com/news/tn-dpt-me-1017-costa-mesa-charter-prevailing-wage-20131016,0,6620108.story](http://dailypilot.com/news/tn-dpt-me-1017-costa-mesa-charter-prevailing-wage-20131016,0,6620108.story)

## Daily Pilot

### Charter could cost city funding

**New law allows state to deny money for public works projects overseen by language like that proposed in Costa Mesa.**

By Emily Foxhall

8:00 PM PDT, October 16, 2013

New California legislation could cut off some state funding for Costa Mesa based on language the city's Charter Committee has voted to include in a new draft charter. advertisement

Gov. Jerry Brown signed Senate Bill 7 into law over the weekend, turning the tables on a local debate over how construction workers should be paid. The legislation allows the state to withhold funds for public works projects executed by cities whose charters include ordinances or provisions that allow contractors to pay other than prevailing wages.

These wages reflect rates paid to the majority of workers in a craft, such as metal roofing, telecommunications technical work and tree trimming, and are determined by the state's director of the department of industrial relations, according to the department's website. They are meant to ensure that construction contracts are not awarded because a competitor offers a low wage rate.

The state Supreme Court determined last year that charter cities could waive the requirement on city-funded projects. However, the new law permits the state to deny money for public works projects overseen by those cities.

This change could affect 51 charter cities, according to the League of California Cities, an association of city officials in the state. If the proposed charter passes unchanged, Costa Mesa could be added to this list.

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#### Committee's Decision

In a 10-1 vote Oct. 9, with committee member Harold Weitzberg dissenting and committee members William Fancher and Mary Ann O'Connell absent, the Costa Mesa Charter Committee decided city-funded construction projects would not necessarily require the payment of prevailing wages.

Specifically, Costa Mesa would be free under the proposal to determine wages for projects that "are not of statewide concern, unless payment of prevailing wages is compelled by terms of the funding source," the draft charter reads.

The vote came after discussion of the issue at several previous meetings.

Committee member Ron Amburgey said Friday that he believed the measure would allow the city to save significantly.

"Bottom line is it adds to the cost of construction projects," Amburgey said of prevailing wage.

Not all agreed. Weitzberg, the only committee member who voted in dissent, explained Friday that the cost savings are more blurry than they seem.

"They claim you'll save millions of dollars, but no one is actually showing me you'll save millions of dollars," he said.

The vote represents the beliefs of the Costa Mesa City Council majority, said Jennifer Muir, spokeswoman for the Orange County Employees Assn., which represents employee unions in the county.

Each of five council members appointed one member on the committee, according to minutes from the June 4 council meeting on the city's website. They chose the next five committee members by a nomination process and the final three by a lottery.

"It's ideological and political and disappointing because it puts the community and the public at risk," Muir said Friday, explaining that safety concerns arise because the best workers might be bypassed for cheaper labor. "This process is a sham."

The decision reminded Muir of the charter that council members approved last summer for the November 2012 general election ballot. That charter also allowed public contracts not to require prevailing wage under certain circumstances. Nearly 60% of voters voted the charter down.

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### **'An ongoing battle'**

SB 7 was introduced last December, before the charter committee had been appointed. It was drafted to affect funding awarded after Jan. 1, 2015, according to the legislative counsel's digest online.

Mayor Jim Righeimer said he was confident SB 7 would be found unconstitutional.

The Legislature had stepped outside of its boundaries by deciding what should be a local or statewide issue, he said, describing the law as a "stopgap measure" to prevent cities from adopting charters.

"For them to decide is a slap in the face," he said. "The only person who can decide is a judge."

Others, such as those from the prevailing wage advocacy group Smart Cities Prevail, saw it as a victory.

The law will serve as an incentive for cities to pay prevailing wage, said spokesman Dale Howard.

"It is a win for middle class workers, and the communities where they live," Howard said in a news release. "Prevailing wage not only boost the local economy, but it can also ensure that local tax dollars being spent on constructions projects stay in the local community."

Whether the committee's vote will be reconsidered remains to be seen.

The agenda has not yet been posted for the next charter committee meeting. Facilitators for the committee, Kirk Bauermeister and Mike Decker, did not respond to email requests for comment.

"It's going to be an ongoing battle, but we're trying," Amburgey had said Friday.

## Article from a Sacramento Newspaper

In a major victory for organized labor, Gov. Brown signed into law Sunday night a bill blocking state funds to cities that don't pay the prevailing wage on public works projects – a measure aimed directly at charter cities, some of which have sought to avoid paying the prevailing wage in order to save money.

The bill, arguably the most important bill to emerge this year from the Legislature, also limits state funds to cities that have allowed a public works project without the prevailing wage being paid in the last two years.

The prevailing wage, a pay level derived from a complex formula set by the state, essentially reflects union-level wages, which often are higher than non-union pay. Critics, led by the charter cities and opponents of organized labor, said the prevailing wage restriction was unconstitutional and forced up the cost of public projects.

But supporters said the prevailing wage represented a public commitment to the middle class and a respect for workers.

“When you see the prevailing wage, you see the apprenticeship, you see the health care component, and you see a pension contribution as well,” said Sandy Harrison, a spokesman of for the State Building and Construction Trades Council, a major proponent of the bill, which represents some 390,000 workers in more than 160 affiliated unions. He noted that wage requirements already apply in federal projects.

The bill, SB 7, was authored by Senate Leader Darrell Steinberg, D-Sacramento.

Charter cities, created by local voters, are able to govern themselves with regard to “municipal affairs” and their authority on some issues traditionally has surpassed that of the state, experts say. Some 121 of California's 478 cities are considered charter cities, including Sacramento, Los Angeles, San Francisco and San Jose.

As of last year, there were 70 charter cities with no exemption of prevailing wages (including the previously named cities), 13 charter cities with partial exemption, and 37 with full exemption from prevailing wages. As of June 2013, 51 charter cities have provisions which allow them to avoid paying the prevailing wage when using their own funds -- but not when using state funds -- for public works projects.

The bill sparked major controversy.

Critics said the measure strips cities of authority and makes certain projects hard to finish without state funding. They said the measure seeks to punish charter cities and micromanage them.

The Associated Builders and Contractors, whose members include non-union builders, opposed this bill.

“Our members perform both prevailing wage and non-prevailing wage work. SB7 will greatly restrict the ability of cities to spend their tax dollars in the most efficient matter for local construction needs. Since our members perform work under both scenarios, we know the savings that can be realized when cities are given options to stretch their dollars further.” said Jodi Nagel, ABC of California Chairwoman in an email.

Critics also said the methodology used to calculate the prevailing wage was flawed because it doesn't take into account vast differences between individual cities and counties, including their economies.

“It [the prevailing wage exemption] also benefits our members by enabling a greater amount of construction projects that might not have been possible without the flexibility for cities to choose a wage rate that better represents their local market conditions.” Nagel said.

But backers of SB 7 said the prevailing wage, calculated by the state Department of Industrial Relations, was intended to provide a living wage for workers and accurately reflects economic conditions, county by county.

“Essentially, what it comes down to is a living wage for that particular area. Even if you have an impoverished area, you want people to make a decent wage, you want them to be able to go out and purchase things so that the local businesses are able to benefit from that. You also want them to be able to stay in their homes, and purchase more homes, because that jumpstarts the economy,” Harrison said.