



CHARTER COMMITTEE AGENDA REPORT

MEETING DATE: JANUARY 22ND, 2014

ITEM NUMBER: 8-A, B & C

SUBJECT: OUTSOURCING, SALE OF CITY OWNED PROPERTY & PENSIONS

DATE: JANUARY 14TH, 2014

FROM: SPECIAL COUNSEL'S OFFICE

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INTRODUCTION

Charter Committee member(s) asked that the following language be considered for the draft charter:

Outsourcing

The City shall have the power(s) to contract out for any services unless limited by the Constitution of the State of California.

Whenever possible outsourcing of services should be considered as a prudent way to manage the resources of Costa Mesa. There should be a periodic review of the city's operations and services to assure that process that serve the residents are done in the most expeditious responsible manner.

Sale of City Owned Property

The sale, conveyance or exchange of any real property owned by the City shall require supermajority approval of the City Council.

Pensions

No action increasing any employee retirement benefits, other post-employment benefits employer contributions including post-retirement health benefits shall be adopted without the assent of the majority of the voters voting for such an ordinance at a general election at which the ordinance is submitted to the registered voters of the city.

Employees hired on or after the effective date of this Charter shall not have their retirement benefits increased without an amendment to the Charter. No ordinance increasing any employee, legislative officer, or elected officials retirement benefits or other post employment benefits shall be adopted without majority approval of the citizens in a general election.

DISCUSSION

A. OUTSOURCING

Whereas general law cities are limited in their ability to outsource services, charter cities have broader discretion in outsourcing services. Government Code § 51335. The language proposed above, does not dictate outsourcing of any specific municipal services. Rather, each provision would give the City the discretion to outsource municipal services where appropriate. The latter provision goes one step further in requiring a periodic review of the City's operations to consider outsourcing. These two intended objectives are within a charter city's authority to govern.

However, an alternative which incorporates these objectives is the following:

The City may enter into a contract for any services unless limited by the Constitution of the State of California. The City shall periodically review its existing operations and services to consider whether said operations and/or services may be performed more efficiently and cost effectively by a third party. Any contract entered into, pursuant to this provision, shall be ratified in accordance with the procedure set by the City Council.

B. SALE OF CITY OWNED PROPERTY

1. Sale of Property Under State Law

There are a number of statutes governing the sale of city owned land set forth in Government Code. If the property involves parks, property dedicated under the subdivision map act and/or redevelopment property, there are specific statutory procedures must be followed.¹ Otherwise, cities have considerable flexibility in the sale of property. The most lenient approach to selling property is to merely find that the sale of the property is in conformance with the general plan and, if so, the planning commission must provide a report that confirms that the disposition of the property conforms to the general plan. Govt. Code § 65402.

An alternative, more stringent approach, requires the city to make a finding of public interest and convenience require the sale of the public building (or site dedicated to a public use) and adopting a resolution of intent to sell the property. Govt. Code § 37421. The resolution of intent must fix a time for public hearing, provide for publication of the notice of the hearing, fix the time that final action will be taken, and contain an accurate description of the property to be sold. Govt. Code § 37422. The resolution must be published at least once in a daily newspaper published and circulated in the city or, if there is none, a newspaper within the county, designated by the city, and also posted at least 10 days in three conspicuous places on the property. Govt. Code § 37423. A four-fifths vote of the city council is needed to override any protests to the sale. Govt. Code § 37425.

The other approach for selling non-park land is to sell the property as "surplus". Each year, cities are required to declare what property, if any, is surplus. After declaring the property surplus, the city then offers the property for sale to other public entities for sale. If other public entities are not interested in purchasing the city owned land, then the city can then offer it for private sale.

2. Sale of Parks under State Law

Where **parkland** is involved, special provisions apply for the park's discontinuance. Govt. Code § 38440 et. seq. The procedure for selling parkland may vary depending upon how it was acquired and the terms under which the park was dedicated. In general, the sale of parkland requires the city council to adopt a resolution of intention finding that the public interest or convenience requires the discontinuance of the use of such lands as a public park, and contain a) an accurate description of the lands; b) state the common name of the park; c) state the disposition which the legislative body proposes to make of the park; and d) fix a time, not less than thirty or more than sixty days after adoption of the resolution, and a place, at which the public or persons particularly interested may protest. Govt. Code § 38444.

If no protests are received, or the City Council overrules the protests by two-thirds vote of its members, it may proceed with the sale or it may call a special election allowing the voters to decide. Govt. Code § 38450. If two-thirds of the City Council does not vote to complete the sale, it shall not take further steps for the sale of the property for one year after final action, unless the City Council first calls a special election² on the question. Govt. Code § 38450.

3. CEQA

The sale of city owned property, whether it is parkland or non-parkland will likely trigger environmental review under the California Environmental Quality Act (CEQA) including the preparation of an initial study, negative declaration or environmental impact report.

¹ GC 37420 and GC

² If a special election is called and a majority of the voters support the proposition, the City Council may then sell the property.

4. Charter Proposal re: Sale of Property

The provisions above apply to general law cities. Thus, as a charter city, with the exception of complying with CEQA, Costa Mesa would not have to follow these provisions governing the sale of city owned property. In fact, a number of charter cities include provisions within their charter governing the sale of real property. Some examples of such provisions include restrictions and/or voter approval for the sale of beachfront property or open space.

Thus, the language proposed is within the Charter Committee's discretion to include in the proposed charter.

C. PENSION INCREASES

The last proposal involves a provision limiting pension increases without voter approval and/or amendment of the charter. Charter cities may establish their own standards, requirements and procedures including compensation, terms and conditions of employment for personnel according to the California Constitution Article XI, Section 5(b). Under the California Constitution, charter cities are obligated to follow state law with respect to labor negotiations as set forth in the Meyers-Milias Brown Act, however, salaries and pensions of local employees of a charter city constitute a municipal affair and are it is within a charter city's authority to regulate. If the Charter Committee proposed a charter provision stating that the City cannot have a pension increase without a vote of the people, the City would still have to collectively meet and confer with the bargaining units before the question could be placed on the ballot. Likewise, any charter provision that would affect the "terms and conditions" of employment would have to be negotiated through the collective bargaining process, prior to placement on a ballot.

CONCLUSION

In conclusion, the Charter Committee can consider language governing outsourcing, sale of city owned property and pension increases subject to the caveats referenced above.