



CITY COUNCIL AGENDA REPORT

MEETING DATE: MARCH 18, 2014

ITEM NUMBER: NB-1

SUBJECT: CHARTER COMMITTEE DRAFT CHARTER

DATE: MARCH 13, 2014

FROM: KIMBERLY HALL BARLOW, SPECIAL COUNSEL
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PRESENTATION BY: KIMBERLY HALL BARLOW

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BACKGROUND

In May 2013, the City Council formed the Charter Committee. Over the past ten (10) months, the Charter Committee has studied the various areas that are considered a “municipal affair” and drafted the proposed charter. The Charter Committee has completed its job and presents the draft Charter to the City Council.

DISCUSSION

I. Charter Committee Process

In May 2013, the City Council formed the Charter Committee for the purpose of considering a proposed city charter in accordance with the process set forth in Section 34450 et. seq. of California Government Code. The Charter Committee was comprised of thirteen (13) members of the community. Members of the Charter Committee include: Ron Amburgey, Brett Eckles, Bill Fancher, Tom Graham, Gene Hutchins, Kerry McCarthy, Mary Ann O’Connell, Hank Panian, Tom Pollitt, Lee Ramos, Andrew Smith, Kevin Tobin, and Harold Weitzberg.

Facilitators Kirk Bauermeister and Mike Decker; Special Counsel Kimberly Hall Barlow and Yolanda Summerhill; and from the City Clerk’s office Brenda Green and Sawyer Pendleton assisted the Charter Committee in its endeavor.

Each committee member was given an opportunity to provide the issue(s) he or she wanted the Committee to consider for the proposed charter. The original list is attached. Once that list was created, staff prepared a report comparing general laws to a city’s ability to regulate an issue as a charter city. Similar to the City Council’s process, Committee members were given an opportunity to ask technical questions and then a discussion ensued. The Facilitators ensured that each Committee member was given an opportunity to voice his or her opinion on each respective item. On some issues, the Committee sought additional information and the item was brought back. Once the issue was addressed to the satisfaction of the Committee, the

Committee gave a “thumbs up” or “thumbs down” as to whether that item should be included in the proposed charter. If a majority of the Committee voted in favor of an item, the Facilitators sought ways to bring those not in favor into the majority through dialogue, proposed language changes or compromise. This was not always possible.

II. Draft Charter Provisions

The Charter Committee opted to address the following areas in the draft Charter:

- A. Name & Boundaries: The draft Charter provides the City’s existing name and boundaries. These are standard provisions that must be included in a charter.
- B. Form of Government & Powers: The draft Charter calls for a Council-Manager form of government whereby the CEO is responsible for the City’s day-to-day operations while the City Council is responsible for policy. This is consistent with the City’s current form of government as set forth in Costa Mesa Municipal Code Section 2-106.
- C. Incompatible Offices: State law prohibits a City Council member or other public official from holding another office that would conflict with his or her responsibility as a Council member. Incompatible offices are distinguishable from a conflict of interest in that it does not involve a financial interest but rather a clash between the Council members’ duties in each office. Section 306 reinforces this rule by prohibiting a City Council member from holding an incompatible office within the City, and further prohibits a City Council member from employment with the City for two (2) years after leaving office.
- D. Budget Reserves: The Charter Committee ultimately approved a provision requiring the City to maintain cash reserves for the purpose of funding unexpected events or opportunities. The Charter Committee spent a considerable amount of time discussing how restrictive or flexible this provision should be. Ultimately the Charter Committee opted for providing greater flexibility with certain restrictions. For example, Section 500 provides examples of such events or opportunities that could be funded with budget reserves which include a major economic downturn, natural disaster or purchase of property, however, these serve only as examples, giving a future City Council the flexibility to use budget reserves for something that may not be contemplated at this particular moment but is, nonetheless, important to the City. Section 400, however, requires a supermajority vote of the City Council. Thus, while providing flexibility in how to use the funds, such an expenditure which would invade the Council’s set budget reserves must be approved by more than a majority of the Council. Additionally, there was considerable discussion on how to quantify the budget reserves. Recognizing the cyclical nature of the City’s property, sales and other revenues, Section 500 requires the City Council to evaluate every five (5) years what that amount should be.
- E. Retirement Benefits: Section 600 requires a supermajority vote at a general election to approve any increase in retirement benefits. Section 600 is very broad as it includes employee retirement benefits, other post-employment benefits, employer contributions for post-retirement benefits including post-retirement health benefits to be paid for by the City or for which the City is liable.
- F. Civic Openness in Negotiations: The Charter Committee adopts by reference COIN provision in the municipal code. Recognizing that COIN may require some changes as time goes by, Section 602 is crafted so that any changes to the COIN ordinance are automatically adopted into the Ordinance. If, however, the City repeals the COIN ordinance altogether, the charter provision remains in

place. The provision was crafted this way so that COIN is incorporated into the draft Charter, may be changed from time to time as necessary, but will remain in effect through a charter provision if the ordinance is repealed..

- G. Prevailing Wages: Section 702 prohibits the payment of prevailing wages on projects that are paid for solely out of the City's local funds. This is a small portion of projects that are performed throughout the City.
- H. Public Contracting: Currently, the City follows the Uniform Construction Cost Accounting Act ("UCCAA"), which is a streamlined approach for bidding on public projects. Section 700 authorizes the City to continue following the UCCAA, however, gives the City the discretion to "opt-out" of this procedure should future changes to the UCCAA prove unsavory to the City.
- I. Charter Review: Section 800 requires the City Council to review the Charter every ten (10) years to consider any changes. It also authorizes citizens, by obtaining the signatures of 2500 registered voters, to initiate the review process.
- J. Outsourcing: Section 802 authorizes the City to outsource services where permissible under State law. It also requires the City to periodically review its existing operations and services to consider whether outsourcing may be more efficient and effective.
- K. General Laws: The draft Charter specifies a number of areas where the City will continue to follow the general laws of the State of California. These include city council terms in office, appointment of a presiding officer, city council compensation, elections, initiatives, referendums, zoning ordinances consistency with the general plan and City Council hiring.
- L. Statutory Construction & Severability: And finally, the draft Charter includes statutory construction and severability provisions consistent with ordinances adopted by the City.

III. Proposals Not Included in the Draft Charter

Although many more items were considered, there were a number of items that the Charter Committee considered but ultimately opted against including in the draft charter. Some examples include voter approval for the sale of city owned property, restrictions on the use of eminent domain, additional conflict of interest provisions to those already set forth under state law and the Costa Mesa Municipal Code, and campaign contribution limits.

IV. Preamble

Principles the Charter Committee felt were important yet did not prescribe a particular action, including transparency, fiscal responsibility, ethics and integrity, were set forth in the preamble.

V. Process going forward

Going forward, the City Council must hold two public hearings at least thirty (30) days apart before placing the proposed charter on the ballot. Each public hearing must provide the public with at least twenty-one (21) days' notice of the hearing, and the vote to propose the charter must occur at least twenty-one (21) days after the second public hearing. Furthermore, preparing drafts, disseminating the information to the public, receiving comments from the public, coupled with argument and rebuttal submission deadlines, must also be taken into consideration when projecting a timeline. The following is a tentative timeline: April 15, 2014 – 1st Public Hearing (Regular City Council Meeting); May 20th, 2014 - 2nd Public Hearing (Regular City Council Meeting); June 17, 2014 - City Council to vote whether to place on ballot (Regular City Council Meeting).

RECOMMENDATION

The City Council accepts the draft Charter from the Charter Committee and determine whether to schedule public hearings to consider the draft.

FINANCIAL IMPACT

The acceptance of the draft Charter does not present any financial implications, however, there will be expenses as previously presented for noticing public hearings and placing the draft Charter on the ballot.

CONCLUSION

The Charter Committee presents the draft Charter to the City Council based on the “municipal affairs” it has considered over the past ten (10) months.

Attachments: (1) [Charter Committee Initial Proposals](#)
(2) [Draft Charter](#)
(3) [Suggestions for City Council Consideration](#)

-----Original Message-----

From: news@costamesaca.gov

Sent: Tuesday, March 18, 2014 11:59 AM

To: GREEN, BRENDA

Subject: weigh in on charter

Submission information

Survey answers

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Give us your thoughts on the charter:

I can't figure out why anyone is working on a charter. We voted against it...and we will again.