



# CHARTER COMMITTEE AGENDA REPORT

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MEETING DATE: OCTOBER 23, 2013

ITEM NUMBER: 7A-1

SUBJECT: PROPOSED CHARTER PROVISION

DATE: OCTOBER 17, 2013

FROM: SPECIAL COUNSEL'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW

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## BACKGROUND

At the October 9, 2013 meeting, the Charter Committee considered Alternative 1 set forth below creating a firewall between the City Council and city staff. From that meeting, the Charter Committee wanted to consider the existing provision and one additional option governing firewall. Those additional proposals are set forth below.

### A. COSTA MESA MUNICIPAL CODE SECTION 2-106 & CITY COUNCIL POLICY 300-6

The city council and its members shall deal with the administrative services of the city only through the city manager, except for the purpose of inquiry, and neither the city council nor any member thereof shall give orders to any subordinates of the city manager; provided, however, that the manager and the council may vary the provisions of this section by the establishment of contrary policies.

Council Policy 300-6 provides a framework for processing requests for information from the City Council through the City Manager.

### B. ALTERNATIVE 1

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 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.

**C. ALTERNATIVE 2**

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 coerce the City CEO in the administrative service of the City.

**DISCUSSION**

**A. COSTA MESA MUNICIPAL CODE SECTION 2-106 & CITY COUNCIL POLICY 300-6**

Costa Mesa Municipal Code Section 2-106 entitled "Interference by council in administrative affairs" sets forth the current limitation on city council engaging with city staff. The first portion creates a chain of command whereby all communications from the city council with staff comes via the CEO. The second portion is consistent with the Council-Manager form of government whereby only the CEO governs city staff. The final provision in Section 2-106 authorizes the city council and the city manager to vary this process if necessary.

Council Policy 300-6 was adopted in 1999 and revised in 2002 to provide a framework for processing requests for information from the City Council through the City Manager. Council Policy 300-6 sets forth a procedure for 1) routine inquiries, 2) requests for limited studies, 3) requests for substantial research and 4) provisions of reports, studies and documents. With respect to routine inquiries, city council members are authorized to directly contact city staff concerning matters such as meeting schedules, complaint status, reporting service requests and other items that do not require a written report. As to requests for limited studies, city council members may ask the City Manager or appropriate Department Director to research an area of interest or need on a given subject. To be considered a request for limited studies, the project must take no more than four (4) hours or less of city staff time. Requests for substantial research that require more than four (4) hours of city staff time must be directed to the City Manager or the City Attorney. The City Manager and requesting city council member can then narrow the scope of the research and subject to availability of resources to conduct the research, and the City Manager then assigns the project to the appropriate department head. Finally, provisions of reports, studies, memorandums, correspondence and related documents prepared pursuant to Council Policy No. 300-6 must be provided to all city council members and the City Manager simultaneously.

Although Section 2-106's title suggests that it provides a firewall between the city council and city staff, it serves more as a chain of command and process for funneling requests for information. As the Charter Committee has discussed firewalling at its meetings, its goal in considering a charter provision governing a firewall is more in the nature of ensuring that the CEO and city staff are not coerced by city council members to undertake an action that is in fact within city staff's authority to control. If that is the case, then the Charter Committee can consider amending Section 2-106 of the Costa Mesa Municipal Code or recommend such a provision in the charter itself.

**B. ALTERNATIVE 1**

The Charter Committee considered Alternative 1 at the October 9, 2013 meeting. Alternative 1 received overall support by the Charter Committee with some suggested variation in the language. As set forth here, the word "influence" was removed in that it was agreed that the City Council has the authority to influence the CEO as the purveyor of city policies. Alternative 1 prohibits 1) interference with the CEO in his or her duties, 2) giving of direct orders to city staff and 3) coercing the CEO on a matter that is within his or her authority. As alluded to above, this provision goes beyond Costa Mesa Municipal Code Section 2-106 in that it not only provides a chain of command but also shields the city staff side from the City Council in its day-to-day operations.

Additionally, the final portion of Alternative 1 prohibits nepotism in City Council hiring of blood relatives. The Political Reform Act which applies to charter cities, and Chapter 10 of the Costa Mesa Municipal Code address City Council conflicts of interest including hiring of family members. For instance, a city councilmember whose son is being considered for employment as a police officer cannot participate in any way in the decision to hire his son. Under the Political Reform Act, that prohibition extends to other decisions that may involve the child's entire department *if* the decision is considered one where the parent has a financial interest.

**C. ALTERNATIVE 2**

At the October 9, 2013, some Charter Committee members proposed addressing this issue in a separate provision governing conflict of interest. Accordingly, Alternative 2 proposes the first portion only of Alternative 1, which creates a firewall between the City Council and city staff.

**CONCLUSION**

Although a city charter potentially strengthens the City Council's authority over municipal affairs, the Charter Committee may consider a provision that creates a firewall between the City Council and CEO on matters that are intended to be within the CEO's discretion and authority.

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KIMBERLY HALL BARLOW