CHARTER COMMITTEE AGENDA REPORT

MEETING DATE: NOVEMBER 13, 2013 **ITEM NUMBER: 8B-1**

SUBJECT: CITY COUNCIL MEMBER PENSIONS

DATE: NOVEMBER 8, 2013

FROM: SPECIAL COUNSEL'S OFFICE

PRESENTATION BY: YOLANDA M. SUMMERHILL

FOR FURTHER INFORMATION CONTACT: BRENDA GREEN @ 714-754-5221

INTRODUCTION

At the October 23, 2014 meeting, the Charter Committee expressed interest in considering a provision governing City Council's pension that is in conformance with state law. The following is an additional discussion regarding this issue.

DISCUSSION

City Council Member Pensions

The City of Costa Mesa's elected officials are covered by the Public Employee's Retirement System (PERS). This is a pension program funded by a combination of employee and employer contributions. The amount that each elected official is entitled to be based on a number of factors that include: service years; benefit factor (based on age at retirement); and final compensation (average monthly eligible earnings over last 12 consecutive month plus 7%). For purposes of calculating pension allowance, only PERS-able compensation is included in eligible earnings. In Attachment B, the column entitled "City Retirement Contribution" is a percentage based on these factors. In researching how surrounding cities address city council pensions, we discovered that none of the surrounding cities have language governing City Council pensions. Attachment A provides the language that these surrounding cities' charters provide related to pensions.

Some cities have considered terminating City Council's state-run pension plans with CalPers only to discover a significant cost for termination. For example, the San Jose City Council, in its efforts to reform pensions, sought to terminate council's CalPers pension program. However, it discover that termination would cost the city anywhere from $5 million to $5.7 million. Thus, San Jose abandoned that plan.

An alternative to terminating CalPERS contract for existing or previous council members, the Charter Committee can consider a provision that council members elected thereafter are not part of the CalPERS system. Additionally, with the passage of the California Public Employees' Pension Reform Act of 2013, the City should will a reduction in its cost for public officials' retirement contribution.

CONCLUSION

In light of the Pension Reform Act and the cost of terminating city council contracts with CalPers for retirement benefits, it is our recommendation that the Charter Committee not modify the existing requirements for City Council pensions at this time.

ATTACHMENTS:
A.) Surrounding Cities Charter Provisions Governing Fiscal Administration and City Council Compensation
B.) City Council's Current Compensation

SURROUNDING CITIES CHARTER PROVISIONS GOVERNING FISCAL ADMINISTRATION & CITY COUNCIL COMPENSATION

	Huntington Beach	Irvine	Newport Beach
Fiscal Year	Yes. The fiscal year of the City shall be as set forth by resolution of the City Council. § 600	Yes. The fiscal year of the City government shall begin on the first day of July of each year and end on the thirtieth day of June of the following year. The Council may by ordinance change the fiscal year. § 1000.	Yes. The fiscal year of the City government shall begin on the first day of July of each year and end on the thirtieth day of June of the following year. § 1100
Annual Budget Required	Yes. At such date as the City Manager shall determine, each board or commission and each department head shall furnish to the City Manager, personally, or through the Director of Finance, estimates of the department's, board's or commission's revenue and expenditures for the ensuing fiscal year, detailed in such manner as may be prescribed by the City Manager. § 601.	Yes. The City Manager shall submit to the City Council a proposed budget for the ensuing fiscal year, and an accompanying message at such time as the City Council shall prescribe. § 1001.	Yes. At such date as the City Manager shall determine, each department head shall furnish to the City Manager estimates of revenue and expenditures for his or her department for the ensuing fiscal year, detailed in such manner as may be prescribed by the City Manager. § 1101
Submission to City Council	Yes.	Yes.	Yes.
Timeline	Yes. At least thirty days prior to the beginning of each fiscal year, the City Manager shall submit the proposed budget to the City Council.	Yes. Does not have specific date. At such time as the City Council shall prescribe. § 1001.	Yes. At least thirty-five days prior to the beginning of each fiscal year, the City Manager shall submit to the City Council the proposed budget as prepared by him. § 1102.
Public Hearing	Yes. After reviewing the proposed budget and making such revisions as it may deem advisable, the City Council shall hold a public hearing thereon at least fifteen days prior to the beginning of each fiscal year and shall cause to be published a notice thereof not less than ten days prior to said hearing. Copies of the proposed budget shall be available for inspection by the public in the office of the City Clerk at least ten days prior	No.	Yes. After reviewing same and making such revisions as it may deem advisable, the City Council shall determine the time for the holding of a public hearing thereon. At the time so advertised or at any time to which such public hearing shall from time to time be adjourned,

	to said hearing.		the City Council shall hold a public hearing on the proposed budget, at which interested persons desiring to be heard shall be given such opportunity. § 1103.
City Council Approval	Yes. At the conclusion of the public hearing the City Council shall further consider the proposed budget and make any revisions thereof that it may deem advisable and on or before the last day of the fiscal year it shall adopt the budget with revisions, if any, by the affirmative vote of at least a majority of the total members of the Council. § 604	Yes. The budget will be adopted by the City Council before the beginning of the fiscal year. 1001.	
Reserve Requirements	No charter provision.	No charter provision.	No charter provision.
Audits	Yes. The City Council shall provide for an independent annual audit of all City accounts and may provide for such more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. Also requires a copy of the financial statement as of the close of the fiscal year shall be published in the official newspaper. § 616.	Yes, consistent with state law. The City Council shall employ a certified public accountant who shall, at such times as may be specified by the City Council examine the books, records, inventories and reports of all officers and employees who receive, handle, or disburse public funds and all such other officers, employees, or departments as the City Council may direct. As soon as practicable after the end of the fiscal year, a final certified audit and report shall be submitted by such accountant to the City Council. §1108.	Yes, consistent with state law. The City Council shall employ at the beginning of each fiscal year, a qualified certified public accountant who shall, at such time or times as may be specified by the City Council, and at such other times as he or she shall determine, examine the books, records, inventories and reports of all officers and employees who receive, handle or disburse public funds… The charter provision also require the audit be published in a newspaper of general circulation within the City. § 1116.
City Council Compensation	Yes. The members of the City Council including the Mayor shall receive as compensation for their services as such a monthly salary in the sum of One Hundred Seventy-five Dollars per month. In addition, each member of the City Council shall receive reimbursement on order	Yes. Compensation for Council member is hereby set, and from time to time shall be changed, in accordance with the provisions of the Government Code relating to salaries of Council members in general law cities. Such	Yes The members of the City Council shall receive as compensation for their services in the amount of $1,227.35 per month, which amount shall reimburse the City Councilmember for expenditures imposed upon him or

	of the City Council for Council authorized traveling and other expenses when on official duty upon submission of itemized expense accounts therefor. In addition, members shall receive such reasonable and adequate amounts as may be established by ordinance, which amounts shall be deemed to be reimbursement to them of other routine and ordinary expenses, losses and costs imposed upon them by virtue of their serving as City Councilpersons. § 302.	compensation may be increased or decreased other than as set forth above by an affirmative vote of a majority of the voters voting on the proposition at any election. § 402.	her in serving as a City Councilmember. The Mayor shall receive as compensation an additional amount of $513.96 per month to reimburse the Mayor for the additional expenses incurred in serving in that capacity.
City Council Pension	Charter does not explicitly specify. The City shall participate in a retirement system. § 404.	Charter does not specify.	Charter does not specify. Plenary authority and power are hereby vested in the … City Council … to do and perform any act, and to exercise any authority granted, permitted, or required under the provisions of the Public Employees' Retirement Act… The City Council may terminate any contract with the Board of Administration of the Public Employees' Retirement System only under authority granted by ordinance adopted by a majority vote of the electors of the City, voting on such proposition at an election at which such proposal is presented. § 900.

Costa Mesa

COUNCIL MEMBER AND MAYOR
Compensation and Benefits

Title	Salary	Retirement City Contribution	Health Benefits	Life Insurance	LTD	Monthly Total
Mayor: Jim Righeimer	$904.40/mo $10,853/yr	3.75%*	$1,476/month**	Included in Medical	Included in Medical	$2,470
Mayor Pro Tem: Stephen Mensinger	$904.40/mo $10,853/yr	3.75%*	$1,476/month**	Included in Medical	Included in Medical	$2,470
Council Member: Sandra Genis	$904.40/mo $10,853/yr	27.383%*	$1,476/month**	Included in Medical	Included in Medical	$2,628
Council Member: Wendy Leece	$904.40/mo $10,853/yr	24.914%*	$1,476/month**	Included in Medical	Included in Medical	$2,606
Council Member: Gary Monahan	$904.40/mo $10,853/yr	24.914%*	$1,476/month**	Included in Medical	Included in Medical	$2,606

* Council members may elect to participate in PARS in lieu of CalPERS. PARS City contribution is 3.75%. PERS City contribution is 24.914% (2.5%@55 benefit) or 27.383% (2%@60 benefit) based on eligibility.

** Cafeteria health benefits.

CHARTER COMMITTEE AGENDA REPORT

MEETING DATE: NOVEMBER 13, 2013 **ITEM NUMBER: 8B-2**

SUBJECT: FISCAL ADMINISTRATION, UNION PARTICIPATION AND PENSION INCREASES

DATE: NOVEMBER 6, 2013

FROM: SPECIAL COUNSEL'S OFFICE

PRESENTATION BY: YOLANDA M. SUMMERHILL

FOR FURTHER INFORMATION CONTACT: BRENDA GREEN @ 714-754-5221

INTRODUCTION

At the October 23, 2013 meeting, the Charter Committee expressed interest in exploring a number of different areas related to finance and personnel. The following is a discussion of how a charter can or cannot address each of these areas.

DISCUSSION

1. Charter Provision Governing City's Annual Budgets

State law gives cities the discretion to decide whether to adopt a budget by ordinance or charter provision. Cal. Govt. Code §§ 53734, 53901. However, other laws and practicalities make it virtually impossible for cities to operate without an annual budget. Foremost is the California Constitutional provision that prohibits cities from incurring debt or liability that exceeds in any year the income and revenue anticipated for that year without two-thirds voter approval. Cal. Const. art XVI, §18. Moreover, under the California Constitution, each city must annually establish appropriations limits based on the prior year's amounts coupled with an inflationary adjustment. Cities are required under state law to provide either a copy of a budget or a list of its anticipated revenues, expenditures and expenses to the County Auditor within 90 days after the beginning of its fiscal year. Cal. Govt. Code § 53891.

The City of Costa Mesa *does* require the adoption of an annual budget along with a number of financial safeguards. First, in accordance with Costa Mesa Municipal Code Section 2-152, the City of Costa Mesa annually adopts a budget. Additionally, the Finance Director is required to compile the budget expense and income estimates; maintain a general accounting system for all of the City's departments; audit all purchase orders before issuance; audit and approve before payment all bills, invoices, payrolls, demands or charges against the city government, submit to the city council through the city manager a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the city; and as of the end of each fiscal year submit a complete financial statement and report. As Charter Committee Member Smith has pointed out, the City's monthly expenditures are presented to the City Council and the general public at each City Council meeting under the consent calendar item "warrants." Thus, it appears there are sufficient safeguards in place.

The cities of Huntington Beach, Irvine and Newport Beach have additional charter provisions governing fiscal administration. Those provisions can be found in Attachment A. These surrounding cities' charter provisions are consistent with the City of Costa Mesa's current process for approving the budget. However, some have taken the extra step of requiring a public hearing prior to the approval of the budget. As it stands, members of the public are given the opportunity to provide public comments on the budget when it is approved. A provision requiring a public hearing merely formalizes the public's participation in the process, which is already guaranteed by state law.

2. Annual Audit

Cities are required to prepare an annual audit known as the Comprehensive Annual Financial Report or more commonly referred to as "CAFR" in accordance with Government Code section 53891. The CAFR must be prepared by a Certified Public Accounting using Governmental Accounting Standards ("GAS"). A CAFR shows the total of all financial accounting that a general purpose budget report does not. The CAFR contains a section that provides a comparison of the period's budgeted revenue and expenditures to the actual revenue and expenditures. Additionally, the CAFR gives a detailed showing of investment accounts by category reflecting balances over previous years. Not only are cities required to make copies of the CAFR available to the public, cities must also notice and hold a public hearing prior to its approval by the City Council. Cal. Govt. Code § 53893. Once all California cities have approved their CAFRs and submitted them to the County Auditor, the State of California Auditor-Controller then publishes a report of each city together with any other matter he or she deems of public interest. Cal. Govt. Code § 12463.

While state law has significant audit requirements, some charter cities have either reiterated these requirements in their charter or taken it one step further. For example, the City of Irvine Charter provides:

> The City Council shall employ a certified public accountant who shall, at such times as may be specified by the City Council examine the books, records, inventories and reports of all officers and employees who receive, handle, or disburse public funds and all such other officers, employees, or other departments as the City Council may direct. As soon as practicable after the end of the fiscal year, a final certified audit and report shall be submitted by such accountant to the City Council.

Irvine's provision is consistent with state law but goes a step further. Typically, the auditor is left with discretion to determine what records should be examined in preparing the audit, however, the City of Irvine's charter provision gives the City Council the authority to direct the auditor as to what financial records should be examined in preparing the audit.[1]

3. Reserve Requirements

While a city may not incur debt or liability that exceeds its income and revenue anticipated for that year under the California Constitution, there are no requirements that they retain a certain portion of the general fund as reserves. The benefit of a reserve requirement is to ensure that cities maintain a sufficient amount of cash on hand to cover its expenses over a period of time in the event that the city's property and sales tax allocation, along with other sources of funding, is insufficient or unavailable. The challenge with a reserve requirement is that the property, sales and income taxes that cities rely upon are so volatile in California that it is difficult to predict a consistent revenue stream. Perhaps as a result of such fluctuations, none of the surrounding cities referenced in Attachment A have a reserve requirement in their charter. In fact, the only city that we could locate that includes a reserve requirement is the City of Culver City. Its charter provides a generic provision stating that, "[t]he City Council shall maintain sufficient cash reserves for the purpose of placing the payment of operating expenses of the City on a cash basis." Culver City Charter § 1606. Requiring a fixed level of reserves by charter provision could preclude a future council from using reserves for emergencies or unexpected financial crises, which is what reserves are typically meant to provide for.

4. Property Tax Equity

Property tax equity can be described as the disproportionate amounts in property taxes paid between current homebuyers and long-term homeowners. The basis for this discrepancy is the passage of Proposition 13 which amended the California Constitution limiting the amount of ad valorem property tax to one percent (1%) of the full cash value of the property. As a result of Proposition 13's passage, long-term homeowners' property taxes are not based on the value of the property and, as such, are significantly lower than what a new homeowner would pay for that same property.

As a matter of statewide concern, the authority to set property tax rates rests with the State of California. Proposition 13 would have to be repealed in order to provide property tax equity amongst long-

[1] Some would argue that allowing the Council to direct the independent auditor in this way actually undermines the value of the auditing process.

term and new homeowners. Thus, a charter provision could not be enacted that would resolve this discrepancy in property taxes between current homebuyers and long-term homeowners.

5. Employee's Union Participation

Participation in employee unions is governed by the Meyers-Milias Brown Act ("MMBA") which guarantees covered employees certain rights on joining, participating in, and being represented by employee organizations. These rights and duties create a mandatory collective bargaining system for California local governments. Cal. Govt. Code §§ 3502-3503, 3505. However, individual employees have the option whether or not to participate in the union. The MMBA specifically states that individual employees have the right to "represent themselves individually." Cal. Govt. Code § 3502.

6. Pension Increases

All cities, including charter cities, are bound by the MMBA. That is to say, the issues surrounding collective bargaining are governed by state law. 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

State and/or local law already address many of the issues discussed above. For example, the City's practice and municipal code requires the preparation of an annual budget and audit. Moreover, members of the public are able to participate in this process. However, the Charter Committee can consider charter provisions governing these areas, some examples which are included in Attachment A. With respect to property tax equity, the authority to set property tax rates is a matter of statewide concern, thus, outside the scope of charter cities' authority. Additionally, a charter provision governing employee's union participation and pension increases would have limited affect since they are already addressed under state law.

ATTACHMENTS: 1.) Surrounding Cities Charter Provisions Governing Fiscal Administration and City Council Compensation