DRAFT

MINUTES OF THE REGULAR MEETING OF THE COSTA MESA CHARTER COMMITTEE

October 9, 2013

1. CALL TO ORDER

The meeting was called to order at 6:00 p.m. in the Emergency Operations Center, at Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

PRESENT: FACILITATORS: Dr. Kirk Bauermeister, Dr. Mike Decker
CHARTER COMMITTEE MEMBERS: Ron Amburgey, Brett Eckles, William Fancher, Thomas Graham, Gene Hutchins, Kerry McCarthy, Mary Ann O'Connell, Henry Panian, Tom Pollitt, Lee Ramos, Andrew Smith, Kevin Tobin, Harold Weitzberg
LEGAL COUNSEL: Kimberly Hall Barlow, Yolanda Summerhill

ABSENT: Committee Members: William Fancher and Mary Ann O'Connell

2. PLEDGE OF ALLEGIANCE - Dr. Bauermeister

3. MOMENT OF SILENCE – Dr. Bauermeister

4. WELCOME - Dr. Bauermeister

5. PUBLIC COMMENTS

Jay Humphrey, Costa Mesa, requested that the Committee to take into consideration the problems that Oceanside encountered when they did not require prevailing wage.

Jim Adams, Council Representative for Los Angeles and Orange County Building Trades, stated that there are no viable studies that prove that prevailing wage saves money and that prevailing wage is a not a union or a non-union issue but a construction worker issue.

Cherie Cabral, Representative of Building and Construction Trades, requested for the Committee Members to look at the trends in regards to prevailing wage in Charter Cities.

6. REVIEW OF MINUTES

MOTION/SECOND: Committee Member Eckles/ Committee Member Graham

The minutes of the September 25, 2013 Charter Meeting were approved.

7. MEETING SUMMARY

Dr. Decker provided a recap of the previous meeting.

8. CHARTER ISSUE

PUBLIC CONTRACTS: PREVAILING WAGE

Dr Bauermeister reviewed the three proposals in the agenda report on prevailing wage.

Public Works Director Munoz suggested that on proposal three the following sentence be added: The procedure and the criteria for the payment of prevailing wages on locally funded projects shall be set forth by ordinance or resolution.

Legal Counsel Hall-Barlow commented that the recommendation for prevailing wage on contracts would come from the staff but the actual decision would be by the City Council.

Discussion ensued on the language in the three prevailing wage proposals; pending legislation in Sacramento (SB7); language in the Vista decision; providing staff parameters; including prevailing wage language or allowing flexibility for future City Councils; limiting profits for contractors; clarification on lowest responsible bid; the politics involved in regards to a 4-1 super majority requirement; dollar savings by not paying prevailing wage; contractor costs including certified payroll and workers compensation.

Proposal 1. Consensus (6 Ayes, 5 Noes): 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.

Ayes: Committee Members: Amburgey, Hutchins, McCarthy, Ramos, Smith, and Tobin.
Noes: Committee Members: Eckles, Graham, Panian, Pollitt, and Weitzberg
Absent: Committee Members: Fancher and O'Connell

Proposal 3. Consensus: (1 Ayes, 10 Noes): The City Council, in its discretion, may decide whether prevailing wages should be paid on a public project that is locally funded and does not otherwise require the payment of prevailing wage under federal or state law or by conditions of grant funding. The procedure and criteria for the payment of prevailing wages on a locally funded project shall be set forth by ordinance or resolution.

Ayes: Committee Member Graham
Noes: Committee Members: Amburgey, Eckles, Hutchins, McCarthy, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg
Absent: Committee Members: Fancher and O'Connell

Discussion ensued regarding allowing City Council to determine whether to pay prevailing wage or never allowing prevailing wages on a locally funded project.

Dr. Bauermeister commented that the legal counsel could reword language in order to create a fourth proposal for the Committee to consider.

BREAK: 7:35 p.m. – 7:45 p.m.

Proposal 4. Consensus: (10 Ayes, 1 Noes): The City shall not require the payment of prevailing wages in public works contracts paid for with local funds and which are not of statewide concern, unless payment of prevailing wage is compelled by the terms of the funding source.

Ayes: Committee Members: Amburgey, Eckles, Graham, Hutchins, McCarthy, Panian, Pollitt, Ramos, Smith and Tobin.
Noes: Committee Member Weitzberg
Absent: Committee Members: Fancher and O'Connell.

Committee Member Eckles asked for a poll on proposal one just to see where everybody stands with changes to the wording as follows: 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 or nature** that the public interest would be served by requiring prevailing wage.

Proposal 1. Consensus: (0 Ayes, 11 Noes)

GOVERNANCE: FIREWALL BETWEEN CEO AND COUNCIL MEMBERS

Dr. Decker reviewed the definition of governance and firewall.

Legal Counsel Hall-Barlow stated that the City Manager and the City Attorney are the only two employees that are hired directly by the City Council.

The proposed firewall language: Neither the City Council nor any of its members shall interfere with the execution by the City CEO or 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 relative by blood or marriage, nor shall any department head or other officer having appointive power appoint any relative by blood or marriage.

Legal Counsel Hall-Barlow recommended crossing out the words "influence or" from the proposed firewall language, and instead of "relative by blood or marriage", the proposal should say "relative by blood or marriage to the 3rd degree".

Legal Counsel Hall-Barlow clarified it is a fundamental role of the Council to adjust the budget and it is not considered interference and that the current language in the municipal code can be changed by ordinance or resolution.

Following opinions were expressed on the firewall issue:

- If what currently exists is working there is no need to change or include anything in the Charter.

- Support for wording to be included that would limit the power of the City Council.
- Firewall language should be included; it proves there is no power grab by the City Council.
- It is a good practice to have the line between staff and City Council; and if the Committee takes what the City has practiced and puts it in the Charter, it will strengthen it.
- The public should not think that the Charter Committee is giving City Council too much power.
- Separate salaried positions from firewall provision.
- Separate nepotism provision from firewall provision.
- Support for a nepotism proposal provision but separate from firewall.
- Firewall language should not be included as it already exists in the current code.
- Private companies have internal controls that provide for checks and balances.

Dr. Bauermeister stated that legal counsel will bring back additional language for the Committee Members consideration at the next meeting.

The topic "Conflict of Interest" was added to the parking lot.

GOVERNANCE: DISTRICTING/EQUAL REPRESENTATION/GIVING MINORITY A VOICE

Legal Counsel Hall-Barlow provided an overview of districting.

Following opinions were expressed on districting:

- Opposed to districting as it divides communities.
- The topic of districting may give an opportunity to help solve the problem of concentration of Council Members in one area of the City.
- Opposed to districting and it should not be in the Charter.
- Districting is the one part of the Costa Mesa government that is truly broken because one-third of the City's population has been excluded from the City Council.
- There is no problem with the current system.
- It may be significant as members from the public have brought it up.

- This topic is a Charter killer, and it clouds the discussion.
- Not in support of districting.
- This is a complex issue that should be studied to attempt to tackle the problem.
- Strongly opposed to districting, not needed because of the size of and geography of Costa Mesa and supports open competition.
- Not in support of districting. Feels well represented even though does not live in an area where a current Council Member lives.

Consensus: (1 Ayes, 10 Noes) Include districting in the Charter.

Ayes: Committee Member Panian.
Noes: Committee Members: Amburgey, Eckles, Graham, Hutchins, McCarthy, Pollitt, Ramos, Smith, Tobin, and Weitzberg.
Absent: Committee Members: Fancher and O'Connell.

Dr. Bauermeister requested sending in language on polarization/process, local control in decision making and the compensation of Council Members and top management.

9. INFORMATION REQUESTS

10. AGENDA BUILDING FOR October 23, 2013

Consensus of the Committee for the following topics to be on the October 23, 2013 agenda: Call to Order; Pledge of Allegiance; Moment of Silence; Welcome; Public Comments; Review of Minutes; Meeting Summary; Charter Issue: Governance: Firewall, Polarization/Process, Local Control, Compensation; Information Requests; Agenda Building; Committee Member Comments and Adjourn.

11. COMMITTEE MEMBER COMMENTS - None

12. ADJOURNMENT at 9:06 P.M.

DRAFT

MINUTES OF THE REGULAR MEETING OF THE COSTA MESA CHARTER COMMITTEE

October 23, 2013

1. CALL TO ORDER

The meeting was called to order at 6:00 p.m. in the Emergency Operations Center, at Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

PRESENT: FACILITATORS: Dr. Kirk Bauermeister, Dr. Mike Decker
CHARTER COMMITTEE MEMBERS: Ron Amburgey, Brett Eckles, William Fancher, Thomas Graham, Gene Hutchins, Kerry McCarthy, Mary Ann O'Connell, Henry Panian, Tom Pollitt, Lee Ramos, Andrew Smith, Kevin Tobin, Harold Weitzberg
LEGAL COUNSEL: Kimberly Hall Barlow, Yolanda Summerhill

ABSENT: Ron Amburgey, Brett Eckles, Kerry McCarthy, Andrew Smith, and Yolanda Summerhill.

2. PLEDGE OF ALLEGIANCE - Dr. Bauermeister

3. MOMENT OF SILENCE – Dr. Bauermeister

4. WELCOME - Dr. Bauermeister

5. PUBLIC COMMENTS

Charles Mooney, Costa Mesa, advised the Committee to be sure that data presented is factual.

6. MEETING SUMMARY

Dr. Decker reviewed the language in the current Charter.

Dr. Bauermeister addressed SB-7 and recommended to the Committee Members to leave the prevailing wage language in the Charter at this point and the Committee can revisit the issue at a later date.

Committee Member Weitzberg requested information on the legal fee implications if prevailing wage language is left in the Charter.

7. CHARTER ISSUE

CHARTER ISSUE – FIREWALL BETWEEN CITY COUNCIL AND CITY STAFF

Dr. Bauermeister read the following regarding firewall:
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 firewall 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 the 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.

Dr. Bauermeister read Alternative 1:
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. Also, read the following provision of firewall under the Conclusion section: 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

Legal Counsel Hall-Barlow clarified that the provisions in Alternative 1 go beyond Costa Mesa Municipal Code Section 2-106 in that it not only provides a chain of command but it also shields the city staff from the City Council in its day-to-day operations. If Committee Members like the existing code the language can be modified to make it very clear that Council Members talk directly to the CEO.

Committee Members comments regarding Firewall:

- No need to be in the Charter; does not need fixing.
- Strongly support Anti-Nepotism policy to be in the Charter.
- There are no consequences if Council Members fail to follow the procedures. Need consequences for violations.
- Good to include in order to prevent fraud. Need checks and balances.
- Currently have an ordinance and if we put too much in the Charter it may create more problems.
- The current code addresses this, not a need if it is working well now.
- Not been an issue for 60 years, not needed.
- Solid rules in the Charter would prevent extortion and bad behavior.
- Firewall is needed in the Charter as the City Council currently can change the rules by changing the ordinance.
- A structure is needed to prevent an opportunity for coercion.
- The current code does not prevent a Council Member from speaking to an employee, it prohibits coercion.

- The Charter is a constitution and includes basic principles which should include a firewall as it is a separation of powers.

Dr. Bauermeister read 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.

Legal Counsel Hall-Barlow stated that if the current municipal code ordinance regarding firewall was included in the Charter, it would provide more of an effect, and the only way to change the amendment would be by a vote of the people.

Consensus: (5 Ayes, 4 Noes) Do not put firewall language in the Charter.

Ayes: Committee Members: O'Connell, Panian, Pollitt, Ramos, and Weitzberg.
Noes: Committee Members: Fancher, Graham, Hutchins, and Tobin.
Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Dr. Bauermeister suggested that since there are four Members absent, the Committee should stay with the consensus and by the Committee's choice they could revisit firewall at a later date.

Break: 7:00 p.m. – 7:10 p.m.

CHARTER ISSUE – COMPENSATION

Legal Counsel Hall-Barlow provided an overview on compensation, what is allowed by state law, and explained the three sections of compensation: salary, health benefits, and pension.

Committee Member Comments on Compensation:

- Follow state law but put in Charter.
- Pensions and health benefits should not be part of compensation.
- The Water Board voted not to be in the pension system.
- City Council should not be in a pension plan.
- Consider a 401K plan instead of a pension.
- Consider the City of Irvine language, "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 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".
- Consider including language regarding absences.

Legal Counsel clarified that it takes five years to become vested in the pension system. Also, if the vote is to not provide a pension system it would take effect after the next general election.

Consensus: (9 Ayes, 0 Noes) City Council compensation will follow state law.
Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, Pollitt, Ramos, Tobin and Weitzberg.
Noes: None
Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Consensus: (7 Ayes, 2 Noes) The City Council should receive health care benefits.
Ayes: Committee Members: Fancher, Hutchins, Panian, Pollitt, Ramos, Tobin and Weitzberg.
Noes: Committee Members: Graham and O'Connell
Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Consensus: (3 Ayes, 6 Noes) The City Council should receive pensions.
Ayes: Committee Members: Fancher, Pollitt, and Tobin.
Noes: Committee Members: Graham, Hutchins, O'Connell, Panian, Ramos, and Weitzberg.
Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Legal Counsel will provide more information on pensions, salary, and health benefits.

CHARTER ISSUE: CHARTER REVIEW AND AMENDMENTS

Legal Counsel stated that it is not uncommon to have a review process, and a Charter can be amended at any time by a vote of the people.

Comments from Committee Members regarding the Charter review:

- Review the Charter at least every ten years.
- Review the Charter every five years.
- Consider the City of Huntington Beach language: "The City Council shall determine if there is a need to review no less frequently than every ten years".
- A review is not needed; also do not need to keep reinventing the wheel. This is like the U.S. Constitution and should not be changed every five years.
- Citizen review should be as needed, not mandated. Public opinions change and the Charter should not be changed by temporal public opinion.
- City Council can put fourth a change to the voters.
- No forced Charter review should be included.
- Consider reviewing every seven years.

- Good thing to review; as the initiative process is onerous.

Dr. Bauermeister commented that the Committee Members would like to have a Charter review; it is just a matter of five or ten years.

Consensus: (8 Ayes, 1 Noes) To have a Citizens Charter review.
Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, Pollitt, Ramos, and Weitzberg.
Noes: Committee Member Tobin.
Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Request for another vote on whether to have a Citizen Charter review.

Consensus: (7 Ayes, 2 Noes) The Committee Members would like to have a Citizens Charter Review Committee.
Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, Ramos, and Weitzberg.
Noes: Committee Members: Pollitt and Tobin.
Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Consensus: (6 Ayes, 3 Noes) Charter Committee Members would like to have a Citizens Charter Review Committee every ten years.
Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, and Ramos.
Noes: Committee Members: Pollitt, Tobin, and Weitzberg (Supports every five years).
Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Dr. Bauermeister stated that at the next Charter Committee Meeting Legal Counsel would bring back language on compensation and the Committee Members are to submit any language regarding salary, health benefits, pension, and/or anything under the issue regarding Financial.

Committee Members Comments regarding pensions:

- Provide an estimate on the unfunded pension liability.
- Review the Joe Nation presentation.
- Ask the Chairman of the Pension Oversight Committee to speak at a Charter Committee Meeting.
- Delay considering the unfunded pension liability issue until the Pension Oversight Committee makes recommendations to the City Council.

MOTION/SECOND: Committee Member Weitzberg /Committee Member Pollitt

Consensus: (9 Ayes, 0 Noes) Delay consideration of the unfunded pension liability until the Pension Oversight Committee has their meeting with CalPERS.
Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, Pollitt, Ramos, Tobin, and Weitzberg.
Noes: None.
Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

NOTE: The Charter Committee Meetings for the November 27, 2013 and December 25, 2013 are cancelled due to the holidays.

8. INFORMATION REQUESTS

9. AGENDA BUILDING FOR November 13, 2013

Consensus of the Committee for the following topics to be on the November 13, 2013 agenda: Call to Order; Pledge of Allegiance; Moment of Silence; Welcome; Public Comments; Review of Minutes; Meeting Summary; Charter Issue: Time Schedule, Governance: Compensation of Council Members and top management, Financial: Financial reserves/Balanced budget and Property tax equity; Communications received from Committee Members; Information Requests; Agenda Building; Committee Member Comments and Adjourn.

10. COMMITTEE MEMBER COMMENTS

Committee Member Hutchins commented on dissemination of information and suggested that the censorship on information sent between Charter Members should be limited.

Committee Member Panian spoke in support of a Citizens Academy.

Committee Member Pollitt commented that pensions is a very important topic and it should be addressed in the Charter.

Committee Member Ramos thanked the facilitators.

Committee Member Weitzberg requested members to not fix what is not broken.

11. ADJOURNMENT at 8:50 P.M.