



CHARTER COMMITTEE AGENDA REPORT

MEETING DATE: FEBRUARY 12, 2014

ITEM: 8-A

SUBJECT: CIVIC OPENNESS IN NEGOTIATIONS ORDINANCE

DATE: FEBRUARY 4, 2014

FROM: YOLANDA M. SUMMERHILL, SPECIAL COUNSEL'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW, SPECIAL COUNSEL

FOR FURTHER INFORMATION CONTACT: BRENDA GREEN (714) 754-5221

BACKGROUND

At the previous meeting, the Charter Committee requested additional information regarding the City's Civic Openness in Negotiations (COIN) ordinance that is provided in this memo.

DISCUSSION

In 2012, the City Council adopted the COIN ordinance setting forth procedures and practices to keep the public informed of labor negotiations, consistent with the Meyers-Millias Brown Act (Government Code section 3500 *et seq.*).

COIN applies to all meet and confer processes undertaken pursuant to the Meyers-Millias Brown Act, where either the City or a recognized employee organization proposes changes in wages, hours, or any other terms or conditions of employment. It establishes a principal negotiator for the City, an independent economic analysis of the fiscal impacts attributed to each term and condition of employment subject to the meet and confer process that is to be made available to the public at least thirty (30) days before consideration by the City Council of an initial meet and confer proposal.

COIN also set forth requirements for reporting out of closed session with the facts, as well as their significance and impact, of all prior offers, counteroffers, and meet and confer-related bargaining positions received or made by either the City or an employee organization and that are no longer being considered. Each City Council member is required to disclose the identity of any employee association representative with whom that Council Member has had any communications regarding the subject matter of a pending meet and confer process. Additionally, prior to rendering a final City Council determination regarding adoption of a memorandum of understanding, the matter must be heard at a minimum of two (2) City Council meetings with the materials for the matter posted on the City's website at least seven (7) days' prior to the first meeting.

COIN is being applied for the first time in the City's current negotiations with Costa Mesa City Employees Association's ("CMCEA") when its contract expired in March 2013. The

City completed an independent fiscal analysis of each employee benefit and, in accordance with COIN, posted it on the city's website more than 30 days before negotiations began. The City hired Richard Kreisler as its chief negotiator on behalf of the City in this process. During these negotiations, the respective offers and counter offers from the City and CMCEA have been available to the public on the City's website. The respective proposals are as follows:

- \$22.69 million annual fiscal impact of CMCEA'S Nov. 21, 2013 proposal; (attached)
- \$22.1 million annual fiscal impact of City's Nov. 13, 2013 proposal; (attached)
- \$22.9 million annual fiscal impact of the CMCEA's Oct. 28, 2013 proposal;
- \$22 million annual fiscal impact of the City's Sept. 30, 2013 proposal;
- \$26.4 million annual fiscal impact of the CMCEA's Sept. 12, 2013 proposal;
- \$21.6 million annual fiscal impact of the City's opening June 18, 2013 proposal.

FOUNTAIN VALLEY

In November 2013, the Fountain Valley City Council considered adopting a COIN Ordinance. However, that action failed by a vote of 4-1. A majority of the City Council had a number of reasons for not adopting COIN including that it would cost an extra \$100,000 a year; the City already has trained staff members who are effective labor negotiators; the City was financially stable; the City was already very transparent, the City did not currently have a problem that requires COIN; and the City has the option without COIN to hire a contract negotiator, if needed.

CONCLUSION

The above describes the process required under COIN during collective bargaining. The City and CMCEA are currently in negotiations and following COIN during this process.

Fiscal Impact Analysis for COIN Ordinance
Cost of Costa Mesa City Employee's Association (CMCEA) Proposal to City dated November 21, 2013
Based on Fiscal Year 2013-2014 Budgeted Costs

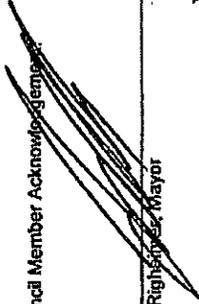
	Value of Pay/Benefit	Existing Contract CY 2012 Cost to City (1)	Projected FY 13-14 Cost to City	New Contract Projected FY 13-14 Cost to City (2)	Existing Unfunded Liability	Projected Unfunded Liability	Existing Funded Liability	Projected Funded Liability
Base Salary	varies	\$13,422,320	\$15,159,365	\$15,015,226	\$69,915,454 (3)	\$83,960,536 (3)	\$147,217,268 (3)	\$141,225,952 (3)
Pension / Retirement Benefits	2.5% @ 55	2,943,823	4,133,724	3,402,574				
	2.0% @ 60		119,538	119,538				
Cafeteria Plan Benefits	\$9,588	1,743,541	2,042,244	2,042,244				
Bilingual Pay	5.00%	126,691	136,097	136,097				
Bilingual Pay	2.50%	4,154	4,712	4,712				
Class A / B License Pay	\$700	10,149	9,800	9,800				
Emergency Med Dispatch Pay	5.00%	49,384	54,321	54,321				
Matron Duty Pay	5.00%	2,189	0	0				
Shift Differential/PM Pay	5.00%	22,987	34,623	34,623				
Shift Differential/AM Pay	7.50%	39,088	52,906	52,906				
Shift Differential/AM Pay	10.00%	39,300	54,691	54,691				
Shorthand Pay	2.50%	4,556	7,746	7,746				
Estimated Costs:								
Retiree Medical (4)	5.25%	795,867	795,867	795,867	13,491,834			
Overtime		666,007	660,000 (5)	660,000				
Excess Accrual Payoff / Cashouts		283,093	300,000 (6)	300,000				
Total		\$20,153,149	\$23,565,634	\$22,690,345				
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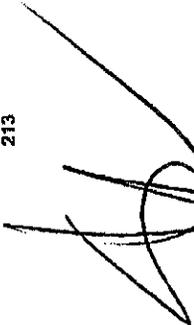
Total Number of Employees Included - Authorized 179 - 209

213 Included

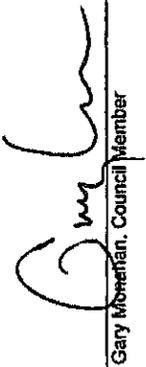
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Council Member Acknowledgements:


 Jim Riggs, Mayor


 Steve Maysinger, Mayor Pro-Tem


 Sandra Genis, Council Member


 Gary Morehan, Council Member


 Wendy Leece, Council Member

Notes:

- (1) - Cost of Contract per item based on Calendar Year 2012 Compensation Report.
- (2) - Based on CMCEA Contract proposal to City dated November 21, 2013:
 - Proposal Item 2: Freeze step increases for all employees. Each step increase is 5%. Step 7 is highest step. Less than 50 employees are below top step. Savings estimated at \$144,139 annually.
 - Proposal Item 3a: Increase retirement contribution to full normal employee rate. This raises the contribution from 8.520% of salary to 10.469%. Savings estimated at \$281,678 annually.
 - Proposal Item 3b: Employees pay 1/2 of the employer retirement rate increase for FY 2013-14. This raises the employee contribution by 1.555%. Savings estimated at \$224,736 annually.
 - Proposal Item 3c: Employees pay an additional 1/2 of the employer retirement rate increase for FY 2013-14. This raises the employee contribution by an additional 1.555%. Savings estimated at \$224,736 annually.
 - Proposal Item 4: Includes changes to sick leave accrual rate, maximum balances and elimination of future accruals to sick leave "Bank 2". Also eliminates the cash out provisions
 - Savings related to the elimination of the cash out provisions depend on actual sick leave and vacation usage patterns. Maximum savings could be the equivalent of about 2.4 full-time employees without benefits.
 - Proposal 5: proposed changes to the salary range steps would have no immediate impact as step increases are frozen during the term of the agreement.
 - Proposal 12: Reduces the maximum vacation leave accrual from 424 to 320 hours. The potential impact varies based on actual usage. Up to 5,123 vacation hours (the equivalent of 2.5 full-time employees) would be taken or lost. All other elements of the proposal have no quantifiable cost or savings.
- (3) - Existing amounts from PERS Valuation for Miscellaneous Employees dated October 2012 - including non-CMCEA represented employees. Projected amounts from PERS Valuation for Miscellaneous Employees dated October 2013 - including non-CMCEA represented employees. Regarding above Note 2, Proposal 5: additional salary steps could impact future pension liability as they create the potential for additional PERSable income.
- (4) - 5.25% rate per employee is not explicit in the contract, however is calculated based on the Annual Required Contribution (ARC) amount as calculated as of June 30, 2012 by Nyhart, an independent actuary for GASB 45 compliance, and documented in the City's CAFR. Unfunded amount is a proportional share (based on budgeted payroll) of the current total unfunded liability amount of \$36.4 million.
- (5) - Overtime amount is not explicit in the contract, however is estimated based on historical actual costs incurred by the City.
- (6) - Payoff - See above note 3, Proposal item 4. Amount could include payoff of accrued hours upon separation.
- (7) - Total number of Employees includes total amount included in the numbers above that column as well as total authorized by the City Council as part of the annual budget process. The difference between the two are authorized vacant/unfilled positions at the time of report.

NOVEMBER 21, 2013

**COSTA MESA MUNICIPAL EMPLOYEES ASSOCIATION
BARGAINING PROPOSAL NO. 3**

1. **TERM** – Commencing on the date of adoption by the City Council and ending June 30, 2015.
2. **STEP INCREASES** – Freeze step increases for all CMCEA bargaining unit employees during the term of the agreement.
3. **RETIREMENT CONTRIBUTIONS BY EMPLOYEES** –
 - (a) CMCEA bargaining unit employees will pay the full normal rate of employee PERS contribution set by statute, currently 10.469% of compensation earnable.
 - (b) CMCEA bargaining unit employees will pay one-half (1/2) of any increase in the employer contribution rate for the CalPERS miscellaneous plan, using FY 2012-2013 as the baseline year.
 - (c) For the period January 1, 2014, through June 30, 2014, only, CMCEA employees will pay an additional one-half (1/2) of the increase in the employer contribution rate for the CalPERS miscellaneous plan for the 2013-14 fiscal year.
 - (d) The City will take all reasonable steps to ensure that all employee retirement contributions hereunder (towards both employee and employer contributions) will be treated, if legally permissible, as pre-tax contributions by employees.
4. **SICK LEAVE** – (1) Eliminate future accruals to the current secondary leave bank; (2) require employees to exhaust any current secondary leave bank balance before utilizing normal sick leave; (3) reduce maximum sick leave accumulation from 480 hours to 432 hours; (4) reduce sick accrual from 3.6 hours per pay period to 3.2 hours per pay period.
5. **MERIT-BASED PERFORMANCE SYSTEM** – CMCEA has an interest in the establishment of a fair and effective merit-based performance system. However, the current municipal culture does not at this time provide an environment conducive to the comprehensive introduction of such a system.

Also, the City's proposal for a merit-based performance system fails to contain any plan or provision for performance management, an integral part of a successful merit-based system.

CMCEA therefore proposes:

- (a) As a first element towards establishment of a fair and effective merit-based system, conversion of the current merit system from seven ranges/steps to eleven ranges/steps, with approximately 3% between ranges/steps 1 through 10, and 5% between range/step 10 and 11.
 - (b) Other than the above, maintain the current system with the understanding that the parties desire to develop and implement a comprehensive overhaul of the current system characterized by objectivity, consistency and accountability, and designed to promote a high level of collaboration between employees and their supervisors, thereby helping the City become a more efficient, effective and responsible organization.
 - (c) On or before March 1, 2014, commence discussions between the City and CMCEA representatives with an objective of agreeing to and implementing a comprehensive overhaul of the current system by July 1, 2014.
6. LEAN - Establish a City/CMCEA working group to evaluate the feasibility and advisability of applying LEAN process analysis and improvement methods to City government.
 7. HEALTH CARE, WELLNESS AND THE AFFORDABLE CARE ACT – Establish a CITY/CMCEA working group to: (a) evaluate the feasibility and advisability of developing a jointly sponsored wellness program; (b) determine the ramifications of, and possible opportunities created by, the Affordable Care Act; and (c) make appropriate recommendations.
 8. RETIREE MEDICAL PROGRAM – Continue the suspension of the employees' Retirement Health Savings Plan (RHS) during the term of the agreement with no contributions by the City or employees during that period.
 9. TRANSPARENCY AND DISCLOSURE – Add the previously proposed Article XXVII (Transparency, Accountability and Full Disclosure) to the MOU.
 10. MOU PROVISIONS – Except as provided in this offer, all remaining terms and conditions of the September 1, 2004 – August 31, 2009 Memorandum of Understanding between the parties, including side letters where applicable, shall remain in full force and effect through the term of this agreement.
 11. NO LAYOFFS – No layoffs during the term of the agreement except in case of catastrophic fiscal emergency.

11/21/13

Revisions to CMGEA Bargaining Proposal No. 3:

4. Sick Leave -

- (1) Eliminate future accruals to the current secondary leave bank;
- (2) Eliminate cash outs.

12. Vacation leave -

- (1) Reduce vacation ^{accumulation} from 424 hrs. to 320 hrs.

Jim Gump
for CMGEA

Fiscal Impact Analysis for COIN Ordinance
City Proposal to CMCEA, November 13, 2013.
Based on Fiscal Year 2013-2014 Budgeted Costs

Value of Pay/Benefit	Existing Contract CY 2012 Cost to City (1)	Existing Contract Projected FY 13-14 Cost to City	City Proposal 11-12-13		Projected Funded Liability
			New Contract Projected FY 13-14 Cost to City (2)	Existing Unfunded Liability	
Base Salary	\$13,422,320	\$15,159,365	\$14,780,381	\$69,915,454 (3)	\$141,225,952 (3)
Pension / Retirement Benefits	2.5% @ 55	2,943,823	3,205,439	3,205,439	83,960,536 (3)
	2.0% @ 60		92,682		
Cafeteria Plan Benefits	\$9,588	1,743,541	2,042,244	2,042,244	
Bilingual Pay	5.00%	126,691	136,097	132,695	
Billing Pay	2.50%	4,154	4,712	4,594	
Class A / B License Pay	\$700	10,149	9,800	0	
Emergency Med Dispatch Pay	5.00%	49,384	54,321	54,321	
Matron Duty Pay	5.00%	2,169	0	2,189	
Shift Differential/PM Pay	5.00%	22,987	34,623	33,757	
Shift Differential Pay	7.50%	39,088	52,906	51,583	
Shift Differential/AM Pay	10.00%	39,300	54,691	53,324	
Shorthand Pay	2.50%	4,556	7,745	0	
Estimated Costs:		795,867	795,867	13,497,834	
Retiree Medical (4)	5.25%	666,007	660,000 (5)	2,000,000	
Overtime		283,093	300,000 (6)	100,000	
Excess Accrual Payoff / Cashouts		\$20,153,149	\$23,565,834	\$22,100,086	
Total				(1,465,548)	

Total Number of Employees: 179 - 209
 Included - Authorized

Council Member Acknowledgement:

Jim Righimer, Mayor

Steve Mansinger, Mayor Pro-Tem

Sandy Davis, Council Member

Gary Monahan, Council Member

Wendy Leece, Council Member

Notes:

- (1) - Cost of Contract per item based on Calendar Year 2012 Compensation Report.
- (2) - Based on City proposal to CMCEA on November 13, 2013:

All elements of the September 30 proposal supplemented by:

Restoration of Matron Pay

Restoration of EMD certification pay

Restoration or partial restoration of other pay elements.

- (3) - Existing amounts from PERS Valuation for Miscellaneous Employees dated October 2012 - including non-CMCEA represented employees.

- (4) - Projected amounts from PERS Valuation for Miscellaneous Employees dated October 2013 - including non-CMCEA represented employees. as calculated as of June 30, 2012 by Nyhart, an independent actuary for GASB 45 compliance, and documented in the City's CAFR.

Unfunded amount is a proportional share (based on budgeted payroll) of the current total unfunded liability amount of \$36.4 million.

- (5) - Overtime amount is not explicit in the contract, however is estimated based on historical actual costs incurred by the City.

- (6) - Payoff - Cashout is not explicit in the contract, however is estimated based on historical actual cost incurred by City.

Amount could include payoff of accrued hours upon separation.

- (7) - Total number of Employees includes total amount included in the numbers above that column as well as total authorized by the City Council as part of the annual budget process. The difference between the two are authorized vacant/unfilled positions at the time of report.

NOVEMBER 13, 2013 THIRD CITY OF COSTA MESA PROPOSAL TO THE CMCEA FOR CHANGES IN WAGES, HOURS, AND TERMS AND CONDITIONS OF EMPLOYMENT

By means of a comprehensive AUGUST 6, 2013 INITIAL 2013-2015 CITY PROPOSAL FOR A SUCCESSOR MOU, the City of Costa Mesa submitted a detailed redline/strikeout proposal for a successor to the 2004-2009 MOU and the subsequent amendments/side letters. The AUGUST 6, 2013 INITIAL CITY PROPOSAL consists of submitting the entire preexisting Memorandum of Understanding, with redline/strikeout changes as indicated.

A SEPTEMBER 30, 2013 SECOND CITY PROPOSAL was presented to the CMCEA and consisted of *changes* that the City is made to the AUGUST 6, 2013 INITIAL PROPOSAL. The SEPTEMBER 30, 2013 proposal remains in effect and is detailed below.

If not addressed herein, each and every proposal (including preamble language) set forth in the AUGUST 6, 2013 INITIAL CITY PROPOSAL, remains unchanged.

1. THE SEPTEMBER 30, 2013 CITY PROPOSAL CONSISTS OF:

Article 3.1 COMPENSATION - Employees covered by this MOU shall be compensated at the monthly base salary rates established for their classification under the Basic Pay Schedule per City Council resolution. The Basic Pay Schedule shall reflect that each classification in the unit represented by the CMCEA shall be designated as consisting of two (2) separate and distinct pay schedules which shall be determined by reference to initial hire date by the City. For example, the Basic Pay Schedule will be reflected as ACCOUNTANT (INITIALLY HIRED PRIOR TO ADOPTION OF A 2013 MOU or resolution of any meet and confer-related impasse,) and ACCOUNTANT (INITIALLY HIRED ON OR AFTER ADOPTION OF A 2013 MOU or resolution of any meet and confer-related impasse.)

Effective the first payroll period commencing on or after City Council adoption of a 2013 MOU or City Council resolution of any meet and confer-related impasse, the Basic Pay Schedule regarding those unit members initially employed by the City prior to the 2013 MOU adoption or resolution of any meet and confer impasse, shall reflect as to each range and step, a 2.5% reduction from the compensation existing immediately prior to adoption of a 2013 MOU or resolution of impasse.

After the above reductions are made to the Basic Pay Schedule for those unit members hired prior to adoption of the 2013 MOU or resolution of impasse, the Basic Pay Schedule for those unit members initially hired on or after the 2013 MOU adoption or resolution of impasse, shall reflect each range and step being 5% less than the range and step applicable to the 2.5% reduced Basic Pay Schedule applicable to the above unit members hired prior to the 2013 MOU.

An employee occupying a position in the classified service shall be compensated within the range established for his or her position as provided in Rule 6 of the Personnel Rules and Regulations. The minimum rate for the class generally shall apply to an employee

upon his or her original appointment. Employees who are re-employed shall receive a rate within the range established for the class and agreed upon by the appointing authority and the employee prior to appointment.

NOW, THE SEPTEMBER 30, 2013 CITY PROPOSAL IS SUPPLEMENTED BY THIS NOVEMBER 13, 2013 THIRD CITY PROPOSAL.

2. THE SUPPLEMENTAL NOVEMBER 13, 2013 CITY PROPOSAL CONSISTS OF:

- a. Article 4.5 Call Back Duty - restoration of status quo (including restoration of minimum 2.0 hours overtime pay) and elimination of proposal to provide a minimum 15 minute compensation for call back duty that is responded to by telephone or other electronic means.
- b. Article 4.6 Call Response During Lunch Periods - restoration of the status quo (employees shall be compensated whenever they respond to a service call during their lunch period.)
- c. Article 5.2 Matron Pay - restoration of the status quo (including 5% base salary payment for the performance of matron duty.)
- d. Article 5.3 "EMD" Certification Pay - restoration of status quo (5% payment.)
- e. Article 5.4 Standby Pay - partial restoration of the status quo. Instead of thirteen (13) straight time hours at the regular rate of compensation for each week assigned to standby duty, there shall be payment of 6.5 hours of straight time.

Further, if a holiday falls within the assigned standby week, an additional two (2.0,) instead of four (4) hours, shall be provided at the employee's regular rate.
- f. Article 8.12 Jury Duty - restoration of the status quo, resulting in compensation for any regularly scheduled working hours spent in the actual performance of jury duty (as opposed to the initial proposal of an 80 hour limitation on such payment.)
- g. Article 17 Labor Management Discussions - restoration of the status quo (not more than twice each calendar year discussion of issues of mutual interest.)

NOVEMBER 13, 2013 CITY OF COSTA MESA RESPONSE TO OCTOBER 28, 2013 CMCEA BARGAINING PROPOSAL NO. 2

Proposal No. 1 Term - the City rejects a term ending October 4, 2014.

Proposal No. 2 Step Increases - the City rejects a proposal that step increases be frozen *during the term of the agreement*.

Proposal No. 3(a) Retirement Contributions by Employees - the City rejects proposal 3(a) and counters with a proposal that *all employees* individually fund 10.469% of compensation as and

for CalPERS contributions and in addition, fund all employer contribution rate increases. (See 08/06/13 City Proposal -Article 3.5.)

Proposal No. 3(b) - before specifically responding to the October 28, 2013 CMCEA proposal for additional payment by employees of 50% of any increase in employer contribution rate for the CalPERS miscellaneous plan, using fiscal year 2012-2013 as the baseline year, *it is necessary for this CMCEA to clarify its proposal as to whether or not the proposal has a sunset date.*

Proposal No. 3(c) - the CMCEA has proposed that the City take "all necessary steps" to ensure that employee retirement contributions, if legally permissible, will be treated as pre-tax contributions by employees. In reply, the City will take all "reasonable" steps to provide for said contributions being considered pre-tax.

Proposal No. 4 Sick Leave - Reject.

Proposal No. 5 LEAN - the City is unable to provide a substantive response to this CMCEA proposal because the proposal sets forth absolutely no details as to what a City wide LEAN program would or could consist of. Upon a concrete exemplar being provided as to how the CMCEA defines a LEAN program, further assessment of the CMCEA proposal can be made.

Proposal No. 6 Health Care, Wellness and the Affordable Care Act - agreed.

Proposal No. 7 Alternate Work Schedules - rejected.

Proposal No. 8 Retiree Medical Program - rejected. (See 08/06/13 City Proposal, Article 7.6.)

Proposal No. 9 Holiday Closure - the CMCEA holiday closure proposal, as written, is rejected. However, the City counterproposal is that unit members deemed non-essential by written designation of both the employee's supervisor and Department Head, shall be authorized to be absent from duty December 24, 2013 through January 1, 2014. During said absence, employees may elect to be compensated for this period of absence by means of use of earned and accrued: compensatory time off, floating holidays and/or vacation time. Sick leave shall not be subject to use during this period of absence. In other words, if during the period of absence an employee is ill and if working, would be eligible to utilize earned and accrued sick leave, there shall be no such use available during the period of absence.

Proposal No. 10 Transparency and Disclosure - the City rejects the CMCEA proposal for adding a transparency-related section to the MOU because the issue is outside of the scope of representation. This being said, the City is a strong advocate of transparency, disclosure and accountability and will be pleased to discuss with the CMCEA, the addressing of this issue, but separate and distinct from the meet and confer process.

Proposal No. 11 Compliance with Material Terms and Conditions of Previous MOUs - rejected.

Any and all remaining proposals, including but not limited to those in the October 28, 2013 proposal no. 2, and not addressed above, are deemed rejected.

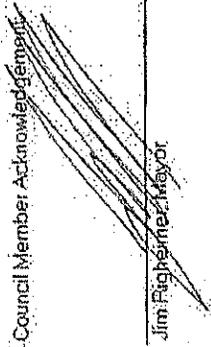
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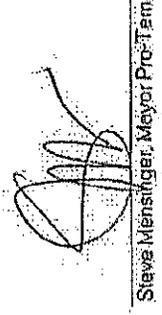
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Not Contracted For
WPC Contracted For

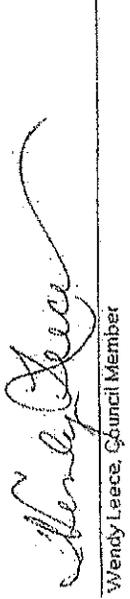
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