



CHARTER COMMITTEE AGENDA REPORT

MEETING DATE: FEBRUARY 12TH, 2014

ITEM NUMBER: 8-E

SUBJECT: PROPOSED CHARTER LANGUAGE

DATE: FEBRUARY 7, 2014

FROM: SPECIAL COUNSEL'S OFFICE

PRESENTATION BY: YOLANDA M. SUMMERHILL

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

BACKGROUND

A number of proposals were submitted by Charter Committee members for consideration as part of the draft charter. Those provisions include:

Proposal 1. Reserves

The City recognizes that without such fiscal responsibility and prudent stewardship of public funds, including the maintenance of substantial reserves, it cannot serve and protect the interests of its Citizens. As such the City will hold these principals as its primary function and obligation.

Proposal 2. Preamble on Civic Freedoms

Equal Treatment: The City exists to serve the people and shall respect the rights of all people equally. If any procedure or permit is necessary to accommodate civic freedoms, the City shall provide a permitting process that is simple, concise and easily available. The City shall issue any necessary permits and do so promptly upon receiving the required documents.

Free Speech: The City shall make no policy that prevents the people from freely expressing ideas, thoughts or religious views.

Public Assembly: The City shall make no policy that prevents public from assembling peacefully.

Self-Defense: The City shall make no policy that prevents the public from owning and carrying arms for the purposes of self-defense.

Proposal 3. Transparency

The City shall make reasonable efforts to make civic affairs open and available to public scrutiny.

Proposal 4. Outsourcing

Outsourcing is defined as the reassignment of city tasks, jobs and responsibilities to an outside, third party contractor. It may coincide with the termination of specific city staff and the eliminations of those positions under city direct employment. Terminated City staff may be hired by the contractor to perform the same or other duties for the contractor.

Outsourcing is not the contracting of specific tasks, jobs, product acquisitions or service acquisitions not currently part of the city services. City services required by State Law cannot be outsourced.

Proposal 5. Charter Review

In order for the public (people, voters) to have input to the charter review process a petition of 1500 registered voters will begin review process.

Proposal 6. Retirement Benefits

In order to protect current and retired employees benefits already earned by their service to the city, on or after...

Proposal 7. Incompatible Offices and Post Elected Office Employment

The members of the City Council shall not be eligible to hold any other office or employment with the city during the period of their terms of service. The members of the City Council shall not be eligible to hold any employment with the City for a period of two years following the end of their elected position on the City Council.

Proposal 8. Union Participation

Except as otherwise provided by the State Legislature, City employees shall have the right to form, join, and participate in the activities of employee organizations. City employees shall also have the right to refuse to join or participate in the activities of employee organizations.

Unless otherwise required by law, a labor union, City contractor, City Employer, or City Employee association may only make expenditures for political activities if the Organization establishes a separate segregated fund for such purposes. Said fund contribution is to be voluntary.

DISCUSSION

Proposal 1. Reserves

Currently, the Charter Committee adopted language in the Preamble stating that future Councils should grow and maintain adequate reserves. It provides,

The City shall maintain cash reserves for the purpose of funding significant unexpected events of risk or opportunity. Such events could include a major economic downturn, major natural disaster, catastrophic infrastructure failure, or purchase of real estate having significant importance to the community, all as determined by a supermajority of the City Council. The City shall perform a review of such possible events not more than every five (5) years and the City Council shall determine the appropriate amount of such cash reserves.

In addition to the above, one proposal calls for the following language:

"The City recognizes that without such fiscal responsibility and prudent stewardship of public funds, including the maintenance of substantial reserves, it cannot serve and protect the interests of it [sic] Citizens. As such the City will hold these principals as its primary function and obligation."

Since the current language dictates a certain action, i.e., supermajority vote requirement, perform a review of such possible events not more than every five (5) years, etc., we propose moving the currently approved language to the body of the draft Charter and if the Committee desires, adopting this additional language in the Preamble.

Proposal 2. Preamble on Civic Freedoms

Proposal 2 reinforces a number of constitutional rights granted under the U.S. and State Constitution including the Equal Protection Clause, the right to public assembly, Freedom of Speech Clause and the 2nd amendment right to bear arms. With the exception of language governing guns, the other proposals are not only preempted by but also protected under the U.S. and State Constitution. In addition to the preemption issue, there is concern that some of the proposed charter provisions in this area could be misconstrued or lead to uncertainty. For example, the proposed language on Free Speech, "The City shall make no policy that prevents the people from freely expressing ideas, thoughts or religious views." This language could be construed to prevent the City Council from establishing reasonable rules regarding the time for public comment, restricting addressing the City Council on items only within the Council's jurisdiction, conducting the Council Meeting or other Commission/Committee meetings as business meetings, etc. There are strong constitutional guarantees protecting the right of free expression/speech. The Committee should refrain from adding to existing constitutional guarantees without considering the full consequences of doing so.

As to the self-defense provision, while gun control, as it is commonly referred to, is governed to some extent by the U.S. Constitution and state law, cities may enact some laws governing the *sale* of weapons, thumb printing requirements for the purchase of ammunition, licensing, possession of weapons in city facilities and on city property (except by peace officers and retired peace officers with a concealed weapons permit) and the duty to report lost or stolen weapons.

Proposal 3. Transparency

Proposal 3 provides that "The City shall make reasonable efforts to make civic affairs open and available to public scrutiny."

The Charter Committee has approved the following language in the preamble that sets forth many of the values that this Committee considers important enough to include in the draft charter. It provides, "We, the people of the City of Costa Mesa, State of California believe ... that ethics and integrity are the foundation of public trust and that just governance is built upon these values." Additionally, the Ralph M. Brown Act was adopted in order to promote openness and citizen participation in the civic process.

The Charter Committee can include a provision encouraging transparency in the draft Charter. So that it is cohesive with existing values set forth in the Preamble, we propose incorporating the word transparency into the first sentence so that it reads as follows: "We, the people of the City of Costa Mesa, State of California believe ... that transparency, ethics and integrity are the foundation of public trust and that just governance is built upon these values."

Proposal 4. Outsourcing

Proposal 4 on outsourcing partly reflects current state general law in that there are no restrictions on a City's ability to contract with a third party for services which are not currently being provided by the City's own employees, however the proposed language does not speak to services provided *by City employees* but rather *services currently provided by City*. This could be read to mean that if the City currently provides the *service* then that function cannot be outsourced even if it is currently not being done by employees but is instead being done by contractors. This could impact many services which are contracted, including janitorial services, public works contracting, city attorney services, etc. Given this reading, the fourth sentence of this language arguably conflicts with the first three sentences. Under general law, the City may "outsource" jobs of existing employees for certain functions so long as it meets and confers with affected employees regarding the impacts of such contracting and gives employees the notice required under the City's own codes. It appears that is what the first three sentences intend to permit.

However, the final sentence of the proposed language would be much more restrictive than current state general law. That sentence reads: "City services required by State Law cannot

be outsourced.” As the language makes no exceptions for contracting with another public agency for provision of essential city services (or otherwise), this final sentence would preclude contracting for police or fire services with the Orange County Sheriff’s Department or the Orange County Fire Authority or contracting with an adjoining city for provision of such services. It could be read to preclude entering into a Joint Powers Agreement or other contract with an adjoining city or cities for shared management or other consolidation of such services. In addition, it could create some confusion about what services “are required by State Law” and actually interfere with some of the City’s required contracting. An example of the former is that each City is required by the general law to appoint a City Clerk and a City Attorney. This provision would arguably require that each of these official positions be filled with an employee rather than an independent contractor who is a professional. An example of the latter is the requirement that the City obtain an independent audit each year. If someone successfully argued that having its books and records audited each year is a “city service required by state law” then we could not contract with an independent auditor for that service; however, such audits are required to be performed by independent third party auditors. In addition, a City is tasked with building, operating and maintaining streets, sidewalks, parks, traffic signals and devices, etc. While a City does not have to own parks, streets, etc., the City of Costa Mesa already does; arguably it has a statutory duty to maintain them. Many of the components of maintaining, rebuilding, replacing and operating these public facilities are currently contracted out and some are required to be contracted out.

Thus, if the Committee wants to address outsourcing, we would suggest the language be modified to clarify the intent and eliminate any contradictions and inconsistencies.

Proposal 5. Charter Review

The Charter Committee has approved the following language governing charter review:

Charter Review: Every ten (10) years, the City Council shall form a Charter Review Committee to review the existing City Charter and determine whether any amendments, modifications or repeal of its provisions are necessary. The City Council may, at its discretion, appoint a Charter Review Committee at any time.

Proposal 5 provides a mechanism whereby the citizens of Costa Mesa may initiate charter review process. According to the 2010 U.S. Census data, with a population of approximately 110,000 people and approximately 80% of those citizens of voting age, 2% of voter signatures would be necessary in order to initiate charter review by the people. This is significantly less than the 5% voter signature requirement for initiatives. If the Charter Committee would like to provide voters the opportunity to initiate a charter review through means other than the initiative process, it may consider this provision with the percentage required as proposed or an amount more consistent with that required by initiative.

Proposal 6. Retirement Benefits

With respect to pension benefit increases, the Charter Committee has approved the following language:

On or after the effective date of this Charter, except for any increase previously authorized in a valid and binding memorandum of understanding or contract, no employee or officer of the City shall receive an increase in 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 for without approval by a majority of the voters at a general election.

Proposal 6 adds “[i]n order to protect current and retired employees benefits already earned by their service to the city” to the beginning of this provision. It does not change the existing language but rather provides context to existing provision.

Proposal 7. Incompatible Offices and Post Elected Official Employment

Under the traditional common law rule, a public officer who is appointed or elected to another public office and enters the duties of the second office automatically vacates the first office if the two offices are incompatible. See *People ex rel Chapman v. Rapsey* (1940) 16 Cal. 2d 636, 644. However, a position as an "employee" or advisory board member is not necessarily a position as an "officer" for purposes of incompatibility. An example of incompatible offices for elected official while simultaneously an employee of the city are the offices of deputy sheriff and county supervisor. 68 Ops Cal Atty Gen 7 (1985). In addition, employees of a local agency may not be sworn into office as an elected or appointed member of the legislative body (i.e. City Council) unless he or she resigns as an employee. If the employee does not resign, the employment shall automatically terminate upon being sworn into office. Gov't Code § 53227.

Costa Mesa Municipal Code Section 2-99 provides that "[n]o person elected to membership on the city council shall, subsequent to such election, be eligible for appointment as city manager until one year has elapsed after he has ceased to be a member of the city council." Proposal 7 takes the above rule one step further in prohibiting any employment or office with the city both during and for two years following his or her term in office.

Proposal 8. Union Participation

At the November 13th, 2013 Charter Committee meeting, the Charter Committee voted *not* to include language governing union participation.

CONCLUSION

In addition to the proposals above, staff has received a number of suggested changes from wordsmith type changes to substantive additions on the topic of firewall, pensions, conflicts of interest, sale or zone changes for public property, employee compensation and maintaining the Pension Oversight Committee for a specified term. These proposed changes can be discussed by the Committee at its pleasure.

COMMUNICATIONS
FROM CHARTER
COMMITTEE MEMBERS

**Communications received regarding Solvency, Reserves, and Preamble
on Sunday January 12, 2014 at 10:58 P.M.**

Solvency/Reserves/Preamble

We have to date decided to include language stating that future Councils should grow and maintain adequate reserves in our Preamble. To increase the impact and seriousness of this concept I propose language in the Preamble to the effect that:

"The City recognizes that without such fiscal responsibility and prudent stewardship of public funds, including the maintenance of substantial reserves, it cannot serve and protect the interests of its Citizens. As such the City will hold these principals as its primary function and obligation"

Communications received regarding Outsourcing on Tuesday January 28, 2014 at 12:54 P.M.

Outsourcing

Outsourcing is defined as the reassignment of city tasks, jobs and responsibilities to an outside, third party contractor. It may coincide with the termination of specific city staff and the eliminations of those positions under city direct employment. Terminated City staff may be hired by the contractor to perform the same or other duties for the contractor.

Outsourcing is not the contracting of specific tasks, jobs, product acquisitions or service acquisitions not currently part of the city services.

City services required by State Law cannot be outsourced.

Recommended Additional Outsourcing Clause

It is important for us to avoid cronyism or undue influence from outside supplier candidates.

Any outside company wishing to bid for and be considered as the supplier for a city task, job or responsibility under outsourcing shall not have in the prior two years, or in the future, within 10 years from contracting, make a direct contributor to a city council candidates or members election funds or a contributor to a PAC contributing directly to a city candidate or member's election funds. This restriction applies to the company itself or any of its officers or directors. Additionally, no contributions from any individuals related by blood or marriage to these officers are allowed to make contributions to these city council candidates or members in excess of \$100. Lastly, no employees of these companies may make contributions to these city council candidates or members unless the employee is also a resident of the City of the Costa Mesa.

Communications received regarding Civic Freedoms on Wednesday January 29, 2014 at 9:54 A.M.

Civic Freedoms

Equal Treatment: The City exists to serve the people and shall respect the rights of all people equally. If any procedure or permit is necessary to accommodate civic freedoms, the City shall provide a permitting process that is simple, concise and easily available. The City shall issue any necessary permits and do so promptly upon receiving the required documents.

Free Speech: The City shall make no policy that prevents the people from freely expressing ideas, thoughts or religious views.

Public Assembly: The City shall make no policy that prevents public from assembling peacefully.

Self-Defense: The City shall make no policy that prevents the public from owning and carrying arms for the purposes of self-defense.

Transparency: The City shall make reasonable efforts to make civic affairs open and available to public scrutiny.

Communications received regarding the Charter Review and Retirement Benefits on Friday January 31, 2014 at 1:29 P.M.

Costa Mesa City Charter

Please present this as an additional discussion item for the next meeting in February. Please send it out now to the team so that they will have time to consider before the meeting. Thank you for your help in this matter.

To be added at the end of the **Charter Review** section of the City Charter:

“In order for the public(people, voters) to have input to the charter review process a petition of 1500 registered voters will begin review process.”

To be added at the beginning **Retirement Benefits** section of the City Charter:

“In order to protect current and retired employees benefits already earned by their service to the city. Retirement Benefits On or after...”

Communications received regarding COIN and Enumeration of Powers on Friday January 31, 2014 at 3:50 P.M.

Good afternoon all. As discussed last week, here are some items I'd like to see reviewed and discussed. If something has previously been voted on, I apologize, please disregard. Obviously I jumped around a bit, so this next meeting may not be suitable for all, but I would like to have discussed and vetted at an upcoming meeting.

1. Coin Language. I believe this needs to be put in the Charter in some form or fashion. So I believe Yolanda was going to be bringing back some type of language.
2. No member of the City Council, department head or other officer of the City, shall be financially interested in any contract, sale, or transaction made by them in their official City capacity. No member of any board, commission, or committee shall participate in any decision when the member has a financial interest in any contract, sale, or transaction to which the City is a party and which comes before the board, commission, or committee of which such person is a member for approval or other official action.
3. The members of the City Council shall not be eligible to hold any other office or employment with the city during the period of their terms of service. The members of the City Council shall not be eligible to hold any employment with the City for a period of two years following the end of their elected position on the City Council.
4. The municipal government established by this Charter shall be known as the Council-Manager form of government. The City Council will establish the policy of the City, and the Chief Executive Officer will carry out that policy.

The elective officers of the City shall consist of a City Council of 5 Members elected at large. The term of office shall be four years. The number of consecutive terms a member may serve on the City Council shall be limited to two terms. The Council Members terms shall be staggered in the manner exiting at the time of the adoption of this Charter.

On the date of any meeting of the City Council at which time the Council receives the certification of the results of any general or special municipal election at which any member of Council is elected, the City Council, after swearing and qualifying and newly elected member, elect one of its members as presiding officer, who shall have the title of Mayor. The City Council, at the same time of electing the Mayor, shall elect one of its members as Mayor Pro Tempore. The term of service for both the Mayor and Mayor Pro Tempore shall be for 2 years. Both the Mayor and Mayor Pro Tempore shall serve in such capacity at the pleasure of the City Council.

All powers of the City shall be vested in the City Council except as otherwise provided in this Charter.

5. Except as otherwise provided by the State Legislature, City employees shall have the right to form, join, and participate in the activities of employee organizations. City employees shall also have the right to refuse to join or participate in the activities of employee organizations.
6. Unless otherwise required by law, a labor union, City contractor, City Employer, or City Employee association may only make expenditures for political activities if the Organization establishes a separate segregated fund for such purposes. Said fund contribution is to be voluntary.
7. The City of Costa Mesa shall not exercise the power of eminent domain to acquire property from the owner of the property, without the owner's consent, for the sole purpose of transferring property to another person to further private economic development.
8. The City Council shall act by ordinance or resolution except as otherwise stated in this Charter. The affirmative vote of three members shall be necessary to the passage of any ordinance or resolution.

Communications received regarding Prevailing Wage and City Council Right's on Tuesday February 4, 2014 at 4:12 P.M.

After reviewing the draft you sent us, I ask that we reconsider the language regarding prevailing wage. To date, there are no legal challenges to the law and I don't think the people of Costa Mesa want to spend their money on another law suit where we are a test case. This language seems to get us in trouble from the outset. Also, in light of the findings on the 60th anniversary accounting, I request we reconsider the inclusion of language about this. I was originally fine with leaving things status quo, but that does not seem to be prudent now. I would also like to discuss adding language about limiting the Council's rights to embroil the city in lawsuits. I don't know that we can do anything, but I think the discussion is important.

**Communication received regarding Pension Benefits on Thursday
February 6, 2014 at 3:04 A.M.**

Yolanda / Kim,

Attached are three Pension Benefit provisions that the POC is now considering. If possible, can you replace the three Pension Benefit provisions sent to you last weekend with the attached provisions. If that is difficult, then would you just add the attached provisions (as alternative provisions) to the materials being sent to Charter Committee members on Friday. The POC members will be providing e-mail comments on the attached provisions by Tuesday, February 11th. Then at the POC's Wednesday, February 19th meeting, the POC will consider approving and recommending Pension Benefit provisions for inclusion in the Charter.

PENSION OVERSIGHT COMMITTEE

POSSIBLE PROPOSED CHARTER PROVISIONS

DRAFT

FEBRUARY 5, 2014

Retirement Benefits: On or after the effective date of this Charter no employee or officer of the City shall receive an increase in individual or collective retirement benefits or post-employment retirement benefits, including a defined benefit (pension) plan, deferred compensation, health/medical/prescription drug or similar post employment benefits that would increase the City's cost, liability, or risk, including benefits that were previously reduced on or after the effective date of this Charter, unless such benefit increase(s) are first approved by a majority of the voters at a general election.

On or after the effective date of this Charter no new employee shall receive individual or collective retirement benefits or post employment retirement benefits that are greater than such benefits previously given to a new employee that was hired on or after the effective date of this Charter, unless such benefit increase(s) are first approved by a majority of the voters at a general election.

Any increase in retirement benefits or post retirement benefits approved by voters shall not be applied "retroactively" unless first approved as a separate issue by a majority of the voters at a general election.

The City Council shall obtain and examine a comprehensive analysis, prepared by a competent independent source, of the long-term impact (financial and risk) on the City that any proposed increase in retirement benefits will have, before authorizing that such benefit increases be decided by voters at a general election. Such comprehensive analysis shall be provided to voters.

Any increase authorized in a valid and binding memorandum of understanding or contract prior to the effective date of this Charter is exempt from this provision.

Employee Compensation:

Employee compensation, including the full cost of retirement benefits and their related liability risk, shall be comparable / equivalent to employment in the private sector. To help assure comparability and the City's financial stability, the City Council is encouraged, to the extent allowed by law and favorable, to transition the City's retirement benefits for new employees away from defined benefit plans (pensions) and toward defined contribution plans or toward reduced pension plans that start retirement at age 60 for Safety employees and age 65 for non-safety employees, with lower formulas using highest average base pay over a period of years.

Pension Oversight Committee

A Pension Oversight Committee ("POC") shall be established and maintained until the City no longer provides defined benefit (pension) retirement plans for its employees. The POC's mission shall be to understand the California Public Employees Retirement System ("CalPERS") actuarial valuations and projections, the financial and risk impact the defined benefit plans have on the City, and report their findings and recommendations to the City Council. The City Council, at its discretion, may adjust the POC's mission from time to time.

It is suggested that the POC meet with CalPERS representative(s) annually following their actuarial valuation of the individual pension plans and review CalPERS' long-term projections of the City employees' retirement fund assets, liabilities, surplus funds, and unfunded liabilities based on (1) CalPERS' estimate of required contributions by the City and (2) the City's estimate of funds that will realistically be available to pay contributions. The two projections shall also be prepared based on CalPERS' discount rate and on an alternate discount rate that is .005 lower than CalPERS' discount rate or on an alternate rate that is chosen by the POC. The POC shall work closely with staff and also have direct access to CalPERS' representative(s).

* * * *

Note to POC – The above proposed provisions (draft) are available for the POC's review, edit, deletions, additions, and approval or not approval. The results will be provided to the Charter Committee and its legal counsel on Wednesday, February 19th after the POC meeting.

Please provide comments, suggestions, and changes to Jeff Arthur, Ralph Taboada, and Gene Hutchins by Tuesday, February 11th. Although the City Council may or may not want the above POC in the Charter, this proposal gives them a structure that can be considered or modified.

Gene Hutchins
2/5/2014

**Communications received regarding the Preamble and Firewall on
Saturday February 1, 2014 at 5:36 P.M.**

Hello Yolanda / Kim,

I have attached the updated Charter that includes my proposed redlined changes. There are notes in the Preamble that suggest certain additional points could be covered. Also, I wasn't sure what exactly happened to "fire wall" that stopped Council Members from going around the CEO and trying to influence staff. Sorry for the delay in getting this to you. Thanks very much for your help.

Preamble

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(Label only used to identify this section of Charter)

We, the people of the City of Costa Mesa, State of California believe fiscal responsibility and the prudent stewardship of public funds is essential for confidence in government, that ethics and integrity are the foundation of public trust and that just governance is built upon these values. Through the enactment of this Charter as the fundamental law of the City of Costa Mesa under the Constitution of the State of California, we do hereby exercise the privilege of retaining for ourselves, the benefits of local government, by enacting the laws, rules, regulations and procedures set forth herein pertaining to the governance and operation of our City.

It is incumbent upon those who govern and make decisions for and on behalf of the City of Costa Mesa to legally, as well as morally, abide by the provisions of this Charter, in its strictest sense, to assure the continued success and well-being of our fair City.

Add – Words on improving and maintaining a high quality of life within the City.

Add – Words on balancing / limiting total compensation of employees with improving, updating, and maintaining the City.

Add – Words on balancing / limiting the density of new high quality development with traffic circulation.

Add – Words on discrimination

Major Contingency Reserve: The City shall maintain a reserve for major contingencies of highly marketable and safe securities (the “Reserve”) for the purpose of funding significant unexpected events of risk or opportunity. Such events could include a major economic downturn, a major financial liability, a major natural disaster, a catastrophic infrastructure failure, or the purchase of real estate having significant importance to the community. The City shall perform a review of such possible events not more than every five years.

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All decisions related to funding the Reserve, its expected rare use, and its re-funding shall be determined by a super-majority of the City Council.

Propose - Move this Reserve to the body of the Charter

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CHARTER OF THE CITY OF COSTA MESA

Name of City: The City of Costa Mesa shall be known as the City of Costa Mesa.

Boundaries: The City of Costa Mesa's boundaries shall include the area within its existing boundaries and any portion herein after annexed.

Powers: The City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter or in the Constitution of the State of California.

Public Contracting: The Public Services Department shall be authorized to utilize the informal bidding procedures and cost thresholds set forth in the Uniform Construction Cost Accounting Act, as the procedures and cost thresholds may be modified every five years by the Uniform Construct Cost Accounting Commission. The City shall not be obligated to comply with any provision of the Uniform Construction Cost Accounting Act, including but not limited to future changes which relate to matters other than solicitation of bids and thresholds for informal bidding.

Prevailing Wages: The City shall not require the payment of prevailing wages in public works contracts that are paid for with local funds and are not of statewide concern, unless payment of prevailing wages is required by the terms of the funding source.

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Question – Are there other contracts subject to prevailing wages ?

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Charter Review: Every 10 years, the City Council shall form a Charter Review Committee to review the existing City Charter and determine whether any amendments, modifications or repeal of its provisions are

necessary. The City Council may, at its discretion, appoint a Charter Review Committee at any time.

Council Member Salary: Each Council Member shall receive an annual stipend not to exceed \$25,000, adjusted annually on the first day of January for inflation as determined for the County of Orange, California by the most commonly used authoritative source. Optional benefits that a Council Member participates in shall be deducted from this amount.

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Council Members elected after the effective date of this Charter shall not be eligible to participate in any retirement benefits or post employment benefits, including a defined contribution plan, defined benefit (pension) plan, deferred compensation, post employment health/medical/prescription drug benefits, or similar post employment benefits..

Retirement Benefits: On or after the effective date of this Charter, except for any increase previously authorized in a valid and binding memorandum of understanding or employment contract, (1) no employee or officer of the City of Costa Mesa shall receive an increase in retirement benefits or post-employment retirement benefits, including a defined benefit (pension) plan, deferred compensation, post employment health/medical/prescription drug or similar post employment benefits to be paid for in total or in part by the City or that the City is liable, including such benefits that were reduced on or after the effective date of this Charter, or (2) no increase shall be made in retirement benefits or post employment retirement benefits within the benefits package given to new employees when compared to such benefits given to previously hired employees, unless such benefit increases are first approved by a majority of the voters at a general election.

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Any increase in retirement benefits and/or post retirement benefits approved by voters shall not be applied “retroactively” unless separately approved by a majority of the voters at a general election.

A comprehensive disclosure of the long-term impact of any increase in retirement benefits shall be obtained by the City Council before any vote to propose such increase to voters at a general election. The comprehensive disclosure shall be provided to voters by inclusion in the related election pamphlet.

Employee Compensation:

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Employee compensation, including the present value of the cost of retirement benefits and their related liability risk, shall be comparable to equivalent employment in the private sector. The City Council is encouraged to transition the City's retirement benefits away from defined benefit (pension) plans to defined contribution plans or to pension plans that allow retirement at age 65.

Pension Oversight Committee

The Pension Oversight Committee shall be maintained until the City no longer provides defined benefit (pension) retirement plans for its employees. The Committee's mission shall be to understand CalPERS' actuarial valuations and projections, the impact the defined benefit plans have and will have on the City, and report their findings and recommendations to the City Council. The City Council, at its discretion, may adjust the Committee's mission from time to time.

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The Committee shall meet with CalPERS representative(s) annually following their actuarial valuation of the individual defined benefit (pension) plans and review CalPERS' long-term projection of assets, liabilities, surplus funds, and unfunded liabilities based on CalPERS' estimate of required contributions and separately on the City's estimate of funds that will realistically be available to pay contributions. The two projections be based on CalPERS' discount rate and on an alternate discount rate that is .005 lower than CalPERS' discount rate or that is chosen by the Committee. The Committee shall work closely with staff support and the Committee shall also have direct access to CalPERS' representative(s).

Note – This provision will be reviewed at the POC's February 5th meeting and approved, edited and approved, or not approved with the results provided to the Charter Committee and legal counsel. Although the City Council may or may not want the above POC in the Charter, this proposal gives them a structure that can be considered or modified.

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Outsourcing: The City may enter into a contract for any services unless limited by the Constitution of the state of California. The City shall periodically review its existing operations and services to consider whether said operations and/or services may be performed as or more efficiently and effectively by a third party. Any contract entered into, pursuant to this provision, shall be ratified in accordance with the procedure set by the City Council. When performing a comparative analysis of cost, the present value cost of employee pensions should be identified with the year earned and added to the cost of employee cash compensation and other benefits.

Conflict of Interest

No City Council Member, Officer, Member of any Board or Commission, shall recommend the appointment, appoint, or vote to any office or any position of employment within the City, any person related by consanguinity or connected by marriage.

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Sale or Long-Term Lease of City Owned Property

Any sale, or lease longer than 40 years, of City owned real estate shall require approval by a super-majority of the City Council. Prior to any vote, the City shall widely and actively publish such proposed sale or lease fully disclosing the purpose of the transaction and its impact on the City, including holding multiple workshops at convenient times to allow residents to attend and provide input to the City Council. The active disclosure requirement in this provision shall not apply when correcting a mistake in property lines, improvements constructed on the wrong property, or similar issues where the size of the property is less than two (2) acres.

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Any sale to a non-public agency buyer of City owned real estate, or two or more adjacent properties sold at different dates, collectively greater than 20 acres in size, shall require approval by a majority of the voters at a general election.

Change in Land Use Designation and Zoning of Property designated for Public Use.

Any proposed change in the land use designation in the City's General Plan from public use to a non-public use shall require approval by a super-majority of the City Council. Prior to any vote, the City, or government agency owning the property, shall widely and actively publish such proposed change in land use designation fully disclosing the purpose of the change and its impact on the City, including holding multiple workshops at convenient times to allow residents to attend and provide input to the City Council.

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