



CHARTER COMMITTEE AGENDA REPORT

MEETING DATE: FEBRUARY 12, 2014

ITEM NUMBER: 8-C

SUBJECT: FORM OF GOVERNMENT AND POWERS

DATE: FEBRUARY 7, 2014

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BACKGROUND

A number of proposals were submitted for consideration in the draft charter regarding form of government and powers. Those provisions include:

1. 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.
2. All powers of the City shall be vested in the City Council except as otherwise provided in this charter.
3. 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.
4. 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.
5. 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.

The following is a discussion of each of these items.

DISCUSSION

1. & 2. CITY COUNCIL POWERS & FORM OF GOVERNANCE

Proposals 1 and 2 provide the Council/Manager form of government along with vesting powers in the City Council. As a general law city, Costa Mesa's form of governance is already set in place. For

instance, Costa Mesa is governed by a city council of five members. The number of members can only be increased by a vote of the people. Govt. Code §§ 34871, 36502. Additionally, as a general law city, state law prescribes the procedures for the city council to establish its form of government. Govt. Code § 36501. Currently, the City operates as a Council/Manager form of government whereby the city manager, or in this case, the CEO, manages the City's employee's, prepares and administers the City's budget and the day-to-day affairs of the City. Costa Mesa Municipal Code Title 2, Chapter IV, Article 2.

As a charter city, Costa Mesa can continue as a Council/Manager form of government or other alternatives including strong mayor form of government. In a strong mayor form of government, the mayor has the authority to hire and fire the city manager and many of the department heads and may present a budget to the city council, much as the governor presents a budget to the state legislature. Political power is concentrated in the mayor, who typically will be more involved in the day-to-day management of the city because the office is a full-time job. Additionally, a charter city can create a city administrator position whereby the city council assigns to the city administrator the day-to-day operations of the city, but retain for the council significant authority over personnel matters (e.g., hiring and firing of department heads, financial transactions, contracts, and similar matters) that would be within the purview of a manager in the council/manager form of government.

Proposal 1 is consistent with the City's Council/Manager form of government whereby the CEO is responsible for day-to-day operations and the City Council would be responsible for making policy. However, in codifying Proposal 1 into the draft Charter, any future City Council would be bound by this form of government unless the voters decide on a different method of governing. Proposal 2 is common in a number of city charters. Although its language suggests full authority is vested in the City Council, specifically - "powers of the City shall be vested in the City Council..." if the Charter Committee maintains the Council/Manager form of government, then the balance of powers remains as it currently stands. Proposal 2 is frankly, unnecessary if Proposal 1 is included in the Charter.

3. Number of Council Members and Terms of Office

Proposal 3 calls for a five (5) member council serving four (4) year terms with a two-term limit. This is identical to the City's current number of council members, terms and term limits. However, if codified in the draft charter, a future council would be bound by these rules unless the voters approved a different amalgamation. If the Charter Committee would like the number of members and term limits "etched in stone", then it should consider adopting this provision or some variation thereof. Note that the City's term limits were part of an initiative passed by the voters, and thus cannot be changed without a vote of the people in any event.

4. Presiding Officers

Proposal 4 is consistent with the City's current manner of presiding over meetings in that it provides for the mayor to serve as the presiding officer at all city council meetings. Govt. Code § 36802. If the mayor is absent or unable to act, the mayor pro tem serves until the mayor returns or is able to act and has all of the powers and duties of the mayor during the mayor's absence. Govt. Code § 36802. As a general law city, state law, ordinances, and local rules prescribe the powers of the presiding officer. Additionally, the Mayor, as presiding officer may refer to rules of parliamentary procedure, such as Robert's Rules of Order, for guidance and supplementation of the city council's procedural rules.

As a charter city, Costa Mesa can adopt its own rules as to who presides over the city council and respecting the role of the mayor. However, Proposal 4 is consistent with the City's current manner of presiding over meetings in that it calls for the council to 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.

5. Adoption of Actions

Proposal 5 would require all action of the City Council be adopted by ordinance or resolution based on the vote of the entire city council. This is far more stringent than what is currently required for the City Council to take action. Currently, the City Council may "take action" via ordinance, resolution or minute

order. Action by ordinance is required to prescribe some permanent rule of conduct or government that remains in force until the ordinance is repealed. An ordinance may be penal or non-penal in nature. An ordinance is the only mechanism by which a city can impose a fine and/or jail sentence as a penalty for violations. See Govt. Code §§ 36900-36901. Action by ordinance is the most formal procedure for taking action in that it requires two readings, may be adopted at least five days after the first reading, requires publication and then is only effective thirty (30) days thereafter (except for urgency ordinances).

Alternatively, the City Council action via resolution may be adopted and take effect at the same meeting, however, typically includes "findings" that serve as the legal basis for its decision. And finally, the minute order or motion is the most casual of the procedures for city council action. The minute order is appropriate when:

- The action is not of a penal nature or intended to be a local law;
- An ordinance or resolution is not specifically required; or
- A formal document reflecting the body's action is unnecessary.

As to the number of votes necessary to take action, under state law, both an ordinance and a resolution require the affirmative vote of three council members. Other actions may be taken by a majority of the quorum of the City Council unless required otherwise by statute. Although ideally it is preferred to have a vote of the entire city council, often times, situations will arise whereby a council member is unable to attend the meeting, wishes to abstain or must recuse him or herself from that decision.

Proposal 5 is far more stringent from the City Council's current manner of taking action in a number of ways, primarily because it eliminates the possibility of taking action via minute order (such as when the warrant register is approved).

CONCLUSION

In conclusion, Proposals 1 through 4 are consistent with the City's current form of government and how powers are vested. However, by codifying them into the charter, they can only be modified by a vote of the people. Proposal 5 is far more stringent than the City's current practice for approving items. We would recommend that the Charter Committee maintain the current practice under state law for approval of business items.