



CHARTER COMMITTEE AGENDA REPORT - SUPPLEMENT

MEETING DATE: MARCH 12, 2014

ITEM NUMBER: 8-B

SUBJECT: SUPPLEMENTAL REPORT ON PROPOSED LANGUAGE

DATE: MARCH 12, 2014

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INTRODUCTION

The following information is provided to the Charter Committee to supplement what was provided in your agenda packets last Friday. Some of these items relate to committee members' proposals (and will be identified by the same proposal numbers as the original report). Others are items suggested for consideration by Special Counsel.

PROPOSALS

Proposal 2 - Hiring

Except as otherwise provided in this charter, no member of the City Council shall order, directly or indirectly, the appointment by the City Manager, or by any of the department heads in administrative service of the City, of any person to any office or employment, or removal therefrom.

Currently, the proposed charter provides for a Council-Manager form of government whereby the city manager, or in this case, the CEO, manages the City's employees, prepares and administers the City's budget and the day-to-day affairs of the City. The charter provision calling for a Council-Manager form of government is consistent with the City's current practice as set out in Costa Mesa Municipal Code Title 2, Chapter IV, Article 2.

The previous report recommended inclusion of this provision to ensure that the powers of a charter city are not used to give the City Council greater control over the City's day to day operations than it would have under the Council-Manager form of government. However, the proposed language is not necessary so long as the draft charter includes a provision adopting the Council-Manager form of government, as it currently does. However, some alternative language might be appropriate to consider if there is concern that the City Council could use charter powers to add additional directly appointed officers to the two currently selected and supervised by the City Council – the City Manager/CEO and the City Attorney. Proposed language follows:

The two administrative officers of the City who will be appointed by the City Council are the Chief Executive Officer (City Manager) and the City Attorney, whose qualifications, appointment and removal shall be pursuant to the general laws of the State of California. No other administrative offices shall be created which may be directly appointed by the City

Council.

Proposal 3 – Elections

Municipal elections shall be held in accordance with the California Elections Code Section 11001 et. seq.

This language is adequate for elections, but do not address referenda, initiatives and recall. As a charter city, the rules governing these could be changed by ordinance. Thus, if the Committee wishes to have referenda, initiatives and recall governed by the general law, and not subject to change by City Council, the following language is suggested:

The power of initiative, referendum and recall of elective officers are reserved to the electors of the City, and these powers shall be exercised in accordance with the general law of the State of California.

Proposal 6 - General law powers - conflict of law

When there is a conflict between State and local affairs, the Charter shall be able to control their municipal affairs.

As noted in our earlier report, we believe this issue is encompassed within the existing language of Section 104. However, if the Committee wishes to, it could add to the existing language in section 104:

In the event of any conflict, this Charter shall control over the general laws of the State of California as to municipal affairs.

Additional Provisions

There are three additional areas that the current charter draft is silent on which the Committee may want to consider for inclusion. They relate to enumeration of powers, construction and severability. Proposed language for each of these issues to be included in the draft charter follows:

Proposed addition to section 104:

The failure of this Charter to provide for a particular power, duty or procedure shall not be deemed to be a limitation or restriction on the general powers granted hereby.

The following two general provisions could be incorporated into another section or placed in their own section:

Construction and Interpretation

Except as provided by mandatory language in this Charter, the language contained in this Charter is intended to be permissive rather than limiting and shall be liberally and broadly construed in favor of the exercise of power to govern with respect to any matter which is a municipal affair.

Severability

If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

CONCLUSION

This supplemental report completes the review of additional proposed language to be considered by the Charter Committee.

Kimberly Hall Barlow