



CHARTER COMMITTEE AGENDA REPORT

MEETING DATE: MARCH 12, 2014

ITEM NUMBER: 8-B

SUBJECT: MISCELLANEOUS PROPOSED LANGUAGE

DATE: MARCH 12, 2014

**FROM: KIMBERLY HALL BARLOW, SPECIAL COUNSEL'S OFFICE
YOLANDA M. SUMMERHILL**

PRESENTATION BY: KIMBERLY HALL BARLOW

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

INTRODUCTION

The following are proposals made by committee members along with Special Counsel's proposals for the Charter Committee's consideration.

PROPOSALS

Proposal 1-General Plan Consistency

All zoning ordinances adopted shall be consistent with the general plan.

Every five (5) years, the City adopts a General Plan that serves as the "big picture" for the city's long-term development. The General Plan must address five (5) particular areas including land use, noise, traffic, public safety and housing. Beneath the General Plan is the various zoning codes adopted by the City that provide detailed requirements for various uses and development. As a general law city, any zoning ordinance that is passed requires a finding that the ordinance is consistent with the general plan. As an example, a zoning ordinance authorizing large housing development in an area that has been designated in the general plan as no growth area would be inconsistent with the general plan. However, as a charter city, zoning ordinances are not required to be consistent with the general plan unless the city has adopted a consistency requirement by charter or ordinance. Cal. Govt. Code Section 65803. Thus, if the Charter Committee would like to ensure this consistency going forward, it could adopt the above provision.

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.

As a charter city, there is the potential for the City Council to exercise greater control over the City's day-to-day operations. For instance, 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. Thus, this proposal seeks to ensure that the CEO is responsible for administration. A number of charter cities have adopted "non-interference" as set forth above. The above provision would confirm the CEO's authority over city staff.

Proposal 3 – Elections

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

As a charter city, Costa Mesa would not be bound by the Elections Code Section 11001 et. seq. As such, the proposed charter could include provisions governing dates of municipal election, procedures and other rules. Some charter cities will hold elections on "off years" with the rationale being that local issues will be given proper attention that is not overshadowed by federal and state political issues. However, there are differences of opinion as to whether municipal elections on off years due in fact receive due attention. Moreover, municipal elections on "off years" increase the cost to the City since it must carry out the task of conducting the election. Under the proposed language, as a charter city, Costa Mesa would continue its current approach in following the California Elections Code.

Proposal 4 - Prohibition of Property Transfer Tax

Transaction, sales, etc. should not be imposed unless approved by a 2/3rds majority of voters.

Charter cities are subject to Proposition 218, which requires voter approval for any tax increase. Under Proposition 218, there is a distinction between a general tax that may be used for any purpose and a special tax that must be used for a particular purpose. Whereas, a general tax requires majority approval, a special tax requires 2/3rds majority. The above proposal is fairly broad, however, depending upon the proposed use of the tax, a 2/3rds majority would be required under state law.

Proposal 5 - Council Meetings

City Council should notice its meetings and have meetings in accordance with the general laws of the State of California. All rules

should follow the State of CA regarding location, notice and conduct of meeting.

A charter city is subject to the Ralph Brown Act such that the City would have limited authority governing notice and location of meetings. Cal. Govt. Code Sections 54951, 54953(a). Additionally, Title 2, Chapter III of the Costa Mesa Municipal lays out detailed provisions consistent with state law governing regular meetings, special meetings, meeting locations, study sessions, criteria for closed session, making correspondence available to the public etc. As a charter city, Costa Mesa would be required to continue to follow these provisions in these particular areas.

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.

This proposal is essentially covered in Section 104 of the draft Charter. Section 104 provides, "[t]he 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."

Proposal 7 - Voting Requirements

Any City Council action shall require 3 affirmative votes to pass a resolution.

As a general law city, all ordinances, resolutions and orders for the payment of money require a recorded majority vote of the total membership of the city council. Cal. Govt. Code Section 36936. Thus, the above proposal is consistent with the City's current requirement as a general law city.

CONCLUSION

In conclusion, Proposals 1-3 are recommended for approval by the Charter Committee. Proposals 4 & 5 are broad proposals covered under state law that apply to charter cities. However, based on the Charter Committee's input, specific language may be crafted governing a particular issue not covered under state law that the Charter Committee would like to address. And finally, Proposals 6 & 7 are already covered in the draft charter or under state law.