DRAFT

MINUTES OF THE REGULAR MEETING OF THE COSTA MESA CHARTER COMMITTEE

February 26, 2014

1. CALL TO ORDER

The meeting was called to order at 6:00 p.m. in Conference Room 1A, at Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

PRESENT: FACILITATORS: Dr. Kirk Bauermeister, Dr. Mike Decker
CHARTER COMMITTEE MEMBERS: Ron Amburgey, Brett Eckles, William Fancher, Thomas Graham, Gene Hutchins, Kerry McCarthy, Mary Ann O'Connell, Henry Panian, Tom Pollitt, Lee Ramos, Andrew Smith, Kevin Tobin, Harold Weitzberg.
LEGAL COUNSEL: Kimberly Hall Barlow, Yolanda Summerhill

ABSENT: None

2. PLEDGE OF ALLEGIANCE - Dr. Bauermeister

3. MOMENT OF SILENCE – Dr. Bauermeister

4. WELCOME - Dr. Bauermeister

5. PUBLIC COMMENTS – None.

6. REVIEW OF MINUTES

Committee Member O'Connell indicated a spelling error on the minutes.

MOTION/SECOND: Committee Member O'Connell/Committee Member Eckles

Consensus: (13 Ayes, 0 Noes): Approval of February 12, 2014 Charter minutes.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, O'Connell, McCarthy, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg.
Noes: None.
Absent: None.

The minutes of the February 12, 2014 Charter Meeting were approved with one correction.

7. MEETING SUMMARY

Dr. Decker provided an overview of the items that the Committee would be addressing throughout the meeting.

8. CHARTER ISSUE

CHARTER ISSUE: PAYCHECK PROTECTION

Consensus: (3 Ayes, 10 Noes): To include language (to be determined) regarding Paycheck Protection.
Ayes: Committee Members: Amburgey, Eckles, and Tobin.
Noes: Committee Members: Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, and Weitzberg.
Absent: None.

CHARTER ISSUE: EMINENT DOMAIN

Consensus: (1 Ayes, 12 Noes): To include language (to be determined) regarding Eminent Domain.
Ayes: Committee Member Eckles.
Noes: Committee Members: Amburgey, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg.
Absent: None.

PROPOSED CHARTER LANGUAGE – PROPOSAL 1: TRANSPARENCY

Dr. Bauermeister stated that staff recommended including the word "transparency" into the first paragraph of the preamble within the Charter document.

Consensus: (13 Ayes, 0 Noes): To include the word "transparency" into the preamble.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg.
Noes: None.
Absent: None.

PROPOSED CHARTER LANGUAGE – PROPOSAL 2: BUDGET RESERVES

Proposal 2 – Budget Reserves: The City recognizes that without 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 principles as its primary function and obligation.

Legal Counsel Hall Barlow suggested that budget reserves language be included in the body of the Charter instead of the preamble because of the language containing a super majority vote.

Legal Counsel Summerhill stated that the Committee could include proposal 2 language into the preamble and move the current budget reserve language into the body of the Charter.

Committee Member comments and questions regarding Proposal 2:

- Concerned that budget reserve language needs to be more specific.

A Committee Member suggested the following language regarding Major Contingency Reserve:

The City shall maintain a Major Contingency Reserve for the purpose of funding significant unexpected events of risk or opportunity ("the Reserve"). 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 City. The City shall perform a review of such possible events not more than every five years.

The types of significant unexpected events, appropriate amount of the Reserve, types of securities allowed by law to be held in the Reserve, timing and method to achieve or restore the appropriate amount held in the Reserve, and the expected rare use of Reserve funds shall be determined by not less than an 80% super-majority of the City Council.

Suggestion to first decide if the Committee wants to include proposal 2 in the preamble.

Consensus: (12 Ayes, 1 Noes): To include the following Proposal 2 language regarding Budget Reserves into the preamble: The City recognizes that without 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 principles as its primary function and obligation.
Ayes: Committee Members: Amburgey, Eckles, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg.
Noes: Committee Member Fancher.
Absent: None.

Legal Counsel stated they would bring back language for consideration regarding budget reserves to be included in the body of the Charter.

PROPOSED CHARTER LANGUAGE – PROPOSAL 3: CIVIC FREEDOMS

Proposal 3 – 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.

Committee Member comments and questions regarding Proposal 3:

- Does the language in proposal 3 differ from the current constitutional protections?

Legal Counsel Summerhill responded that the proposed language does not but it can still be included.

Consensus: (1 Ayes, 12 Noes): To include the following proposal 3 language regarding Civic Freedoms into the preamble: 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.
Ayes: Committee Member Tobin.
Noes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, and Weitzberg.
Absent: None.

PROPOSED CHARTER LANGUAGE – PROPOSAL 4: Outsourcing

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.

Committee Member comments regarding Proposal 4:

- Should contract pricing be held for at least 5 years?

- Should outsourcing contracts be negotiated under COIN?

Legal Counsel Hall Barlow responded that the negotiations would be covered in the contract; she also stated that depending on the type of service 5 years may not be an appropriate amount of time.

- The prices have to be held as they are proposed in the contract and no changes are made afterwards.

Legal Counsel Hall Barlow commented that when prices are held as proposed the contractors may give a higher bid because they want to build future increases into the base price.

- COIN was created because there was a perceived imbalance of powers in negotiations but the bid process replaces COIN.

- The current language in the Charter is appropriate.

- If a contractor requested an increase the contract should be put out for rebid. Getting locked into a long contract is not appealing.

Legal Counsel Hall Barlow stated that the vast majority of contracts use the language "not to exceed" because they are based on a proposal.

- Concerned that outsourcing may cost the City more money than services provided in-house.
- Trust the City staff to review and abide by the process.
- Staff may not always abide by the process, consider the 60th anniversary.
- Keep it simple and stay with the language that was already approved to be included in the Charter.

Consensus: (11 Ayes, 2 Noes): Keep the current outsourcing language that was previously approved.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, Panian, Pollitt, Ramos, Smith, and Tobin.
Noes: Committee Members: O'Connell and Weitzberg.
Absent: None.

PROPOSED CHARTER LANGUAGE – PROPOSAL 5: CHARTER REVIEW

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.

Committee Member comments and questions regarding Charter Review:

- How many signatures are required for an initiative to be placed on the ballot?

Legal Counsel Hall Barlow responded that it depends on how many registered voters voted during the most recent election; for special elections it is 15% and regular elections it is 10%.

- What is the intent of the language?

Legal Counsel Hall Barlow commented that the intent is to initiate a Charter Review.

- The intent of the language is to give the people a chance to initiate a review of the Charter.
- Change the wording from "have input to" into "initiate". This would support the intent of the language.
- In favor of the language.

Alternative additional language proposed by Legal Counsel Hall Barlow regarding Charter Review: A Charter Review process can also be initiated by a petition signed by 1500 registered voters.

Consensus: (6 Ayes, 7 Noes): To include the alternative additional language: A Charter Review process can also be initiated by a petition signed by 1500 registered voters.
Ayes: Committee Members: Amburgey, Graham, Panian, O'Connell, Pollitt, and Weitzberg.
Noes: Committee Members: Eckles, Fancher, Hutchins, McCarthy, Ramos, Smith, and Tobin.
Absent: None.

Continued Committee Member comments regarding proposal 5:

- Propose that the number be 2500 registered voters.

Consensus: (10 Ayes, 3 Noes): To include the additional alternative language: A Charter Review process can also be initiated by a petition signed by 2500 registered voters.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, Panian, Pollitt, Ramos, and Smith.
Noes: Committee Members: O'Connell, Tobin, and Weitzberg.
Absent: None.

PROPOSED CHARTER LANGUAGE – PROPOSAL 6: RETIREMENT BENEFITS

Proposal 6 – Retirement Benefits: In order to protect current and retired employees benefits already earned by their service to the city, on or after…

Committee Member comments regarding Retirement Benefits:

- This language protects the current employee's benefits so that retirement benefits are not lost.

Dr. Decker commented that the proposed language is an explanation sentence.

- Not in favor of this language because it raises too many questions.

Consensus: (6 Ayes, 7 Noes): To include Proposal 6 regarding additional Retirement Benefits language into the Charter.
Ayes: Committee Members: Amburgey, McCarthy, O'Connell, Panian, Pollitt, and Weitzberg.
Noes: Committee Members: Eckles, Fancher, Graham, Hutchins, Ramos, Smith, and Tobin.
Absent: None.

BREAK 7:20 P.M. – 7:30 P.M.

BUDGET RESERVES

Alternative proposed language regarding Budget Reserves in the body of the Charter: The City shall maintain cash reserves for the purpose of funding significant or unexpected events or opportunities. Such events could include a major economic downturn, natural disaster or purchase of real property of importance to the community, as determined by a supermajority of the City Council. The City Council shall review the appropriate amount of cash reserves for such purposes at least every five (5) years.

Consensus: (13 Ayes, 0 Noes): To include alternative proposed Budget Reserve language into the body of the Charter.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg.
Noes: None.
Absent: None.

COUNCIL MEMBER SALARY

Current salary language: Each Council Member shall receive an annual stipend of $25,000. Optional benefits shall be deducted from this amount.

Committee Member comments regarding Salary:

- Instead of the Council Members receiving annual stipends they should receive a monthly stipend of about $2,100.00.

- Council Members should only get paid for the months that they serve.

Legal Counsel stated they would bring back language for consideration regarding Council Member salary.

PREVAILING WAGES

Current prevailing wages language: The City shall not require the payment of prevailing wages in public works contracts paid for with local funds and which are not a matter of statewide concern, unless payment of prevailing wages is compelled by the terms of the funding source.

Committee Member comments and questions regarding prevailing wages:

- Using the word "compelled" in the language could create a problem.

Legal Counsel Hall Barlow responded that whoever funds the public work contract will decide how the money will be spent.

- What if there are three different entities working on one project and two of them are paying prevailing wage?

Legal Counsel Hall Barlow responded that if the City of Costa Mesa was working with two other entities and they were paying prevailing wages than Costa Mesa would not be required to pay prevailing wages as well.

- What is the status on SB-7 and how is it affecting the City?

Legal Counsel Hall Barlow responded that multiple charter cities filed lawsuits challenging SB-7.

- The unforeseen consequences of prevailing wages could promote lawsuits.

Legal Counsel stated they would bring back language for consideration regarding prevailing wages.

PENSION COMMITTEE VOTES FOR THE CHARTER COMMITTEE – PROVISIONS 1 & 2

Provision 1: No increase in retirement benefits unless approved by voters.

Provision 2: No "retroactive" application of increased retirement benefits unless approved by voters.

Committee Member comments and questions regarding pension committee votes:

- The total unfunded liability of the City is about $260 million.

Dr. Decker commented that the sentence that provision 1 proposes is already included in the Charter document under retirement benefits.

- The current language is very similar but it does not cover new employees.

Legal Counsel Hall Barlow stated that under State law new employees have a more reduced benefit package than current employees.

- Suggest that if there is language that needs to be added then it should be sent in and reviewed for the next meeting.
- Is there any way to prohibit retroactive increases?
- It would be up to a vote of the people.
- A financial impact report should be required.
- The attorney's impartial analysis would include a financial impact report.

Consensus: (12 Ayes, 1 Noes): Bring back both provisions 1 and 2 for the next meeting.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, and Tobin.
Noes: Committee Member Weitzberg.
Absent: None.

PREVAILING WAGES

Consensus: (11 Ayes, 2 Noes): Alternative language regarding Prevailing Wages: The City shall not require the payment of prevailing wages in public works contracts paid for solely with the City's local funds and which are not a matter of statewide concern, unless payment of prevailing wages is compelled by the terms of the funding source.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, Panian, Pollitt, Ramos, Smith, and Tobin.
Noes: Committee Members: O'Connell and Weitzberg.
Absent: None.

COUNCIL MEMBER SALARY

Consensus: (13 Ayes, 0 Noes): Alternative language regarding Council Member Salary: Each Council Member shall receive a monthly stipend of $2,100.00 per month of each month or portion thereof that he or she serves in office. Optional benefits shall be deducted from this amount.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg.
Noes: None.
Absent: None.

MEASURE V DISCUSSION

At the February 12, 2014 meeting legal Counsel Hall Barlow suggested that the Committee review Measure V as well as other cities charters.

Committee Member comments and questions regarding Measure V:

- Is there anything that the Committee has left out of the Charter that Legal Counsel would suggest that the Committee consider?
- It is not legal Counsel's role to make suggestions for the Charter.
- Should listen to the legal resource.
- Legal Counsel should not advocate a position.
- The Committee Members should have individually reviewed the binder full of other cities Charters.
- If there is an error of omission the Committee should know about it.
- The Committee would be remiss if they did not want to hear the suggestions of Legal Counsel.
- Not direction, would like suggestions from legal staff.

- Should not silence Legal Counsel.

Consensus: (10 Ayes, 3 Noes): Consider suggestions from Legal Counsel regarding Charter items.
Ayes: Committee Members: Amburgey, Fancher, Graham, Hutchins, McCarthy, Panian, Pollitt, Ramos, Smith, and Tobin.
Noes: Committee Members: Eckles, O'Connell, and Weitzberg.
Absent: None.

Legal Counsel Hall Barlow stated that the sentence under Form of Government and Powers that states "The number of consecutive terms a member may serve on the City Council shall be limited to two terms" is redundant because it is already the law of the City by voter initiative.

Consensus: (3 Ayes, 10 Noes): Keep language in the Charter regarding Form of Government.
Ayes: Committee Members: Amburgey, Eckles, and Pollitt.
Noes: Committee Members: Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Ramos, Smith, Tobin, and Weitzberg.
Absent: None.

Legal Counsel Hall Barlow stated that section 201(e) of Measure V regarding qualifications would be good to include because it would not allow for future Council to change the qualifications.

Section 201(e) – Qualifications: A candidate for City Council must meet qualifications as set forth in the general laws of the State, as applicable and as may be amended and recodified.

Consensus: (13 Ayes, 0 Noes): To include section 201(e) from Measure V into the current Charter document.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg.
Noes: None.
Absent: None.

Legal Counsel Hall Barlow suggested reviewing the current proposed Charter and that Committee Members review the other Charters that were provided and request feedback from Legal Counsel if needed. Also, Legal Counsel can provide a list of recommendations.

Continued Committee Member comments regarding Measure V:

- The Committee has worked very hard on this Charter document and now there comes a point where the Committee wants to jam 8 paragraphs into the Charter within 6 hours.

- It is the Committee's job to bring suggestions to the Charter meetings, not legal Counsel's.

- Do not want an artificial deadline for the Charter to be done in two weeks because the Committee will be rushing with trying to include several decisions.

- Need to get this document to the City Council within a timely manner.

Dr. Bauermeister stated that the March 12, 2014 Charter meeting would start at 5:00 P.M. instead of 6:00 P.M.

Consensus: (10 Ayes, 3 Noes): Allow Legal Counsel Hall Barlow to suggest foundational items that should be included in the Charter.
Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, Pollitt, Ramos, Smith, and Tobin.
Noes: Committee Members: O'Connell, Panian, and Weitzberg.
Absent: None.

9. INFORMATION REQUESTS - None

10. AGENDA BUILDING FOR February March 12, 2014

Consensus of the Committee for the following topics to be on the March 12, 2014 agenda: Call to Order; Pledge of Allegiance; Moment of Silence; Welcome; Public Comments; Review of Minutes; Meeting Summary; Proposed Pension Language; Suggestions from Legal Counsel; Review Final Charter Document; Suggestions to the City Council; Post Committee Process; Communications received from Committee Members; Committee Member Comments and Adjourn.

11. COMMITTEE MEMBER COMMENTS

Committee Member Pollitt thanked the Committee for all of the hard work.

Committee Member Smith acknowledged all of the hard work that has been done.

Committee Member Eckles stated that he appreciated all of the good suggestions.

Committee Member Weitzberg thanked everyone for their hard work.

Committee Member Ramos thanked the Committee for all of their work and stated that it is has been a good journey.

Committee Member Hutchins stated that the Committee cannot lose their focus.

Committee Member Panian spoke on the suggestions to the Council.

Committee Member Graham spoke on the City of La Mirada Charter decision, stating they only held 3 meetings, and that their process cannot be compared to the City of Costa Mesa Charter Committee process.

12. ADJOURNMENT at 8:45 P.M.