



CITY COUNCIL AGENDA REPORT

MEETING DATE: October 19, 2010

ITEM NUMBER: IX-3

SUBJECT: Request of Mayor Pro Tem Leece for Consideration of a Request for City Membership in the Association of California Cities – Orange County

DATE: October 15, 2010

FROM: City Manager's Department

PRESENTATION BY: Wendy Leece, Mayor Pro Tem

FOR FURTHER INFORMATION CONTACT: Allan L. Roeder, City Manager
(714) 754-5328

RECOMMENDATION:

It is recommended that the City Council:

1. Discuss the proposed formation of the Association of California Cities – Orange County; and
2. Determine whether the City of Costa Mesa would support, join and pay membership dues to the Association, if established.

BACKGROUND:

Special Note

(All 34 cities in Orange County have been requested to consider membership in the proposed Association of California Cities – Orange County. To conserve time and duplication of effort, the City Manager reviewed a number of staff reports on this topic as prepared for City Councils in other cities. The staff report prepared by City Manager Tim Casey for the City Council of Laguna Niguel was especially well done and has been used extensively in the preparation of this report. Credit is due City Manager Casey – who has served with City Manager Roeder on the Oversight Committee for the Orange County Division of the League of Cities which has been extensively involved in this subject – for his excellent report on this subject.)

The subject brought forward by Mayor Pro Tem Leece relates to representation, advocacy and collaboration involving the 34 cities in Orange County. The proposed Association of California Cities – Orange County has evolved from discussions involving the Orange County Division of the League of California Cities. Consequently, a fundamental understanding of the relationships between the proposed Association, the Orange County Division of the League and the League of California Cities is necessary in order to understand the proposal before the City Council.

The League of California Cities (State League) provides legislative advocacy, professional development and education services to member cities throughout California. The State League is divided into sixteen (16) Regional Divisions. Orange County is designated as a Regional Division. The Orange County Division – League of California Cities (OC Division) is the only Regional Division with a full-time staff and a separate dues structure. OC Division staff is considered employees of the State League. Division dues are paid to the State League which provides administrative support services (i.e. payroll, accounting, human resources) for the separately budgeted activities of the OC Division. For philosophical and/or economic reasons, several Orange County cities have dropped their State League memberships and stopped paying State League dues. As a result, the State League does not allow these cities to formally participate in the activities of the Orange County Division or pay Division dues. Several other Orange County cities including - Costa Mesa - have stated their intent to drop out of the State League in 2011. The impact of the current and prospective withdrawals from the State League threatens the financial capability of the OC Division to continue to support a full-time staff and provide the broad range of Division membership and representation services, educational programs and collaborative opportunities that currently exist. OC Division elected officials has proposed the formation of a new 501(c)(3) non-profit organization: the Association of California Cities – Orange County. The new Association would provide essentially the same services and programs of the current OC Division; however, it would be legally and financially separate from the State League.

ANALYSIS:

OC Division elected officials have proposed the formation of a new 501(c)(3) non-profit organization: the Association of California Cities – Orange County. The new Association would provide essentially the same services and programs of the current OC Division; however, it would be legally and financially separate from the State League. A one-page summary of the proposed Association is attached (see Attachment 1).

Articles of Incorporation: The Draft Articles of Incorporation establish the Association as a California Public Benefit Corporation organized and operated for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The stated purposes of the Association are to serve and represent its members by

providing education, information legislative and advocacy services. It is anticipated that legislative advocacy would constitute a minor part of the Association's activities and the Association would be prohibited from supporting or opposing political candidates. A copy of the proposed Articles of Incorporation is attached (see Attachment 2).

By-Laws: The Draft By-Laws essentially mirror the current By-Laws of the OC Division with minor amendments to delete references to the State League and the responsibilities of a Regional Division of the State League. The purposes and functions of the Association would be:

1. To advocate on behalf of its members the preservation and enhancement of local control;
2. To hold periodic meetings of city officials to foster and disseminate knowledge relating to municipal government by all appropriate means and to generate greater interest and more active civic consciousness among the members;
3. To hold periodic meetings of city officials for the discussion of municipal issues for the purposes of promoting governmental efficiency and reducing the cost of government;
4. To formulate policy and advocate the common policies of its members on local, regional, state and national issues of interest to its members; and
5. To seek advisory votes from its members on specific policy matters.

Provisions related to Association Officers, Duties of Officers, Meetings, and Standing Committees are not changed.

A copy of the Draft By-Laws is attached (see Attachment 3).

The proposed formation of the Association of California Cities – Orange County would address the following issues:

1. Any Orange County city could continue to pay dues to, and fully participate in the policy development, legislative advocacy and educational programs of, the State League.
2. Any Orange County city that declines State League membership could choose to pay dues to and be a member of the new Association of California Cities – Orange County. That is not possible under current State League administrative policy.
3. If some or all of the current and prospective State League non-member OC Cities chose to join the new Association, the financial position of the new Association and its ability to continue to provide a broad range of services to its members would be strengthened.
4. The current OC Division staff would be removed from the sometimes awkward position of being State League employees who are primarily accountable to a Regional Division and Board who sometimes find themselves in conflict with State League legislative priorities and positions.

5. The new Association could take a legislative position on behalf of Orange County cities that is in conflict with the State League, and communicate that position without violating State League By-Laws.

Some of the arguments and concerns advanced against formation of a new Association include the following:

1. OC Division and OCCOG organizational alternatives (including formation of a separate non-profit organization of Orange County cities) were evaluated four years ago by the Orange County City Managers Association. It was recommended that the current Hybrid Division be retained.
2. The OC Division should focus its activities on regional/county/local issues and defer to the State League on matters of State legislation and/or statewide interest.
3. It should not be assumed that all or most of the current Orange County cities that are not State League members will opt to join and pay dues to the new Association.
4. There will still be a need for Orange County cities that belong to the State League to organize themselves and carry out the duties and responsibilities of a Regional Division.

LEGAL REVIEW:

Should the City Council express interest in becoming a member of the Association of California – Orange County, the City Attorney will review all of the proposed Articles of Incorporation and By-Laws to assure compliance with applicable statutes prior to the City's becoming an official member.

FISCAL REVIEW:

The FY 2010-11 budget includes an appropriation of \$20,897 for membership in the Orange County Division of the League. Funding was discontinued for membership in the California League of Cities.

CONCLUSION:

Due to the requirements of the California League of Cities that cities must be members of the State League in order to be members of their Regional Division, the City is in a somewhat challenging situation. Beginning January 1, 2011, the City will no longer be eligible to participate as a member of the Division due to State League requirements. The Association of California Cities – Orange County may offer a viable alternative if enough cities in Orange County choose to become members. The greatest liability at this point is the possibility that neither the Orange County Division

of the League or the Association of California Cities – Orange County will sustain or attract enough members to be viable. The result would simply mean cities would have the option of remaining or joining the State League, relying on in-house staff or contract representatives or simply choosing not to participate at all.



ALLAN L. ROEDER

City Manager

- ATTACHMENTS:
- 1 Association of California Cities – Orange County Fact Sheet
 - 2 Association of California Cities – Orange County - Draft Articles of Incorporation
 - 3 Association of California Cities – Orange County – Draft By-Laws

Association of California Cities

Orange County

What is it?

A California non-profit association of Orange County cities formed to advocate on behalf of its members for the preservation and enhancement of local control.

What does it do?

Holds monthly dinner meetings to facilitate communication between its member cities, collaboration on projects of mutual benefit and timely educational programs of interest to its members. Provides other educational events and collaborative forums to address problems of a regional nature in a manner that preserves the highest degree of local control and flexibility.

What does it cost?

Member cities will pay the same amount in dues that they paid last year to be members of the Orange County Division, League of California Cities. Cities will also be offered a 10% discount on membership dues for purchasing a two year membership option.

Can I join both ACC-OC and the League of CA Cities?

Yes. You may choose to be a member of ACC-OC, the State League, or both. Dues will be paid separately.

Why should I join?

Orange County cities often have a different perspective than the Northern California cities that dominate State League policy discussions. This organization will provide Orange County cities with a collective voice apart from the League that has the freedom to act independently. The ACC-OC will strive to provide top quality educational, collaborative and policy resources to members while focusing specifically on Orange County issues.

**Articles of Incorporation
of the
Association of California Cities
a California Public Benefit Corporation**

ONE: The name of this corporation is the Association of California Cities.

TWO: This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. The specific purposes for which this corporation is organized are to serve and represent its members by providing education, information, legislative and advocacy services.

THREE: The name and address in the State of California of this corporation's initial agent for service of process is Robert Ming, 5 Fairlane Road, Laguna Niguel, CA 92677.

FOUR: (a) This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

(b) Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or (2) by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

(c) No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

FIVE: The names and addresses of the persons appointed to act as the initial directors of this corporation are:

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SIX: The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of the organization shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private person.

On the dissolution or winding up of the corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of this corporation, shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Date: _____

, Director

We, the above-mentioned initial directors of this corporation, hereby declare that we are the persons who executed the foregoing Articles of Incorporation, which instrument is our act and deed.

**Bylaws
of the
ASSOCIATION OF CALIFORNIA CITIES – ORANGE COUNTY
A California Public Benefit Corporation**

ARTICLE I

Section A: Name

The name of this organization shall be: "Association of California Cities – Orange County."

ARTICLE II – Purpose

Section A: Composition

The Association of California Cities – Orange County, shall be composed of each municipal corporation within the County of Orange which pays such dues assessment as may be determined by the Association.

Section B: Purposes and Functions

The purpose and functions of this Association shall be:

1. To advocate on behalf of its members the preservation and enhancement of local control.
2. To hold periodic meetings of city officials to foster and disseminate knowledge relating to municipal government by all appropriate means and to generate greater interest and more active civic consciousness among the members.
3. To hold periodic meetings of city officials for the discussion of municipal issues for the purposes of promoting governmental efficiency and reducing the cost of government.
4. To formulate policy and advocate the common policies of its members on local, regional, state and national issues of interest to its members.
5. To seek advisory votes from its members on specific policy matters, according to the process included in Article VI, Section C.

ARTICLE III – Membership

Section A: Eligibility

Any incorporated city in Orange County is eligible for membership.

Section B: Representatives

The membership of the Association shall be represented therein by the municipal officers of member cities. Active participation in the deliberations of the Association and a vote of any question shall be confined to member municipalities whose membership has not been suspended.

Section C: Suspension

Any municipality which is in arrears in payment of its dues assessment, as has been adopted by the Association, for a period of 90 days shall automatically be deemed suspended from membership, including all associated privileges including voting rights. It shall be the duty of the Association Executive Director to notify said city immediately.

Section D: Reinstatement

A member city that has been suspended for non-payment of dues assessment to the Association, or that relinquishes membership by choice for a period of more than 90 days, shall be reinstated to membership only after the city's total dues assessment has been paid to the Association for the current year of suspension in which non-membership occurred.

Section E: Notices

Notice will be deemed given to all member cities and council members three days after mailing of the notice by USPS (United States Postal Service), first-class, postage pre-paid, or upon facsimile to the clerk of each city, with electronic receipt confirmation received, or upon hand delivery to the clerk of each city, whichever method should be selected by the sender and/or, if multiple methods are selected, whichever should occur first.

ARTICLE IV – Officers**Section A: Board of Directors**

The affairs of the Association shall be conducted by a Board of Directors. The Board of Directors of the Association shall consist of the President, the First and Second Vice Presidents, the Chair of the Advocacy Committee, three large city representatives and five district representatives. The Immediate Past President and the Chair of the City Managers' Committee shall serve as non-voting ex officio members of the Board of Directors.

Section B: Executive Committee

An Executive Committee will be comprised of the President, First Vice President, Second Vice President, the Advocacy Committee Chair, and the immediate Past President, providing he/she is still in office. The Executive Committee includes the Immediate Past President, as a non voting ex officio member.

Section C: Elections

Election of the President, First Vice President and Second Vice President, and Advocacy Committee Chair shall be held in the month preceding the annual meeting. The selection of the three large city representatives and five Supervisorial district representatives shall take place at least one month before the election of officers at the General Meeting. The eight largest member cities shall select the three large city representatives, while the cities in each of the five Supervisorial districts shall select one representative per district to the Board of Directors. The three large city representatives shall be elected prior to the five Supervisorial district representatives. For the three large city and five district positions, no city shall have more than one representative elected to the Board of Directors.

Section D: Terms and Vacancies

The President, Vice Presidents, Chair of the Advocacy Committee, three large city representatives and five district representatives shall serve for a term of one (1) year and until their successors are elected. The term of office for all members of the Board of Directors shall commence on [the Second Thursday in September of each year]. In the event of a vacancy, the office shall be filled by the Association membership at the next regularly scheduled meeting for the unexpired portion of such term, if the term expires more than three months from the election of new officers.

Section E: Nominations

A nominating committee, comprised of one member from each County Supervisorial District, shall be appointed by the President and confirmed by the Executive Committee two meetings before the meeting at which the President, Vice Presidents, and Advocacy Committee Chair will be elected. At the meeting immediately before the election, this committee will present its report to the Association. At that time and at the election meeting, members present may place in nomination from the floor additional candidates for any office then under consideration by the Association.

ARTICLE V – Duties of Officers

Section A: President

It shall be the duty of the President to preside at the meetings of the Association and the Board of Directors, and to perform such other duties as ordinarily pertain to the office of President.

Section B: Vice Presidents

The First and Second Vice Presidents shall assume, in order, the duties of the President during the absence of the President.

Section C: Large City and District Representatives

The large city and district representatives shall represent the membership of the Association and assume duties as assigned by the President.

Section D: Chair of the Advocacy Committee

It shall be the duty of the Chair of the Advocacy Committee to preside at the meetings of the Advocacy Committee.

Section E: The Board of Directors shall:

1. Meet when called by the President to plan and coordinate the business and proposed activities to be brought before the Association.
2. Prepare and present the annual budget to the membership for approval.
3. Establish and conduct a recruitment process for the position of Association Executive Director, and appoint or remove the Association Executive Director as it deems necessary or appropriate from time to time.
4. Solicit and nominate individuals to represent the Association on various bodies as defined in Article IX, Section A of these Bylaws.
5. Appoint the standing committees as defined in Article IX, Section A, of these Bylaws.
6. Appoint temporary and on-going task forces and committees as necessary.
7. Have the authority to act on behalf of the Association on matters of concern, including legislative and policy matters subject to approval of the Association at its next regular meeting.

Section F: Executive Committee

The Executive Committee shall be responsible for working with the Association Executive Director on setting the Board of Directors monthly meeting agenda items, establishing the monthly General Membership Agenda and Speaker, and confirming the nominations of the President.

ARTICLE VI – Meetings**Section A: Regular**

Regular meetings of the Association shall be held monthly, on the second (2nd) Thursday of each month, whenever possible, and at such place as the Board of Directors may direct.

Section B: Special

Special meetings of the Association may be held at any time upon call of the President or upon petition of 25 percent of the member cities in good standing. No such special meeting may be legally held, however, unless written notice thereof is given to the member municipalities at least 24 hours in advance of such special meeting. Such notice shall specify the time, place and purpose of such special meeting, and no other business shall be transacted except that for which said meeting is called.

Section C: Advisory Votes

From time to time the Association may issue advisory votes on select policy matters to city representatives on various boards and commissions. Such policy matters shall be agendized for a vote of the Association at any regular or special meeting provided that 10 days notice is given to member cities. Two-thirds (2/3) of member cities must support an Association advisory vote for it to be transmitted to city representatives. The meeting agenda shall make provision for affected city representatives to address the Association on the advisory vote policy matter.

Section D: Quorum

A majority of the member cities shall constitute a quorum for the transaction of business at any meeting of the Association.

Section E: Voting

1. A majority of the member cities present may act on any issue properly coming before any meeting of the Association, except that a Association Advisory Vote shall require a two-thirds (2/3) vote of the total number of member cities.
2. Each member city shall have one vote. The vote shall be cast by the Mayor of each member city, or his/her Council Member designee, confirmed in writing and delivered to the Association prior to the vote.
3. When taking positions on legislative matters and/or adopting the State and Federal Legislative Platforms, a weighted voting system may be used at the request of any member city prior to the vote. The weighted voting system shall require that a majority of member cities present at the meeting representing a majority of their total population will be required to act on the issue before the Association.
4. There shall be no secret ballots.

Section F: Minutes

The reading of the minutes of the prior meeting of the membership shall be acted upon and the prior reading therefore may be waived by a majority vote of the member cities present.

Section G: Procedure

The conduct of meetings shall be governed by Robert's Rules of Order where the question at issue is not determined by these Bylaws.

ARTICLE VII – Finances

Section A: Retention of Financial Professional

The Executive Director, with the advice and consent of the Board of Directors, shall secure appropriate financial professionals to oversee and maintain bookkeeping, financial reporting and auditing functions for the Association.

Section B: Audit

Each year the Board of Directors and Association Executive Director shall engage an independent auditor to compile and/or review financial records of the preceding fiscal year and report the findings to the Board of Directors.

Section D: Budgeting

Annual dues shall be approved and the annual budget shall be adopted by the Board of Directors and the Association no later than August preceding the fiscal year.

Section E: Dues

Annual dues assessments shall be due and payable by January 1 of each year.

Section F: Fiscal Year

The fiscal year of the Association shall be from January 1 to December 31 of each year.

ARTICLE VIII – Standing Committees

Section A: Budget Committee

The Board of Directors, or its designees, shall serve as the Budget Committee and shall prepare and present the annual budget according to Article VII, Section D, of these Bylaws.

Section B: Advocacy Committee

The policies governing the responsibilities and procedures of the Advocacy Committee are contained in the separate document entitled "Advocacy Committee Procedures" and attached to the Bylaws as Appendix A.

Section C: City Managers' Committee

The City Managers' Committee will advise the Association Board of Directors on matters pertaining to finance, budgeting, audit, and other matters pertaining to the Association, and may serve as a staff resource to all committees and task forces appointed by the Association. The City Managers' Committee shall consist of the members appointed by the President of the Orange County City Managers' Association.

ARTICLE IX – Appointments

Section A: Procedure

1. All appointments of individuals or committees to represent or serve the Association on a sustaining basis shall be nominated by the President, confirmed by the Executive Committee and approved by the Association.
2. All appointees shall be elected officials, except as otherwise provided by law.

3. A majority of the cities present (if a quorum was achieved) is necessary to appoint representatives to boards, commissions, or agencies. If there are three or more nominees for a position and none receives a majority vote of the number of members present, then all but the two nominees with the greatest number of votes shall be removed and the balloting repeated. If neither receives the required majority vote after two additional ballots, the meeting shall be continued to a subsequent time for further consideration. This rule limiting the number of ballots to a total of three (3) may be suspended upon a two-thirds (2/3) vote of eligible cities present.
4. Each recommended appointment shall be announced at the next regular meeting of the Association for approval. If disapproved, an appointment may be substituted by direction of the Association.
5. Any appointment may be revoked by the foregoing procedure or by direction of the Association.
6. Temporary task forces may be appointed by the President and confirmed by the Board of Directors without Association approval.

Section B: Reporting

A current list of all appointed individuals and committee members shall be maintained by the Association Executive Director. When appropriate, the President shall periodically call upon appointed individuals and committees to make direct reports to the Association.

Section C: Attendance

1. The Association Executive Director shall maintain accurate attendance records for all appointed individuals serving on committees.
2. Appointments to any position shall be considered vacated when the appointee fails to attend three (3) consecutive meetings of the committee to which they are appointed or fails to attend a majority of the regular meetings scheduled within their term.
3. Appointees by the Association shall attend a minimum of four (4) Association General Meetings per year.
4. Special exceptions to the above-described requirements may be granted by a majority vote of the Board of Directors and must be promptly reported to the membership.
5. The President shall report at each Association meeting any vacated positions.

Section D: Responsibilities of City Representatives

All city representatives appointed by the Association are responsible for exercising the duties of their positions with diligence, integrity and the highest regard for the public trust and the joint interest of the citizens of the cities within Orange County. Each appointee is fully accountable to the Association for actions taken as a city representative.

From time to time the Association may issue advisory votes on selected policy matters to city representatives appointed by the Association. In cases where city representatives fail to follow the Association advisory vote, a reconsideration of their appointment shall automatically be conducted at the next Association meeting and the subject city representative shall be given the

opportunity to explain and detail his or her position and vote on the policy matter. The city representative may be removed by a majority vote of the total number of member cities present, if a quorum was achieved, except as otherwise provided by law.

ARTICLE X – Amendments

Section A: Written Notice

Proposed amendments to these Bylaws must first be submitted in writing to the members of the Association for consideration and study at least thirty (30) days prior to the date of the meeting at which the proposed Bylaw amendments are to be acted upon.

Section B: Authority

These Bylaws may be amended at a meeting where:

1. two-thirds (2/3) of all member cities are present, and then
2. upon affirmative action of a majority of all member cities, whether present or not.

Certification of Approval

It is hereby certified that these Bylaws for the Association of California Cities - Orange County, were duly adopted by unanimous written consent by its Board of Directors on [September __, 2010].