

CORDON, CHRISTINE

From: Marshall Krupp [REDACTED]
Sent: Friday, June 01, 2012 5:27 PM
To: LEECE, WENDY; BEVER, ERIC; RIGHEIMER, JIM; MONAHAN, GARY; MENSINGER, STEPHEN
Cc: CORDON, CHRISTINE; HATCH, THOMAS
Subject: URGENT --- City of Costa Mesa Proposed Charter - Public Hearing Testimony June 5, 2012
Public Hearing - Marshall Krupp, Presenter
Attachments: Letter - City Charter Public Hearing June 5, 2012 2012-05-30.pdf

Dear Mayor Bever and Members of the City Council;

After requesting additional time to speak at the public hearing on June 5, 2012 on the City of Costa Mesa Proposed Charter, Mayor Bever advised me on May 30, 2012 that I would only be allowed the maximum of 3-minutes to make my public hearing presentation as provided by City Council policy. I recognize that there is this City Council policy. And, this is a complicated issue and it requires considerably more presentation time than is allowed for. I am disappointed and disturbed that the City Council would not want to hear everything that needs to be said on this matter from those who have valuable and knowledgeable input, so that the City Council can make an informed decision.

The purpose of a public hearing is to enable the City Council to gain input so that they can make an informed decision on matters. It is also an opportunity for the City staff and particularly the audience and the resident viewers of the Costa Mesa TV 24 to hear the testimony that is offered on City Council matters. Also, it is an opportunity for the Community members in attendance, the new media, and those who are viewers of Costa Mesa TV 24 to become informed so that they can make an informed decision to support, oppose or comment on the actions of the City Council. To limit public presentation testimony to 3-minutes, the City Council denies the audience, the news media, and the viewers of Costa Mesa TV24 the right to hear and view the testimony that is presented in the written materials and letters that are offered into the public hearing record.

I recognize that allowing unlimited time could be time consuming and lengthen the City Council meetings. I also recognize that unlimited time can be used by some to be "seen-and-heard" on a soap box. However, on issues which have significant or potentially significant controversy, complexity, and city-wide consequences, the City Council has a public responsibility and should consider being more flexible on this public presentation limitation. The fact that the City Council does not want to allow more than a 3-minutes presentation goes to the heart of my public hearing comments regarding the lack of a public participation program on the Proposed Charter and the potential betrayal of the public's trust.

Per Mayor Bever's suggestion, I have provided many of my comments in writing in the attached letter to the City Council dated June 1, 2012. I invite you to review it prior to the meeting of June 5, 2012 and consider its content. I will be available for questions and comments at the meeting.

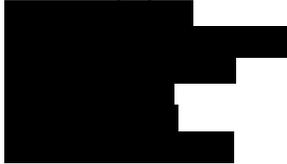
Ms. Cordon, please transmit this letter to the Mayor and Members of the City Council, others who receive the City Council Agenda Reports and Packets, and anyone else who requests materials on the Proposed Charter and this letter. I also request that copies of this email and the attached letter be duplicated and made available at the entry to the Council Chambers for distribution to those who may be attending the public hearing and want to review it in conjunction with the other materials that are handed out to the audience.

Thank you for your consideration and assistance

Marshall B. Krupp



Marshall B. Krupp, President
Community Systems Associates, Inc.



www.communitysystemsassociates.com



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From the Desk of Marshall B. Krupp

June 1, 2012

Via Email

Mayor and Members of the City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92626

Subject: Proposed City of Costa Mesa Charter
First Public Hearing – June 5, 2012
Public Hearing Testimony of Marshall Krupp

Dear Honorable Mayor and Members of the City Council;

I am a resident of the City of Costa Mesa and live in the Providence Park Community located east of Susan Street and north of South Coast Drive. I am also President of Community Systems Associates, Inc. and WorldSolarTec, Inc. In 1982, I formed Community Systems Associates, Inc., a strategic planning firm focused on consulting services for public agencies and development interests with specific areas of expertise in formulating public-private partnerships, financial strategies, environmental review and impact mitigation, school facilities and financing, and negotiations and mediation.

Since 1994, Community Systems Associates, Inc. has specifically offered consultation to school districts and community college districts in representing their interests in formulating financing strategies for school facilities and the mitigation of the impacts of residential development on increasing enrollments, while State funding has been declining. In addition, I have been an expert advisor on political, financial and development strategic plans for capital facility programs for my school district clients. Earlier in my career, I was employed by the City of Cerritos (charter city) and the City of Fullerton (general law city) in the areas of community development, redevelopment, long-range planning and General Plan development and implementation. I have knowledge of how it is to conduct business under a general law city and a charter city, having been involved with both.

I believe that I have a good working knowledge of local governmental affairs, administration and management, and in formulating thoughts around decision-making and problem solving. More importantly, I know how to empower and inspire community participation and active involvement of community members in the governance of communities. I believe that my clients would attest to my professionalism, technical skills, and expertise in dealing with local government issues.

For the record and in the spirit of transparency and disclosure, I disclose that I have filed a Candidates Intent Statement to run for one of the seats on the Costa Mesa City Council scheduled for election on November 6, 2012. My comments contained herein are not the representations of others. I do not represent any group of people or special interests in this matter. I am speaking on behalf of myself only and not any other group of people who may agree or disagree with the content of this letter. I have also not been influenced by a) any individual, group of people, or specific special interests as to the content of this letter; or b) any value that I may



gain from others as a result of me offering these comments and sharing my thoughts. They are strictly intended to be constructive public hearing input as has been requested by the City Council.

I have reviewed the Proposed Charter of the City of Costa Mesa ("Charter" or "Proposed Charter") as has been posted on the City's website and offered by the City Council. I have also reviewed City of Costa Mesa City Council Resolution No's. 12-16, 12-17, 12-18, 12-19 and 12-20 referring to the election on the Proposed Charter as was previously intended for the June 5, 2012 election. I have also reviewed the following items that are also posted on the City's website:

1. Timeline to put proposed Costa Mesa charter on November 6, 2012 ballot
2. Costa Mesa Charter that was proposed for the June 5, 2012 ballot
3. League of California Cities primer on city charters
4. Potential savings with a city charter (analysis by the City dated January 6, 2012)
5. Charters of OC cities

Finally, I have review the City Council Agenda Report and its attachments dated _____, 2012 for this matter's consideration at the City Council meeting of June 5, 2012.

I recognize that the purpose of this public hearing is to seek the public input from Costa Mesa residents and constituents on the Proposed Charter. I also recognize that after the second public hearing scheduled for July 10, 2012, the City Council will make the determination as to whether or not the measure is to be placed on a subsequent ballot, which based on the materials presented on the City's website is suggested for November 6, 2012. This decision will be made on July 31, 2012 as stated in the documents. There does not appear to be any other workshops, meetings, public hearings, or community processes planned and associated with the consideration of the Proposed Charter, although I recognize that this could change as a result of the conduct and input of the public hearing process.

Based on the intent of this public hearing and the desires of the City Council to obtain public input, this letter presents formal written public hearing testimony to be entered into the public record of this public hearing and is offered for consideration by the City Council so that they can make an intelligent, objective and informed decision.

Background

Article XI, section 3(a) of the California Constitution authorizes the adoption of a city charter and provides that such a charter has the force and effect of State law. Article XI, section 5(a), the "home rule" provision, affirmatively grants to charter cities supremacy over "municipal affairs." However, the California Constitution does not define the term "municipal affair." The home rule provision of the California Constitution authorizes a charter city to exercise plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations.

Whether a given activity is a municipal affair over which a city has sovereignty, or a state-wide concern, over which the State Legislature has authority, is a legal determination for the courts to resolve. Thus, the determination of whether a given activity is a municipal affair or state-wide concern is done on a case-by-case basis. The court's determination depends on the particular facts and circumstances of each case. There are some areas that the courts have consistently classified as municipal affairs. Examples include the following:

1. Municipal elections
2. Procedures for initiatives, referendum and recall
3. Procedures for adopting ordinances and resolutions

4. Compensation of City officers and employees
5. Processes associated with City contracts, including waving prevailing wage requirements
6. Financing public improvements
7. Making charitable gifts of public funds for public purpose
8. Term limits for City Council members
9. Land use and zoning decisions

The following have consistently been classified by the courts as matters of state-wide concern:

1. School systems
2. Traffic and vehicle regulations
3. Licensing of members of a trade or profession
4. Tort claims against governmental entities
5. Open and public meetings
6. Exercise of the power of eminent domain

A city organized under a charter may choose different systems, including the "strong mayor" or "city manager" forms of government. And, because the city is governing itself under its own rules and regulations contained within the charter, there is the potential for abuse and/or misuse of the authority that is granted which would be a betrayal of the public trust. This is evidenced in the most recently case of the City of Bell, California. It is noted, that because of the City of Bell situation, many new charters contain provisions that limit council members and city employee compensation to what is allowed under California law.

The charter in the City of Bell was created after a little noticed special election, where few voters understood what becoming a charter city meant. After a charter was approved, State laws limiting city salaries no longer applied and the City Manager gave himself a salary of \$1.5 million for managing a city of about 36,000 people. There may have been numerous reasons why this came about, but several things appear to be clear. First, this was done under the authority of their city charter. Second, there was little input by the community during the charter adoption process and the community did not understand the authority that was granted. And, third there was no oversight or checks-and-balances provisions contained in the charter that would have allowed there to be public transparency of the implementation of the provisions of the charter to protect the city from abuse and misuse of the charter provisions and City Council and/or city manager decisions.

The City of Bell situation cause their city to incur substantial criminal and civil litigation, there has been enormous cost and financial loss to the City, there was a deterioration of trust and confidence by the constituents of the City, and the effectiveness of the City was put in jeopardy. Although this may be atypical of charter cities, it is evidence that a watchful eye is critical in the formulation of the charter and the conduct of the charter adoption. Transparency, disclosure and public/community participation is critical to a successful process.

The records of charter city processes also reveal that the most successful elections on charter adoptions are those which include a citizen participation and collaboration process and which are extended over a period of time to allow the process to unfold in ways that result in "buy-in" by all constituencies. This process can take as long as 12-24 months just to get to the decision to proceed to election. In Costa Mesa, it appears that such a process has not occurred and the decision of the City Council to go forward with the June 5, 2012 election appeared to have come about within 2-3 months following the decision of the City Council to consider the use of a charter city approach.

It is recognizes that there are 482 cities in the State of California. Of them, 120 cities are charter cities (approximately 25%) and 362 cities are general law cities (approximately 75%). In Orange County, there are 34 cities of which 10 are charter cities (approximately 29%) and 24 are general law cites (approximately 70%). The

cities that are charter cities in Orange County include the cities of Anaheim, Buena Park, Cypress, Huntington Beach, Irvine, Los Alamitos, Newport Beach, Placentia, Santa Ana, and Seal Beach. For the record it is also noted that the City of Bell is also a charter city and there will be further discussions herein relating to the recent events in the City of Bell.

It is noted that in the Fall of 2011, the City Council asked the City Attorney to investigate the benefits and variations of the "charter" form of city government. Between the Fall of 2011 and March 6, 2012 when the Resolutions setting the measure for the June 5, 2012 election were approved by the City Council, the City through what appears to be specific members of the City Council was able to draft and finalize the content of the Proposed Charter. City Council meetings were held on December 6, 2012 and January 3, 2012, and a charter information meeting was held at Costa Mesa Neighborhood Community Center on January 5, 2012 to gain input. The process appears to have been on an expedited schedule to get the measure on the June 5, 2012 ballot.

I have been informed that certain members of the current City Council were the lead architects (drafters) of the Proposed Charter and that it was proposed to address the past and current controversies with the employee associations and the past, present and potentially future financial crises facing the City. I have been unable to verify this directly, but believe based on comments made by Council Members that these conclusions may be correct. I would appreciate if the City Council can publicly clarify this in the spirit of transparency.

The February 29, 2012 City Council Agenda Report prepared for the City Council's consideration on March 6, 2012 for Item Number NB-2 stated:

"In the fall of 2011, City Council asked the City Attorney to investigate the benefits and variations of the Charter form of city government. The City Council subsequently provided direction to City Staff and the City Attorney's office to draft a charter ("Proposed Charter") that could be submitted to the qualified voters of the City for the June 5, 2012 election. To that end, City Staff and the City Attorney prepared the Proposed Charter, submitted it to the City Council for review/revision and for the purposes of conducting public hearings (as required by California Government Code Section 34458(b)).

Pursuant to California Government Code Section 34458(b), Public Hearings were held on the substance of the Proposed Charter and on the question of submitting the Proposed Charter, on January 10, 2012 and February 13, 2012. Throughout this entire process, City Council directed both City Staff and the City Attorney to revise and clarify certain provisions based upon feedback garnered from the Public Hearings."

The Agenda Report for March 6, 2012 further stated:

"After several months of discussion, hearings, and revisions, the final step, absent any minor subtractions or editing, in submitting the Proposed Charter to the qualified voters of the City is to pass the following resolutions:..."

Although the Agenda Report stated "The City Attorney's office has reviewed this report and attachments and approves as to the form found therein", there was no specific recommendation by the Mr. Thomas Hatch, Chief Executive Officer, his staff, or Mr. Thomas Duarte, City Attorney as to which form of governmental structure the Staff would recommend or the content of the Proposed Charter

Although the resolutions were presented in the Agenda Report, what was visibly missing was any objective quantitative and/or qualitative analysis of the pros and cons of conducting business as a charter city versus conducting business as a general law city so that the City Council could make an informed decision and the

Community could see the advantages and/or disadvantages of one over the other. This visibly missing piece of the Agenda Report was surprising when weighted against the "Background" discussion set forth in the Agenda Report which stated "City Council asked the City Attorney to investigate the benefits and variations of the Proposed Charter form of city government." One would have expected that this material would have been provided as part of the Agenda Report materials supporting a) the resolutions that were offered; and b) the City Council's decision to proceed to the original date of an election of June 5, 2012.

The current Agenda Report dated May 24, 2012 and presented to the City Council for their June 5, 2012 public hearing also contains no recommendation of Mr. Thomas Hatch, Chief Executive Officer, his staff, or Mr. Thomas Duarte, City Attorney as to which form of governmental structure the Staff would recommend or the content of the Proposed Charter.

The June 5, 2012 Agenda Report states:

"Due to a clerical error in the City Clerk's office, the proposed charter was not placed on the June 5, 2012 ballot. Staff was asked to restart the process of placing a proposed charter on the November 6, 2012 ballot."

It is noted that as a result of legal issues, the City has had to postpone the election on the Proposed Charter until the November 6, 2012 general election or later, and is now conducting additional public hearings to determine if the City intends to go forward.

The Agenda Report for June 5, 2012 provides a general analysis of the charter proposal, but does not provide the analysis that would be expected to share the pros and cons, and the advantages and disadvantages of the charter form of government in comparisons to the general law city structure in the level of detail that would be necessary for the City Council to make an objective informed decision. The Agenda Report attempts to suggest that there are "several limitations and safeguards placed upon a charter city's powers". However, these safeguards do not address many of the comments contained herein.

The Agenda Report of June 5, 2012 then goes on to state "what is different in Costa Mesa's Proposed Charter" as follows:

"Charters for California cities--especially those adopted within the past decade--are remarkably similar because the primary goal of local control is the same, and the charter language used by other cities has been legally tested. That said, the proposed charter contains the following provisions:

1. Section 203. Removal of City CEO & City Attorney without cause. This section limits the City Council's ability to remove the City CEO or City Attorney by requiring an affirmative vote of four out of five members of the City Council in order to remove the City CEO or City Attorney without cause.
2. Section 401. Purchasing and Contracts. This section allows the City to decide whether or not to pay prevailing, or union, wage on public works projects that use only local funds.
3. Section 602. Employee Retirement Benefits. This section requires increases in any employee, legislative officer or elected official's existing retirement benefits, other post-employment benefits, or employer contributions, with the exception of Cost of Living Adjustments, to require the majority approval of qualified voters of the City at a general municipal election. On the other hand, any reduction in retirement benefits, other postemployment benefits, or employer contributions does not require the majority approval of qualified voters of the City at a general municipal election.

4. Section 603. Voluntary Municipal Employee Political Contributions. This section ensures that city employee association dues collected directly from city paychecks will not be used for political activities.”

The Agenda Report of June 5, 2012 states “Alternatives Considered, as follows:

“ALTERNATIVES CONSIDERED:

Council can choose to direct staff and the City Attorney to discontinue the process of placing a proposed charter on the November 6, 2012 ballot.”

This letter contains and presents several other alternatives that the City Council may consider.

The Agenda Report of June 5, 2012 states “Fiscal Review, as follows:

“FISCAL REVIEW

Whether a proposed charter is placed on the November ballot, in the normal course of business, the City would consolidate its scheduled city elections with the statewide election in November. If the proposed charter is placed on the November 2012 ballot, the County Registrar of Voters estimates the cost of the consolidated election with the charter to be in the range of \$77,500 to \$96,500. The overall cost may increase if the full charter is to be printed in the sample ballot.”

This letter contains and presents comments that suggest that the fiscal review is incomplete and inadequate to make an informed decision.

Public Input Process Fundamentally Flawed

The current process of the public hearing, public input and public participation in considering the Proposed Charter is fundamentally flawed. Except for the materials posted on the City’s website and the June 5, 2012 Agenda Report and attachments, there are no other materials relating to this Proposed Charter proposal and process that has been made available to the public. There is no detailed objective operational, financial or legal analysis presented for consideration, nor is there any short- or long-term analysis as to the impacts of the Proposed Charter on the operations, finances and authority implementation of the City.

Even though this is a controversial and complex issue, and the City Council and Staff have had ample time to prepare these kinds of documents and make them available to the public for inspection and review. However, it appears that there was no attempt to provide additional documents with adequate time to allow public review and to solicit written comments. In addition, there does not appear to have been prepared any documents that address the concerns and issues that have been previously made public by opponents or concerned citizens of the City with regards to the Proposed Charter and its potential impacts.

On May 30, 2012, I sent an email to Mayor Bever and the City Council requesting that the 3-minute limitation on public hearing presentation be extended to allow for a thorough presentation of the input I want to bring to the attention of the City Council. I request of Mayor Bever that I be given additional time beyond the 3-minute limitation to address the issues and convey my thoughts on the Proposed Charter process and the content of the. Mayor Bever responded with:

“My suggestion is that you put your comments in writing and submit them. They will then be added to the record. (best approach for accuracy).

And so you can plan appropriately, please plan on having 3 minutes to speak.”

Without having adequate time to review the materials presented to the City Council at this public hearing prior to the public hearing, it seems irrational and illogical to suggest that comments be in writing and that adequate time not be provided during the meeting to share those comments.

I recognize that the 3-minute limitation is a City Council policy. And, this is a complicated issue that requires considerably more presentation time than is allowed for. I am disappointed and disturbed that the City Council would not want to hear everything that needs to be said on this matter from those who have valuable and knowledgeable input so that the City Council can make an informed decision.

The purpose of a public hearing is to enable the City Council to gain input so that they can make an informed decision on such matters. It is also an opportunity for the City staff and particularly the audience and the resident viewers of the Costa Mesa TV 24 to hear the testimony that is offered on City Council matters. Also, it is an opportunity for the Community members in attendance or those who are viewers of Costa Mesa TV 24 to become informed so that they can make an informed decision to support, oppose or comment on the actions of the City Council. To limit public presentation testimony to 3-minutes, the City Council denies the audience and the viewers of Costa Mesa TV24 the right to hear and view the testimony that is presented in the written materials and letters that are offered into the public hearing record.

I recognize that allowing unlimited time could be time consuming and lengthen the City Council meetings. I also recognize that unlimited time can be used by some to be “seen-and-heard” on a soap box. However, on issues which have significant or potentially significant controversy, complexity, and city-wide consequences, the City Council has a public responsibility and should consider being more flexible on this public presentation limitation. The fact that the City Council does not want to allow more than a 3-minutes presentation goes to the heart of my public hearing comments regarding the lack of a public participation program on the Proposed Charter and the potential betrayal of the public’s trust.

Per Mayor Bever’s suggestion, I have provided many of my comments in writing in this letter to the City Council dated June 1, 2012. I invite you to review it prior to the meeting of June 5, 2012 and consider its content.

Prior to the June 5, 2012 City Council meeting, I requested by email that Ms. Cordon, Acting Deputy City Clerk transmit this letter to the Mayor and Members of the City Council, others who receive the City Council Agenda Reports and Packets, and anyone else who requests materials on the Proposed Charter and this letter. I also requested that copies of this letter be duplicated and made available at the entry to the Council Chambers for distribution to those who may be attending the public hearing and want to review it in conjunction with the other materials that are handed out to the audience

It is my opinion that this process is flawed and that if true public input is now sought by the City Council to the level that is needed or required to make an informed decision, the City Council needs to change its policies and procedures with regards to consideration of the Proposed Charter.

Pros and Cons

Most of the research completed on charter cities suggests that there are both pros and cons, and advantages and disadvantages of general law cities and charter cities. Although charters provide local control and flexibility, they can also be abused and misused by elected and appointed officials of the governmental entity. Charter content

can be a vehicle to “dictate” to others or the content can be a way to unfold a more collegial decision-making process. The proof is in the words of the charter itself. Therefore, careful drafting of the charter is critical; particularly in light of the fact that to amend the charter to correct its inadequacies requires a similar legal process and timeline as for the original adoption of the Proposed Charter.

The Proposed City of Costa Mesa Charter consists of approximately 9 pages, 2,063 words, and 76 paragraphs. When compared to the comprehensiveness of other city charters, it is one of the shortest charters in length that I have reviewed and it is so broad and ambiguous that the City Council and City management has the real potentiality of abusing and/or misusing the authority granted under it. I am not suggesting that this will happen, but rather as a long-term document, it provides a vehicle for such abuses and misuses to potentially take place by this City Council and administration or future City Councils and administrations.

The Proposed Charter clearly has the potential to provide authority that could take advantage of the employees and association of the City, particularly in light of the recent conflicts that have unfolded in the City these past several years and the on-going and future negotiations. This became more visible when during the recent discussions on the City’s Fiscal Year 2012-2013 Capital Improvement Budget there was a suggestion of one way of generating money for the CIP program was through “negotiation with employee groups”. The Proposed Charter appears to give the City Council greater leverage to entertaining and implement this concept.

In a time when morale is down, trust is questionable, and the employees of the City are going through a transition for whatever reasons (including unusually high rates of attrition, employee vacancies, and employee turnover), it does not seem reasonable to pursue a Proposed Charter that has the potential of creating even more distrust, morale deterioration, and dysfunctionality in the operation of the City. Instead, the City Council should be looking at ways to strengthen their relationships with the employee association, the Community, and the other public agencies and special districts that are facing similar financial constraints and limitations in this budgetary crisis. It would appear that the most appropriate thing to do at this time is to allow the City to normalize and then begin the process of building up.

It therefore, is reasonable for the Community to ask for and the City to prepare a comprehensive document setting forth the pros and cons of a general law city and a charter city, clearing delineating the advantages and disadvantages of both. This should be done from the stand point of financial, operational, decision-making, administrative, employee and Community perspectives.

Expediting the Process

As noted in the Agenda Report for the March 6, 2012 City Council meeting, the Report recognizes that the process of considering a charter and the re-organization of the City of Costa Mesa began in the Fall of 2011. The adoption of resolutions by the City Council occurred in March 6, 2012. The Agenda Report acknowledges that “Public Hearings were held on the substance of the Proposed Charter and on the question of submitting the Proposed Charter, on January 10, 2012 and February 13, 2012.” This would suggest that the process of formulating the content of the Proposed Charter for public hearing took place over just a couple of months (possibly two or three). Although it is recognized that the Agenda Report stated that “Throughout this entire process, City Council directed both City Staff and the City Attorney to revise and clarify certain provisions based upon feedback garnered from the Public Hearings”, it is clear from the expedited process that the City Council directed of Staff, that the process did not in any way have a foundation of Community participation, collaboration, feedback, or significant input, before the City Council chose to proceed with scheduling the election of June 5, 2012.

If it were not for the decision of Judge Franz Miller on March 27, 2012 which denied Costa Mesa’s request that the Proposed Charter be put on the June 5, 2012 primary ballot, the process of Community participation in the

Charter discussion would have been minimal, if any. At least now the City has an opportunity to reverse that process and to proactively and constructively seek the participation of the Community in a more effective and responsive manner.

Even though the City Council has this Community participation opportunity, they appear to be focused on an expedited timeline to get the measure on the November 6, 2012 ballot. Further, the legal timelines appear to prevent a full and complete Community participation program. In essence, the first public hearing is scheduled for June 5, 2012, the second public hearing is scheduled for July 10, 2012 and the City Council is scheduled to take a final action to submit the measure for election on July 31, 2012. It is interesting to note that except for the two public hearings, there are no workshops scheduled in the Community and no program to reach out to the Community to formulate support of the City Council's intentions and direction. What message does this send to the Community and to those who have been outspoken on this matter over the past months?

In essence, the City Council and the City has attempted to expedite the process without significant public participation and involvement up to this point. It would be my recommendation that this process be more formally structured and that a public participation process be implemented, which would start by the formation of a Charter Citizens Oversight and Advisory Committee to review, oversee, and facilitate the involvement and input by the Community. In addition, at a minimum, the City Council as one of its tactical goals should direct Staff to provide information about the advantages and disadvantages of becoming a charter city before the public hearings are closed and the Community no longer has an opportunity to provide input as to those advantages and disadvantages.

In lieu of proceeding with a proposed charter measure on the November 6, 2012 ballot, the City might consider an alternative measure to establish a Charter Commission as the vehicle to go forward in the future. This is discussed further herein.

Why a Charter?

The primary advantage of becoming a charter city is that the City would have the ability to adopt ordinances and regulations concerning its own municipal affairs without the constraint of State statutes on the specific issues covered in the charter. In essence, it allows the City more local control over its municipal affairs. However, a charter city is still subject to the general laws as passed by the State Legislature on non-municipal affairs that are of state-wide concern, such as traffic regulation and the other topical areas.

Transition from a general law city to a charter city is normally considered in order to address a specific problem or series of problems. Up until now, the City Council has not formally and in unity even identified or disclosed in detail the problem or series of problems that it is intending be addressed through the transition to a charter city. Nor has the City Council disclosed how the charter will actually address the problem or series of problems and the resulting consequences or impacts.

As one reads the Proposed Charter and the supporting materials, it appears that the reasoning for going forward is that the City will be able to circumvent the "prevailing wage" laws and regulations of the State, and that by doing so the City will be able to more effectively address the current budget crises facing the City including, but not limited to being able to designate financing resources to capital improvement projects. Although this is not directly stated, it appears that this is one of the primary purposes of the charter proposed by the City Council. It is noted that most of the analysis completed by the City to justify the charter is financial analysis showing how the City might save money associated with capital improvement projects.

However, there also appears to be an intention of dealing with the employee association conflict and negotiations through the use of the charter content and authority which could have further consequences on the employees of

the City, including, but not limited to police and fire, and may affect the service provided to the constituents of the City.

If any of these intention appearances are accurate, then the City Council should be forthright and disclose these intentions to the Community before it makes its decision to proceed, so that the Community can show their support or opposition to those intentions. More importantly, there needs to be further transparency of any hidden agendas of the City Council, collectively or individually, in order to gain the trust of the constituents.

As is relates to prevailing wage requirements, charter cities are subject to the Public Contracts Code unless the charter city expressly provides that the Code does not apply. As for prevailing wages, charter cities are likely not currently subject to the prevailing wage laws unless they elect to be subject to such laws, if the project involves work out of the city limits, or if the project is otherwise of significant state interest. However, this rule is not without doubt. In December 2004, the California Supreme Court issued its decision in *City of Long Beach v. Department of Industrial Relations*, 34 Cal. 4th 942 (2004), a case in which it had the opportunity to reaffirm the long-standing rule that charter cities are substantially free from the requirement of paying prevailing wages on "public works" projects. In that case, the court of appeal held that the state's prevailing wage laws addressed matters of "statewide concern" and therefore applied to projects funded or subsidized by all public agencies, including charter cities. Upon review, the California Supreme Court reversed the decision of the court of appeal but decided the case on an alternative ground. Unfortunately, the Court avoided the issue of whether the prevailing wage law is a matter of such "statewide concern" that it would override a charter city's interests in conducting its municipal affairs. It is noted that it appears that several cities in the State that have become charter cities still required the payment of prevailing wages as a result of lobbying by employee unions and associations.

So what is the other reasoning for proceeding with a charter? What is it the City Council wants to accomplish or what issues does it want to address through the use of the charter authority? What problems or series of problems is the charter intended on addressing that will assist the City in getting out of the crises that it is in? This needs to be disclosed by the City Council in this process of discernment.

The charter is not a panacea. It is not a cure-all. It simply attempts to optimize local government authority and decision-making... it does not fix a dysfunctional one. A charter DOES have the ability to hold local government accountable, so City Council members will no longer be able to blame the State for things which are under the jurisdiction of the charter. And, it has the potential for abuse and misuse as was partly observed in the City of Bell situation.

So before the City Council proceeds to put this measure to a vote of the citizens of Costa Mesa, it is only reasonable for the City Council to specifically identify the reasoning for the charter, what it hopes to accomplish and what problems and issues will it address. To date, there has not been a comprehensive objective analysis to quantify and qualify the reasoning for proceeding with a charter. In essence, what are the compelling reasons for the City to transition from a general law city to a charter city? This is requested.

Prevailing Wage Requirements of the Proposed Charter

Section 401 of the Proposed Charter states:

“Section 401. Purchasing and Contracts

"Public Works Contract," as used in this section, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind, which is paid for in whole with tax revenue paid by residents of the City of Costa Mesa.

"Other Public Contract" as used in this section means any contract, purchase order, or other agreement used to procure services and supplies of any kind, that are paid for in whole with tax revenue paid by the residents of the City of Costa Mesa.

The City is exempt from the provisions of all California statutes regulating public contracting and purchasing, except as provided by this Charter, City ordinance, or by agreement approved by the City Council.

Annually, the City Council shall set a value at which Public Works Contracts shall be exempt from public bidding and shall follow such procedures for open market sale or purchase as set by the City Council.

The City Council shall establish all standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any Public Works Contract greater than the value set by the Council, including but not limited to, the compensation rates to be paid for the performance of such work.

The City may, without exception, enter into Other Public Contracts. Other Public Contracts shall follow such procedures as set by the City Council.

No City Public Works Contract or Other Public Contract shall require payment of the prevailing wage schedule unless: the prevailing wage is legally required and constitutionally permitted to be imposed by the requirements of federal grants, state grants, redevelopment law, or other federal or state law; or the project is considered by the City Council not to be a municipal affair of the City; or payment of the prevailing wage schedule is authorized by resolution of the City Council. Payment of the prevailing wage schedule, if authorized hereunder, shall use the pertinent rates published by the State of California. The City will promote fair and open competition for all City construction projects so that all contractors and workers, whether union or non-union, are treated equally in the bidding and awarding of City construction contracts.”

These provisions appear to give the City Council a blank check and substantial leverage for how they are to structure “public works projects” and “other public contracts”. These provisions are broad and without any reasonable parameters. More importantly, these provisions could be used by the City Council to put in jeopardy the contractual relationships with the various employee associations. These broad and ambiguous provisions provide a great opportunity for abuse and misuse by the City Council. More important, there are no checks-and-balances procedures to insure that the implementation of the Proposed Charter will be implemented in the best interest of the Community and the City, and not the special interests of the City Council or individual majorities on the City Council. It is noted that generally only three (3) votes of the City Council is required to implement any portion of the Proposed Charter.

As it relates to this discussion, these comments are in no way suggested to take a specific position on the issues facing the City and the employees of the City. It is not to suggest a right or wrong position of either party. Rather, these comments are offered to show the ambiguity of the Proposed Charter and the potential for controversy, challenge and litigation, and the inability to move forward in a collaborative way due to the authority that the City Council would have under the Proposed Charter and the pressure that they could apply.

Protection from Abuse and Misuse

The Proposed Charter fails to provide any mechanism to protect the Community from the abuse and misuse of the authority of the Proposed Charter by the City Council or the administration of the City. The process that the City has followed up to now could be considered a misuse or abuse of the power and privilege of the authority of the

City Council, particularly when there has been no collaborative process between the City Council and the Community. What is missing from the content of the Proposed Charter and the process that has been undertaken to date, is a lack of trust on behalf of Community, special interests, the employee associations, and opponents of the Proposed Charter that the Proposed Charter will be implemented in a way that is in the best interest of the Community as a whole. In this past, many of the decisions and processes undertaken by the City Council have led to hostility, lack of trust and suspicion. This has been the message that has been conveyed by the City Council through their actions and words, and is perceived explicitly and implicitly.

To overcome this, the Proposed Charter should contain a provision for a Charter Citizens Oversight and Advisory Committee that would provide the on-going safeguards to prevent abuses and misuse of the authority contained in the Proposed Charter. This standing Committee would be advisory in nature and would have the charge to insure that the City Council and administration conducted themselves in a manner that is in the best interests of the Community. Set up as a broad based non-partisan body with skill-sets and experience of its members, the Charter Citizens Oversight and Advisory Committee could be used as a sounding board for subsequent City Council actions, and could provide for oversight and discernment of the implementation of the Proposed Charter. In addition, the Charter Citizens Oversight and Advisory Committee could be charged with the annual review of the Proposed Charter to determine the appropriateness and necessity for Proposed Charter amendments and/or other administrative or legal remedies that may be needed to protect the interest of the Community. The Charter Citizens Oversight and Advisory Committee would lend credibility, trust and confidence to the Proposed Charter process and its implementation after adoption.

There should be even more concern for the potential of abuse and misuse of the charter provisions based on the financial crises facing the City. The City acknowledges that in addition to the having to address prevailing wage issues and the issues related to the negotiation of agreements with the employee associations, the City faces a very dim future in terms of balancing its annual budget, setting aside adequate funds to meet its operating requirements, and re-establishing an effective capital improvement and maintenance program which is more in line with the necessary requirements of the City. With the loss in certain State revenues and the elimination of the financial value of the redevelopment agency to the City, a greater burden is placed on the City for both operations and capital improvements. When considering the "unfunded liabilities" of Cal PERS, medical reimbursements and replenishment of the General Fund balances, together with the multi-year capital improvement initiatives that have been identified by the City Council and the Staff, the City has both short-and long-term deficiencies and shortfalls in the tens and hundreds of millions of dollars. This has been verified in the recent Fiscal Year 2012-2013 Budget discussions and modifications.

This financial crisis is not a one year crises. It is a multi-year on going crises that the City will be facing in the future, all driven by revenue reductions that the City has experienced in the past 18-24 months and future revenue reduction projections that it will continue to experience.

To address these conditions, like a business in the private sector, the City will have to either reduce operating and capital improvement project costs or increase General Fund and capital improvement project revenues, or both. The City will certainly need to do business differently in the future and the City Council may no longer be able to pursue any of its pet projects to satisfy specific interests in the Community. The message may not be desirable, but it needs to be stated.

The Proposed Charter will give the City Council greater flexibility, greater authority, and greater power and responsibility to put in place tools and mechanisms that will generate cost reductions and revenue increases. This may be on the backs of the employees of the City, the property owner of property in the City, residents who may shop and spend money in the City, and others who make up the constituencies of the City. It may give the City the power to structure consolidation plans with other public agencies and to put in place requirements and programs that have adverse consequences on the Community. These possibilities could come to fruition with a

simple majority vote of the City Council, or three out of five City Council Members. Personal, political and/or special interest agendas could influence the process resulting in potential abuses and misuses of the authority of the Proposed Charter without any oversight and checks-and-balances in place.

Without some level of checks-and-balances in place, the only way to potentially offset potential abuses and misuse of the Proposed Charter would be thorough the electoral or legal processes which could be time consuming and costly for the City and the constituents. Therefore, the content of the Proposed Charter needs to be carefully drafted so as to narrow the possibility of such abuses and misuse of authority.

Planning Commission and Parks and Recreation Commission Consideration and Recommendations

As noted the Proposed Charter has authority within it to enable the City to establish regulations and requirements that affect many of the decision-making processes of the City. One aspect is the authority related to land use and zoning decisions. Throughout the content of the Proposed Charter there are provisions that provide broad authority to the City Council and the City Manger pursuant to the Proposed Charter. There is nothing in the Proposed Charter that specifically addresses land use and zoning decisions, but the content is so broad that the authority can be interpreted from the content. This is one of those areas of the Proposed Charter that appears to be inadequate and does not provide proper and appropriate guidance and direction.

More importantly, the City Council has failed to gain the input or consideration of the Proposed Charter by the Planning Commission and the Parks and Recreation Commission who may be impacted by the actions and decisions of the City Council under the authority of the Proposed Charter. One would expect that if the City Council truly sought the public input that it has sought through the public hearing process, that the City Council would have referred the content of the Proposed Charter to the Planning Commission and the Parks and Recreation Commission for their consideration and recommendations.

The Proposed Charter states:

“Section 400. Economic and Community Development

The City shall encourage, support, and promote economic development and community development in the City.”

Certainly, this is an activity that has value to the City. However, it is unclear through the Proposed Charter how the City Council intends to go forward with this and what authority, limitations and parameters the City will establish for themselves in terms of the implementation of the Proposed Charter authority. At a minimum, the City Council should have referred the Proposed Charter to the Planning Commission and the Parks and Recreation Commission to gain their input into the authority that the City Council would and/or should have with regards to economic development and community development, and what that authority would or should specifically entail. Again, this is an example of the ambiguities and broadness of the current content of the Proposed Charter.

Charter Commission

Transition from a general law city to a charter city can be divisive in a Community. Therefore a collaborative process of formulating the Proposed Charter is critical to a successful out come in the election, but more importantly in the successful subsequent implementation of policies and decision-making. One way of overcoming that is through the use of a Charter Commission as the vehicle to formulate the charter proposal. Although it may take time to unfold this process, it is one that provides for transparency, Community

participation, collaboration and problem-solving. The following are relevant Government Code section that should be considered.

Government Code § 34450. Authorization

Any city or city and county may enact, amend, or repeal a charter for its own government according to this article or Article 3 (commencing with Section 9255) of Chapter 3 of Division 9 of the Elections Code.

Government Code § 34451. Charter commission; proposals; eligibility of candidates

The charter may be proposed by a charter commission chosen by the voters of the city or city and county, at any general or special election, but no person shall be eligible as a candidate for the commission unless he or she is a registered voter of the city or city and county.

Government Code § 34452. Election of charter commissioners; vacancies

(a) An election for choosing charter commissioners may be called by a majority vote of the governing body of a city or city and county, or on presentation of a petition signed by not less than 15 percent of the registered voters of the city or city and county. The petition shall be verified by the authority having charge of the registration records of the city or city and county and the expenses of the verification shall be provided by the governing body thereof. The governing body shall call an election pursuant to Sections 1000 and 10403 of the Elections Code.

(b) If any vacancy arises in a charter commission established for a city or city and county pursuant to this chapter, the vacancy shall be filled by an appointment by the mayor of the city or city and county.

Government Code § 34453. Questions submitted; effect of vote

At an election the voters shall vote first on the question "Shall a charter commission be elected to propose a new charter?" and, secondly, for the candidates of the office of charter commissioner. If the first question receives a majority of the votes of the qualified voters voting thereon at the election, the 15 candidates for the office of charter commissioner receiving the highest number of votes shall forthwith organize as a charter commission. However, if the first question receives less than a majority of the votes of the qualified voters voting thereon at the election no charter commission shall be deemed to have been elected.

Government Code § 34454. Nomination of candidates for charter commission

Candidates for the office of charter commissioner shall be nominated either in the same manner provided for the nomination of officers of the municipal or city and county government, or by petition substantially in the same manner provided by general laws for the nomination by petition of candidates for public offices to be voted for at general elections.

Government Code § 34455. Proposed or amended charter; signatures; filing

The charter commissioners shall propose a charter and may propose amendments to a charter, for the government of the city or city and county. The charter so prepared shall be signed by a majority

of the charter commissioners and shall be filed in the office of the clerk of the governing body of the city or city and county.

Government Code § 34456. Printing and mailing of copies of charter; type styles

In any city or city and county, the governing body shall cause copies of the charter to be printed in type of not less than 10-point. If the governing body causes copies of the proposed charter to be mailed to the voters, the text of the proposed charter may show the difference from existing provisions of law by the use of distinguishing type styles.

Government Code § 34457. Proposed charter; submission to the voters

After the charter prepared by the charter commission has been filed in the office of the clerk of the governing body of the city or city and county pursuant to Section 34455, the proposed charter shall be submitted to the voters of the city or city and county at either a special election called within 14 days by the governing body for that purpose to be conducted at least 95 days after the date the special election is called, or at the next established municipal election date or at the next established election date pursuant to Section 1000 of the Elections Code, provided there are at least 95 days before the election.

Government Code § 34458. Proposal of governing body; election

As an alternative to the procedure provided for in Sections 34450 to 34457, inclusive, the governing body of any city or city and county, on its own motion may propose or cause to be proposed, amend or cause to be amended, or repeal or cause to be repealed, a charter and may submit the proposal for the adoption, or the amendments or repeal thereof, to the voters at either a special election called for that purpose or at any established municipal election date or at any established election date pursuant to Section 1000 of the Elections Code, provided there are at least 88 days before the election.

Government Code § 34459. Charter proposal, amendment or repeal; ratification; acceptance and filing

If the voters vote in favor of the charter proposal, amendment, or repeal, it shall be deemed to be ratified, but shall not take effect until accepted and filed by the Secretary of State pursuant to Section 34460.

Charter Citizens Oversight and Advisory Committee

As an alternative to the Charter Commission and as a minimum oversight process, the use of a Charter Citizens Oversight and Advisory Committee is recommended and may provide a less formal process with the same outcome of formulating a Proposed Charter that has buy-in by the Community through the participation and collaboration. In a Community where there is the lack of trust, suspicion, hostility and controversy between the City Council and the Community, the use of the Charter Citizens Oversight and Advisory Committee is a valuable tool to gain the support that is need to go forward

In Costa Mesa where there has been significant controversy, drama and agendas around issues such as the Orange County Fair Grounds, the employee associations, the budget crises, and directly the Charter as proposed in March 2012, it would seem only appropriate and possibly necessary to decelerate the process and establish a Charter

Citizens Oversight and Advisory Committee to become the building block for a final decision as to how to proceed.

Clarity Sought

There are some areas of the content of the Proposed Charter that appear to be flawed and are of concern. An example of one of these is set forth herein.

Section 102 of Proposed Charter states:

“Section 102. Municipal Affairs

Each of the responsibilities of governance set forth and described in this Charter, and as established by the Constitutional, statutory and judicially defined law of the State of California, is hereby declared to be a municipal affair of concern, the performance of which is unique to the benefit of the citizens of the city of Costa Mesa.”

This content would suggest that if a “municipal affair” is not set forth in the Proposed Charter it is then NOT defined as a municipal affair and as such the City would have no authority over it. In order for a responsibility to be a municipal affair, it must a) be set forth and described in the Proposed Charter; AND b) be established by the Constitutional, statutory and judicially defined law of the State of California. So if a responsibility IS established by the Constitutional, statutory and judicially defined law of the State of California, but IS NOT set forth and described in the Proposed Charter it is not a municipal affairs and instead would be of state-wide concern and responsibility.

This leaves the Proposed Charter open for interpretation and subsequent legal challenges which would have consequences on the City. This needs to be clarified. And, there are other areas of the content of the Proposed Charter that require similar clarification.

Amendment of the Charter

One of the most serious concern I have is that with the lack of a current comprehensive review of the content of the Proposed Charter, the lack of clarity and the existence of ambiguity in the content of the Proposed Charter, the lack of Community participation in the drafting of the Proposed Charter, and the lack of detail around the oversight of the Proposed Charter after it is adopted, this may lead to the need for significant future amendments. The process to amend the Proposed Charter will be as difficult as the process has been and will be in terms of this original Proposed Charter measure. The result is that the content of the Proposed Charter is etched in stone until the next possible scheduling of an election to amend the Proposed Charter. To expedite the process now leaves open the possibility that the Proposed Charter will have significant inadequacies that simply have not be addressed or even thought of. This does not serve the Community and could further lead to significant controversies and political agendas in the Community.

Fiscal Review

As noted, the Agenda Report of June 5, 2012 states “Fiscal Review, as follows:

“FISCAL REVIEW

Whether a proposed charter is placed on the November ballot, in the normal course of business, the City would consolidate its scheduled city elections with the statewide election in November. If the proposed

charter is placed on the November 2012 ballot, the County Registrar of Voters estimates the cost of the consolidated election with the charter to be in the range of \$77,500 to \$96,500. The overall cost may increase if the full charter is to be printed in the sample ballot.”

This discussion in the Agenda Report only addresses the fiscal consequence of the “election” itself. It does not provide the City Council with any understanding of the fiscal and financial consequences of the Proposed Charter on the short- and long-term operations, administration and decision-making authority of the City and the City Council.

It only seems prudent and critical for the City Council and the Community to have an understanding of the short- and long-range financial and fiscal consequences and impacts (positive and negative) as a result of the City conducting business as a charter city in comparisons to conducting business as a general law city. In particular, this financial and fiscal analysis should address how each form of government would affect the City’s General Fund, Capital Improvement Fund, other special funds of the City, the City financing capabilities and bonding ratings, and the ability to address the unfunded balances and other obligations and liabilities that currently exist in the City.

The analysis should also provide some clarity as to the what the City may or could choose to do under the authority of the Proposed Charter to address the financial crises facing the City, including, but not limited to increasing revenues and reducing cost, establishing a capital improvement and deferred maintenance program, and establish adequate funding for addressing the unfunded balances and other obligations and liabilities that currently exist in the City.

This level of fiscal and financial analysis would certainly provide greater clarity as to further justifying the need and anticipated use of the charter authority versus the authority that the City currently has under the general law authority. This is part of the transparency and disclosure that the City Council and the Community should have access to in order to make an informed decision.

Side-by-Side Analysis

As noted previously, there are 120 cities in the State and 10 cities in Orange County who have chosen the charter form of government for their cities. I am confident that among these cities, there are three or four that are similar to the structure and characteristics of the City of Costa Mesa in terms of socio-economic conditions, the provisions of law enforcement and fire services, the provisions of other services and facilities, the physical and land use of the community, and who have similar economic and budget issues. In order to strengthen the trust and confidence of the citizens in terms of the specific content and language contained in the Proposed Charter, and to overcome the concerns and objections associated with the Proposed Charter and its implementation, it would be advisable for the City to do a side-by-side written comparison of the provisions offered in the Proposed Charter with the provisions of the charters of three or four other similar cities with charters.

A detailed objective comparison would enable the City Council and the Community to identify differences and similarities, identify specific content that is unique to the Proposed Charter and not the other charters, and identify the content of other charters that have been deleted from the Proposed Charter. In essence, a comprehensive evaluation and review would provide a clearer picture of the Proposed Charter in comparison to other charters.

In addition, the City should also do a side-by-side comparison of the “community participation process” that went into the formulation and successful election of the charter measures of other cities in comparison to the process that is being used in the City, along with timeline and milestone comparisons. This would give the City Council and the Community a greater awareness and understanding as to how to go about transitioning from a general law City to a charter city.

Finally, the City should do a side-by-side comparison of other charters in terms of how they address the protections and safeguards to minimize, monitor, and oversee abuses and misuses of their Proposed Charter provisions in comparison to how the City intends to address these same issues. This would give the City Council and the Community some clarity as to how to address this concern in a way that would result in potential support of the Proposed Charter content.

The City should not proceed with the process and finalize the content of the Proposed Charter until these side-by-side comparisons have been made and the results have been reviewed by the City Council and the Community to determine how best to move ahead if that is what the desire of the City Council and the Community is.

Alternatives

As noted, the Agenda Report of June 5, 2012 states “Alternatives Considered”, as follows:

“ALTERNATIVES CONSIDERED:

Council can choose to direct staff and the City Attorney to discontinue the process of placing a proposed charter on the November 6, 2012 ballot.”

As has been set forth in these comments, there are other alternatives to a) proceeding with the election on the current Proposed Charter; and b) discontinuing the process of placing the proposal on the November 6, 2012 ballot.

In my opinion the question of alternatives is not as black-and-white as is stated in the Agenda Report. I believe that there are other options that should be considered and evaluated. Some of these might include the following or any combination of the following (or other alternatives):

1. Revising and amending the current Proposed Charter to address the concerns and issues raised during the public hearing process and setting for election a revised Charter for consideration on the November 6, 2012 ballot.
2. Establishing a Charter Citizens Oversight and Advisory Committee and referring the matter to them for consideration and a recommendation as to how to proceed with the re-consideration of the form of government sought by the City.
3. Setting for election the establishment of a Charter Commission to consider and recommend a charter proposal that could be considered by the City Council and placed on a ballot at a subsequent election.
4. Deferring the current Proposed Charter ballot measure until an election following the November 6, 2012 election and in the meantime, complete the analysis sought herein, making revisions and adjustments to address the concerns and further to address the results of the analysis.

It is recommended that along with considering the current Proposed Charter and the process that the City intends to unfold, that the above alternatives or other alternatives should be considered by the City Council and the Community.

Conclusion

It is my hope and suggestion that the City Council consider the words that I have offered herein and that you take the appropriate measures to address the concerns raised. More importantly, I would suggest that the process of placing the Proposed Charter measure on the November 2012 ballot be deferred until there is a Charter Citizens Oversight and Advisory Committee or other similar measure implemented that can provide the City Council with the recommendations as to the content of a Proposed Charter and the schedule for going forward if that is the recommendation.

The past actions of the current City Council has brought about a lack of trust and confidence in the decision-making processes of the City. This has resulted in hostility and controversy. It has also resulted in a dysfunctional local government structure. It would seem irrational to go forward with such a significant governmental reorganization in light of the current conditions of the City and the further drama that this would bring upon the Community. Let's not jeopardize the future of the City with the agendas of a few individuals who have not fully thought this through and who have not coalesced the Community into supporting an appropriate direction. Only through a community participation process which is based on collaboration through the use of a Charter Citizens Oversight and Advisory Committee or similar can this be accomplished.

Before proceeding, the City Council needs to publicly answer two questions for the benefit of the constituents of the Community:

1. What is at risk if the City goes forward with the Proposed Charter?
2. What is at risk if the City does not go forward with the Proposed Charter?

Until the Community is aware of the parameters of the risks, the process should not go forward. The depth and details of these two questions (if consider objectively by the City Council) will provide the leadership that is necessary at this time. The Community deserves that and has the right to expect it of the City Council.

The comments contained herein cannot be dismissed or discounted. In the event the Proposed Charter is placed on the November 6, 2012 ballot there will be at the same time three of five seats on the City Council (majority) up for election. The Proposed Charter has a great possibility to becoming a debate item of the incumbents and the candidates who will be running for the City Council seats. The points expressed herein will be raised at later dates as the City Council election campaign unfolds. It therefore is prudent that the comments contained herein be taken seriously and addressed by the City Council before it proceeds further with the consideration of the Proposed Charter.

If you have any questions or wish to discuss this further prior to, during or after the public hearing I would be more than pleased to make myself available to the City Council and/or the City Staff to have further discussions and answer any inquiries

Thank you,

Sincerely,

Marshall Krupp

Mr. Marshall B. Krupp

MBK:mbk
Letter - City Charter Public Hearing June 5, 2012 2012-05-30.doc

CC: Mr. Thomas Hatch, Chief Executive Officer

City of Costa Mesa

Ms. Christine Lam Cordon, Acting Deputy City Clerk
City of Costa Mesa