



CITY COUNCIL AGENDA REPORT

MEETING DATE: JULY 1, 2014

ITEM NUMBER: NB - 6

SUBJECT: CITY COUNCIL CONSIDER PROPOSED CHARTER FOR PLACEMENT ON THE BALLOT FOR THE NOVEMBER 4, 2014 STATEWIDE GENERAL ELECTION

DATE: JUNE 26, 2014

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RECOMMENDATION

The recommendation is for the City Council to:

1. Review and approve the requested changes in the draft charter; and
2. Decide whether to place the proposed charter on the general election ballot by adopting the following resolutions:
 - A. Resolution No. 14 – 40, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA PROPOSING A MEASURE FOR SUBMISSION TO THE VOTERS OF THE QUESTION WHETHER THE CITY OF COSTA MESA SHALL ESTABLISH HOME RULE BY ADOPTING THE PROPOSED CHARTER AS APPROVED BY THE CITY COUNCIL, ADDING THE MEASURE TO THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014 AS CALLED BY RESOLUTION NO. 14-26, AND REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE ESTABLISHED IN SECTION 10403 OF THE ELECTIONS CODE
 - B. Resolution No. 14 – 41, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, SETTING PRIORITIES FOR FILING WRITTEN ARGUMENT(S) REGARDING A CITY MEASURE CONCERNING THE ADOPTION OF A PROPOSED CITY CHARTER AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS
 - C. Resolution No. 14 – 42, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS FOR CITY MEASURE CONCERNING THE ADOPTION OF A PROPOSED CITY CHARTER SUBMITTED AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 4, 2014

BACKGROUND

The City Council held its first and second public hearings on the proposed charter on April 22, 2013 and June 3, 2014, respectively. At both hearings, the City Council received public comments, asked questions, as well as discussed possible changes of its own. Having completed both public hearings, the City Council must first consider the proposals from the second public hearing and then decide whether to place the draft charter on the ballot at the November 2014 general election.

Proposed Changes to Draft Charter

The proposed changes include:

- A. Section 700 – Public Contracting – Clarify the City’s discretion to follow the Uniform Construction Cost Accounting Act.
- B. Section 304 – Compensation - Include “shall continue to be limited” as in general law.
- C. Section 306 – Include commissioners and committee members as well as council members.
- D. Add Provision re: Elected Officer Qualifications – Follow general law.
- E. Add Procedure for Adopting Ordinances – Follow general law.
- F. Add Section 602 proposed by Pension Oversight Committee– Pensions – Financial Impact Analysis.
- G. Section 104 – Powers – Impose limitations on power.
- H. Add Code of Ethics.

Proposed Changes to Ballot Description

California Government Code § 34458.5 requires a proposal to adopt or amend a charter to include a ballot description with the enumeration of new city powers as a result of the adoption of the charter. The “City Council of the City of Costa Mesa Ballot Title/Question, Summary and Description Including Enumeration of Powers Pursuant to California Government Code § 34458.5” (“Ballot Description”) reflects the draft charter as of the first public hearing. If, however, the City Council adopts any of the changes proposed below, the Ballot Description should be adopted to reflect those changes. Beneath each proposal, set forth below, is a corresponding Ballot Description that should be adopted.

DISCUSSION

Proposed Modifications

A. Section 700 – Public Contracting.

The Charter Committee and staff agreed that the Uniform Construction Cost Accounting Act (“UCCAA”) is a good procedure for awarding public contracts. Thus, Section 700, as originally drafted, authorized the City to follow the UCCAA while also giving the City discretion to opt out in the event of future changes. At the first and second public hearing, changes were proposed that give the City discretion of opting out of the UCCAA. However, opting out of the UCCAA would not allow the City to dispense with formal bidding procedures altogether. Section 700, as modified below, reflects that proposal.

The Public Services Department shall utilize either the formal or informal bidding procedures and cost thresholds set forth in the Uniform Construction Cost Accounting Act, as the procedures and cost thresholds may be modified every five (5) years by the Uniform Construction Cost Accounting Commission. Notwithstanding the foregoing, the City shall not be obligated to comply with any provision of the Uniform Construction Cost Accounting Act, including but not limited to, future changes which relate to matters *other than solicitation of bids and thresholds for formal or informal bidding. (Emphasis added.)*

Ballot Description Pertaining to Section 700.

If the modification is made to Section 700, no change to the Ballot Description is necessary.

B. Section 304 – Compensation.

Section 304 titled “Council Member Compensation” would include the following minor change:

The salary of the Council Members shall continue to be limited in accordance with California Government Code section 36515 as it hereafter may be amended.

Ballot Description Pertaining to Section 304.

If the modification is made to Section 304, no change to the Ballot Description is necessary.

C. Section 306. Incompatible Offices.

The members of the City Committees, Commissions, and City Council shall not be eligible to hold any other office or employment with the City during the period of their terms of service. The members of the City Council shall not be eligible to hold any employment with the City for a period of two (2) years following the last date of service as an elected official on the City Council.

Ballot Description Pertaining to Section 306.

Section 306 prohibits City Council members, committee members and commissioners from holding any other office or employment with the City during his or her term as City Council member. Section 306 also prohibits City Council members from being employed by the City for a period of two (2) years following the last date of service as an elected official on the City Council.

D. Qualifications.

The draft charter is silent on qualifications of elected officials. With this proposal, Costa Mesa would continue to require the following qualifications of elected officials: U.S. citizenship, registered voter, minimum age requirement of eighteen (18) years, fifteen (15) day minimum residency requirement prior to the election and throughout the council member's term. If the City Council chooses to add qualification requirements, we propose renumbering Section 302 as follows:

- Article III. Elected Officers.
 - Section 300. Terms.
 - Section 302. Qualifications.
 - Section 304. Presiding Officer.
 - Section 306. Council Member Compensation.
 - Section 308. Incompatible Offices.

Section 302. Qualifications.

The qualifications of elected officers shall be as established in the general law of the State of California.

Ballot Description Pertaining to Section 302.

Section 302 requires any elected officer to qualify for office in accordance with the general law of the State of California. Those qualifications include U.S. citizenship, registered voter, minimum age requirement of eighteen (18) years, fifteen (15) day minimum residency requirement prior to the election and throughout the council member's term.

E. Procedure for Adopting Ordinances.

The draft charter is also silent on the procedure for adopting ordinances. This proposal requires the City to follow general law. If approved, the City Council would continue to introduce/give first reading, give second reading and adopt, publish within fifteen (15) days of adoption and take effect thirty (30) days following adoption of non-urgency ordinances.

Section 310. Procedure for Adopting Ordinances.

The procedure for adopting ordinances shall be as established by general law.

Ballot Description Pertaining to Section 310.

Section 310 requires the City to continue to follow general law when adopting ordinances meaning that all ordinances would be introduced/given first reading, then second reading and adopted. Following adoption, the ordinance must be published within fifteen (15) days and would take effect thirty (30) days thereafter.

F. Pensions.

Currently, the proposed charter addresses pensions in two ways. First, it requires 2/3rds of Costa Mesa voters to approve any increase in employee retirement benefits, other post-employment benefits, employer contributions for post-retirement benefits, and post-retirement health benefits. Second, it codifies the Civic Openness In Negotiations (“COIN”) requirements.

The proposed amendment would add Section 602 to the draft charter that requires a detailed actuarial financial analysis of the City’s future annual costs and accrued liabilities resulting from the proposed increase in employee retirement benefits, other post-employment benefits, employer contributions for post-retirement benefits, and post-retirement health benefits. The impact analysis would include:

- Annual financial impact for 30 years and risks to the City and its General Fund.
- Any changes in unfunded liability and reasons therefor.
- Any financial impact from retroactive application of benefits.
- Impact of future retirement fund earnings calculated at one percentage point above and below the actuarially projected earnings/discount rate.
- Present value of annual retirement benefits for a representative sample of employee positions.

The Pension Oversight Committee report provides an in-depth explanation of each of these proposals. Under the current language, the financial analysis required would be as set forth in California Government Code section 7507.

Ballot Description Pertaining to Section 602.

Section 602 requires a detailed actuarial financial analysis of the City’s future annual costs and accrued liabilities resulting from the proposed increase in employee retirement benefits, other post-employment benefits, employer contributions for post-retirement benefits, and post-retirement health benefits.

G. Powers.

The proposed charter currently provides the following language with respect to the City's powers as a charter city.

Section 104. Powers.

The City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter or in the Constitution of the State of California. In the event of any conflict, this Charter shall control over the general laws of the State of California as to municipal affairs.

Section 104 as it reads gives the City full authority over municipal affairs regardless of whether the charter addresses that particular issue. This proposal would limit the City's powers to those areas expressly addressed in the charter.

Section 104. Powers.

Except as enumerated in this charter, the general laws of the State of California shall apply.

Ballot Description Pertaining to Section 104.

Section 104 would limit the City's powers to those areas expressly addressed in the charter.

F. Code of Ethics.

The Charter Committee considered conflict of interest and ethics provisions. However, since the Government Code provisions regarding self-dealing in contracting (Government Code sections 1090, et seq.) Political Reform Act, and the ethics requirements established in Chapter X and section 2-68 of the Costa Mesa municipal code were enacted by voters will govern, regardless of whether Costa Mesa is a general law or charter city, the Charter Committee opted against additional provisions.

Ballot Description Pertaining to Code of Ethics.

The Ballot Description would depend upon provisions adopted.

PUBLIC INPUT

Before the 2012 General Election, the City sent out three informational mailers about the proposed charter to inform Costa Mesa residents: one mailer was a reprint of the proposed charter; a second mailer answered frequently asked questions about charters and the charter process (most of the answers came from material from the California League of Cities and all were reviewed by the City Attorney's Office for impartiality); and a third mailer contained a reprint of the charter along with margin notes that explained different sections of the charter (the notes were reviewed by the City Attorney's Office for impartiality).

For the 2014 General Election, members of the City Council have indicated varying numbers of informational mailers should be sent out—from zero to five. Staff suggests, as with the last election, that three mailers be mailed out to inform voters: a reprint of the charter; answers to frequently asked charter questions; and a General Law City vs. Charter City chart from the California League of Cities. For an optional fourth mailer, staff suggests a reprint of the charter with margins notes that help put into layman’s terms what each section means. With each mailer, staff also suggests a paragraph be included that provides a brief background on the Charter Committee and how the proposed charter came to fruition.

Each charter mailer would cost approximately \$8,400.00. Staff recommends the following mailing dates (with bulk mail, it can take up to five days for the material to reach some mailboxes):

- Mailer No. 1 (General Law vs. Charter City chart) – Sept. 25
- Mailer No. 2 (Charter FAQs): Oct. 6
- Mailer No. 3 (Reprint of the proposed charter): Oct. 20
- Optional - Mailer No. 4 (reprint of the proposed charter with margin notes): Oct. 27

ALTERNATIVES CONSIDERED:

The City Council can reject or modify the proposed changes or choose not to proceed with a proposed charter.

FISCAL REVIEW

If the proposed charter is placed on the November 2014 ballot, the additional cost is estimated at \$12,880.00. Thus, the total cost of a consolidated election that includes the charter is \$78,500-\$97,500.00. Additionally, the cost for citywide mailings to the 42,570 active business and residential addresses would be approximately \$8,400.00 per mailing.

CONCLUSION

The Council should decide whether to include the proposed changes and whether to place the proposed charter on the ballot by way of adopting the attached resolution.

Attachments:

- (1) [Proposed Charter](#)
- (2) [Pension Oversight Committee Proposal](#)
- (3) [Resolutions](#)
- (4) [Public Communications](#)