

MINUTES OF THE REGULAR MEETING OF THE COSTA MESA CHARTER COMMITTEE

SEPTEMBER 11, 2013

1. CALL TO ORDER

The meeting was called to order at 6:00 p.m. in the Emergency Operations Center, at Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

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

ABSENT: Kimberly Hall Barlow, Hank Panian, and Kevin A. Tobin.

2. PLEDGE OF ALLEGIANCE - Dr. Bauermeister

3. MOMENT OF SILENCE – Dr. Bauermeister

4. WELCOME - Dr. Bauermeister

Dr. Bauermeister reminded the Committee Members that correspondence regarding the Charter meetings should be sent to the City Clerk in order to avoid Brown Act violations.

5. PUBLIC COMMENTS

Robin Leffler, Costa Mesa, commented that the Committee should do a needs assessment.

James Bridges, Costa Mesa, commented that the Committee should do a needs assessment.

Jay Humphrey, Costa Mesa, commented on other Charter cities and their problems.

6. CHARTER ISSUE

PREAMBLE

Legal Counsel Summerhill stated that the City's powers as a Charter City would be to the fullest extent possible as long as it does not conflict with state law and also clarified that a Charter states the specific issues that the City would govern and therefore not follow state law.

Comments from Committee Members regarding language for a Preamble:

- If there is not specific language in the Charter then the City would follow state law.
- Goal is to be transparent and open and values stated.
- The Preamble or Powers should have values.

- It was clarified that the “values” portion of the Charter would be considered when the Charter document was complete, however it should be at the beginning.
- The Charter should state that the City would follow General Law except for what is specifically stated in the Charter.
- Charter Committee should consider the language of Huntington Beach: Powers of City – 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.
- Powers of a City is separate from a Preamble. A Preamble should have values.
- The Committee should also consider the language from Huntington Beach for the Preamble: We the people of the City of Costa Mesa, State of California believe fiscal responsibility and the prudent stewardship of public funds is essential for confidence in government, that ethics and integrity are the foundation of public trust and that just governance is built upon these values. Through the enactment of this Charter as the fundamental law of the City of Costa Mesa under the Constitution of the State of California, we do hereby exercise the privilege of retaining for ourselves, the benefits of local government, by enacting the laws, rules, regulations and procedures set forth herein pertaining to the governance and operation of our City.

It is incumbent upon those who govern and make decisions for and on behalf of the City of Costa Mesa to legally, as well as morally, abide by the provisions of this Charter, in its strictest sense, to assure the continued success and well-being of our fair City.

CONSENSUS (11 ayes, 2 absent): The Charter will include the following language for Preamble and Powers:

PREAMBLE: We the people of the City of Costa Mesa, State of California believe fiscal responsibility and the prudent stewardship of public funds is essential for confidence in government, that ethics and integrity are the foundation of public trust and that just governance is built upon these values. Through the enactment of this Charter as the fundamental law of the City of Costa Mesa under the Constitution of the State of California, we do hereby exercise the privilege of retaining for ourselves, the benefits of local government, by enacting the laws, rules, regulations and procedures set forth herein pertaining to the governance and operation of our City.

It is incumbent upon those who govern and make decisions for and on behalf of the City of Costa Mesa to legally, as well as morally, abide by the provisions of this Charter, in its strictest sense, to assure the continued success and well-being of our fair City.

POWERS OF THE CITY: 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.

TRANSPARENCY - PROPOSED LANGUAGE GOVERNING PUBLIC CONTRACTING

The Charter Committee reviewed the following proposed language that was provided in the agenda report:

- The Public Works Department shall comply with the bidding and awarding set forth in public contracting by the alternatives UCCAA every five years. If Commission and state controller make adjustments for material changes in public construction code that differ from requirements of this Charter, the Charter requirement will prevail.
- The Public Services Department shall be authorized to utilize the 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 years by the Uniform Construction Cost Accounting Commission. 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 informal bidding.

Comments from Committee Members regarding language governing public contracting:

- The language proposed in #1 would give the Charter the ability to utilize the UCCAA but not be bound by it.
- The proposed language states what the city is a currently doing.
- The proposed language would articulate in the Charter the procedures the City is currently following, but it does not change anything, it accomplishes the same thing.
- No need to add the language to the Charter if not changing current procedures or practices.
- Adding the language would allow current practices and procedures and protect them from being changed in the future from political influence outside of the city.
- The current alternate procedures are adopted by Ordinance and can be repealed by the City Council.
- Keep the Charter simple, the language does not change anything so does not need to be included.
- The Charter can only be changed by a vote of the people not the City Council.
- If the language is not included in the Charter the public may question the procedures the City is currently following.
- If the language is included it shows transparency.

- Voters may get confused with the provisions.
- Answers were provided by Legal Counsel Summerhill that there would be no fiscal impact, no difference in the quality of life point of view, and no legal difference if this language was included.

CONSENSUS (8 ayes, 3 noes): The following language will be added to the Charter: The Public Services Department shall be authorized to utilize the 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 years by the Uniform Construction Cost Accounting Commission. 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 informal bidding.

Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, Ramos, and Smith.

Noes: Committee Members: O'Connell, Pollitt, and Weitzberg

Absent: Committee Members: Panian and Tobin.

Committee Member Eckles inquired if the Committee did not receive 100% consensus on an item then would it be left off the Charter?

Committee Member Smith commented that it would be put into the parking lot and reconsidered later.

Dr. Bauermeister clarified that as the meetings continue the Committee may add more items into the Charter and all items in the parking lot will be revisited.

Break 7:25 p.m. – 7:35 p.m.

The Charter Committee reviewed the following proposed language that was provided in the agenda report:

The City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the award and performance of contracts, including contracts for the construction of public improvements, including, but not limited to, compensation paid for performance of such work.

Legal Counsel Summerhill explained this proposed language governing public contracting gives the City Council very broad powers and it also gives the city the power whether to pay or not pay prevailing wages.

Comments from Committee Members regarding language for public contracting:

- This language is contradictory with the two previous paragraphs just considered.
- Legal Counsel Summerhill stated that the Committee would have to choose either of the two.

- Prevailing wage should be a discussion on its own, not included with this discussion.
- This grants broad powers but supports the wording.
- A voter may look at this wording and use it to vote against a Charter, it is not needed.
- The Committee should not want the City Council to be getting involved with contracts.
- Currently the City Council has the right to approve contracts but the City Council does not have the right to set the rules and regulations in all aspects of the award and performance of contracts, including the contracts for construction.
- Legal Counsel Summerhill clarified this gives the City Council broad powers and allows different thresholds.
- It would be best to be silent on this topic and not include in the Charter.

Consensus (11 ayes, 2 absent): to not include language from #1 in the Charter.

It was suggested that the Committee table this discussion and bring back alternate language for discussion at the September 25, 2013 meeting.

Consensus (8 ayes, 3 noes): Bring back alternate language for discussion at the September 25th meeting.

Ayes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, Ramos, and Smith.

Noes: Committee Members: O'Connell, Pollitt, and Weitzberg

Absent: Committee Members: Panian and Tobin.

Dr. Bauermeister read the language that was submitted for openness.

Committee Member Eckles commented on the document that he submitted regarding openness and he stated that he would like to have it in the public contracting section of the Charter.

Committee Member Weitzberg inquired if the current contracts follow the qualities of openness that Committee Member Eckles stated in his document.

Ernesto Munoz stated that the city generally follows these qualities of openness in the contracts.

Committee Member Weitzberg commented that prevailing wage is a very important issue and that the next meeting should be focused on prevailing wage. He also stated that the Members that are in favor of prevailing wage should bring information and the Members who are not in favor should also bring their information.

Committee Member Hutchins handed out a document on prevailing wage that he prepared.

Public Works Director Munoz provided a presentation on prevailing wage:

- Explained the list of Capital Improvement Projects
- Estimated Funding of Projects

Public Works Director Munoz clarified that when the city receives grants and the City needs to match the amount of the grant, then it is required that prevailing wage be paid.

Committee Member Weitzberg stated that the Committee should look at all the benefits and liabilities of prevailing wage, not just money.

7. INFORMATION REQUESTS

8. MEETING SUMMARY

- A preamble and powers were discussed and moved by consensus.
- Committee discussed language on openness.
- Committee decided to revisit public contracting related to transparency at the next meeting.
- Public Works Director Munoz gave a presentation on applicability of prevailing wage for city projects.

9. AGENDA BUILDING FOR September 25, 2013

Consensus of the Committee for the following topics to be on the September 25, 2013 agenda: Call to Order; Pledge of Allegiance; Moment of Silence; Welcome; Public Comments; Review of Minutes; Meeting Summary; Charter Issue: Transparency – Review of Language, Openness – Review of Language, Public Contracts: Retention, Firewall, Prevailing Wage & Governance: Districting, Equal Representation, Polarization, Local Control, Minority, Compensation, Firewall; Information Requests; Agenda Building; and Adjourn.

10. COMMITTEE MEMBER COMMENTS - None

11. ADJOURNMENT at 8:59 P.M.



CITY CLERK