

# MINUTES OF THE REGULAR MEETING OF THE COSTA MESA CHARTER COMMITTEE

October 23, 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: Ron Amburgey, Brett Eckles, Kerry McCarthy, Andrew Smith, and Yolanda Summerhill.

## 2. PLEDGE OF ALLEGIANCE - Dr. Bauermeister

## 3. MOMENT OF SILENCE – Dr. Bauermeister

## 4. WELCOME - Dr. Bauermeister

## 5. PUBLIC COMMENTS

Charles Mooney, Costa Mesa, advised the Committee to be sure that data presented is factual.

## 6. MEETING SUMMARY

Dr. Decker reviewed the language in the current Charter.

Dr. Bauermeister addressed SB-7 and recommended to the Committee Members to leave the prevailing wage language in the Charter at this point and the Committee can revisit the issue at a later date.

Committee Member Weitzberg requested information on the legal fee implications if prevailing wage language is left in the Charter.

## 7. CHARTER ISSUE

### CHARTER ISSUE – FIREWALL BETWEEN CITY COUNCIL AND CITY STAFF

Dr. Bauermeister read the following regarding firewall:  
Although section 2-106's title suggests that it provides a firewall between the city council and city staff, it serves more as a chain of command and process for funneling requests for information. As the Charter Committee has discussed firewall at its meetings, its goal in considering a charter provision governing a firewall is more in the nature of ensuring that the CEO and city staff are not coerced by the city council members to undertake an action that is in fact within city staff's authority to control. If that is the case, then the Charter Committee can

consider amending Section 2-106 of the Costa Mesa Municipal Code or recommend such a provision in the Charter itself.

Dr. Bauermeister read Alternative 1:

Alternative 1 prohibits 1) interference with the CEO in his or her duties, 2) giving of direct orders to city staff and 3) coercing the CEO on a matter that is within his or her authority. Also, read the following provision of firewall under the Conclusion section: Although a city charter potentially strengthens the City Council's authority over municipal affairs, the Charter Committee may consider a provision that creates a firewall between the City Council and CEO on matters that are intended to be within the CEO's discretion and authority

Legal Counsel Hall-Barlow clarified that the provisions in Alternative 1 go beyond Costa Mesa Municipal Code Section 2-106 in that it not only provides a chain of command but it also shields the city staff from the City Council in its day-to-day operations. If Committee Members like the existing code the language can be modified to make it very clear that Council Members talk directly to the CEO.

Committee Members comments regarding Firewall:

- No need to be in the Charter; does not need fixing.
- Strongly support Anti-Nepotism policy to be in the Charter.
- There are no consequences if Council Members fail to follow the procedures. Need consequences for violations.
- Good to include in order to prevent fraud. Need checks and balances.
- Currently have an ordinance and if we put too much in the Charter it may create more problems.
- The current code addresses this, not a need if it is working well now.
- Not been an issue for 60 years, not needed.
- Solid rules in the Charter would prevent extortion and bad behavior.
- Firewall is needed in the Charter as the City Council currently can change the rules by changing the ordinance.
- A structure is needed to prevent an opportunity for coercion.
- The current code does not prevent a Council Member from speaking to an employee, it prohibits coercion.
- The Charter is a constitution and includes basic principles which should include a firewall as it is a separation of powers.

Dr. Bauermeister read Alternative 2: Neither the City Council nor any of its members shall interfere with the execution by the City CEO of his or her powers and duties. No member of the City Council shall give direct order to any subordinates of the City CEO. No member of the City Council shall attempt to coerce the City CEO in the administrative service of the City.

Legal Counsel Hall-Barlow stated that if the current municipal code ordinance regarding firewall was included in the Charter, it would provide more of an effect, and the only way to change the amendment would be by a vote of the people.

**Consensus:** (5 Ayes, 4 Noes) Do not put firewall language in the Charter.

Ayes: Committee Members: O'Connell, Panian, Pollitt, Ramos, and Weitzberg.

Noes: Committee Members: Fancher, Graham, Hutchins, and Tobin.

Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Dr. Bauermeister suggested that since there are four Members absent, the Committee should stay with the consensus and by the Committee's choice they could revisit firewall at a later date.

Break: 7:00 p.m. – 7:10 p.m.

#### CHARTER ISSUE – COMPENSATION

Legal Counsel Hall-Barlow provided an overview on compensation, what is allowed by state law, and explained the three sections of compensation: salary, health benefits, and pension.

Committee Member Comments on Compensation:

- Follow state law but put in Charter.
- Pensions and health benefits should not be part of compensation.
- The Water Board voted not to be in the pension system.
- City Council should not be in a pension plan.
- Consider a 401K plan instead of a pension.
- Consider the City of Irvine language, "Compensation for Council Member is hereby set, and from time to time shall be changed, in accordance with the provisions of the government code relating to salaries of Council Members in general law cities. Such compensation may be increased or decreased other than as set forth above by an affirmative vote of a majority of the voters voting on the proposition at any election".
- Consider including language regarding absences.

Legal Counsel clarified that it takes five years to become vested in the pension system. Also, if the vote is to not provide a pension system it would take effect after the next general election.

**Consensus:** (9 Ayes, 0 Noes) City Council compensation will follow state law.

Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, Pollitt, Ramos, Tobin and Weitzberg.

Noes: None

Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

**Consensus:** (7 Ayes, 2 Noes) The City Council should receive health care benefits.

Ayes: Committee Members: Fancher, Hutchins, Panian, Pollitt, Ramos, Tobin and Weitzberg.

Noes: Committee Members: Graham and O'Connell

Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

**Consensus:** (3 Ayes, 6 Noes) The City Council should receive pensions.

Ayes: Committee Members: Fancher, Pollitt, and Tobin.

Noes: Committee Members: Graham, Hutchins, O'Connell, Panian, Ramos, and Weitzberg.

Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Legal Counsel will provide more information on pensions, salary, and health benefits.

#### CHARTER ISSUE: CHARTER REVIEW AND AMENDMENTS

Legal Counsel stated that it is not uncommon to have a review process, and a Charter can be amended at any time by a vote of the people.

Comments from Committee Members regarding the Charter review:

- Review the Charter at least every ten years.
- Review the Charter every five years.
- Consider the City of Huntington Beach language: "The City Council shall determine if there is a need to review no less frequently than every ten years".
- A review is not needed; also do not need to keep reinventing the wheel. This is like the U.S. Constitution and should not be changed every five years.
- Citizen review should be as needed, not mandated. Public opinions change and the Charter should not be changed by temporal public opinion.
- City Council can put fourth a change to the voters.
- No forced Charter review should be included.
- Consider reviewing every seven years.
- Good thing to review; as the initiative process is onerous.

Dr. Bauermeister commented that the Committee Members would like to have a Charter review; it is just a matter of five or ten years.

**Consensus:** (8 Ayes, 1 Noes) To have a Citizens Charter review.

Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, Pollitt, Ramos, and Weitzberg.

Noes: Committee Member Tobin.

Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Request for another vote on whether to have a Citizen Charter review.

**Consensus:** (7 Ayes, 2 Noes) The Committee Members would like to have a Citizens Charter Review Committee.

Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, Ramos, and Weitzberg.

Noes: Committee Members: Pollitt and Tobin.

Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

**Consensus:** (6 Ayes, 3 Noes) Charter Committee Members would like to have a Citizens Charter Review Committee every ten years.

Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, and Ramos.

Noes: Committee Members: Pollitt, Tobin, and Weitzberg (Supports every five years).

Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

Dr. Bauermeister stated that at the next Charter Committee Meeting Legal Counsel would bring back language on compensation and the Committee Members are to submit any language regarding salary, health benefits, pension, and/or anything under the issue regarding Financial.

Committee Members Comments regarding pensions:

- Provide an estimate on the unfunded pension liability.
- Review the Joe Nation presentation.
- Ask the Chairman of the Pension Oversight Committee to speak at a Charter Committee Meeting.
- Delay considering the unfunded pension liability issue until the Pension Oversight Committee makes recommendations to the City Council.

**MOTION/SECOND:** Committee Member Weitzberg /Committee Member Pollitt

**Consensus:** (9 Ayes, 0 Noes) Delay consideration of the unfunded pension liability until the Pension Oversight Committee has their meeting with CalPERS.

Ayes: Committee Members: Fancher, Graham, Hutchins, O'Connell, Panian, Pollitt, Ramos, Tobin, and Weitzberg.

Noes: None.

Absent: Committee Members: Amburgey, Eckles, McCarthy, and Smith.

**NOTE:** The Charter Committee Meetings for the November 27, 2013 and December 25, 2013 are cancelled due to the holidays.

## 8. INFORMATION REQUESTS

## **9. AGENDA BUILDING FOR November 13, 2013**

Consensus of the Committee for the following topics to be on the November 13, 2013 agenda: Call to Order; Pledge of Allegiance; Moment of Silence; Welcome; Public Comments; Review of Minutes; Meeting Summary; Charter Issue: Time Schedule, Governance: Compensation of Council Members and top management, Financial: Financial reserves/Balanced budget and Property tax equity; Communications received from Committee Members; Information Requests; Agenda Building; Committee Member Comments and Adjourn.

## **10. COMMITTEE MEMBER COMMENTS**

Committee Member Hutchins commented on dissemination of information and suggested that the censorship on information sent between Charter Members should be limited.

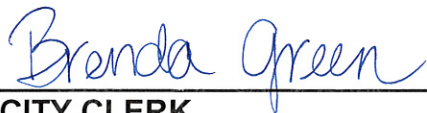
Committee Member Panian spoke in support of a Citizens Academy.

Committee Member Pollitt commented that pensions is a very important topic and it should be addressed in the Charter.

Committee Member Ramos thanked the facilitators.

Committee Member Weitzberg requested members to not fix what is not broken.

**11. ADJOURNMENT** at 8:50 P.M.



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**CITY CLERK**