

MINUTES OF THE REGULAR MEETING OF THE COSTA MESA CHARTER COMMITTEE

October 9, 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: Committee Members: William Fancher and Mary Ann O'Connell

2. PLEDGE OF ALLEGIANCE - Dr. Bauermeister

3. MOMENT OF SILENCE – Dr. Bauermeister

4. WELCOME - Dr. Bauermeister

5. PUBLIC COMMENTS

Jay Humphrey, Costa Mesa, requested that the Committee to take into consideration the problems that Oceanside encountered when they did not require prevailing wage.

Jim Adams, Council Representative for Los Angeles and Orange County Building Trades, stated that there are no viable studies that prove that prevailing wage saves money and that prevailing wage is a not a union or a non-union issue but a construction worker issue.

Cherie Cabral, Representative of Building and Construction Trades, requested for the Committee Members to look at the trends in regards to prevailing wage in Charter Cities.

6. REVIEW OF MINUTES

MOTION/SECOND: Committee Member Eckles/ Committee Member Graham

The minutes of the September 25, 2013 Charter Meeting were approved.

7. MEETING SUMMARY

Dr. Decker provided a recap of the previous meeting.

8. CHARTER ISSUE

PUBLIC CONTRACTS: PREVAILING WAGE

Dr Bauermeister reviewed the three proposals in the agenda report on prevailing wage.

Public Works Director Munoz suggested that on proposal three the following sentence be added: The procedure and the criteria for the payment of prevailing wages on locally funded projects shall be set forth by ordinance or resolution.

Legal Counsel Hall-Barlow commented that the recommendation for prevailing wage on contracts would come from the staff but the actual decision would be by the City Council.

Discussion ensued on the language in the three prevailing wage proposals; pending legislation in Sacramento (SB7); language in the Vista decision; providing staff parameters; including prevailing wage language or allowing flexibility for future City Councils; limiting profits for contractors; clarification on lowest responsible bid; the politics involved in regards to a 4-1 super majority requirement; dollar savings by not paying prevailing wage; contractor costs including certified payroll and workers compensation.

Proposal 1. Consensus (6 Ayes, 5 Noes): The City exempts locally funded public works projects from mandated prevailing wage unless prevailing wage is compelled by the terms of a federal or state grant or is otherwise funded from a source that requires prevailing wage; the public work is a matter of statewide concern; or the payment of prevailing wage is separately authorized by the City Council, because the project is of a complexity and nature that the public interest would be served by requiring prevailing wage.

Ayes: Committee Members: Amburgey, Hutchins, McCarthy, Ramos, Smith, and Tobin.

Noes: Committee Members: Eckles, Graham, Panian, Pollitt, and Weitzberg

Absent: Committee Members: Fancher and O'Connell

Proposal 3. Consensus: (1 Ayes, 10 Noes): The City Council, in its discretion, may decide whether prevailing wages should be paid on a public project that is locally funded and does not otherwise require the payment of prevailing wage under federal or state law or by conditions of grant funding. The procedure and criteria for the payment of prevailing wages on a locally funded project shall be set forth by ordinance or resolution.

Ayes: Committee Member Graham

Noes: Committee Members: Amburgey, Eckles, Hutchins, McCarthy, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg

Absent: Committee Members: Fancher and O'Connell

Discussion ensued regarding allowing City Council to determine whether to pay prevailing wage or never allowing prevailing wages on a locally funded project.

Dr. Bauermeister commented that the legal counsel could reword language in order to create a fourth proposal for the Committee to consider.

BREAK: 7:35 p.m. – 7:45 p.m.

Proposal 4. Consensus: (10 Ayes, 1 Noes): The City shall not require the payment of prevailing wages in public works contracts paid for with local funds and which are not of statewide concern, unless payment of prevailing wage is compelled by the terms of the funding source.

Ayes: Committee Members: Amburgey, Eckles, Graham, Hutchins, McCarthy, Panian, Pollitt, Ramos, Smith and Tobin.

Noes: Committee Member Weitzberg

Absent: Committee Members: Fancher and O'Connell.

Committee Member Eckles asked for a poll on proposal one just to see where everybody stands with changes to the wording as follows: The City exempts locally funded public works projects from mandated prevailing wage unless prevailing wage is compelled by the terms of a federal or state grant or is otherwise funded from a source that requires prevailing wage; the public work is a matter of statewide concern; or the payment of prevailing wage is separately authorized by the City Council, because the project is of a **complexity or nature** that the public interest would be served by requiring prevailing wage.

Proposal 1. Consensus: (0 Ayes, 11 Noes)

GOVERNANCE: FIREWALL BETWEEN CEO AND COUNCIL MEMBERS

Dr. Decker reviewed the definition of governance and firewall.

Legal Counsel Hall-Barlow stated that the City Manager and the City Attorney are the only two employees that are hired directly by the City Council.

The proposed firewall language: Neither the City Council nor any of its members shall interfere with the execution by the City CEO or 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 influence or coerce the City CEO in the administrative service of the City. The City Council shall not appoint to a salaried position under the City government any person who is relative by blood or marriage, nor shall any department head or other officer having appointive power appoint any relative by blood or marriage.

Legal Counsel Hall-Barlow recommended crossing out the words "influence or" from the proposed firewall language, and instead of "relative by blood or marriage", the proposal should say "relative by blood or marriage to the 3rd degree".

Legal Counsel Hall-Barlow clarified it is a fundamental role of the Council to adjust the budget and it is not considered interference and that the current language in the municipal code can be changed by ordinance or resolution.

Following opinions were expressed on the firewall issue:

- If what currently exists is working there is no need to change or include anything in the Charter.
- Support for wording to be included that would limit the power of the City Council.

- Firewall language should be included; it proves there is no power grab by the City Council.
- It is a good practice to have the line between staff and City Council; and if the Committee takes what the City has practiced and puts it in the Charter, it will strengthen it.
- The public should not think that the Charter Committee is giving City Council too much power.
- Separate salaried positions from firewall provision.
- Separate nepotism provision from firewall provision.
- Support for a nepotism proposal provision but separate from firewall.
- Firewall language should not be included as it already exists in the current code.
- Private companies have internal controls that provide for checks and balances.

Dr. Bauermeister stated that legal counsel will bring back additional language for the Committee Members consideration at the next meeting.

The topic "Conflict of Interest" was added to the parking lot.

GOVERNANCE: DISTRICTING/EQUAL REPRESENTATION/GIVING MINORITY A VOICE

Legal Counsel Hall-Barlow provided an overview of districting.

Following opinions were expressed on districting:

- Opposed to districting as it divides communities.
- The topic of districting may give an opportunity to help solve the problem of concentration of Council Members in one area of the City.
- Opposed to districting and it should not be in the Charter.
- Districting is the one part of the Costa Mesa government that is truly broken because one-third of the City's population has been excluded from the City Council.
- There is no problem with the current system.
- It may be significant as members from the public have brought it up.
- This topic is a Charter killer, and it clouds the discussion.
- Not in support of districting.
- This is a complex issue that should be studied to attempt to tackle the problem.

- Strongly opposed to districting, not needed because of the size of and geography of Costa Mesa and supports open competition.
- Not in support of districting. Feels well represented even though does not live in an area where a current Council Member lives.

Consensus: (1 Ayes, 10 Noes) Include districting in the Charter.

Ayes: Committee Member Panian.

Noes: Committee Members: Amburgey, Eckles, Graham, Hutchins, McCarthy, Pollitt, Ramos, Smith, Tobin, and Weitzberg.

Absent: Committee Members: Fancher and O'Connell.

Dr. Bauermeister requested sending in language on polarization/process, local control in decision making and the compensation of Council Members and top management.

9. INFORMATION REQUESTS

10. AGENDA BUILDING FOR October 23, 2013

Consensus of the Committee for the following topics to be on the October 23, 2013 agenda: Call to Order; Pledge of Allegiance; Moment of Silence; Welcome; Public Comments; Review of Minutes; Meeting Summary; Charter Issue: Governance: Firewall, Polarization/Process, Local Control, Compensation; Information Requests; Agenda Building; Committee Member Comments and Adjourn.

11. COMMITTEE MEMBER COMMENTS - None

12. ADJOURNMENT at 9:06 P.M.


CITY CLERK