

MINUTES OF THE REGULAR MEETING OF THE COSTA MESA CHARTER COMMITTEE

January 22, 2014

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, Henry Panian, Tom Pollitt, Lee Ramos, Andrew Smith, Kevin Tobin, Harold Weitzberg.
LEGAL COUNSEL: Yolanda Summerhill

ABSENT: Kimberly Hall Barlow and Mary Ann O'Connell.

2. PLEDGE OF ALLEGIANCE - Dr. Bauermeister

3. MOMENT OF SILENCE – Dr. Bauermeister

4. WELCOME - Dr. Bauermeister

5. PUBLIC COMMENTS

Bob Ooten, Costa Mesa Sanitary District Member, spoke on outsourcing and suggested that the Committee write strict language stating that the City Council Members are the Policymakers.

6. REVIEW OF MINUTES

MOTION/SECOND: Committee Member Eckles/Committee Member Weitzberg

Committee Member Hutchins stated that on page 3 of the minutes the topic should be Reserves, not Budget Reserves.

Consensus: (12 Ayes, 0 Noes): Approval of January 8, 2014 Charter minutes.

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

Noes: None.

Absent: Committee Member O'Connell.

The minutes of the January 8, 2014 Charter Meeting were approved.

7. MEETING SUMMARY

Dr. Bauermeister provided an overview of the items that the Committee would be addressing throughout the meeting.

The Committee agreed to consider the agenda item regarding Pensions first.

8. CHARTER ISSUE

UNFUNDED PENSION LIABILITY – PRESENTATION BY JEFF ARTHUR

The Pension Oversight Committee Chairperson, Jeff Arthur, gave a presentation regarding:

- PERS contribution rates.
- "Classic" employees PERS plan formulas.
- "Classic" employees PERS contribution rates.
- Costa Mesa's unfunded liability.

Questions and Answers between the Charter Committee Members and Mr. Arthur:

Q – Explain the Social Security program for employees of the City.

A – The City employees only receive pension benefits, no Social Security.

Q – How is the liability reduced?

A – The liability can be reduced if more money is paid into the fund or if there is a better return on an investment.

Q – When the market performs better does the liability for the City reduce?

A – The reduction fluctuates each year.

Q – Does a recipient receive the pension until they die?

A – The pension received is a defined benefit plan.

Q – Can the current pensions in place be changed?

A – Currently in California there are no methods to reduce pensions.

Mr. Arthur confirmed that the PERS Committee will be meeting in February to address the Social Security maximum lifetime numbers; recognizing that people are living longer now than previously estimated in the past. Also, he stated that projecting enhanced mortality will be difficult because of different factors like mortality rate and payroll growth.

Q – What is the correlation between stock market returns and PERS returns?

A – PERS has a largely diversified portfolio; sometimes they will perform better than the U.S. stock market and sometimes not as well.

Q – Is it possible to create a private pension plan for new hires?

A – It is a possibility but there needs to be negotiations with the employee bargaining groups.

Q – Can certificates of participation be issued to fund the unfunded liability and allow for local citizens to buy them?

A – It would be too complicated due to outside investors.

Q – How many quarters must be paid to participate in Social Security?

A – Forty quarters for Social Security and an employee must have five years of service in order to be vested in PERS.

Q – Explain the services, benefit factor, and plan compensation?

A – PERS keeps track of all the years of service, the agency worked for, and the compensation plans of an individual.

Q – Does the City keep paying once a person retires?

A – The City does continue to pay.

Q – Can the City prohibit future pension increases without the vote of the people?

Legal Counsel Summerhill responded that via an ordinance the City can prohibit future pension increases.

Committee Member comment: If it can be enacted by an ordinance it can also be rescinded by an ordinance. If it is added into a Charter it would be more difficult to change.

Q – How would prohibiting retroactive benefit increases affect the current unfunded liability?

A – It would not affect the current unfunded liability but it would prevent the current problem from reoccurring.

The Committee considered the following proposed language regarding Pensions:

1. No action increasing any employee retirement benefits, other post-employment benefits employer contributions including post-retirement health benefits shall be adopted without the assent of the majority of the voters voting for such an ordinance at a general election at which the ordinance is submitted to the registered voters of the City.
2. Employees hired on or after the effective date of this Charter shall not have their retirement benefits increased without an amendment to the Charter. No ordinance increasing any employee, legislative officer, or elected officials retirement benefits or other post employment benefits shall be adopted without majority approval of the citizens in a general election.

Committee Member comments regarding Pensions:

- Opposed to the language as it is divisive.

- Support the language and inquired on pay increases during the final months of service.

A – Pension is based on the 12 highest months, not the last 12 months, and contracts can be negotiated.

- We cannot change what has already taken place regarding pensions. Can make changes via an ordinance, so this is not needed in the Charter. Having an election to make a change in the Charter is expensive and facts get lost in the rhetoric.
- Support language in the Charter and it should be reviewed every 10 years; opposed to leaving the decision in the hands of three Council Members.
- Suggest a joint meeting between the Charter Committee and the Pension Oversight Committee.
- Support including language in the Charter because it makes it harder to change. This is not changing the past; it is implementing provisions for the future.
- Support including language in the Charter; it needs to go to a vote of the people.
- This is a resurrection of measure V, which the voters strongly defeated. It is divisive and still needs to be negotiated.
- This is a golden opportunity. Having an election is less expensive than a \$228 million unfunded pension liability.
- This language only pertains to pensions; salary and other compensation still needs to be negotiated.
- Support having voters decide.
- A defined benefit plan is a great opportunity for the employee and employer.
- The Charter Committee should listen to what the Pension Oversight Committee recommends.

Consensus: (10 Ayes, 2 Noes): To include language (to be determined) in the Charter regarding Pensions.

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

Noes: Committee Members: Panian and Weitzberg.

Absent: Committee Member O'Connell.

BREAK: 7:30 – 7:40

Legal Counsel Summerhill proposed the following language for consideration regarding Pensions:

On or after the effective date of this Charter, except for any increase previously authorized in a valid and binding memorandum of understanding or contract, no employee or officer of the City of Costa Mesa shall receive an increase in employee retirement benefits, other post-employment benefits, employer contributions including post-retirement health benefits to be paid for by the City or that the City is liable for without approval by a majority of the voters at a general election.

Committee Member comments continued:

- In favor of putting language in the Charter, but not this proposed language.
- The Committee should include the language in the Charter and can make final modifications at a later meeting.
- The voters are the ultimate stakeholders and language should be easy to understand.
- Focus should only be on post retirement benefits including pension and healthcare, not compensation.
- The people of Costa Mesa should be able to decide what the employees get paid.
- The current employee's salaries should stay the same.
- The substitute language is good.

Legal Counsel Summerhill commented that the Committee Members can revise the language before it is made into a final document.

Consensus: (10 Ayes, 2 Noes): Language to be included: On or after the effective date of this Charter, except for any increase previously authorized in a valid and binding memorandum of understanding or contract, no employee or officer of the City of Costa Mesa shall receive an increase in employee retirement benefits, other post-employment benefits, employer contributions including post-retirement health benefits to be paid for by the City or that the City is liable for without approval by a majority of the voters at a general election.

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

Noes: Committee Members: Panian and Weitzberg.

Absent: Committee Member O'Connell.

Dr. Bauermeister clarified that anything within the Charter can be modified and changed until the Committee finalizes the document.

CHARTER ISSUE: OUTSOURCING

The Committee considered the following proposed language regarding Outsourcing:

1. The City shall have the power(s) to contract out for any services unless limited by the Constitution of the State of California.
2. Whenever possible outsourcing of services should be considered as a prudent way to manage the resources of Costa Mesa. There should be a periodic review of the City's operations and service to assure that processes that serve the residents are done in the most expeditious responsible manner.

Legal Counsel Summerhill summarized that it would be the City Council's decision whether to outsource or not if there is no specific language.

Committee Member comments regarding Outsourcing:

- Outsourcing can be very effective but the proposed language does not set any limits to protect the public.
- Language needs to be added that states "Outsourcing can occur only when the professional standards and accountability are equivalent for both agencies".

Legal Counsel Summerhill stated that case law only applies to general law cities, not charter cities.

- Disagree with including the following proposed language into the Charter because of its complexity: "Outsourcing can occur only when the professional standards and accountability are equivalent for both agencies".
- The proposed language would ensure that the qualifications and accountability of outside sources are at the same level as the City's.

Legal Counsel Summerhill commented that the proposed language is not dictating; it is ensuring that the contracting agencies are qualified.

- Request a list of what services can be outsourced in regards to general law?
- Support including a clause in the Charter that states "Cannot outsource to any company in which the company's executive or employees have made any campaign contributions to any City Council candidates".
- Request for more information on conflict of interest.
- The rules should apply to both contractors and unions.

- If contribution rules are applied to contractors, they should also be applied to Associations and Unions.
- Any companies that bid for an outsourcing contract should not be making contributions to the candidates of the City Council.
- In the language add the words "as or" before "more efficiently", this will create more equivalency.
- The last sentence should be eliminated, "There should be a periodic review of the City's operations and service to assure that processes that serve the residents are done in the most expeditious responsible manner".

Consensus: (11 Ayes, 1 Noes): To include language (to be determined) regarding Outsourcing in the Charter.

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

Noes: Committee Member Weitzberg.

Absent: Committee Member O'Connell.

Legal Counsel Summerhill proposed the following language for consideration regarding Outsourcing:

The City may enter into a contract for any services unless limited by the Constitution of the State of California. The City shall periodically review its existing operations and services to consider whether said operations and/or services may be performed as or more efficiently and effectively by a third party. Any contract entered into, pursuant to this provision, shall be ratified in accordance with the procedure set by the City Council.

Committee Member comments continued:

- Standards should be included in the language.

Bob Ooten, Costa Mesa Sanitary District Member, commented that he is unsure if verbiage needs to be included in the Charter, and he supports outsourcing if it is done in a step by step method.

- Concerned that outsourcing may lead to cronyism; need language that would prevent cronyism.

Legal Counsel Summerhill stated that conflict of interest language will be drafted for consideration at the February 12, 2014 Charter Meeting.

Consensus: (11 Ayes, 1 Noes): To include the following language: The City may enter into a contract for any services unless limited by the Constitution of the State of California. The City shall periodically review its existing operations and services to consider whether said operations and/or services may be performed as or more efficiently and effectively by a third party. Any contract entered into, pursuant to this provision, shall be ratified in accordance with the procedure set by the City Council.

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

Noes: Committee Member Weitzberg.

Absent: Committee Member O'Connell.

CHARTER ISSUE: SALE OF CITY OWNED REAL ESTATE

Proposed language regarding Sale of City owned real estate:

The sale, conveyance of any real property owned by the City shall require a supermajority approval of the City Council.

Committee Member comments regarding the sale of City owned real estate:

- Include a threshold such as, "in excess of".
- There is no need for this language to be in the Charter.

Consensus: (4 Ayes, 8 Noes): To not include language regarding Sale of City owned real estate in the Charter.

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

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

Absent: Committee Member O'Connell.

CHARTER ISSUE: COIN

Legal Counsel Summerhill provided an overview of COIN and also stated that COIN could be problematic in the Charter because if there are modifications to the ordinance voter approval is needed. However, it could be included by reference or as modified.

Committee Member comments regarding COIN:

- Support language in the Charter regarding the COIN ordinance.
- COIN does not need to be included; currently the ordinance can be modified by the City Council.
- Suggest adding the word "openness" after the word ethics in the preamble.

- The COIN ordinance was developed because of the pension problem; very strongly support putting language in the Charter regarding the COIN ordinance.
- Need to define exactly what is meant by transparency.

Dr. Bauermeister requested that the Committee send in language regarding COIN and Conflict of Interest for the February 12, 2014 Charter Meeting.

9. INFORMATION REQUESTS - None

10. AGENDA BUILDING FOR February 12, 2014

Consensus of the Committee for the following topics to be on the February 12, 2014 agenda: Call to Order; Pledge of Allegiance; Moment of Silence; Welcome; Public Comments; Review of Minutes; Meeting Summary and Review of Norms; Charter Issue: COIN; Conflict of Interest; Form of Government; Finalization of Document; Pension Timeline; Communications received from Committee Members; Information Requests; Committee Member Comments and Adjourn.

11. COMMITTEE MEMBER COMMENTS

Committee Member Tobin requested discussion about including language regarding civil rights and citizens rights in the preamble.

Committee Member Hutchins requested additional language regarding pensions be included in the Charter.

Committee Member Smith spoke regarding the voters and citizens of Costa Mesa.

Committee Member Ramos encouraged the Committee to reach out for more information from the Pension Oversight Committee.

Committee Member Pollitt stated the Mayors in Anaheim and San Jose have proposed initiative wording on pensions.

Committee Member Fancher spoke on being respectful.

Committee Member Weitzberg spoke on the Committee working together in order to complete the Charter document.

12. ADJOURNMENT at 8:54 P.M.



BRENDA GREEN
CITY CLERK