

MINUTES OF THE REGULAR MEETING OF THE COSTA MESA CHARTER COMMITTEE

February 12, 2014

1. CALL TO ORDER

The meeting was called to order at 6:00 p.m. in Conference Room 1A, 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

ABSENT: Yolanda Summerhill

2. PLEDGE OF ALLEGIANCE - Dr. Bauermeister

3. MOMENT OF SILENCE – Dr. Bauermeister

4. WELCOME - Dr. Bauermeister

5. PUBLIC COMMENTS

Mike Harmanos, Costa Mesa, spoke on the City of La Mirada and their decision to not proceed with a Charter.

Kyle Krahel-Frolander, Smart Cities Prevail, suggested if the Committee Members had any questions about the City of La Mirada Charter decision they could come to him for more information as he attended their Charter Meetings.

6. REVIEW OF MINUTES

Committee Member Hutchins stated a correction on page 4 of the minutes regarding his vote on pensions.

MOTION/SECOND: Committee Member Eckles/Committee Member Graham

Consensus: (13 Ayes, 0 Noes): Approval of January 22, 2014 Charter minutes.

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

Noes: None.

Absent: None.

The minutes of the January 22, 2014 Charter Meeting were approved with one correction.

7. MEETING SUMMARY

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

Dr. Decker provided a timeline of the Charter process to the Committee and discussed the specific dates.

8. CHARTER ISSUE

CHARTER ISSUE: COIN

Consensus: (7 Ayes, 6 Noes): To include language (to be determined) regarding COIN in the Charter.

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

Noes: Committee Members: O'Connell, Panian, Pollitt, Smith, Tobin, and Weitzberg.

Absent: None.

Legal Counsel Hall Barlow reviewed the 3 options regarding COIN:

- Reference COIN in the Charter.
- Include the COIN document verbatim.
- Create new language.

Committee Member comments regarding COIN:

- COIN is still a new ordinance and there could be potential flaws in the process.
- It is important to include COIN in the Charter so City Council cannot repeal it.
- There is no benefit to having COIN in the Charter.
- The Charter should only include provisions that we cannot do as a general law City.
- Including COIN in the Charter ensures transparency and would be an integral part of the Charter.
- It is very important for COIN to be included in the Charter.
- Strongly believe COIN should be in the Charter, should be solidified into the Charter; this would allow COIN to be amended by a future Council but it could not be repealed.

Legal Counsel Hall Barlow stated that it is very difficult to draft language regarding COIN that can take every possibility into account. But if included by reference a Council could significantly modify.

- The Charter language should be easy to understand and not complex.

- The purpose of including new and existing language into the Charter is to make them Constitutional and any changes would be limited.
- Add a sentence to the beginning of COIN that states, "In an effort to maintain openness, fairness, and transparency we adopt Articles 1 and 2 of the Costa Mesa Municipal Code". This would help explain what the purpose of the code is.
- COIN should not be included in the Charter as labor negotiations are complicated and complex. From a practical point of view adding this in the Charter would impose rigidity on negotiations.
- If a reference to COIN is included in the Charter a supermajority vote by the City Council should be required for any changes or modifications.
- Need to include language that states the intention of COIN. So any changes cannot be made that conflict with the intention.

Consensus: (7 Ayes, 6 Noes): Original COIN language to be included: Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code governing labor negotiations and any amendments, modifications, or deletions are hereby adopted by reference. The City Council shall comply with Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code when engaging in the meet and confer process pursuant to the Meyers-Milias-Brown Act. In the event that Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code shall hereafter be repealed, the terms of those provisions as they exist at the adoption of this Charter, except as same may be modified by court order, shall continue to be followed by the City Council when engaging in the meet and confer process pursuant to the Meyers-Milias-Brown Act.
 Ayes: Committee Members: Amburgey, Eckles, Fancher, Hutchins, Pollitt, Ramos, and Smith.
 Noes: Committee Members: Graham, O'Connell, McCarthy, Panian, Tobin, and Weitzberg.
 Absent: None.

BREAK 6:55 P.M. – 7:05 P.M.

Legal Counsel Hall Barlow provided two new language proposals for discussion and consideration.

Continued Committee Member comments regarding COIN:

- Skeptical of adding supermajority in the language as it takes away flexibility.
- The language should be easy to understand for the voters.
- If the Committee wants a constitution that will govern the City, complex and specific language is required in case it gets challenged.

Consensus: (7 Ayes, 6 Noes): Original language to be included: Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code governing labor negotiations and any amendments, modifications, or deletions are hereby adopted by reference. The City Council shall comply with Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code when engaging in the meet and confer process pursuant to the Meyers-Milias-Brown Act. In the event that Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code shall hereafter be repealed, the terms of those provisions as they exist at the adoption of this Charter, except as same may be modified by court order, shall continue to be followed by the City Council when engaging in the meet and confer process pursuant to the Meyers-Milias-Brown Act.

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

Noes: Committee Members: Graham, O'Connell, McCarthy, Panian, Tobin, and Weitzberg.

Absent: None.

Consensus: (6 Ayes, 7 Noes): Alternative language to be included: Civic openness during labor negotiations being essential to good government, Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code governing negotiations shall not be amended, modified, or deletions made to these provisions without a supermajority vote of the full City Council. In the event that Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code shall hereafter be repealed, the terms of those provisions as they exist at the adoption of this Charter, except as same may be modified by court order, shall continue to be followed by the City Council when engaging in the meet and confer process pursuant to the Meyers-Milias-Brown Act.

Ayes: Committee Members: Amburgey, Fancher, McCarthy, Pollitt, Smith, and Tobin.

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

Absent: None.

Consensus: (6 Ayes, 7 Noes): Alternative language regarding repeal of COIN to be included: Civic openness during labor negotiations being essential to good government, Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code governing negotiations shall not be amended, modified, or deletions made to these provisions without a supermajority vote of the full City Council. In no event shall these provisions be repealed in their entirety.

Ayes: Committee Members: Amburgey, Fancher, Graham, Panian, Pollitt, and Tobin.

Noes: Committee Members: Eckles, Hutchins, McCarthy, O'Connell, Ramos, Smith, and Weitzberg.

Absent: None.

- Suggestion to add the statement, "Civic openness during labor negotiations being essential to good government", to the first original COIN language.

Consensus: (9 Ayes, 4 Noes): Original language with additional statement to be included: Civic openness during labor negotiations being essential to good government, Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code governing labor negotiations and any amendments, modifications, or deletions are hereby adopted by reference. The City Council shall comply with Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code when engaging in the meet and confer process pursuant to the Meyers-Miliias-Brown Act. In the event that Title 2, Chapter VI, Articles 1 and 2 of the Costa Mesa Municipal Code shall hereafter be repealed, the terms of those provisions as they exist at the adoption of this Charter, except as same may be modified by court order, shall continue to be followed by the City Council when engaging in the meet and confer process pursuant to the Meyers-Miliias-Brown Act.

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

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

Absent: None.

CHARTER ISSUE: CONFLICT OF INTEREST

Consensus: (13 Ayes, 0 Noes): To include language (to be determined) regarding Conflict of Interest in the Charter.

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

Noes: None.

Absent: None.

Committee Member comments and questions regarding Conflict of Interest:

- How is conflict of interest enforced and what is the process for enforcement?

Legal Counsel Hall Barlow responded that the Fair Political Practices Committee (FPPC) is the enforcing agency for violations of Government Code 1090.

- Suggestion to add the language of 1090 in the Charter because it is simple.

Legal Counsel Hall Barlow stated that in the Costa Mesa Municipal Code there is a provision that makes a campaign contribution of \$250.00 or more a conflict of interest; also that an independent expenditure is not a campaign contribution.

- Outsourcing contracts should not be subject to cronyism or influenced from campaign contributions.

Legal Counsel Hall Barlow stated the current voter enacted conflict code, "For purposes of this section of financial interest which would preclude participation. A financial interest as defined by the act shall also include any campaign contribution of \$250.00 or more from a contributor or the agent of a contributor in the twelve month interval prior to the day of which the decision involving the contributor is to be made. No City Council Member shall accept, solicit, or direct a contribution of \$250.00 or more from any party or his or her agent. While a preceding involving a licensed permit or other entitlement for use is pending for the City Council and the three months following the date a final decision is rendered in the preceding".

- There could be creative ways to maneuver through this code.

Legal Counsel Hall Barlow provided an explanation on campaign contributions to Council Members and conflict of interests.

- Could previous employees that were laid off create their own company and bid on their previous jobs?

Legal Counsel Hall Barlow responded that the previous employees would not be prohibited.

- Individuals can report to the FPPC and file a complaint if there is suspicion of a conflict.

Consensus: (12 Ayes, 1 Noes): To not include language regarding Conflict of Interest in the Charter.

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

Noes: Committee Member Eckles.

Absent: None.

CHARTER ISSUE: FORM OF GOVERNMENT AND POWERS

Legal Counsel Hall Barlow suggested the Committee make reference to general law if language similar to proposal three is wanted in the Charter.

Committee Member comments regarding Form of Government and Powers:

- The Committee should follow general law provisions.

Legal Counsel Hall Barlow stated that the point in restating existing language in the Charter is that it will ensure that future Councils cannot change it.

- The State should not tell the City how to decide districts; support codifying language in the Charter.

Consensus: (8 Ayes, 5 Noes): To include Proposal 3 in the Charter: The elective officers of the City shall consist of a City Council of 5 Members elected at large. The term of office shall be four years. The number of consecutive terms a member may serve on the City Council shall be limited to two terms. The Council Members terms shall be staggered in the manner existing at the time of the adoption of this Charter.

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

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

Absent: None.

Legal Counsel Hall Barlow stated if anything in the Charter was to change it would have to be by a vote of the people.

Dr. Bauermeister stated if the Committee accepts proposal 1 there will be no need for proposal 2.

Consensus: (11 Ayes, 2 Noes): To include Proposal 1 in the Charter: The municipal government established by this Charter shall be known as the Council-Manager form of government. The City Council will establish the policy of the City, and the Chief Executive Officer will carry out that policy.

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

Noes: Committee Members: O'Connell and Weitzberg.

Absent: None.

Consensus: (0 Ayes, 13 Noes): To include Proposal 2 in the Charter: All powers of the City shall be vested in the City Council except as otherwise provided in this charter.

Ayes: None.

Noes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg.

Absent: None.

Consensus: (9 Ayes, 4 Noes): To include Proposal 4 in the Charter: On the date of any meeting of the City Council at which time the Council receives the certification of the results of any general or special municipal election at which any member of Council is elected, the City Council, after swearing and qualifying any newly elected member, elect one of its members as presiding officer, who shall have the title of Mayor. The City Council, at the same time of electing the Mayor, shall elect one of its members as Mayor Pro Tempore. The term of service for both the Mayor and Mayor Pro Tempore shall be for 2 years. Both the Mayor and Mayor Pro Tempore shall serve in such capacity at the pleasure of the City Council

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

Noes: Committee Members: Graham, O'Connell, Tobin, and Weitzberg.

Absent: None.

Consensus: (0 Ayes, 13 Noes): To include Proposal 5 in the Charter: The City Council shall act by ordinance or resolution except as otherwise stated in this Charter. The affirmative vote of three members shall be necessary to the passage of any ordinance or resolution.

Ayes: None.

Noes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, Tobin, and Weitzberg.

Absent: None.

BREAK 8:20 P.M. – 8:25 P.M.

CHARTER ISSUE: TIMELINE FOR PROPOSED EMPLOYEE PENSION VOTER APPROVAL REQUIREMENT

Legal Counsel Hall Barlow explained the process of the timeline if the Committee included a provision concerning voter approval requirements for increases in employee pensions.

CHARTER ISSUE: PROPOSED CHARTER LANGUAGE

Consensus: (1 Ayes, 12 Noes): To include Proposal 2 in the Charter:

Preamble on Civic Freedoms

Equal Treatment: The City exists to serve the people and shall respect the rights of all people equally. If any procedure or permit is necessary to accommodate civic freedoms, the City shall provide a permitting process that is simple, concise and easily available. The City shall issue any necessary permits and do so promptly upon receiving the required documents.

Free Speech: The City shall make no policy that prevents the people from freely expressing ideas, thoughts or religious views.

Public Assembly: The City shall make no policy that prevents public from assembling peacefully.

Self-Defense: The City shall make no policy that prevents the public from owning and carrying arms for the purposes of self-defense.

Ayes: Committee Member Tobin.

Noes: Committee Members: Amburgey, Eckles, Fancher, Graham, Hutchins, McCarthy, O'Connell, Panian, Pollitt, Ramos, Smith, and Weitzberg.

Absent: None.

Proposal 7 – Incompatible Offices and Post Elected Office Employment:

The members of the 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 years following the end of their elected position on the City Council.

Committee Member comments regarding Proposal 7 of the proposed Charter language:

- What was the intent of this language?
- Committee Member stated the reason for this language is due to concern that Council Members could make a large decision concerning Committee/Commissions and then immediately join the Committee/Commission which was benefited.
- One year is too short, support two years.

Consensus: (12 Ayes, 1 Noes): To include Proposal 7 in the Charter:

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

Noes: Committee Member Tobin.

Absent: None.

Proposal 8 – Union Participation:

Except as otherwise provided by the State Legislature, City employees shall have the right to form, join, and participate in the activities of employee organizations. City employees shall also have the right to refuse to join or participate in the activities of employee organizations.

Unless otherwise required by law, a labor union, City contractor, City Employer, or City Employee association may only make expenditures for political activities if the Organization establishes a separate segregated fund for such purposes. Said fund contribution is to be voluntary.

Legal Counsel Hall Barlow stated that proposal 8 is stated in State law.

Committee Member comments or questions regarding Proposal 8 of the proposed Charter language:

- What happens when State law changes?

Legal Counsel Hall Barlow responded that it would be very difficult for the law to change.

- Support including the language as it is under State law.

Consensus: (2 Ayes, 11 Noes): To include Proposal 8 in the Charter.

Ayes: Committee Members: Amburgey and McCarthy.

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

Absent: None.

Dr. Bauermeister stated that the Committee would be discussing paycheck protection and eminent domain at the next meeting; as well as beginning the finalization process of the Charter document.

Legal Counsel Hall Barlow suggested that the Committee review Measure V and other City Charters.

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; Charter Issue: Review Current Charter Document; Paycheck Protection; Eminent Domain; Communications received from Committee Members; Finalization of Document; Information Requests; Committee Member Comments and Adjourn.

11. COMMITTEE MEMBER COMMENTS

Committee Member Hutchins spoke on the provisions from Measure V.

Committee Member Ramos inquired on the process of finalizing the document.

Committee Member Pollitt thanked the Committee for all of the hard work.

12. ADJOURNMENT at 9:00 P.M.



BRENDA GREEN
CITY CLERK