

ATTACHMENT A
CHARTER UPDATE COMMITTEE
MINUTES
Central Library Friends Room
1000 Avocado Avenue, Newport Beach 92660
Thursday, June 14, 2012
4:00 p.m.

I. CALLED MEETING TO ORDER – 4:00 p.m.

II. ROLL CALL

Present: Chairman Paul Watkins and Members Paul Glowienke, Jeff Herdman, Suzanne Savary, Joseph Stapleton, Dan Wampole, and Council Member Steve Rosansky

Excused

Absence: Member David Bahnsen

City Staff: City Manager Dave Kiff, City Clerk Leilani Brown, Acting Assistant City Attorney Michael Torres, Assistant to the City Manager Rob Houston, Public Information Manager Tara Finnigan, Finance Director Tracy McCraner, and Deputy Finance Director Matusiewicz

III. PUBLIC COMMENTS ON AGENDA ITEMS

Dan Purcell requested that the Charter Update Committee agenda include descriptions of the Charter Sections. Chairman Watkins pointed out that Attachment B (redline Charter Sections) was included with the packet.

George Schroeder requested and received confirmation from Chairman Watkins that the public will be allowed to speak during the Charter Section discussions.

Robert Hawkins indicated that he submitted written comments and recommended that the Committee be provided with the *Board, Commission and Committee Handbook* and sign the confirmation page. He noted that, at the June 7 meeting, the City Attorney's Office indicated that the Committee Members are not public officials, but believed that the Handbook states otherwise.

City Manager Kiff confirmed for Chairman Watkins that the Planning Commission, Board of Library Trustees, Parks, Beaches and Recreation Commission, and Civil Service Board received information regarding their perspective Charter Sections and asked them to participate if they so desired.

Jim Mosher indicated that it would be helpful for the public to be informed at the beginning of the meeting whether public comments will be allowed for each item under Item V (Charter Section Discussions).

IV. APPROVAL OF MINUTES

Chairman Watkins pointed out that the City Clerk presented amended minutes which include corrections to names. Regarding **Section 1114** (Claims and Demands), he requested that Acting Assistant City Attorney Torres provide the Committee with information regarding Los Angeles' court case relative to class action lawsuits. In response to Chairman Watkins' question regarding **Section 503** (Compensation and Bond), Acting Assistant City Attorney Torres confirmed that the City's bond covers all City employees, but clarified that the City Manager is the only employee listed in the Charter that is required to have a bond. He noted that Newport Beach Municipal Code (NBMC) Chapter 2.16 lists other City employees required to have a bond.

Without objection, Member Savary requested that her statement about wanting more information about the Los Angeles case regarding class action lawsuits be included in the minutes.

George Schroeder and Novell Hendrickson noted that their names are spelled incorrectly. City Clerk Brown noted that those errors have been corrected.

Jim Mosher stated that the agenda should note the meeting date of the minutes to be approved. He added that he believed the process has been done in haste.

Dan Purcell took issue with the minutes, particularly as it related to Mr. Mosher's statements on page 2, his statement regarding class action lawsuits (page 2), and Ronnie Watkins' statement during public comments (page 4). He suggested that the minutes include more information.

Robert Hawkins indicated that he submitted written comments and believed that for the May 31 and June 7 meeting, the City Manager had a conflict yet still spoke on **Article V** (City Manager) Charter Sections. He believed that the Committee should review the minutes for those meetings and amend them.

Motion by Member Wampole, seconded by Member Glowienke to waive reading of the subject minutes, approve as amended, and order filed.

The motion carried by the following roll call vote:

Ayes: Glowienke, Herdman, Savary, Stapleton, Wampole, Chairman Watkins
Noes: None
Absent: Bahnsen

V. **CHARTER SECTION DISCUSSIONS**

Regarding **Section 1106** (Centralized Purchasing), Finance Director McCraner indicated that staff has researched the matter and recommends keeping "centralized" in **Section 1106** and **Section 504** (City Manager Powers and Duties) since it is a more efficient and economical way to purchase items. She noted that this does not preclude other types of purchases, i.e. online purchases by departments. City Manager Kiff stated that the proposal is to leave the language as currently stated in the **Section 1106**, but noted that reconsideration of **Section 504** will need to be brought back since it is not on today's agenda.

Jim Mosher agreed with having a centralized purchasing system. He suggested reviewing what other city charters include relative to purchasing requirements in the event more should be added to the City Charter.

Robert Hawkins requested to see the Finance Director's report relative to the centralized purchasing system and took issue that none of the Committee Members requested to see the report. He believed that the redline document is not sufficient background information, noted that the 2010 Charter Update Commission had reports on each item, and recommended that the Committee request reports from staff.

Motion by Member Savary, seconded by Member Herdman to leave the current language in **Section 1106** (Centralized Purchasing) unchanged.

The motion carried by the following roll call vote:

Ayes: Glowienke, Herdman, Savary, Stapleton, Wampole, Chairman Watkins
Noes: None
Absent: Bahnsen

Regarding "as soon as practicable" in **Section 1116** (Independent Audit), Deputy Finance Director Matusiewicz reported that the annual financial statement has been published within 180 days of the end of the fiscal year; however, the Finance Department has published it 270 days after the end of the fiscal year in order to meet the Government Finance Officers Association's (GFOA) award program. He encouraged keeping the current language since 1) the report is predicated by when the City receives the auditor's opinion letter, 2) there is no State requirement to publish by a specific date, and 3) the language provides the City with flexibility if needed. He also reported that publishing in the newspaper and the reference to Government Code Section 40804 does not relate to independent audits, but refers to financial statements. He also confirmed that the City may not see audit documentation until November.

Discussion ensued relative to adding language that better describes the City's website.

George Schroeder suggested using "electronically, online, on the website, or in a successor fashion."

Jim Mosher indicated that he is happy with "website" or any of the other suggestions. He recommended being more specific than "as soon as practicable." He questioned whether Government Code Section 40804 is the appropriate reference and asked if the summary is being published.

Dan Purcell stated that having timelines helps, expressing concern that "as soon as practicable" does not require the City to provide the reports in a timeline manner. He suggested that, for the public's benefit when referencing Government Codes, that the verbiage be included in the Charter Sections.

Bob Hawkins agreed that the Charter should include the full text of Government Code language when a reference has been mentioned. He agreed that "as soon as practicable" does not provide a specific timeline and believed that 180 days is too long.

City Manager Kiff noted that "as soon as practicable" is language created by the City's forefathers and pointed out that some members of the public have had issues with changing any of the original language. He emphasized that the audits are created by an independent auditor and by placing a specific date for the audit, might create problems for the City and the auditor. He added that the independent auditors are changed periodically and selected by the Request For Proposal (RFP) process; however, timeline restrictions may produce unresponsive RFPs. He suggested not changing the language.

Member Herdman noted that the independent audit is different than the financial statement; however, the title of Section 1116 is *Independent Audit*.

Deputy Finance Director Matusiewicz stated that there is a Government Code Section that discusses the State Controller's audit. He submitted potential language that incorporates general accepted accounting principals as it relates to audits. Member Herdman asked if this can be looked at during the next meeting.

Acting Assistant City Attorney Torres reported that the purpose of bringing **Section 1116** to the Committee was to not require that the entire financial statement be published in the newspaper, but to only publish a summary in order to conserve resources. He suggested striking everything after, "...shall be published."

City Manager Kiff noted that an ordinance can be adopted by the City Council to include all the specifics, i.e. state where the summary is posted on the internet. He added that the Government Code referenced in the redline may not be the correct Government Code Section, but staff can look into it.

Member Wampole questioned why the report should even be published in a newspaper since it can be accessed on the internet. City Manager Kiff noted that the newspaper lobbyists oppose all non-publishing requirements.

Chairman Watkins indicated that the language provided by Deputy Finance Director Matusiewicz does not apply to the publication language. He suggested that the language be changed to "...shall be published in the official newspaper as required by Government Code."

Member Stapleton expressed support for "as soon as practicable"; using "available electronically" with no reference to the City's website; and striking everything after "shall be published."

Member Glowienke suggested replacing "as soon as practicable" with "in a period of less than 270 days." He further suggested changing the title of **Section 1116** to "Independent Audit. Financial Statement."

Member Savary suggested using "City's website or electronic equivalent" and expressed support for referencing Government Code Sections.

Motion by Member Glowienke, seconded by Member Herdman to a) change the title of **Section 1116** to be "Independent Audit. Financial Statement"; b) delete "As soon as practicable" and replace it with "Within 270 days..."; and c) amend the Section to read, "...available for inspection by the general public, available on the City's website or electronic equivalent, and a summary copy of the financial statement as of the close of the fiscal year shall be published in the official newspaper as required by California Government Code Section 40804, or any successor statute."

The motion carried by the following roll call vote:

Ayes: Glowienke, Herdman, Savary, Stapleton, Wampole, Chairman Watkins
Noes: None
Absent: Bahnsen

City Manager Kiff and/or Acting Assistant City Attorney Torres discussed the proposed changes to the following Charter Sections:

Section 407 (Regular Meeting) - Due to a lack of business and absences, the City Council generally does not hold the second meeting in August or December.

Section 408 (Special Meetings) - The language is duplicative since the Ralph M. Brown Act covers special meetings.

Section 409 (Place of Meetings) - One change makes the Section gender neutral and the other change refers to the Ralph M. Brown Act relative to meeting locations.

Chairman Watkins suggested adding language to **Section 407** which reads, "...at such times as it shall fix by ordinance or resolution, and shall be necessary to properly conduct its business; in all events, the City Council shall hold at least one meeting per month."

Member Glowienke expressed concern with holding meetings if there is not business to conduct. He suggested amending **Section 407** to read, "The City Council shall hold regular meetings as the business of the City dictates at least twice each month at such time..." Member Glowienke expressed support for the suggested changes to **Sections 408 and 409**.

Member Savary believed that there should be a requirement to hold meetings at least once a month. She indicated that she has not reviewed the Ralph M. Brown Act and requested a copy of it. City Manager Kiff noted that there are sections of State law that Charter cities must follow regardless, like the Ralph M. Brown Act.

Regarding **Sections 407, 408 and 409**, Jim Mosher discussed the importance to the public of holding Council Meetings in order to voice concerns and stated that twice a month is not an onerous burden. He indicated that Council can meet in another location other than the Council Chambers during an emergency, but should conduct business in the Council Chambers all other times. He indicated that, if the City just wants to follow State law, it can repeal the Charter, but stated that the City should not give up being a Charter City lightly.

George Schroeder expressed concern that the new language in **Section 407** would allow Council too much flexibility to choose how often to meet.

Novell Hendrickson expressed opposition to changing **Section 407** because people already know when Council meetings are held and believed that Council meetings should be held in the Council Chambers (**Section 409**), especially since the City is building a new City Hall.

Robert Hawkins believed that **Sections 407 and 409** should not be changed. He stated that Council has met twice a month the past two years, noting that meetings in August and December were special meetings.

Dan Purcell believed that changing **Sections 407, 408 and 409** will not make the City accountable. He stated that he agrees with Mr. Mosher.

Ron Hedrickson believed that two meetings is not too many, but if Council feels they attend too many meetings that they should not have as many ad hoc committees.

Council Member Rosansky indicated that the Sections are probably being proposed for changes because the meetings would either be held during the summer or holidays in which much of the public will not attend. He assured the public that Council is not trying to shirk its duties. He suggested requiring that all regular meetings be held in the Council Chambers at City Hall since they may need to meet elsewhere for special meetings.

Robert Hawkins took issue with Council Member Rosansky providing input, believing that he is not a member of the Committee. Acting Assistant City Attorney Torres clarified that Council Member Rosansky and Mayor Nancy Gardner are Council-approved/appointed Council Liaisons who are non-voting members on the Committee. Council Member Rosansky noted that he will be termed out on the City Council by the time the results of the November election are declared, so none of the changes will affect him as a Council Member. He reiterated that he is the Council Liaisons to assist the Committee with deliberations.

The Committee indicated that Council Member Rosansky's input was welcomed.

Chairman Watkins expressed support for his previously recommended language change in **Section 407** and the proposed amendments to **Sections 408 and 409** which references the Ralph M. Brown Act and allows Council flexibility to determine meeting locations.

Member Herdman believed that the two meetings a month are important to have for the public.

Discussion ensued relative to having two meetings a month, except in August and December, Member Glowienke believed that the language would be confusing (**Section 407**). He agreed that the preference should be to hold meetings in the Council Chambers but Council should have the option to move the meeting location (**Section 409**). He expressed support for the proposed language in **Section 408**.

In response to Chairman Watkins's question, City Manager Kiff indicated that City Hall has been closed during the Christmas and New Year's Holiday in order to save costs and reduce leave time. He further expressed the opinion that, as a member of the public, he might be upset that a Council meeting is being conducted when people are gone. He stated that many Council Members, past and present, have expressed a desire to take a vacation without missing any meetings. He expressed support for holding meetings twice a month, except in the months of August and December.

Acting Assistant City Attorney Torres suggested holding regular meetings twice a month, except in the months of August and December, but allow the flexibility to hold special meetings at various locations as allowed pursuant to the Ralph M. Brown Act.

Motion by Member Wampole, seconded by Savary to a) amend **Section 407** to read, "The City Council shall hold regular meetings ~~at least twice each month~~ at such times as it shall fix by ordinance or resolution, and as shall be necessary to properly conduct its business; in all events, the City Council shall hold two meetings per month except in the months of August and December. All regular meetings shall be publicly noticed according to the Ralph M. Brown Act, or any successor law."; b) amend **Section 408** to read, "Special meetings may be called at any time by the Mayor, or by four members of the City Council, by written notice ~~delivered personally sent to each member and~~ publicly noticed according to the Ralph M. Brown Act, or any successor law."; and c) amend **Section 409** to read, "All regular meetings shall be held in the Council Chambers of the City Hall, ~~however other types of meetings shall be at locations allowed by the Ralph M. Brown Act, or any successor law or in such place to which any such meeting may be adjourned, and shall be open to the public.~~ If, by reason of fire, flood or other emergency, it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the Mayor, or, if he or she should fail to act, by four members of the City Council.

The motion carried by the following roll call vote:

Ayes: Herdman, Savary, Stapleton, Wampole, Chairman Watkins
Noes: Glowienke
Absent: Bahnsen

V. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Jim Mosher believed that it is confusing to the public about what has been adopted since the beginning of the meetings. He noted that Member Savary requested a copy of the Ralph M. Brown Act, but believed that the Attorney General's website is out of date. He stated that the language in the original Charter might not have been perfect because the 1954 California Constitution required that the product be completed in 90 days.

Member Stapleton requested that a comprehensive redline version be included with the next packet. City Clerk Brown indicated that she can provide a full redline version and a partial redline version that only includes the Charter Sections to be discussed.

Regarding the Ralph M. Brown Act, Acting Assistant City Attorney Torres reported that he can provide the Committee with a summary.

Ron Hendrickson requested confirmation that **Sections 421 and 425** will be discussed at the next meeting.

Rhonda Watkins confirmed that her statements at the last meeting was not meant for a particular City service, but that any cost incurred should be thought out and considered.

Dan Purcell expressed concern that the Committee is considering too many things that need time to be addressed. He speculated why the Charter amendments were not during the June Primary Election. He indicated that Planning Commissioner Toerge indicated that he was not notified regarding **Section 707** but that he should attend the meeting on the section. He asked how expandable the Council Chambers will be.

Robert Hawkins believed that the Committee should receive Ralph M. Brown Act training rather than just the Act. He suggested reconsidering **Section 407** because someone can interpret the motion to mean that Council does not have to have any meetings in August or December.

VI. ADJOURNMENT - Adjourned at 6:01 p.m. to Tuesday, June 21, 2012, at 4:00 p.m. in the City Council Chambers.

The agenda was posted on June 18, 2012, at 2:05 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Recording Secretary

Chairperson

City Clerk