

Comments on June 7, 2012 Charter Update Agenda Items

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GENERAL COMMENTS ON THE PROCESS SO FAR

Having attended the Charter Update Committee's first two meetings, it has become apparent to me that the opportunity for public participation in this process through oral comment is extremely limited: at the May 31, 2012 meeting, 3 minutes (180 seconds) was allowed for each member of the public to comment on proposed revisions to groups of 10 charter sections leaving, even if carefully prepared, just 18 seconds for each. I, at least, find it difficult to adequately and completely communicate complex thoughts in 18 seconds, and I am, therefore, attempting to put in writing at least some part of my thinking about the issues before the committee.

My first observation is that thoughtful participation by the committee members themselves, was equally limited. 20 revisions were considered in less than 90 minutes, giving each of the 6 committee members present, if they all wished to participate, less than 45 seconds to ask questions, express their thoughts and make a decision.

I don't regard that as an adequate mechanism for deciding so weighty an issue as what matters should be placed on a ballot put to the voters of Newport Beach, and what exact revisions, if any are needed, would best serve the public.

My second observation is that the committee appears to be operating in a vacuum. In the absence of thoughtfully prepared background material from staff, the committee is being presented with proposed changes to language, and essentially being asked to reinvent their fellow citizens' government without adequate information as to what the original language was, why it was written as it originally was, whether it has been changed by previous voter action, what the consequences of the proposed change will be, how it may interact with other sections of the Charter, municipal code and policies, and perhaps most importantly, how California's many other charter cities have dealt with similar issues.

To provide this missing context, I would suggest that the City Clerk make available a link to the original charter (which is on the City's web-server, but in what is called the Alchemy database, and not at a location for which a link can be easily provided by a member of the public), and possibly the version that was rejected by voters at the February 8, 1949 election.

The committee should also be aware that under the provisions of Article 11, Section 8 of the 1879 California Constitution, the committee of 15 citizens independently elected by the voters of Newport Beach on December 22, 1953 had a maximum of 90 days (a limit imposed by the Constitution) to put together the Charter and present it to the City Council. As a result, the original Charter is primarily a collection of sections compiled from the charters of other successful cities, sometimes customized to Newport Beach.

In considering how sections of *our* Charter might be changed, it can, therefore, be enlightening to compare how *other* charter cities, often with the same original language, have dealt with the same or similar issues. For that purpose, committee members may wish to be aware of the very helpful collection of searchable California city charters at: <http://www.bixby.org/charter/>

Among those one can find, for example, a wide range of solutions to such problems as council compensation, openness of meetings, and bonding of city officers.

I have also tried to set up a website tracking the progress of the present committee at: <http://newportcharterupdate.wikispaces.com> however the pace of revision has been much too rapid for me to provide adequate context to it.

In my opinion the public of Newport Beach would be much better served by a committee that could take the time to explore and evaluate a wide range of alternatives, and give thoughtful consideration to each section where a change is being recommended. I do not see that happening in the current format.

Item III. PUBLIC COMMENTS ON AGENDA ITEMS

- The boilerplate at the foot of the agenda says the public will “*be allowed to comment on agenda items before the Committee and items not on the agenda but are [sic] within the subject matter jurisdiction of the Committee. The Committee may limit public comments to a reasonable amount of time, generally three (3) minutes per person.*”
- The re-appearance of “Item III” on the agenda is ominous and implies that the promise in the Brown Act boilerplate will be fulfilled by giving each member of the public, as part of Item III, a *single* 3-minute opportunity to comment on *all* matters listed on the agenda – a policy I have seen enforced at meetings of the City Arts Commission and the Board of Library Trustees.
- I find such a policy both a disservice to the public interest and an insult to members of the public who take the time to attend meetings scheduled during many people’s business hours.
- In addition, I feel the 3-minute limit is an arbitrary invention of City staff that has not been thoughtfully considered or adopted by the committee, and has been found in practice to stifle legitimate and constructive public contributions to the committee’s deliberations.
- In the specific case of the Charter Update Committee, since at its May 31, 2012 meeting since 3-minute public comments were allowed on *each* agenda item as it was being discussed by the committee, I find the re-introduction of this policy a violation of Article 1, Section 3(b)(2) of the California Constitution which holds that any policy restricting the openness of public meetings be accompanied by “*findings demonstrating the interest protected by the limitation and the need for protecting that interest.*” I do not believe the committee has made any such finding.

Item IV. APPROVAL OF MINUTES

There are numerous sections in which at its May 31, 2012 meeting the committee too hastily recommended placing on the ballot poorly thought out, and in some cases, bad, changes.

Since I am writing this with only three hours left before the meeting, it is not possible to detail all these concerns, however I am particularly concerned about the statement on page 2 of the draft minutes where the explanation for the recommended change to Section 410 is that "the City Clerk calls the roll anytime requested by Council." My impression is that the "roll" is currently called by use of the electronic tote board on every motion. My understanding of the change being recommended to voters is to eliminate, even in the case of the passage of ordinances and resolutions, any obligation to record the member-by-member vote in the permanent minutes of the Council meetings, and it will only be necessary (as required by Section 412) for the presiding officer to make a determination that four or more of the Council members are in agreement – without identifying who they are. That I may interpret this differently from the committee members recommending the change, suggests a lack of clarity in the Charter, and a need to make it clear.

I also feel the committee has inadvertently overturned carefully thought out rules for the appointment and organization of advisory boards and commissions.

I have now approximately 1 hour to formulate written comments on the 21 sections to be considered under agenda Items V and VI.

Item V. CHARTER SECTION DISCUSSIONS

Section 705

- The proposed change is upsetting a carefully constructed process.
- Council and staff have been ignoring this process, for example by recently appointing Tim Brown to fill not only the unexpired term of a resigning Planning Commissioner, but also a full four year term beyond that.
- That not only violates the Charter, but it is a bad policy because it prevents those who had been waiting for the normal end-of-term vacancy to occur, to have an opportunity to participate. Unless they have been following the activities of the City Council very closely, it will come as a complete surprise that the vacancy was filled up to a year earlier.

Section 710

- The proposed change is to implement the change to gender neutral language started in 2010.
- I have no objection to this, but I recall there is another case of an unqualified “he” or “she” somewhere else in the current Charter – exactly where, I don’t remember.

Section 1101

- I believe the existing language is vague as to whether the City Manager is supposed to consult with the boards and commission about the amount that needs to be reserved for the operation of their meetings, or for the city functions that they oversee.
- I do not at all support staff’s efforts to cut the boards and commissions out of the budget loop. They are our citizen’s watchdogs, and their recommendations as to the proper priorities help to keep the budget one that serves the wishes of the people rather than one that serves the wishes of the staff. The City Council simply doesn’t have the time at its meetings to review the budget at this level of detail, and needs such input.
- The committee members should be aware that only 1 in 10 of City staff members actually live in Newport Beach. As fine of public servants as they may be, it should not be assumed that know (or care) what we want.

Section 1114

- In the neighboring general law City of Costa Mesa the public sees all “warrants” (checks written by the city to pay vendors) and claims made against the city clearly presented at the start of every Council agenda packet.
- I think the committee should consider carefully the original language of the Charter, and how the citizens of Newport Beach have lost the level of transparency enjoyed by those in a general law city.
- Further erosion of this section seems unlikely to be for our benefit.

Section 1115

- I would approach any revisions to this section with the same caution as those to Section 1114. I have no idea what the consequences of deleting this section may be.

Section 1116

- I would want more background on this and the extent to which staff has been following the current requirements.

Section 1200

- I would like more information on why this section was in the original charter and what the consequences of deleting it may be.

Section 1201

- As with Sections 103 and 105, staff regards this an obsolete section that should be deleted "to save trees."
- I do not buy this argument. The number of trees lost will be miniscule, and, at least in my mind, it is more important to preserve in the Charter a clear statement of historic continuity. Much effort will be lost by future generations trying to discover if something nefarious has been lost in "Article XII Reserved".

Section 1400

- Since the phrase "public officer" does not appear anywhere else in the Charter, it seems odd to give a definition of it here.
- Much more importantly this whole business of delegation of powers is a dangerous thing, and needs to be much more carefully thought out, if wanted at all. It destroys the strict accountability assigned to named officers in the Charter.
- The proposed language is vague and poorly conceived.
 - This seems to legalize and open to abuse the kind of thing that happened with the multi-million dollar Big Canyon Reservoir cover, where a subordinate alleged signed a waiver of indemnity with no clear authority.
 - Who will be regarded as "deputies" under the proposed language is unclear.
 - It is also unclear whether "deputies" need authorization to perform an act reserved to their superiors.
 - It appears the Council will be allowed to authorize persons who are neither sworn officers nor employees of the City to act on behalf of the City, and perform duties assigned to definite officers by the Charter. That, again, sounds unwise to me.

Section 503

- Our current City Manager, and other "key" employees, have "life-time" contracts, something the Orange County Grand Jury would have observed (if they had noticed it – they were worried by contracts with 5 year terms) is unique in our County.
- I think the setting of the City Manager's salary should remain a very public process, and the need for bonding carefully weighed against the practices in other cities.
- We are the public, and these provisions are for our protection.

Section 611

- Again, the need for bonding should be carefully weighed against the practices in other cities.

Section 407

- Staff needs to provide a good reason why the two meetings per month requirement should be deleted.
- Staff has provided nothing but flim-flam arguments for why they have been ignoring this provision.
- Prior to the time at which staff and Council starting skipping them, here is absolutely no evidence that the second meetings in December or August were less busy, or had fewer items to deal with, than any others.
- Going from a required two meetings per month to holding only meetings the Council wants to hold, and at such times as it wants, seems an extreme act of folly, leaving the public with no recourse, if they are unhappy, short of a recall, which seems expensive and unnecessary.

Section 408

- I believe the Brown Act would apply whether or not it is explicitly stated, so the origin of the existing language should be carefully examined to see if it was intended to provide greater protection to the public.

Section 409

- This is not at all an innocuous change, and requires *much* greater scrutiny.
- The existing requirement that Council meet at a definite place and open to the scrutiny of the public is fundamental to citizen oversight of our government.
- Going to the lesser standards of the Brown Act is a major change.

Section 421

- The changes being considered here will have *HORRIBLE* consequences for the people of Newport Beach and are intended to legitimize a staff-requested contracting policy that the City Council acquiesced to in January 2011. It completely destroys the system of clear accountability established by the Charter.
- A beneficial change to this section would be to ignore staff's recommendation, and instead concentrate on clarifying in the second paragraph how definitely a project has to be "included within the budget approved by the City Council" before the City Manager has a right to bind the City to a contract without further public approval.

- It would also be wise for the committee to reconsider the authority given to the City Manager to bind the City “without a written contract.” That does not seem sound public policy to me.

Section 425

- As indicated in the annotation, the current language codifies a provision inserted into the Charter by voter initiative just four years ago, in 2008.
- The recommended change seems intended to relieve staff and Council of guilt over not having carefully read the measure, and, as a result, having not built something conforming to it in all respects.
- The idea of re-writing a voter initiative after just four years, and then slipping the revised language back on the ballot where it won't be noticed in a package of 40 other changes, seems a bit audacious to me.
- I'm not sure what the best solution is, but I think staff and Council should at least be honest about the mistake, and meekly ask the public's blessing, rather than quietly covering it up.

Item VI. ADDITIONAL PROVISION(S) TO BE CONSIDERED

I have not had time to review the following sections, regarding which the agenda indicates the committee will be considering seeking Council authorization to review:

Section 1102

Section 1103

Section 1110

Section 1401

Section 1106

In my view the entire Charter is worthy of review by the public, although as indicated at the beginning of the current document, it does seem possible to me for the committee to give adequate consideration to more than a small handful of sections.

In addition to sections that might (or might not) profit from revision, there are many areas in which one might consider adding entirely new sections (or expanding existing sections) to provide the public with greater clarity and certainty as how their government will work to serve them. Unfortunately, I need to submit my written comments now, and do not have time to detail them here.