

HANDOUTS FROM THE PUBLIC

From: Larry Tucker [<mailto:tucker@gtpcenters.com>]

Sent: Monday, June 11, 2012 12:38 PM

To: Kiff, Dave

Cc: Harp, Aaron

Subject: FW: Proposed changes to the City Charter that affect the Planning Commission, Library Board of Trustees and PB&R Commission

Hi Dave,

I would delete all of Section 707 (c). The Public Works part is now adequately covered by the Government Code as you note. But the remainder of the clause makes no sense to me. As redlined, the clause would now read: The Planning Commission would "Make recommendations to the City Council concerning the clearance and rebuilding of blighted or substandard areas within the City." Here are my questions and comments:

1. I assume the word "clearance" means "clearing" as in demolition.
2. Would it be up to the Planning Commission to define what are "blighted or substandard areas"? Would there be criteria or would it be one of those "you know it when you see it" situations?
3. Since the City has no redevelopment agency (and neither does any other City at this point), under what authority would the City Council have the right to implement any such recommendation with respect to private property, except a taking for a public use which has always been allowed?
4. Would the Planning Commission initiate a review of areas around town so that it can come up with a list of areas it recommends should be cleared?
5. If so, would that be both public and private structures in identified areas?
6. If blighted or substandard areas are general planned and zoned for appropriate uses, then they can be re-used without Planning Commission or Council approval (absent a need for a use permit or variance or perhaps a CEQA requirement), correct? Also, how would the City Council be in a position to mandate what a private property owner must do with his own property if he is not violating any laws?

Upon closer reading (and maybe my legal background is influencing my thought process), I believe this clause covers ground well beyond the traditional purview of the Planning Commission and should be removed from the Charter as superfluous. It may have sounded good to those that originally put it in the Charter, but I don't think it is a function that should be fulfilled by the Planning Commission.

These are my personal opinions and not necessarily those of any other Planning Commissioner.

Best regards,

Larry Tucker

Brown, Leilani

From: Kiff, Dave
Sent: Tuesday, June 19, 2012 10:21 AM
To: 'ronov@cox.net'; Paul Watkins
Cc: Brown, Leilani
Subject: RE: Charter Update Committee: Section 425 City Hall (Revised)

Hi Ron –

Thanks for taking a look at it and coming up with that. I think it certainly works for staff.

Dave

From: ronov@cox.net [mailto:ronov@cox.net]
Sent: Tuesday, June 19, 2012 9:31 AM
To: Paul Watkins
Cc: Kiff, Dave
Subject: Charter Update Committee: Section 425 City Hall (Revised)

Dear Paul:

Following up on my 6/13/12 email to you re: Sec. 425, I have a couple more comments. I believe "related parking" should be added in as part of the description, and there is a superfluous "and" in the last sentence.

Following is my recommended revised wording of Sec. 425:

SEC. 425 CITY HALL (revised)

City Hall, including most administrative offices and related parking shall be located on the City owned parcel bounded by Avocado Avenue on the west, San Miguel Drive on the north, MacArthur Boulevard on the east, and the Newport Beach Central Library on the south.

(Added by amendment effective March 3, 2008.)

Thanks for the opportunity to input.

Ron Hendrickson
Newport Beach

Comments on Draft June 14, 2012 Charter Update Minutes

from: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

The following are suggested corrections to the Draft Minutes of the Newport Beach Charter Update Committee's June 14, 2012 meeting as presented in "Attachment A" in the agenda packet distributed on June 18 for consideration at the June 21, 2012 meeting.

- On page 3, in paragraph 3, I request that the following sentence attributed to me be stricken:

~~"He recommended being more specific than "as soon as practicable." "~~

- It seems unlikely I said this, since I had no concern about the existing language.
 - What I intended to say, and what I think I said, was that I found it disturbing that Deputy Finance Director Matusiewicz had just testified that a proposed reference to the California Government Code Section 40804, inserted by non-finance staff, was, in his opinion, a reference to an inappropriate section, and it appeared this error would not have been noticed unless Member Glowienke had asked for the review of Section 1116 to be continued to this meeting for the sole purpose of considering alternatives to the "as soon as practicable" phrase. This seemed indicative to me of the slipshod fashion in which a large mass of proposed changes is being rushed to the ballot without adequate review.
 - In that regard, I think we have a continuing problem, for the original intent of the Charter Section 1116 seems to have been that the City's financial statement be published *after* it has been subjected to an independent audit. However, the new summary to be published pursuant to Government Code Section 40804 is of a report that has to be submitted to the State Controller within 90-110 days after the close of the fiscal year. Since our proposed Charter language gives the auditor up to 270 days to reach their conclusions, it appears the proposed Charter language is encouraging the publication of a summary of the unaudited financial data submitted to the Controller rather than the final audited statement.
- Also on page 3, in paragraph 8, second line, "**general** accepted accounting **principals**" should read "**generally** accepted accounting **principles**."

Comments on June 21, 2012 Charter Update Agenda Items

from: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

The following comments are on the Charter sections called out for possible review in the agenda.

Section 504(e) Powers and Duties. (of City Manager)

- Based on the Finance Director's testimony at the June 14, 2012 meeting, I would recommend retaining the word "*centralized*."

Section 421 (Contracts. Execution.)

- I submitted brief written comments on this item at the June 7 and June 14 committee meetings, where it seemed possible it might be reviewed.
- This section is primarily boilerplate copied into the original Charter from other city charters. Nonetheless, and despite the opening sentence being very convoluted and hard to understand, it is important boilerplate providing clear and direct accountability to the public over the binding of the City to contractual relationships (and thereby over most expenditures of public funds): it restricts approval authority for contracts to the City Council and, under limited circumstances after public approval by the Council, to the City Manager.
- Despite the Committee's recommendation to modify Section 1400(b) to give the Council broad authority to delegate duties, these are *not* duties that should be delegated.
- And despite the Charter's clear requirements, at its January 25, 2011 meeting the City Council modified its contracting policies, F-5 and F-14, to delegate the City Manager's approval authority to a host of other officials, including the City Attorney, who under Section 602 is supposed to be reviewing contracts for legal problems, not awarding them (the employment of outside attorneys being a power assigned exclusively to the Council).
- The Committee should not endorse the recommended changes, which are intended to legitimize the actions taken in contravention of the Charter in January 2011.
- Instead, the Committee should perhaps be considering whether the existing provision allowing the City Manager (and as proposed, other employees) to bind the City *without* written contract is wise public policy. I don't think it is.

Section 425 (City Hall.)

- I submitted written comments on this item at the June 7 and June 14 committee meetings, where it seemed possible it might be reviewed.

Section 402-A (Compensation.) / Section 402-B (Reimbursement for Expenses.) / Section 404 (The Mayor.)

- I submitted extensive written comments on this issue at the May 31 committee meeting, and brief one on June 7 and June 14.
- In my view, it is important for the Committee to understand there is an important distinction between “salary for services” and “reimbursement for expenses” : to date the Charter has, with respect to Council members, allowed the later, but prohibited the former.
- It is probably also important for the Committee to be aware of Article 11, Section 5(b) of the California Constitution, which states:

It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

- The word “plenary” means “absolute,” so the electors of a city have, through their Charter, absolute authority to prescribe the compensation to be paid to their elected and appointed officials.
- As I understand it, Newport Beach city staff feels that there is an error in the detailed language of the existing Charter, which forces staff to regard the intended “reimbursement for expenses” as a salary (despite the explicit prohibition against providing a salary for services), and thereby not only allows, but compels them to provide Council members with a wide-ranging employee benefit package.
 - Setting aside the fact that the Planning Commissions are allowed \$60/meeting reimbursement for expenses, and despite not having to itemize those expenses are not regarding as needing a benefit package, the purported problem is that the existing Charter language does not explicitly require the Council members to itemize the expenses for which they are seeking reimbursement.
- Staff is in effect saying that a syntactical ambiguity has deprived the people of Newport Beach of their Constitutional right to set the compensation paid to the Councilmembers.

- My suggestion is that rather than modifying the Charter to justify the current practice, staff should be relieved of their guilt by correcting the language to clarify the longstanding intent of the Charter. This can be accomplished simply by inserting the words “up to” before the dollar amount of the allowable stipend specified in Section 402-B.
 - The amount to be paid for expenses would then no longer be a fixed amount required by law, and staff would be left free to ask Council members to supply an itemization justifying the expense.
 - The equivalent language already exists in Section 404 where it says “not exceeding.”
- This interpretation of the stipend language has the important precedent that when voters were last asked to revise the language of Section 402-B with a new cost-of-living adjustment in 1980, the language originally proposed to appear on the ballot (per Council Resolution 9629) was:

*Shall Proposition 2, which amends certain sections of the City Charter pertaining to **the maximum amounts allowed as reimbursement for expenses** incurred by the Mayor and Councilmen and delegating authority to the City Council to adjust said **maximum amounts** based on the Consumer Price Index or an annual 5% increase, whichever is lesser, be ratified?*

Section 608 (Illegal Contracts. Financial Interest.)

- I submitted written comments on this item at the June 14 committee meeting.
- The people of Newport Beach hold their public officials to higher standard than that of California Government Code 1090 (which I suspect would apply whether or not it is mentioned in the Charter), and I see no explanation of why we should lower or standards.

Section 707. (Planning Commission. Powers and Duties.)

- Since the people of Newport Beach have, in Section 200, wisely or unwisely, given to their government all conceivable powers over municipal affairs not explicitly prohibited by the Charter, the remaining sections have only two possible purposes that I can think of:
 1. Limiting what the government can do with those powers, or
 2. Placing requirements on the government, which it is obligated to perform.

- The proposed insertion of the word “**may**” into Section 707, like the previous proposals to insert “may” into the listing of duties of various officers completely vitiates the purpose of the Charter: the Council is given the discretion, but not the obligation, to impose these duties on the Planning Commission. Since there is no obligation, the fact that certain duties are “suggested” in the Charter loses all legal force and becomes meaningless, except as unenforceable guidance.
- It would seem more productive, to me, for the Committee to consider the expression “Master Plan” in Section 707(a) – which is possibly obsolete and needs to be revised (did it once mean something similar to what we now call a “General Plan”?).
- It might also be noted that staff seems to be recommending deleting **Section 706 (Planning Commission. Members.)** and combining it with Section 707, although that does not appear to be part of the official scope of the Committee’s work.

Section 708 (Board of Library Trustees. Powers and Duties.)

- The Committee should be aware that a similar measure, when put to the voters as a stand-alone issue, was defeated as Measure G at the November 8, 1994 election.
- Committee Member Glowienke observed at the May 24, 2012 Charter Update Committee meeting that he felt the Library Trustees had too much power as evidenced by their proposed closing of the Corona del Mar Branch Library in 2007 (in connection with reconstruction of the OASIS Center), a matter on which he spoke to the Council on September 25 of that year.
 - Press reports from the time suggest the proposal actually originated with City Manager Homer Bludau and the then-City Library Director, and that town halls were orchestrated by Council member Nancy Gardner.
 - It is unclear what role the Library Trustees played in this, as copies of the minutes of their meetings from that year are not available on-line.
- In a similar episode in 2011 involving the proposed closure of the Balboa Branch Library and its replacement by an electronic kiosk at the new Marina Park, minutes of the Library Trustees meetings *are* readily available and suggest they were completely unaware both of the decision, and the decision to rescind it. Instead, the idea seems to have originated entirely with City staff.
- The problem here, in my view, is not that the Charter gives the Library Board (which has existed since 1920) too much power, but rather that the Board has failed to exercise the citizen oversight and administrative functions given it by the Charter.

- The citizens of Newport Beach should not be tolerating important policy decisions regarding their library services being made by City staff, 90% of whom, however well meaning, do not live in the City and have a minimal stake in the outcome.
- As in so many other areas, in my view the best and most efficient solution is to adjust our practices to conform to the Charter, rather than modifying the Charter to conform to our current practices, especially when the latter have demonstrated themselves so dysfunctional.

Section 709 (Parks, Beaches and Recreation Commission. Powers and Duties.)

- In my view the proposed changes are unnecessary and unwise.
- We have a Parks, Beaches and Recreation Commission precisely because we place a high value on those amenities; and because the City Council has many other important issues before them, having a citizens group to oversee them, including being able to perform the diligent investigation needed to make intelligent recommendations as to the allocation of limited budget resources that will be most beneficial to the public.
- Again, these are not matters that should be left to staff's discretion, and an engaged electorate should, to the greatest extent possible, retain control of its own fate.

Charter Section 801 (Positions Included in the [Civil Service] System.)

- I agree with the written comments submitted by Robert C. Hawkins.

Brown, Leilani

From: Robert C. Hawkins [rhawkins@earthlink.net]
Sent: Thursday, June 21, 2012 6:52 AM
To: Brown, Leilani
Cc: Kiff, Dave
Subject: Comments on the Charter Commission aka Committee's Agenda Items
Attachments: 2012_06_19 Watkins I2 with attachments.pdf

LAW OFFICES OF ROBERT C. HAWKINS

June 19, 2012

Via Email (LBrown@newportbeachca.gov)

Paul Watkins, Chair
Members of the Charter Commission aka Charter Committee
City of Newport Beach
3300 Newport Blvd.
Newport Beach, California 92663

Re: **Additional Comments on the Draft Charter Redline and City Manager Weighted Suggestions Draft of the Revised Charter**

Dear Mr. Watkins and Members of the Charter Commission aka Charter Committee:

Thank you for the opportunity to comment on the captioned matter. As you know, this firm represents businesses, groups and individuals who work and live in the City of Newport Beach. We offer the comments below on their behalf.

I. Corrections to the Minutes and Motion to Reconsider.

Throughout the minutes, I am referred to as "Robert Hawkins," however on page 3, it is simply "Bob Hawkins." I think that the reference should be unified. Also, as indicated in these comments and in our June 14, 2012 Comments, Robert Hawkins commented throughout on behalf of clients in the City.

Also, as I indicated in my comments on non-agenda items, the motion to change Section 407 was incomplete and could allow for no meetings in August and December. That clearly was not the intent of the Commission aka Committee: the Commission's aka Committee's discussion was always that there be at least one meeting in those months. Someone should move to reconsider the motion and make the correction.

II. Staff Must Provide Substantial Evidence regarding Council Compensation at \$1,227.35 per month and Mayor Compensation at an Additional \$513.96 per month.

As indicated in our June 14, 2012 Comments, Staff has provided no basis for any compensation and provided no basis for a specific figure for compensation. These are two separate questions:

First, should the Council members receive compensation?

Second, if yes, what compensation should the Council members receive?

As to the first, the Charter currently prohibits any compensation for Council members. Section 402-A states:

110 Newport Center Drive, Suite 200
Newport Beach, California 92660
(949) 650-5550
Fax: (949) 650-1181

“The members of the City Council shall receive no compensation for their services as such.”

There was a reason for this prohibition but Staff provides no reason for this prohibition. Why has the Charter all this time prohibited Council compensation? We amended the Charter in 2010 and this prohibition was not touched. Why now?

As to the second, what are Councils in other Orange County cities being paid? Staff should provide written staff reports for the Commission aka Committee, the residents and others to review. The Commission aka Committee should request such reports.

II. Section 421 Should Not be Changed Without Reason and Contracting Authority Should Not be Expanded.

Our June 14, 2012 Comments dealt with this issue and we incorporate them herein. They are attached hereto.

III. Section 608 Should Not Be Expanded to Include Members of any Committee.

Both the full version of the proposed changes to Section 608 as well as the short version seek to expand the conflicts circle to members of the Committees. This is bad policy.

The City has long relied on residents to assist the Council in developing policies and providing advice. Never have these committees been subjected to any conflicts requirements. Various Commissions have been subject to such requirements with good reason. Planning Commissioners, Harbor Commissioners and others can affect values of properties and resources. But Committees are simply advisory and do not really have the same impact on values.

Indeed, Government Code Section 1090 does not extend to volunteer Committees:

“Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.”

Since the Legislature did not extend the statute to such volunteer Committees, this Commission aka Committee should not either.

As for the short proposal which simply incorporates section 1090 into the Charter, this is also bad policy. The City loses the strength and the reason for having a Charter. As we indicated in our June 14, 2012 Comments:

“The charter of a municipality is its constitution. [Citations deleted.] Any ordinance passed by a municipal corporation within the scope of the authority expressly conferred on it has the same force within its corporate limits as a statute passed by the legislature has throughout the state. [Citations deleted.] To be valid, an ordinance must harmonize with the charter.[Citations deleted.] An ordinance can no more change or limit the effect of the

charter than a statute can modify or supersede a provision of the state Constitution. [Citations deleted.] The board of supervisors in establishing a procedure could not deprive a property owner of a right given by the charter. [Citations deleted.]

Marculescu v. City Planning Com. (1935) 7 Cal. App. 2d 371, 373-374. That is, the Charter limits the power of the City. In Marculescu, the only way the supervisors could establish a procedure to deprive a property owner of a right given by the Charter is to change the Charter.

Here, simply incorporating the requirements of Section 1090 and expanding them to Committees does not fulfill the true purpose of the Charter. The City of Newport Beach should not go in the opposite direction of the City of Costa Mesa and move from a Charter to the requirements of a general law city.

Staff has provided no basis or reason for changing Section 608. The public is not aware of any Committees which have been engaged in conflicts of interest. The Commission aka Committee should reject any changes to Section 608 and leave it as is.

IV. Article VII Concerning Boards and Commissions Should Not be Weakened as Proposed.

All of the proposed changes to Article VII seek to weaken the Boards and Commissions, and limit the expectations of residents.

For instance, Staff proposes to change Section 707 concerning the Planning Commission from “requiring” the Commission to perform the listed duties to simply have the power to do such duties if asked by the Council. This proposal takes out any duties of the Planning Commission and residents cannot expect anything of the Commission. This is improper.

Further, this is uniform for Sections 707, 708, and 709. However, Sections 711 (Civil Service Board) and 712 (the Arts Commission) still contain the language of “have the power and duty to perform the listed duties without change. What is the rationale to change some but not others?”

Also, Staff proposes to eliminate the Planning Commission’s role in public works projects. With this elimination, citizen participation in such projects evaporates. That is bad policy.

Staff’s proposed changes to Section 708 simply gut the authority and autonomy of the Board of Library Trustees. The Board now has the power to hire the Library Director, to purchase books and other materials for the Library and to contract with schools, the County and other agencies for library services.

The proposed Section 708 simply eliminates these powers and duties, and makes the Board simply an advisory and recommending body. Staff offers no reason for such changes. We have had no problems with the Board as currently constituted and empowered. There is no reason to change it.

As for Section 709 concerning the Parks, Beaches, and Recreation Commission (“PBR”), Staff proposes to eliminate PBR’s power and duty to make recommendations to the City Manager and Council regarding budgeting for parks, beaches, recreation, parkways and tree purposes. This is simply the power and duty to make a recommendation regarding such items for the purposes of the budget. If PBR cannot

perform these recommending functions, why should the City have a PBR? We one such a body precisely because it should make recommendations regarding budgeting for these items.

The Commission aka Committee should reject all changes to Article VII and leave these bodies as they are.

V. Section 801(f) Must be Rejected.

As indicated in our June 14, 2012 Comments, Section 801(f) is too broad and sweeping, and threatens the existence of the Civil Service System and the Civil Service Board. Section 801 states that all City employees are included in the Civil Service System except identified employees. The listed of excluded employees and persons is specific and finite. Adding total new classes of employees or categories of employees is not specific enough to provide for exclusion. Any change or addition to excluded employees must be specific and finite. It should not be open ended.

As we said before, Staff has provided no justification for this proposed change. Without substantial justification for this change, the Commission aka Committee should reject it with little discussion.

VIII. Conclusion and Additional Comments.


The Commission aka Committee has no reason to recommend any changes discussed above. Again, Staff has provided no written documentation to support these 2012 changes. Oral discussion by staff is insufficient especially because the minutes do not reflect the full discussion.

Also, find attached the Staff Report referenced by the Finance Director in 2010. If Staff looked at a change in 2010 and recommended leaving Section 1106 the same, why are we considering it again? It makes no sense.

Thank you for your attention. We reserve all rights in making these comments and urge the Commission aka Committee to obtain adequate and substantial information before making any recommendations to anyone.

Sincerely,

LAW OFFICES OF ROBERT C. HAWKINS



By: Robert C. Hawkins

RCH/kw

cc: David Kiff, City Manager (DKiff@newportbeachca.gov)
Leilani Brown, City Clerk (LBrown@newportbeachca.gov)

Attachments as indicated

LAW OFFICES OF ROBERT C. HAWKINS

June 14, 2012

Via Facisimile

Paul Watkins, Chair
Members of the Charter Commission aka Charter Committee
City of Newport Beach
3300 Newport Blvd.
Newport Beach, California 92663

Re: Comments on the Draft Charter Redline and City Manager Weighted Suggestions Draft of the Revised Charter

Dear Mr. Watkins and Members of the Charter Commission aka Charter Committee:

Thank you for the opportunity to comment on the captioned matter. As you know, this firm represents businesses, groups and individuals who work and live in the City of Newport Beach. We offer the comments below on their behalf.

I. Why Are We Doing This Update?

First, it is unclear why the Charter requires update especially since the City just updated the Charter in 2010. Resolution No. 2012-32 states:

“WHEREAS, the City’s Charter was amended by the residents of the City of Newport Beach at the 2010 General Municipal Election. Since the last amendment, additional Charter sections have been identified for possible amendment;

“WHEREAS, since the last Charter amendment, additional Charter sections have been identified for possible amendment; (sic)

“WHEREAS, it is appropriate to appoint a citizens committee to review the City Charter for update and modernization issues in order to maximize the benefit to the City and its citizens and to move the work program for such an update and modernization forward in a limited period of time;”

However, it is unclear who or why additional Charter sections have been identified for possible amendment. Indeed, many of the Charters sections proposed for possible amendment **were amended by the 2010 Charter Commission, the City Council and the voters in 2010.** Indeed, Paul Watkins, Mike Torres and David Kiff all participated in the 2010 Update; apparently, there is some need to get a “do over.” But it is unclear why we need to spend precious staff resources and limited City funds to make this “do over.”

Second, Staff has maintained that this effort is simply a Charter cleanup. That was the purpose of the last Charter Update two years ago. Why weren’t these cleanup issues done then? Moreover, many of the proposed changes are not clean-up. Notable among these new and important changes is the proposed exclusion from Charter Section 801 which states that the City Service System includes all City employees except listed employees. New subsection (f) proposes to exclude a whole host of new employees and categories:

“New positions and/or employees not previously included within the civil service system that are excluded by a vote of the City Council.”

(Emphasis supplied.) Some have referred to this as the “Costa Mesaision” of the Civil Service System in the City. As discussed below, this goes far beyond “cleanup” and is bad public policy.

II. What About the Minutes and the City Attorney’s Advice?

The minutes for the meetings of May 31, 2012 and June 7, 2012 are too cute by half regarding various conflicts issues. First, at the May 31, 2012 meeting, Mr. Robert Rush raised a conflicts issue regarding Mr. Watkins earlier client in a land use matter. The Deputy City Attorney Mike Torrez said that under the Political Reform Act, Government Code section 81000 et seq., members of the Committee such as Mr. Watkins were not public officials under the Act and therefore the conflict provisions did not apply. This advice is incorrect and conflicts with the City’s newly circulated Handbook for City of Newport Beach Boards, Commissions, and Committees (the Handbook) and the code sections and regulations cited therein. The Handbook provides that a person is a public official if they are a member of a Board, Commission or Committee in the City of Newport Beach. Handbook, page 10 citing 2 Cal. Code Regs. Section 18701.

At that same meeting, Mr. Kiff discussed the proposed changes to the City Manager provisions of the captioned draft of the Charter. As you know, I raised the issue that Mr. Kiff was a covered public official under the Act and should not participate in the discussion. He did not participate in much of the discussion thereafter and did not leave the room. However, he did improperly participate in the discussion on Section 507 which discusses his duties relating to the appointment of the Manager Pro Tem.

Again, this conduct conflicts with the Handbook and the cited code sections. The Handbook says that the public official “must publicly announce the specific financial interest that is the source of the disqualification” and “must leave the room during any discussion. . . .” Handbook, page 12 citing Government Code section 87105; 2 Cal. Code Regs. Section 18702.5. Again, Mr. Kiff did not announce the apparent conflict which concerned his compensation and did not leave the room as required by the Handbook.

Then in discussion on Article VI, Mr. Kiff lead the discussion, and Mr. Torrez and Ms. Brown did not participate. Staff realized that an impermissible conflict existed by members of the City Attorney’s and the City Clerk’s offices discussing and arguing for changes to Section 602 (City Attorney) and Section 603 (City Clerk).

The May 31, 2012 meeting minutes cutely attempts to handle these conflicts by the following ambiguous language:

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

This fails to satisfy the obligations of the minutes or the Political Reform Act. The minutes must be revised.

The minutes for the meeting of June 7, 2012 continues this ambiguity. In the discussion of Section 503, the minutes listed Mr. Huston, Assistant City Manager, as leading the discussion. We understand that Mr. Kiff also participated in this discussion. If this is mistaken, it should be clarified in the minute that Mr. Kiff left the room and did not participate in the discussion. If this is correct, then the minutes should reflect his participation.

As for the conflicts discussion by the City Attorney's office, the proposed revisions to Section 608 renders this Commission aka Committee a potential covered public official under the City's conflicts provisions and under the Political Reform Act. Although we do not believe that the conflict identified by Mr. Rush is disqualifying, this Commission aka Committee should discuss these changes. If the Commission aka Committee endorses the proposed changes to Section 608, it should make the appropriate disclosures.

Further, the City's recently circulated Handbook has not been presented to this Commission aka Committee. Further, as required by the Handbook, this Commission aka Committee has not signed Confirmation Sheet which is required by the Handbook. Also, the Handbook advises that members of such bodies that they are public officials and should disclose any potential conflicts of interest.

Given these issues, the Commission aka Committee should review and correct its minutes and further discuss these issues.

III. Section 1114 aka 1116 Requires Additional Changes.

These Sections concern the Charter's requirement for an Independent Audit. The proposed amendments concern the publication requirements. Currently, the Charter requires that the Audit be published in the official newspaper. The recommended change is to make it available on the website and publish a summary in the official newspaper. This weakens the public circulation of the Audit. Although publishing the entire Audit may create a significant cost to the City, Staff has not provided this information. The Commission aka the Committee should request this information before making this change.

Also, given that the proposed change weakens circulation, the Commission aka Committee should recommend that the Audit be generally available at all City libraries.

IV. Why Is Staff Proposing Changes to Section 402?

Currently, the Charter provides for no compensation for City Council members and only reimbursement for expenses. Staff proposes to fix compensation at \$1,227.35 for Council members and an additional \$513.96 for the Mayor. Staff has provided no basis or rationale for these figures. Presumably, there is a reason for such compensation rates, but the Commission aka Committee has no information at all for such rates. In order to make a reasoned recommendation, the Commission aka Committee should request some explanation, some staff report and some comparison with other Orange County cities.

In line with this lack of information, Staff proposes a cost of living adjustment. Again, the question is why? Staff provides no answers.

In order to make a reasoned recommendation, the Commission aka Committee must have some rationale or reasonable basis for the rates and the adjustment.

V. Sections 407, 408, and 409 Should Remain Without Change Absent Explanation and Rationale for Change.

Section 407 concerns “Regular [Council] Meetings;” Section 408 concerns “Special [Council] Meetings; Section 409 concerns “Place of [Council] Meetings. The proposed changes to these sections weaken the Charter requirements and allows such meetings to be set by ordinance or regulation; Section 409 proposes to eliminate the home rule advantage of the Charter and simply rely on State law. This is improper, and the Commission aka Committee should not recommend it to anyone.

The Charter of the City is unique: it is its Constitution which limits the power of the City and limits the State’s ability to direct the City over municipal affairs. As the Court of Appeal said long ago,

“The charter of a municipality is its constitution. [Citations deleted.] Any ordinance passed by a municipal corporation within the scope of the authority expressly conferred on it has the same force within its corporate limits as a statute passed by the legislature has throughout the state. [Citations deleted.] To be valid, an ordinance must harmonize with the charter.[Citations deleted.] An ordinance can no more change or limit the effect of the charter than a statute can modify or supersede a provision of the state Constitution. [Citations deleted.] The board of supervisors in establishing a procedure could not deprive a property owner of a right given by the charter. [Citations deleted.]

Marculescu v. City Planning Com. (1935) 7 Cal. App. 2d 371, 373-374. That is, the Charter limits the power of the City. In Marculescu, the only way the supervisors could establish a procedure to deprive a property owner of a right given by the Charter is to change the Charter.

Here, the City proposes to do this; deprive residents of certain rights that its City Council will meet as required by the Charter. Changing these sections to allow for setting meetings based on ordinances and resolutions deprives the residents of the certainty of when City Council meetings occur. Changing the location of Council meetings to locations allowed by the Ralph M. Brown Act, Government Code section 54950 et seq., is absurd. The only limitation on the location of public meetings in the Ralph M. Brown Act is contained in Government Code section 54961 which prohibits public meetings

“ . . . in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase.”

Given that City and its residents are spending \$150,000,000 on the new City Hall, the residents have a right to expect the Council to meet in the new facility. This is exactly what the current Charter provides. The Commission aka Committee cannot change Section 409 with ample reason. Staff has provided none.

VI. Section 421 Should Not be Changed Without Reason and the Contracting Abilities of Employees Should Not be Expanded.

Currently, the Charter limits the contracting power for the City to the Council and City Manager. Staff's proposed changes expand this significantly: it allows the City Manager, City Clerk or the City Attorney to designate any employee to sign any contracts without any authorization by the City Council. Further, given the proposed change to Section 1400(b) concerning "public officers," it is unclear how far the proposed Section 421 would allow members of the City Manager's office, the City Clerk's office, or the City Attorney's office to delegate contracting powers.

Staff has provided no justification to expand the contracting powers. In the past, the City has suffered from unscrupulous employees. Fortunately, our current staff generally conducts itself within the bounds of the law. But the Charter should not be designed for a good or the best City staff; it must provide brakes on the worst possible City staff. The proposed changes to section 421 do the reverse.

The Commission aka Committee should no recommend such expansions.

VII. Section 801(f) Must be Rejected.

As indicated above, Staff proposes to amend Section 801's employees who are exempt from the Civil Service System to include:

"(f) New positions and/or employees not previously included within the civil service system that are excluded by a vote of the City Council. This exclusion shall not apply to any employees within the civil system at the time of the City Council vote."

This change could serve to eliminate the Civil Service System over a lifetime. The Council could exclude every new employee or category from coverage in the System. The changes in 2010 concerned specific employees; the proposed changes in new section (f) could affect the entire System.

Staff has provided no justification for this proposed change. Without substantial justification for this change, the Commission aka Committee should reject it with little discussion.

VIII. Conclusion and Additional Comments.

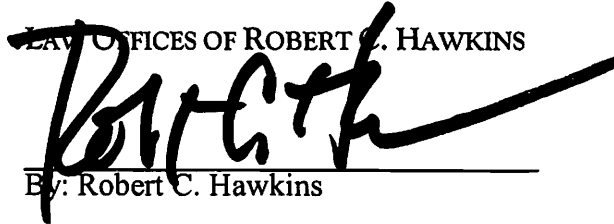
We have simply run out of time to provide other written comments on these and other proposed changes. We will make future written comments and make oral comments at any meetings we attend.

However, it is clear that the Commission aka Committee has no reason to recommend any changes because Staff has provided no written documentation to support these 2012 changes. Oral discussion by staff is insufficient especially because the minutes do not reflect the full discussion.

Thank you for your attention. We reserve all rights in making these comments and urge the Commission aka Committee to obtain adequate and substantial information before making any recommendations to anyone.

Thank you for your attention. We reserve all rights in making these comments and urge the Commission aka Committee to obtain adequate and substantial information before making any recommendations to anyone.

Sincerely,

LAW OFFICES OF ROBERT C. HAWKINS

By: Robert C. Hawkins

RCH/kw
cc: David Kiff, City Manager
Leilani Brown, City Clerk

**CITY OF NEWPORT BEACH
CHARTER UPDATE COMMISSION STAFF REPORT**

Agenda Item No. 3
April 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Administrative Services Department
Tracy McCraner, Administrative Services Director
949-644-3123, tmcraner@newportbeachca.gov

SUBJECT: CHARTER SECTION 1106– CENTRALIZED PURCHASING

RECOMMENDATION:

Recommend to the City Council to leave Charter Section 1106 unchanged (Alternative #1).

DISCUSSION:

Attached is a "white paper" with relevant background information and suggested alternatives for the Commission to consider.

Submitted by:


Tracy McCraner,
Administrative Services Director

Attachments: Section 1106 White Paper
Charter Section 1106

Centralized Purchasing
(Charter Section 1106)

Statement of the Issue

Should the City modify or eliminate Charter Section 1106 which establishes a centralized purchasing system for all departments of the City under the direction of the City Manager?

Relevant Background

Section 1106 of the Charter provides that “under the control and direction of the City Manager there shall be established a centralized purchasing system for all City departments and agencies, except as otherwise in this Charter provided.” Charter Section 1111 states that “the City Council may prescribe by ordinance rules and regulations for the purchasing of supplies, materials and equipment” and specifies that when making such purchases, merchants within City limits shall be given preference so long as the quality and prices are equal.

Other than these two sections, the Charter currently gives broad discretion to the City Manager to implement a centralized purchasing system as he or she sees fit. The Charter places limitations on public works contracts and contracts for legal advertisements, both of which the Charter Update Commission has considered separately. Existing City Council policies limit the City Manager’s authority to enter into agreements or make purchases over a set dollar amount.

Historically, cities establish centralized purchasing systems to ensure the acquisition of goods and services at the lowest total cost, to promote fair and open competition among suppliers, and to ensure good internal controls exist to prevent unnecessary or duplicative expenditures of public funds. Because centralized purchasing controls are considered to be good business practices, it is common for the establishment of a centralized purchasing system to be included in a city’s charter.

When this issue was first identified, there was a question as to whether decentralized purchasing could be a less expensive alternative. For example, technology now makes it possible to purchase goods and materials on-line, which can shorten the time between ordering and delivery and improve efficiency. However, even with the advances in technology, the principles underlying the rationale for having a centralized purchasing system remain valid. Upon further review of these principles, staff recognizes that having a centralized point for the negotiation of contracts with specified vendors, such as for discounted purchase of commodities like office supplies, does not preclude the delegation of authority for departments to make direct online purchases within established procedures and spending limits.

Newport Beach Municipal Code Section 2.12.040 specifies the Administrative Services Department as being financially responsible for the “purchase of supplies, equipment, training and services used by City departments.” The Administrative Services Director is delegated authority by the City Manager to manage the centralized purchasing system within the limits of the City Charter, the Municipal Code, City

Council Policies, and other administrative policies and procedures approved by the City Manager. These administrative policies include purchasing procedures, and the handling of expenditure approvals for departments. Together, these provide the City Manager and Administrative Services Manager with the flexibility needed to effectively operate the City in the most efficient manner.

ALTERNATIVES

The Commission has the following alternatives identified by Staff:

Alternative 1: Recommend that Charter Section 1106 remain unchanged.

This alternative acknowledges the benefits of having a centralized purchasing system, and the broad authority and flexibility currently given to the City Manager to manage the system as effectively and efficiently as possible.

Alternative 2: Recommend elimination of the Section, leaving the Charter silent on the matter, thereby relying on the City's existing codes, policies and administrative procedures to establish roles and responsibilities as deemed necessary by the City Manager.

As stated above, having a centralized purchasing system is considered to be good business practice for local governments. Although there is no legal requirement for a centralized purchasing to be established by charter, Charter Section 1106 does not dictate how the centralized purchasing system is to be implemented, merely that there be one.

The City Manager has recently created an internal committee to review all contracting and purchasing processes and policies citywide. The Administrative Services Director, City Attorney and representatives from many other city departments are serving on the committee to review policy limits, contracting processes and approvals to streamline those processes and enhance internal controls over purchasing. This committee will be drafting a report of recommended changes to the existing policies which will be forwarded to the City Manager for review and approval. The final report will be presented to Council for their information. In light of this internal review, it appears that elimination of Charter Section 1106 would be premature at this time.

Charter Section 1106 – Centralized Purchasing

Section 1106. Centralized Purchasing.

Under the control and direction of the City Manager there shall be established a centralized purchasing system for all City departments and agencies, except as otherwise in this Charter provided.