

AMENDED ATTACHMENT A

CHARTER UPDATE COMMITTEE
MINUTES

City Council Chambers
Thursday, June 21, 2012
4:00 p.m.

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

II. ROLL CALL

Present: Chairman Paul Watkins and Members David Bahnsen, Paul Glowienke, Jeff Herdman, Suzanne Savary, Joseph Stapleton, Dan Wampole (arrived at 4:27 p.m.), Mayor Nancy Gardner, Council Member Steve Rosansky

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

III. PUBLIC COMMENTS ON AGENDA ITEMS

In response to Ron Hendrickson's question, Chairman Watkins confirmed that it is being proposed that **Section 407** (Regular Meeting) be brought back to further clarify Committee's June 14 action.

IV. APPROVAL OF MINUTES FOR THE JUNE 14, 2012 CHARTER UPDATE COMMITTEE MEETING

Amended →

Chairman Watkins stated that the handouts from the last meeting were posted on the City's website. He also stated that, on June 14, Robert Hawkins faxed a letter to the Committee which indicated that he believed that City Manager Kiff had a conflict relative to bonds in **Section 503** ([City Manager] Compensation and Bond). He stated that, following the June 14 Charter Update Committee meeting, he raised this issue with Acting Assistant City Attorney Torres who indicated that City Manager Kiff does not have a conflict since the Committee rejected staff's recommendation and kept the bond requirement in place; (2) City Manager Kiff's contract with the City provides that the City will pay/reimburse the premium for the bonds; and (3) Charter Section 611 (Official Bonds) provides, in part, that premiums on official bonds will be paid for by the City. Therefore, regardless of whether the bond is kept in place or removed City Manager Kiff's financial interests are not affected because under Charter **Section 611** and his contract, the City is obligated to pay the bond premiums.

Member Herdman noted that Acting Assistant City Attorney Torres provided the Committee with information regarding the Los Angeles court case regarding class action lawsuits (**Section 1114 - Claims and Demands**).

Jim Mosher asked if the Los Angeles court case information was available to the public. He noted that he submitted written comments about the minutes and requested that *general* be changed to *generally*, and *principals* be changed to *principles* on page 3.

Dan Purcell noted that consideration of the minutes was conducted out of order and before public comments on agenda items.

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

The motion carried by the following roll call vote:

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

V. CHARTER SECTION DISCUSSIONS

City Manager Kiff noted that “centralized” will remain in **Section 504(e)** (Powers and Duties) and will read, “Establish and maintain a centralized purchasing system for all City offices, departments and agencies.”

Motion by Member Herdman, seconded by Member Stapleton to approve the recommendation so that **Section 504(e)** (Powers and Duties) states, “Establish and maintain a centralized purchasing system for all City offices, departments and agencies.”

The motion carried by the following roll call vote:

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

Regarding **Section 421** (Contracts. Execution), Acting Assistant City Attorney Torres reported that the City is in compliance with the current language; however, the amendment is being proposed to clarify how the City currently handles contracts.

Regarding **Section 425** (City Hall), City Manager Kiff reported that most administrative offices are located at City Hall, but there are some that are not, i.e. Police and Lifeguard administration. He stated that amending the section would also clarify the location of City Hall. He noted that Ron Hendrickson provided written suggestions that would indicate that the property is City-owned and keeps the reference to when the Charter amendment occurred.

Chairman Watkins stated that the recommendation from Ron Hendrickson for **Section 425** would read, “City Hall, including most administrative offices of the City and administrative offices of the City of Newport Beach, and related parking, shall be located on ~~and within the 12.82 acres of real property owned by the City of Newport Beach described as Parcel 3 of parcel Map No. 90-361 in the City of Newport Beach~~ the City-owned parcel, which is bounded by Avocado Ave. on the west, San Miguel Dr. on the north, ~~and~~ MacArthur Blvd. on the east, and the Newport Beach Central Library on the south (Added by amendment effective March 3, 2008).”

Amended →

In response to Committee questions, City Manager Kiff **acknowledged that the proposed language in Section 425 (City Hall) may be at odds with the reality of the location of the new City Hall for a short period of time following the vote on November 6, 2012, but the important point to keep in mind is that the proposed language is helpful in providing flexibility in the case of some administrative offices being located at a place within the City other than the new City Hall.**

Amended →

George Schroeder expressed support for the proposed changes to **Section 425**, pointing out that the City will also probably be building new facilities throughout the City.

Jim Mosher noted that the Library administration offices are also currently not located at City Hall (**Section 425**). Regarding **Section 421**, he believed that the proposal is a complete rewrite of the Charter Section and took issue that it would allow the City Manager and other employees to obligate the City with or without a written contract in place. He stated that the City should always require a written contract.

**Charter Update Committee
Meeting Minutes
June 21, 2012**

Regarding **Section 421**, Novell Hendrickson believed that the verbiage should remain as is in order to protect the City.

City Attorney Harp clarified that the proposed language matches the City's current practice and is not a substantive change.

Member Glowienke noted that there will be a direct line of culpability since Council already determines who can execute contracts (**Section 421**).

In response to Committee questions, Acting Assistant City Attorney Torres indicated that the current practice is to also have the City Attorney approve the form of contracts and the City Clerk attest the signature.

Motion by Member Bahnsen, seconded by Member Stapleton to approve the recommended changes to **Section 421** as proposed.

The motion carried by the following roll call vote:

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

Member Wampole arrived at 4:27 p.m.

Motion by Member Bahnsen, seconded by Member Herdman to amend **Section 425** to read, "City Hall, ~~including most administrative offices of the City and administrative offices of the City of Newport Beach,~~ and related parking, shall be located on ~~and within the 12.82 acres of real property owned by the City of Newport Beach described as Parcel 3 of parcel Map No. 90-361 in the City of Newport Beach the City-owned~~ parcel, which is bounded by Avocado Ave. on the west, San Miguel Dr. on the north, ~~and MacArthur Blvd. on the east,~~ and the Newport Beach Central Library on the south (Added by amendment effective March 3, 2008)."

Regarding leaving in the text that references the amendment date in **Section 425**, Acting Assistant City Attorney Torres stated that doing so would be the exception to the Charter since there will already be a historical thread after any section that undergoes an amendment.

Amended motion by Member Glowienke, seconded by Member Bahnsen to amend **Section 425**, to read, "City Hall, ~~including most administrative offices of the City and administrative offices of the City of Newport Beach,~~ and related parking, shall be located on ~~and within the 12.82 acres of real property owned by the City of Newport Beach described as Parcel 3 of parcel Map No. 90-361 in the City of Newport Beach the City-owned~~ parcel, which is bounded by Avocado Ave. on the west, San Miguel Dr. on the north, ~~and MacArthur Blvd. on the east,~~ and the Newport Beach Central Library on the south."

The amended motion carried by the following roll call vote:

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

Upon the advice of the City Attorney, Mayor Gardner and Council Member Rosansky recused themselves from discussions relative to Section 402-A (Compensation) (recommended to be renumbered Section 402), Section 402-B (Reimbursement for Expenses), and Section 404 (The Mayor. Mayor Pro Tempore).

Regarding **Section 402-A** (Compensation), **Section 402-B** (Reimbursement for Expenses), and **Section 404** (The Mayor, Mayor Pro Tempore), City Attorney Harp reported that the amended language places **Sections 402-A and 402-B** into one Section, and updates the dollar amount to reflect current amounts.

Chairman Watkins pointed out that specific Consumer Price Index (CPI) references were included and that the dollar amount is being updated to reflect what has occurred since the 1980 amendment.

Member Glowienke received confirmation that the \$1,237.35 amount is the end product arrived from the 1980 \$441.15 amount including CPI or 5%, whichever is less.

City Manager Kiff discussed comparative stipend and allowance, auto allowance, health benefit, and retirement contributions for Anaheim, Huntington Beach, Irvine, Laguna Hills, Orange, and Mission Viejo. He noted that Anaheim is the only city that provides its Council Members with auto allowance. He stated that the yearly average total compensation for a Newport Beach Council Members is \$24,200, and the approximate averages for Anaheim is \$32,000; Huntington Beach is \$32,500; Irvine is \$30,300; Laguna Hills is \$22,190; Orange is \$27,500; and Mission Viejo is \$25,800.

In response to Committee questions, City Manager Kiff noted that Council Members can opt out of receiving compensation and, in past years, have chosen to not accept the CPI increases. He stated that **Section 900** (Retirement System) discusses health benefits provided to non-safety employees through the California Public Employees' Retirement System (CalPERS), but emphasized that **Section 900** is not in the Committee's scope of work.

George Schroeder suggested that the City look at the total compensation given to Council Members, believed that most of the Council Members already make a good living, took issue with potential automatic raises on July 1, and questioned why Council needs retirement benefits.

Jim Mosher pointed out that original **Section 402-A** (Compensation) does not give Council any compensation and **Section 402-B** (Reimbursement for Expenses) only provided for reimbursements. He believed that the new language is substantive and that the original language was not intended to convert reimbursement into compensation.

Dan Purcell expressed the opinion that the current amount is too high and that if four years worth of money was provided in advance to Council Members, the public might look at it differently.

Scott Peotter questioned why the Mayor receives more compensation than Council Members. In response, City Manager Kiff indicated that he is not sure why the Mayor receives more, but assumes it is because the Mayor has more obligations and duties. Mr. Peotter believed that the pay differential should be looked at and recommended that the Council not **receive** any retirement benefits. He also suggested rounding the dollar amount.

Amended →

Finance Director McCraner reported that Council **or any City employee** is not allowed by law to opt out of CalPERS due to IRS rules.

Amended →

City Manager Kiff noted that, if this is a controversial item for the Charter Amendment, Council may decide to not consider **Section 402**. He pointed out that the money provided to Council is reflected on a W-2 from the City.

Member Bahnsen indicated that a Council Member's financial status should not be a consideration in this matter. He pointed out that the City's compensation is in line with surrounding cities and, in some cases, not close to others. He expressed support for the amendment.

Motion by Member Bahnsen, seconded by Member Glowienke to approve the recommended changes to **Sections 402-A, 402-B and 404**, as proposed.

The motion carried by the following roll call vote:

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

Regarding **Section 608** (Illegal Contracts. Financial Interests), Chairman Watkins referenced alternate language that was included as Attachment D to the agenda packet and noted that, since Charter cities also must follow Government Code Section 1090 *et seq.*, the alternate language streamlines the intent of the Section. He stated that he has read the written concerns by Robert Hawkins and Jim Mosher, and believed that the alternative language is a good solution.

Member Glowienke indicated that he prefers the specificity of the proposed language to assist the public in understanding the Section. He further questioned whether the 3% threshold should be increased.

Jim Mosher noted that being a Charter City allows the City to do things differently than State law and recommended not making any amendments to **Section 608**. He stated that the proposed language incorporates Committees but the Charter has not defined it, and believed that Committees should be formed similarly to Boards and Commissions.

Members Herdman and Savary expressed support for the proposed language, not the alternate language.

Member Stapleton indicated that, since Government Code Section 1090 is easy to find, he supports the alternative language.

Motion by Member Glowienke, seconded by Member Savary to approve the recommended change to **Section 608**, as proposed.

The motion carried by the following roll call vote:

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

City Manager Kiff indicated that a written comment from Planning Commissioner Larry Tucker expressed support for removing **Section 707(c)** (Planning Commission. Powers and Duties.) in its entirety because the clearing and rebuilding of blighted or substandard areas would be resolved by Code Enforcement, Public Works, or another department.

Regarding **Section 708** (Board of Library Trustees. Powers and Duties.), City Manager Kiff stated that he is now recommending that the Section not be changed. He noted that he has spoken to Elizabeth **Stahr** and that he does not have an issue with the Board of Library Trustees reviewing Library Director selections.

Amended →

City Manager Kiff reported that the change to **Section 709** (Parks, Beaches and Recreation Commission. Powers and Duties.) deals with the review of the annual budget and that Council can direct staff to have the commission review the budget if desired.

Chairman Watkins also noted that the first sentence of **Sections 707, 708 and 709** have been updated to be consistent. He suggested changing *recommended* to *recommend* in **Section 707**.

Amended →

Regarding **Section 708**, Member Savary agreed with not amending the section, noting that changes to this Section have been voted down repeatedly. Mayor Gardner indicated a desire to leave the Section unchanged, but expressed support for **Section 708(d)** as proposed: “Make recommendations to the City Manager regarding Approve or disapprove the appointment, suspension or removal of the Library Director, who shall be the department head.” She stated that the City Council hires the City Manager to select these types of positions. Council Member Rosansky stated that the library has much different uses than in the past, so does not have the same concerns as when the Section was first adopted. He expressed support for Mayor Gardner’s suggestion but indicated that the Section can be removed from consideration if it is going to hinder approval of the other Charter Section Amendments. Members Glowienke and Bahnsen expressed support for changing proposed **Section 708(d)**.

Amended →

Member Savary believed that, as it relates to the library, there needs to be something outside of the City Manager’s control since the library is becoming more of a cultural arts center.

Member Glowienke questioned why some Boards and Commissions have five members and some have seven members.

Amended →

George Schroeder expressed concern that amending **Section 708** would affect the chances of the Charter being amended. He pointed out that the library has consistently ranked high in citizen surveys and believed that the vote in 1994 was probably to ensure that the library does not become susceptible to politics. Regarding the consistent language in **Sections 707, 708 and 709**, he believed that *may* should be removed.

Amended →

Jim Mosher suggested not changing **Section 707(c)** and questioned if the reference to Master Plan in **Section 707(a)** might be what is now called a General Plan; agreed with removing *may* in the three Sections; expressed support for the current language in **Section 708**; and believed that the Parks, Beaches and Recreation Commission should review the budget (**Section 709**), not just City staff.

Novell Hendrickson believed that *shall* should be added to all the sections; questioned why the Planning Commission is the only citizen body that receives a stipend; and disagreed with removing **Section 707(c)**, amending **Section 708** in any fashion, and removing the budget review from **Section 709**.

Dan Purcell questioned whether a dollar limit should be placed on Public Works projects that would require Planning Commission review (**Section 707**), and asked who the public is supposed to report any complaints about the Library Director or any other department head to. He expressed support for having the Parks, Beaches and Recreation Commission review the budget (**Section 709**).

Due to the time and in response to Chairman Watkins’ question, City Attorney Harp confirmed that these Sections can be brought back at the next meeting without having public comment; however the public may comment on the Sections during Public Comments on Agenda Items.

Member Glowienke suggested voting on **Sections 707 and 709**.

Motion by Member Glowienke, seconded by Member Wampole to approve the recommended change to **Section 707**, including striking out Section 707(c) in its entirety, changing *recommended* to *recommend*, changing *Master Plan* to *General Plan*, and removing *may* from the first sentence of the proposed language.

The motion carried by the following roll call vote:

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

Motion by Member Glowienke, seconded by Member Wampole to approve the recommended change to **Section 709**, including the removal of *may* from the first sentence of the proposed language.

The motion carried by the following roll call vote:

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

Member Savary requested more information about the Parks, Beaches and Recreation Commission's role.

VI. PUBLIC COMMENTS ON NON-AGENDA ITEMS - None

VII. ADJOURNMENT - Adjourned at 5:46 p.m. to Thursday, June 28, 2012, at 4:00 p.m. in the Events Center at the OASIS Senior Center, 801 Narcissus, Corona del Mar, 92625

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