

**CHARTER UPDATE COMMISSION
MINUTES**

Council Chambers
Tuesday, February 16, 2010
2:00 p.m.

I. ROLL CALL

Present: Commissioners Rush Hill, Richard Luehrs (arrived at 2:25 p.m.), Dennis O'Neil, Karen Rhyne, Larry Tucker, Paul Watkins, Chairwoman Marian Bergeson, and Mayor Pro Tem Henn

Absent: None

II. APPROVAL OF FEBRUARY 2, 2010 MEETING MINUTES

1. Chairwoman Bergeson noted that the minutes have been amended and that copies of the change have been distributed.

Motion by Commissioner O'Neil, seconded by Commissioner Rhyne, to waive reading of subject minutes, approve as amended, and order filed.

The motion carried by the following roll call vote:

Ayes: Hill, O'Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson

Absent: Luehrs

III. CHARTER SECTION DISCUSSIONS (COUNCIL-APPROVED PROVISIONS)

2. CHARTER SECTION 1110 – PUBLIC WORKS CONTRACTS.

Public Works Director Badum provided the staff report and noted that tying public works contracts to the Consumer Price Index (CPI) or Engineering News Record (ENR) construction index would provide the City with more flexibility so that this issue would not need to go to a vote every time an adjustment is needed. He referenced Council Policy F-14 (Authority to Contract for Services) relative to informal contracts and noted that staff is recommending changing the limit from \$30,000 to \$125,000 which is the standard for many cities.

Following discussion, City Attorney Hunt received confirmation that the Commission is in favor of increasing the threshold to \$125,000 and having it tied to either the CPI or ENR, but would like to see specific language that allows for more flexibility in the types of bidding methods used by the City.

It was moved by Commissioner Watkins to defer consideration until the Commission can review the specific language.

Substitute motion by Commissioner O'Neil, seconded by Commissioner Rhyne, to recommend to the City Council that Charter Section 1110 1) be amended to increase the contract cost limits requiring formal bidding to \$125,000 (Alternative 1); 2) include a provision granting City Council the power to regulate all aspects of public works projects, including the bidding, award and performance of public works contracts, through ordinance or resolution; 3) tie the public works contract threshold to either the CPI or ENR construction index; and 4) bring back specific language that allows for more flexibility in the types of bidding methods used by the City.

W.R. Dildine, private citizen, believed that the limits, index amounts, and bidding procedures have been well-defined by the California Public Contract Code and noted that the California Uniform Construction Accounting Act's threshold is \$250,000.

The substitute motion carried by the following roll call vote:

Ayes: Hill, O'Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Absent: Luehrs

3. CHARTER SECTION 1402 - SALE OF WATER FRONT PROPERTY.

Harbor Resources Manager Miller provided the staff report and indicated that the public will still vote on any sale of water front property; however, the proposed amendment does not require a Charter amendment every time a property is sold. He emphasized that all Coastal Commission and State land regulations and statutes will still be followed. City Attorney Hunt confirmed that Council Policy F-7 (Income Property) will be complied with prior to putting the issue on the ballot and that this section of the Charter deals with sale of water front properties, not leases.

Motion by Commissioner Tucker, seconded by Commissioner O'Neil, to recommend to the City Council that Charter Section 1402 be amended to allow for the sale or conveyance of waterfront property upon an affirmative vote of the electorate (Alternative 1).

The motion carried by the following roll call vote:

Ayes: Hill, Luehrs, O'Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Noes: None

4. CHARTER SECTIONS 800 - 803 - CIVIL SERVICE SYSTEM.

Chairwoman Bergeson suggested that questions and issues regarding the civil service system be forwarded to staff ahead of time.

City Attorney Hunt reported that official discussions about the civil service system will begin in March and that the handout in the packet was to provide background. Human Resources Director Cassidy stated that her office has been evaluating what other charter cities and cities with civil service systems have done. She noted that the City's system is complex and has not evolved with the changing laws and practices. She stated that the City's Civil Service Board has served an important investigatory function and has the ability to hear appeals.

In response to Commissioner O'Neil's questions, Human Resources Director Cassidy noted that each jurisdiction can adopt its own rules; Bruce Praet, Esq., of Ferguson, Praet & Sherman has provided the City with a report; his law firm does advise cities on fire department issues; Mr. Praet can address the Commission if it is their desire; and that full-time lifeguards are covered under the civil service system. Regarding Lexipol, Human Resources Director Cassidy noted that it is updated every six months but contains many contradictions.

City Attorney Hunt reported that the four documents governing safety employees are their internal Standard Operating Procedures (SOP), the Memorandums of Understanding for the five bargaining units, the civil service ordinance (Ordinance

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No. 866) and the regulations recommended by the Civil Service Board to the City Council, and the City's Employee Policy Manual. He stated that the Civil Service rules are the only component of the civil service system that can be changed without a vote of the people. He noted that the Commission can bring the following options to Council regarding the civil service system: leave as is, modify, identify the appropriate role of the Civil Service Board, or repeal the civil service system. He indicated that the City will be asking the Commission to determine the appropriate role of the Civil Service Board in light of current personnel practices, and consider repealing the civil service ordinance and replace it with a Council-adopted ordinance. The ordinance can then be adapted to change as personnel-related laws change. He noted that this would not change the Charter responsibility to have a civil service system.

City Attorney Hunt noted that there is a discussion at the Council level about whether an Assistant Chief position should be instituted in the Police and Fire Departments, and whether that position should fall under the civil service system. He stated that this is not covered in Ordinance No. 866.

Regarding making recommendations relative to an ordinance that is not part of the Charter, City Attorney Hunt noted that the Commission is charged with addressing issues set forth by Council for the purpose of updating and modernizing the Charter. Further, the Commission may review the Charter and initiative-enacted ordinances, and make recommendations to Council to expand the list of issues to address. He noted that Ordinance No. 866 was adopted by a vote of the people.

Commissioner Watkins asked if the City Council has the authority to address non-safety employees. City Attorney Hunt indicated that the Charter discusses this as part of the City Manager's responsibilities and authorities.

Commissioner Tucker questioned why the civil service system was adopted. City Attorney Hunt commented that the system grew in the 1950s from the concept that City employment is a merit system, not based on political or family affiliations; however, all of the concerns of the past have been handled through laws. Further, the City also has an Employee Policy Manual that spells out the procedures and is administered by the City Manager. Human Resources Director Cassidy noted that any negotiated changes that supersede the Employee Policy Manual are handled through Memorandums of Understanding with the appropriate bargaining unit. Assistant City Manager Perkins added that many cities do not have a formal civil service system but have professional practices that are based on merit.

Mayor Pro Tem Henn emphasized that the Charter indicates that the City structure is a Council/Manager form of government to minimize and blunt the affects of politics and politicization when dealing with employees. He stated that it is the City Manager's responsibility to run the City and the City Council's responsibility to evaluate the City Manager, City Attorney, and City Clerk. This provides a layer of protection against abuses. He pointed out that the Civil Service Board structure, in some ways, duplicates and supplements the current structure outlined in the Charter.

Commissioner O'Neil determined that Mr. Praet's presence is not necessary since the Commission will not be rewriting the ordinance.

Chairwoman Bergeson expressed concern relative to political activities being conducted by the Police and Fire Departments, and whether they utilize public facilities and work hours to conduct political activities.

Paul Mattheis, Fire Division Chief, stated that the Civil Service Board allows him to conduct testing without concern about outside influences and believed that there are important components to the civil service system. Chairwoman Bergeson invited the Fire Department to be a part of the discussions.

Jeff Boyles, Fire Captain and Newport Beach Firefighters Association Chairman, emphasized that the association is not involved in any political activity during work hours and does not use City facilities, the Fire Department logo, or Fire Department apparatus while involved in political activities.

IV. ADDITIONAL PROVISIONS TO BE CONSIDERED (NOT YET COUNCIL APPROVED)

5. DETERMINE WHETHER THERE ARE OTHER CHARTER PROVISIONS THAT SHOULD BE REVIEWED.

Commissioner Luehrs asked whether Charter Section 423 (Protection from Traffic and Density - Greenlight) should be brought before Council to see if this issue should be considered for inclusion in the Commission's work plan. He believed that there has been a decline in overall economic activity since Greenlight and the General Plan were approved. Commissioner Tucker noted that the updated General Plan was approved by the voters and believes that changing the General Plan so soon after the 2006 election would not be advisable. Commissioner O'Neil expressed the opinion that bringing Greenlight into the Charter update discussions could jeopardize the bigger effort to modernize and clean-up the Charter.

The issue died for lack of a motion.

6. REQUEST FROM THE WEST NEWPORT BEACH ASSOCIATION TO REVIEW CHARTER SECTION 400 - CITY COUNCIL ELECTIONS.

Commissioner O'Neil expressed the opinion that the current at-large election system has historically worked well and that the Commission's time would not be productive in discussing the issue. Commissioner Tucker and Chairwoman Bergeson agreed. Commissioner Watkins, West Newport Beach Association (WNBA) Board Member, indicated that it may make sense for the Commission to vet the issue if it is Council's desire.

The issue died for lack of a motion.

7. REQUEST FROM THE NEWPORT BEACH CHAMBER OF COMMERCE TO CONSIDER RECOMMENDING A NEW CHARTER PROVISION REGARDING THE FUNDING OF NON-PROFIT ORGANIZATIONS.

City Attorney Hunt commented on procedural issues, noting that none of the Commissioners associated with the Chamber of Commerce have a conflict of interest since the Commission is only a recommending body. Further, the Commission is not required to file a Statement of Economic Interests (Form 700).

Commissioner Watkins, Chair of the Chamber of Commerce, noted that he provided the Commission with correspondence at the last meeting and that it is included with the staff report. He discussed the section in the Charter related to the Chamber and stated that many events held in the City benefit from City sponsorship. He believed that the

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Chamber should be allowed to apply for sponsorship like any other non-profit organization.

Motion by Commissioner Hill, seconded by Commissioner O'Neil, to refer the issue to Council to determine whether it should be added to the Commission's work plan.

Commissioner Hill indicated that this issue is not specifically for the Chamber, even though the Chamber is mentioned in the Charter. He noted that the Special Events Advisory Committee was established to evaluate event funding and define an organized method for supporting these events. This should also entail removing any unique Charter restrictions.

In response to Commissioner Tucker's question, Commissioner Luehrs reported that the Chamber has an affiliate Political Action Committee (PAC), the Business and Community PAC (BAC PAC) of Newport Beach Chamber of Commerce, and noted that it does provide Council endorsements. Commissioner Tucker expressed concern relative to allowing organizations that endorse Council candidates to have the ability to request financial support from the City. Commissioner Watkins believed that a firewall exists between BAC PAC and the Chamber. Chairwoman Bergeson noted that a 501(c)(3) organization cannot have political involvement. City Attorney Hunt indicated that he will research this.


The motion carried by the following roll call vote:

Ayes: Hill, Luehrs, O'Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Noes: None

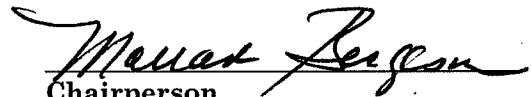
V. PUBLIC COMMENTS - None

VI. ADJOURNMENT - Adjourned at 3:55 p.m. to Tuesday, March 2, 2010, at 2:00 p.m. in the Council Chambers.

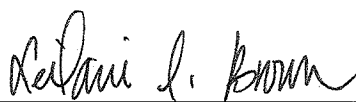
The agenda was posted on February 11, 2010, at 8:15 a.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.



Recording Secretary



Chairperson



City Clerk

