

**CHARTER UPDATE COMMISSION
MINUTES**

Newport Beach Central Library – 1000 Avocado Avenue
Tuesday, April 20, 2010
2:00 p.m.

I. ROLL CALL

Present: Commissioners Rush Hill, Richard Luehrs, Dennis O'Neil, Karen Rhyne, Larry Tucker, Paul Watkins, Chairwoman Marian Bergeson, and Mayor Pro Tem Henn
Absent: None

II. APPROVAL OF MARCH 16, 2010 MEETING MINUTES

1. Without objection, Commissioner Watkins requested that the motion for Item 5 (Newport Beach Municipal Code Section 3.24.010) be amended to read, "...evaluate Chamber of Commerce funding requests according to Council Policy and the Code Language in existence *for all community organizations* at the time the request is made."

Motion by Commissioner Luehrs, seconded by Commissioner Hill, to waive reading of subject minutes, approve as amended, and order filed.

The motion carried by the following roll call vote:

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

III. CHARTER SECTION DISCUSSIONS

2. **CHARTER SECTIONS 710-711 – CIVIL SERVICE BOARD; CHARTER SECTIONS 800-803 – CIVIL SERVICE SYSTEM; AND ORDINANCE NO. 866.**

City Manager Kiff reviewed the Civil Service System matrix included with the staff report. He indicated that staff is recommending that the key elements from Ordinance No. 866 be placed in the Charter, that the Civil Service Board no longer be involved in the recruitment and selection process when the Civil Service Board could be hearing appeals about the position, and that Police Department and Fire Department Chief Assistant positions not be included in the Civil Service System. Human Resources Director Cassidy reported that the concepts in the staff report were presented to the Civil Service Board and they were generally supportive of the recommendations. She stated that the Civil Service Board is recommending that the recruitments for the Assistant Chief positions be an open recruitment. She noted that the summary document (matrix) replaces the staff report from the March 16 Commission meeting.

Mickey Dunlap, Civil Service Board Member, stated that he is satisfied with staff's recommendations and that previous concerns he had regarding repealing Ordinance No. 866 have been adequately addressed in the matrix and through staff explanations. He believed that an amended ordinance would assist with the mechanics of the Civil Service System. He questioned whether lifeguards in the Fire Department and non-safety employees in the Fire and Police Departments were included in the Civil Service System. He agreed that the hiring process for the Police Chief should be handled by the City Manager and staff; however, believed that the Civil Service Board should still review the list of candidates, but this does not need to be in the new ordinance.

Human Resources Director Cassidy reiterated that the recommendation is to strengthen the Charter language, sunset Ordinance No. 866 but replace it in the future with an ordinance approved by the Civil Service Board and Council, and incorporate the changes in the Civil Service Rules. City Manager Kiff indicated that the replacement ordinance will be contingent upon the voters repeal of Ordinance No. 866.

Robert Hawkins, Chair of the Planning Commission, speaking as a citizen, expressed concern about the provision in the draft that states that Civil Service Board rules and regulations must be approved by the City Attorney (Charter Section 711.a) since that could take away from the Civil Service Board's independence. He noted that the Planning Commission does not need City Council approval to change its rules or regulations, and questioned why the Civil Service Board needs to bring their changes to Council if the change does not affect City employees. He also believed that the Civil Service Board should be involved in the front end of the hiring process. Commissioner Tucker clarified that the Civil Service Board does not need to bring procedural changes to Council.

Commissioner Tucker agreed that the Civil Service Board decides what to bring to Council regardless if the City Attorney agrees with them. He requested that Section 711.a be amended to read, "The rules and regulations *as are adopted from time to time by the City Council* shall have the force and effect of law." He noted that Council does not always have to agree with the Civil Service Board's recommendation. He asked that Section 711.c.1 be amended to read, "...the action is lawful or *the* action is superseded..." For Section 801.2, he noted that the City has two Assistant City Managers. He thanked staff for preparing the matrix because it answered his previous question regarding the protections the Civil Service Board was concerned with. Acting City Attorney Mulvihill noted that Section 801.2 would apply to anyone with the "Assistant City Manager" job title. City Manager Kiff added that an Assistant City Manager is also a Department Head.

Pursuant to existing Charter duties, Acting City Attorney Mulvihill reported that the Office of the City Attorney reviews City documents to ensure that they are in legal form and substance. She indicated that the office will continue to perform this role regardless if the statement was removed from Section 711.a. Commissioner Watkins suggested substituting "review" for "approval."

Without objection, it was the consensus of the Commission to remove "after approval by the City Attorney" from Section 711.a; amend Section 711.a to read, "...the rules and regulations *as are adopted from time to time by the City Council* shall have the force and effect of law;" amend Section 711.c.1 to read, "...the action is lawful or *the* action is superseded by local, state or federal *law*;" and renumber Sections 800-803.

Chairwoman Bergeson noted that no one wished to speak on the issue of Assistant Chiefs in the Police or Fire Departments (Section 801). She emphasized that the Charter amendments need to provide sufficient latitude in order to not bind the City and also to avoid needing to bring this to a vote every time a new rule, regulation or law goes into effect.

Motion by Commissioner Tucker, seconded by Commissioner O'Neil to a) recommend to the City Council that Charter Sections 711 and 800-803 be amended to clarify and strengthen the scope of the Civil Service Board and System, including the removal of "after approval by the City Attorney" from Section 711.a; amendment of Section 711.a to read, "...the rules and regulations *as are adopted from time to time by*

the City Council shall have the force and effect of law,” amendment of Section 711.c.1 to read, “...the action is lawful or *the* action is superseded by local, state or federal *law*,” and the renumbering of Sections 800-803; and b) repeal Ordinance No. 866 and replace with a new Ordinance to comply with current local, state and federal law and the best practices in personnel which would not require a vote of the electorate (Alternative 1).

In response to Commissioner Luehrs’ questions, City Manager Kiff indicated that newly-numbered Section 801 encompasses lifeguards in the Fire Department and non-safety employees in both the Fire and Police Departments. Assistant City Attorney Mulvihill noted that the Civil Service System applies to these employees since they are employed by the Fire and Police Departments.

The motion carried by the following roll call vote:

Ayes: Hill, Luehrs, O’Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Absent: None

3. DRAFT CHARTER UPDATE COMMISSION REPORT TO THE CITY COUNCIL.

In response to Commission Tucker’s question regarding Charter Section 1110 (Public Works Contracts), Interim Assistant City Manager Perkins recommended, without objection that, rather than having Council choose either the Consumer Price Index (CPI) or Engineering News Record (ENR) for inclusion in the Charter, the language be written so it allows Council the flexibility to select an appropriate index as needed through the adoption of a Council resolution. Acting City Attorney Mulvihill agreed that language can be drafted to indicate that the amount shall be adjusted as provided for by City Council resolution.

Commissioner O’Neil stated that he will provide Interim Assistant City Manager Perkins with his non-substantive edits to the draft report.

Regarding Newport Beach Municipal Code Section 3.24.010 (Funding Requests from Chambers of Commerce), Commissioner Tucker expressed concern that the Newport Beach Chamber of Commerce has a political action committee that endorses candidates and questioned the appropriateness of requesting funding from the City when this occurs. He noted that he feels the same about labor organizations endorsing candidates. He suggested that the language remain in the Municipal Code, but the amount be updated based on what other organizations receive for community activities and suggested including a cost of living component. He also encouraged Commission members to offer reasons why he should concur with the Commission recommendation.

Commissioner Watkins noted that he is the Chair of the Newport Beach Chamber of Commerce, but does not know who serves on the Business and Community Political Action Committee (BAC PAC) of the Newport Beach Chamber of Commerce. He emphasized that BAC PAC is a separate entity from the Chamber and indicated that he would not be in favor of setting a limit when other organizations do not have one. He suggested treating all organizations the same and added that funding requests must go before the Special Events Advisory Committee (SEAC). Mayor Pro Tem Henn reported that SEAC is an advisory committee and will only be involved when an organization or event requests over \$20,000 in funding or in-kind services. Further, that the committee does not make final funding determinations, but makes recommendations to Council.

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Commissioner Luehrs stated that there is a firewall between the BAC PAC Board of Trustees and the Chamber of Commerce Board of Directors. Further, SEAC will analyze special events requests. He discussed the Chamber's history and its role in the City. He took issue that the Chamber of Commerce has been singled-out.

In response to Commission questions, Commissioner Luehrs indicated that the 11 BAC PAC Trustees are selected by the current Trustees, reported that it abides by Fair Political Practices Commission (FPPC) rules and regulations, and stated that he is unsure how BAC PAC Trustees can be removed.

Chairwoman Bergeson believed that this should be equitable and noted that the FPPC has specific rules regarding 501(c)(3) organizations. She indicated that Council should have flexibility in how funding should be allocated to an organization or event.

Commissioner O'Neil explained that Commissioner Tucker is not debating the Chamber's role in the community. The concern is that the Newport Beach Chamber of Commerce has a political action committee that is indirectly identified with it. Additionally, the political action committee supports or opposes ballot measures and Council candidates. He disclosed that he is also a Trustee on BAC PAC, but indicated that there is separation between BAC PAC's and the Chamber's activities. He stated that he will be supporting the recommendation to repeal NBMC Section 3.24.010.

Commissioner Hill believed that the purpose of SEAC is to ensure that the limited special event funds are distributed in a fair and equitable manner. Further, he believed that, if the Charter Update Commission had not been formed, Chamber of Commerce requests would have gone before Council and probably been approved without the knowledge of the funding limit in NBMC Section 3.24.010. He stated that he will be running for City Council and has been informed that many organizations that may request funding from the City, like the Conference and Visitors Bureau and labor organizations, interview candidates for one reason or another. He believed that there is a separation between the Chamber of Commerce and the BAC PAC and agreed that one organization should not be singled-out.

Commissioner Tucker indicated that he is now comfortable enough to have the report presented to Council with the current recommendation.

Chairwoman Bergeson reported that the recommendations presented this afternoon will be included in the updated report and that the Commission will review it one more time at the May 4th meeting prior to it going before Council. Mayor Pro Tem Henn noted that Council has the option to change, adopt or amend the Commission's recommendations.

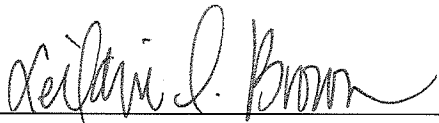
In response to Commission questions, Interim Assistant City Manager Perkins reported that the Office of the City Attorney will draft the language for the ballot measures. City Clerk Brown reported that the Orange County Registrar of Voter indicated that it is hard to determine how many measures the County will allow cities to place on the ballot and recommended that the City's questions be limited to no more than five. She confirmed that the Charter amendment questions can be grouped. Mayor Pro Tem Henn stated that condensing the questions so they are not confusing to the electorate will be part of Council's work plan.

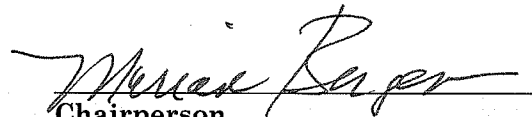
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Interim Assistant City Manager Perkins requested that edits be sent to her within the next couple of days. Commissioner Tucker requested that the updated draft report include red lines that denote the changes. She stated that, at the May 4th meeting, the Commission can also decide what type of presentation to make to Council at the May 25th Study Session and June 8th Regular Meeting.

- IV. **COMMISSION WORK PLAN** - None
- V. **PUBLIC COMMENTS** - None
- VI. **ADJOURNMENT** - Adjourned at 3:14 p.m. to Tuesday, May 4, 2010, at 2:00 p.m.

The agenda was posted on April 15, 2010, at 9:15 a.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.


Recording Secretary


Chairperson


City Clerk

