

CHARTER UPDATE COMMISSION
MINUTES
Council Chambers
Tuesday, May 4, 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 Curry
Absent: None

II. APPROVAL OF APRIL 20, 2010 MEETING MINUTES

1. Commissioner Hill requested that page 2 be amended to read, "Robert Hawkins, *Chairman of the Planning Commission, speaking as a citizen, ...*"

Commissioner Tucker requested that a sentence be added to the third paragraph of Item 3 that reads, "He also encouraged Commission members to offer reasons why he should concur with the Commission recommendation."

Motion by Commissioner O'Neil, 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, Tucker, Watkins, and Chairwoman Bergeson
Noes: None

III. CHARTER SECTION DISCUSSIONS

2. **DRAFT CHARTER UPDATE COMMISSION REPORT TO THE CITY COUNCIL.**

In response to Commission questions, Project Manager Standiford reported that an amendment to the report regarding Restrictions on Oil Drilling (page 16) was being distributed at the meeting in order to better explain the changes that would occur to Section 1401. She pointed out that the land area on which oil drilling could occur would be reduced from 360 acres to about 20 acres because that is the total land area of the three drilling sites being proposed. She noted that future sites are not being discussed in the Section because there are no other land areas that can be annexed into the City.

Regarding Ordinance No. 866 and Charter Sections 711 and 800 to 803 (Civil Service Board and Civil Service System), Acting City Attorney Mulvihill clarified that the amendments being recommended by the Commission would sunset Ordinance No. 866 and relocate certain provisions into the Charter. She referenced a letter received from the Police Management Association's (PMA) attorney late last week, and reported that she spoke with the attorney to make sure he understood the language they are objecting to relative to the Civil Service Board's review of a department's discipline determination currently exists in Ordinance No. 866 today. She noted that the PMA attorney was not aware that the provision currently exists. She indicated that the language does not just set out one standard of review (arbitrary and capricious standard), but also utilizes two other standards: 1) error in process and 2) lack of factual support for the decision. She opined that the three standards could deal with almost any objection that an employee would have. She reported that she encouraged the attorney to review the materials, explain the objection to the language, and attend today's meeting or provide information because she intended to explain the position of the Office of the City Attorney today. The attorney has not responded back to her.

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In response to Commissioner Watkins question, Acting City Attorney Mulvihill indicated that the proposed amendment (Section 711.c) is taken verbatim from Ordinance No. 866.

Commissioner Rhyne believed that the City's current language is incorrect and should be clarified by Council. Acting City Attorney Mulvihill indicated that the Office of the City Attorney will prepare a written opinion for Council, but stated that this might be an issue of semantics because the ordinance does follow the use of the three standards discussed earlier. She indicated that if an employee wanted to appeal a disciplinary decision, the appeal will in essence be a trial de novo if they can present a factual dispute. Commissioner Rhyne expressed concern that the burden of proof lies with the employee.

Commissioner O'Neil noted that any employee can pursue an appeal with the Civil Service Board using any of the standards. He asked if an employee can be denied the right to an appeal and if the employee has to prove their own case. He stated that the Commission's charge is to make recommendations to Council who will make the final decisions. He reported that he is satisfied with the current recommendations since an employee has the right to an appeal based on the three standards, but suggested clarifying how the hearings are to be conducted.

Human Resources Director Cassidy reported that in the Civil Service Board procedural rules, a settlement conference prior to the appeal hearing is required to be conducted and, if no agreement is reached, the Board will hear the issues similar to a trial de novo. She stated that the purpose for having hearing procedures is to bring forward the matter and have it heard to its fullest extent, from the perspectives of both the employee and the City. She reported that the procedures will need to be reviewed in conjunction with any Charter amendment. She indicated that historically, the Board has heard very few appeals.

Commissioner Tucker believed that this issue is beyond the Commission's purview, but should be made consistent with current law if it is not. He believed that the language should remain as written unless, upon further review, it is determined that the language needs amending. He stated that this should be done before Council hears the issues and prior to being placed on the ballot.

Commissioner Watkins indicated that he does not see the words "review" or "burden" upon his review of the language, and stated that he is not sure that this procedural matter needs to be addressed in this Section.

Commissioner Rhyne noted that the other court cases referenced by the PMA attorney indicate that the Civil Service Board only has authorities that are granted in the Charter. She added that she does not want the City to put amendments in the Charter that may produce negative reactions by the public and reduce the effectiveness of the body of work the Commission has done. Acting City Attorney Mulvihill emphasized that the Office of the City Attorney does not want anything in the Charter that is not consistent with existing law. She noted that the Charter sets out the authority of the Civil Service Board, but agreed that the procedural rules will need to be revisited if the amendment moves forward. She believed that the current Charter language and proposed amended language alone does not run afoul or is contrary to existing law.

Chairwoman Bergeson reiterated that the current Charter language comes from Ordinance No. 866. Acting City Attorney Mulvihill added that the amendment proposes to move other ordinance language into the Charter, but that the rules and regulations can be amended through the Municipal Code.

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Commissioner Tucker requested that "The" be removed from Section 711, so the sentence reads, "Rules and regulations as are adopted from time to time by the City Council shall have the force and effect of law."

Shari Pence, Construction Industry Force Account Council (CIFAC), provided a handout, discussed the California Uniform Construction Cost Accounting Act, and requested that the Commission consider utilizing the Act in Section 1110 as an alternative to recommending amendments to the charter related to public works contracting. She stated that the City would need to adopt a resolution and file it with the State Controller's Office if it decided to participate in the Act. Commissioner Tucker expressed his belief that this is beyond the Commission's purview and should be taken up with the City Council.

W. R. Dildine, resident, stated that the proposed limit increase for Public Works contracts (Section 1110) can only be used by cities that opt into the Uniform Construction Cost Accounting Act. He expressed hope that the City is not raising its force account limit from \$30,000 to \$125,000, and believed that all the supporting documentation for the proposed amendments has come from the Act. He reported that the California Uniform Construction Cost Accounting Commission reviews the Act every five years and the new limits do not have to wait for approval via legislation.

Motion by Commissioner O'Neil, seconded by Commissioner Luehrs, to approve and forward the amended Charter Update Commission Report to the City Council.

The motion carried by the following roll call vote:

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

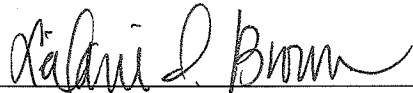
IV. PUBLIC COMMENTS - None

V. ADJOURNMENT - 2:45 p.m.

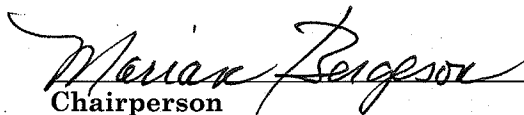
Chairwoman Bergeson thanked the Commission and staff for their hard work.

Mayor Curry commended the Commission for doing a yeoman service to the City and indicated that he is pleased with the Commission's report.

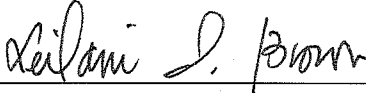
The agenda was posted on April 28, 2010, at 1:30 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.



Recording Secretary



Chairperson



City Clerk

