

GREEN, BRENDA

From: news@costamesaca.gov
Sent: Thursday, June 05, 2014 1:03 PM
To: GREEN, BRENDA
Subject: weigh in on charter

Submission information

Submitter DB ID : 7390
Submitter's language : Default language
IP address :
Time to take the survey : 1 min. , 15 sec.
Submission recorded on : 6/5/2014 1:02:36 PM

Survey answers

Name:
Terri Fuqua

Address:

City: Costa Mesa
State: CA
Zip Code: 92627

E-mail:

Give us your thoughts on the charter:

No one has given a reason for the need for a charter. Therefore, my husband and I will be voting NO...again.

GREEN, BRENDA

From: news@costamesaca.gov
Sent: Saturday, June 07, 2014 1:20 PM
To: GREEN, BRENDA
Subject: weigh in on charter

Submission information

Submitter DB ID : 7430
Submitter's language : Default language
IP address :
Time to take the survey : 2 min. , 41 sec.
Submission recorded on : 6/7/2014 1:20:11 PM

Survey answers

Name:
Dana

Address:

City: costa mesa
State: CA
Zip Code: 92627

E-mail:

Give us your thoughts on the charter:

Well since this Charter has been a topic, many citizens have asked what the 1st 10 or 15 action items will be implemented. I haven't heard any answers to the same question that has been ask many times. So please do tell me what those first steps will be.
Thank You for Your Time

GREEN, BRENDA

From: news@costamesaca.gov
Sent: Wednesday, June 11, 2014 12:24 PM
To: GREEN, BRENDA
Subject: weigh in on charter

Submission information

Submitter DB ID : 7465
Submitter's language : Default language
IP address :
Time to take the survey : 1 min. , 51 sec.
Submission recorded on : 6/11/2014 12:24:14 PM

Survey answers

Name:
Leigh Harrison

Address:

City: Costa Mesa
State: CA
Zip Code: 92626

E-mail:

Give us your thoughts on the charter:

You are doing a great job and choosing to help the city move forward in a positive manner. The introduction of the charter to allow us more flexibility in guiding the projects and plans is a great idea and I am fully supportive of this plan.

GREEN, BRENDA

From: news@costamesaca.gov
Sent: Wednesday, June 11, 2014 10:44 PM
To: GREEN, BRENDA
Subject: weigh in on charter

Submission information

Submitter DB ID : 7475
Submitter's language : Default language

Time to take the survey : 35 min. , 6 sec.
Submission recorded on : 6/11/2014 10:43:30 PM

Survey answers

Name:
Michael Stoddard

Address:

City: Costa Mesa
State: CA
Zip Code: 92626

E-mail:

Give us your thoughts on the charter:

Making Costa Mesa a charter city is a good idea since local control is better than state or federal government control. But only as long as there are safe guards in the charter to prevent abuse by local officials.

Recommended safeguards:

1.
Limit the salaries of local officials to the prevailing salaries of officials in similar positions in other cities of California. This will prevent the kind of abuse seen in the city of Bell.

2.

Property taxes cannot be increased by special taxes or by adding taxes that are called fees a la Jerry Brown.

3.
No bid contracts would only be allowed under the following conditions:

a
The service or product provided is only available from the company providing it.

b.
There was an emergency.

4.
Contracts should not be awarded simply based on the lowest bid. The better quality of the service or product must be part of the written justification for using a company with a higher bid.

5.
The chart city pdf must be capable of being text searched. The Measure V - Proposed Charter.pdf online could not be text searched. This pdf must be just one big image document, not a good idea.

Thank You for asking for feed back on this issue.

GREEN, BRENDA

From: news@costamesaca.gov
Sent: Saturday, June 14, 2014 12:38 PM
To: GREEN, BRENDA
Subject: weigh in on charter

Submission information

Submitter DB ID : 7502
Submitter's language : Default language
IP address
Time to take the survey : 13 min. , 22 sec.
Submission recorded on : 6/14/2014 12:37:58 PM

Survey answers

Name:
Brian hunt

Address:

City: Costa mesa
State: CA
Zip Code: 92626

E-mail:

Give us your thoughts on the charter:

It appears that the council does not respect the voters. We rejected your charter in 2012. We do not trust politicians. It is an insult to our intelligence that you trying again only two years Later. I will vote against it. I will also vote against the reelection of council members who vote for putting the proposal on the ballot

GREEN, BRENDA

From: news@costamesaca.gov
Sent: Tuesday, June 24, 2014 1:08 PM
To: GREEN, BRENDA
Subject: weigh in on charter

Submission information

Submitter DB ID : 7617
Submitter's language : Default language
IP address :
Time to take the survey : 13 min. , 48 sec.
Submission recorded on : 6/24/2014 1:07:45 PM

Survey answers

Name:
Barry Samuels

Address:

City: Costa Mesa
State: CA
Zip Code: 92626

E-mail:

Give us your thoughts on the charter:

I already voted against becoming a Charter in the last General Election. I am also against the current plan to become a Charter against the wishes of the citizens of Costa Mesa. The current City Council has cost the taxpayers millions of dollars in unnecessary legal bills. The Charter will result in more and more wasted taxpayer funds used to fight unnecessary lawsuits.

GREEN, BRENDA

From: news@costamesaca.gov
Sent: Wednesday, June 11, 2014 10:44 PM
To: GREEN, BRENDA
Subject: weigh in on charter

Submission information

Submitter DB ID : 7475
Submitter's language : Default language
IP address : [REDACTED]
Time to take the survey : 35 min. , 6 sec.
Submission recorded on : 6/11/2014 10:43:30 PM

Survey answers

Name:
Michael Stoddard

Address:

[REDACTED]
City: Costa Mesa
State: CA
Zip Code: 92626

E-mail:

[REDACTED] x

Give us your thoughts on the charter:

Making Costa Mesa a charter city is a good idea since local control is better than state or federal government control. But only as long as there are safe guards in the charter to prevent abuse by local officials.

Recommended safeguards:

1.
Limit the salaries of local officials to the prevailing salaries of officials in similar positions in other cities of California. This will prevent the kind of abuse seen in the city of Bell.
- 2.

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IP address : [REDACTED]
Time to take the survey : 2 min. , 41 sec.
Submission recorded on : 6/7/2014 1:20:11 PM

Survey answers

Name:
Dana

Address:

[REDACTED]
City: costa mesa
State: CA
Zip Code: 92627

E-mail:
[REDACTED]

Give us your thoughts on the charter:

Well since this Charter has been a topic, many citizens have asked what the 1st 10 or 15 action items will be implemented. I haven't heard any answers to the same question that has been ask many times. So please do tell me what those first steps will be.
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Survey answers

Name:
Terri Fuqua

Address:

[REDACTED]
City: Costa Mesa
State: CA
Zip Code: 92627

E-mail:

[REDACTED]

Give us your thoughts on the charter:

No one has given a reason for the need for a charter. Therefore, my husband and I will be voting NO...again.

City of Costa Mesa

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Submission information

Submitter DB ID : 6647
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 4/25/2014 3:56:28 PM
Time to take the survey : 3 minutes, 4 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:
T : Ryan

Address:
T : [REDACTED]
T **City:** : Costa Mesa
T **State:** : CA
T **Zip Code:** : 92627

E-mail:
T : [REDACTED]

Give us your thoughts on the charter:
T : Charter is a joke just like the council majority. Dictator Righeimer needs to go!

City of Costa Mesa



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Submission information

Submitter DB ID : 6567
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 4/22/2014 6:29:13 PM
Time to take the survey : 8 minutes, 51 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T :
Cynthia McDonald

Address:

T :
[REDACTED]
T **City:** :
Costa Mesa
T **State:** :
CA
T **Zip Code:** :
92626

E-mail:

T :
[REDACTED]

Give us your thoughts on the charter:

T :
I don't support wasting more money on putting this charter on the ballot. It doesn't really give us local control and we lose rights and remedies we would have under general law. You can't void contracts just because Costa Mesa becomes a charter city. There are no benefits or gains.

City of Costa Mesa



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Submission information

Submitter DB ID : 6114
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 3/26/2014 3:51:29 PM
Time to take the survey : 6 minutes, 42 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T :
Scott Williams

Address:

T :
[REDACTED]
T **City:** :
Costa Mesa
T **State:** :
CA
T **Zip Code:** :
92626

E-mail:

T :
[REDACTED]

Give us your thoughts on the charter:

T :
I believe very strongly in local control. The charter is limited by the State Constitution but, nonetheless, it provides local control over local projects. It allows the city managers to shop for the best construction deal and pay market wages. The managers will have to "manage" to make this a successful but that's why they manage!

City of Costa Mesa



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Submission information

Submitter DB ID : 5975
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 3/19/2014 4:31:09 PM
Time to take the survey : 1 minutes, 59 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T :
Diane Scioli

Address:

T : [REDACTED]

T **City:** :
Costa Mesa

T **State:** :
CA

T **Zip Code:** :
92627

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T :

I very much in support of Costa Mesa becoming a charter city. I thank those of you who are fighting hard for this goal and not bending to the will of employee unions. Diane Scioli

City of Costa Mesa



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Submission information

Submitter DB ID : 5933
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 3/18/2014 11:58:57 AM
Time to take the survey : 1 minutes, 12 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T : Carol L Beck

Address:

T : [REDACTED]

T **City:** : Costa Mesa

T **State:** : CA

T **Zip Code:** : 92627

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T : I can't figure out why anyone is working on a charter. We voted against it...and we will again.

City of Costa Mesa



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Submission information

Submitter DB ID : 5741
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 3/7/2014 10:30:13 PM
Time to take the survey : 2 minutes, 20 secs.

Survey answers

[Switch to submitter's answers edit mode](#)
Name:

T

:

Rhett Taylor

Address:

T

:

[REDACTED]

T

City: :

costa Mesa

T

State: :

CA

T

Zip Code: :

92627

E-mail:

T

:

[REDACTED]

Give us your thoughts on the charter:

T

Why is there nothing done about a Vehicle that has been abandoned on Kenwood Avenue for over 90 days. The vehicle has spider webs growing off of it. There has been 0 effort by the city to have this vehicle moved. This is a nuisance as well as a health hazard as those webs are of black widow spiders, in addition to the damage on the rear passenger tire.

City of Costa Mesa



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Submission information

Submitter DB ID : 5389
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 2/14/2014 12:59:04 PM
Time to take the survey : 14 minutes, 58 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T : Mike Harmanos

Address:

T : [REDACTED]

T **City:** : Costa Mesa

T **State:** : CA

T **Zip Code:** : 92627

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T :

As promised, here is the article I mentioned in public comment at the last charter meeting. <http://www.whittierdailynews.com/government-and-politics/20140211/la-mirada-committee-recommends-against-becoming-charter-city> I would like to point out the following quotes from the article: Their six-page report, which is expected to go to the City Council at its March 11 meeting, stated there was no compelling reason to seek local control of municipal affairs beyond what is already granted to general law cities. "There's no advantage, whether with economic development or revenue to becoming a charter city," said John Grotz, the committee's chairman. When the City Council launched the effort in August, city officials said a charter would provide more local control and allow it to

provide subsidies to attract businesses to La Mirada. However, since then the viewpoint has changed. "When I came here I thought the charter city was the way to go," said committee member John Lewis. "After looking at it, I came to the conclusion it was not." Thank you very much. Sincerely, Mike Harmanos

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La Mirada committee recommends against becoming charter city

*By Mike Sprague, Whittier Daily News
Tuesday, February 11, 2014*

WhittierDailyNews.com

The Whittier Daily News (<http://www.whittierdailynews.com>)

La Mirada committee recommends against becoming charter city

LA MIRADA >> A five-member citizen committee voted 5-0 Monday to recommend against proceeding with a city charter.

Their six-page report, which is expected to go to the City Council at its March 11 meeting, stated there was no compelling reason to seek local control of municipal affairs beyond what is already granted to general law cities.

"There's no advantage, whether with economic development or revenue to becoming a charter city," said John Grotz, the committee's chairman.

Grotz said he feared that having a charter would be a negative for the city.

"When you're looking at changing your form of government, it's not something you can change back and forth," he said. "Once you establish (the charter) you can't just get rid of it."

Grotz said he also was worried about what happened in the city of Bell when a charter was established and the salaries of officials were exempted from state caps.

When the City Council launched the effort in August, city officials said a charter would provide more local control and allow it to provide subsidies to attract businesses to La Mirada.

However, since then the viewpoint has changed.

"When I came here I thought the charter city was the way to go," said committee member John Lewis. "After looking at it, I came to the conclusion it was not."

Committee member Fred Latham credited the change to the presentation by City Attorney James Markman.

Markman at the committee's Jan. 13 meeting told the committee that charter and general law cities have the authority to provide economic development subsidies.

He said La Mirada would not have an economic development advantage if it were to become a charter city.

“Essentially, he was saying to us that general law cities have the same law and authority to create agreements with developers as a charter city does,” Latham said.

And in November, the City Council approved an agreement to provide furniture giant Living Spaces with half the sales tax it produces up to \$3 million over the next 10 years. City officials said the agreement was necessary to keep the store from leaving town.

Another change was over the prevailing wage issue. Until this year, charter cities could exempt themselves from state law requiring the payment of prevailing wages on public works contracts.

However, a new law went into effect on Jan. 1 taking away that power from charter cities, said Grotz.

URL: <http://www.whittierdailynews.com/government-and-politics/20140211/la-mirada-committee-recommends-against-becoming-charter-city>

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City of Costa Mesa

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Submission information

Submitter DB ID : 3485
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 9/21/2013 9:11:25 PM
Time to take the survey : 6 minutes, 28 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T : Jeffrey McConnell

Address:

T : [REDACTED]

T **City: :** Grand Terrace

T **State: :** CA

T **Zip Code: :** 92313

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T :

My little city of Grand Terrace, Ca is trying to force a UUTax on us due to the loss of RDA funds. I am on the central committee to stop the tax and return to a contract city as we once were in 1978. Looks like we need to become a charter city also. I would like to follow your trials and tribulations through this process so that I can help my city do the same.



September 20, 2013

Dear Charter Committee Members,

As a statewide organization that is dedicated to disseminating the most reliable information and research related to prevailing wage, Smart Cities Prevail ("SCP") wants to share our analysis of the complex question of what city-administered public works projects may be considered to be "municipal affairs." Upon careful review, we have found the Public Services Department September 9, 2013 memorandum presented to you for the September 11 Charter Committee meeting to be overconfident and exaggerated in its assessment of the extent to which the City could - under a Charter - permit contractors to lower wage and benefit standards for construction workers.

We find that only twelve - not nineteen - capital improvement projects in 2013-14 likely would meet the applicable tests and be deemed "municipal affairs." Budgeted construction costs for those projects total **only \$2.66 million.**

Smart Cities Prevail believes that state regulators and courts are likely to rule that projects funded by Measure M and/or the Gas Tax are not "municipal affairs" projects.¹ This is important because staff included six Measure M and/or Gas Tax-funded projects totaling \$11,671,600 in its list of projects that would not require prevailing wage under a charter.

Costa Mesa could face protracted, costly legal challenges if it were to invite bids for Measure M and/or Gas Tax-funded projects without requiring contractors to adhere to prevailing wage standards. "Public works coverage determinations" already issued by the State's Department of Industrial Relations ("DIR") signal that state authorities and courts would contradict Costa Mesa's position that such projects fall under an exception for "municipal affairs" public works projects.

¹ As explained in the staff memo, the courts have identified three factors in evaluating whether a particular public works project is a "municipal affair" or a matter of statewide concern:

1. The extent, if any, of extra-municipal control over the project;
2. The source and control of the funds used to finance the project; and
3. The nature and purpose of the project.

In the case of the Gas Tax, the Department of Industrial Relations determined in Public Works Case #2000-048 that using Gas Tax funds for a local construction project does trigger a prevailing wage requirement, due to the fact that the state “exerts authority and control” over the Gas Tax funds. City of Redding staff recently asserted that city projects that received Gas Tax funds would require prevailing wage under a Charter Provision. Staff from the charter city of Palo Alto declared that all of its Gas Tax-funded projects require prevailing wages. The Charter City of Newport Beach required prevailing wages when it invited bids earlier this year on a gas tax-funded pavement rehabilitation project.

Similarly, exempting prevailing wage on Measure M funds is highly questionable, due to the fact that the funds are from a countywide-approved tax that is overseen by the Orange County Transportation Authority (“OCTA”). The DIR recently issued Public Works Coverage Determination #2009-048, which is directly relevant. The Charter City of Lindsay argued that a pavement overlay project was a “municipal affair,” despite the fact that the project was funded in part with funds raised via a countywide sales tax and was overseen by a non-municipal authority. The DIR pointed out that “[t]he Tulare County Transportation Authority, not City, allocates and coordinates Measure R funds,” and opined that “[t]he federal loan, state grant and county taxes involved here cannot be fairly characterized as ‘local revenues.’” The explicit legal obligations of the City of Costa Mesa under its Master Funding Agreement with OCTA for Measure M-funded projects clearly indicate that control transcends Costa Mesa city boundaries.

Finally, the city intends to finance one of its listed capital improvement project with *bona fide* “Local” funds, but that project may nonetheless not meet the definition of being a “municipal affair.” Both control as well as the nature and purpose of the “Costa Mesa High School Track and Field Upgrade” project would be inextricably linked to the Newport-Mesa School District, which owns the site of the proposed project and retains authority to accept or reject the design proposals for the capital improvements. Numerous provisions of a District-approved Memorandum of Understanding suggest that the District intends to exert control over the project’s design as well as the possible involvement of extra-municipal agencies including the State Fire Marshall and the Division of the State Architect. The project therefore quite likely would not be found to be a strictly municipal affair.

In conclusion: Only **\$2.7 million**-worth (*not* \$14.8 million) of the \$18 million FY 2013-14 Capital Improvement projects listed in the 9/11/13 staff memorandum is relevant to the discussion of public works contractors lowering wage and benefit standards for their employees.²

SCP has provided documentation to back the points made above to the Public Services Department. Director Ernesto Munoz has acknowledged receipt and has stated that city

² We have replicated the Public Services Department’s table of City of Costa Mesa 2013-2014 Capital Improvement Projects by Funding Source, and make that table available at a publicly accessible internet site.

analysts would review the material. We wanted to be sure that the members of the charter committee have this information as the committee moves through the decision making process.

If you have any questions or if we can help in any other way, please feel free to contact me via (510) 545-3307. Thank you for giving back to your community, and for your careful consideration of the details and complexity of this matter.

Sincerely,

Scott Littlehale

Scott Littlehale
Senior Research-Analyst

Program/Project Name	Fund 201	Fund 203	Fund 207	Fund 208	Fund 209	Fund 401	403/415/416	Total	Prevailing Wage Projects*	Non-RW Projects†
Parkway & Median Improvements, Program										
1 Median Improvements- Del Mar Avenue	-	-	-	-	-	\$200,000	-	\$200,000	\$200,000	\$200,000
2 Tree Planting Program	-	-	-	-	-	\$100,000	-	\$100,000	\$100,000	\$100,000
Street Improvements, Program										
3 Bicycle Racks at Various City Facilities	-	\$5,076	-	-	-	\$33,974	* -	\$39,050		
4 Bicycle Education at Elementary Schools	-	\$18,018	-	-	-	\$120,582	* -	\$138,600		
5 Bicycle Signal Project on Placentia Avenue	-	\$31,757	-	-	-	\$212,531	* -	\$244,288		
6 Bristol Street Medians (Baker St. to Newport Blvd.)	-	-	-	-	-	\$109,300	* -	\$109,300		
7 CDBG Alley Improvements- Alley No.'s 16 & 17	-	-	\$151,962	-	-	-	-	\$151,962		
8 CDBG Alley Improvements- Alley No.'s 120 & 121	-	-	\$315,000	-	-	-	-	\$315,000		
Storm Drain Improvements, Program										
11 Additional Lighting in Public Alleys	-	-	-	-	-	\$100,000	-	\$100,000	\$100,000	\$100,000
12 East 19th Street Safe Routes to School Project	-	-	-	-	-	\$770,900	* -	\$770,900		
13 Placentia Avenue- 20th Street Crosswalk	-	\$20,000	-	-	-	\$138,900	* -	\$158,900		
14 Placentia Avenue Medians (Adams Ave. to Wilson St.)	-	-	-	-	-	\$105,800	* -	\$105,800		
15 Red Hill Avenue Medians (McCormick Ave. to Bristol St.)	-	-	-	-	-	\$102,700	* -	\$102,700		
16 Wallace Avenue Rehabilitations	-	-	\$250,000	-	-	-	-	\$250,000		
Curbs and Sidewalks, Program										
21 Concrete Walkway Replacement- Various Parks	-	-	-	-	-	\$50,000	-	\$50,000	\$50,000	\$50,000
22 TeWinkle Park - Middle Lake Repairs	-	-	-	-	-	\$50,000	-	\$50,000	\$50,000	\$50,000
23 Rehabilitate Parking Lot- Various Locations	-	-	-	-	-	\$200,000	-	\$200,000	\$200,000	\$200,000
Park Development, Program										
24 Canary Drive Stairs	-	-	-	-	-	\$65,000	-	\$65,000	\$65,000	\$65,000
25 Fairview Park Multipurpose Trail	-	-	-	-	-	\$835,959	* -	\$835,959		
26 Park Security Lighting Replacement Program	-	-	-	\$475,000	-	-	-	\$475,000	\$475,000	\$475,000
27 Parking Lot Lighting at Fairview Park	-	-	-	-	-	\$650,000	-	\$650,000	\$650,000	\$650,000
28 Parsons School Field Lighting	-	-	-	-	-	\$20,000	-	\$20,000	\$20,000	\$20,000
29 Smallwood Park Improvements	-	-	-	-	-	\$250,000	-	\$250,000	\$250,000	\$250,000
Building Maintenance, Program										
31 Building Maintenance Projects Total FY 13-14 CIPs	-	-	-	-	-	\$500,000	-	\$500,000	\$500,000	\$500,000
	\$3,250,000					\$8,871,800		\$18,054,059	\$14,831,600	\$2,860,000
								100%	82%	14.73%

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



January 5, 2001

Michael S. Potts
Contract Compliance Representative
Southern California Labor/Management
Operating Engineers Contract Compliance
[REDACTED]
Pasadena, CA 91103

RE: Public Works Case No. 2000-048
Michelson Drive Median Landscape
City of Irvine

Dear Mr. Potts:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the Michelson Drive Median Landscape Improvements ("Project") is a public work, and the City of Irvine's ("City") charter city status does not exempt it from the requirement to pay prevailing wages.

The Project involves the construction of median landscape improvements on a street within the City. Improvements include sawcutting and removal of existing roadway asphalt pavement and sub-base, construction of median curbs, installation of landscaping and irrigation systems, slurry sealing and striping of existing roadway, and the construction of reclaimed water, telephone and power utility laterals in support of the landscaping. The contract for the work is between the City and a private contractor, GMC Engineering. According to a letter from the City's senior accountant, the Project is being funded with \$259,000 in City general funds and \$371,000 in state gasoline sales tax funds.

Labor Code section 1720(a) generally defines public work to mean: "Construction, alteration, demolition or repair work done under contract and paid for in whole or in part out of public funds." The Project is construction and alteration work, performed under contract and paid for out of public funds. As such, the Project is a public work.

Letter to Michael S. Potts
Re: Public Works Case No. 2000-048
January 5, 2001
Page 2

The issue presented here concerns the application of California's prevailing wage laws to a charter city. Under article XI, section 5 of the California Constitution, a city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to general laws." The City, by operation of article II, section 200 of its charter, has availed itself of this constitutional home-rule privilege.¹ Whether the charter city exemption from state regulation applies here depends on whether the Project is purely a municipal affair or a matter of statewide concern.

In *Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115, the California Supreme Court considered the following factors in determining whether a project is a municipal affair: (1) the extent of non-municipal control over the project; (2) the source and control of the funds used for the project; and (3) the nature and purpose of the project. Subsumed within the third factor is the project's geographic scope. *Young v. Superior Court of Kern County* (1932) 216 Cal. 512, 517-518.

Regarding the first factor, the City let the contract and appears to have control over the construction of the Project. Regarding the third factor, the Project involves median landscape improvements to a single street entirely within the bounds of the City.

As to the second factor, over 50 percent of the Project's funding derives from state gasoline sales tax ("gas tax") revenue, over which the state exerts its authority and control, as described below.

Article XIX, section 1 of the state Constitution mandates that gas tax funds be used for specified purposes. Under article XIX, section 3, the sole authority to allocate gas tax funds to cities, counties and other areas of the state is vested by the Constitution in the state Legislature.

¹ Pursuant to section 1 of City Ordinance No. 98-03 of January 27, 1998, section 6-10-216 was added to the City's Municipal Code to explicitly exempt from California's prevailing wages laws those contracts undertaken by the City that are within the realm of the City's "municipal affairs."

Letter to Michael S. Potts
Re: Public Works Case No. 2000-048
January 5, 2001
Page 3

Gas tax funds derive from three types of taxes, the Motor Vehicle Fuel License Tax established by Revenue & Taxation Code sections 7301 *et seq.*, the Use Fuel Tax established by Revenue & Taxation Code sections 8601 *et seq.*, and the Diesel Fuel Tax established by Revenue & Taxation Code sections 6001 *et seq.* These taxes are deposited into the Highway Users Tax Account in the State Transportation Tax Fund and apportioned to cities under Streets & Highways Code sections 2105(b), 2106 and 2107. Cities are required to set up a "special gas tax street improvement fund" into which the apportioned funds must be deposited. Streets & Highways Code § 2113. All cities and counties that receive gas tax funds must file annually with the State Controller a complete report of expenditures during the preceding fiscal year. Streets & Highways Code § 2151. No gas tax funds will be paid if the report is not filed. Streets & Highways Code § 2155. Also, according to the Division of Audits of the State Controller's Office, the annual reports regularly are audited to ensure that cities and counties spend gas tax funds only for authorized purposes and that proper accounting procedures are employed to track these expenditures.

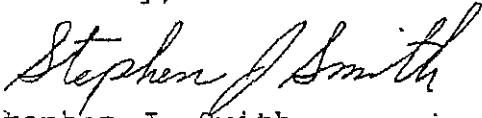
Given the above, no factual or legal basis can be found for the City's position that gas tax funds are local by nature and that there are no state funds involved in this Project. See, Memorandum of City Attorney, September 18, 2000, p. 3.² Cities have no rights to gas tax funds, other than that which is granted to them by the state constitutional and statutory scheme. Gas tax funds are state revenue over which the state exerts its control through reporting requirements and audit procedures. Accordingly, analysis of the second factor takes the Project outside the ambit of a municipal affair and renders the charter city exemption inapplicable.

² In footnote 2 of the City Attorney's Memorandum, Streets & Highways Code section 2113 is described as "permit[ting] a city to create a 'Special Tax Street Improvement Fund' . . . to fund local improvement projects without being subject to the prevailing wages where the projects . . . fall under the category of 'municipal affairs.'" This misstates the law. First, in order to receive gas tax funds, cities are **required**, not permitted, to set up the special fund. Second, section 2113 makes no mention of prevailing wages. It states, in relevant part, "[I]n making any expenditure a city shall follow the law governing it in regard to the doing of the particular type of work in cases which are not exclusively municipal affairs." There is no indication that this enactment was intended to disturb state law regarding payment of workers on a construction project.

Letter to Michael S. Potts
Re: Public Works Case No. 2000-048
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Based on the foregoing, I conclude that the Project is not a municipal affair but rather a matter of statewide concern that comes within the domain and regulations of the general laws of the state. Therefore, the Project, a public work, is subject to California's prevailing wage requirements.

Sincerely,

A handwritten signature in cursive script that reads "Stephen J. Smith". The signature is written in dark ink and is positioned above the typed name and title.

Stephen J. Smith
Director

cc: Daniel M. Curtin
Chief Deputy Director

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



February 25, 2010

Bryan Berthiaume
Executive Director
Foundation for Fair Contracting
3807 Pasadena Avenue, Suite 150
Sacramento, CA 95821

Re: Public Works Case No. 2009-048
2007 Tulare Road Overlay Improvement Project
City of Lindsay

Dear Mr. Berthiaume:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to California Code of Regulations, title 8, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the 2007 Tulare Road Overlay Improvement Project (the "Project") in the City of Lindsay ("City") is a public work; and, City's chartered city status does not exempt it from the requirement to pay prevailing wages.

Facts

The Project entailed the re-paving and re-striping of Tulare Road, a two-mile long, two lane stretch of arterial roadway, in City. City posted invitations to bid in August 2008. The Notice Inviting Bids states: "This [P]roject is wholly funded by local revenues and is therefore exempt from prevailing wage requirements." The contract was awarded to Mitch Brown Construction, Inc. ("Contractor").¹ The Notice of Completion was recorded on September 15, 2009.

To finance the Project, City received funding from multiple outside funding sources.

City received a \$225,000 grant from the State of California Integrated Waste Management Board, subsequently renamed CalRecycle ("CIWMB"). CIWMB receives an annual appropriation from the California Tire Recycling Management Fund to administer the Tire Recycling Act. (Stat. 1990, ch. 35 (Senate Bill 937).) Public Resources Code section 42872(a) allows for the awarding of grants to public entities involved in activities that result in reduce the stockpiling of waste tires or the disposal of waste tires at landfills. The \$225,000 grant to City was awarded from CIWMB's Targeted Rubberized Asphalt Concrete Incentive Grant Program, which provides financial assistance to first time or limited users of rubberized asphalt concrete made from recycled waste

¹Both the Instructions to Bidders and the construction contract contain language similar to the prevailing wage exemption statement in the Notice Inviting Bids quoted above. Both documents state that City determined the Project to be exempt under City Ordinance No. 467. It should be noted, however, that this ordinance was effective for fiscal years 1995/1996 through 1997/1998, and that the construction contract here was entered into 10 years later. See Instructions to Bidders, Section 1B-14, p. 3; construction contract, Eighth ¶, p. 2.

tires. To qualify for the grant, City was required to certify compliance with principles of Environmental Justice as defined by Government Code section 65040.12(e) and pass a resolution authorizing the grant application. Additional conditions required by CIWMB included the filing of Reliable Contractor Declaration and Recycled-content Certification forms, the posting of a CIWMB-approved sign,² approval by the CIWMB grant manager of changes or modifications to the Project, the filing of progress and final reports, the maintenance of records for auditing purposes, and the scheduling of a CIWMB-sponsored training prior to construction. On February 27, 2008, CIWMB issued the Notice to Proceed, which authorized City to begin work on the Project. Under the terms and conditions of the grant, CIWMB had the right to issue a stop work notice requiring City to cease all work on the Project.

City also received a \$1.6 million Community Facilities Loan from Rural Housing Services, United States Department of Agriculture ("USDA"). A document entitled USDA Rural Development Bid Requirements was included in City's bid package. The construction contract between City and Contractor did not become effective until approved by a representative of USDA Rural Development, which occurred on October 10, 2008.

The method of repaying the USDA loan was accomplished through a series of contractual agreements amongst City, USDA and the Lindsay Financing Authority, a joint powers authority,³ ("Authority"). City entered into a Property Lease with Authority in which City agreed to lease Tulare Road to Authority for one dollar. City and Authority then entered into the Lease Agreement in which City agreed to lease Tulare Road back from Authority for annual payments starting on November 12, 2009 at \$52,300 and increasing over the next 19 years to \$116,912. City, Authority and USDA entered into an Assignment Agreement in which Authority agreed to assign its rights under the Lease Agreement to USDA in consideration for the USDA loan to City. The Lindsay Financing Authority Certificates of Participation Road Improvements (Measure R) was issued in an aggregate principal amount of \$1.6 million, acknowledging USDA's entitlement to City's lease payments under the Lease Agreement.

As indicated in the Certificates of Participation, the USDA loan is being repaid through the above financing mechanism out of Measure R funds. Passed by residents of the County of Tulare ("County") in 2006, Measure R is a one-half cent sales tax that in the next 30 years is expected raise more than \$652 million in County revenue to address County's major transportation needs. The Tulare County Association of Governments, composed of representatives from each of County's eight cities, the Tulare County Board of Supervisors and staff, also serves as the Tulare County Transportation Authority, which coordinates all aspects of Measure R. Through the 1st quarter of the 2009/2010 fiscal year, the Tulare County Transportation Authority allocated \$20,576.46 in Measure R funds to City for servicing the USDA loan.⁴

²According to a photograph submitted by City to CIWMB, the CIWMB-approved sign at the Project site states: "Funded By A Grant From California Integrated Waste Management Board; The Repaving Of This Street With Rubberized Asphalt Diverted 10,730 Waste Tires From California's Landfills; Zero-Waste-You Make It Happen!"

³Authority operates pursuant to a Joint Exercise of Powers Agreement dated July 1, 1990, between City and the Lindsay Redevelopment Agency. See \$1,600,000 Lindsay Financing Authority Certificates of Participation Road Improvements (Measure R), Certificate Regarding Effectiveness of Joint Powers Agreement, November 12, 2008.

⁴Under the Measure R Cooperation Agreement entered into on May 30, 2007, between City and the Tulare County Association of Governments, acting as the Local Transportation Authority, City was required to install Measure R signs approved and/or required by Authority at both ends of the Project site. A representative of the Tulare County

Section 3 of the Assignment Agreement states: "Authority does hereby absolutely assign and transfer to the United States, all of its right, title and interest under the Lease Agreement, including but not limited to its right to receive the Lease Payments from City under the Lease Agreement; ... and otherwise to protect its interests and enforce its rights under the Lease Agreement in the event of a default by City." Under section 9.2 of the Lease Agreement, remedies on default include the right to enter the property in order to take possession of the property or re-let it, and to terminate the Lease Agreement. Section 9.6 acknowledges that the rights and remedies of Authority under the Lease Agreement have been assigned to USDA with City's consent.

As the grantor, USDA imposes a series of conditions on its grantees. Under the terms of the USDA loan, USDA had approval authority over the construction contract, any contract change orders, and pay estimates. USDA dictated progress payment terms. USDA also participated in a mandated pre-construction conference, and conducted mandated pre-final and final inspections of the Project on November 7, 2008, January 8, 2009, February 9, 2009, April 14, 2009, and May 29, 2009. In addition, Contractor was required to create a Project sign in accordance with USDA specifications and post it at a location designated by a USDA representative.⁵

City became a chartered city on April 17, 1996. Its charter contains a "home rule" provision at section 2.03, which states as follows: "As regards municipal affairs, and all powers granted herein and hereby, this Charter shall supersede all laws inconsistent therewith." Section 8.11K of the charter allows the City Council to adopt its own bidding and wage requirements that are otherwise consistent with the charter. On September 16, 1996, the City Council passed Ordinance 482 enacting title 3, chapter 3.04 to the Lindsay Municipal Code. Section 3.04.210, subdivisions A and B state that public works contracts shall contain no provision for "payment of so-called prevailing wages" unless required by grant contract or funding mechanism.

Discussion

Labor Code section 1720,⁶ subdivision (a)(1) generally defines "public works" to mean: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds" Subdivision (b)(1) includes within the definition of "paid for in whole or in part out of public funds" the payment of money by the state or political subdivision of the state directly to the public works contractor. California Code of Regulations, title 8, section 16001(b) states:

Association of Governments provided the Department with a template of the sign used at the Project site. The template includes the name and logo of the city undertaking the project and the statement: "This Project is funded by: Measure R; Tulare County Association of Governments: YOUR TAX DOLLARS AT WORK."

⁵ The sign's specifications can be found at www.usda.gov/rus/water/ees/englib/contract.htm. As confirmed by a representative of USDA Rural Development, the USDA sign at the Project site included information about the Project and the following statement: "USDA Rural Development: Committed to the future of rural communities; Financed by United States Department of Agriculture (USDA) Rural Development; Barack Obama, President of the United States; Tom Vilsack, Secretary of Agriculture." See USDA Rural Development Supplemental Provisions 20, 20.1.

⁶ All further section references are to the California Labor Code, unless otherwise indicated.

Federally Funded or Assisted Projects. The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort.

The Project entails construction done under contract and paid for out of the federal, state and county funds described above. Therefore, the Project meets the definition of "public works" in subdivision (a)(1). The USDA loan triggers application of the above regulation concerning federally funded or assisted projects. Under the regulation, the Project is subject to state prevailing wage requirements because it was carried out by City, a California awarding body.

City asserts, however, that its chartered city status exempts it from state prevailing wage requirements on the Project. Under article XI, section 5, subdivision (a) of the California Constitution, a city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws." City has, by operation of its charter, availed itself of the constitutional power to make and enforce all laws and regulations with respect to its own municipal affairs.

The California prevailing wage law, a general law, does not apply to public works projects of a chartered city "as long as the projects in question are within the realm of 'municipal affairs'." (*Vial v. City of San Diego* (1981) 122 Cal.App.3d 346, 348, citing *City of Pasadena v. Charleville* (1932) 215 Cal.384, 392 [disapproved on other grounds by *Purdy and Fitzpatrick v. State* (1969) 71 Cal.2d 566].) Whether the chartered city exemption applies in this case, therefore, depends on whether the Project is a municipal affair⁷ or a subject of statewide concern. The following three factors are considered in making this determination: (1) the extent of extra-municipal control over the project; (2) the source and control of the funds used to finance the project; and (3) the nature and purpose of the project. *So. Cal. Roads Co. v. McGuire* (1934) 2 Cal.2d 115. Related to the nature and purpose of the project are its geographical scope (*Young v. Superior Court of Kern County* (1932) 216 Cal. 512, 516-517) and its extra-territorial effects (*Pacific Telephone and Telegraph Co. v. City and County of San Francisco* (1959) 51 Cal.2d 766, 771-774).

Regarding the first factor, City planned and executed the Project, determined the scope of work and awarded the contract. By the terms and conditions of the USDA loan, however, the federal government had the authority to approve or reject the construction contract. In fact, the construction contract did not become effective until approved by USDA. USDA also monitored the course and completion of the Project through pre-final and final inspections, and had approval authority over change orders. Under the terms of the Assignment Agreement, USDA holds a leasehold interest in the Project site. By the terms and conditions of the CIWMB grant, the state also had authority over the Project. CIWMB's grant manager had the authority to approve changes or modifications to the Project. The filing of progress and final reports was required by the state, as was attendance at a CIWMB-sponsored training prior to construction. Moreover, the state

⁷In determining the applicability of the chartered city exemption, courts have asked whether the act or activity in question is "merely a municipal affair" (*City of Pasadena v. Chamberlain* (1928) 204 Cal. 653, 660 [emphasis supplied], *So. Cal. Roads Co. v. McGuire, supra*, 2 Cal.2d 115, 123 [emphasis supplied]); "strictly municipal affairs" (*Committee of Seven Thousand v. Superior Court of Orange County* (1988) 45 Cal.3d 491, 505 [emphasis supplied]); "purely municipal affairs" (*Baggett v. Gates* (1982) 32 Cal.3d 128, 136, citing *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 539 [emphasis supplied]); or, "exclusively municipal affairs" (*Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 291 [emphasis supplied]).

authorized the work to commence, and had the authority to issue a stop work notice. Given elements of both federal and state authority over the project, analysis of the first factor does not support City's assertion that the Project is purely a municipal affair.

Regarding the second factor, there were three funding sources – a federal loan, a state grant and a county-wide sales tax. Contrary to the Notice Inviting Bids, the Instructions to Bidders and the construction contract, none of the funds used to finance the Project was derived from local revenue.⁸ Representations made by City in the bid and contract documents are contradicted by signs City was required to post at the Project site, which stated as follows: "Financed by United States Department of Agriculture (USDA) Rural Development; Barack Obama, President of the United States; Tom Vilsack, Secretary of Agriculture;" "Funded By A Grant From California Integrated Waste Management Board;" and "This Project is funded by: Measure R; Tulare County Association of Governments: YOUR TAX DOLLARS AT WORK." Additionally, the terms and conditions of the USDA loan include external oversight over those federal funds. For example, USDA has approval authority over pay estimates and dictated progress payment terms. The Tulare County Transportation Authority, not City, allocates and coordinates Measure R funds. Plainly, the Project would have not been possible without the assistance of county, state and federal taxpayers. The manner in which their tax dollars is spent is surely of concern to more than just those living within the boundaries of City. Given the outside funding sources, analysis of the second factor does not support City's assertion that the Project is purely a municipal affair.

Regarding the third factor, the re-paving and re-striping of Tulare Road, a two-mile long, two lane stretch of arterial roadway located entirely within City's limits, appears to serve a municipal nature and purpose in improving the roadways within City. It would also appear, however, that the federal loan was given as part of a federal program to improve the quality of rural communities throughout the nation and the state grant was given as part of a concerted effort on the part of the state to reduce landfill waste by recycling tires. In addition, County's voters approved Measure R to address major county-wide transportation needs. Analysis of the third factor does not support City's assertion that the Project is purely a municipal affair.

In sum, analysis of the above factors renders the chartered city exemption inapplicable because the Project is not solely, merely, purely, or exclusively within the realm of a municipal affair. City relies on *Vial v. City of San Diego, supra*, 122 Cal.App.3d 346 to support its argument that the Project does fall within the realm of a municipal affair. *Vial*, however, involved the expenditure of "a city's funds" subject to its sole control. In *Vial*, the City of San Diego's resolution exempting public works projects from prevailing wage requirements did not apply to state or federally funded projects, such as the Project here. As such, City's reliance on *Vial* is misplaced.

City also asserts that receipt of the state grant does not negate the Project's municipal affairs status because the state grant is not explicitly conditioned on payment of prevailing wages. First, construction paid for in whole or in part out of a state grant is a public work subject to prevailing wage requirements under section 1720, subdivision (a)(1) regardless of whether prevailing wages are explicitly required by a grant contract or funding source. This is because the obligation to pay prevailing wages is statutory, not contractual, in nature. (See *Lusardi Construction Co. v. Aubry*

⁸Generally, a municipality can raise revenue through its taxing authority, the issuance of licenses or the exercise of police powers in imposing fines and penalties, assessing fees or leasing property. See McQuillin, *Municipal Corporations* (3rd Revised) § 39:3, pp. 5-6. The federal loan, state grant and county taxes involved here cannot be fairly characterized as "local revenues."

(1992) 1 Cal.4th 976, 986-987.) Second, City's municipal code, which does not require "payment of so-called prevailing wages" on public works projects unless required by grant contract or funding mechanism, does not control the analysis of whether the Project is a municipal affair for purposes of determining whether the chartered city exemption applies. That analysis is controlled by case law that has developed under the California Constitution. Under the *McGuire* factors, the Project does not fall within the realm of a purely municipal affair.

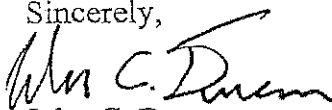
City similarly argues that receipt of the federal loan does not negate the Project's municipal affairs status because the federal loan is not subject to federal prevailing wage requirements under the Davis-Bacon Act. Regardless of whether a federally funded or assisted project is subject to the Davis-Bacon Act, it is nonetheless subject to California prevailing wage requirements if it is controlled or carried out by a California awarding body. (Cal. Code Regs., tit. 8, § 16001(b).) As explained by USDA: "Projects financed by this agency are not subject to the wage requirements of the Davis Bacon Act. ... Also, if the Owner is not a public body, then state prevailing wages may not be required."⁹ Conversely, if the owner is a public body, then state prevailing wages may indeed be required. As stated above, case law controls the municipal affairs analysis and, under the *McGuire* factors, the expenditure of federal funds removes the Project from the ambit of a purely municipal affair.

Finally, City contends that application of the chartered city exemption would be consistent with the Director's prior determination in PW 2008-030, *Lili Valley Water System Improvement Project, City of West Point* (November 3, 2008). It should be noted that *Lili Valley* did not involve a construction project undertaken by a chartered city. The project in *Lili Valley* was undertaken by a private utility company with a USDA loan and grant. The Director found that the project was not controlled or carried out by a California awarding body and therefore the application of state prevailing wages was not required. If the issue in this case were the applicability of the regulation concerning federally funded or assisted projects, the Project would be subject to California's prevailing wage laws because, unlike the project in *Lili Valley*, the Project here was carried out by a California awarding body. In relying on *Lili Valley*, City presumably is aware that the law characterizes the Project as a federally funded or assisted project, a characterization at variance with City's position that the Project is a municipal affair.

For the foregoing reasons, under the specific facts of this case, the Project is a public work that does not fall within the chartered city exemption and therefore is subject to California's prevailing wage laws.

I hope this determination satisfactorily answers your inquiry.

Sincerely,


John C. Duncan
Director

⁹USDA RURAL DEVELOPMENT, Architect-Engineers Instructions For Use Of The Contract Requirements Guide, Item #2.

1 MASTER FUNDING AGREEMENT NO. C-1-2757

2 BETWEEN

3 ORANGE COUNTY TRANSPORTATION AUTHORITY

4 AND

5 CITY OF COSTA MESA

6 FOR

7 M2 COMPREHENSIVE TRANSPORTATION FUNDING PROGRAMS

8 THIS AGREEMENT is effective this _____ day of _____ 2011, by and
9 between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange,
10 California 92863-1584, a public corporation of the State of California (hereinafter referred to as
11 "AUTHORITY"), and the City of Costa Mesa, 77 Fair Drive, Costa Mesa, CA 92626, a municipal
12 corporation (hereinafter referred to as "AGENCY").

13 RECITALS:

14 WHEREAS, Voters approved Renewed Measure M (M2) on November 7, 2006; and

15 WHEREAS, Orange County Local Transportation Authority Ordinance No. 3 outlines the M2
16 Transportation Ordinance and Investment Plan to fund transportation facility and service improvement
17 programs for a period of thirty years commencing on April 1, 2011; and

18 WHEREAS, AUTHORITY and AGENCY agree that M2 funding is subject to AGENCY fulfilling
19 M2 eligibility requirements; and

20 WHEREAS, AUTHORITY's Board of Directors approved the Renewed Measure M Eligibility
21 Guidelines - Local Agency Preparation Manual on January 25, 2010 and subsequent amendments on
22 March 14, 2011 and April 11, 2011; and

23 WHEREAS, AUTHORITY's Board of Directors approved the Comprehensive Transportation
24 Funding Programs (CTFP) Guidelines on March 22, 2010; and

25 WHEREAS, AUTHORITY will periodically update the Renewed Measure M2 Eligibility
26 Guidelines - Local Agency Preparation Manual and the CTFP Guidelines whereby the most recent

1 update is incorporated herein by reference; and

2 WHEREAS, AUTHORITY has approved AGENCY's competitive project(s) (hereinafter referred
3 to as "PROJECT(s)") as specified in Attachment A "Projects List" to receive funding under the CTFP;
4 and

5 WHEREAS, AUTHORITY has determined that AGENCY's PROJECT(s) has met the
6 requirements of and is eligible under the CTFP Guidelines; and

7 WHEREAS, AGENCY's "Project List" may be amended to include new projects with each
8 competitive call for projects and will be incorporated by Letter Agreement (See Attachment B) executed
9 by both parties and incorporated herein; and

0 WHEREAS, the Letter Agreement may include additional requirements for PROJECT(s) funded
1 with sources other than M2 or Local Fair Share Net Revenues sources; and

2 WHEREAS, AUTHORITY and AGENCY agree that Local Fair Share Program Net Revenues
3 are distributed on a formula basis to eligible jurisdictions; and

4 WHEREAS, payment terms for this Master Funding Agreement will be in accordance with
5 Chapter 10 of the CTFP Guidelines; and

6 WHEREAS, this Master Funding Agreement defines the specific terms and conditions and
7 funding responsibilities between AUTHORITY and AGENCY for CTFP and Local Fair Share Program
8 Net Revenues; and

9 WHEREAS, AUTHORITY's Board of Directors approved this Master Funding Agreement on
10 June 27, 2011; and

11 WHEREAS, the AGENCY's City Council approved this Agreement on the _____ day of
12 _____ 2011;

13 NOW, THEREFORE, it is mutually understood and agreed by AUTHORITY and AGENCY as
14 follows:

15 ARTICLE 1. COMPLETE AGREEMENT

16 A. This Agreement, including any attachments incorporated herein and made applicable by

1 reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this
2 agreement between AUTHORITY and AGENCY and it supersedes all prior representations,
3 understandings, and communications. The invalidity in whole or in part of any term or condition of this
4 Agreement shall not affect the validity of other term(s) or conditions(s) of this Agreement. The above
5 referenced Recitals are true and correct and are incorporated by reference herein.

6 B. AUTHORITY'S failure to insist on any instance(s) of AGENCY's performance of any
7 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
8 AUTHORITY's right to such performance or to future performance of such term(s) or condition(s), and
9 AGENCY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of
10 this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by
11 an authorized representative of AUTHORITY by way of a written amendment to this Agreement and
12 issued in accordance with the provisions of this Agreement.

13 C. AGENCY's failure to insist on any instance(s) of AUTHORITY's performance of any
14 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
15 AGENCY's right to such performance or to future performance of such term(s) or condition(s), and
16 AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any
17 portion of this Agreement shall not be binding upon AGENCY except when specifically confirmed in
18 writing by an authorized representative of AGENCY by way of a written amendment to this Agreement
19 and issued in accordance with the provisions of this Agreement.

20 **ARTICLE 2. SCOPE OF AGREEMENT**

21 This Agreement specifies the roles and responsibilities of both AUTHORITY and AGENCY as
22 they pertain to the subjects and projects addressed herein. Both AUTHORITY and AGENCY agree
23 that each will cooperate and coordinate with the other in all activities covered by this Agreement and
24 any other supplemental agreements, including Letter Agreements, which may be required to facilitate
25 purposes thereof.
26 /

1 ARTICLE 3. RESPONSIBILITIES OF AUTHORITY

2 AUTHORITY agrees to the following responsibilities for funding of PROJECT(s):

3 A. AUTHORITY shall allocate M2 Net Revenues as specified in Ordinance No. 3 and pay
4 AGENCY in accordance with the policies and procedures contained in the CTFP manual and
5 AUTHORITY's Board of Directors approved PROJECT budgets.

6 B. AUTHORITY shall provide guidance and oversight of the M2, state and federal funds in
7 compliance with M2 eligibility guidelines, CTFP Guidelines, state and federal funding requirements and
8 allocation and reporting requirements.

9 C. Within thirty (30) days of receipt of an acceptable initial payment CTFP invoice and
10 within sixty (60) days for an acceptable final payment invoice for eligible expenditures, AUTHORITY
11 shall, in accordance with Chapter 10 of the CTFP Guidelines, remit to AGENCY the required
12 reimbursement for applicable planning, environmental, engineering, right-of-way and construction
13 activities.

14 D. AUTHORITY shall pay Net Revenues allocated for the Local Fair Share Program to
15 eligible AGENCY within sixty (60) days of receipt by AUTHORITY.

16 E. AUTHORITY shall process any required Federal Transportation Improvement Program
17 (FTIP) amendments, Subject to state and federal regulations and guidelines prepared by the Southern
18 California Association of Governments.

19 F. At the request of AGENCY, AUTHORITY shall, in accordance with AUTHORITY
20 specification and no cost to the AGENCY excluding installation and removal expenses, provide signage
21 for all construction PROJECT(s) that are in excess of FIVE HUNDRED THOUSAND DOLLARS
22 (\$500,000) and exceed a ninety (90) day construction schedule.

23 G. AUTHORITY, or agents of AUTHORITY, may upon close-out of each PROJECT(s)
24 under this Agreement, perform an audit and or technical review to ensure that CTFP Guidelines policies
25 and procedures were followed. Such audit shall be performed within one hundred and eighty (180)
26 days of AUTHORITY receiving the final report for each PROJECT(s). If the audit or technical review

1 determines that any of the activities performed are ineligible for CTFP funding, AGENCY must return
2 the amount of funding used to perform the ineligible activity to AUTHORITY in accordance with Article
3 4.G.

4 ARTICLE 4. RESPONSIBILITIES OF AGENCY

5 AGENCY agrees to the following responsibilities for PROJECT(s):

6 A. AGENCY or AGENCY's designee will act as the lead agency for all phases of the
7 PROJECT(s) identified in Attachment A, approved for M2 funding.

8 B. AGENCY agrees that M2 funding is subject to AGENCY meeting all of the requirements
9 outlined in the M2 Eligibility Guidelines and CTFP Guidelines.

10 C. AGENCY agrees to implement and complete PROJECT(s) funded under this
11 Agreement in accordance with the CTFP Guidelines, M2 Eligibility requirements and application
12 submitted to AUTHORITY.

13 D. AGENCY agrees to submit all PROJECT information to the Federal Transportation
14 Improvement Program and OCFundTracker during semi-annual reviews and as requested by the
15 AUTHORITY in accordance with the prescribed deadlines.

16 E. AGENCY agrees to obligate funds in the programmed year in accordance with the
17 CTFP Guidelines and adhere to any additional requirements identified in any and all Letter
18 Agreement(s) amended hereto.

19 F. AGENCY agrees to enter into and required Letter Agreement for PROJECT(s) approved
20 by the Board to define specific funding and reporting requirements.

21 G. AGENCY shall return funds expended on activities, other than those approved by the
22 AUTHORITY's Board of Directors, within thirty (30) day's of AUTHORITY's written demand. Any
23 AGENCY which uses funds for other than transportation purposes shall be deemed ineligible to receive
24 funds for a period of five (5) years.

25 H. AGENCY agrees to dispose of any acquired right-of-way in excess of the required
26 transportation use. Excess right-of-way must be identified at the time of initial payment submittal and

1 prior to the disposal process. Resolution of any issues regarding whether or not a right-of-way is
2 excess to the transportation improvement will be by the mutual agreement of AUTHORITY and
3 AGENCY. Excess land acquired with CTFP funds shall be sold by AGENCY in accordance with
4 Government Code Sections 54220-54232 and proceeds from the sale shall be returned immediately to
5 AUTHORITY.

6 I. AGENCY will comply with all federal, state and local laws and regulations, including the
7 Renewed Measure M2 Eligibility Guidelines – Local Agency Preparation Manual and the CTFP
8 Guidelines, which are incorporated herein by reference.

9 J. AGENCY shall install and remove signage for all competitively awarded construction
0 PROJECT(s) that are in excess of \$500,000 and exceed a 90 day construction period in accordance
1 with AUTHORITY specifications during construction period. AGENCY may request AUTHORITY
2 furnished signage or it may choose to provide AGENCY furnished signage so long as said signage
3 conforms to AUTHORITY specifications as follows: Signage shall include a Measure M2 logo that is a
4 minimum of twelve inches (12") tall, an OCTA logo that is a minimum of three inches (3") tall (image
5 files provided by OCTA upon request), verbiage stating "Street Improvements Funded by Measure M"
6 in Myriad Pro, bold condensed font at two hundred and fifty six (256) pt. and "Your dollars at Work" in
7 Myriad Pro, bold condensed font at one hundred and eighty (180) pt.

8 **ARTICLE 5. DELEGATED AUTHORITY**

9 The actions required to be taken by AGENCY in the implementation of this Agreement are
10 delegated to its Director of Public Services, or his/her designee, and the actions required to be taken by
11 AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief Executive
12 Officer.

13 **ARTICLE 6. AUDIT AND INSPECTION**

14 AUTHORITY and AGENCY shall maintain a complete set of records in accordance with
15 generally accepted accounting principles. Upon reasonable notice, AGENCY shall permit the
16 authorized representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books,

1 accounts, and other data and records of AGENCY for a period of four (4) years after final payment, or
2 completion of audit by the AUTHORITY, or after final payment of debt service where local fair share
3 revenues were pledged, whichever is longer. For purposes of audit, the date of completion of this
4 Agreement shall be the date of AUTHORITY's payment of AGENCY's final billing (so noted on the
5 invoice) under this Agreement. AUTHORITY shall have the right to reproduce any such books, records,
6 and accounts. The above provision with respect to audits shall extend to and/or be included in contracts
7 with AGENCY's contractor(s).

8 **ARTICLE 7. INDEMNIFICATION**

9 A. AGENCY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
10 employees and agents from and against any and all claims (including attorney's fees and reasonable
11 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker's
12 compensation subrogation claims, damage to or loss of use of property alleged to be caused by the
13 negligent acts, omissions or willful misconduct by AGENCY, its officers, directors, employees or agents
14 in connection with or arising out of the performance of this Agreement.

15 B. AUTHORITY shall indemnify, defend and hold harmless AGENCY, its officers, directors,
16 employees and agents from and against any and all claims (including attorney's fees and reasonable
17 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker's
18 compensation subrogation claims, damage to or loss of use of property alleged to be caused by the
19 negligent acts, omissions or willful misconduct by AUTHORITY, its officers, directors, employees or
20 agents in connection with or arising out of the performance of this Agreement.

21 C. The indemnification and defense obligations of this Agreement shall survive its
22 expiration or termination.

23 **ARTICLE 8. ADDITIONAL PROVISIONS**

24 A. Term of Agreement: This Agreement shall continue in full force and effect through final
25 acceptance of PROJECT by AUTHORITY, or until March 31, 2041 whichever is later. This Agreement
26 may be extended at the mutual consent of both parties

1 B. Termination: This agreement is null and void if PROJECT is not awarded. However,
 2 AUTHORITY agrees to reimburse AGENCY for any costs incurred up to the official date of notification
 3 to AGENCY that PROJECT will not be awarded.

4 C. AUTHORITY and AGENCY shall comply with all applicable federal, state, and local
 5 laws, statutes, ordinances and regulations of any governmental authority having jurisdiction over the
 6 PROJECT(s).

7 D. Legal Authority: AUTHORITY and AGENCY hereto consent that they are authorized to
 8 execute this Agreement on behalf of said parties and that, by so executing this agreement, the parties
 9 hereto are formally bound to the provisions of this Agreement.

0 E. Severability: If any term, provision, covenant or condition of this Agreement is held to be
 1 invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the
 2 remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or
 3 condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

4 F. Counterparts of Agreement: This Agreement may be executed and delivered in any
 5 number of counterparts, each of which, when executed and delivered shall be deemed an original and
 6 all of which together shall constitute the same agreement. Facsimile signatures will be permitted.

7 G. Force Majeure: Either Party shall be excused from performing its obligations under this
 8 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
 9 cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God;
 10 commandeering of material, products, plants or facilities by the federal, state or local government;
 11 national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of
 12 such cause is presented to the other Party, and provided further that such nonperformance is
 13 unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

14 H. Assignment: Neither this Agreement, nor any of the Parties rights, obligations, duties, or
 15 authority hereunder may be assigned in whole or in part by either Party without the prior written consent
 16 of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be deemed

void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

I. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to authorize or require any Party to issue bonds, notes or other evidences of indebtedness under the terms, in amounts, or for purposes other than as authorized by local, state or federal law.

J. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.

K. Litigation fees: Should litigation arise out of this Agreement for the performance thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing party.

L. Notices: Any notices, requests, or demands made between the parties pursuant to this Agreement are to be directed as follows:

To AGENCY:	To AUTHORITY:
City of Costa Mesa 77 Fair Drive Costa Mesa, CA 92626	Orange County Transportation Authority 550 South Main Street P.O. Box 14184 Orange, CA 92863-1584
ATTENTION: Peter Naghavi, Director of Public Services	ATTENTION: Marvin Cruz, Senior Contract Administrator
Tel: (714) 754-5343 Email: PNaghavi@ci.costa-mesa.ca.us	Tel: (714) 560 - 5568 Email: mcruz@octa.net

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This Agreement shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-1-2757 to be executed on the date first above written.

CITY OF COSTA MESA

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____
Gary Monahan
Mayor

By: _____
Will Kempton
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: _____
Julie Folcik
City Clerk

By: _____

Kennard R. Smart, Jr.
General Counsel

APPROVED AS TO FORM:
AGENCY Attorney

APPROVAL RECOMMENDED:

By: _____
Tom Duarte
City Attorney

By: _____
Kia Mortazavi
Executive Director, Planning

Dated: _____

Dated: _____



June 27, 2011

City of Costa Mesa
77 Fair Drive
P.O. Box 1200
Costa Mesa, CA 92626

Subject: Agreement No. C-1-2757, City of Costa Mesa, "M2 CTFP Master Funding Agreement" – Letter Agreement No. 1

Dear Mr. Monahan:

This letter agreement serves as the Orange County Transportation Authority's (Authority) approval to incorporate Attachment A, in its entirety, as identified in Article 3. A, "Project List and Reporting Requirements", dated and effective June, 27, 2011 attached hereto as Attachment A, which is incorporated and made a part of the Agreement. All provisions set forth in Cooperative Agreement No. C-1-2757 apply. The Authority's Board of Directors approved the Project(s) on June 27, 2011.

The following additional Provisions apply to Project(s) approved by the Board on June 27, 2011:

1. For project(s) granted State-Local Partnership Program (SLPP) funds, the project is subject to additional reporting and allocation procedures identified in the 2010 Call for Projects – Regional Capacity Program State-Local Partnership Program (SLPP) Requirements. Request for California Transportation Commission (CTC) allocation documents must be submitted to Authority Local Programs no later than February 1, 2012. Additional requirements include:
 - a. Submittal of the California Environmental Quality Act (CEQA) environmental document to the CTC for consideration of funding no later than February 1, 2012.
 - b. 100% design completion.
 - c. Right-of-Way Certification approval by the California Department of Transportation (Caltrans) by February 1, 2012, in accordance with the California Department of Transportation (Caltrans) Local Procedures Manual (LAPM) Chapter 13.
2. The Agency agrees that SLPP funds are for construction phase work only. Cost savings realized in construction phase must be applied proportionately. Reprogramming of SLPP funds to other phases is not allowable.
3. The Agency is responsible for preparing and submitting to Authority all the CTC documentation needed including CEQA documentation for the Authority SLPP program of projects project nomination, baseline agreement, and allocation request three months prior to the required CTC meeting or in accordance with Item 1.
4. The Agency agrees that allocation approval or Letter of No Prejudice (LONP) approval from CTC is required prior to contract award and expenditure of funds. CTC allocation is currently expected in April/May 2012.
5. The Agency may advertise at its own risk for construction following completion of the required tasks in Item 1 but may not award a contract until either the allocation or LONP request is approved by the CTC.

ATED AGENCIES

Orange County
Transit District

ocal Transportation
Authority

ervice Authority for
away Emergencies

ted Transportation
Service Agency

tion Management
Agency

ervice Authority for
andoned Vehicles

AGREEMENT NO. C-1-2757
ATTACHMENT B

6. The Agency agrees that contract must be awarded within six months following the CTC allocation of funds or CTC approval of a LONP. If contract award is not possible within 6 months of allocation, Agency must immediately notify Authority and must notify Authority within 4 months of either LONP or allocation approval in order to be eligible to receive an extension for contract award.
7. The Agency agrees that unless noted in the allocation request, the project will be complete no later than 36 months following contract award for construction.
8. The Agency agrees that construction funds expire 36 months after the contract award date, unless extended by the CTC.
9. The Agency agrees to provide copies of all contractor contracts, invoices, and cancelled checks to Authority on a quarterly basis and any additional information required in accordance with invoicing requirements as outlined in the Caltrans LAPM Chapter 5.
10. The Agency agrees to follow procurement guidelines in the LAPM Chapter 15 and 16.
11. The Agency is responsible for submitting the required information for the quarterly reports to Authority at least 1 week prior to the due date required by Caltrans and a Caltrans Final Delivery Report to Caltrans within six months of project construction completion and the project becoming operable.
12. The Agency agrees that SLPP funded projects are subject to Caltrans audit within six months following submittal of the Final Delivery Report.

If you have any questions, you may contact Marvin Cruz at 714-560-5568, mcruz@octa.net.

Please execute this letter agreement and return the signed original to the attention of Marvin Cruz.

Accepted and Agreed

Kia Mortazavi
Executive Director, Planning
Orange County Transportation Authority

Gary Monahan
Mayor of Costa Mesa

Meena Katakia
Department Manager
Orange County Transportation Authority

c: - Roger Lopez, Adriann Cardoso, Abbe McClenahan
 - Accounting
 - Contract File

Enclosure

MEMORANDUM OF UNDERSTANDING

Section 1. PARTIES AND DATE.

This Memorandum of Understanding (the "MOU") is dated for identification purposes as of the ___ day of _____, 2013, and is entered into by and between the City of Costa Mesa, California, a municipal corporation and general law city organized under the law of the State of California, hereinafter referred to as "City," and the Newport-Mesa Unified School District, a school district organized and existing under the laws of the State of California, hereinafter referred to as "District," (sometimes together hereinafter referred to as "Parties"), with respect to the following:

Section 2. RECITALS.

2.1 District owns and operates Costa Mesa High School located at 2650 Fairview Road, Costa Mesa, CA, 92626.

2.2 District and City are authorized to jointly exercise any common powers pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California (section 6500 et seq.);

2.3 Education Code section 10900 et seq. authorizes the governing bodies of District and City to enter into agreements for the construction and maintenance of recreational facilities and the operation of programs of community recreation; and

2.4 It is in the best interest of the residents of the City of Costa Mesa that District and City study the joint construction and use of a Stadium and/or Athletic Facility at Costa Mesa High School for school and community recreational purposes (the "Project").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and City hereby agree as follows:

Section 3. TERMS.

3.1 **Effective Date.** The "Effective Date" shall be the date in which the latter of City's Council and District's Board, by official action, approve and execute this MOU.

3.2 **Funding.** Within 30 days from the effective date of this MOU, City shall tender to District the sum of Fifteen Thousand Dollars (\$15,000.00) to be used by District in its sole discretion to fund the Design Feasibility Study, in whole or in part for the Project.

3.3 Design Professional. Within 60 days of receipt of the City's funding, District's Board of Education shall retain a qualified design professional experienced in the design of sports facilities on public school sites, for the purpose of providing a Design Feasibility Study for the Project. The Design Professional shall deliver the Design Feasibility Study (Section 3.4) within 90 days of retention by the Board of Education.

3.4 Design Feasibility Study. The Design Feasibility Study shall include, but not necessarily be limited to, options and recommendations as to the following factors:

- a. Siting for a Stadium and/or Athletic Facility
- b. Capacity of a Stadium and/or Athletic Facility
- c. Design Concepts for a Stadium and/or Athletic Facility
- d. Parking, Driveway, Street Access and Traffic Control Arrangements
- e. Lighting Arrangements
- f. Sound Amplification Arrangements
- g. Consideration of the requirements of the California Environmental Quality Act ("CEQA") with respect to the above factors and any other CEQA factors, including the need for an Initial Study and the potential need for a Mitigated Negative Declaration, Environmental Impact Report, or other CEQA compliance.
- h. Determine what approvals may be required from non-Party agencies, including but not limited to: California Department of Education ("CDE"), Division of State Architect ("DSA"), County of Orange, State Fire Marshal, etc.
- i. Cost estimates for the full project, including both "hard" and "soft" costs.
- j. Cost estimates for routine maintenance of the completed project.
- k. Cost estimates for capital facilities replacement over the life of the project.
- l. Other issues to be identified by the design professional and/or subconsultants.
- m. Other issues that may be mutually agreed to by District and City.

Upon completion, the Design Feasibility Study shall be delivered to District's Superintendent and City's City Manager.

3.5 Community Input. Within 15 days of retaining the Design Professional, the District shall provide notice to Costa Mesa interested parties so that community members can provide input to the Design Professional. The community meeting will be held at Costa Mesa High School.

3.6 Subsequent Actions. Within 6 months of receipt of the Design Feasibility Study, City's Council and District's Board shall consider the input of stakeholders, including but not limited to: District's Board, staff, parents and students; City's Council, staff and residents; and bona fide organizations sponsoring recreational activities in the City that might use the proposed Stadium and/or Athletic Facility.

Upon mutual approval of the Design Feasibility Study by City's Council and District's Board, City and District shall commence meeting and conferring with respect to negotiation of a Joint Use Agreement regarding the terms on which to fund, design, construct, operate and maintain the designed Stadium and/or Athletic Facility at Costa Mesa High School.

This MOU shall no longer be of any force or effect, and as a result this MOU will be deemed to be terminated, in the event there has not been mutual approval of the Design Feasibility Study by both City Council and Board of Education within one (1) year of delivery of the Design Feasibility Study by the Design Professional. In such case, it is agreed and understood that no monetary damages, or any judicial relief shall be either due or owing to the other party.

3.7 Indemnification. City and District each agree to mutually indemnify and hold each other harmless from and against all claims, causes of action, demands, losses and liability for injury to any person or damage to any property to which the other may be subjected to the extent that the same are the result of an error, omission or negligent act of the other, its officers or employees, or any other agent acting pursuant to its control and performing under this MOU.

Each party agrees to defend, indemnify and hold harmless the other party, their elected officials, agents, officers and employees, from all costs, damages, liability and claims caused by or arising out of or related to that party's negligence or willful misconduct. To the extent that more than one party is determined to have been negligent, the parties agree that each party shall bear its own portion or percentage of liability and to indemnify and hold harmless the other party from that share.

3.8 Assignment. This MOU or any interest of City herein shall not at any time after the date hereof, without the prior written consent of District, be assigned or transferred by City. City shall at all times remain liable for the performance of the covenants and conditions to be performed pursuant to this MOU, notwithstanding any assignment or transfer which may be made.

3.9 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by

United States registered mail, return receipt requested, postage prepaid and addressed as follows:

City: City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: City Manager

District: Newport-Mesa Unified School District
2985 Bear Street, Building A
Costa Mesa, CA 92626
Attn: Superintendent

Either party may change its address or contact person by giving written notice to the other party.

3.10 Default and Termination. Should either party default in the performance of or breach any covenant, condition, or restriction of this MOU herein provided to be kept or performed by such party, and should such default or breach continue uncured for a period of thirty days from and after written notice thereof, either party may, at its option, terminate this MOU by giving the other party written notice thereof.

In such case, it is agreed and understood that no monetary damages, or any judicial relief shall be either due or owing to the other party.

3.11 Validity. If any one or more of the terms, provisions, promises, covenants or conditions of this MOU shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this MOU shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

3.12 Non-Discrimination. Both City and District covenant by and for itself, its administrators and assigns, and all persons claiming under or through it, including the Design Professional and its consultants, that this MOU is made subject to the following requirements:

There shall be no discrimination because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status or disability in accordance with the requirements of applicable State law.

3.13 Amendment. This MOU sets forth the entire understanding between City and District, and any modifications must be in the form of a written amendment agreed to by the Parties.

3.14 Waiver. The failure of either party to insist upon strict performance of any of the terms, conditions or covenants in this MOU shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants herein contained.

3.15 Counterparts. This MOU may be executed in two (2) counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same MOU.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date(s) indicated below.

ATTEST:

CITY:
CITY OF COSTA MESA

City Clerk of the City
of Costa Mesa, California

By: _____

Title: _____

Date: _____

Date: _____

DISTRICT:
NEWPORT-MESA UNIFIED
SCHOOL DISTRICT

By: _____

Title: _____

Date: _____

March 28, 2013

Ms. Christine Baker
Department of Industrial Relations
Division of Labor Statistics and Research
PO Box 420603
San Francisco, CA 94142

Re: Request for Coverage Determination

Ms. Baker,

The Center for Contract Compliance (“Center”) is a non-profit labor management committee established pursuant to the Labor Management Cooperation Act of 1978. In compliance with California Code of Regulations 16000 *et. seq.*¹, the Center respectfully requests a coverage determination of the California’s prevailing wage laws for the “2013 Public Works Curb, Gutter, and Sidewalk Restoration (CIP-545000)” (“Project”) in the City of San Marcos (“City”). Based on the Center’s review of the facts and interpretation of applicable case law, our analysis concludes the project should be subject to the prevailing wage law.

Facts

I. Project Details

The project will entail the demolition, removal, and replacement of curb, gutter, sidewalk, cross gutter, and other miscellaneous improvements throughout sections 4 and 5 of the City of San Marcos. The Notice Inviting Bids states that “pursuant to the San Marcos City Charter and the San Marcos Municipal Code, payment of prevailing wages and compliance with the California Labor Code Sections 1770 *et seq* is NOT required for this project”(Exhibit A). The contract was awarded to Tri -Group Construction, Inc. for \$496,990 at the February 26, 2013 City Council meeting (Exhibit B). Work on the project has yet to commence.

The City Council agenda report indicates the project is fully financed through the City’s Gas Tax Fund. The City’s municipal code section 3.24.010 indicates the source of the funds, “All monies received by the city *from the state* under the provisions of the Streets and Highways Code ^[2] ... shall be paid into the special gas tax street improvements fund” (emphasis added) (Exhibit C).

II. Motor Vehicle Fuel Tax

The State Legislature has imposed the Gas Tax upon each gallon of fuel in compliance with the

1. Appendix A contains the required information set forth in 8 CCR 16302 (c).

2. Any further reference to the Streets and Highway Code will be cited as “SHC”.

March 28, 2013

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Department of Industrial Relations

Revenue and Taxation Code Section 7360-7373³. Any taxes imposed on fuel over and above the cost of collection shall be deposited into the Highway Users Tax Account⁴ (California Constitution Article 19, Sec. 2).

The City's Gas Tax Fund receives monthly appropriations from the State Controller ("Controller") from this tax. The appropriations are based on factors specific to each city and invariably change every year. The factors range from: receipts during prior fiscal years, proportion of registered vehicles, population, road miles, and various pre-determined amounts (SHC 2100 *et. seq.*)⁵.

The funding is restricted by the Legislature and shall solely be used for the research, planning, construction, improvement, maintenance, and operation of public streets and highways and their related public facilities for non-motorized traffic⁶. Moreover, a city must adhere to supplementary conditions imposed by the Controller in order to receive funding. The following is a partial list demonstrating the degree of control the State asserts over fund recipients:

1. The Controller must verify and shall make a disposition regarding any agreement between cities regarding their apportionment (SHC2106.5).
2. No more than 25% of a city's apportionment can be used to make principle and interest payments (SHC 2107.4).
3. Fund recipients shall develop and adopt a pavement management program (SHC 2108.1).
4. Apportionments shall not be used on streets that are not public (SHC 2111).
5. Apportionments cannot be used if contract specifies proprietary material unless contract is awarded to lowest responsible bidder (SHC 2112).
6. City must set up by ordinance a "special gas tax street improvements fund", and any interest received on the fund can only be used for street purposes (SHC 2113).
7. A City will not receive funding when it failed, neglected, or refused to comply with the SHC and applicable law (SHC 2119).

The City was incorporated as a general law city on January 28, 1963, and became a charter city on July 4th, 1994. Last amended on November 4, 2004 by voters, the charter contains a "home rule" provision declaring: "Each of the responsibilities of governance set forth and described in this Charter, and established by the...State of California, is hereby declared to be a municipal affair or concern, the performance of which is unique to the benefit of the citizens of the City of San Marcos" (City Charter, Article 1, Section 100)(Exhibit D).

3. Relevant portions of the Revenue and Taxation Code are found in Appendix B.

4. Relevant portions of the California Constitution are found in Appendix C.

5. Relevant portions of the SHC are found in Appendix D. To be concise the appendix does not include the numerous SHC sections that describe the allocations, but they can be found at www.leginfo.ca.gov.

6. Both the California Constitution, Article 19 and the SHC 2100 *et. seq.* contain similar language as to the usage and restrictions of the revenues generated by the motor vehicle fuel tax.

March 28, 2013

Page 3

Department of Industrial Relations

Section 200 provides: "The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work". Municipal Code section 2.30.090 (d) declares the payment of prevailing wage "shall not be required by the City or any of its agencies except when required as a condition of any Federal or State grants and on other jobs considered to be of statewide concern" (Exhibit E).

Discussion

Labor Code section 1720, subdivision (a)(1) defines public works as "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds... ." Subdivision (b)(1) further defines "paid for in whole or in part" as the payment of money by the state or political subdivision of the state directly to the public works contractor."

The project entails construction work done under contract between the City and a private contractor and paid for in whole or in part out of public funds. Therefore, the project falls within the definition of a public work under Labor Code 1720.

However, the City's charter status triggers further analysis to determine if the project is a municipal affair or a statewide concern. The City has taken the position that its charter preempts the application of state prevailing wage⁷. Therefore, by function of its charter, the City has availed itself of the constitutional powers to make and enforce all laws and regulations with respect to its own municipal affairs.

The courts have developed a three-factor test⁸ when considering whether a public works project is a municipal affair of a chartered city⁹:

1. The extent of extra-municipal control over the project.
2. The source and control of the funds used to finance the project.
3. The nature and purpose of the project¹⁰.

7. Applying the principle under article XI, section 5, subdivision (a) of the California Constitution, a city "may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws."

8. The test was developed in *So. Cal Roads Co. v. McGuire* (1934) 2Cal.2d 115.

9. In future coverage determinations the Director did not require each factor be consistent with each other in order to make a determination. See PW.2008-006 "Kirby Building Improvements", where the project was determined to be a public work requiring prevailing wage although the project was "not subject to extra-municipal control."

10. The nature and purpose of the project are its geographical scope (*Young v. Superior Court of Kern County* (1932) 216 Cal. 512, 516-517) and its extra-territorial effects (*Pacific Telephone and Telegraph Co. v. City of San Francisco* (1959) 51 Cal.2d 766, 771-774).

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Department of Industrial Relations

In regards to the first factor, the City is subjected to state control in order to meet apportionment eligibility requirements. These extra-municipal factors include: (1) cooperative agreements between cities must be verified by the Controller; (2) the City is restricted by a 25% limit of their apportionment to pay principle and interest; (3) the Controller mandates the City develop a pavement management program; (4) City's apportionment is restricted for public road improvements only; (5) the Controller asserts authority over City with contract regulations regarding proprietary material; (6) the City must set up a special gas tax fund in order to receive funds, which interest is also restricted by the Controller; and (7) The City will lose the right to receive an apportionment if they fail to abide by state regulations. As such, the Legislature has asserted considerable control over the City's project, diminishing the City's municipal autonomy and supports our finding the project is not purely a municipal affair¹¹.

In regards to the second factor, the project is entirely comprised of non-municipal funding¹². The Legislature imposes the gas tax upon each gallon of fuel throughout the state, from this, monthly appropriations are made by the Controller to individual municipalities. These statutory appropriations which factor population, the proportion of registered vehicles in a municipality, road miles, and other fixed pre-determined amounts are, by design, beyond the municipal control of the City and virtually guarantee an exact dollar-for-dollar distribution impossible.

Furthermore, there is no mechanism in force that assures the City's allocation derive only from City's residents. In fact, the most equitable factor in the City's appropriations are tax receipts from prior years. However, even if the City's appropriation were determined solely from sales within the City's borders, they would not be exclusively comprised from City residents. It is reasonably presumed that our fluid economy assures a large portion of gas station patrons reside beyond the City's borders¹³.

11. Also see case 2009-048 where the Director held various oversight authority by the USDA and the state, although more stringent than the present case, does not support the conclusion the project was purely a municipal affair; see case 2003-054 where the Director held cooperative agreements, certain project obligations from outside agencies do not constitute municipal control; ; see case 2005-012 where the director held loans and grants from the US State Department is an extra-municipal source; see case 2007-016 and 2007-017 where the director held a joint powers agreement between two other cities is outside a municipal affair; see case 2008-006,2003-041 and 2007-018, where the director generally held that complete autonomy over the planning and execution of the project is sufficient to be a municipal affair, which is unlike the present case considering the Controller encroaches considerably by restricting the type of project that can be constructed.

12. Also see case 2007-001 where the Director held funding made "exclusively by City residents" is a municipal affair, unlike the present case; see case 2006-016 where the Director held funding from the "City's own General Fund" is a municipal affair because "by definition, [the fund] is under control of the City", unlike the present case where the fund is beyond City control, but restricted only to be used for road construction.

13. Coverage determination 2007-018 in the City of Merced addressed a similar issue. The Director held fees paid to enter a zoo within Applegate Park are transferred to the city and become city funds, "irrespective of whether a portion of them can be traced to non-resident Zoo patrons." The facts of the zoo case and the present case are substantially different to come to the same conclusion here. The Zoo (1) collected fees themselves, not a state taxing agency, and (2) the zoo operates under complete autonomy and are free to charge and spend the fees as they wish, unlike the present facts of this project.

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Department of Industrial Relations

These transient taxpayers cannot vote for the City's Charter, but they do elect the Legislatures who impose and regulate collection of the Gas Tax. This relationship should subject them to the laws of the state and not the municipality¹⁴. Thus, the appropriation scheme for the Highway Users Tax account is non-discriminate, and inevitably contains tax revenue generated from sales throughout the state. As such, analysis of the second factor supports our finding the project is not a municipal affair.

In regards to the third factor, the curb, gutter, sidewalk, cross gutter, and other miscellaneous improvements are entirely within City limits and will serve a municipal purpose benefiting local residents. However, the purpose of the project should not be restricted to its practical local use, but also include the Legislative purpose that made its inception possible¹⁵. The California Vehicle Act first enacted in 1923¹⁶ demonstrates the purpose of the Motor Vehicle Fuel Fund¹⁷. It originally addressed apportionments to counties and declared "Such funds shall be expended by the county receiving it exclusively in the construction and maintenance of roads, bridges and culverts...." As such, the purpose as declared by the Legislature supports our finding the project is a statewide concern.

The courts have contemplated similar situations on many occasions. The facts between any two cases fail to match on every factor, but they do provide some guidance applicable here. *Southern California Roads Company v. McGuire* considered a project also funded by the SHC for use in municipality road work¹⁸. The court held the project was subject to the Public Works Wage Rate Act, the precursor to the current prevailing wage law. The relevant point at issue is whether the Gas Tax is a statewide concern¹⁹, where it was held a "large portion of the money to improve them [highways] is money belonging to the state, and the people of the state are concerned in its expenditure."

Moreover, details of *McGuire* share similarities with current legislation that should be addressed. The court discussed at length the petitioner's argument that the state may surrender to a municipality its control over a matter of statewide concern. Where the petitioner argued the relinquishment of control and jurisdiction of the project to the City makes the project a

14. See case 2009-048 where the Director held funding by a federal loan, a state grant and a county-wide sales tax is a statewide concern. Moreover, the Director held the project "would not have been possible without the assistance of county, state and federal taxpayers. The manner in which their tax dollars is spent is surely of concern to more than just those living with the boundaries of City."

15. See case 2001-016 where the director held that the purpose of the project was demonstrated by a federal agency requiring the project be relocated rather than demolished. The showing of purpose was partly sufficient to find the project is not a municipal affair.

16. The entire Act can be found in Appendix E.

17. The legislation was later incorporated into the California Constitution and the SHC which included apportionments to cities.

18. The case involved constructing parts of Sepulveda Boulevard in Los Angeles County.

19. Although the decision was based partly on the fact Sepulveda Boulevard was considered by the state to be a "secondary state highway" is irrelevant to the point that the court found the funding to be of statewide concern.

March 28, 2013

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Department of Industrial Relations

“municipal affair and not subject to the control of general laws.” A similar provision is found in the current SHC regulations 2113, “in making any expenditure a city shall follow the law governing it in regard to the doing of the particular type of work in cases which are not exclusively municipal affairs.”

In *McGuire*, the court disagreed with the City’s argument, stating the delegation of authority “simply gives the parties to such contract the authority to contract for its construction in pursuance of such existing laws.” Moreover, “If the state does the work directly it must proceed under the law governing state contracts; if a city or county does the work as the state’s agent, the agent should follow the law governing it in regard to the letting of contracts dealing with matters which are not exclusively municipal affairs.” Therefore, the City was given the authority to execute contracts in according with applicable law, but they were not given authority to govern the wage rates on the project.

In regards to case history, the courts have upheld the charter exemption shielding municipalities from the prevailing wage law on several occasions. In *State Building and Construction Trades Councils of California, AFL-CIO v. City of Vista*, *City of Pasadena v. Charleville*, and *Vail v. City of San Diego* all were determined to be municipal affairs. However, these and similar cases specifically involved projects funded entirely from local funds, making them difficult to apply here.

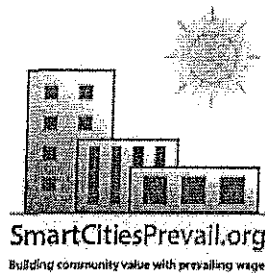
Conclusion

In sum, given that the Project is subject to extra-municipal control, the source of funding belongs to the state, and the purpose is to address a statewide concern, the Project should be subject to the prevailing wage law. Again, the Center respectfully requests your office issue a coverage determination for the “2013 Public Works Curb, Gutter, and Sidewalk Restoration” in the City of San Marcos. If you have any questions or comments I may be reached at (951) 686-3328, or by e-mail at: brandenl@socalccc.org. Thank you for your time and consideration.

Respectfully,

Branden Lopez
Sr. Investigator

CC: Mr. Jim Desmond, Mayor of San Marcos
Mr. Jack Griffin, City Manager of San Marcos



August 14, 2013

Honorable Members of the Charter Committee
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Charter Committee Members,

I am a researcher with Smart Cities Prevail, a non-profit public interest organization dedicated to providing the most reliable and informative research so that community leaders like you can make informed decisions about prevailing wage policy, and I've spent my career using the best methods available to evaluate and estimate the fiscal impacts of wage policy on construction costs.

In the spirit of our mission, we wanted to draw your attention to weaknesses that we found in the memo presented to your committee by the city staff.

The staff report relies heavily on staff memoranda from Costa Mesa and the City of Oceanside that share a common weakness: rather than compare *actual* costs from prevailing wage projects against *actual* costs of *similar* non-prevailing wage projects, the memoranda are based almost entirely on unverifiable contractor claims of what their costs *would have been* if they were either required or not required to pay prevailing wages. This methodology strays far from best practices for doing public works cost comparisons.

Moreover, the Costa Mesa January 2012 staff memorandum uses the results of its hypothetical cost difference estimates to generate claims about the costs of *completely dissimilar* types of projects. Specifically, unsubstantiated "savings" estimates on non-building projects - things like road repair and drainage improvements - are used to speculate about the range of potential savings that might be realized when building a police station or a library. This sort of leap is like comparing apples and watermelons. As someone who has been doing this type of research for more than ten years, I respectfully submit that numbers generated in this manner should be discounted as utterly unreliable.

I am supported in this opinion by Dr. Peter Phillips, Professor of Economics at the University of Utah. Writing about a similar set of estimates in July of this year, Dr. Phillips concluded:

Hypothetical models such as used in this Review cannot capture the potential skill and experience effects of higher wages mandated by prevailing wage regulations. By not being able to measure these potential benefits of higher wage rates, the hypothetical model in this Review gets a hard-wired conclusion that prevailing wage elimination will save 5% on total construction costs... This is an empty exercise as are all such exercises that assume from the outset what they intend to demonstrate through evidence.

PO Box 348766 - Sacramento, CA 95834 - 916-259-3727
www.smartcitiesprevail.org

Interestingly, the 2012 Costa Mesa Staff memorandum does not mention that the municipally funded projects that staff selected for review were unmitigated success stories. The actual cost of the five selected projects - projects completed by workers who were paid prevailing wages - was *36% less than the engineer's estimate*. These actual successes swamp the hypothetical and dubious claims of potential savings from opening up competition for the City's public works projects to contractors engaged in a "race to the bottom" in wage rates.

Finally, the documents from the City of Oceanside included in the staff report have been previously and repeatedly debunked. The most glaring example was when Oceanside officials claimed \$800,000 in savings on an aquatics center, when, in reality, the bottom line costs went down because *the actually constructed size and scope* of the project was reduced in value by \$1.4 million. To make matters worse, the non-prevailing wage contractor they hired failed to deliver, and the project was plagued with delays and litigation as a result.

Sadly, this is a story that repeats itself often.

Take the recent examples of two similar libraries being built in the cities of Gilroy and Palo Alto. Gilroy used prevailing wage contractors, but Palo Alto did not. Gilroy's library was completed on time, cost less per square foot than Palo Alto, and over 71% of the contractors came from the local area. In Palo Alto, the library still isn't finished, less than 12% of the contractors on the project came from the local area, it has experienced numerous delays, and looks to be headed toward litigation between the city and the main contractor.

There are complete studies about these libraries, as well as the Oceanside examples on our website at www.smartcitiesprevail.org, and I encourage you to visit our site and read the research so that you can make a more informed decision.

As you consider placing another charter on the ballot, I wanted to take this opportunity to share recent polling data conducted by Goodwin Simon Strategic Research. In a poll conducted a few weeks ago among people living in general law cities like yours, respondents opposed going charter by a 3 to 1 margin. At the same time, those polled thought prevailing wage was a good idea by a 20% margin. Given these numbers, it is no surprise that the previous charter was rejected by 60% of voters.

In conclusion, I hope that you will bear in mind that eliminating prevailing wage in your city really means eliminating good paying middle class jobs in your local area. It means eliminating the \$1.50 in economic activity generated for every dollar spent on a prevailing wage project. Finally, and unfortunately, it likely means more troubled projects like the ones in Oceanside and Palo Alto, and fewer projects completed on-time and on-budget like in Gilroy.

Because of the dramatic affect that eliminating this policy could have on middle class families in your community, we urge you to proceed carefully, ask questions, and demand that full and accurate research be conducted before you make a decision.

We are pleased to be a resource for you on these issues, and we hope you will feel free to contact us with any questions.

Sincerely,

Scott Littlehale

Scott Littlehale
Research Analyst

City of Costa Mesa

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Submission information

Submitter DB ID : 2513
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 6/28/2013 9:55:52 AM
Time to take the survey : 1 minutes, 51 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T

:

Carol L Beck

Address:

T

:

[REDACTED]

T

City: :

Costa Mesa

T

State: :

CA

T

Zip Code: :

92627

E-mail:

T

:

[REDACTED]

Give us your thoughts on the charter:

T

:

Why is there a Charter committee at all, If I recall correctly the voters said no in November to a Charter. What's up?

City of Costa Mesa



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Submission information

Submitter DB ID : 2527
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 6/28/2013 3:32:56 PM
Time to take the survey : 15 minutes, 44 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T : Sheila Pfafflin

Address:

T : [REDACTED]

T **City:** : Costa mesa

T **State:** : CA

T **Zip Code:** : 92627

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T :

First, I must question the information given on the summary page for the Charter Committee. It was my understanding that the job of the Charter committee was first to determine whether we needed a charter. I must further object to the biased point of view presented in the statements about the Committee. They presuppose that cities are better off with charters. Considering the source, this is not surprising, but the overview materials should at least have indicated that there are other views of the matter, and what they are. Specifically, I note that being a general law city provides some protections to the city residents from capricious and arbitrary actions by their City Council. A Charter does indeed hand over power, but it does so to the City Council, and there are numerous examples, of

which Bell is merely a recent, if notorious, example. of situations in which those Councils have not served the best interests of the city residents. Before they proceed further, I would like the Committee to generate a list of all the protections we would lose as a charter city, and to indicate how they plan to compensate for these losses, in so far as it may be possible to do so.

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City of Costa Mesa



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Submission information

Submitter DB ID : 2511
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 6/27/2013 6:19:58 PM
Time to take the survey : 5 minutes, 35 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T :
Richard Alexander

Address:

T :
[REDACTED]

T **City:** :
costa mesa

T State: :
Not answered

T **Zip Code:** :
926271808

E-mail:

T :
[REDACTED]

Give us your thoughts on the charter:

T :
First, please define the problem that a charter would solve. Many of us suspect this move it just a power grab by certain council members. If that's the case, we definitely need oversight by the state to remain in place. So, again, what's the problem?



Los Angeles / Orange Counties Building and Construction Trades Council

1626 Beverly Boulevard
Los Angeles, CA 90026-5784
Phone (213) 483-4222
(714) 827-6791
Fax (213) 483-4419



RON MILLER
Executive Secretary

Affiliated with the Building & Construction Trades Dept., AFL-CIO

June 26, 2013

Brenda Green
Interim City Clerk
Costa Mesa City Council
77 Fair Drive
Costa Mesa, California 92626

Dear Ms. Green:

Please consider this letter a formal request to incorporate the prevailing wage language listed below into the proposed City Charter. We specifically request you forward this letter to Costa Mesa City Councilpersons, as well as the Chairperson of the Costa Mesa Charter Commission, for their consideration for the inclusion into the proposed Charter.

The language is as follows:

Prevailing Wages:

The provisions of California Labor Code Section 1770 et. seq. regarding prevailing wages on public works and related regulations, as now existing and as may be amended, are accepted and made applicable to the City, its departments, boards, officers, agents and employees.

Thank you for your consideration. If we can be of any assistance, please contact me at Council Offices.

Sincerely,

Ron Miller
Executive Secretary

Jim Adams
Council Representative

cc: Mayor Righeimer, Mayor Pro-Tem Mensinger
Councilpersons: Sandra Genis, Wendy Leece, Gary Monahan

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CITY OF COSTA MESA
BY

City of Costa Mesa**VISION INTERNET CONTENT MANAGEMENT SYSTEM****Administration****Workspace****Core Components****Advanced Components****Utilities****Log Out****Help****Advanced Components: Forms: Reporting: Voter Details**User: Arzo Azad [[Reset Password](#)][Back](#)[graphical report](#) | [text fields entries](#) | [cross tabulation](#) | [data export](#)**Submission information**

Submitter DB ID : 2475
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 6/26/2013 10:55:02 PM
Time to take the survey : 41 minutes, 26 secs.

Survey answers[Switch to submitter's answers edit mode](#)**Name:**

T :
Mike Harmanos

Address:

T :
[REDACTED]
T **City:** :
Costa Mesa
T **State:** :
CA
T **Zip Code:** :
92627

E-mail:

T :
mike.harmanos@gmail.com

Give us your thoughts on the charter:

T :

Dear Brenda, Please inform Ms. Barlow that, on Page 4 of 6 of Attachment 1 of the document "General Law City v. Charter City", that there has been an error since the creation of the staff reported dated April 23, 2013. The California Supreme Court weighed in on this case on July 2, 2012. The case number is #S173586 and the case is "State Building and Constructions Trades Councils of California, AFL-CIO v. City of Vista. It decided that wages paid to workers on charter city projects are not subject to California's prevailing wage law. Additionally, please inform Ms. Barlow of the following: I am a nobody. I am a stupid citizen who pays his taxes on time and makes about one hundredth of the salary of Ms. Barlow. I will never make an hourly rate anywhere comparable to hers.

Yet a simple nobody like me with no background in the law figured out this stark, glaring error. I can only conclude that our tax dollars are paying for poor performance. That angers me. Please also inform Ms. Barlow that I informed The Mayor and The Mayor Pro Tem of this error in my interview for the Charter Committee on Thursday, May 30. The Mayor and The Mayor Pro Tem both strongly supported the Supreme Court's decision. It would stand to reason that the Mayor and the Mayor Pro Tem would want this information known to the public immediately. The documents have not changed since my meeting. Finally, please inform Ms. Barlow that she is paid by me. When she makes major errors in staff reports, and then jokes that speaking of Measure V is "verboden", I find major faults in her judgment and her ability to facilitate the legal aspects of the Charter Committee.
Most Sincerely, Mike Harmanos

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City of Costa Mesa



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Submission information

Submitter DB ID : 2337
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 6/16/2013 9:29:33 PM
Time to take the survey : 6 minutes, 26 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T : Pat Danahy

Address:

T : [REDACTED]

T **City :** Costa Mesa

T **State :** CA

T **Zip Code :** 92627

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T :

WE dont need any idiots In Sacramento bothering this city.They have plenty of problems of their own to take care of and they keep making up more dumb rules and regs.

City of Costa Mesa



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Submission information

Submitter DB ID : 2325
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 6/14/2013 10:45:41 AM
Time to take the survey : 5 minutes, 10 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T : Gilbert Friese

Address:

T : [REDACTED]

T **City:** : Costa Mesa

T **State:** : CA

T **Zip Code:** : 92626

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T :

The city should buy services and equipment by competitive bidding (above some specified expected cost). The winner shall be one that can do the job as required and also be the lowest cost bidder.

City of Costa Mesa

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Submission information

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ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 7/15/2012 12:10:25 PM
Time to take the survey : 6 minutes, 20 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T :
Denise

Address:

T :
Brady

T **City:** :
Costa Mesa

T **State:** :
CA

T **Zip Code:** :
92627

E-mail:

T :
[REDACTED]

Give us your thoughts on the charter:

T :

I read through the Charter proposal very carefully and the only so called benefit to the city that I could see is not having to pay prevailing wages to workers when the project is using city funds exclusively. How much is the city really going to save when shoddy work done by possibly under qualified people has to be re-done? You get what you pay for. We have an extremely short-sighted city council. I look very much forward to the next city council election. I find it hard to believe that there are not better people out there than what we've got.

City of Costa Mesa

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Submission information

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ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 7/15/2012 3:08:58 PM
Time to take the survey : 8 minutes, 7 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T : Sharon Fitch Boudreau

Address:

T : [REDACTED]

T **City :** Costa Mesa

T **State :** CA

T **Zip Code :** 92627

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T :

I totally disagree with the actions of the majority of our city council regarding the methods you are using to try to foist this charter on our citizens. The one-sided slick "puff pieces" you have sent out at taxpayers expense are not fooling anyone. The citizens will vote it down. Now today I read in the Daily Pilot that the council is appointing another one of their cronies to the Planning Commission. Hopefully the wiser citizens of Costa Mesa will wake up and stop this right-wing takeover.

From the Desk of Marshall B. Krupp

July 10, 2012

Via Email

Mayor and Members of the City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92626

Subject: Proposed City of Costa Mesa Charter
Second Public Hearing – July 10, 2012
Public Hearing Testimony of Marshall Krupp

Dear Honorable Mayor and Members of the City Council;

On June 5, 2012, I provided written testimony to the City Council at its first public hearing on the Proposed Charter for the City of Costa Mesa. That testimony is incorporated herein by reference.

The City Council now intended to hold a second public hearing on the Proposed Charter and has scheduled July 10, 2012 as that public hearing. Unfortunately, business calls me away and I will not be able to attend the meeting. However, I am submitting this letter as my formal written testimony to be considered by the City Council at its public hearing on July 10, 2012.

I have reviewed the most recent redline draft of the Proposed Charter of the City of Costa Mesa (“Charter” or “Proposed Charter” or “Proposed Charter Version 2”) as has been attached to the City Council Agenda Report dated July 6, 2012. I recognize that the purpose of this public hearing is to seek additional public input from Costa Mesa residents and constituents on the Proposed Charter. I also recognize that the City Council will make the determination as to whether or not the measure is to be placed on a subsequent ballot, which based on the materials presented on the City’s website is suggested for November 6, 2012. This decision will be made on July 31, 2012 as stated in the documents. There does not appear to be any other workshops, meetings, public hearings, or community processes planned and associated with the consideration of the Proposed Charter, although I recognize that this could change as a result of the conduct and input of the public hearing process.

Based on the intent of this public hearing and the desires of the City Council to obtain public input, this letter presents formal written public hearing testimony to be entered into the public record of this public hearing and is offered for consideration by the City Council, so that they can make an intelligent, objective and informed decision.

Authority to Offer Testimony

I am a resident of the City of Costa Mesa and live in the Providence Park Community. I am also President of Community Systems Associates, Inc. and WorldSolarTec, Inc. In 1982, I formed Community Systems Associates, Inc., a strategic planning firm focused on consulting services for public agencies and development

interests with specific areas of expertise in formulating public-private partnerships, financial strategies, environmental review and impact mitigation, school facilities and financing, and negotiations and mediation.

Since 1994, Community Systems Associates, Inc. has specifically offered consultation to school districts and community college districts in representing their interests in formulating financing strategies for school facilities and the mitigation of the impacts of residential development on increasing enrollments, while State funding has been declining. In addition, I have been an expert advisor on political, financial and development strategic plans for capital facility programs for my school district clients. Earlier in my career, I was employed by the City of Cerritos (charter city) and the City of Fullerton (general law city) in the areas of community development, redevelopment, long-range planning and General Plan development and implementation. I have knowledge of how it is to conduct business under a general law city and a charter city, having been involved with both.

I believe that I have a good working knowledge of local governmental affairs, administration and management, and in formulating thoughts around decision-making and problem solving. More importantly, I know how to empower and inspire community participation and active involvement of community members in the governance of communities. I believe that my clients would attest to my professionalism, technical skills, and expertise in dealing with local government issues.

For the record and in the spirit of transparency and disclosure, I disclose that I have filed a Candidates Intent Statement to run for one of the seats on the Costa Mesa City Council scheduled for election on November 6, 2012. My comments contained herein are not the representations of others. I do not represent any group of people or special interests in this matter. I am speaking on behalf of myself only and not any other group of people who may agree or disagree with the content of this letter. I have also not been influenced by a) any individual, group of people, or specific special interests as to the content of this letter; or b) any value that I may gain from others as a result of me offering these comments and sharing my thoughts. They are strictly intended to be constructive public hearing input as has been requested by the City Council.

Revised Proposed Charter

I recognize that the City has made a number of revisions to the Proposed Charter that was offered at the June 5, 2012 public hearing and is now offered in the July 10, 2012 version "Proposed Charter Version 2". Although many of the revisions are valuable and constructive, there are still some additional items that need to be address in Proposed Charter Version 2. These need to be addressed to gain my support.

Let me again emphasize that I generally support the governance of the City under charter authority. Based on my experience, I believe that such governance is more effective and efficient for the operations of a City then under general law governance. However, I am seriously concerned that Proposed Charter Version 2 still does not address certain items that would result in putting in jeopardy the successful implementation of the authority by the City Council under charter governance. It will also have significant financial consequences on the City. These are further discussed herein.

Charter Flexibility

Much of Proposed Charter Version 2 appears to focus on the acceptance of general law provisions, except as specifically discussed in the content of Proposed Charter Versions 2. With regards to those items specifically discussed in Proposed Charter Version 2, there is the provision of Section 900 which states:

"This Charter, and any of its provisions, may be amended by a majority vote of the qualified voters voting on the questions. Amendment or repeal may be proposed by initiative or by the City Council."

Therefore, the only way that Proposed Charter Version 2 can be revised is by an election which will be time consuming and costly, and may not be timely when the change may be needed. This applies to certain issues that are identified in Proposed Charter Version 2. For example, if the City Council were to want to add an Administrative Officer other than the City CEO and the City Attorney, it would require an election process which could put in jeopardy the ability of the City Council to act in a responsible and timely manner. Another example, is that Proposed Charter Version 2 does not recognize that general federal and State Court decisions may be inconsistent with the provisions of the Charter which would require the Charter to be revised and subject to an election and which may then not receive the require approvals to bring the Charter in conformance with those decisions. This would for example specifically apply to the definitions of Municipal Public Works Contract and Other Municipal Contract.

Tax Revenue Paid by Residents of the City of Costa Mesa

There is no definition for "tax revenues" paid by the residents of the City of Costa Mesa Section 401. Because this is so critical to the definition of Municipal Public Works Contract and Other Municipal Contract, this needs to be defined as to what is included in "tax revenue" paid by the residents of the City of Costa Mesa. Otherwise, it will be open ended.

Purchasing and Contracts

Section 401 of the Proposed Charter Version 2 states:

"Section 401. Purchasing and Contracts

(a) Definitions

(1) "Municipal Public Works Contract," as used in this section, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind, which is paid for in whole with tax revenue paid by residents of the City of Costa Mesa.

(2) "Other Municipal Contract" as used in this section means any contract, purchase order, or other agreement used to procure services, equipment, and supplies of any kind, which is paid for in whole with tax revenue paid by the residents of the City of Costa Mesa.

(b) Exemption from the Public Contracts Code

The City is exempt from the provisions of all California statutes regulating public contracting and purchasing insofar as such contracting and purchasing are solely within local control and are municipal affairs, except as provided by this Charter, City ordinance, or by agreement approved by the City Council.

(c) Annual Value of Exempted Contracts

Annually, the City Council shall set a value at which Municipal Public Works Contracts shall be exempt from formal public bidding and such contract awards shall follow such procedures as set by ordinance or resolution of the City Council. Such procedures shall include safeguards to ensure that the best value and quality of work is being obtained for the City, and compliance with Government Code section 1090 and the California Political Reform Act.

(d) Establishment of Procedures

The City Council shall establish, by ordinance or resolution, all standards, procedures, rules, or regulations to regulate all aspects of the bidding, award, and performance of any Municipal Public Works Contract or Other Municipal Contract greater than the annual value set by the City Council.

(e) Other Municipal Contracts

The City may, without exception, enter into Other Municipal Contracts. Other Municipal Contracts shall follow such standards, procedures, rules, and regulations as set by ordinance or resolution of the City Council.

(f) Prevailing Wages

No Municipal Public Works Contract or Other Public Contract shall require payment of a prevailing wage unless:

- (1) Prevailing wages are legally required to be paid by the requirements of federal grants, State grants, or other federal or State law;
- (2) The project is considered by the City Council, by resolution, not to be a municipal affair of the City; OR
- (3) Payment of prevailing wages is authorized by resolution of the City Council. If payment of a prevailing wage is authorized hereunder, then a prevailing wage schedule for municipal public works contracts shall be established by City Council resolution or ordinance.

(g) Fair & Open Competition

The City shall promote fair and open competition for all City public works construction projects so that all contractors and workers, whether union or non-union, are treated equally in the bidding and awarding of Municipal Public Works Contracts and Other Public Contracts.

(h) Contracting for Services

In determining whether to use the City's workforce for any public works construction or to contract for such services, the sole considerations shall be quality of work and costs savings to the City. No municipal law or rule shall require the use of employees rather than contract providers for any service."

These provisions appear to give the City Council a blank check and substantial leverage for how they are to structure "public works projects" and "other public contracts". These provisions are broad and without any reasonable parameters. More importantly, these provisions could be used by the City Council to put in jeopardy the contractual relationships with the various employee associations. These broad and ambiguous provisions provide a great opportunity for abuse and misuse by the City Council. More importantly, there are no checks-and-balances procedures to insure that the implementation of Proposed Charter Version 2 will be implemented in the best interest of the Community and the City, and not the special interests of the City Council or individual majorities on the City Council. It is noted that generally only three (3) votes of the City Council is required to implement any portion of Proposed Charter Version 2.

As it relates to this discussion, these comments are in no way suggested to take a specific position on the issues facing the City and the employees of the City. It is not to suggest a right or wrong position of either party. Rather, these comments are offered to show the ambiguity of Proposed Charter Version 2 and the potential for controversy, challenge and litigation, and the inability to move forward in a collaborative way due to the authority that the City Council would have under Proposed Charter Version 2 and the pressure that they could apply

The following is offered as revisions to Proposed Charter Version 2:

Section (b) Exemption from the Public Contracts Code should read:

“The City is exempt from the provisions of all California statutes regulating public contracting and purchasing insofar as such contracting and purchasing are solely within local control and are municipal affairs, except as provided by this Charter, City ordinance, by agreement approved by the City Council, or by a determination or ruling of a State or federal Court in terms of the application of State or federal law.”

Section (f) Prevailing Wages should read:

(f) Prevailing Wages

No Municipal Public Works Contract or Other Public Contract shall require payment of a prevailing wage unless:

(1) Prevailing wages are legally required to be paid by the requirements of federal grants, State grants, or other federal or State law; OR

(2) The project is considered by the City Council, by resolution, not to be a municipal affair of the City; OR

(4) The payment of any wage less than prevailing wage will i) reduce the quality of work; ii) jeopardize the timely completion of the contract in accordance with the terms and conditions associated with the scope of the Municipal Public Works Contract or Other Municipal Contract; and/or iii) the result in financial, administrative, and operational impacts on the provision of services and facilities by the City and/or its employees; OR

(3) Payment of prevailing wages is authorized by resolution of the City Council. If payment of a prevailing wage is authorized hereunder, then a prevailing wage schedule for municipal public works contracts shall be established by City Council resolution or ordinance.

Section (g) Fair and Open Competition should read:

“(g) Fair & Open Competition

The City shall promote fair and open competition for all City public works construction projects so that all contractors and workers, whether union or non-union, are treated equally in the bidding and awarding of Municipal Public Works Contracts and Other Public Contracts. The City and the applicable City employee associations shall in good faith and in a timely and reasonable manner collaborate on all Municipal Public Works Contracts and Other Public Contracts which may be issued and entered into by the City.

Section (h) Contracting for Services should read:

“In determining whether to use the City's workforce for any Municipal Public Works Contract or Other Municipal Contract, the City shall establish and regularly update criteria by which to make a determination, including, but not limited to i) quality of work; ii) the costs savings to the City; iii) the timely completion of the contract in accordance with the terms and conditions associated with the scope of the Municipal Public Works Contract or Other Municipal Contract; and iv) the financial, administrative, and operational impacts of the provisions of services and facilities by the City and its employees . No municipal law or rule shall require the use of employees rather than contract providers for any Municipal Public Works Contract or Other Municipal Contract, provided however, that where the City's workforce can provide services equal to or better than the outsourcing, the City shall give preference to the use of the City's workforce. The City shall collaborate with and consider the input of affected employee associations.”

Revenue Retention

Section 500 of Proposed Charter Version 2 states:

Section 500. Reduction Prohibited states:

“Revenues raised and collected by the City shall not be subject to subtraction, retention, attachment, withdrawal, or any other form of involuntary reduction by any other level of State government.”

The following is offered as revisions to Proposed Charter Version 2:

Section 500. Reduction Prohibited states:

“Revenues raised and collected by the City shall not be subject to subtraction, retention, attachment, withdrawal, or any other form of involuntary reduction by any other level of State government, except as may be determined by a State or federal Court or any law that supersedes municipal law authority”

Section 500 of Proposed Charter Version 2 states:

“Section 501. Mandates Limited

No person whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of State government, unless and until funds sufficient for the performance of such function are provided by said mandating authority.

The following is offered as revisions to Proposed Charter Version 2:

“Section 501. Mandates Limited

No person whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of State government, unless and until funds sufficient for the performance of such function are provided by said mandating authority, except as may be determined by a State or federal Court or any law that supersedes municipal law authority”

General Laws

Section 602 of Proposed Charter Version 2 states:

“Section 602. Employee Retirement Benefits

Upon this Charter's adoption, no ordinance or resolution increasing any employee's, legislative officer's or elected official's existing retirement benefits, other post-employment benefits, or employer contributions, with the exception of Cost of Living Adjustments, shall be adopted without the assent of the majority of the voters voting upon such an ordinance at an election at which such an ordinance has been duly submitted to the registered voters of the City.”

The following is offered as revisions to Proposed Charter Version 2:

“Upon this Charter's adoption, no ordinance or resolution increasing any employee's, legislative officer's or elected official's existing retirement benefits, other post-employment benefits, or employer contributions, with the exception of Cost of Living Adjustments, shall be adopted without the 4/5 voting approval by the City Council. In the event of a) a 4/5 voting approval of the City Council and the filing of a petition by no less than 5% of the then registered voters in the City; or b) in the absence of a 4/5 voting approval by the City Council, then the ordinance or resolution increasing any employee's, legislative officer's or elected official's existing retirement benefits, other post-employment benefits, or employer contributions shall only take effect with the assent of the majority of the voters voting upon such an ordinance or resolution at an election at which such an ordinance or resolution has been duly submitted to the registered voters of the City.”

Section 604 of Proposed Charter Version 2 states:

“Section 604. Voluntary Municipal Employee Political Contributions

Unless otherwise required by law, a City employee labor union, City contractor, City employer, or City employee association ("Organization") may only make expenditures for political activities if the Organization establishes a separate segregated fund for such purposes ("Fund") that meets the requirements of this section. The Organization shall ensure that: (a) In soliciting contributions for the Fund, the Organization discloses, in clear and unambiguous language on the face of the solicitation, that contributions are voluntary and that the Fund is a political fund and will be expended for political activities (where "political activity" includes the espousal of a candidate or a cause, and some degree of action to promote the acceptance thereof by other persons); (b) Any fees or dues collected from the members of the Organization that are not used for political activities, transferred to the Fund, or intermingled in any way with Fund moneys; (c) The cost of administering the Fund is paid from Fund contributions and not from any of the fees or dues collected for non-political purposes; (d) Each contribution is voluntary and shall be made by the member or employee and may not be automatically deducted from the member or employee's paycheck using the City's payroll system; and, (e) The solicitations are designed such that the Organization is in compliance with California Government Code Section 84304, as it may be amended or recodified.”

The following is offered as revisions to Proposed Charter Version 2:

“Section 604. Voluntary Municipal Employee Political Contributions

In the event and subsequent to the adoption of this Charter, there is a state-wide initiative or ballot measure approved by the voters of the State of California, including, but not limited to the "Stop Special Interest money Act" (Initiative 1487; CISS 11-001; 2012) which is applicable to Voluntary Municipal Employee Political Contributions then the approved state-wide measures shall be in effect and shall apply. In the event that there is no state-wide initiative or ballot measure approved by the voters of the State of California which is applicable to Voluntary Municipal Employee Political Contributions then general law shall apply.

It is interesting to note that the content offered in the Proposed Charter Version 2 is very similar to the content of the "Stop Special Interest money Act" (Initiative 1487; CISS 11-001) scheduled to be voted on in the November 2012 General Election. The Act reads as follows:

"SECTION. 2. The Stop Special Interest Money Now Act

Article 1.5 of Chapter 5 of Title 9 of the Government Code (commencing with section 85150) is added to read as follows:

§85150 (a) Notwithstanding any other provision of law and this Title, no corporation, labor union, or public employee labor union shall make a contribution to any candidate, candidate controlled committee; or to any other committee, including a political party committee, if such funds will be used to make contributions to any candidate or candidate controlled committee.

(b) Notwithstanding any other provision of law and this Title, no government contractor, or committee sponsored by a government contractor, shall make a contribution to any elected officer or committee controlled by any elected officer if such elected officer makes, participates in making or in any way attempts to use his or her official position to influence the granting, letting, or awarding of a public contract to the government contractor, during the period in which the decision to grant, let, or award the contract is to be made and during the term of the contract.

§85151 (a) Notwithstanding any other provision of law and this Title, no corporation, labor union, public employee labor union, government contractor, or government employer shall deduct from an employee's wages, earnings, or compensation any amount of money to be used for political purposes.

(b) This section shall not prohibit an employee from making voluntary contributions to a sponsored committee of his or her employer, labor union, or public employee labor union in any manner, other than that which is prohibited by subdivision (a), so long as all such contributions are given with that employee's written consent, and that consent shall be effective for no more than one (1) year.

(c) This section shall not apply to deductions for retirement benefit, health, life, death or disability insurance, or other similar benefit, nor shall it apply to an employee's voluntary deduction for the benefit of a charitable organization organized under Title 26 United States Code section 501(c)(3).

§85152 For purposes of this Article, the following definitions shall apply:

(a) "Corporation" means every corporation organized under the laws of this state, any other state of the United States, or the District of Columbia, or under an act of the Congress of the United States.

(b) "Government contractor" means any person, other than an employee of a government employer, who is a party to a contract between the person and a government employer to provide goods, real property, or services to a government employer. Government contractor includes a public employee labor union which is a party to a contract with a government employer.

(c) "Government employer" means the State of California, or any of its political subdivisions, including, but not limited to, counties, cities, charter counties, charter cities, charter city and counties, school districts, University of California, special districts, boards, commissions, and agencies, but not including the United States Government.

(d) "Labor union" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e) "Political purposes" means a payment made to influence or attempt to influence the action of voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or any payment received by or made at the behest of a candidate, a controlled committee, a committee of a political party; including a state central committee, and county central committee, or an organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union, public employee labor union, or corporation.

(f) "Public employee labor union" means a labor union in which the employees participating in the labor union are employees of a government employer.

(g) All other terms used this Article that are defined by the Political Reform Act of 1974, as amended (commencing with section 81000 et seq.), or by regulation enacted by the Fair Political Practices Commission, shall have the same meaning as provided therein, as they existed on January 1, 2011.

SECTION 3. Implementation

(a) If any provision of this measure, or part of it, or the application of any such provision or part to any person, organization, or circumstance, is for any reason held to be invalid or unconstitutional, then the remaining provisions, parts, and applications shall remain in effect without the invalid provision, part, or application.

(b) This measure is not intended to interfere with any existing contract or collective bargaining agreement. Except as governed by the National Labor Relations Act, no new or amended contract or collective bargaining agreement shall be valid if it violates this measure.

(c) This measure shall be liberally construed to further its purposes. In any legal action brought by an employee or union member to enforce the provisions of this Act, the burden shall be on the employer or labor union to prove compliance with the provisions herein.

(d) Notwithstanding Government Code section 81012, the provisions of this measure may not be amended by the Legislature. This measure may only be amended or repealed by a subsequent initiative measure or pursuant to Article II, Section 10(c)."

It is very suspicious that the content offered in the Proposed Charter Version 2 is very similar to the content of the "Stop Special Interest Money Now Act" and has the same intent. In essence, if the Act fails to pass on the state-wide ballot in November 2012, but the Charter is passed with the content that is proposed, then the provisions will be applicable on only City of Costa Mesa employees and associations. This appears to be manipulative, circuitous and agenda driven act of the City Council to impose campaign reform on City of Costa Mesa employees and associations for the protection of the City Council in terms of the Proposed Charter Version 2 content, even though if the Act does not pass, the provisions will not be imposed on other city employees or associations. This is simply an unfair practice of the City Council and is evidence of the type of misuse and abuse of that can occur as a result of the authority in the Proposed Charter Versions 2.

Infrastructure Fund

The Agenda Report offers the following for consideration as Section XXX of Proposed Charter Version 2.

"Section XXX. Infrastructure Fund

(a) Revenues placed in the Infrastructure Fund shall not supplant existing infrastructure funding. Expenditures for infrastructure improvements and maintenance, subsequent to the adoption of this Charter, shall not be reduced below 5% of the General Fund.

(b) The City Council may by ordinance establish a "Citizens Infrastructure Advisory Board" to conduct an annual review and performance audit of the Infrastructure Fund, and report its findings to the City Council prior to adoption of the following fiscal-year budget."

This provision may have significant consequences on the City's ability to fund its General Operating Fund in the event of a financial crises or the lack of available revenues sources.

The following is offered as revisions to Proposed Charter Version 2:

"Section XXX. Infrastructure Fund

(a) Revenues placed in the Infrastructure Fund shall not supplant existing infrastructure funding. Expenditures for infrastructure improvements and maintenance, subsequent to the adoption of this Charter, shall not be reduced below 5% of the General Fund, provided however that the appropriation of General Fund revenue required to meet the 5% level for the Infrastructure Fund shall not reduce the quality, timely provision, operation, and availability of services and facilities required to be funded by the General Fund and provided to the public.

(b) The City Council shall by ordinance establish a "Citizens Infrastructure Advisory Board" to conduct an annual review and performance audit of the Infrastructure Fund, and report its findings to the City Council prior to adoption of the following fiscal-year budget."

Charter Citizens Oversight and Advisory Board

As an alternative to the Charter Commission and as a minimum oversight process, the use of a Charter Citizens Oversight and Advisory Committee is recommended and may provide a less formal process with the same outcome of formulating a Proposed Charter that has buy-in by the Community through the participation and collaboration. In a Community where there is the lack of trust, suspicion, hostility and controversy between the

City Council and the Community, the use of the Charter Citizens Oversight and Advisory Committee is a valuable tool to gain the support that is need to go forward

In Costa Mesa where there has been significant controversy, drama and agendas around issues such as the Orange County Fair and Center, the employee associations, the budget crises, and directly the Charter as proposed in March 2012, it would seem only appropriate and possibly necessary to decelerate the process and establish a Charter Citizens Oversight and Advisory Committee to become the building block for a final decision as to how to proceed.

The following is offered as revisions to Proposed Charter Version 2:

“Section XXX. Charter Oversight and Advisory Board

The City Council shall by ordinance establish a “Charter Oversight and Advisory Board” to conduct regular and periodic review and oversight of the all aspects of the performance and implementation of the Charter, including the preparation of reports and findings to the City Council, suggestions as to any required amendments to the Charter and subsequent elections, and identification of any abuses and misuses of the authority contained herein by the Legislative Body, the Administrative Officers, and others governed by the Charter. The Charter Oversight and Advisory Board shall be only advisory and may be used by the Legislative Body as a sounding board and for such other purposes that the Legislative Body may by ordinance or resolution find fulfills the needs for oversight of the Charter. The Charter Oversight and Advisory Board at a minimum shall consist of reprehensive of the residents and businesses of the City, representatives of the employee associations, and representatives of the commissions, committees and other entities that may be affected by the authority granted under the Charter. The Legislative Body shall have the sole determination as to the implementation of any recommendations or findings of the Charter Oversight and Advisory Board. The Charter Oversight and Advisory Board shall have all legal and administrative authority that may be granted under State or federal law.

Why a Charter?

The primary advantage of becoming a charter city is that the City would have the ability to adopt ordinances and regulations concerning its own municipal affairs without the constraint of State statutes on the specific issues covered in the charter. In essence, it allows the City more local control over its municipal affairs. However, a charter city is still subject to the general laws as passed by the State Legislature on non-municipal affairs that are of state-wide concern, such as traffic regulation and the other topical areas.

Transition from a general law city to a charter city is normally considered in order to address a specific problem or series of problems. Up until now, the City Council has not formally and in unity even identified or disclosed in detail the problem or series of problems that it is intending be addressed through the transition to a charter city. Nor has the City Council disclosed how the charter will actually address the problem or series of problems and the resulting consequences or impacts.

As one reads Proposed Charter Version 2 and the supporting materials, it appears that the reasoning for going forward is that the City will be able to circumvent the “prevailing wage” laws and regulations of the State, and that by doing so the City will be able to more effective address the current budget crises facing the City including, but not limited to being able to designate financing resources to capital improvement projects. Although this is not directly stated, it appears that this is one of the primary purposes of the charter proposed by the City Council. It is noted that most of the analysis completed by the City to justify the charter is financial analysis showing how the City might save money associated with capital improvement projects.

However, there also appears to be an intention of dealing with the employee association conflict and negotiations through the use of the charter content and authority which could have further consequences on the employees of the City, including, but not limited to police and fire, and may affect the service provided to the constituents of the City.

If any of these intention appearances are accurate, then the City Council should be forthright and disclose these intentions to the Community before it makes its decision to proceed, so that the Community can show their support or opposition to those intentions. More importantly, there needs to be further transparency of any hidden agendas of the City Council, collectively or individually, in order to gain the trust of the constituents.

As it relates to prevailing wage requirements, charter cities are subject to the Public Contracts Code unless the charter city expressly provides that the Code does not apply. As for prevailing wages, charter cities are likely not currently subject to the prevailing wage laws unless they elect to be subject to such laws, if the project involves work out of the city limits, or if the project is otherwise of significant state interest. However, this rule is not without doubt. In December 2004, the California Supreme Court issued its decision in *City of Long Beach v. Department of Industrial Relations*, 34 Cal. 4th 942 (2004), a case in which it had the opportunity to reaffirm the long-standing rule that charter cities are substantially free from the requirement of paying prevailing wages on "public works" projects. In that case, the court of appeal held that the state's prevailing wage laws addressed matters of "statewide concern" and therefore applied to projects funded or subsidized by all public agencies, including charter cities. Upon review, the California Supreme Court reversed the decision of the court of appeal but decided the case on an alternative ground. Unfortunately, the Court avoided the issue of whether the prevailing wage law is a matter of such "statewide concern" that it would override a charter city's interests in conducting its municipal affairs. It is noted that it appears that several cities in the State that have become charter cities still required the payment of prevailing wages as a result of lobbying by employee unions and associations.

So what is the other reasoning for proceeding with a charter? What is it the City Council wants to accomplish or what issues does it want to address through the use of the charter authority? What problems or series of problems is the charter intended on addressing that will assist the City in getting out of the crises that it is in? This needs to be disclosed by the City Council in this process of discernment.

The charter is not a panacea. It is not a cure-all. It simply attempts to optimize local government authority and decision-making... it does not fix a dysfunctional one. A charter DOES have the ability to hold local government accountable, so City Council members will no longer be able to blame the State for things which are under the jurisdiction of the charter. And, it has the potential for abuse and misuse as was partly observed in the City of Bell situation.

So before the City Council proceeds to put this measure to a vote of the citizens of Costa Mesa, it is only reasonable for the City Council to specifically identify the reasoning for the charter, what it hopes to accomplish and what problems and issues will it address. To date, there has not been a comprehensive objective analysis to quantify and qualify the reasoning for proceeding with a charter. In essence, what are the compelling reasons for the City to transition from a general law city to a charter city? This is requested.

Protection from Abuse and Misuse

Proposed Charter Version 2 fails to provide any mechanism to protect the Community from the abuse and misuse of the authority of Proposed Charter Version 2 by the City Council or the administration of the City. The process that the City has followed up to now could be considered a misuse or abuse of the power and privilege of the authority of the City Council, particularly when there has been no collaborative process between the City Council and the Community. What is missing from the content of Proposed Charter Version 2 and the process that has

been undertaken to date, is a lack of trust on behalf of Community, special interests, the employee associations, and opponents of Proposed Charter Version 2 that Proposed Charter Version 2 will be implemented in a way that is in the best interest of the Community as a whole. In this past, many of the decisions and processes undertaken by the City Council have led to hostility, lack of trust and suspicion. This has been the message that has been conveyed by the City Council through their actions and words, and is perceived explicitly and implicitly.

To overcome this, Proposed Charter Version 2 should contain a provision for a Charter Citizens Oversight and Advisory Committee that would provide the on-going safeguards to prevent abuses and misuse of the authority contained in Proposed Charter Version 2. This standing Committee would be "advisory" in nature and would have the charge to insure that the City Council and administration conducted themselves in a manner that is in the best interests of the Community. Set up as a broad based non-partisan body with skill-sets and experience of its members, the Charter Citizens Oversight and Advisory Committee could be used as a sounding board for subsequent City Council actions, and could provide for oversight and discernment of the implementation of Proposed Charter Version 2. In addition, the Charter Citizens Oversight and Advisory Committee could be charged with the annual review of Proposed Charter Version 2 to determine the appropriateness and necessity for Proposed Charter amendments and/or other administrative or legal remedies that may be needed to protect the interest of the Community. The Charter Citizens Oversight and Advisory Committee would lend credibility, trust and confidence to Proposed Charter Version 2 process and its implementation after adoption.

There should be even more concern for the potential of abuse and misuse of the charter provisions based on the financial crises facing the City. The City acknowledges that in addition to the having to address prevailing wage issues and the issues related to the negotiation of agreements with the employee associations, the City faces a very dim future in terms of balancing its annual budget, setting aside adequate funds to meet its operating requirements, and re-establishing an effective capital improvement and maintenance program which is more in line with the necessary requirements of the City. With the loss in certain State revenues and the elimination of the financial value of the redevelopment agency to the City, a greater burden is placed on the City for both operations and capital improvements. When considering the "unfunded liabilities" of Cal PERS, medical reimbursements and replenishment of the General Fund balances, together with the multi-year capital improvement initiatives that have been identified by the City Council and the Staff, the City has both short-and long-term deficiencies and shortfalls in the tens and hundreds of millions of dollars. This has been verified in the recent Fiscal Year 2012-2013 Budget discussions and modifications.

This financial crisis is not a one year crises. It is a multi-year on going crises that the City will be facing in the future, all driven by revenue reductions that the City has experienced in the past 18-24 months and future revenue reduction projections that it will continue to experience.

To address these conditions, like a business in the private sector, the City will have to either reduce operating and capital improvement project costs or increase General Fund and capital improvement project revenues, or both. The City will certainly need to do business differently in the future and the City Council may no longer be able to pursue any of its pet projects to satisfy specific interests in the Community. The message may not be desirable, but it needs to be stated.

Proposed Charter Version 2 will give the City Council greater flexibility, greater authority, and greater power and responsibility to put in place tools and mechanisms that will generate cost reductions and revenue increases. This may be on the backs of the employees of the City, the property owner of property in the City, residents who may shop and spend money in the City, and others who make up the constituencies of the City. It may give the City the power to structure consolidation plans with other public agencies and to put in place requirements and programs that have adverse consequences on the Community. These possibilities could come to fruition with a simple majority vote of the City Council, or three out of five City Council Members. Personal, political and/or

special interest agendas could influence the process resulting in potential abuses and misuses of the authority of Proposed Charter Version 2 without any oversight and checks-and-balances in place.

Without some level of checks-and-balances in place, the only way to potentially offset potential abuses and misuse of Proposed Charter Version 2 would be thorough the electoral or legal processes which could be time consuming and costly for the City and the constituents. Therefore, the content of Proposed Charter Version 2 needs to be carefully drafted so as to narrow the possibility of such abuses and misuse of authority.

Planning Commission and Parks and Recreation Commission Consideration and Recommendations

As noted Proposed Charter Version 2 has authority within it to enable the City to establish regulations and requirements that affect many of the decision-making processes of the City. One aspect is the authority related to land use and zoning decisions. Throughout the content of Proposed Charter Version 2 there are provisions that provide broad authority to the City Council and the City Manger pursuant to Proposed Charter Version 2. There is nothing in Proposed Charter Version 2 that specifically addresses land use and zoning decisions, but the content is so broad that the authority can be interpreted from the content. This is one of those areas of Proposed Charter Version 2 that appears to be inadequate and does not provide proper and appropriate guidance and direction.

More importantly, the City Council has failed to gain the input or consideration of Proposed Charter Version 2 by the Planning Commission and the Parks and Recreation Commission who may be impacted by the actions and decisions of the City Council under the authority of Proposed Charter Version 2. One would expect that if the City Council truly sought the public input that it has sought through the public hearing process, that the City Council would have referred the content of Proposed Charter Version 2 to the Planning Commission and the Parks and Recreation Commission for their consideration and recommendations.

Proposed Charter Version 2 states:

“Section 400. Economic and Community Development

The City shall encourage, support, and promote economic development and community development in the City.”

Certainly, this is an activity that has value to the City. However, it is unclear through Proposed Charter Version 2 how the City Council intends to go forward with this and what authority, limitations and parameters the City will establish for themselves in terms of the implementation of Proposed Charter Version 2 authority. At a minimum, the City Council should have referred Proposed Charter Version 2 to the Planning Commission and the Parks and Recreation Commission to gain their input into the authority that the City Council would and/or should have with regards to economic development and community development, and what that authority would or should specifically entail. Again, this is an example of the ambiguities and broadness of the current content of Proposed Charter Version 2.

Charter Commission

Transition from a general law city to a charter city can be divisive in a Community. Therefore a collaborative process of formulating Proposed Charter Version 2 is critical to a successful outcome in the election, but more importantly in the successful subsequent implementation of policies and decision-making. One way of overcoming that is through the use of a Charter Commission as the vehicle to formulate the charter proposal. Although it may take time to unfold this process, it is one that provides for transparency, community participation, collaboration and problem-solving.

The City Council has provide no basis or justification for choosing to proceed with Proposed Charter Version 2 without first considering as an option the establishment by election of a Charter Commission. This needs to be addressed by the City Council.

Amendment of the Charter

One of the most serious concern I have is that with the lack of a current comprehensive review of the content of Proposed Charter Version 2, the lack of clarity and the existence of ambiguity in the content of Proposed Charter Version 2, the lack of Community participation in the drafting of Proposed Charter Version 2, and the lack of detail around the oversight of Proposed Charter Version 2 after it is adopted, this may lead to the need for significant future amendments. The process to amend Proposed Charter Version 2 will be as difficult as the process has been and will be in terms of this original Proposed Charter measure. The result is that the content of Proposed Charter Version 2 is etched in stone until the next possible scheduling of an election to amend Proposed Charter Version2. To expedite the process now leaves open the possibility that Proposed Charter Version 2 will have significant inadequacies that simply have not be addressed or even thought of. This does not serve the Community and could further lead to significant controversies and political agendas in the Community.

Fiscal Review

As noted, the Agenda Report of June 5, 2012 states "Fiscal Review, as follows:

"FISCAL REVIEW

Whether a proposed charter is placed on the November ballot, in the normal course of business, the City would consolidate its scheduled city elections with the statewide election in November. If Proposed Charter Version 2 is placed on the November 2012 ballot, the County Registrar of Voters estimates the cost of the consolidated election with the charter to be in the range of \$78,500 to \$97,500. The overall cost may increase if the full charter is to be printed in the sample ballot."

This discussion in the Agenda Report only addresses the fiscal consequence of the "election" itself. It does not provide the City Council with any understanding of the fiscal and finical consequences of Proposed Charter Version 2 on the short- and long-term operations, administration and decision-making authority of the City and the City Council.

It only seems prudent and critical for the City Council and the Community to have an understanding of the short- and long-range financial and fiscal consequences and impacts (positive and negative) as a result of the City conducting business as a charter city in comparisons to conducting business as a general law city. In particular, this financial and fiscal analysis should address how each form of government would affect the City's General Fund, Capital Improvement Fund, other special funds of the City, the City financing capabilities and bonding ratings, and the ability to address the unfunded balances and other obligations and liabilities that currently exist in the City.

The analysis should also provide some clarity as to the what the City may or could choose to do under the authority of Proposed Charter Version 2 to address the financial crises facing the City, including, but not limited to increasing revenues and reducing cost, establishing a capital improvement and deferred maintenance program, and establish adequate funding for addressing the unfunded balances and other obligations and liabilities that currently exist is the City.

This level of fiscal and financial analysis would certain provide greater clarity as to further justifying the need and anticipated use of the charter authority versus the authority that the City currently has under the general law

authority. This is part of the transparency and disclosure that the City Council and the Community should have access to in order to make an informed decision.

Side-by-Side Analysis

As has been recognized, there are 120 cities in the State and 10 cities in Orange County who have chosen the charter form of government for their cities. I am confident that among these cities, there are three or four that are similar to the structure and characteristics of the City of Costa Mesa in terms of socio-economic conditions, the provisions of law enforcement and fire services, the provisions of other services and facilities, the physical and land use of the community, and who have similar economic and budget issues. In order to strengthen the trust and confidence of the citizens in terms of the specific content and language contained in Proposed Charter Version 2, and to overcome the concerns and objections associated with Proposed Charter Version 2 and its implementation, it would be advisable for the City to do a side-by-side written comparison of the provisions offered in Proposed Charter Version 2 with the provisions of the charters of three or four other similar cities with charters.

A detailed objective comparison would enable the City Council and the Community to identify differences and similarities, identify specific content that is unique to Proposed Charter Version 2 and not the other charters, and identify the content of other charters that have been deleted from Proposed Charter Version 2. In essence, a comprehensive evaluation and review would provide a clearer picture of Proposed Charter Version 2 in comparison to other charters.

In addition, the City should also do a side-by-side comparison of the “community participation process” that went into the formulation and successful election of the charter measures of other cities in comparison to the process that is being used in the City, along with timeline and milestone comparisons. This would give the City Council and the Community a greater awareness and understanding as to how to go about transitioning from a general law City to a charter city.

Finally, the City should do a side-by-side comparison of other charters in terms of how they address the protections and safeguards to minimize, monitor, and oversee abuses and misuses of their charter provisions in comparison to how the City intends to address these same issues. This would give the City Council and the Community some clarity as to how to address this concern in a way that would result in potential support of Proposed Charter Version 2 content.

The City should not proceed with the process and finalize the content of Proposed Charter Version 2 until these side-by-side comparisons have been made and the results have been reviewed by the City Council and the Community to determine how best to move ahead if that is what the desire of the City Council and the Community is.

Alternatives

As noted, the Agenda Report of July 6, 2012 states “Alternatives Considered”, as follows:

“ALTERNATIVES CONSIDERED:

Council can choose to direct staff and the City Attorney to discontinue the process of placing a proposed charter on the November 6, 2012 ballot.”

As has been set forth in these comments, there are other alternatives to a) proceeding with the election on the current Proposed Charter; and b) discontinuing the process of placing the proposal on the November 6, 2012 ballot.

In my opinion the question of alternatives is not as black-and-white as is stated in the Agenda Report. I believe that there are other options that should be considered and evaluated. Some of these might include the following or any combination of the following (or other alternatives):

1. Revising and amending current Proposed Charter Version 2 to address the concerns and issues raised during the public hearing process and setting forth an election on a revised Charter for consideration on the November 6, 2012 ballot.
2. Establishing a Charter Citizens Oversight and Advisory Committee and referring the matter to them for consideration and a recommendation as to how to proceed with the re-consideration of the form of government sought by the City.
3. Setting forth an election on the establishment of a Charter Commission to consider and recommend a charter proposal that could be considered by the City Council and placed on a ballot at a subsequent election.
4. Deferring the current Proposed Charter ballot measure until an election following the November 6, 2012 election and in the meantime, complete the analysis sought herein, making revisions and adjustments to address the concerns and further to address the results of the analysis.

It is recommended that along with considering current Proposed Charter Version 2 and the process that the City intends to unfold, that the above alternatives or other alternatives should be considered by the City Council and the Community.

Conclusion

It is my hope and suggestion that the City Council consider the words that I have offered herein and that you take the appropriate measures to address the concerns raised. More importantly, I would suggest that the process of placing Proposed Charter Version 2 measure on the November 2012 ballot be deferred until there is a Charter Citizens Oversight and Advisory Committee or other similar measure implemented that can provide the City Council with the recommendations as to the final content of a Proposed Charter and the schedule for going forward if that is the recommendation.

The past actions of the current City Council has brought about a lack of trust and confidence in the decision-making processes of the City. This has resulted in alienation, hostility and controversy. It has also resulted in a dysfunctional local government structure. It would seem irrational to go forward with such a significant governmental reorganization in light of the current conditions of the City and the further drama that this would bring upon the Community. Let's not jeopardize the future of the City with the agendas of a few individuals who have not fully thought this through and who have not coalesced the Community into supporting an appropriate direction. Only through a community participation process which is based on collaboration through the use of a Charter Citizens Oversight and Advisory Committee or similar can this be accomplished.

Before proceeding, the City Council needs to publicly answer two questions for the benefit of the constituents of the Community:

1. What is at risk if the City goes forward with Proposed Charter Version 2?
2. What is at risk if the City does not go forward with Proposed Charter Version 2?

Until the Community is aware of the parameters of the risks, the process should not go forward. The depth and details of these two questions (if considered objectively by the City Council) will provide the leadership that is necessary at this time. The Community deserves that and has the right to expect it of the City Council.

If you have any questions, I would be more than pleased to make myself available to the City Council and/or the City Staff to have further discussions and answer any inquiries.
Thank you,

Sincerely,

Marshall Krupp

Mr. Marshall B. Krupp

MBK:mbk
Letter - City Charter Public Hearing July, 2012 2012-07-09.doc

CC: Mr. Thomas Hatch, Chief Executive Officer
City of Costa Mesa

Ms. Brenda Green, Interim City Clerk
City of Costa Mesa

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Monday, July 09, 2012 12:06 PM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: the proposed City Charter

---Original Message---

From: [REDACTED]
Sent: Monday, July 09, 2012 11:01 AM
To: BEVER, ERIC; LEECE, WENDY; MONAHAN, GARY; RIGHEIMER, JIM; MENSINGER, STEPHEN
Subject: the proposed City Charter

Hello,

I am a 45-year resident of Costa Mesa and am very concerned about the manner in which the City Council is advocating the current proposed City Charter. I would like to see much more specific language/stipulations in the charter about the scope of councilmembers' ability to control citywide actions, citywide referenda, and sale of municipal real property.

I am proud that the City of Costa Mesa recently was recognized as a highly transparent entity. Please keep this transparency alive by incorporating "transparency-encouraging" language into the proposed charter.

Sincerely,

Bob Martin
[REDACTED]
Costa Mesa, CA

GREEN, BRENDA

From: RODELIUS, SHARON
Sent: Monday, July 09, 2012 9:48 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: Charter suggestions

From: Dan Goldmann [REDACTED]
Sent: Monday, July 09, 2012 9:23 AM
To: RODELIUS, SHARON
Subject: Charter suggestions

Tamar Goldmann: City charter proposals submitted July 9,2012

1) Protection of right to quiet enjoyment of one's own home ordinances. True local control.

a) The following must be approved by the majority of Costa Mesa voters in a general election: Any changes to zoning or density that could adversely affect any existing residence or any park-by any method, including but not limited to-- a general plan change or a waiver or a change in definition; and any road widening or new business or development that will increase traffic passing a residential area.

b) Requests for any variances to a private residence be noticed to all homeowners within an area of 500 feet at least one month in advance in a an official letter clearly marked as affecting their property and clearly spelling out the variance request.

d) Requests for variances for commercial property or changes to zoning, parks or traffic patterns shall require notice to all residents and property within an area of one-quarter mile as well as to any homeowner who will experience a direct impact of increased traffic at their home.

c. Notices for any variances to residential or commercial property shall be sent at least one month in advance in an official letter clearly marked as affecting the property and clearly spelling out the suggested changes.

e) A citizen's commission composed of representatives of each neighborhood shall approve the format of the template for notification letters to be sent out.

f) Appeals by residents of affirmative Planning Commission decisions (those allowing a variance) to City Council or a rehearing of a City Council decision shall cost no more than \$50.

g) Variance and spot-rezones must be approved only with a written statement as to the *necessity* for this variance signed by approving council members, city CEO, planning supervisor, and city attorney.

1) Balance of powers ordinances: Companion to 604 (June 5, 2012 draft)

a) Every entity--including but not limited to--developers, businesses, contractors, the principals of the preceding, and individuals doing business with the city is forbidden to spend a single dollar for political purposes without a letter approving such expenditures by every tax-paying city resident. Without such approval, only entities that document that they and their principals refrain from political expenditures may do business with the city.

Procedure for obtaining approval shall follow the directives in Section 604. It is, of course, preferable to strike 604.

b) No rule or proposal increasing the salary, benefits, power, or authority of elected officials or their appointed representatives,* including this City Charter shall take effect until each sitting member of the Council at the time of passage of the ordinance has stood for re-election. (For example, this charter could not go into effect until after the 2014 election.) This ordinance will make clear to all residents of the city--elected and appointed officials and the voting public as well--that the ordinance has been clearly designed for the long-term benefit of the city and its residents.

*Members of Planning Commission, Parks & Rec Commission, etc.

c) No elected or appointed official may receive pay for more than one committee or commission position.

d) Any authority or power not specifically given to City Government shall be governed by the general law of the state of California.

e) Members of the Planning Commission shall be elected for two-year terms by the residents of Costa Mesa at large.

f) Members of all (other—except for elected Planning Commission members) commissions and committees shall be chosen by an appointment committee consisting of equal numbers of council members plus current committee members and citizens chosen at random from a volunteer pool.

The appointment committee shall establish a job description and a list of desirable qualifications prior to solicitation of applicants.

*Any member of a hiring committee who has a personal relationship with an applicant—family, friendship, or business, must resign from the hiring committee for that particular position. Strictly professional relationships within the Costa Mesa committee or employee network would not exclude a person from the hiring committee.

Section 800 is dangerously permissive. Strike entirely. Replace with:

Language contained in this charter is to be construed narrowly. Any powers not specifically and clearly granted to the city shall be governed by the general law of the state of California.

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Tuesday, July 03, 2012 10:12 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: City Charter Suggestions

From: Jamie Alai [REDACTED]
Sent: Monday, July 02, 2012 2:43 PM
To: MONAHAN, GARY
Subject: City Charter Suggestions

Name: Jamie Alai

Address: No address provided

Email: [REDACTED]

Suggested changes in the City Charter:

My family and I have lived in Costa Mesa for over 16 years and are in FULL support of the proposed Charter City.

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Monday, July 02, 2012 10:32 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: [BULK] City Charter Suggestions

Importance: Low

From: Robin Burmeister [REDACTED]
Sent: Friday, June 29, 2012 10:13 PM
To: MONAHAN, GARY
Subject: [BULK] City Charter Suggestions
Importance: Low

Name: Robin Burmeister

Address: No address provided

Email: [REDACTED]

Suggested changes in the City Charter:

I do not want the Charter as proposed by the corrupt city council

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Monday, July 02, 2012 10:32 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: [BULK] City Charter Suggestions

Importance: Low

From: Adam Gardner [REDACTED]
Sent: Friday, June 29, 2012 10:12 PM
To: MONAHAN, GARY
Subject: [BULK] City Charter Suggestions
Importance: Low

Name: Adam Gardner

Address: costa mesa resident

Email: [REDACTED]

Suggested changes in the City Charter:

I do not want the Charter as proposed by the corrupt city council

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Monday, July 02, 2012 10:31 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: [BULK] City Charter Suggestions

Importance: Low

From: Denise May [REDACTED]
Sent: Friday, June 29, 2012 10:09 PM
To: MONAHAN, GARY
Subject: [BULK] City Charter Suggestions
Importance: Low

Name: Denise May
Address: costa mesa resident
Email: [REDACTED]
Suggested changes in the City Charter:
I do not want the Charter proposed by the corrupt city council

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Monday, July 02, 2012 10:27 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: City Charter Suggestions

From: Paul Kopfstein [REDACTED]
Sent: Friday, June 29, 2012 11:43 AM
To: MONAHAN, GARY
Subject: City Charter Suggestions

Name: Paul Kopfstein

Address: [REDACTED]

Email: [REDACTED]

Suggested changes in the City Charter:

I really disagree with the direction this council has taken this city and will NOT be voting for the proposed City Charter. I will be actively working against this ridiculous proposal and will not be voting for any politician that supports it. You are wasting my tax dollars and I do not feel 'represented' in any way by you folks. Such a shame that the so called 'leadership' in this city turns their backs the citizens and city workers to further their own agendas and political careers. Hopefully, you will be sent this same message on election day.

GREEN, BRENDA

From: CHALMERS, SYLVIA
Sent: Monday, July 02, 2012 8:16 AM
To: GREEN, BRENDA
Subject: FW: [BULK] City Charter Suggestions

Importance: Low

Sylvia Chalmers
Executive Secretary
CEO's Office, City of Costa Mesa
(714) 754-5099 Fax (714) 754-5330
SYLVIA.CHALMER5@costamesaca.gov
www.costamesaca.gov

From: Denise Gardner [REDACTED]
Sent: Friday, June 29, 2012 10:13 PM
To: CHALMERS, SYLVIA
Subject: [BULK] City Charter Suggestions
Importance: Low

Name: Denise Gardner
Address: No address provided
Email: [REDACTED]
Suggested changes in the City Charter:
I do not want the Charter as proposed by the corrupt city council

GREEN, BRENDA

From: SHELTON, KELLY on behalf of HATCH, THOMAS
Sent: Friday, June 29, 2012 12:55 PM
To: GREEN, BRENDA
Subject: FW: City Charter Suggestions

From: Ron & Chris McLean [REDACTED]
Sent: Saturday, June 23, 2012 10:57 AM
To: HATCH, THOMAS
Subject: City Charter Suggestions

Name: Ron & Chris McLean

Address: [REDACTED]

Email: [REDACTED]

Suggested changes in the City Charter:

My wife and I have lived in Costa Mesa for 43 years. The City Charter gives us hope that we can afford to live here for more years to come. Change is needed in pension reform, salary negotiations, and city spending. Unemployment can reverse with city and county and state financial control. We appreciate the Mayor and City Council determination to place this on ballot. The city needs to be run like a business, with balanced budget and surplus funds every year. Unions have a place, but not as dictators to the city. If they become competitive, they will be chosen to perform city work. Continue and make Costa Mesa a leader now !!!

GREEN, BRENDA

From: SHELTON, KELLY on behalf of HATCH, THOMAS
Sent: Friday, June 29, 2012 12:54 PM
To: GREEN, BRENDA
Subject: FW: City Charter Suggestions

From: Paul Kopfstein [REDACTED]
Sent: Friday, June 29, 2012 11:43 AM
To: HATCH, THOMAS
Subject: City Charter Suggestions

Name: Paul Kopfstein

Address: [REDACTED]

Email: [REDACTED]

Suggested changes in the City Charter:

I really disagree with the direction this council has taken this city and will NOT be voting for the proposed City Charter. I will be actively working against this ridiculous proposal and will not be voting for any politician that supports it. You are wasting my tax dollars and I do not feel 'represented' in any way by you folks. Such a shame that the so called 'leadership' in this city turns their backs the citizens and city workers to further their own agendas and political careers. Hopefully, you will be sent this same message on election day.

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Friday, June 29, 2012 9:03 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: [BULK] City Charter Suggestions

Importance: Low

From: John Miilu [REDACTED]
Sent: Thursday, June 28, 2012 2:15 PM
To: MONAHAN, GARY
Subject: [BULK] City Charter Suggestions
Importance: Low

Name: John Miilu

Address: No address provided

Email: [REDACTED]

Suggested changes in the City Charter:

Agree strongly with the advisability of adopting the charter. There's no reason why taxpayers should be forced to pay for public employee lifestyles and benefits which are much richer than they can afford themselves. Public employees' pensions are bankrupting the state and I can understand why they would oppose any decrease in their lavish perks, negotiated between their unions and complaisant politicians who corruptly sought reelection at the expense of the taxpayers.

City of Costa Mesa



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Submission information

Submitter DB ID : 560
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 10/28/2012 3:15:04 PM
Time to take the survey : 4 minutes, 36 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T : Jennifer Broderick

Address:

T :

T **City: :** [REDACTED]
Costa Mesa

T **State: :** CA

T **Zip Code: :** 92626

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T :

-The document should have been developed with more detail and less ambiguity. Other city charters are not nearly as vague. -This document broadly diminishes the checks and balances that should be in place for a city council. This is fine when you have people you trust in office, but what happens when the city council changes?

City of Costa Mesa**VISION INTERNET CONTENT MANAGEMENT SYSTEM**[Administration](#)[Workspace](#)[Core Components](#)[Advanced Components](#)[Utilities](#)[Log Out](#)[Help](#)**Advanced Components: Forms: Reporting: Voter Details**User: Arzo Azad [[Reset Password](#)][Back](#)[graphical report](#) | [text fields entries](#) | [cross tabulation](#) | [data export](#)**Submission information**

Submitter DB ID : 233
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 8/27/2012 11:31:40 PM
Time to take the survey : 6 minutes, 35 secs.

Survey answers[Switch to submitter's answers edit mode](#)**Name:**

T

:

Larry Fuqua

Address:

T

:

[REDACTED]
City: :

Costa Mesa

T

State: :

CA

T

Zip Code: :

92627-3359

E-mail:

T

:

Give us your thoughts on the charter:

T

:

Not well written, and not for this City Council! It is too broad and give to much power to the Council. It takes the peoples power from them. It also leaves a lot of unanswered questions, could cause the city to be bank-rupted.

GREEN, BRENDA

From: Jack hanley [REDACTED]
Sent: Tuesday, July 31, 2012 3:13 PM
To: CITY CLERK
Subject: City Charter

We are firmly opposed to the adoption of the charter for the City of Costa Mesa for many reasons. The existing council has not shown the slightest inclination to be protective of the public's rights of quiet enjoyment of their property. The charter would only make it easier for the council to ignore those rights.

Section 901 would be reason enough to be in complete opposition to even considering the adoption. A review of the need for public study to be considered only on the second meeting every tenth year? Incredible! Why even bother to have elections?. Where is the Democracy?

Jack & Virginia Hanley

GREEN, BRENDA

From: HATCH, THOMAS
Sent: Tuesday, July 31, 2012 1:32 PM
To: GREEN, BRENDA
Cc: LOBDELL, WILLIAM; CORDON, CHRISTINE
Subject: FW: Support a Charter for our City!

Another one for red folders for tonight.

From: Phil Lesh [mailto:]
Sent: Tuesday, July 31, 2012 8:42 AM
To: RIGHEIMER, JIM; LEECE, WENDY; steve.mensing@costamesaca.gov; BEVER, ERIC; MONAHAN, GARY
Cc: HATCH, THOMAS; Daily Pilot - LA Times
Subject: Support a Charter for our City!

Councilmembers,

I am writing to ask that each of you let the voters decide on whether our City should become a Charter. When this idea first came about a year ago, the pundits claimed the June ballot was too rushed. They claimed they supported a Charter, but wanted more time to study it. Now, we put the vote off until November and they find new reasons to oppose it.

Charters allow cities to stop being slaves to Sacramento. They allow us to control ourselves and determine how we should spend our money. Why would we want Sacramento telling us how to spend OUR money.

The critics have leafletted our neighborhood with lies and misinformation about what the Charter will do. Fear will not work in our City. It is only energizing our neighbors to vote for it. Please allow the voters a chance to determine how we want our City to be run.

Support the Charter!

Thank you.

Phil Lesh

GREEN, BRENDA

From: HATCH, THOMAS
Sent: Tuesday, July 31, 2012 1:31 PM
To: GREEN, BRENDA
Cc: LOBDELL, WILLIAM; CORDON, CHRISTINE
Subject: FW: Charter for Nov Ballot

Not sure if you have this one.

From: Judy Lindsay [REDACTED]
Sent: Monday, July 30, 2012 6:57 PM
To: BEVER, ERIC; RIGHEIMER, JIM; MENSINGER, STEPHEN; MONAHAN, GARY; LEECE, WENDY; HATCH, THOMAS
Subject: Charter for Nov Ballot

NO NO NO NO NO NO NO NO TO CHARTER AS WRITTEN.

Judy Lindsay
269 Sierks ST
Costa Mesa, CA
(949) 722 1182

City of Costa Mesa



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Submission information

Submitter DB ID : 185
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 7/29/2012 12:42:13 PM
Time to take the survey : 4 minutes, 45 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T

:
Stephen Guy

Address:

T

:
[REDACTED]

T

City :
Costa Mesa

T

State :
CA

T

Zip Code :
92627

E-mail:

T

:
[REDACTED]

Give us your thoughts on the charter:

T

:
I would consider voting for the charter only if it was the product of a special committee process.

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Tuesday, June 26, 2012 9:01 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: City Charter Suggestions

From: Jonathan Brown [mailto:jonbrown@dslextreme.com]
Sent: Friday, June 22, 2012 10:23 AM
To: MONAHAN, GARY
Subject: City Charter Suggestions

Name: Jonathan Brown
Address: [REDACTED] Costa Mesa
Email: [REDACTED]

Suggested changes in the City Charter:

I am 100% in favor of the proposed Charter for the city of Costa Mesa. The unions have strangled the State of California, as well as Costa Mesa, costing the public millions of dollars and lack of local control. The city of Costa Mesa, rather than the State of California knows best what it needs and how to satisfy those needs. The Costa Mesa City Council has been remiss in the past and this needs to be corrected with courage.

City of Costa Mesa

VISION INTERNET CONTENT MANAGEMENT SYSTEM



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Advanced Components: Forms: Reporting: Voter Details

User: Arzo Azadi [Reset Password]

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Submission information

Submitter DB ID : 180
ASP.net's user name : Disabled
Submitter's Email : Anonymous
Submitter's language : Default language
IP address : [REDACTED]
Submission recorded on : 7/24/2012 5:36:36 PM
Time to take the survey : 4 minutes, 5 secs.

Survey answers

[Switch to submitter's answers edit mode](#)

Name:

T : Jamie MacLeod

Address:

T : [REDACTED]

T **City:** : Costa Mesa

T **State:** : CA

T **Zip Code:** : 92627-3164

E-mail:

T : [REDACTED]

Give us your thoughts on the charter:

T :

This Charter should NOT be accepted or put on the November ballot under any circumstances...it is a Charter put together essentially by ONE individual for the good of that individual and a SMALL governing group. There was NO Citizens' Group, as there normally is, Involved with its conceptualization, research, or contents. A Charter should be a document individualized for a specific city and its residents, not a vague cut and paste generic document. Only someone who wants to protect their malfeasant opportunities to do whatever they want, to whomever they want, when they want, without interference from the city's residents would put a clause into their Charter that says it would only be reviewed every TEN years!!! I believe normally it is usually about every two years. And

even at that, there would only be a discussion as to whether the Charter needs to be reviewed or not! The large majority of Costa Mesa residents do NOT want this charter as it is a document that is not written for them, but for the city council, and the city council is fully aware of this. That should be enough for them to know not to put it on the November ballot. However, given their many previous decisions that go directly against what the people they are supposed to represent want them to do, will this be another case of "screw you, Costa Mesans, we're going to do what WE want to do; we DONT CARE what you want!?" I sure hope not, for, in addition to all the other things wrong with it, it will end up being an other expense the city could avoid altogether by keeping it off the ballot. It will be another waste of money that the city cannot afford, and it will be defeated if the city council foolishly go against what the majority wants and puts it on the ballot. Don't put the Charter on the November ballot - a waste of money and time. It's a bad deal for Costa Mesa and its citizens. Jamie MacLeo Costa Mesa, CA

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Tuesday, June 26, 2012 9:01 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: City Charter Suggestions

From: Don Huber [mailto: [REDACTED]]
Sent: Friday, June 22, 2012 9:51 AM
To: MONAHAN, GARY
Subject: City Charter Suggestions

Name: Don Huber

Address: [REDACTED]

Email: [REDACTED]

Suggested changes in the City Charter:

Sounds like we should have done this years ago. I am certainly more confident in the City Council decision making regarding Costa Mesa than that of our state legislators.

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Tuesday, June 26, 2012 8:59 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: City Charter Suggestions

From: william mitchell [REDACTED]
Sent: Friday, June 22, 2012 8:01 AM
To: MONAHAN, GARY
Subject: City Charter Suggestions

Name: william mitchell

Address: [REDACTED]

Email: [REDACTED]

Suggested changes in the City Charter:

It sounds great lets get this going and start saving our city money. Take some power away from the union that is controlling our city.

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Tuesday, June 26, 2012 8:59 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: City Charter Suggestions

From: Scott MAY [REDACTED]
Sent: Thursday, June 21, 2012 8:31 PM
To: MONAHAN, GARY
Subject: City Charter Suggestions

Name: Scott MAY

Address: [REDACTED]

Email: [REDACTED]

Suggested changes in the City Charter:

I do not trust the current CRIMINAL city council. NO ON THE CHARTER.

GREEN, BRENDA

From: MONAHAN, GARY
Sent: Tuesday, June 26, 2012 8:56 AM
To: GREEN, BRENDA; CHALMERS, SYLVIA
Subject: FW: City Charter Suggestions

From: Dorothy Hamill [REDACTED]
Sent: Thursday, June 21, 2012 2:04 PM
To: MONAHAN, GARY
Subject: City Charter Suggestions

Name: Dorothy Hamill
Address: No address provided
Email: [REDACTED]

Suggested changes in the City Charter:

I have just finished reading your newsletter regarding the status of becoming a Charter city. It is a wonderful idea and I support it 100%. Keep up the great work!

Sincerely, Dorothy Hamill

GREEN, BRENDA

From: CHALMERS, SYLVIA
Sent: Thursday, June 21, 2012 2:02 PM
To: GREEN, BRENDA
Subject: FW: [BULK] City Charter Suggestions

Importance: Low

For City Clerk.

Sylvia Chalmers
Executive Secretary
CEO's Office, City of Costa Mesa
(714) 754-5099 Fax (714) 754-5330
SYLVIA.CHALMERS@costamesaca.gov
www.costamesaca.gov

From: Susan Shaw [REDACTED]
Sent: Thursday, June 14, 2012 8:47 AM
To: CHALMERS, SYLVIA
Subject: [BULK] City Charter Suggestions
Importance: Low

Name: Susan Shaw
Address: No address provided
Email: [REDACTED]

Suggested changes in the City Charter:

The vague language needs to be fixed so the City Council doesn't have an easy route to making big changes without listening to the citizens. The way the Charter is currently written the Council can change many items easily while the citizens have a much more difficult route. Waiting two years to have an opportunity to voice concern by electing a different council, is not efficient enough. Major damage can take place in that amount of time.

GREEN, BRENDA

From: CHALMERS, SYLVIA
Sent: Thursday, June 21, 2012 2:01 PM
To: GREEN, BRENDA
Subject: FW: City Charter Suggestions

For City Clerk.

Sylvia Chalmers
Executive Secretary
CEO's Office, City of Costa Mesa
(714) 754-5099 Fax (714) 754-5330
SYLVIA.CHALMERS@costamesaca.gov
www.costamesaca.gov

From: Phil Diment [REDACTED]
Sent: Monday, June 18, 2012 10:30 AM
To: CHALMERS, SYLVIA
Subject: City Charter Suggestions

Name: Phil Diment

Address: [REDACTED]

Email: [REDACTED]

Suggested changes in the City Charter:

I am very much in favor of the City Charter. I think we have to be a fiscally responsible city and get control of our expenses, especially when it comes to pension and salary expenses. I live of a street that is in desperate need of repair, especially the inadequate storm drains. We have had two floods that nearly swamped our homes -- where was the city? Why have additional drains not been installed? My fear is that the city will use funds to pay bloated pensions and there will be no \$\$ left to make repairs and help homeowners.

I am not against pensions and I am not against fire fighters or police. I think that they deserve a decent salary / pension, however it needs to be commensurate with the private sector.

Phil Diment
Concerned Citizen