

**SPECIAL MEETING OF THE CITY COUNCIL
CITY OF COSTA MESA**

February 13, 2012

The City Council of the City of Costa Mesa, California met in a Special Meeting on February 13, 2012 at 7:04 p.m. in the Council Chambers of City Hall, 77 Fair Drive, Costa Mesa. The meeting was called to order by the Mayor Pro Tem.

ROLL CALL

Council Members Present:	Mayor Pro Tem James Righeimer Council Member Eric R. Bever Council Member Wendy Leece Council Member Stephen Mensinger
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Council Members Absent:	Mayor Gary Monahan
Officials Present:	Chief Executive Officer Thomas R. Hatch City Attorney Thomas Duarte Interim Development Services Director Khanh Nguyen Interim Public Services Director Ernesto Munoz Assistant Chief Executive Officer Rick Francis Economic Development Director/Deputy CEO Peter Naghavi Interim Fire Chief Tom Arnold Police Chief Tom Gazsi Public Affairs Manager Bill Lobdell Public Affairs Manager Dan Joyce City Clerk Julie Folcik

CLERK'S STATEMENT: The Notice of the Public Hearing was posted at the City Council Chambers, Postal Office on Adams, and Mesa Verde Public Library, and the City's website on Friday, January 13, 2012; and was published in the Daily Pilot on January 17, 2012. The Special Meeting Agenda and Notice and Call were posted at the City Council Chambers and the City's website on February 10, 2012. (00:01:57)

PUBLIC HEARING

1. SECOND PUBLIC HEARING: Consider Proposal of Charter and content of Proposed Charter

CEO Tom Hatch provided an overview and update of the charter process; and staff reports, attachments, suggestions, and comments submitted. (00:02:56)

Per request from Council Member Leece, City Attorney Thomas Duarte

provided an update of court cases regarding to charter and prevailing wages which would apply to Section 401 of the proposed charter. (00:08:27)

James H. Bridges, Costa Mesa, commented on council member compensation and salaries, expressed concern regarding the lack of spending limits for council members in a charter, and supported a charter. (00:12:40)

Perry Valantine, Costa Mesa, opined a charter is not needed and supported a charter written by an elected commission. (00:16:25)

Eleanor Egan, Costa Mesa, suggested language be included adopting state general law for initiatives and referenda. (00:19:39)

Tom Egan, Costa Mesa, supported a change to the number of council members and elected by district. (00:20:41)

Susan Shaw, Costa Mesa, expressed appreciation to members of the Council for engaging in dialogue with her regarding the charter, but was disappointed in the content of the informational flyer. (00:24:00)

Jim Fitzpatrick, Costa Mesa, spoke in support of the charter. (00:25:42)

Paul Kelly, Costa Mesa, expressed concern regarding provisions for administrative removal without a hearing, the function of administration, and Section 800. (00:28:53)

Jay Humphrey, Costa Mesa, expressed disappointment in the informational flyer and opined that the process and charter was rushed. (00:31:32)

Ron Moss, Costa Mesa, expressed concern in the urgency of the process and spoke in opposition of the charter. (00:34:48)

Robert Mosqueda, Tustin, spoke about the benefits of prevailing wage and opposed the charter. (00:36:57)

Al Morelli, Costa Mesa, shared his experience with charters and municipal government, and made suggestions to Section 201 and the appointment of commissioners. (00:39:44)

Al Morelli, Costa Mesa, shared his experience with charters and city government, and made suggestions to the selection of mayor and commissioners. (00:39:45)

Doug Mangione, Orange, spoke in support of maintaining prevailing wage. (00:42:25)

George Greenwalt, Costa Mesa, urged Council to slow down the process.

(00:44:30)

Jay Litvak, Costa Mesa, suggested moving the charter to the November ballot and supported a charter commission. (00:46:38)

Jim Conway, Danville, spoke about prevailing wage and what constitutes a municipal or state concern, and suggested a charter commission. (00:49:57)

Cindy Brenneman, Costa Mesa, suggested that Section 603 be removed, and commented on meeting conduct. (00:52:15)

Shari Pence, Riverside, expressed concern regarding Section 401 and the fairness of the bidding process for public works projects. (00:54:50)

Robin Leffler, Costa Mesa, suggested simplifying the charter and include language for ex parte communications. (00:56:30)

Mark Shaefer, Costa Mesa, spoke in support of prevailing wage and moving the charter to the November ballot. (01:00:04)

Karin Ahlf, Costa Mesa, opposed the charter, but spoke in support of placing it on the November ballot; and expressed the need for more time. (01:01:33)

Terry Koken, Costa Mesa, sang a song about the charter. (01:04:52)

Eric Christen, Poway, praised the Council for trying to move away from State control and referred to the State's budget. (01:07:27)

Phil Morello, Costa Mesa, spoke in support of the charter and process and suggested a comparison chart with other city charters. (01:10:40)

Bill Baber spoke in support of the charter and commented on prevailing wage, bids, and charter amendments. (01:13:11)

Kevin Dayton, Dayton Public Policy Institute, spoke about prevailing wage and made clerical suggestions to the language. (01:15:34)

The Mayor Pro Tem recessed the meeting at 8:29 p.m. (01:24:32)

The Mayor Pro Tem reconvened the meeting at 8:41 p.m. (01:36:10)

William Schultz, Costa Mesa, spoke in support of prevailing wage. (01:36:51)

Jason Curtis, Costa Mesa, spoke in support of prevailing wage. (01:37:31)

Council Member Bever clarified that the prevailing wage clause only applies to municipal projects that do not have state or federal grant money

and is not a large percentage. (01:39:18)

Chris McEvoy, Costa Mesa, expressed concern regarding the speed of the charter process, and criticized the information flyer. (01:40:47)

Tamar Goldmann, Costa Mesa, opined that a charter is not a constitution and made suggestions to balance of powers and that certain items must be voted on by the voters. (01:43:54)

Sandra Genis, Costa Mesa, commented on the process and suggestions, and spoke in opposition of the charter. (01:47:29)

Greg Thunell, Costa Mesa, expressed concern regarding the timeliness of the flyer distribution and spoke in opposition of the charter. (01:49:42)

Jim Adams, Anaheim, requested that language be included in the charter to protect prevailing wage. (01:53:16)

John Hill, Costa Mesa, spoke in support of the charter and applauded the Council for moving forward quickly with the process. (01:57:42)

Jay Photoglou, Costa Mesa, urged Council to slow down the process. (02:02:02)

Karl Ahlf, Costa Mesa, spoke in support of placing the charter to the November 2012 ballot. (02:04:50)

Walter Garcia, Costa Mesa, urged Council to listen to the residents. (02:05:28)

Robby Hunter spoke about the building trade and in support of prevailing wage. (02:07:36)

Jeremy Katz, Costa Mesa, asked questions regarding Sections 300 and 202, and urged placement of the proposed charter on the November ballot. (02:10:57)

Patrick Kelly, Costa Mesa, expressed concern regarding the effects of the charter on property values, and spoke in opposition of the charter. (02:12:56)

Katrina Foley, Costa Mesa, asked questions about Sections 101, 201, 205, and 300; and requested a list of who the informational flyer was mailed to. (02:16:31)

Mayor Pro Tem Righeimer addressed a concern about Section 101 made during public comments, and indicated that if an issue is municipal in nature, everything remains the same unless it is changed by an ordinance. (02:22:15)

In response to questions from Mayor Pro Tem Righeimer regarding the information mailer, Public Affairs Manager Bill Lobdell and CEO Hatch indicated that the mailer was mailed to every household in Costa Mesa and the distribution list was the same as the list for the mailing of the recreation guide. City staff created the guide which was approved by the City Attorney before it was mailed, and the cost was \$2,700 for printing and materials, and \$6,000 for bulk rate postage. (02:23:26)

Council Member Leece stated the charter process was rushed and spoke in support of prevailing wage. (02:27:30)

Council Member Bever addressed comments made by public speakers, and indicated that throughout the history of the city, the majority vote of the Council has always ruled. He clarified that the municipal code and the process of amending the code will not change as a result of the charter. In response to comments regarding "Republican operatives" influencing the vote of the Council, he stated that he has never had pressure from the Republican party regarding how to vote. In response to comments regarding apartment tenants not receiving the charter mailer, he indicated that he did receive the mailer as a condominium resident and that the mailer was addressed to "Postal Customer"; he directed staff to check with the post office regarding the mailing. (02:44:29)

Council Member Mensinger suggested that language should be included for ex parte communications for associations, and would support a motion for ex parte communications if more clarification could be provided as to what needs to be disclosed. (02:51:35)

Council Member Bever indicated that the one-sentence suggestion for ex parte communications (Section 606) is too broad. (02:58:41)

Mayor Pro Tem Righeimer commented on the charter process in other cities, explained that the charter is about the city having tools to be able to put the finances in order, and stated the need for infrastructure improvements. (03:04:38)

Council Member Leece disagreed with comments made regarding the severity of infrastructure issues, and expressed concern regarding public safety. (03:14:10)

Council Member Mensinger directed staff to follow-up on the Recreation on Campus for Kids (ROCKS) program and the fees for the Jim Scott Stadium as it relates to the joint use agreement; expressed the need for alley and infrastructure improvements; and referred to comments made about property value, and indicated that it is a function of homeowners to maintain their own homes. (03:17:20)

As affirmed by the City Attorney, Council Member Bever clarified that raising taxes requires the vote of the people. In response to a question

regarding the waiver of taxes and fees, Council Member Bever expressed that he would still like programs for the waiver of certain fees, if the circumstances permit. He responded to comments made regarding the hiring of illegal workers as a result of the charter, and indicated that the municipal code prohibits the hiring of illegal workers. Council Member Bever also stated that comments made regarding the low need to fix alleys and drainage are disingenuous, and in response to comments about negotiations, clarified that the prior Council locked the contracts with the employee groups. (03:24:01)

Council Member Mensinger asked staff to explain if the city is less safe compared to last year. CEO Hatch provided background and indicated that the number of personnel has been reduced but the levels of public safety are similar to those in the past. Police Chief Tom Gazsi shared that while certain crimes have increased, the city is safer than eight years ago. (03:40:07)

Council Member Bever referred to Section 604 and shared concerns made by employees who preferred not to be members of the employee association but felt pressured to join. (03:44:50)

MOTION: Approve the charter with the following amendment as referenced in the second draft titled, "Charter of the City of Costa Mesa":

-Section 205, Paragraph 3: To remove, "A breach of this section shall be cause for removal of any such Council Member, officer, board or member of such board or commission."

Moved by Council Member Stephen Mensinger, seconded by Council Member Wendy Leece.

The motion carried by the following roll call vote:

Ayes: Mayor Pro Tem James Righeimer, Council Member Eric R. Bever, Council Member Wendy Leece, Council Member Stephen Mensinger

Noes: None.

Absent: Mayor Gary Monahan

MOTION: Place the proposed charter on the November 2012 ballot.
Moved by Council Member Wendy Leece. Motion died for lack of second.

MOTION: Approve the charter with the following amendment as referenced in the second draft titled, "Charter of the City of Costa Mesa":

-Section 201, Paragraph 2: To remove, "If there is no ordinance establishing the qualifications for a candidate for city council, then a candidate must meet qualifications as set forth in Government Code Section 36502 and Elections Code Section 321, as either may be amended and recodified," and replace with, "A candidate must meet qualifications as set forth in Government Code Section 36502 and

Elections Code Section 321, as either may be amended and recodified."

Moved by Mayor Pro Tem James Righeimer, seconded by Council Member Eric R. Bever.

The motion carried by the following roll call vote:

Ayes: Mayor Pro Tem James Righeimer, Council Member Eric R. Bever, Council Member Wendy Leece, Council Member Stephen Mensinger

Noes: None.

Absent: Mayor Gary Monahan

MOTION: Create a section and add language to indicate the elections schedule must follow the schedule of general law.

Moved by Mayor Pro Tem James Righeimer, seconded by Council Member Eric R. Bever.

The motion carried by the following roll call vote:

Ayes: Mayor Pro Tem James Righeimer, Council Member Eric R. Bever, Council Member Wendy Leece, Council Member Stephen Mensinger

Noes: None.

Absent: Mayor Gary Monahan

MOTION: Approve the charter with the following amendment as referenced in the second draft titled, "Charter of the City of Costa Mesa":

-Section 401, Paragraph 7, first sentence: To change "...the prevailing wage schedule..." to "...a prevailing wage schedule.."; and

-Section 401, Paragraph 7, last sentence: To change "...shall use the pertinent rates..." to "...shall consult the pertinent rates..."

Moved by Mayor Pro Tem James Righeimer, seconded by Council Member Eric R. Bever.

The motion carried by the following roll call vote:

Ayes: Mayor Pro Tem James Righeimer, Council Member Eric R. Bever, Council Member Stephen Mensinger

Noes: Council Member Wendy Leece

Absent: Mayor Gary Monahan

MOTION: Add Section 403: "The City's prohibited from enacting any law imposing real property transfer fees."

Moved by Council Member Stephen Mensinger, seconded by Council Member Eric R. Bever.

The motion carried by the following roll call vote:

Ayes: Mayor Pro Tem James Righeimer, Council Member Eric R. Bever, Council Member Wendy Leece, Council Member Stephen

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Noes: None.
Absent: Mayor Gary Monahan

MOTION: Approve the charter with the following amendment as referenced in the second draft titled, "Charter of the City of Costa Mesa":

-Section 205, Paragraph 2, last sentence: Rewrite the sentence for clarification to emphasize that members of the Council are to contact department directors, and not the general employees.

Moved by Council Member Eric R. Bever, seconded by Mayor Pro Tem James Righeimer.

The motion carried by the following roll call vote:

Ayes: Mayor Pro Tem James Righeimer, Council Member Eric R. Bever, Council Member Stephen Mensinger

Noes: Council Member Wendy Leece

Absent: Mayor Gary Monahan

MOTION: Add "Section 606. Require disclosure of ex parte communications," as referenced in Attachment 4 titled, "City Charter Suggestions/Comments (from Jan. 10 through Feb. 10, 2012).

Moved by Council Member Wendy Leece. Motion died for lack of second.

MOTION: Add language in the preamble for transparency in negotiations "as it relates to negotiations and appropriations of taxpayer dollars."

Moved by Council Member Stephen Mensinger, seconded by Mayor Pro Tem James Righeimer.

The motion carried by the following roll call vote:

Ayes: Mayor Pro Tem James Righeimer, Council Member Eric R. Bever, Council Member Stephen Mensinger

Noes: Council Member Wendy Leece

Absent: Mayor Gary Monahan

MOTION: Approve the charter with the following amendment as referenced in the second draft titled, "Charter of the City of Costa Mesa":

-Remove Sections 603 and 604.

Moved by Council Member Wendy Leece. Motion died for lack of second.

MOTION: Approve the charter with the following amendment as referenced in Attachment 3 titled "City Charter Suggestions/Comments (through Jan. 5, 2011):

-Preamble: Add "...believe fiscal responsibility and the prudent stewardship of public funds is essential for the confidence in government, that ethics and integrity are the foundation of public trust and that just governance is built upon these values. Through the enactment of this Charter..."; and

-Preamble: Add "It is incumbent upon those who govern and make decisions for and on behalf of the City of Costa Mesa to legally, as well as morally, abide by the provisions of this Charter, and in its strictest sense, to assure the continued success and well-being of our City."

Moved by Council Member Wendy Leece, seconded by Council Member Stephen Mensinger.

SUBSTITUTE MOTION: Approve the charter with the following amendment as referenced in Attachment 3 titled "City Charter Suggestions/Comments (through Jan. 5, 2011)":

-Preamble: Add "...believe fiscal responsibility and the prudent stewardship of public funds is essential for confidence in government, that ethics and integrity are the foundation for public trust and that just governance is built upon these values"; and

-Preamble: Add "It is incumbent upon those who govern and make decisions for and on behalf of the City of Costa Mesa to legally, as well as morally, abide by the provisions of this Charter, and to assure the continued success and well-being of our City."

Moved by Council Member Eric R. Bever, seconded by Mayor Pro Tem James Righeimer.

The substitute motion carried by the following roll call vote:

Ayes: Mayor Pro Tem James Righeimer, Council Member Eric R. Bever, Council Member Stephen Mensinger

Noes: Council Member Wendy Leece

Absent: Mayor Gary Monahan

MOTION: Separate General Powers from Seal in Section 103, and create Section 104: Seal.

Moved by Council Member Wendy Leece. Motion died for lack of second.

MOTION: Approve the charter with the following amendment as referenced in the second draft titled, "Charter of the City of Costa Mesa":

-Section 100: Add "The boundaries of the city shall continue as now established until change in the matter authorized by law" to its own section, "Section 101: Boundaries."

Moved by Council Member Wendy Leece. Motion died for lack of second.

MOTION: Approve the charter with the following amendment as referenced in the second draft titled, "Charter of the City of Costa Mesa":

-Section 202, Paragraph 1: Revise "one regular meeting" to "There shall be at least two regular meetings in each calendar month."

Moved by Council Member Wendy Leece. Motion died for lack of second.

MOTION: Approve the charter with the following amendment as referenced in the second draft titled, "Charter of the City of Costa Mesa":

-Section 100, Title: Add "Boundaries" to the title to now read "Name of City; Perpetual Succession; Boundaries."

Moved by Council Member Eric R. Bever, seconded by Council Member Wendy Leece.

The motion carried by the following roll call vote:

Ayes: Mayor Pro Tem James Righeimer, Council Member Eric R. Bever, Council Member Wendy Leece, Council Member Stephen Mensinger

Noes: None.

Absent: Mayor Gary Monahan

MOTION: Add a section on prevailing wage.

Moved by Council Member Wendy Leece. Motion died for lack of second.

ADJOURNMENT - The Mayor Pro Tem adjourned the special meeting at 11:09 p.m.

Mayor of the City of Costa Mesa

ATTEST:

Acting Deputy City Clerk of the
City of Costa Mesa