



CITY COUNCIL AGENDA REPORT

MEETING DATE: June 5, 2012

ITEM NUMBER: PH-3

SUBJECT: PUBLIC HEARING TO CONSIDER CONTENT OF PROPOSED CHARTER AND SUBMISSION OF PROPOSED CHARTER TO VOTERS

DATE: MAY 24, 2012

FROM: CITY ATTORNEY'S OFFICE
CITY CLERK'S OFFICE

PRESENTATION BY: CITY ATTORNEY'S OFFICE

FOR FURTHER INFORMATION CONTACT: Christine Cordon, Acting Deputy City Clerk,
(714) 754-5121

RECOMMENDATION:

Conduct a public hearing on the proposed City charter for Costa Mesa, receive community comments and suggestions, and provide direction on any changes to the proposed charter (Attachment 1).

BACKGROUND:

In the fall of 2011, the City Council asked the City Attorney to research the benefits and variations of a charter form of city government, which would shift control over strictly municipal affairs from Sacramento to Costa Mesa. Using an initial first draft of the proposed charter as a starting point, the City sought comments on the charter through various media outlets; through public comments at the December 6, 2011 and January 3, 2012 City Council meetings; and at a charter informational meeting held at the Costa Mesa Neighborhood Community Center (NCC) on January 5, 2012. The original intent was to place the proposed charter resulting from this process on the June 5, 2012 ballot.

Due to a clerical error in the City Clerk's office, the proposed charter was not placed on the June 5, 2012 ballot. Staff was asked to restart the process of placing a proposed charter on the November 6, 2012 ballot.

ANALYSIS:

The City of Costa Mesa is currently a general law city. The general law form allows cities to act only based upon the authority given by the California Constitution and the California Legislature. The alternative type of city government used by 120 California cities is the charter form (see Attachment 4 for the League of California Cities' primer on charter cities). A charter city is one that has adopted a set of bylaws, called the charter, which acts as a local constitution for the city. Similar to federal and state constitutions, a charter may only be adopted, amended, or repealed by a majority vote of a city's registered voters.

Charter cities have more authority over their municipal affairs, strengthening the City's home rule. By adopting a charter, the City will have greater flexibility in the operations of its municipal government, which, if properly utilized, translates to greater efficiency, effectiveness, and innovation.

A charter city has more options when considering how to handle a number of municipal affairs. This includes, but is not limited to the following:

1. Construction and maintenance contracting,
2. Land use,
3. City finances,
4. State mandates, and
5. City government structure

For example, the current draft of the proposed charter states that the City would not be required to pay prevailing, or union, wage for projects that are locally funded.

Limitations and Safeguards:

Notwithstanding these advantages, there are several limitations and safeguards placed upon a charter city's powers. In particular, a charter city's decision-making authority is specifically limited to only municipal affairs and does not extend to matters of "statewide concern." A matter of statewide concern is something that is determined, by the courts or by the Legislature, to be of an importance to the entire state. In those cases, state law preempts local regulations. For example, many traffic regulations are matters of statewide concern. A charter city would not be able to adopt local traffic regulations that would conflict with those enacted by the Legislature.

Also, recent charters passed by California cities have included "anti-City of Bell measures" that limit council member and city employee compensation to what is allowed under state law. This proposed charter contains similar limitations.

It is important to note that adoption of a charter does not change the way the city operates. Like the state and federal constitutions, a charter would only provide the city a general framework and an opportunity to make community-specific decisions. Any changes to existing ordinances and regulations may be made so long as they are within the framework of the charter.

What is different in Costa Mesa's Proposed Charter:

Charters for California cities--especially those adopted within the past decade--are remarkably similar because the primary goal of local control is the same, and the charter language used by other cities has been legally tested. That said, the proposed charter contains the following provisions:

1. Section 203. Removal of City CEO & City Attorney without cause. This section limits the City Council's ability to remove the City CEO or City Attorney by requiring an affirmative vote of four out of five members of the City Council in order to remove the City CEO or City Attorney without cause.

2. Section 401. Purchasing and Contracts. This section allows the City to decide whether or not to pay prevailing, or union, wage on public works projects that use only local funds.
3. Section 602. Employee Retirement Benefits. This section requires increases in any employee, legislative officer or elected official's existing retirement benefits, other post-employment benefits, or employer contributions, with the exception of Cost of Living Adjustments, to require the majority approval of qualified voters of the City at a general municipal election. On the other hand, any reduction in retirement benefits, other postemployment benefits, or employer contributions does not require the majority approval of qualified voters of the City at a general municipal election.
4. Section 603. Voluntary Municipal Employee Political Contributions. This section ensures that city employee association dues collected directly from city paychecks will not be used for political activities.

Adoption process:

AB1344, which went into effect in January 1, 2012 requires more public input on proposed city charters than prior law, before a charter measure is placed on the ballot. The anticipated timeline of events provides for the second public hearing to be on July 10, 2012 with the final meeting (concerning whether to submit the Proposed Charter to qualified voters of the City) on July 31, 2012.

The City encourages interested parties to submit potential changes to the proposed charter before each public hearing, so the City Council and residents will have the maximum time to review suggestions from residents.

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.

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 the proposed charter 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 \$77,500 to \$96,500. The overall cost may increase if the full charter is to be printed in the sample ballot.

LEGAL REVIEW:

The City Attorney's office has reviewed and approved this report and its attachments.

CONCLUSION:

Council is requested to hold a public hearing on the proposed City charter for Costa Mesa and listen to community comments and suggestions and provide direction on any changes to the first draft of the proposed charter.

TOM HATCH
City Chief Executive Officer

THOMAS P. DUARTE
City Attorney

DISTRIBUTION: City CEO
City Attorney
City Clerk
Staff

ATTACHMENTS: 1 [Proposed Charter](#)
2 [Chart for General Law City v. Charter City](#)
3 [List of Charter Cities](#)
4 [Charter Cities: A Quick Summary for the Press and
Researchers](#)
5 [How to amend or repeal a charter](#)
6 [Process used to adopt a charter](#)
7 [What is in a charter?](#)
8 [What is a charter?](#)
9 [Foundational Aspects of Charter Cities](#)