



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: MAY 17, 2022**

FROM: CITY ATTORNEY'S OFFICE **WARDS: ALL**

SUBJECT: DISCUSSION ON MEASURE MM TO CLARIFY ITS INTENT AND PURPOSE

ISSUE:

Receive and file a report regarding Measure MM.

RECOMMENDATION:

That the City Council receive and file a report regarding Measure MM.

BACKGROUND:

On January 11, 2022, the City Council directed staff to return to the City Council with a discussion on Measure MM to clarify its intent and purpose. The following is intended to provide the City Council with the information necessary to achieve its objective. The information set forth herein includes, but is not limited to, the following:

1. The background/history of the Charter Review Committee (CRC)
2. The recommendations made by the CRC
3. The City Council approved ballot question submitted to the voters related to Measure MM
4. The City Attorney impartial analysis of Measure MM and
5. The implementation measures and training after the passage of Measure MM.

DISCUSSION:

On May 6, 2003, the City Council approved a motion to form a 17-member Charter Review Committee ("CRC") to conduct a full review of the Charter (Exhibit A). On July 22, 2003, the City Council appointed the 17-member CRC (Exhibit B).

On August 5, 2003, the initial meeting of the CRC was convened by the City Clerk. Eric Haley was appointed Chair and Ben Johnson was appointed Vice-Chair. City Attorney Priamos reviewed the purpose and scope of the Charter, the Charter Review Committee's powers and

duties, the Committee's charge, issues for consideration, and the process for the presentation of recommendations to the City Council for placement on a future ballot. The CRC determined that it would conduct its meetings on the 2nd and 4th Thursday of each month with the next meeting scheduled for August 14, 2003 (Exhibit C).

On August 14, 2003, the second meeting of the CRC was held. The City Clerk reviewed the Charter history and answered questions. The communications officer reviewed the promotional/campaign, timeline, budget, and community outreach program. The CRC approved the following:

1. A public forum be held at the La Sierra High School Performing Arts Center on October 23, 2003
2. The forum be advertised in the Press-Enterprise and Charter Communications be invited to televise the public forum free of charge to gain maximum awareness of the charter review process
3. Conceptually approve the promotional campaign/timeline presented and
4. Each member review the Charter, identify issues of concern, and be prepared at the August 28, 2003, meeting to discuss the Charter line by line as a group (Exhibit D).

August 28, 2003, the 3rd meeting of the CRC was held. The CRC reviewed the Charter in its entirety to identify future discussion items. The CRC identified the Preamble and 24 sections for future discussion. The future discussion items included section 1202 – powers and duties of the Board of Public Utilities, including the \$100,000 threshold (Exhibit E). On September 11, 2003, the 4th meeting of the CRC was held. The CRC conducted an interview with City Manager George Carvalho and Mayor Pro Tempore Frank Shiavone and unanimously approved the CRC logo (Exhibit F). On September 25, 2003, the 5th meeting of the CRC was held. The CRC unanimously approved the permanent appointment of the Chair and Vice-Chair, conducted interviews with Mayor Loveridge and Councilmember Pearson, and determined the format for the October 23, 2003, community forum (Exhibit G). On October 9, 2003, the 6th meeting of the CRC was held. The CRC conducted interviews with Councilmember Defenbaugh and Beaty (Exhibit H). On October 23, 2003, the 7th meeting of the CRC was a community forum held at La Sierra High School Performing Arts Center. Staff provided an overview of issues and the CRC received public input for Charter issues (Exhibit I).

On November 13, 2003, the 8th meeting of the CRC was held. The CRC conducted interviews with Councilmembers Moore and Adkison. The future meeting schedule was reviewed, and topics were calendared for discussion and deliberation with the local preference policy added to the meeting of February 26, 2004 (Exhibit J). There was no meeting held on November 27th, Thanksgiving Day.

On December 11, 2003, the 9th meeting of the CRC was held. The CRC discussed five substantive areas: (1) Human Resources Board - the Human Resources Director recommended that there be no changes to Charter Section 807; (2) Board of Library Trustees - the Library Director recommended that there be no changes to Charter Section 808; (3) Park and Recreation Commission recommended that there be no changes to Charter Section 809 relating to the Park and Recreation Commission; (4) Planning Commission – the Planning Director recommend no changes to Charter Section 806 relating to the Planning Commission; and (5) Board of Public Utilities – the Public Utilities Director summarized the Board of Public Utilities recommended

changes to Article XII of the Charter as follows: (a) preference should be given to Riverside based companies for construction contracts; (b) add to Section 1202 to allow the Board of Public Utilities to award contracts over \$50,000 with the approved City budget, without further City Council approvals – see board memorandum dated 2003 and the unofficial Board minutes dated November 21, 2003; (c) amend Section 1202(b) so that in addition to exceptions for “urgent necessity to preserve life, health, and property that customer-requested work provided under the rules adopted by the Board of Public Utilities and City Council also be exempt from City Council approval requirements (subject to ratification by the Board after the fact); and (d) add to Section 1202 delegation to the Public Utilities Director, without further City Council authorization or approval, the power and authority to enter into long-term contracts to provide water and power in accordance with approved tariffs based on current cost of service studies up to seven years in length (Exhibit K).

There was no meeting held on December 25, 2003, Christmas day.

On January 8, 2004, the 10th meeting of the CRC was held. The CRC conducted an interview with Councilmember Hart and discussed Fiscal Administration. Finance Director Sundeen reviewed Charter section 1113 independent audit and the bidding process for appoint of the independent auditor and recommended minor changes to Section 1110, 1111, and 1113 (Exhibit L). On January 22, 2004, the 11th meeting of the CRC was held. The CRC conducted interviews with Councilmembers elect Gage, Adams, Betro and continued discussion of Charter Section 805 – Board and Commission Vacancies (Exhibit M). On February 12, 2004, the 12th meeting of the CRC was held. The CRC discussed elections and instant run off voting with a review of elections from the City Clerk and a review of instant run-off voting from a representative of the California IRV Coalition (Exhibit N).

On February 26, 2004, the 13th meeting of the CRC was held. The CRC discussed the minutes and received the City Manager presented charter amendments related to public works contracts, general obligation bonded debt limit, Board of Public Utilities powers and duties relative to section 1202, Board of Public Utilities customer requested work – relative to section 1202, Board of Public Utilities authority to enter into long-term contracts – relative to section 1202. The CRC also reviewed the local preference policy for public works survey results and provided feedback on the proposed charter amendment matrix (Exhibit O).

On March 11, 2004, the 14th meeting of the CRC was held. The CRC received a historical overview of the City of Riverside Charter. The CRC discussed the form of government, the powers and duties of the Mayor, City Council, and City Manager. The CRC was advised that an updated charter matrix would be included in ever CRC agenda packet. (Exhibit P) On March 25, 2004, the 15th meeting of the CRC was held. The CRC received information regarding open government including the Brown Act and had discussion and deliberation regarding the Preamble, fiscal management, independent audit, and public works contracts – design/build. (Exhibit Q)

Based upon the minutes of the April 22, 2004, meeting it does not appear that there was a CRC meeting held on April 8, 2004.

On April 22, 2004, the 16th meeting of the CRC was held. The CRC discussed (1) the use of mail ballot elections for general obligation bonds (the discussion was continued to May 27, 2004); (2) whether general obligation bonds, notes, or other indebtedness should be sold at public sale by notice or by negotiated private sale; (3) local preferences; (4) Mayor and City Council salaries; and (5) the proposed Charter matrix. The last page of the charter matrix identifies the potential positions related to changes to Charter section 1202 - (a) no change to the current procedure of seeking City Council approval for all contracts or (b) authorize the board to award contracts over

\$50,000 within the approved City budget without City Council approval. In addition, the last page of the minutes identifies the request of the Board of Public Utilities to increase their authority to be able to approve contracts without Council approval (Exhibit R).

On May 13, 2004, the 17th meeting of the CRC was held. The CRC had discussions and deliberations regarding Mayor and City Council salaries and the Preamble (Exhibit S). On May 27, 2004, the 18th meeting of the CRC was held. The CRC continued their discussions and deliberations regarding (1) Elections; (2) Youth membership on boards/commissions (Exhibit T).

On June 10, 2004, the 19th meeting of the CRC was held. The CRC continued their discussions and deliberations regarding (1) increased youth involvement in boards/commissions; (2) Board of Public Utility – contract awards which included information provided by Director Evans including explaining the proposal to allow the Board of Public Utilities to award budgeted contracts for routine work without further City Council action which will increase efficiency by reducing approval time following receipt of bids; (3) Board of Public Utilities – customer requests; (4) public utilities director – long term contracts; (5) cash management – capital project fund – independent audit; (6) Preamble; (7) public works contracts security/bonds; (8) general obligation bonds – mail ballot elections; (9) ward representation on boards/commissions; and (10) future deliberation and report to the City Council (Exhibit U).

On June 24, 2004, the 20th meeting of the CRC was held. The CRC continued their discussions and deliberations regarding voting/veto power of the Mayor, campaign contribution limits, appointment of boards/commissions, board/commission ward representation, increase/reduce the number of Charter boards/commissions, increase authority of Charter boards/commissions, advisory role of Park & Recreation Commission, authorize design-build projects, review Mayor/Council compensation draft language, possible reconsideration of motions which previously failed for lack of 11 affirmative votes, public campaign financing, closed session video-taping and master judge review, change auditor every three years, appointment of department heads (Exhibit V).

On July 13, 2004, the CRC submitted its final report to the City Council. The amendments endorsed by the CRC are detailed in the matrix and draft charter language attached to the report. Page 28 of the matrix provides the CRC's recommendation which states "authorize Board to award contracts over \$50,000 within the approved City budget and authorize the City Manager to execute such contracts without City Council approval". The CRC approved the recommendation by a vote of 12 in the affirmative and 2 no. The CRC final report presentation included a slide that addressed the proposed charter amendment changes related to the Public Utilities. The first bullet point of the slide provides "Board award of budgeted contracts over \$50,000." The draft language endorsed by the CRC added language related to public works, good, and services, see page 26 of the draft Charter language. The City Council accepted the CRC's final report and approved the recommendations of the CRC related to section 1202 of the Charter (Exhibit W).

On July 27, 2004, the City Council called the election which was to be consolidated with the statewide general election for the purpose of considering twenty-three amendments to the City Charter. On August 13, 2004, the Board of Supervisors approved the consolidation of the election and Measure MM was submitted to the voters. The ballot measure that was submitted to the voters read as follows: "Shall the Charter of the City of Riverside be amended to (1) allow the board of public utilities to award and execute contracts for construction, goods, or services for the public utility. . ." (see Exhibit A to the County of Riverside Submittal dated August 31, 2004) (Exhibit X).

On November 9, 2004, the City Council received a report regarding the impacts of the Charter

Amendments. With respect to Measure MM the report provides, in part, that the Board of Public Utilities will now award contracts for public works projects, purchases of equipment, materials, and goods and services, in accordance with the budget approved by the City Council. The City Council directed the City Manager, City Clerk, and City Attorney to execute the implementation steps as outlined in the written report (Exhibit Y).

On December 21, 2004, the City Council declared the results of the election including Measure MM (Exhibit Z).

On May 17, 2005, the procurement rules and regulations were revised to incorporating the voter approved charter amendments. The staff report at page 2 address the revision as it relates to Measure MM and provides, in part, that Measure MM allows the Board of Public Utilities to award bids and authorize contracts to be executed that exceed \$50,000 for construction, goods, or services for the public utilities so long as such bid awards and contracts are within the Public Utilities Department budget limits as approved by the City Council. The proposed resolution ensures that bids awarded, and contracts approved by the Board of Public Utilities are procured in accordance with the City Council-established procurement rules and regulations of the new purchasing resolution (Exhibit AA).

On June 3, 2005, Supervising City Attorney Eileen Teichert gave a detailed report on how Measure MM will be implemented by the BPU and the contracting rules and procedures applicable to PUD contracts. Ms. Teichert reported on the background, types of contracts and procurements impacted by Measure MM (construction, good, non-profession services, and professional services, competitive procurement procedures, qualifications-based selection procedures, limits of authority, and types of contracts not impacted by Measure MM). The report to the BPU identifies the contracts and procurements that the Board is empowered to authorize and award under Measure MM without further Council approval. The contracts fall into four general categories including professional services (Exhibit BB).

On October 7, 2020, the Inclusiveness, Community Engagement, and Governmental Process Committee received a report on whether the Riverside City Charter, as amended by Measure MM, authorizes the Board of Public Utilities to award professional services agreements. The ballot question submitted to the voters was “Shall the Charter of the City of Riverside be amended to (1) allow the board of public utilities to award and execute contracts for construction, good, or services for the public utility? The voters answered that question in the affirmative. The committee received and filed the report and directed that award of professional services contracts by the Board of Public Utilities be added to the CRC scope of work; and that an outside legal opinion on Charter Section 1202 regarding powers and duties of the Board of Public Utilities be sought. The motion carried unanimously (Exhibit CC, Bates).

On November 12, 2020, the outside legal opinion was received from Meyers Nave and was provided to the City Council.

STRATEGIC PLAN ALIGNMENT:

This discussion regarding Measure MM supports the priorities of the City of Riverside’s Envision Riverside 2025 Strategic Plan, by contributing to **Strategic Priority No. 5 High Performing Government**, by supporting the following:

Goal No. 5.3 – Enhance communication and collaboration with community members to improve transparency, build public trust and encourage shared decision-making.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – Riverside is transparent and makes decisions based upon sound policy, inclusive community engagement, involvement of City Boards & Commissions, and timely and reliable information. Activities and actions serve the public interest, benefit the City's diverse populations, and result in greater public good. Providing reliable information regarding the history of Measure MM at an open and public meeting serves the public and City's interest in promoting and building public trust.
2. **Equity** – Riverside is supportive of the City's racial, ethnic, religious, sexual orientation, identity, geographic, and other attributes of diversity and is committed to advancing fairness of treatment, recognition of rights, and equitable distribution of services to ensure every member of the community has equal access to share in the benefits of community progress. Providing the information contained herein as part of the public agenda ensures that all individuals that are interested in this subject have equal access to the information, recognizes the rights of every member of the community who chooses to participate, and affords every member of the community the opportunity to provide input.
3. **Fiscal Responsibility** – Riverside is a prudent steward of public funds and ensures responsible management of the City's financial resources while providing quality public services to all. Ensuring we are complying with Measure MM and its implementing policies, particularly related to procurement, promotes prudent stewardship of public funds and ensures that we are managing the City's financial resources in accordance with the approved processes which are designed, in part, to increase efficiencies.
4. **Innovation** – Riverside is inventive and timely in meeting the community's changing needs and prepares for the future through collaborative partnerships and adaptive processes. Measure MM was the result of a comprehensive review of the City's Charter by a 17-member committee. One of the purposes of the CRC is to ensure the Charter is keeping pace with the community's changing needs and modifying the charter to prepare for the future. The CRC held many community meetings and a public forum to engage the members of the community related to potential changes to the Charter.
5. **Sustainability & Resiliency** – Riverside is committed to meeting the needs of the present without compromising the needs of the future and ensuring the City's capacity to persevere, adopt and grow during good and difficult times alike. The Charter is an ever-evolving document, and the CRC was charged with evaluating and making recommendation to the City Council to meeting the needs at the time.

FISCAL IMPACT:

There is no fiscal impact associated with this informational presentation.

Prepared by: Phaedra A. Norton, City Attorney
Certified as to
availability of funds: Edward Enriquez, Chief Financial Officer/Treasurer

Attachment: Exhibits