

CHARTER REVIEW COMMITTEE
MONDAY, JULY 8, 2019, 5 P.M.
MAYOR'S CEREMONIAL ROOM

MINUTES

PRESENT: Chair Clarke, Vice-Chair McQuern, and Members Angel, Miller, Evans, Clymer, Zaragoza, MacKinney, Beeman, Barnhart, Teichert, Irving, Webb, Riemer, and Bristow and Alternate McKeith

ABSENT: Alternate Mabon

STAFF PRESENT: Colleen Nicol, Susan Wilson, Elliot Min, and Eva Arseo

Chair Clarke convened the Charter Review Committee at 5 p.m.

ORAL COMMUNICATIONS FROM THE AUDIENCE

Jason Hunter spoke regarding Charter Officers being subject to the Code of Ethics and Conduct and the employment agreement with a former City Manager.

APPROVAL OF MINUTES

Following discussion, it was moved by Member Clymer and seconded by Member Irving to approve the minutes of the meeting of June 10, 2019, as presented. Motion carried with Members Teichert, MacKinney, Bristow, and Angel abstaining.

EXCUSAL OF ABSENCES

Following discussion, it was moved by Member Barnhart and seconded by Member Webb to excuse the absences of Eileen Teichert, Kimberly MacKinney, Art Angel, and David Bristow from the meeting of June 10, 2019. Motion carried with Members Angel and MacKinney abstaining.

INTERVIEW WITH COUNCILMEMBER PERRY

Councilmember Perry thanked the Committee members for their service. He supports clarification of the Mayor's veto powers, especially with respect to Charter Officer contracts. With respect to the Charter Officers being subject to the Code of Ethics and Conduct, Councilmember Perry responded that the City Council has the responsibility of supervising the Charter Officers and evaluating their performance. If the Committee proposes that Charter Officers be subject to the Code, practical implementation will have to be examined. He does not favor expansion of the Mayor's vote authority and supports the current Charter provisions in this regard.

Councilmember Perry feels that appointments to fill City Council vacancies should be no greater than 6 months or one year. He recommends the Committee review spending authorizations in the Charter. He supports forwarding all the Committee recommendations to the voters but cautions the Committee to consider balance and voter fatigue if there are a large number of measures.

Councilmember Perry supports the current Charter provision that each board and commission have at least one member from each of the seven Wards. Councilmember Perry stated he has no issue with requiring a supermajority vote on the Discussion Calendar for sale of Riverside water outside of the City.

Councilmember Perry noted that service as a Councilmember is a full-time job with part-time pay. At some point, the voters need to decide if they prefer full-time Councilmembers as a primary job, which would require additional compensation. He would like voters to determine how Mayor and Councilmember salaries are set.

INTERVIEW WITH CITY ATTORNEY

City Attorney Geuss explained that the idea of having Charter Officers subject to the Code of Ethics and Conduct will not accomplish what the Committee seeks and will subject the City to some liability. All three professional positions have their own ethics codes. Charter Officers are direct employees of the City Council. If there is an allegation of ethical misconduct, it is incumbent upon the City Council to institute a performance review in closed session to ensure privacy of personnel records and disciplinary actions. Public airing of personnel issues may potentially violate the individual's personnel rights. A member of the public could request a Councilmember place a Charter Officer complaint on the closed session agenda. The Code of Ethics is not incorporated into current Charter Officer contracts.

When questioned, City Attorney Geuss responded that he was not aware of Public Works handling of street trees contrary to Charter provisions. The City must comply with all provisions of the Charter.

When a citizen raises a potential violation of the Charter, the City Attorney convenes with the appropriate parties to address the issue. Elected officials are accountable to the voters and the Charter Officers are accountable to the City Council. City Attorney Geuss stated that citizens do not have a private cause of action under the Charter. If a subcommittee is formed to discuss this issue, the City Attorney committed to provide staff support. Pursuant to Charter Section 1401, enforcement of violations would come through the District Attorney or possibly the Attorney General. A misdemeanor would be prosecuted within its jurisdiction.

The Charter clearly states that the three Charter Officers serve at the pleasure of the City Council. There is no provision for concurrence of the Mayor. The clear reading of the Charter, giving placement of the Mayor's general powers and the power of veto sections, cannot conflict with the nondiscretionary orders of the Charter that the Charter Officers serve at the pleasure of the City Council. The Committee may wish to offer an amendment to grant such authority to the Mayor.

INTERVIEW WITH CITY CLERK – ELECTIONS – VACANCIES

City Clerk Colleen Nicol presented recommendations to amend the Charter to clearly state that members of the City Council are nominated and elected by voters in their respective Wards, to change election dates for members of the City Council from odd to even-numbered years, and to provide that all Mayor and Councilmember elections be conducted on the same day as statewide elections. Placement of Councilmember seats on the same ballot as the Mayor cannot be avoided without having terms of all Councilmembers expire simultaneously. Waiting for the appeal decision on the Redondo Beach action challenging Charter City subjectivity to the Voter Participation Act would place the City in violation of State law.

The City Clerk supports clarification of the Mayor's veto power over Charter Officer contracts.

The City Clerk has no issue being held accountable to the aspirational tenets and prohibited behaviors in the Code of Ethics and Conduct, but feels vetting of Charter Officer personnel actions should be conducted in closed session with the City Council.

The City Clerk briefed the Committee on instant runoff voting, the belief by supporters that such a system better reflects the support of a majority of voters, prior Charter Review Committees' inaction on this matter, elimination of the runoff system, election costs, potential voter confusion, and likely delayed election results.

The City Clerk discussed the League of Women Voters proposal to limit the length of City Council appointments to fill City Council vacancies. The City Clerk will prepare an election calendar example regarding the process and timing for calling of a special election to fill a vacancy for consideration at the next meeting.

Following discussion, it was moved by Member McQuern and seconded by Member Beeman to conceptually approve proposed amendments to (1) amend Charter Section 400(b) to clarify that members of the City Council are nominated and elected from voters of the Ward; (2) amend Charter Section 500 to provide

that elections for Members of the City Council be held on the same day as statewide primary and general elections beginning in 2022; (3) amend Charter Section 500 to provide that elections of the Mayor be held on the same day as statewide elections; and (4) amend Charter Section 400(c) through (h) to provide for a City Council Wards 2, 4, and 6 runoff election, if needed, on November 2, 2021, and delete obsolete sections (f) through (h). Motion carried with Member Clymer voting no.

The City Clerk will ensure proposed Charter language provides that members of the City Council serve until any successor member is elected and seated. The City Attorney will draft language options to provide for appointment to fill City Council vacancies until the next regular or special municipal election is called and if the word "incumbent" can be used as a ballot designation.

PRIORITIZATION OF PROPOSED CHARTER AMENDMENT IDEAS

Assistant City Attorney Wilson presented proposed Charter amendment categories for discussion and prioritization by the Committee.

Following discussion, Members McKeith, Beeman, Bristow, and Clymer and a representative of the City Attorney's Office agreed to serve on a subcommittee to discuss a citizen private right of action to enforce the Charter.

It was suggested that "Mayor Veto" and "Mayor Vote" be combined as "Authority of the Mayor".

Following further discussion, it was moved by Member Teichert and seconded by Member McQuern to remove instant runoff voting from consideration. Motion carried with Members Bristow, Irving, Miller, Barnhart, and Clymer voting no.

Following further discussion, it was moved by Member Riemer and seconded by Member Beeman to remove designation of Councilmembers as part-time vs full-time from consideration, but retaining further discussion on Councilmember salary. Motion carried unanimously.

Following discussion, Chair Clarke directed that discussion of water sales be placed on the December 9, 2019, agenda.

Member Bristow left the meeting at 6:56 p.m.

APPLICATION OF CODE OF ETHICS AND CONDUCT TO CHARTER OFFICERS

The Committee discussed application of the Code of Ethics and Conduct to Charter Officers and the complaint process. The complaint process for Charter Officers as employees could differ from the current process. Several members expressed support for inclusion of Charter Officers. Assistant City Attorney Wilson

explained possible sanctions for sustained violations. Several members noted that the opportunity exists for members of the public to file complaints in response to any unpopular decision, which may hamper efficient conduct of City business and may carry potential liability with respect to employee confidentiality. It was noted that the Code's prohibited conduct sections are also in State law.

Chair Clarke directed this matter be included in the subcommittee discussion, agendized for further discussion in September, and that the Board of Ethics Chair be invited to attend the September meeting.

Member Barnhart will also serve on the subcommittee for the two issues.

INFORMATIONAL AND RESEARCH MATERIALS

The Committee briefly reviewed the informational and research materials provided by staff. No formal action was required or taken.

ORAL COMMUNICATIONS FROM THE AUDIENCE

Kevin Dawson spoke regarding the powers and duties of the City Clerk with respect to contracts with outside legal counsel, a requirement that all contracts be written with no payment on oral contracts, and actions of prior City Managers, Assistant City Managers, and the Code of Ethics.

Jason Hunter suggested defining "gross operating revenues" with respect to the General Fund Transfer. He supports Charter Officers being subject to the Code of Ethics and Conduct and requested the Committee to discuss limitation of long-term contracts.

ITEMS FOR FUTURE CONSIDERATION AS REQUESTED BY CHARTER REVIEW COMMITTEE MEMBERS

Chair Clarke noted that the rubric being drafted by a subcommittee will be presented at the next meeting. Member Beeman described the tool being developed and its purpose.

The meeting adjourned at 7:36 p.m.

Respectfully submitted,


COLLEEN J. NICOL
City Clerk