

**ELK GROVE CHARTER COMMISSION  
SPECIAL MEETING  
8380 LAGUNA PALMS WAY, CONF. RM. 2C  
TUESDAY, AUGUST 26, 2008**

1. Call to Order / Roll Call

The Special Commission meeting of August 26, 2008 was called to order by Chair Allen at 6:02 p.m.

Present: Commissioners – Allen, Johnson, Sendejas-Lopez, Loveland, and Orrock

Absent: Commissioner Martin

Also Present: City Attorney Susan Cochran and Assistant City Clerk Jason Lindgren

Chair Allen led the pledge of allegiance.

2. Public Comment (on non-agenda items)

None.

3. Approval of Minutes

MOTION/VOTE:

Vice Chair Orrock made a motion, Commissioner Sendejas-Lopez second, to approve the August 12, 2008 minutes as presented. The motion carried by the following vote:

Ayes: Commissioners – Allen, Johnson, Sendejas-Lopez, and Orrock

Noes: Commissioners – None

Abstain: Commissioners - Loveland

Absent: Commissioners – Martin

4. Discuss general organization of the Elk Grove City Charter

City Attorney Cochran presented a broad outline of a draft charter (filed). She stated that the draft was built from items raised by the Commission and included specific provisions found in other charters that were inserted to give the outline continuity and to offer starting points on a breadth of topics in order to provide a comprehensive outline. She explained that the draft was intended as a work in progress, and would be amended on a forward going basis to chronicle the progress of the deliberations of the Commission.

Commissioner Loveland noted that numerous charters were available on the Internet to use as resources, with a wide range of variation in depth and complexity. City Attorney Cochran offered that there are cases of very simplified

charters of only two pages reserving all powers, but the vague nature of such an approach creates its own issues in regards to interpretation and execution. She hoped that the Commission would seek to produce a charter that was a balance of the extremes of detail versus simplicity.

In response to Commissioner Johnson, City Attorney Cochran clarified that the powers reserved in the opening paragraph of Article I of the draft were for the charter, and that the Commission, as the electors for the charter, would delineate the powers, and limits of those powers, available to be used by the Council.

Public Comment

None.

5. Discuss and draft Charter language regarding the following topics:

a) Mayor selection

In response to Chair Allen, City Attorney Cochran explained that the issue of a directly elected mayor could be: 1) posed in the form of two ballot questions separate from the charter, 2) included as part of the charter, or 3) presented in both formats during the same election. She stated that placing the issue of a directly elected mayor in the charter does not require running additional ballot questions; but, the questions could be run in tandem with the charter if there was sentiment that the charter may not pass (but the issue of a directly elected mayor was still desired). Ms. Cochran also explained that provisional terms could be included in the charter to amend its language to accommodate divergent election results that could arise between the two ballot questions being decided differently with the form presented in the charter.

Chair Allen inquired on election costs if the election does not coincide with a General Election. Assistant City Clerk Lindgren replied that costs for the Sacramento County Registrar of Voters to run an election are dependent on how many ballot items are run, and how many agencies participate, on any given ballot. He stated that \$60,000 had been budgeted for the 2008 General Election, and that number would likely increase if the same ballot was run during a Primary Election as there would be fewer regional issues and less participating agencies running items on the ballot. Mr. Lindgren stated the costs for Special Elections run significantly higher as an agency will likely have few other agencies to split costs, having to fund the brunt of the entire election cost to the Registrar.

The Commission agreed to include a provision for a directly elected mayor and confirmed that the mayor would not have a veto power.

Public Comment

None.

b) Number of Council Members

Commissioner Loveland observed that the current draft has two at-large positions and five election districts, creating the possibility that one district could have three representatives on the Council if the two at-large positions elected originated from one district. City Attorney Cochran noted that attempting to restrict at-large members from residing in same district would likely not be possible in regards to the State Elections Code. Mr. Loveland also noted that the at-large seats would invariably be more expensive campaigns compared to the smaller population district seats.

Commissioner Sendjas-Lopez inquired if at-large candidates would have access to public financing for their campaigns, to which City Attorney Cochran stated that would be uncertain at this point in the process.

Discussion continued regarding redistricting. City Attorney Cochran noted that election district composition would be dictated by Federal law mandates accounting for demographics, historical districts and population numbers obtained from census data. She observed that, considering the changes the City has seen since the 2000 census, it is likely that current district composition would change by 2010.

Commissioner Johnson wanted language regarding contiguous districts to be adopted in the charter to guide district drawing. Several Commissioners noted that current districts have odd shapes and irregularities in regards to boundaries and areas of inclusion. In response to comments by Constance Conley, who described the origins of current district lines through the efforts of Danetta Garcia, City Attorney Cochran observed that the current district configuration may have been the result of having to draw district boundaries after Council members were elected during incorporation; thus drawing boundaries in reverse to match geographic areas that matched the winning elected officials of the 2000 election (rather than drawing districts based on voter composition first, then holding the election).

Commissioner Loveland viewed the charter as an opportunity to depoliticize the drawing of districts and suggested examining how other charters address the issue of district drawing for direction.

In response to Chair Allen, City Attorney Cochran noted that, with the timing of the charter, the City would not have access to updated census data to include district drawing in the charter. She noted that direction could be given on the composition and guidelines of a body, such as the Citizen's Commission in the City of Modesto, which could be directed by the charter on standards and regulations on how to define and draw districts.

Commissioner Sendejas-Lopez believed that a library of charters and charter examples, in general, would be a great benefit and resource for the Commission.

The Commission agreed to keep the number of Council Members at seven (7); including the office of the mayor, one Council member elected at-large, and five (5) members elected by each of the five Districts. The Commission decided the matter of drawing districts was not a part of the charter, but it would explore establishing guidelines for how future redistricting will occur and who the appropriate agents are to conduct such redistricting.

#### Public Comment

Damon Mireski asked if consideration was given for one mayor at-large and six district seats. Vice Chair Orrock replied that a balance was desired to have two at-large seats accountable to all registered voters, rather than creating another seat only accountable to one district.

Mr. Mireski inquired in regards to the five-district model and if the second at-large position was under consideration as a directly elected Vice Mayor. Chair Allen stated he did not wish to impose another restriction on Council composition, and wanted to provide the Council discretion in regards to selection of the Vice Mayor. Vice Chair Orrock offered that an elected office designation of Vice Mayor could provide an advantage of title in future elections for the seated Vice Mayor to run for Mayor compared to other standing Council members. He offered that a rotation could be defined in the charter designating the succession of Vice Mayor, to which City Attorney Cochran advised against, as the rotation designee may not have the capacity in time and resources to perform the duties required of the office. Vice Chair Orrock noted that a provision to opt out of the rotation could remedy such a scenario.

Constance Conley requested clarification on the role of redistricting in the charter and what voters should expect of district composition if they agree to the terms of the charter. Commissioner Johnson affirmed that districts would not be drawn through the charter, and Vice Chair Orrock stated that the public outreach portion of the Commission's charge would include educational outreach on the ramifications of the charter on future district drawing.

#### c) By-District and At-Large Elections

The Commissioners deliberated on the benefits and drawbacks of voting by district and voting at-large including: 1) high cost for seats campaigning at-large compared to expected smaller costs campaigning for one district, 2) at-large elections from districts can result in placement of a candidate that the City as a whole may prefer but is not the preferred candidate of the district, and 3) accountability by district is only to the voters of the district, not the citizens at-large.

The Commission agreed to remain with five council seats elected by District, one seat elected at-large, and the mayor elected at-large.

### Public Comment

Shirley Peters, representing the Greater Sheldon Road Estates Homeowner's Association (GRESHA), voiced opposition to voting by district, stating that voting at-large holds all seats accountable to all registered voters of the City.

Tom Shine noted that the Charter Commission should not place considerable concern in regards to election costs and campaign financing. He also noted that elections conducted by district open the opportunity for interest groups to "buy" a district much more easily than an at-large seat.

Damon Mireski observed that the comparatively low entry cost for running smaller district campaigns also opens the opportunity for groups to run targeted, opposition campaigns by district at lower cost.

#### d) Term Length

Chair Allen reiterated earlier discussions in which the term length could be dictated by vote if the two questions were run on the ballot concurrently with the charter for a directly elected mayor. He added that the second question asks voters if they want the mayor's term to be two or four years, and cited that the poll results indicate there is a preference for the four year term.

City Attorney Cochran noted that districts are currently voted on in a staggered manner so that one election year does not have the capacity to turn over an entire Council. She continued that if two-year terms were set for the mayor and at-large position there would be an election for the majority of Council seats every two years. Commissioner Johnson observed that with the completion of the charter the first election of the mayor would occur in 2012, so in order to coincide with the current district election rotation the mayor would run when the odd district numbers run.

In response to Commissioner Johnson, City Attorney Cochran replied that in the event a seat is vacated General Law provides that the Council has 88 days to fill the post; if the Council fails to take action to fill the post then a Special Election is held. She stated that the Commission could use the charter to establish guidelines for filling vacancies such as requiring supermajorities for appointments, setting qualifications, or increasing the powers of the new mayor to make appointments. After deliberation the Commission agreed to leave the issue of vacancies as dictated by General Law, considering that the increased cost to the City to hold a Special Election would be incentive enough to generate consensus amongst a Council within the 88 days.

### Public Comment

None.

e) Primary and General Elections

City Attorney Cochran explained that the current election process for the City of Elk Grove is election by plurality from district during the General Election; the top vote-gathering candidates for each district up for election win their respective district. She cited that the poll indicates a desire for a majority vote, requiring fifty percent plus one of registered voters, to win for both the at-large seats and the individual district seats. Ms. Cochran noted that for election by majority it is preferable to have the election during the Primary Election, so that in the event that there is no majority winner the top two vote-gatherers have a run-off election during the General Election (rather than in a Special Election).

Chair Allen observed that a majority Primary Election would likely increase election costs requiring run-off elections in the General Election, but did note the preference reflected in the poll for election by majority. Commissioner Johnson noted that there would be no additional cost if a candidate secured a majority of votes during the Primary Election.

City Attorney Cochran inquired if the Commission wished to consider direct appointment of an open seat if only one candidate qualifies to run. Commissioner Johnson did not support immediate appointments, and believed such an immediate appointment would remove the capacity for write-in candidates, limiting avenues for citizen participation in the election process.

City Attorney Cochran raised the question of whether the Commission wanted the charter to address ballot initiatives: direct initiative, recall, and referendum. Vice Chair Orrock did not want to limit the voting powers of citizens. City Attorney Cochran clarified that the charter can dictate how ballot initiatives are processed and can be utilized in the City. She continued that ballot initiatives merit further consideration as the Commission delves into the particulars of having both at-large and district seats, dictating who has the capacity to start petitions, and whether the Commission would want to expand or contract such powers. Ms. Cochran stated that currently the draft outline, under Article VI, follows the State Elections Code.

Commissioner Johnson wanted to clarify that the Primary Election to be used, as proposed by the charter, should be the Primary that occurs immediately preceding the General Election to avoid confusion in election years with multiple Primary Elections, such as 2008. City Attorney Cochran stated she would examine current language regarding Primary and General Elections to set the election period in the charter as close to June as possible.

Public Comment

Constance Conley preferred the majority vote but raised concern that such a requirement for election could become a “deal breaker” in the eyes of others in

deciding to pass the charter. Commissioner Loveland noted that the process being conducted by the Commission is intended to bring these exact questions to the surface in order to assess, discuss and hopefully resolve such issues.

f) Public Works Contracts

City Attorney Cochran presented a draft approach to Public Works Contracts establishing a threshold amount of \$50,000 to require bids and defining what constitutes a public work project (filed). She offered to extend an invitation to Bruce Cline, the City Attorney of Folsom, to speak to the Commission in regards to public works contracts as addressed in charters.

Commissioner Johnson clarified that he was not against examining options for the charter to address the Public Contract Code, but he was against making alterations to the Public Contract Code in the charter. He stated that by empowering the charter to make amendments by ordinance, and addressing the Public Contract Code via ordinances, the Council would be afforded the flexibility to adjust proposed changes as needed. He warned that if language altered the Public Contract Code and were adopted directly through the charter the City would face immense challenges if required to correct such language due to future legal challenge. He believed that conducting the outreach to educate citizens on the need to vote for a charter amendment package primarily making legal language corrections would be difficult.

In response to Vice Chair Orrock, City Attorney Cochran replied that, if a portion of the charter were found to be illegal in the eyes of the court, that segment would be removed and reverted back to General Law. Chair Allen stated that Ms. Cochran's inclusion of a severability clause permits the continued use of the entirety of the charter in the event that portions are removed by decisions of the court.

Vice Chair Orrock raised concern that the allowance of Council discretion through ordinance for particular sections of the charter would lead to constant changes and alterations. He believed that making corrections now in the charter to address inconsistencies in the Public Contract Code would provide long-term, clear direction.

City Attorney Cochran presented the City's Purchasing Ordinance (filed) as an example providing definitions of services requiring bids, establishing thresholds and providing procedures regarding the conduct of bids. She explained that the Purchasing Ordinance could be presented in a similar fashion to include public work contracting under the determined threshold, providing many of the protections raised as concerns by the Commission and members of the public such as: 1) prohibiting the splitting of large projects into serial bids, 2) giving discretion in regards to selection of bidders, 3) restricting capacity to change the scope of work, 4) providing a local vendor preference discount, 5) establishing requirements to determine project estimates and bidder eligibility, and 6) defining reporting requirements on bids awarded. Ms. Cochran noted that the charter provides a means to identify what topics the City wishes to exert control over,

and ordinances can provide the means to define how the City exerts such control.

The Commission agreed that the threshold amount of \$50,000 was appropriate for establishing bidding requirements, but inconsistencies (particularly in regards to defining the public work status of maintenance and repair work) and the extent of complexity in the Public Contract Code raised concerns in regards to making changes directly in the wording of the charter or accommodating changes through the use of ordinances.

Commissioner Johnson disagreed with changing any language in the Contract Code as was presented in the proposed draft for Public Works Contracts. He believed the same level of specificity could be achieved by referencing the Public Contract Code, and that changing any wording would only bring the uncertainty of interpretation and inevitable legal challenge. He offered that instead of redefining public works that the charter should reference exclusions in the Public Contract Code and amend with definitions as necessary through ordinances.

City Attorney Cochran offered to return with the proposed draft for Public Works Contracts with a side-by-side, red lined comparison with the Public Contract Code to display all current language changes proposed.

#### Public Comment

Steve Detrick inquired if measures were in place with the current Purchasing Ordinance to deter year to year bid roll-over to the same agency and whether there were restrictions on the capacity to change the scope of work by contractors. City Attorney Cochran replied that the programmatic approach of the Capital Improvement Project for the City defines project schedule timelines and the scope of work for projects for a five year period.

Damon Mireski asked if provisions were made to ensure laborers under contract are being provided prevailing wages, to which City Attorney Cochran informed Mr. Mireski that State Labor Code dictates the application of prevailing wages. Mr. Mireski also inquired on force accounts, in which a city already paying for labor to Public Works staff does not need to include the cost of labor of the city *work force* when determining pricing. Chair Allen noted that this issue is similar to the ambiguities the Commission faced when addressing the Public Contract Code, and would look to examine this issue as well in light of the comparison to be provided by City Attorney Cochran at the next meeting.

#### 6. New Business

City Attorney Cochran reminded the Commission that it was scheduled to present a report at the regularly scheduled September 10, 2008 City Council meeting. She informed the Commission that the report would take place on the Regular calendar and not during the presentations segment of the agenda, as the Commission would be seeking direction from the Council. Chair Allen requested to meet with Vice Chair Orrock and City Attorney Cochran the morning

of September 10. Vice Chair Orrock noted that City Clerk Blackston forwarded an outline of tasks completed to date. Commissioner Loveland requested that all members of the Commission receive these updates, and requested that a discussion on the nature of the presentation be on the agenda of the Commission's next regularly scheduled meeting on September 9.

Commissioner Loveland noted that the appointment for the vacant seat on the Commission was scheduled for the August 27, 2008 regular City Council meeting.

City Attorney Cochran reported that the Public Outreach Consultants would be reviewed at the next regularly scheduled meeting of the Commission, and that the meeting would return to the regular venue, in the Chamber Hall, at 8400 Laguna Palms Way.

Vice Chair Orrock thanked the citizens present at the meeting for their attendance and public comment and asked participants to please spread the word to increase community involvement. He noted the commitment and work of Leo Fassler as an active citizen participant in the charter process. Mr. Orrock stated that he expects increased public outreach will soon begin, with the selection of a consultant, to extend meetings into the community beyond the Commission's Tuesday night meetings.

#### Public Comment

Damon Mireski inquired if recent polls initiated by the City had a common practice of excluding citizens who serve on boards, committees and commissions. He stated he was called a few times and excluded because he sits on a committee. Vice Chair Orrock noted that the decision would be made on the part of the agent conducting the poll, and criteria for exclusion would likely be incorporated in the design of the poll.

#### 7. Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 8:36 p.m.

ATTEST:

Jason Rolf Lindgren.  
Assistant City Clerk