

Attachment H

**CITY OF NEWPORT BEACH
CHARTER UPDATE COMMISSION STAFF REPORT**

Agenda Item No. 4
February 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: OFFICE OF THE CITY ATTORNEY
David R. Hunt, City Attorney
949/644-3131, dhunt@newportbeachca.gov

**SUBJECT: CHARTER SECTION 501 – CITY MANAGER RESIDENCY
REQUIREMENT**

RECOMMENDATION:

Recommend repeal of Charter Section 501 due to its inconsistency with the California Constitution and to allow the City Council to determine in each recruitment the appropriate distance from City Hall that a particular City Manager may live.

DISCUSSION:

The full text of Charter Section 501 is appended as Attachment “A.” A “white paper” with relevant background information and suggested alternatives for the Commission to consider is appended as Attachment “B.”

Staff is recommending the repeal of Charter Section 501 in order to bring it into conformity with the California Constitution and to give the Council the latitude to make the best decision for the City in recruiting a City Manager.

The quality of the transportation system and the quality of communications have changed dramatically since the adoption of Charter Section 501. In addition, a provision in the Charter restricting the City Council’s choice between viable candidates for the position of City Manager could result in the City having to pass up the best candidate based upon an arbitrary limit. For these reasons staff recommends simple repeal of the Charter provision, thus bringing our Charter into conformity with the California Constitution and allowing the City Council the latitude for making the best recruitment decision for the City based upon individual circumstances.

Should the Commission wish to consider setting a “reasonable and specific” limitation as allowed under the California Constitution, staff recommends considering whether a particular distance provides a City Manager candidate with a reasonable opportunity to

live outside of the City and meets the City's need to have its City Manager within a reasonable response time to City Hall. We have appended as Attachment "C" maps for consideration by the Commission identifying locations within 10, 15, and 30 miles of the current City Hall location and the new City Hall site. The Commission may recommend that a reasonable radius is one in which the City Manager can arrive at the City Hall within a specified period of time (*such as 30 minutes, for instance*) and choose a distance based upon that determination.

ENVIRONMENTAL REVIEW: Not applicable.

Prepared by:

Submitted by:

OFFICE OF THE CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY

By 
David R. Hunt, City Attorney

By 
David R. Hunt, City Attorney

Attachments: "A" - Charter Section 501
"B" - Charter Section 501 White Paper
"C" - Maps

ATTACHMENT “A”

Charter Section 501

February 2, 2010 Charter Commission Staff Report

CHARTER OF THE CITY OF NEWPORT BEACH

Article V
City Manager

Section 501. Residence.

The City Manager need not be a resident of the City at the time of his appointment, but he shall establish his residence within the City within ninety days after his appointment, unless such period is extended by the City Council, and thereafter maintain his residence within the City during his tenure of office.

[A09-00673] – Charter Section 501 – 100202 Commission Mtg

ATTACHMENT “B”

Charter Section 501 White Paper

February 2, 2010 Charter Commission Staff Report

City Manager Residency Requirement

Charter Section 501

STATEMENT OF THE ISSUE:

How should the City modify Charter Section 501 governing City Manager residency within the City in order to make it consistent with current law.

RELEVANT BACKGROUND:

Section 501 of the City's charter was adopted with the original enactment of the Charter effective on January 7, 1955 and it has not been amended since that time. It provides that the City Manager shall reside within the City during his tenure in office. This provision was consistent with the California Constitution at the time of its enactment.

The law changed, however, with the enactment of California Constitution Article XI, Section 10(b) in 1974, and its reenactment in 1976. Now, as discussed in the memorandum from Assistant City Attorney Mynette Beauchamp dated July 28, 2009 and attached hereto as Exhibit "A," cities may not require their employees to reside within the city's corporate boundaries. Thus, Charter section 501 is unconstitutional and not enforceable.

California Constitution Section 10(b), however, allows for the adoption of requirements that an employee reside within a reasonable distance of their place of employment. Specifically, Section 10(b) provides:

A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location.

Thus, the Section 501 can be modified to provide that the City Manager must reside within a "reasonable and specific" distance from City Hall.

ALTERNATIVES:

The Commission has the following alternatives identified by staff:

Alternative 1: Recommend repeal of the Charter Section 501.

This approach is by far the simplest approach. It then allows the City Council to exercise discretion balancing the need of the City for a City Manager to live close to City Hall with the requirements of the law. The factors to consider in such a determination, such as the quality of the transportation system, have changed over the years that may make it more appropriate for the City Council to have the authority to make the decision. Additionally, the Council may wish to appoint a City Manager for a limited term that lives outside of Newport Beach but, who, for good business reasons, would make the best

City Manager. Moreover, a City Manager could need to live outside a specified radius for family reasons, while still providing excellent service to the City. Giving the City Council the authority to make that decision enables the City to have the best City Manager appointed and serving at the time.

Alternative 2: Recommend amendment of Charter Section 501 to bring it into conformance with the California Constitution by establishing a "reasonable and specific" distance from City Hall that a City Manager must live.

If the Commission chooses to make this recommendation, it must set the "reasonable and specific" distance.

Exhibit "A" - Memorandum from Assistant City Attorney Mynette Beauchamp dated July 28, 2009

[A09-00673] – Charter section 501 – White Paper – 100202 Commission Mtg

CITY OF NEWPORT BEACH
OFFICE OF THE CITY ATTORNEY

TO: David R. Hunt, City Attorney
FROM: Mynette D. Beauchamp, Assistant City Attorney
MATTER: City Charter's Unconstitutional Residency Requirement for City Manager; A09-00545
DATE: July 28, 2009



Issue:

Is the City Charter's residency requirement for the City Manager constitutional?

Short Answer:

Article XI, Section 10(b) of the California Constitution prohibits cities and counties, including charter cities and counties, from requiring that their employees be residents of such city or county. Therefore, the City may not require that the City Manager become a resident of Newport Beach.

Discussion:

Section 501 of the City Charter, as originally enacted, provides: "The City Manager need not be a resident of the City at the time of his appointment, but he shall establish his residence within the City within ninety days after his appointment, unless such period is extended by the City Council, and thereafter maintain his residence within the City during his tenure of office."

Article XI, Section 10(b) of the California Constitution ("Section 10(b)") states: "A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location."

Prior to the adoption of Section 10(b) of the California Constitution, the California Supreme Court upheld a city's general requirement that all of its employees live within its borders. In *Ector v. City of Torrance* (1973) 10 Cal.3d 129, 109 Cal.Rptr. 849, 514 P.2d 433, the Supreme Court found that no fundamental rights or suspect classes were involved, and applied the traditional equal protection test, which requires only that a law bear a rational relationship to a legitimate governmental objective. The court listed as some of the possible legitimate objectives: "[T]he promotion of ethnic balance in the community; reduction in high unemployment rates of inner-city minority groups; improvement of relations between such groups and city employees; enhancement of the quality of employee performance by greater personal knowledge of the city's

conditions and by a feeling of greater personal stake in the city's progress; diminution of absenteeism and tardiness among municipal personnel; ready availability of trained manpower in emergency situations; and the general economic benefits flowing from local expenditure of employees' salaries." *Id.* at 135. The court held that the city's residency requirement bore a rational relationship to the governmental objectives, and thus did not violate the equal protection clause of the state Constitution. *Id.*

The *Ector* opinion, however, inspired the Legislature and the electorate to pass a Constitutional amendment, Section 10(b), prohibiting any city or county, including those established by charter, from requiring its employees to be residents.¹ The amendment was intended to improve local government by increasing the pool of qualified applicants. In *Wall v. Municipal Court of South Orange Judicial District of Orange County* (1990) 223 Cal.App.3d 247, 272 Cal.Rptr. 702, in which an applicant for a traffic trial commissioner was rejected because he was not a resident of Orange County, the Court of Appeal noted that Section 10(b) "clearly prohibits ... a city, county or public district from imposing residency requirements on its employees..." but distinguished similar residency restrictions imposed by state law in finding in favor of the Municipal Court. *Id.* at 250.

Similarly, in *Cooperrider v. San Francisco Civil Service Commission* (1979) 97 Cal.App.3d 495, 158 Cal.Rptr. 801, the Court of Appeal held that the city of San Francisco's (a charter city) one-year residency requirement for applicants for public employment violated Section 10(b) as well as the equal protection provisions of the state Constitution. Plaintiff Candis Cooperrider, a resident of Piedmont, attempted to apply for a position with the City as an aquarist, but her application was refused solely on the basis that she was not a resident of San Francisco; she was otherwise fully qualified for the position. The court explained that San Francisco's residency requirement was in direct contravention of the mandate of Section 10(b), and was thus unconstitutional on that basis. *Id.* at 502-03.

Conclusion:

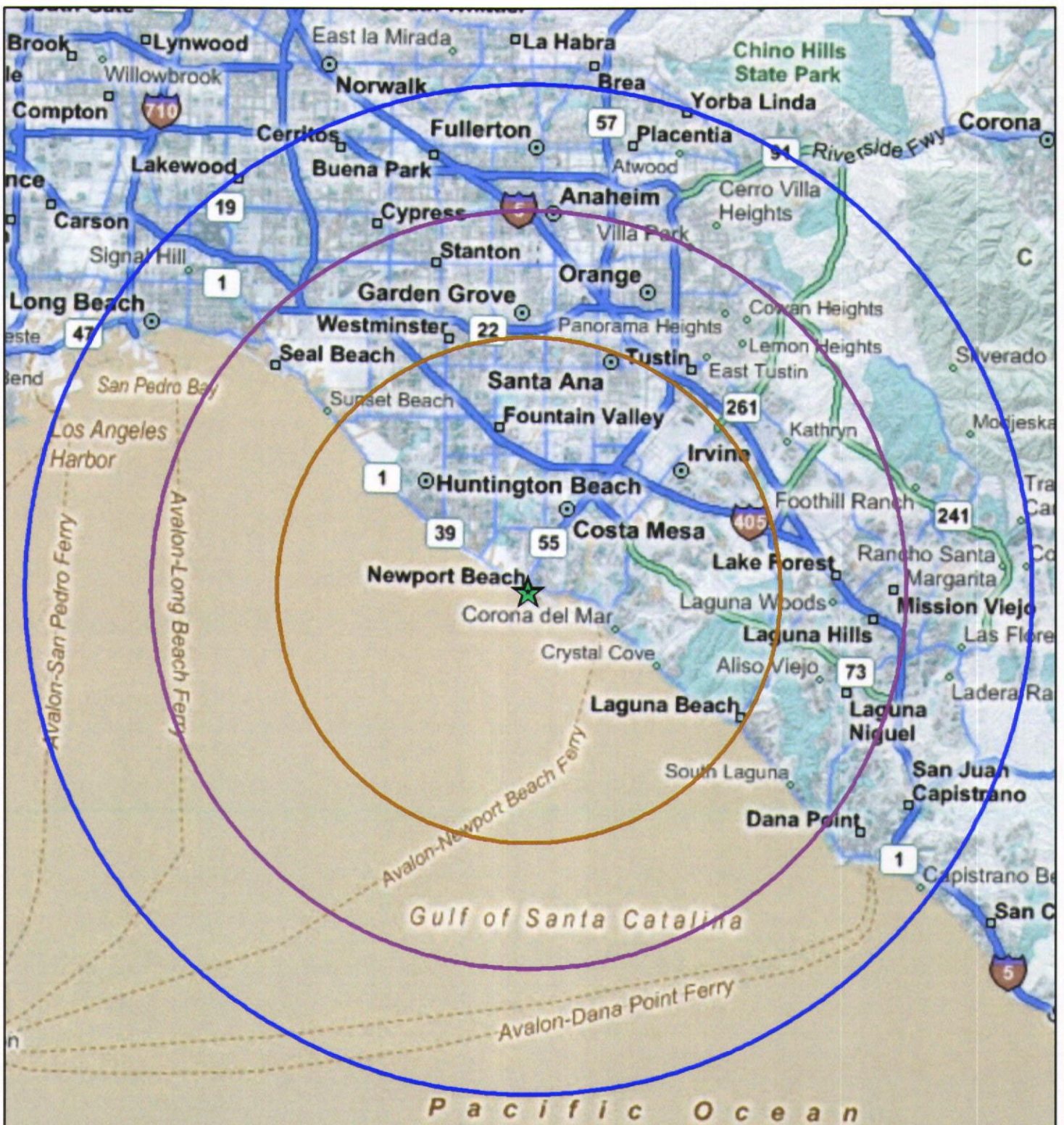
Although the City Charter residency requirement for the City Manager was enacted prior to the adoption of Section 10(b) to the state Constitution, the Constitutional amendment now preempts the City Charter provision. As a result, the residency requirement is unconstitutional and unenforceable, and the City may not require a new City Manager to become a resident of the City.

¹ Subsection (b) is former section 10.5, as adopted by the voters on November 5, 1974; in 1976, it was repealed (Stats. 1976, Res., ch. 5, ACA 40, effective July 9, 1976) and reenacted as subdivision (b) (Stats. 1976, Res., ch. 24, ACA 90, effective July 8, 1976). (See Stats. 1976, p. 6659.)




ATTACHMENT “C”

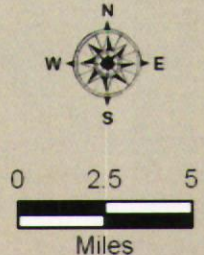
Maps

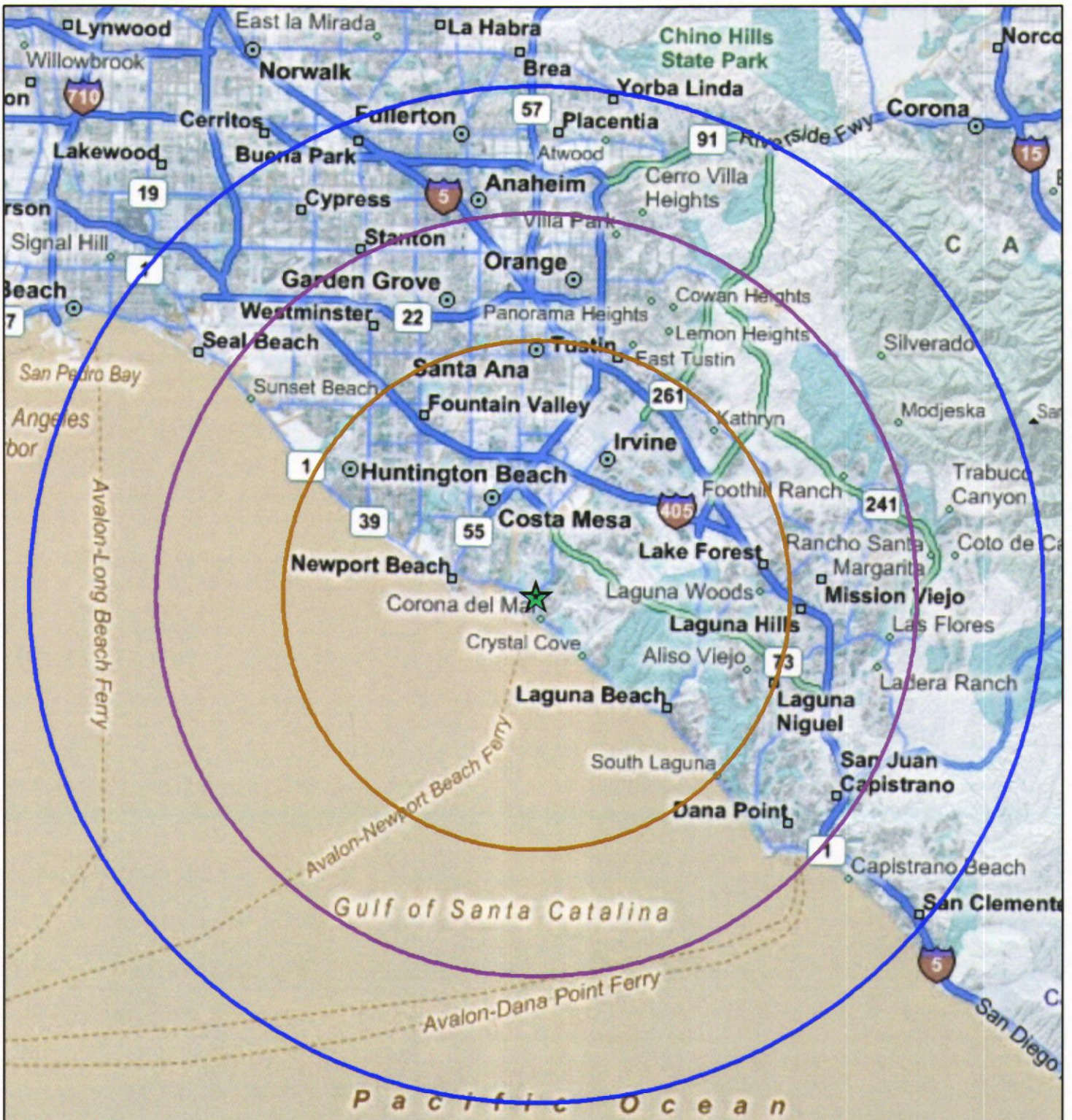
February 2, 2010 Charter Commission Staff Report



Current Newport Beach City Hall Location

-  Current City Hall
-  10 Miles
-  15 Miles
-  20 Miles





New Newport Beach City Hall Location

-  New City Hall
-  10 Miles
-  15 Miles
-  20 Miles

