

Attachment E

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

Agenda Item No. 1
February 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: OFFICE OF THE CITY ATTORNEY
David R. Hunt, City Attorney
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SUBJECT: GENDER NEUTRAL LANGUAGE – CHARTER SECTIONS 500, 501, 502, 503, 504, 602, 603, 605, 606, 607, 608, 609, 610, 611 AND 704

RECOMMENDATION:

Recommend to the City Council that the above-captioned Charter Sections be changed to reflect gender neutral language.

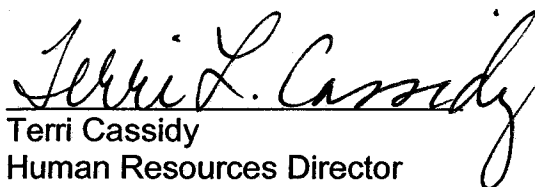
DISCUSSION:

Rather than rewording the sections to utilize only position titles, plural references or eliminate personal pronouns altogether, our recommendation is to include a reference to the female gender rather than the sole reference to the male gender in the current language. These changes will retain the intended meaning of the original Charter language and lessen the chance of creating confusion or ambiguity.

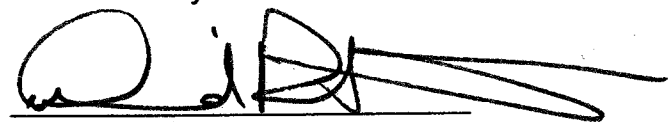
Additionally, it is our recommendation that Councilmember replace Councilman and Chairperson replace Chairman.

Attached are the sections identified by the committee that do not reflect gender neutral language with our recommended changes highlighted in grayscale to correct the issue.

Prepared by:


Terri Cassidy
Human Resources Director

Submitted by:


David R. Hunt
City Attorney

Attachments: City of Newport Beach Charter Sections 500, 501, 502, 503, 504, 602, 603, 605, 606, 607, 608, 609, 610, 611 and 704

**City of Newport Beach Charter Sections 500, 501, 502, 503, 504, 602, 603, 605, 606, 607,
608, 609, 610, 611 and 704**

Section 500. City Manager.

There shall be a City Manager appointed by the City Council who shall be the chief administrative officer of the City. In the selection of a City Manager the City Council shall screen all qualified applicants and other qualified persons known by the Council to be available. It shall appoint by a majority vote, the person that it believes to be best qualified on the basis of his or her executive and administrative qualifications, with special reference to his or her experience in, and his or her knowledge of, accepted practice in respect to the duties of the office as set forth in this Charter. The City Manager shall serve at the pleasure of the City Council.

Section 501. Residence.

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

Section 502. Eligibility.

No person shall be eligible to receive appointment as City Manager while serving as a member of the City Council nor within one year after he or she has ceased to be a City Councilmember.

Section 503. Compensation and Bond.

The City Manager shall be paid a salary commensurate with his or her responsibilities as chief administrative officer of the City, which salary shall be established by ordinance or resolution. The City Manager shall furnish a corporate surety bond in such form and in such amount as may be determined by the City Council.

Section 504. Powers and Duties.

The City Manager shall be the head of the administrative branch of the City government. He or she shall be responsible to the City Council for the proper administration of all affairs of the City. Without limiting the foregoing general grant of powers, responsibilities and duties, the City Manager shall have power and be required to:

(a) Appoint, and he or she may suspend or remove, subject to the provisions of this Charter, all department heads and officers of the City except elective officers and those department heads and officers the power of whose appointment is vested by the Charter in the City Council, and approve or disapprove all proposed appointments and removals of subordinate employees by officers or department heads.

(b) Prepare the budget annually, submit such budget to the City Council and be responsible for its administration after its adoption.

(c) Prepare and submit to the City Council as of the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding fiscal year.

(d) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem to him or her desirable.

(e) Establish a centralized purchasing system for all City offices, departments and agencies.

(f) Prepare rules and regulations governing the contracting for, purchasing, storing, distribution, or disposal of all supplies, materials and equipment required by any office, department or agency of the City government and recommend them to the City Council for adoption by it.

(g) See that the laws of the State pertaining to the City, the provisions of this Charter and the ordinances of the City are enforced.

(h) Exercise control of all administrative offices and departments of the City and of all appointive officers and employees except those directly appointed by the City Council and prescribe such general rules and regulations as he or she may deem necessary or proper for the general conduct of the administrative offices and departments of the City under his or her jurisdiction.

(i) Perform such other duties consistent with this Charter as may be required of him or her by the City Council.

Section 602. City Attorney. Powers and Duties.

To become and remain eligible for City Attorney the person appointed shall be an attorney at law duly licensed as such under the laws of the State of California, and shall have been engaged in the practice of law for at least three years prior to his or her appointment. The City Attorney shall have power and may be required to:

(a) Represent and advise the City Council and all City Officers in all matters of law pertaining to their offices.

(b) Prosecute on behalf of the people any or all criminal cases arising from violation of the provisions of this Charter or City ordinances. He or she shall prosecute misdemeanor offenses arising under State law if authorized and directed to do so by ordinance or resolution adopted by the City Council.

(c) Represent and appear for the City in any or all actions or proceedings in which the City is concerned or is a party, and represent and appear for any City officer or employee, or former City officer or employee, in any or all actions or proceedings in which any such officer or employee is concerned or is a party for any act arising out of his or her employment or by reason of his or her official capacity.

(d) Attend all regular meetings of the City Council and give his or her advice or opinion in writing whenever requested to do so by the City Council or by any of the boards or officers of the City.

(e) Approve the form of all contracts made by and all bonds given to the City, endorsing his or her approval thereon in writing.

(f) Prepare any and all proposed ordinances and resolutions for the City and amendments thereto.

(g) Devote such time to the duties of his or her office as may be specified in the ordinance or resolution fixing the compensation for such office.

(h) Surrender to his or her successor all books, papers, files and documents pertaining to the City's affairs.

The City Council shall have control of all legal business and proceedings and may employ other attorneys to take charge of any litigation or matter or to assist the City Attorney therein. (As amended effective April 28, 1966)

Section 603. City Clerk. Powers and Duties.

The City Clerk shall have power and be required to:

(a) Attend all meetings of the City Council unless excused and be responsible for the recording and maintaining of a full and true record of all of the proceedings of the City Council in books that shall bear appropriate titles and be devoted to such purpose.

(b) Maintain separate books, in which shall be recorded respectively all ordinances and resolutions, with the certificate of the Clerk annexed to each thereof stating the same to be the original or a correct copy, and as to an ordinance requiring publication, stating that the same has been published or posted in accordance with this Charter; keep all books properly indexed and open to public inspection when not in actual use.

(c) Maintain separate books, in which a record shall be made of all written contracts and official bonds.

(d) Be the custodian of the seal of the City.

(e) Administer oaths or affirmations, take affidavits and depositions pertaining to the affairs and business of the City and certify copies of official records.

(f) Be ex-officio Assessor, unless the City Council has availed itself, or does in the future avail itself, of the provisions of the general laws of the State relative to the assessment of property and the collection of City taxes by county officers, or unless the City Council by ordinance provides otherwise.

(g) Have charge of all City elections.

(h) Perform such other duties consistent with this Charter as may be required of him or her by ordinance or resolution of the City Council. (Section 604. City Treasurer, deleted by amendment effective January 20, 1959)

Section 605. Director of Finance.

There shall be a Director of Finance appointed by the City Manager and subject to suspension or removal by the City Manager who shall have power and shall be required to:

(a) Have charge of the administration of the financial affairs of the City under the direction of the City Manager, and be head of the Finance Department of the City.

(b) Compile the budget expense and income estimates for the City Manager.

(c) Maintain a general accounting system for the City government and each of its offices, departments and agencies.

(d) Receive all taxes, assessments, license fees and other revenues of the City, or for whose collection the City is responsible, and receive all taxes or other money receivable by the City from the County, State or Federal Government, or from any Court, or from any office, department, or agency of the City.

(e) Have custody of all public funds belonging to or under control of the City or any office, department or agency of the City government and deposit all funds coming into his or her hands in such depository as may be designated by resolution of the City Council, or, if no such resolution be adopted, then in such depository designated in writing by the City Manager, and in compliance with all of the provisions of the State Constitution and laws of the State governing the handling, depositing and securing of public funds.

(f) Supervise and be responsible for the disbursement of all moneys and have control of all expenditures to insure that budget appropriations are not exceeded; audit all purchase orders before issuance; audit, approve and provide for the payment of all bills, invoices, payrolls, demands or charges against the City and, with the advice of the City Attorney, when necessary, determine the regularity, legality and correctness of such claims, demands or charges.

(g) See that all taxes, assessments, license fees and other revenues of the City, or for whose collection the City is responsible, and all other money receivable by the City from the County, State or Federal Government, or from any court, office, department or agency of the City are collected.

(h) Through the City Manager submit to the City Council and to the certified public accountant employed by the City as an independent auditor a monthly statement of all receipts, disbursements and fund balances in sufficient detail to show the exact financial condition of the City; and, as of the end of each fiscal year, submit a complete financial statement and report.

(i) Supervise the keeping of current inventories of all property of the City by all City departments, offices and agencies.

(j) Assume the title of and act as City Treasurer and with the approval of the City Manager appoint deputies as necessary to act under the provisions of any law requiring or permitting action by a City Treasurer.

(k) Perform such other duties consistent with this Charter as may be required of him or her by ordinance or resolution of the City Council. (As amended effective January 20, 1959)

Section 606. Administering Oaths.

Each department head and his or her deputies shall have the power to administer oaths and affirmations in connection with any official business pertaining to his or her department.

Section 607. Department Heads. Appointment Powers.

Each department head and appointive officer shall have the power to appoint, suspend and remove such deputies, assistants, subordinates and employees as are provided for by the City Council for his or her department or office, subject to the provisions of this Charter and of any personnel, merit or civil service system adopted hereunder. Any such appointment or removal by a department head appointed by the City Manager shall be subject to approval by the City Manager.

Section 608. Illegal Contracts. Financial Interest.

No member of the City Council, department head or other officer of the City (except a member of any board or commission), shall be financially interested, directly or indirectly, in any contract, sale or transaction to which the City is a party.

No member of any board or commission shall be financially interested directly or indirectly, in any contract, sale or transaction to which the City is a party and which comes before the board or commission of which such person is a member for approval or other official action or which pertains to the department, office or agency of the City with which such board or commission is connected.

Any contract, sale or transaction in which there shall be such an interest, as specified in this Section, shall become void at the election of the City when so declared by resolution of the City Council.

No member of the City Council, department head or other officer of the City, or member of any board or commission shall be deemed to be financially interested, within the meaning of the foregoing provisions, in any contract made with a corporation where his or her only interest in the corporation is that of a stockholder and the stock owned by him or her shall amount to less than three percent (3%) of all the stock of such corporation issued and outstanding.

If any member of the City Council, department head or other officer of the City, or member of a board or commission shall be financially interested as aforesaid, upon conviction thereof he or she shall forfeit his or her office in addition to any other penalty which may be imposed for such violation of this Charter.

Section 609. Acceptance of Other Office.

Any elective officer of the City who shall accept or retain any other elective public office, except as provided in this Charter, shall be deemed thereby to have vacated his or her office under the City Government.

Section 610. Nepotism.

The City Council shall not appoint to a salaried position under the City government any person who is a relative by blood or marriage within the third degree of any one or more of the members of such City Council, nor shall any department head or other officer having appointive power appoint any relative of his or her within such degree to any such position. (As amended effective April 28, 1966)

Section 611. Official Bonds.

The City Council shall fix by ordinance or resolution the amounts and terms of the official bonds of all officials or employees who are required by this Charter or by ordinance to give such bonds. All bonds shall be executed by responsible corporate surety, shall be approved as to form by the City Attorney, and shall be filed with the City Clerk. Premiums on official bonds shall be paid by the City.

There shall be no personal liability upon, or any right to recover against, a superior officer, or his or her bond, for any wrongful act or omission of his or her subordinate, unless such superior officer was a party to, or conspired in, such wrongful act or omission.

Section 704. Meetings. Chairperson.

As soon as practicable, following the first day of July of every year, each of such boards and commissions shall organize by electing one of its members to serve as presiding officer at the pleasure of such board or commission. Each board or commission shall hold regular meetings at least once each month and such special meetings as such board or commission may require. All proceedings shall be open to the public.

Except as may be otherwise provided in this Charter, the City Manager shall designate a secretary for the recording of minutes for each of such boards and commissions, who shall keep a record of its proceedings and transactions. Each board or commission may prescribe its own rules and regulations which shall be consistent with this Charter and copies of which shall be kept on file in the office of the City Clerk where they shall be available for public inspection. Each board or commission shall have the same power as the City Council to compel the attendance of witnesses, to examine them under oath, to compel the production of evidence before it and to administer oaths and affirmations.