Attachment C

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

Agenda Item No. 3
February 16, 2010

**TO:** HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

**FROM:** Harbor Resources Office
Chris Miller, Harbor Resources Manager
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**SUBJECT:** **CHARTER SECTION 1402 - Sale of Waterfront Property**

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**RECOMMENDATION:**

Recommend to the City Council to amend Charter Section 1402 to allow for the sale or conveyance of waterfront property upon affirmative vote of the electorate (Alternative 1).

**DISCUSSION:**

Attached is a "white paper" with relevant background information and suggested alternatives for the Commission to consider.

Submitted by:

Chris Miller
Harbor Resources Manager

Attachments:
Section 1402 White Paper
Charter Section 1402
Map of City Owned Property
Beacon Bay Bill/State Tidelands Grant (pp.1-2)
Council Guidelines Section F-7/Income Property

# The Sale of Waterfront Property

# Charter Section 1402

**Statement of the Issue:**

Currently, Charter Section 1402 prohibits the sale or conveyance of any waterfront property with limited exceptions. However, over the years, Section 1402 has been amended six times in order to allow for the sale of waterfront property at various locations throughout the harbor.

*Should the City modify Charter Section 1402 to provide for the sale or conveyance of waterfront property?*

**Relevant Background:**

Section 1402 was adopted with the original Charter effective January 7, 1955. Since then, Section 1402 has been amended six times to allow for the sale of specifically identified parcels:

- The first (1402.a) and second (1402.b) amendments were added effective January 25, 1961
- The third (1402.c) amendment was added effective May 4, 1964
- The fourth (1402.d) amendment was added effective April 28, 1966
- The fifth (1402.e) was added January 12, 1967
- The sixth (1402.f) and final amendment was effective November 3, 1992

Each amendment required an affirmative vote of the electorate to modify the Charter and add the exception. In principle, Charter amendments should be reserved for consideration of significant changes to public policy or City governance. The number of exceptions made to Section 1402 since 1961 indicate that there can be a compelling public reason to sell waterfront property, and brings into question whether the Charter provision is overly restrictive.

Historical City records do not reveal any relevant information or discussions on these amendments except that 1402 (f) states that the proceeds from the sale of the property be placed in a special fund to be used solely for the completion of the new central library. In addition, after reviewing past parcel maps, we can see that most of the City parcels previously sold were extremely small or unusually shaped, providing little public value. In these cases, the property was usually sold to the adjacent property owner as a matter of convenience or lot-line practicality.

Waterfront properties currently owned by the City are identified on the attached map. Excluded from this map are the dozens of public street ends and oceanfront beaches which would never be sold. The areas shaded in red represent the City's waterfront property, including some smaller beaches, that could potentially be considered for sale. The areas shaded in green are also City property but currently have long term leases (income property) associated with them (Beacon Bay, Balboa Bay Club, American

Legion, Basin Marine and North Star Beach which is jointly owned by the City/County). Some of these areas may not be sold per the provisions of the Tideland Trust (Beacon Bay Bill). Council Policy F-7 addresses the management of income properties including those that are tidelands, filled tidelands or waterfront by stating that "…the City is the steward of a public trust and state law requires the City to maximize returns..." Therefore, the City must view this income property as a potential revenue generator and a means to benefit the community.

In a review of six California Chartered cities holding waterfront property, all had charter provisions allowing for the sale of waterfront property (Alameda, Huntington Beach, Long Beach, San Diego, Santa Barbara and Ventura).

**Alternatives:**

**Alternative 1:** Amend Charter Section 1402 to allow for the sale or conveyance of waterfront property upon an affirmative vote of the electorate.

*This alternative would simplify the process by allowing the electorate to continue to vote on the sale of waterfront property by the City, but without requiring a Charter amendment to do so..* The electorate would retain the right to determine whether waterfront property should be conveyed by the City.

**Alternative 2:** Do not amend Charter Section 1402. Continue the current practice of not allowing City owned waterfront property to be sold or conveyed except to the State or County for use as a public beach or park.

*This alternative would continue the practice of making exceptions to Charter Section 1402 each time waterfront or beach front property is sold. The advantage is that this would require no change to the current Charter section. The disadvantage is that Charter amendments in principle should be reserved for significant questions related to public policy or governance, not the transfer of property for compelling public reasons.*

# Charter Section 1402

**Section 1402. Water-front Property.**

The City Council shall not sell or convey any water-front or beach property, excepting to the State or to the County for use as a public beach or park.

Notwithstanding any other provision of this Charter, the City Council shall have the authority to lease City-owned property, including tide and submerged lands so long as the lease is limited to the term permitted by State law.

Nothing in this Section shall invalidate any lease of such property in existence at the time of the effective date of the Charter nor the future leasing or re-leasing of any such property under lease at the effective date of this Charter.

There shall be reserved forever to the people the public use of a strip of bay front land above mean high tide not less than eighty-five feet in depth of the city-owned water front property bounded on the west by the southeasterly line of Nineteenth Street and bounded on the east by a line parallel thereto lying 349.90 feet northwesterly of the northwesterly line of Fifteenth Street, said frontage to be bay front frontage. (As amended effective January 11, 1957, and November 3, 1992)

**Section 1402(a). Exception to Section 1402.**

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned property fronting on the Rivo Alto Canal described as Lot 4, Block 434, Canal Section, Newport Beach, as per map recorded in Book 4, Page 98, Miscellaneous Maps, Records of Orange County, California. (Added by amendment effective January 25, 1961)

**Section 1402(b). Exception to Section 1402.**

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned property fronting on Newport Bay described as follows:

> All of Lot 1, Block 223, as shown upon a map of Section “A,” Newport Beach, recorded in Book 4, Page 21, of Miscellaneous Maps, Records of Orange County, California, and all that portion of Block 222 of said Section “A” described as follows: Beginning at the most northerly corner of said Block 222; running thence south 46° 50’ 30" East along the Northeasterly line of said Block 222 to the most northerly corner of Lot 1, Tract 814, as shown upon a map recorded in Book 24, page 36, Records of said County; running thence southwesterly along the Northwesterly line of said Lot 1, Tract 814, to a point in the Southwesterly line of said Block 222; thence Northwesterly along the Southwesterly line of said Block 222 to the most Westerly corner of said Block 222; thence Northeasterly along the Northwesterly line of said Block 222 to the point of beginning.

(Added by amendment effective January 25, 1961)

**Section 1402(c). Exceptions to Section 1402.**

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned real property described as follows, to-wit:

> Lot 6, Block 218, as shown upon a map of Section “B,” Newport Beach, recorded in Miscellaneous Maps, Book 4, page 27, Records of Orange County, California, together with a portion of Lot 4, Section 33, Township 6 South, Range 10 West, S.B.B. & M., bounded on the south by the northerly line of said Lot 6, on the north of the easterly

extension of the northerly prolongation of the easterly line of said Lot 6, and on the west by the easterly lines of Lots 3 and 4 of said Block 218.

(Added by amendment effective May 4, 1964)

**Section 1402(d). Exception to Section 1402.**

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned real property described as follows, to wit:

That portion of Section Thirty-five (35) in Township Six (6) South, Range Ten (10) West, San Bernardino Base & Meridian together with that portion of Fractional Section Two (2), in Township Seven (7) South, Range Ten (10) West, San Bernardino Base & Meridian shown as Parcel “A” on the map recorded in Book 80, Page 48 of Record of Surveys in the office of the County Recorder of Orange County, California, and described as follows:

Beginning at the most westerly corner of Lot 8, Block 22, Eastside Addition to Balboa Tract as shown on the map recorded in Book 4, Page 20 of Miscellaneous Maps in the office of the County Recorder of said County; thence S 70° 10’ 00" E. 3.78 feet to the True Point of Beginning; thence continuing S 70° 10’ 10" E. 26.22 feet; thence N 19° 50’ 00" E 9.46 feet; thence West 27.87 feet to the True Point of Beginning.

(Added by amendment effective April 28, 1966)

**Section 1402(e). Exception to Section 1402.**

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned property fronting on Newport Bay described as follows:

That portion of Lot 2 in Section 33, Township 6 South, Range 10 West, of the San Bernardino meridian, in the City of Newport Beach, County of Orange, State of California, according to the official plat of said land filed in the District Land Office, August 4, 1890, lying northeasterly of the northeasterly line of Blocks 222 and 223 in Section A, Newport Beach, as per map recorded in Book 4, page 21 of Miscellaneous Maps, in the office of the County Recorder of said County and between the northeasterly prolongations of the northwesterly line of Lot 1 in Block 223 of said Tract and of the northwesterly line of Lot 1 of Tract No. 814, as per map recorded in Book 24, pages 35 and 36, of said Miscellaneous Maps.

(Added by amendment effective January 12, 1967)

**Section 1402(f). Exception to Section 1402.**

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City owned property fronting on the Rivo Alto with the legal description as follows:

Lot 6, Block 242, Canal Section Tract filed in Book 4, Page 98 of Miscellaneous Maps in the Office of the Recorder of Orange County, California.

The proceeds of the sale of this property shall be deposited in a special fund to be used solely for the completion of the new central library.

(Added by amendment effective November 3, 1992)

NEWPORT SHORES
SANTA ANA RIVER JETTY
COAST HIGHWAY
NEWPORT BLVD
SUPERIOR AVE
SANTA ANA AVENUE
ORANGE COAST COLLEGE DR
IRVINE AVENUE
DOVER DRIVE
1402(f)
1402(a)
1402(e)
1402(b)
1402(c)
1402(d)
TURNING BASIN
WEST LIDO CHANNEL
LIDO PENINSULA
LIDO ISLE
NEWPORT PIER
BALBOA BLVD
BAY ISLAND
LINDA ISLE
HARBOR ISLAND
COLLINS ISLAND
BALBOA YACHT BASIN
BALBOA ISLAND
BALBOA PIER
NORTH STAR BEACH
NEWPORT DUNES
JAMBOREE ROAD
SAN JOAQUIN HILLS ROAD
NEWPORT CENTER DRIVE EAST
MACARTHUR BLVD
STATION 54 O.C.H.D. BOAT DOCK COAST GUARD
HARBOR ENTRANCE
THE WEDGE
WEST JETTY
EAST JETTY
BIG CORONA
LITTLE CORONA
Big Canyon
Waterfront City Property
Exceptions to Section 1402
Waterfront City Property
Leased Waterfront City Property
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Miles
WaterfrontCityProperty_11X17.mxd

# Chapter 74 (Statutes of 1978)

*An act relating to tide and submerged lands in the City of Newport Beach, and in this connection repealing Chapter 494 of the Statutes of 1919, Chapter 70 of the Statutes of 1927, Chapter 142 of the Statutes of 1929, Chapter 574 of the Statutes of 1929, Chapter 813 of the Statutes of 1929, and Chapter 200 of the Statutes of 1931, and declaring the urgency thereof, to take effect immediately.*

The PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

Section 1. There is hereby granted to the City of Newport Beach and its successors all of the right, title, and interest of the State of California held by the state by virtue of its sovereignty in and to all that portion of the tidelands and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay in the County of Orange, which were within the corporate limits of the City of Newport Beach, a municipal corporation, on July 25, 1919; the same to be forever held by the city and its successors in trust for the uses and purposes and upon the following express conditions:

(a) The lands shall be used by the city and its successors for purposes in which there is a general statewide interest, as follows:

(1) For the establishment, improvement, and conduct of a public harbor; and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.

(2) For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.

(3) For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.

(b) Except as otherwise provided in this section, the city or its successors shall not, at any time, grant, convey, give, or alienate the lands, or any part thereof, to any individual, firm, public or private entity, or corporation for any purposes whatever; except that the city or its successors may grant franchises thereon for a period not exceeding 50 years for wharves and other public uses and purposes and may lease the lands, or any part thereof, for terms not exceeding 50 years for purposes consistent with the trust upon which the lands are held by the state and with the uses specified in this section.

(c) The lands shall be improved without expense to the state; provided, however, that nothing contained in this act shall preclude expenditures for the development of the lands for the purposes authorized by this act, by the state, or any board, agency, or commission thereof, or expenditures by the city of any funds received for such purpose from the state or any board, agency, or commission thereof.

(d) In the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(e) The state shall have the right to use without charge any transportation, landing, or storage improvements, betterments, or structures constructed upon the lands for any vessel or other watercraft or railroad owned or operated by the state.

(f) There is hereby reserved to the people of the state the right to fish in the waters on the lands with the right of convenient access to the waters over the lands for such purpose, which rights shall be subject, however, to such rules and regulations as are necessary for the accomplishment of the purposes specified in subdivision (a).

(g) Notwithstanding any provision of this section to the contrary, the city may lease the lots located within Parcels A, B, and C described in Section 6 of this act for the purposes set forth in this act and for terms not to exceed 50 years. The consideration to be received by the city for such leases shall be the fair market rental value of such lots as finished subdivided lots with streets constructed and all utilities installed. The form of such leases and the range of consideration to be received by the city shall be approved by the State Lands Commission prior to the issuance of any such lease. All money received by the city from existing and future leases of those lots shall be deposited in the city tideland trust funds as provided in Section 2.

(h) With the approval of the State Lands Commission, the city may transfer portions of the lands granted by this act, or held pursuant to this act, to the state acting by and through the State Lands Commission, for lease to the Department of Fish and Game for an ecological reserve or wildlife refuge, or both, and other compatible uses to be undertaken by the department; provided, however, that, if at any time the Department of Fish and Game no longer uses those portions of the lands so transferred by the city to the state for those purposes, the lands so transferred shall revert to the city to be held pursuant to the provisions of this act. Upon approving such a transfer from the city to the state, the State Lands Commission shall lease the lands so transferred to the Department of Fish and Game. The public benefits shall be the sole consideration to be received by the State Lands Commission from the Department of Fish and Game for that lease. Any and all income received by the Department of Fish and Game from the lands so leased shall be used only in connection with the department's improvement and administration of the leased lands.

(i) The city shall establish a separate tidelands trust fund or funds in such a manner as may be approved by the State Lands Commission, and the city shall deposit in the fund or funds all money received directly from, or indirectly attributable to, the granted tidelands in the city.

# INCOME PROPERTY

The City owns and manages an extensive and valuable assortment of property including streets, parks, beaches, public buildings and service facilities. The City also owns and operates a yacht basin, a mobile home park, a luxury residential development and various other income properties. Most of the income property is tidelands, filled tidelands or waterfront. Unencumbered fee value of income property is estimated at upwards of one hundred million dollars, and income typically contributes ten percent of all City revenues.

As owner of property, the City is the steward of a public trust, and state law requires the City to maximize its returns or be subject to a charge of making a gift of public funds. Nevertheless, the City Council recognizes the importance of this property not only as a revenue generator, but also as a means to provide otherwise unfeasible uses and facilities to benefit the community.

In managing its property, the City will continually evaluate the potential of all City owned property to produce revenue. This may include leasing unused land, renting vacant space, and establishing concessions in recreation areas or other similar techniques. The City Council will evaluate the appropriateness of establishing new income properties using sound business principals and after receiving input from neighbors and users.

The policy of the City Council is that income property be managed in accordance with the following:

A. Whenever a lease, management contract, concession, sale or similar action regarding income property is considered by the City, an analysis shall be conducted to determine the maximum or open market value of the property. This analysis shall be conducted using appraisals or other techniques to determine the highest and best use of the property and the highest value of the property.

B. All negotiations regarding the lease, management contract, concession, sale or similar action regarding income property shall include review of an appraisal or analysis of the use being considered for the property conducted by a reputable and independent professional appraiser, real estate consultant or business consultant.

C. The City shall seek, whenever practical and financially advantageous, to operate or manage all property and facilities directly with City staff or contractors.

D. In all negotiations regarding the lease, management contract, concession, sale or similar action regarding a non-residential income property, the City shall seek revenue equivalent to the open market value of the highest and best use; and, whenever possible the City shall conduct an open bid or proposal process to insure the highest financial return.

E. Whenever less than the open market or appraised value is received or when an open bid process is not conducted, the City shall make specific findings setting forth the reasons thereof.

Such findings may include but need not be limited to the following:

1. The City is prevented by tideland grants, Coastal Commission guidelines or other restrictions from selling the property or converting it to another use.

2. Redevelopment of the property would require excessive time, resources and costs which would outweigh other financial benefits.

3. Converting the property to another use or changing the manager, concessionaire or lessee of the property would result in excessive vacancy, relocation or severance costs, which would outweigh other financial benefits.

4. Converting residential property to another use or opening residential leases to competitive bid would create recompensable liabilities and other inequities for long-term residents.

5. The property provides an essential or unique service to the community that might not otherwise be provided were full market value of the property be required.

6. The property serves to promote other goals of the City such as affordable housing, preservation of open space or marine related services.

F. Generally, lengths of leases, management contracts, concessions or similar agreements will be limited to the minimum necessary to meet market standards and will contain appropriate reappraisal and inflation protection provisions. Also, all agreements shall contain provisions to assure complete audits periodically through their terms.

G. All negotiations regarding the lease, management contract, concession, sale or similar action regarding income property shall be conducted by the City Manager or his designee under the direction of any appropriate City committees prior to consideration by the City Council.

H. To provide an accurate accounting of actual net revenues generated by the City's income property, all costs and charges directly attributable to the management of a specific income property shall be debited against the gross revenues collected on that property in the fiscal year the costs are incurred. Costs and charges include property repairs and maintenance, property appraisals, and consultant fees, as authorized by the City Council, City Manager or by this Income Property Policy.

I. The City Manager is authorized to sign an amendment to the lease, management contract, concession or similar agreement in order to correct any errors or discrepancies in the agreement, or to clarify provisions in the agreement. The City Manager is also authorized to sign an amendment if circumstances arise that were not reasonably foreseeable by the parties, which need to be addressed in an amendment. Notwithstanding the foregoing, the City Council shall authorize any amendment which increases or decreases the annual revenues in the agreement by $10,000 or more.

**Adopted - July 27, 1992**
**Amended - January 24, 1994**
**Amended - February 27, 1995**
**Amended - February 24, 1997**
**Amended - May 26, 1998**
**Amended – August 11, 2009**

**Formerly F-24**