

Attachment B

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

Agenda Item No. 2
March 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Administrative Services Department
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**SUBJECT: CHARTER SECTION 420 – RESTRICTIONS ON LONG-TERM
CONTRACTS AND LEASES**

RECOMMENDATION:

Recommend to the City Council to amend Charter Section 420 in order to extend any contract or lease term to 30 years from 25 years (Alternative 1).

DISCUSSION:

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

Submitted by:

Tracy McCraner,
Administrative Services Director

Dick Kurth
Deputy Administrative Services Director

Attachments: Section 420 White Paper
Charter Section 420

Charter Section 420

Section 420. Contracts. Restrictions.

The City Council shall not have the power to make or authorize any contract or lease or extension thereof for a longer period than twenty-five years unless said contract, lease or extension be approved by a majority of the qualified electors of the City voting on such question at any election. A contract, lease or extension for a longer period shall be valid without such approval if it provides for the acquisition by the City at the end of such period of the real or personal property so leased or contracted for. This Section shall not apply to any franchise granted pursuant to the provisions of this Charter or to any contract for the furnishing, or acquisition of the products, commodity or services of any public utility.

Restrictions on Long-Term Contracts and Leases

(Charter Section 420)

Statement of the Issue

Should the twenty-five year limit on City Council contract authority be modified by the addition of one exception and the elimination of another?

Relevant Background

Section 420 reads as follows:

Section 420. Contracts. Restrictions. The City Council shall not have the power to make or authorize any contract or lease or extension thereof for a longer period than twenty-five years unless said contract, lease or extension be approved by a majority of qualified electors of the City voting on such question at an election. A contract, lease or extension for a longer period shall be valid without such approval if it provides for the acquisition by the City at the end of such period of the real or personal property so leased or contracted for. This Section shall not apply to any franchise granted pursuant to the provisions of this Charter or to any contract for the furnishing, or acquisition of the products, commodity, or services of any public utility.

Although the intent and wording of this section are generally clear, it is problematic in that:

- a) It draws no clear distinction as to which side a given transaction the City might be on (lease or lessor, for example);
- b) The twenty-five year threshold is now inconsistent with most long-term arrangements;
- c) It offers an exception for public utilities that does not seem to be necessary.

Alternatives

1. Update the Section to include some or all of the modifications proposed below.
2. Eliminate the Section, leaving the Charter silent on the matter, thereby relying on the Municipal Code to establish such restrictions.
3. No change.

Proposed Revision

Staff believes it is appropriate for the Charter to include constraining parameters for long-term leases and contracts, but that the specifics of the current wording need to be updated. To that end, the proposed revision below accomplishes five things:

1. Makes two minor clerical changes.
2. Changes the basic limit to 30 years from 25.
3. Eliminates the exception at the end for public utilities.
4. Draws a distinction between situations where the City is the Lessee or the Lessor in one situation, thereby pointing out the fact that the rest of the Section should apply either way.
5. Adds a special provision for long-term real property leases.

Section 420. Contracts. Restrictions. The City Council shall not have the power to make or authorize any contract, ~~or~~ lease or extension thereof for a longer period than ~~twenty-five~~ **thirty** years unless said contract, lease or extension ~~be~~ **is** approved by a majority of qualified electors of the City voting on such question at an election. A contract, lease or extension for a longer period shall be valid without such approval if it provides for the acquisition by the City at the end of such period of the real or personal property so leased or contracted for.

The thirty year limit specified above shall be fifty-five years if the City becomes lessor of long-term assets such as land or structures, so long as the net proceeds of such lease are dedicated exclusively to the replacement or major renovation of other City facilities.

This Section shall not apply to any franchise granted pursuant to the provisions of this Charter. ~~or to any contract for the furnishing, or acquisition of the products, commodity, or services of any public utility.~~