

**CHARTER UPDATE COMMISSION
MINUTES
Council Chambers
Tuesday, March 2, 2010
2:00 p.m.**

I. ROLL CALL

Present: Commissioners Rush Hill, Richard Luehrs, Dennis O’Neil, Karen Rhyne, Larry Tucker, Paul Watkins, Chairwoman Marian Bergeson, and Mayor Pro Tem Henn
Absent: None

II. APPROVAL OF FEBRUARY 16, 2010 MEETING MINUTES

1. W. R. Dildine, private citizen, requested that the minutes be amended to reflect that his comments regarding Charter Section 1110 (Public Works Contracts) reflect that he said the California Uniform Construction Accounting Act’s threshold is \$250,000, not that he supports changing the City’s threshold to \$250,000.

Commissioner Hill requested that Mr. Dildine be reflected as a private citizen and noted a correction to page 5 regarding his name.

Motion by Commissioner O’Neil, seconded by Commissioner Watkins, to waive reading of subject minutes, approve as amended, and order filed.

The motion carried by the following roll call vote:

Ayes: Hill, Luehrs, O’Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Absent: None

2. CHARTER SECTION 420 – RESTRICTIONS ON LONG-TERM CONTRACTS AND LEASES.

Administrative Services Director McCraner provided the staff report and indicated that staff is now recommending that the section be eliminated, leaving the Charter silent on the matter, thereby relying on the Municipal Code to establish such restrictions (Alternative 2). City Attorney Hunt clarified that amendments to the Charter require a vote of the electorate, but an ordinance can be amended by the City Council. He commented that Alternative 2 provides the City with flexibility should changes in law arise. He suspected that this issue might have been initiated because prior to the Gann Act, cities did not have limitations on how much debt they could enter into. Cities now have debt limitations and have to annually report on the amount of debt incurred, which cannot exceed the Gann limit. He noted that the protections to the citizens are provided through this State law and can be managed through the City’s Municipal Code. City Attorney Hunt added that another option would be to change the term to 30 years since this is the standard term for bond issuances. Administrative Services Director McCraner recommended that, if the Commission prefers this option, the language relative to the City being a lessee or lessor be better clarified.

Commissioner Hill expressed support for Alternative 2. Regarding Alternative 1, he stated that he has been involved in transactions where the public agency is the lessor and the term of the lease has been 66 to 99 years to allow the subordination of the lease in lieu of the subordination of the land.

Commissioner O'Neil agreed that this provision is no longer necessary in the Charter.

Motion by Commissioner O'Neil, seconded by Commissioner Watkins, to recommend to the City Council that Charter Section 420 be eliminated, leaving the Charter silent on the matter, thereby relying on the Municipal Code to establish such restrictions (Alternative 2).

Commissioner Tucker requested and received clarification that only the sale of City-owned water front property must go for a vote, but long term leases do not require a vote of the electorate; and that a 55-year lease is generally sufficient for leasehold financing for the commercial market. Regarding the net lease proceeds only being used to improve City facilities, Administrative Services Director McCraner indicated that the money would be used to help maintain facilities since another asset is being tied up by a lessee.

The motion carried by the following roll call vote:

Ayes: Hill, Luehrs, O'Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Absent: None

3. CHARTER SECTION 1107 – TAX LIMITS.

Deputy City Attorney Torres reported that staff is recommending that the Charter Update Commission leave Charter Section 1107 unchanged since it is currently consistent with the California Constitution. He noted that the section was amended in 1966, predates Proposition 13 and Proposition 218, and therefore, is grandfathered. He stated that keeping the section as is allows Council to maintain its local sovereignty over the Propositions and provides the City with options should the tax ever be needed.

In response to the Commission's questions, staff indicated that they will verify whether the 15¢ library tax is still being collected. Deputy City Attorney Torres indicated that the Charter section deals with ad valorem taxes assessed on real property. He highlighted Section 1107(a) and reported that any other type of new tax is subject to Proposition 218 and requires a ballot vote. City Attorney Hunt commented that if this tax were imposed and collected, it would be a City tax that the County collects on behalf of the City.

Commissioner Tucker expressed support for leaving the section as is. He reviewed Sections 1107(b) and 1107(c), and pointed out that the citizens can be taxed up to \$1 per \$100 assessed value to pay for employee pensions and general obligation bonds if the City does not have enough funds to pay for them. Commissioner Hill received confirmation that the \$1 levy can be imposed by a simple majority of Council for reasons enumerated by the Charter section.

Chairwoman Bergeson agreed that it would be beneficial for the City to maintain its grandfather status as it relates to this section and that the City must honor all its debt obligations and pension obligations.

City Attorney Hunt pointed out that, in 1966, the section was written as a limitation on taxing power. However, this will enable the City to impose the tax, if necessary, upon approval by the City Council. He pointed out that no tax has ever been levied thus far under this Charter provision and commented that he cannot opine at this time whether there is a precondition prior to the levying of the tax.

Motion by Commissioner Watkins, seconded by Commissioner Luehrs, to leave Charter Section 1107 unchanged since it is currently consistent with the California Constitution.

The motion carried by the following roll call vote:

Ayes: Hill, Luehrs, O'Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Absent: None

4. ARTICLE XIII OF THE CHARTER – FRANCHISE PROCEDURES.

Acting Revenue Division Manager Tseng provided the staff report and pointed out that it currently takes about three months for a solid waste hauler to obtain a franchise.

In response to Commission questions, Acting Revenue Division Manager Tseng explained how the procedure would be streamlined to utilize franchising procedures in the City's Municipal Code. City Attorney Hunt explained that a franchise allows a company to use City property to conduct its business. He stated that staff is proposing to allow Council to determine the best way to handle franchises that are not as cumbersome as the current procedures. He confirmed that non-exclusive franchises do not go out for competitive bid, but are handled via a permit/application process.

Commissioner O'Neil indicated that Alternative 1 is an appropriate recommendation and agreed that the procedures should be handled through the Municipal Code. He expressed hope that Council consider placing a limit on the number of non-exclusive solid waste collection franchises in the City.

Motion by Commissioner Hill, seconded by Commissioner Luehrs, to recommend to the City Council that Article XIII of the Charter be amended in order to streamline franchising procedures (Alternative 1).

The motion carried by the following roll call vote:

Ayes: Hill, Luehrs, O'Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Absent: None

5. CHARTER SECTION 1404 – MISDEMEANOR PENALTIES.

Deputy City Attorney Rowen provided the staff report and noted that staff is recommending that Charter Section 1404 be amended to allow Council the flexibility to adopt appropriate penalty provisions for any violation of the City's Municipal Code (Alternative 1).

In response to Commission questions, Deputy City Attorney Rowen reported that the City has the authority to impose the maximum penalty, but pointed out that the City currently can only default to the maximum penalty allowed pursuant to Penal Code § 19 and Government Code § 36901. He noted that the current section has a maximum limit of \$1,000 or imprisonment of six months; however, if legislation increases those amounts or requires another form of restitution, the City would not be able to impose the appropriate penalty without a vote of the people since it is not written that way in the Charter. He emphasized that this does not reclassify any crimes and just deals with penalties that can be imposed. He confirmed that the Charter does not address how the City's administrative citation process is handled but will set the maximum base fine

amounts. He explained why penalty provisions need to be specifically expressed and included in the Charter for imposed criminal penalties.

Commissioner O'Neil expressed concern that voters may not be able to understand this issue.

Motion by Commissioner O'Neil, seconded by Commissioner Watkins, to recommend to the City Council that Charter Section 1404 be updated to allow for flexibility in the establishment of misdemeanor penalties for violations of the City's Municipal Code (Alternative 1).

The motion carried by the following roll call vote:

Ayes: Hill, Luehrs, O'Neil, Rhyne, Tucker, Watkins, and Chairwoman Bergeson
Absent: None

IV. COMMISSION WORK PLAN

Commissioner Tucker questioned how the Charter update issues will appear on the ballot. He reported that he attended yesterday's Civil Service Board meeting and requested that staff provide information about how other cities use their civil service system. He noted that he will not be in attendance at the April 6 meeting.

Project Manager Standiford reported that staff distributed the updated Commission work plan and the staff report from yesterday's Civil Service Board meeting.

Regarding the civil service system, City Attorney Hunt reported that the Human Resources Department is conducting a civil service system survey, the Civil Service Board is meeting on Monday, March 8, at 8:00 a.m. to answer the five questions on the staff report and to provide a recommendation to present to the Commission, and staff will ultimately provide the Council with a policy recommendation and Civil Service Board's recommendation. He noted that the issue is scheduled to be discussed during two Commission meetings.

City Attorney Hunt reported that Charter update issues must be presented to the electorate separately on the sample ballot. He indicated that staff welcomes input on how to present the information in a clear manner to the electorate.

In response to Commissioner Tucker's questions, City Attorney Hunt confirmed that, if Council wishes to repeal Ordinance No. 866, an updated ordinance can be adopted with an effective date subject to the repeal of Ordinance No. 866 by the electorate. He stated that the Commission will clarify the policy and Council will work on the details, but the matter needs to be placed on the ballot in June. He confirmed that the replacement ordinance can be brought to Council for consideration before the election. He stated that there are meet and confer issues relative to the civil service system and that it is important to the City that this process moves forward in a manner that is also consistent with established agreements with City staff, labor organizations, and the City as a whole.

In response to Mayor Pro Tem Henn's question, City Attorney Hunt confirmed that all matters regarding the civil service system require a two-thirds vote of the electorate to pass, pursuant to Article VIII. He indicated that he will verify whether the same applies in the event Council decides to dissolve the civil service system and whether only a simple majority is needed for approval of all other Charter matters.

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Chairwoman Bergeson stated that the Commission appreciates all the work that staff has done on this issue. She emphasized the need for the Charter questions and information to be simple and clear for the public.

In response to Chairwoman Bergeson's questions, City Attorney Hunt indicated that the Human Resources Director has been speaking with the labor organizations and have invited them to participate in the entire process. Further, staff invited the Civil Service Board to attend today's Charter Update Commission meeting. He stated that staff will probably provide the Commission with the Board minutes in the next packet. He reiterated that the Board's requests and recommendations will also be brought before the Commission.

V. **PUBLIC COMMENTS** – None

VI. **ADJOURNMENT** – Adjourned at 3:09 p.m. to Tuesday, March 16, 2010, at 2:00 p.m. in the Council Chambers.

The agenda was posted on February 25, 2010, at 1:10 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Recording Secretary

Chairperson

City Clerk