

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

Agenda Item No. 2
April 5, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Office of the City Attorney
Leonie Mulvihill, Acting City Attorney
949-644-3131, lmulvihill@newportbeachca.gov

SUBJECT: CHARTER SECTION 403 – CITY COUNCIL VACANCIES

RECOMMENDATION:

Recommend that the Charter Update Commission review and discuss the available alternatives, and to determine the appropriate recommendation to submit to City Council.

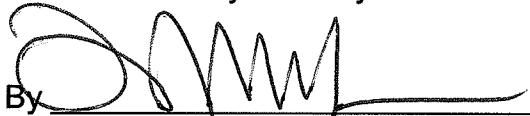
DISCUSSION:

Attached is a "white paper" with relevant background information for the Charter Update Commission's reference.

CONCLUSION:

Please ask questions or give direction so that we can bring this matter back to you for potentially final recommendation at your next meeting.

Office of the City Attorney

By 

Leonie Mulvihill,
Acting City Attorney

Attachment 1: Charter Section 403
Attachment 2: Charter Section 403 White Paper

ATTACHMENT 1

Charter Update Commission

April 5, 2010

Charter Section 403

Section 403. Vacancy.

A vacancy in the City Council from whatever cause arising, shall be filled by appointment by the City Council of a qualified person from the district in which the vacancy has occurred, such appointee to hold office until the first Tuesday following the next general municipal election and until his successor qualifies. At the next general municipal election following any vacancy, a Councilman shall be elected from the district in which the vacancy exists to serve for the remainder of the unexpired term.

If a member of the City Council absents himself from all regular meetings of the City Council for a period of sixty days consecutively from and after the last regular City Council meeting attended by such member, unless by permission of the City Council expressed in its official minutes, or is convicted of a crime involving moral turpitude, or ceases to be a qualified elector of his district, his office shall become vacant and shall be so declared by the City Council.

In the event the City Council shall fail to fill a vacancy by appointment within thirty days after such office shall have been so declared vacant, it shall forthwith cause an election to be held to fill such vacancy from the proper district.

ATTACHMENT 2

Charter Update Commission

April 5, 2010

Charter Section 403 White Paper

City Council Vacancies
(Charter Section 403)

STATEMENT OF THE ISSUE:

The term of an elected City Council member is four years. Section 403 provides the process by which a vacancy on City Council is filled. The vacancy may be filled by appointment by the City Council of a qualified person from the district in which the vacancy has occurred. If City Council fails to fill a vacancy by appointment within thirty days, an election is to be held to fill the vacancy. Should Charter Section 403 be amended to modify the process by which a vacancy on City Council is filled?

RELEVANT BACKGROUND:

City Charter Section 403 provides, in relevant part, as follows:

A vacancy in the City Council from whatever cause arising, shall be filled by appointment by the City Council of a qualified person from the district in which the vacancy has occurred, such appointee to hold office until the first Tuesday following the next general municipal election and until his successor qualifies. At the next general municipal election following any vacancy, a Councilman shall be elected from the district in which the vacancy exists to serve for the remainder of the unexpired term.

Thus, the City Council has the option to either fill the vacancy within 30 days, or submit the position to the electorate.

If the City Council makes an appointment to fill the vacancy, the appointee holds the office until after the next general municipal election and a successor is qualified. The elected successor is to serve for the remainder of the unexpired term.

Under City Charter Section 401, no person is eligible to hold office as a member of City Council for more than two consecutive four-year terms.

According to the records of the City Clerk, City Council has appointed a person to fill vacancies 10 times since 1954.

DISCUSSION:

The process of filling a vacancy provides City Council with an option to either appoint a qualified person within thirty days or cause an election to fill such vacancy. Calling an election is both costly and time consuming and City Council has historically utilized the appointment process to fill vacancies.

Charter Section 403 specifies that the appointee serves for the remainder of the unexpired term, but does not state whether this remainder term is consider a "term" for purposes of Charter Section 401.

ALTERNATIVES:

The Commission has the following alternatives identified by Staff:

Alternative 1: Amend Section 403 to provide an alternative process by which a vacancy on City Council is filled.

Such a recommendation would amend Section 403 to provide a different method for the appointment of vacant positions.

Alternative 2: Recommend an amendment to Section 403 to clarify that the remaining unexpired term is not considered a term for the purposes of term limits.

Such a recommendation would leave Section 403 as currently drafted but would add language making it clear that the unexpired term served by the appointee is not considered a term for the purposes of calculating term limits under Charter Section 401.

Alternative 3: No change.

Chapter 1.32

Chapter 1.35

COUNCIL TERM LIMITS

EMINENT DOMAIN

Sections:

- 1.32.010 Intent.**
- 1.32.020 Effect of Serving Partial Term.**

Sections:

- 1.35.010 Definitions.**
- 1.35.020 Limitations on Use of Eminent Domain.**

1.32.010 Intent.

The intent of this chapter is to clarify the provisions of Section 401 of the Charter of the City of Newport Beach pertaining to term limits for the office of City Council. Provisions of this chapter are a clarification and declaration of existing charter provisions. (Ord. 2009-22 § 1 (part), 2009)

1.32.020 Effect of Serving Partial Term.

A. Effect of Leaving Office Prior to Serving a Four-Year Term. Any person elected to a four-year term on the City Council who assumes office upon certification of the election results by the City Clerk is deemed to have served his or her full term of office for the purposes of determining eligibility to serve subsequent terms under Charter Section 401. If a council member leaves office prior to the last day of that term for any reason, he or she shall be deemed to have served a full four-year term of office.

B. Effect of Completing a Partial Vacated Term. Any person elected or appointed to serve less than four years of the remaining portion of a term of office vacated or otherwise left vacant by a member of the City Council shall remain eligible to serve two additional consecutive four-year terms of office on the City Council.

C. Effect of Serving Two Consecutive Terms. No person who serves two consecutive four-year terms on the City Council shall be eligible to stand for election to another term on the City Council until the consecutive nature of that member's service has been broken by being out of office one four-year term. (Ord. 2009-22 § 1 (part), 2009)

1.35.010 Definitions.

As used in this chapter, the following terms shall have the following ascribed meanings:

"City-affiliated agency" means the City of Newport Beach and/or any other entity possessing the power of eminent domain, the governing board of which is solely composed of, or is solely appointed by, the members of the City Council of the City of Newport Beach.

"Owner" means the owner of the fee title interest in the property to be acquired, as shown on the last equalized assessment roll, or other more current proof of vesting the City may have.

"Property" means any interest in real or personal property otherwise subject to acquisition through the use of eminent domain. (Ord. 2006-12 § 1 (part), 2006)

1.35.020 Limitations on Use of Eminent Domain.

The City of Newport Beach and/or any City-affiliated agency shall not exercise the power of eminent domain to acquire any property from the owner of the property, without the owner's consent, for the sole purpose of transferring the property to another person to further private economic development. (Ord. 2006-12 § 1 (part), 2006)