

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

Agenda Item No. 5
March 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Office of the City Attorney
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SUBJECT: Update of Misdemeanor Penalty Provisions of the Charter

RECOMMENDATION:

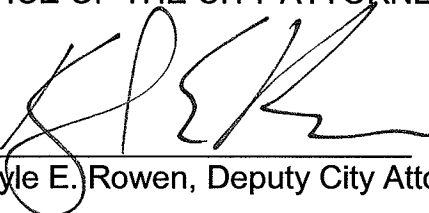
Staff recommends the updating of the Charter to allow for flexibility in the establishment of misdemeanor penalties (Alternative No. 1).

DISCUSSION:

As discussed in the attached white paper, the City's misdemeanor penalties are established expressly within the Charter. Thus, to update the penalties there would have to be a Charter amendment brought through a vote of the people. In order to make the penalty provisions of the Charter more flexible, modern and efficient, we recommend they be modified as reflected in Alternative No. 1 of the attached white paper.


ENVIRONMENTAL REVIEW: Not applicable

Prepared by:
OFFICE OF THE CITY ATTORNEY

By 

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Attachment 1: Charter Section 1404
Attachment 2: Section 1404 White Paper

ATTACHMENT 1

Charter Update Commission

March 2, 2010

Charter Section 1404

Section 1404. Violations.

The violation of any provision of this Charter shall be punishable by a fine of not exceeding One Thousand Dollars (\$1000.00) or by imprisonment for a term of not exceeding six months or by both such fine and imprisonment.

ATTACHMENT 2

Charter Update Commission

March 2, 2010

Section 1404 White Paper

Misdemeanor Penalties

(Charter Section 1404)

STATEMENT OF THE ISSUE:

Should the City modify Charter Section 1404 to enable the City to seek the imposition of different punishment for misdemeanor violations of the City Charter and Municipal Code?

RELEVANT BACKGROUND:

Section 1404 of the City's Charter became effective on June 6, 1974. It provides as follows: "The violation of any provision of this Charter shall be punishable by a fine of not exceeding One Thousand Dollars (\$1000.00) or by imprisonment for a term of not exceeding six months or by both such fine and imprisonment."

Current state law establishes certain maximum penalties for misdemeanor offenses. (Cal. Gov't Code § 36901 and Cal. Penal Code § 19 [maximum fine of \$1,000 and/or six months in jail].) However, Newport Beach, as a Charter City, is not subject to these limitations. (See, *County of Los Angeles v. City of Los Angeles* (1963) 219 Cal.App.2d 838, 844.) This is because a charter city enjoys freedom from state legislative control with respect to its municipal affairs and the maximum punishment that may be sought for a violation of a city's charter, or its ordinances, is a municipal affair.

While Newport Beach does enjoy freedom from state legislative control, this freedom is not absolute. Newport Beach is still restricted by federal and state constitutional prohibitions. (See, U.S. Const., 8th Amend. and Cal. Const. Art. I, § 17 [prohibiting the imposition of excessive fines].) A court will review on a case-by-case basis whether a fine imposed by a statute or ordinance is "excessive." (*Hale v. Morgan* (1978) 22 Cal.3d 388, 404.) However, courts have held that a penalty mandatory in amount and potentially unlimited in duration may be unconstitutional. (See, *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302.)

As currently drafted, Section 1404 only sets forth the maximum penalties that could be imposed for violations of the City's Charter. It does not reflect maximum penalties for violations of the City's ordinances. As such, the City is subject to the state's statutory restrictions contained in Government Code § 36901 and Penal Code § 19. An amendment to Section 1404 could be crafted to provide the City maximum flexibility to legislate the proper penalties that may be sought for violations of its Charter and ordinances. Additionally, it is important to note that just because the charter or an ordinance may set forth a maximum punishment; such a sentence will not always be sought by a prosecutor and imposed by a judge.

ALTERNATIVES:

The Commission has the following alternatives identified by Staff:

Alternative 1: Recommend an amendment to Section 1404.

This approach would allow the City to exercise maximum flexibility to legislate and determine the appropriate maximum punishment that could be sought for a violation of the City's Charter or an ordinance. Such an amendment could read as follows:

"(a) The violation of any provision of this Charter shall be deemed a misdemeanor, which may be prosecuted in the name of the People of the State of California, and be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the City Jail for a term of not exceeding six (6) months or by both such fine and imprisonment. Additionally, such violations of this Charter may also be redressed by civil action and/or administrative citation.

(b) The City Council may make the violation of any ordinance of the City a misdemeanor or an infraction which may be prosecuted in the name of the People of the State of California. Unless specifically designated as an infraction, a violation of any ordinance of the City shall constitute a misdemeanor. The maximum fine and/or penalty for any violation of a city ordinance, whether a misdemeanor or an infraction, shall be established by ordinance. Additionally, the violation of any ordinance of the City may also be redressed by civil action and/or administrative citation."

Alternative 2: Recommend no change.

Such a recommendation would leave Section 1404 as currently drafted and the City would be governed by state statute for the maximum punishment that could be sought for a violation of a city ordinance.