

Appendix F

CITY OF NEWPORT BEACH CHARTER UPDATE COMMISSION STAFF REPORT

Agenda Item No. 3
March 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Office of the City Attorney
David R. Hunt, City Attorney
949/644-3131, dhunt@newportbeachca.gov

SUBJECT: Newport Beach Charter Section 1107

RECOMMENDATION:

It is recommended the Newport Beach Charter Update Commission ("Commission") leave Newport Beach Charter Section 1107 ("Section 1107") unchanged since it is currently consistent with the California Constitution.

DISCUSSION:

Section 1107 establishes various ad valorem property taxes within the City.¹ The Commission is researching whether the tax provisions in Section 1107 need to be amended in light of Proposition 218 or Proposition 13. Proposition 218, passed in 1996, requires certain taxes to be submitted to a vote of the people prior to taking effect. While Proposition 13 passed in 1978, places a 1% limitation upon ad valorem taxes.

Section 1107 was adopted in 1966 and predates both Proposition 218 and Proposition 13. This predating is important because it "grandfathers" in the City's tax and tax methodology under Proposition 218. (*AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747, 763; Cal. Gov. Code § 53750(h)(2)(B).) It also allows the City to rely upon an exception to the 1% limitation in Proposition 13. (*Carman v. H.B. Alvord* (1982) 31 Cal.3d 318, 333; Cal. Const. Art.13A Section 1(b)(1).)

Any change to Section 1107 may jeopardize its current status under Proposition 218 and Proposition 13. Therefore, we strongly recommend leaving Section 1107 unchanged.

¹ Ad valorem property tax is defined as any tax imposed on the basis of the value of real property. (Cal. Revenue and Taxation Code § 2237.2(f).)

ENVIRONMENTAL REVIEW: Not applicable

Prepared by:
OFFICE OF THE CITY ATTORNEY

By 

Michael D. Torres, Deputy City Attorney

Submitted by:
OFFICE OF THE CITY ATTORNEY

By 

David R. Hunt, City Attorney

Attachment: Charter Section 1107

ATTACHMENT

Charter Update Commission

March 2, 2010

Charter Section 1107

Section 1107. Tax Limits.

(a) The City Council shall not levy a property tax, for municipal purposes, in excess of One Dollar (\$1) annually on each One Hundred Dollars (\$100) of the assessed value of taxable property in the City, except as otherwise provided in this Section, unless authorized by the affirmative votes of three-fifths of the electors voting on a proposition to increase such levy at any election at which the question of such additional levy for municipal purposes is submitted to the electors. The number of years that such additional levy is to be made shall be specified in such proposition.

(b) There shall be levied and collected at the same time and in the same manner as other property taxes for municipal purposes are levied and collected, as additional taxes, if no other provision for payment thereof is made:

1. A tax sufficient to meet all liabilities of the City for principal and interest of all bonds and judgments due and unpaid, or to become due during the ensuing fiscal year, which constitute general obligations of the City; and

2. A tax sufficient to meet all obligations of the City to the State Employees' Retirement System for the retirement of City employees, due and unpaid or to become due during the ensuing fiscal year.

(c) Special levies in addition to the above, may be made annually for the following purposes in amounts not to exceed the limits hereinafter respectively enumerated in this Section, on each One Hundred Dollars (\$100) of the assessed value of taxable property in the City:

1. For libraries in an amount not to exceed fifteen cents.
2. For advertising and promotion in an amount not to exceed ten cents.
3. For parks, beaches, civic beautification, recreation and playgrounds in an amount not to exceed fifteen cents.

The proceeds of special levies may be used solely for the respective purposes for which such levies have been made. (As amended effective April 28, 1966)