

**City of Newport Beach
 Charter Update Commission
 Summary of Recommendations to the City Council
 May 25, 2010**

Note: This summary does not include specific language for recommended amendments or ballot initiatives. Ballot language will be developed by the City Attorney’s Office once the Council has provided direction on each item.

<i>CATEGORY 1: <u>Clean-Up</u>: Those matters in which the Charter or initiative measure is inconsistent with existing law.</i>			
<i>Topic</i>	<i>Existing Charter or Ordinance Provision</i>	<i>Background</i>	<i>Charter Update Commission Recommendation</i>
C1. City Manager Residency Requirement	Charter §501 requires that a City Manager become a resident of the City.	As determined during the recent recruitment process, this requirement is now inconsistent with federal law.	Repeal §501 and allow the City Council to determine the appropriate distance from City Hall that a particular City Manager may live.
C2. Redistricting Committee	Charter section 1005 requires the City Council to appoint a committee to study and report on possible redistricting every four years.	This section has not been uniformly followed and creates an administrative burden. Statewide redistricting takes place every ten years when the census results are published.	Amend §1005 to require the Council to appoint a redistricting committee every 10 years, after the completion of the national census. This would reduce the administrative burden to create a redistricting committee more frequently, and would be consistent with practices followed by most other agencies.
C3. Tax Limits and Procedures	Charter section 1107 sets limitations on the taxing authority of the City.	These limitations and procedures have been largely superseded by state law through Proposition 13 and Proposition 218. However, Section 1107 remains consistent with the California Constitution.	Leave §1107 unchanged.

Topic	Existing Charter or Ordinance Provision	Background	Charter Update Commission Recommendation
C4. Sale of Waterfront Property	Charter §1402 provides that waterfront property, except with limited exceptions, cannot be sold.	The City has enacted Charter amendments six times in the past to allow for the sale of waterfront property.	Amend §1402 to allow for the sale or conveyance of waterfront property upon an affirmative vote of the electorate. This will continue the practice of letting the voters decide on a case by case basis, without requiring a technical amendment to the Charter itself.
C5. Gender References	§500-504, §602-611, and §704 refer to the City Manager, City Attorney, City Clerk, Finance Director, department heads, "Chairmen," or City Council as males.	Gender neutral language can be reflected by adding references to the female gender (i.e., "his or her," "he or she"), by replacing "Councilman" with "Councilmember" and by replacing "Chairman" with "Chairperson."	Amend §500-504, §602-611, and §704 to reflect gender neutral language
CATEGORY 2: <u>Modernization and Efficiency</u>: Those matters in which the Charter is not consistent with current municipal practice and efficiency in government can be achieved through modernization.			
Topic	Existing Charter or Ordinance Provision	Background	Charter Update Commission Recommendation
M1. Contracting Authority	Charter section 1110 requires all Public Works' projects with total expenditures over \$30,000.00 go to formal bid.	The last adjustment to this Charter section was made more than 20 years ago, and the \$30,000 limit contrasts sharply with existing state law and standards adopted by other charter cities. Allowing for an annual adjustment by City Council resolution would allow the limit to be adjusted in the future without a Charter amendment.	Amend §1110 to (1) increase the contract cost limits requiring formal bidding to \$125,000, (2) give the Council the power to regulate all aspects of public works contracts, (3) provide for an annual adjustment based on an index as specified by City Council resolution, and (4) include language that allows for more flexibility in the types of bidding methods used by the City.

Topic	Existing Charter or Ordinance Provision	Background	Charter Update Commission Recommendation
M2. Civil Service System	Charter §800 through 803 provide for a Civil Service System within the City and Ordinance 866, passed by the voters on November 4, 1958 (codified as Municipal Code Chapter 2.24).	The City's civil service system is governed by the Charter, the City's municipal code, and the City's Civil Service Rules and Regulations. The Civil Service Ordinance (NBMC Chapter 2.24) has not been changed since its original adoption in 1958, while laws governing public personnel matters have changed dramatically since then.	Amend §711 and 800-803 to strengthen the scope of the Civil Service Board and system. <i>Note: The Commission did consider some specific language for such an amendment, which is contained in the Commission's report.</i> Repeal Ordinance 866 and replace it with a new ordinance that complies with current local, state and federal laws, as well as best practices in personnel
M3. Ordinance Publication Requirements	Charter §414 requires that an ordinance be published at least once in the official newspaper.	Publication of ordinances in their entirety can be extremely expensive. State law (Government Code section 36933) allows for summaries of ordinances to be published as a cost savings device.	Repeal §414 , and follow the procedures of Government Code §36933 to permit summary ordinances to be published instead.
M4. Publication of Legal Notices	Charter §419 requires the City Clerk to go to bid annually for contracting out publication of legal notices.	Annual bidding has not produced any noticeable savings and has created a difficult administrative burden on the City Clerk's Office. Annual bidding also is not the current practice for other similar professional service agreements, which have bidding timeframes between three and five years.	Repeal §419 and handle legal advertising as a contract or purchase agreement.
M5. Restrictions on Long-term Contracts and Leases	Charter §420, with some exceptions, restricts the length of time for municipal contracting to not in excess of 25 years.	This requirement potentially limits the City's ability to enter into modern financial transactions.	Repeal §420 and establish restrictions on long-term contracts and leases within the Municipal Code

Topic	Existing Charter or Ordinance Provision	Background	Charter Update Commission Recommendation
M6. Franchise Procedures	Charter §1301 establishes notice and hearing requirements for potential franchises in the City	The current process takes about three months to complete and does not distinguish between different types of franchisees. Solid waste haulers must obtain a franchise under NBMC §12.63.030, even if they are hauling for a single, short-term project.	Amend §1301 to streamline franchising procedures for solid waste haulers and concurrently, update NBMC 12.63.030 to set forth franchise procedures for such haulers.
M7. Centralized Purchasing	Charter §1106 requires the City to continue a process of centralized purchasing.	Centralized purchasing represents a good business practice to ensure the purchase of goods and services for the lowest total cost, to promote fair and open competition among suppliers, and to ensure good internal controls to prevent unnecessary or duplicative expenditures of public funds.	Leave §1106 unchanged.
M8. Misdemeanor Penalties	Charter §1404 limits misdemeanor penalties to \$1,000 and/or six months' imprisonment	Currently this provision is consistent with the California Penal Code. It may be helpful to amend it with general language that allows for the penalties to be raised, as long as they do not exceed those provided by California law. In addition, there is no provision establishing misdemeanor penalties for violations of the City's ordinances.	Amend §1404 to allow for flexibility in the establishment of misdemeanor penalties.

CATEGORY 3: Policy: Those matters in the Charter that may warrant a review and update for policy reasons.

Topic	Existing Charter or Ordinance Provision	Background	Charter Update Commission Recommendation
P1. Filling of Council Vacancies	Charter §403 directs that vacancies on the Council shall be filled by appointment within thirty days, or set an election, and the appointee shall sit until the next general municipal election and his or her successor is qualified.	The process specified by Charter §403 has work satisfactorily in the filling of Council vacancies. Term limits for those appointed to fill a Council vacancy are specified in the Municipal Code.	Leave §403 unchanged.
P2. Restrictions on Oil Drilling within the City	Charter §1401 effectively provides that there is to be no new oil exploration, drilling, production, or refining in the City that was not in existence at the effective date of the Charter or on the effective date of newly annexed properties.	The current language is ambiguous about the scope of activities that are allowed to continue oil production from an existing oil extraction area, and makes it difficult to allow reuse of Banning Ranch into open space or development. It also makes it difficult for the City to implement new oil extraction techniques on its own well sites to increase revenue from them.	Amend §1401 to designate three geographic areas as the only locations in which new oil drilling may be allowed upon annexation to the land in Newport Beach, and to eliminate other drilling provisions. The effect of this amendment would be to reduce the land area on which oil drilling could occur from approximately 360 acres in use to today, to roughly 20 acres. The three geographic areas would be the two existing City oil well sites and the consolidated sites proposed for Banning Ranch.
P3. Funding of Non-Profit Organizations	A 1955 voter-approved ordinance (codified as NBMC §3.24.010) limits the appropriation of funds to the Newport Beach Chamber of Commerce to \$2,400.	Currently the City provides financial assistance and numerous staff hours each year to support events, programs and activities for a number of community organizations.	Repeal NBMC §3.24.010 and evaluate chamber of commerce funding requests on the same basis as requests from other community organizations, according to City Council policy and the municipal code language in effect at the time the request is made.



**CITY OF NEWPORT BEACH
2010 CHARTER UPDATE COMMISSION**

Report to the City Council

Marian Bergeson, Chairperson
Rush Hill
Richard Luehrs
Dennis O'Neil
Karen Rhyne
Larry Tucker
Paul Watkins

Non-Voting Council Liaisons
Mayor Pro Tem Michael F. Henn
Mayor Keith D. Curry (Alternate)

Commission Meeting – May 4, 2010

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Executive Summary

This report transmits recommendations from the Charter Update Commission to the Newport Beach City Council for updating the City's Charter. These recommendations are being provided to assist the City Council in determining whether measures to update and modernize the City Charter should be placed on the ballot for the upcoming November 2, 2010 general municipal election.

The Charter Update Commission ("Commission") was established by the Newport Beach City Council on December 8, 2009. After an application process, the Newport Beach City Council appointed seven citizens to the Commission on January 26, 2010. The Commission was tasked with reviewing sections of the Charter and City ordinances that have been adopted by initiative measure and making recommendations for changes. The sections reviewed include those which are currently out of compliance with state or federal law, those which could be modernized to reflect modern-day practices and improve the efficiency of the City, and sections that could benefit from possible update for policy reasons.

The Charter Update Commission convened its first meeting on February 2, 2010 and continued to meet regularly through the months of March and April 2010. The Commission held its final meeting on May 4, 2010.

The Commission considered a total of 17 Charter-related topics and voter-initiated measures. Of these, the Commission recommends that 3 be left unchanged, 8 be amended, and 6 be repealed.

The following table summarizes 17 Commission recommendations for the City Council's consideration. The Charter sections and issues are organized into three categories, as follows:

- **Clean Up:** Those matters in which the Charter or initiative measure is inconsistent with existing law.
- **Modernization and Efficiency:** Those matters in which the Charter is not consistent with current municipal practice and/or where improved efficiency in government could be achieved through modernization.
- **Policy:** Those matters in the Charter that may warrant a review and update for policy reasons.

Table 1: Summary of Commission Recommendations

Charter Section: Issue	Commission Recommendation		
	No Change	Amend	Repeal
Clean Up Matters			
§501: City Manager Residency Requirement			X
§1005: Timing of Appointment of Redistricting Committee		X	
§1107: Tax Limits	X		
§1402: Sale of Waterfront Property		X	
Various: Gender Neutral Language		X	
Modernization and Efficiency Matters			
§1110: Public Works Contracts		X	
§§711, 800-803: Civil Service Board and Civil Service System		X	
Voter-approved Ordinance No. 866: Civil Service System (NBMC Chapter 2.24)			X
§414: Publication of Ordinances			X
§419: Publication of Legal Notices			X
§420: Restrictions on Long-term Contracts and Leases			X
§1301: Franchise Procedures for Solid Waste Haulers		X	
§1106: Centralized Purchasing	X		
§1404: Misdemeanor Penalties		X	
Policy Matters			
§403: Council Vacancies	X		
§1401: Restrictions on Oil Drilling		X	
Voter-approved Ordinance No. 743 (NBMC 3.24.10)			X

Recommendations

The following are the Commission's specific recommendations for each topic.

City Manager Residency Requirement:

Recommendation: Repeal

The Commission recommends that Charter Section 501 be repealed due to its inconsistency with the California Constitution and to allow the City Council to determine for each recruitment the appropriate distance from City Hall that a particular City Manager may live. Appendix D provides background information related to this recommendation.

Timing of Appointment of Redistricting Committee:

Recommendation: Amend

The Commission recommends that Charter Section 1005 be amended so that it requires the City Council to appoint a committee to study and report on the advisability of redistricting the City every 10 years after the completion of the national census, and not every four years as presently provided. Appendix E provides background information related to this recommendation.

Tax Limits:

Recommendation: No Change

The Commission recommends that Charter Section 1107 remain unchanged since it is currently consistent with the California Constitution. Appendix F provides background information related to this recommendation.

Sale of Waterfront Property:

Recommendation: Amend

The Commission recommends that Charter Section 1402 be amended to allow for the sale or conveyance of waterfront property upon an affirmative vote of the electorate. Appendix G provides background information related to this recommendation.

Gender Neutral Language:

Recommendation: Amend

The Commission recommends that Charter Sections 500, 501, 502, 503, 504, 602, 603, 605, 606, 607, 608, 609, 610, 611 and 704 be changed to reflect gender neutral language. Appendix H provides background information related to this recommendation.

Public Works Contracts:

Recommendation: Amend

The Commission recommends that Charter Section 1110 be amended to (1) increase the contract cost limits requiring formal bidding to \$125,000; (2) include a provision granting the City Council the power to regulate all aspects of public works projects, including the bidding, award and performance of public works contracts through ordinance or resolution; (3) provide for an annual adjustment based on an index as specified by City Council resolution adopted each year; and (4) include language that allows for more flexibility in the types of bidding methods used by the City. Appendix I provides background information related to this recommendation.

Civil Service Board and Civil Service System:

Recommendation: Amend

The Commission recommends that Charter Section 711 and 800-803 be amended to clarify and strengthen the scope of the Civil Service Board and System.

Recommendation: Repeal

The Commission recommends that Ordinance No. 866 be repealed and replaced with a new Ordinance to comply with current local, state and federal law and best practices in personnel. Appendix J provides background information related to this recommendation along with the specific language to be changed in Sections 711, 800, 801, 802 and 803.

Appendix J provides background information related to this recommendation along with the specific language³ to be changed in Sections 711, 800, 801, 802 and 803.

Publication of Ordinances:

Recommendation: Repeal

The Commission recommends that Charter Section 414 be repealed, and that the City follow the procedures of Government Code Section 36933 for the legal publication of ordinances. Appendix K provides background information related to this recommendation.

Publication of Legal Notices:

Recommendation: Repeal

The Commission recommends that Charter Section 419 be repealed, and that the publication of legal notices be handled through a contract or purchase agreement. Appendix L provides background information related to this recommendation.

Restrictions on Long-term Contracts and Leases:

Recommendation: Repeal

The Commission recommends that Charter Section 420 be repealed, leaving the Charter silent, and that restrictions on long-term contracts and leases be established within the Newport Beach Municipal Code. Appendix M provides background information related to this recommendation.

Franchise Procedures:

Recommendation: Amend

The Commission recommends that Charter Article 13 be amended to streamline franchising procedures for solid waste haulers, and that concurrently, Newport Beach Municipal Code Section 12.63.030 be updated to set forth the franchise procedures to be applicable to waste haulers. Appendix N provides background information related to this recommendation.

Centralized Purchasing:

Recommendation: No Change

The Commission recommends that Charter Section 1106 be unchanged. Appendix O provides background information related to this recommendation.

Misdemeanor Penalties:

Recommendation: Amend

The Commission recommends that Charter Section 1404 be amended to allow for flexibility in the establishment of misdemeanor penalties. Appendix P provides background information related to this recommendation.

City Council Vacancies:

Recommendation: No Change

The Commission recommends that Charter Section 403 be unchanged. Appendix Q provides background information related to this recommendation.

Restrictions on Oil Drilling:

Recommendation: Amend

The Commission recommends that Charter Section 1401 be amended to designate certain geographic areas as the only locations in which new oil drilling may be allowed upon annexation to the land in Newport Beach, and to eliminate all other provisions with the exception of the three geographic areas. Appendix R provides background information related to this recommendation.

Fundraising Requests from Chambers of Commerce:

Recommendation: Repeal

The Commission recommends that Newport Beach Municipal Code Section 3.24.010 be removed and that Chamber of Commerce funding requests be evaluated on the same basis as requests from other community organizations according to Council policy and the Municipal Code language in existence at the time the request is made. Appendix S provides background information related to this recommendation.

More detailed information about the individual issues considered and the Commission's recommendations are provided beginning on Page 12.

Background

A Charter and Its Purpose

A city charter is a unique document that, in many ways, acts like a constitution for the city adopting it. It can be only adopted, amended or repealed by a majority vote of the city's voters. The primary advantage of a charter is that it allows greater authority for a city's governance than that provided by state law.

A charter transfers the power to adopt legislation affecting municipal matters from the state legislature to the city adopting it. These matters are unaffected by the general laws passed by the state legislature on the same subject matters. This, in effect, gives the local voters more control over their local government and the matters of the city. However, a city operating under a charter is still subject to the general laws, as passed by the state legislature, on matters that are not municipal in nature, and are of statewide concern (e.g., the California Vehicle Code).

Key Principles of Charters

Charters seek to follow four key principles: (1) Be a document of limitation, (2) be flexible, (3) stand the test of time, and (4) reserve all powers possible to allow home rule by the local municipality.

Document of Limitation: A charter serves as a limitation by the voters on city council action. It should include only those elements necessary to achieve identified goals and objectives. The charter may, intentionally or unintentionally, expand or contract a city's ability to function. Therefore, it is important to protect and define local municipal authority in the Charter when appropriate. Many issues are better addressed outside of the charter, such as through the city's municipal code, or policies and procedures adopted by the City Council and/or City Manager.

Flexibility: A charter should be proactive and flexible, and not unreasonably restrict future governmental action. It should allow for change, progress and reform. Controls that seem appropriate today may become less appropriate in the future. Therefore, a charter should not impede timely governmental response to changing conditions.

Test of Time: A charter should stand the test of time. The nature of government is that missions, goals and responsibilities will change over time as community needs and conditions change. A charter also should address these changes and be as sound today as 20 years from now. Charter development must involve forward thinking and an element of futures forecasting.

Reserve All Powers of Municipal Affairs: A charter must reserve all powers possible to the local municipality. The more broad the granting of authority, the less likely individual charter elements will be challenged as conflicting with state law. A charter brings a degree of independence, and that independence should be protected and preserved in the charter language. The charter must ensure accountability and preserve authority over all municipal affairs.

Common Charter Elements

Some of the common municipal affairs that are explicitly regulated in a charter include:

- The powers of the city, its incorporation and succession
- The form of government for the city, i.e., Council-Manager
- The City Council, i.e., eligibility, composition, terms of office, term limits, filling of vacancies, and powers of authority
- The city manager, officers and employees of the city, their authorities and responsibilities
- Appointive boards and commissions, their roles and responsibilities
- Elections
- Fiscal Administration, including the adoption of the city's budget

City charters may contain additional elements having specific importance to the community.

The Newport Beach City Charter

The City of Newport Beach Charter was originally adopted effective January 7, 1955. Since that time it has been periodically amended. Appendix A summarizes the history of the Newport Beach City Charter since inception to date.

While amendments have been made to the Charter over the last 55 years, the document itself has never undergone a significant or comprehensive review. A closer examination of the charter revealed that it contains provisions that are no longer consistent with state or federal laws, and that updating, clarifying, amending, or repealing certain sections could help make Newport Beach's municipal government more efficient. In addition, there are a few sections which could benefit from review and updating for policy reasons, which has been done through this Charter Update Commission process.

Establishment of the Charter Update Commission

On November 24, 2009, the City Council first considered the appointment of a commission to consider possible updates to the Charter and to City ordinances that have been adopted by initiative measure. Staff was directed to prepare a resolution creating such a commission, establishing the issues to be addressed and a timeline for the Commission to complete its work.

On December 8, 2009 the City Council adopted Resolution No. 2009-91 (Appendix B). This resolution created the Charter Update Commission, established the issues for the Commission to consider in updating and modernizing the charter, and set a timeline of June 2010 for the Commission to complete its work. The City Council's intent was to allow sufficient time to consider the Commission's recommendations and place update measures, if any, on the November 2, 2010 general municipal election ballot.

On Saturday, December 12, 2009 the City Clerk advertised the vacancies for serving on the Commission; the deadline to apply was Friday, January 8, 2010. Fourteen applications were received by this deadline. There were some Council districts for which there were no applicants.

On January 12, 2010, Mayor Keith D. Curry and Council Members Don Webb and Edward D. Selich were appointed to a Council Ad Hoc Appointments Committee to review the applications received. Because not all Council districts were represented, the Council Ad Hoc Appointments Committee recommended that all of the applications be forwarded to the City Council for consideration and appointment.

On January 26, 2010, the City Council adopted Resolution No. 2010-16, which amended Resolution No. 2009-91 regarding the membership, purpose and responsibilities of the Charter Update Commission and refined the areas for the Commission to consider (Appendix C). By paper ballot, the City Council appointed seven citizens to the Charter Update Commission as follows:

- Marian Bergeson, Chairperson
- Rush Hill
- Richard Luehrs
- Dennis O'Neil
- Karen Rhyne
- Larry Tucker
- Paul Watkins

The City Council also appointed Mayor Pro Tem Michael F. Henn as a non-voting Council Liaison to the Commission; Mayor Curry was appointed as an alternate non-voting Council Liaison.

The City Council's Charge to the Commission

In Resolution No. 2010-16, the City Council identified 15 areas of the Charter for the Commission to consider. The areas fall into three categories as follows:

- **Clean Up:** Those matters in which the Charter or initiative measure is inconsistent with existing law.
- **Modernization and Efficiency:** Those matters in which the Charter is not consistent with current municipal practice and/or where improved efficiency in government could be achieved through modernization.
- **Policy:** Those matters in the Charter that may warrant a review and update for policy reasons.

The Commission was empowered and instructed to review the issues approved by the City Council. The Commission also was empowered to review the Charter and initiative enacted ordinances and make recommendations to the City Council for expanding the list of issues to be addressed.

Upon the Commission's recommendation, the City Council approved one addition to the Commission's work plan on February 23, 2010. This addition was the consideration of restricted funding for chambers of commerce found in Newport Beach Municipal Code Section 3.24.010, which had been adopted as an initiative measure.

Commission Meeting Dates and Topics Discussed

The Commission commenced its work on February 2, 2010. Table 2 below summarizes the Commission's meeting dates and the Charter or voter initiative issues discussed at each meeting. Topics are further identified by which category they fall into.

Clean up topics or those matters that are inconsistent with existing law are coded as "C"; modernization and efficiency topics are coded with an "M"; and issues which were reviewed as a matter of policy are indicated with a "P."

Table 2: Commission Meetings Held and Topics Discussed

Date	Topic	Type
February 2, 2010	Gender Neutrality (various charter sections)	C
	Publication of Ordinances (§414)	M
	Publication of Legal Notices (§419)	M
	City Manager Residency Requirement (§501)	C
	Timing to Appoint Redistricting Committee (§1005)	C
February 16, 2010	Public Works Contracts (§1110)	M
	Sale of Waterfront Property (§1402)	C
	Civil Service System (§800-803), background provided	M
March 2, 2010	Restrictions on Long-Term Contracts and Leases (§420)	M
	Tax Limits (§1113)	C
	Franchising Procedures (Article 13, §1301)	M
	Misdemeanor Penalties (§1404)	M
March 16, 2010	Civil Service Board and Civil Service System (§711, §800-803, initiative measure 7866, codified as NBMC Chapter 2.24)	M
April 6, 2010	City Council Vacancies (§403)	P
	Centralized Purchasing (§1106)	M
	Restrictions on Oil Drilling (§1401)	P
	Non-profit Funding (NBMC Section 3.24.010)	P
April 20, 2010	Civil Service Board and Civil Service System (§711, §800-803, initiative measure 866, codified as NBMC Chapter 2.24), continued from March 16, 2010	M
	Review and Comment on Draft Commission Report to the City Council	
May 4, 2010	Consideration and Approval of Commission Report to the City Council	

Charter Update Commission Recommendations

This section contains more detailed information about each Charter section reviewed, the alternatives considered, and the Commission's recommendation.

I. **Clean Up Matters**

The following recommendations pertain to matters in which the Charter or initiative measure is inconsistent with existing law.

1. **City Manager Residency Requirement**

Charter Section 501 is inconsistent with the California Constitution, Article XI, Section 10(b), which prohibits cities from requiring their employees to reside within the city's corporate boundaries. The Commission considered two alternatives (1) recommend to repeal Charter Section 501, or (2) recommend amendment of Charter Section 501 to bring it into conformance with the California Constitution by establishing a "reasonable and specific" distance from City Hall that a City Manager must live. Appendix D provides the background information the Commission used in forming its recommendation.

Recommendation: Repeal Charter Section 501

The Commission recommends that Charter Section 501 be repealed due to its inconsistency with the California Constitution and to allow the City Council to determine for each recruitment, the appropriate distance from City Hall that a particular City Manager may live.

2. **Timing of Appointment of Redistricting Committee**

Charter Section 1005 requires the City Council to appoint a committee every four years "to study and report to the City Council on the advisability of redistricting the City." The State of California, and most agencies, redistrict after the completion of the national census. The Commission considered two alternatives: (1) recommend no change, or (2) recommend a change to appoint the redistricting committee every 10 years, upon receipt of the final results of the national census. Appendix E provides the background information the Commission used in forming its recommendation.

Recommendation: Amend Charter Section 1005

The Commission recommends that Charter Section 1005 be amended so that it requires the City Council to appoint a committee to study and report on the advisability of redistricting the City every 10 years after the completion of the national census, and not every four years as presently provided.

3. **Tax Limits**

Charter Section 1107 establishes various ad valorem property taxes within the City. The Commission reviewed whether the tax provisions in Section 1107 needed to be amended in light of Proposition 218 or Proposition 13, and determined that the section is currently consistent with the California Constitution. Appendix F provides the background information the Commission used in forming its recommendation.

Recommendation: No Change to Charter Section 1107

The Commission recommends that Charter Section 1107 remain unchanged since it is currently consistent with the California Constitution.

4. Sale of Waterfront Property

Charter Section 1402 prohibits the sale or conveyance of any waterfront property with limited exceptions. However, over the years, Section 1402 has been amended six times to allow for the sale of waterfront property at various locations throughout the harbor. Each amendment required an affirmative vote of the electorate to modify the Charter and add the exception.

The Commission considered two alternatives. The first was to recommend amending Charter Section 1402 to allow for the sale or conveyance of waterfront property upon an affirmative vote of the electorate. This would allow the electorate to retain the right to determine whether waterfront property should be conveyed by the City, but would not require an amendment of the Charter to do so. The second alternative considered was to recommend no amendment to the Section, thereby continuing the practice of not allowing City-owned waterfront property to be sold or conveyed except to the State or County for use as a public beach or park. Appendix G provides the background information the Commission used in forming its recommendation.

Recommendation: Amend Charter Section 1402

The Commission recommends that Charter Section 1402 be amended to allow for the sale or conveyance of waterfront property upon an affirmative vote of the electorate.

5. Gender Neutral Language

Charter Sections 500 through 504, 602 and 603, 605 through 611 and 704 contain language that is not gender neutral. The Commission considered two alternatives: (1) recommend amending various sections of the Charter to reflect gender neutral language, or (2) recommend retaining the language as it exists. Appendix H provides the background information the Commission used in forming its recommendation.

Recommendation: Amend Various Sections to reflect Gender Neutral Language

The Commission recommends that Charter Sections 500, 501, 502, 503, 504, 602, 603, 605, 606, 607, 608, 609, 610, 611, and 704 be changed to reflect gender neutral language.

II. Modernization and Efficiency Matters

The following recommendations pertain to matters in which the Charter or initiative measure is not consistent with current municipal practice and where efficiency in government could be achieved through modernization.

1. Public Works Contracts

Charter Section 1110 currently provides that all public works projects over \$30,000 be required to undergo formal bidding procedures and be awarded by Council. Over the years, Charter Section 1110 has been amended twice to raise the monetary limit, however, the current threshold contrasts sharply with existing state law and standards adopted by other charter cities.

The Commission considered two alternatives: (1) recommend a change to increase the threshold requirement for formal bidding of public works contracts from \$30,000 to \$125,000, consistent with the guidelines provided by state law in Public Contracts Code Section 22032; and that the City Council be given the authority to regulate all aspects of public works contracts by ordinance or resolution; or (2) leave Charter Section 1110 unchanged. Appendix I provides the background information the Commission used in forming its recommendation.

Recommendation: Amend Charter Section 1110

The Commission recommends that Charter Section 1110 be amended to (1) increase the contract cost limits requiring formal bidding to \$125,000; (2) include a provision granting the City Council the power to regulate all aspects of public works projects, including the bidding, award and performance of public works contracts through ordinance or resolution; (3) provide for an

annual adjustment based on an index as specified by City Council resolution adopted each year; and (4) include language that allows for more flexibility in the types of bidding methods used by the City.

2. Civil Service Board and Civil Service System

The City of Newport Beach's civil service system is founded upon the provisions of Article VIII of the City's Charter. NBMC Chapter 2.24 and the City's Civil Service Rules and Regulations are additional sets of regulations governing the system. The Civil Service Ordinance (reflected as NBMC Chapter 2.24) has not been changed since its original adoption in 1958. The law governing public personnel matters, however, has changed dramatically since then. The Commission considered several alternatives as follows: Appendix J provides the background information the Commission used in forming its recommendation along with the specific language to be changed in Sections 711, 800, 801, 802 and 803.

Recommendation: Amend

The Commission recommends that Charter Section 711 and 800-803 be amended to clarify and strengthen the scope of the Civil Service Board and System.

Recommendation: Repeal

The Commission recommends that Ordinance 866 be repealed and replaced with a new Ordinance to comply with current local, state and federal law and best practices in personnel.

3. Publication of Ordinances

Currently Charter Section 414 requires that an ordinance be published in its entirety at least once in the official newspaper. However, publication of ordinances in their entirety can be extremely expensive. Government Code Section 36933 allows for summaries of ordinances to be published as a cost savings measure for local governments.

The Commission considered two alternatives: (1) recommend repeal of Section 414 and follow Government Code Section 36933, or (2) recommend no change to Section 414 and continue to publish ordinances in their entirety. Appendix K provides the background information the Commission used in forming its recommendation.

Recommendation: Repeal Charter Section 414

The Commission recommends that Charter Section 414 be repealed, and that the City follow the procedures of Government Code Section 36933 for the legal publication of ordinances.

4. Publication of Notices

Charter Section 419 requires the City Clerk to go out to bid annually for publication of legal notices. Legal notices include public hearing notices, notices of vacancies, and notices inviting bids. Annual bidding is not the City's current practice for other similar professional service agreements. For such agreements, the standard timeframe between bids ranges between three and five years.

The Commission considered two alternatives: (1) recommend amendment of Section 419 to require the City Clerk to go out to bid at an interval to be determined by the City Council, rather than annually, or (2) recommend removing Section 419 and handle legal advertising as a contract or purchase agreement. Appendix L provides the background information the Commission used in forming its recommendation.

Recommendation: Repeal Charter Section 419

The Commission recommends that Charter Section 419 be repealed, and that the publication of legal notices be handled through a contract or purchase agreement.

5. Restrictions on Long-term Contracts and Leases

Charter Section 420 limits the City Council's authority to enter into contracts for longer than 25 years without voter approval. Section 420 makes no distinction as to which side of a given transaction the City might be on, offers an exception for public utilities that appears to be unnecessary, and imposes a 25-year limit that is inconsistent with most modern long-term arrangements.

The Commission considered three alternatives: (1) recommend amending Section 420 to extend the Council's authority over a longer contract term, eliminate the exception for public utilities, create a distinction between situations where the City is the lessee or the lessor, and add a provision for long-term real property leases; (2) recommend elimination of the Section and rely on the NBMC to establish such restrictions, or (3) recommend no change. Appendix M provides the background information the Commission used in forming its recommendation.

Recommendation: Repeal Charter Section 420

The Commission recommends that Charter Section 420 be repealed, leaving the Charter silent, and that restrictions on long-term contracts and leases be established within the Newport Beach Municipal Code.

6. Franchise Procedures

Charter Section 1301 sets forth the notice and hearing requirements for potential franchises in the City. The requirements take approximately three months to complete and apply to a wide variety of entities and utilities using the public right of way, including solid waste haulers. However, unlike other entities, solid waste haulers are required to obtain a franchise by NBMC Section 12.63.030, even if they are hauling from only one demolition site. The franchise approval process in the Charter and the associated time required serves as a disadvantage to solid waste haulers.

The Commission considered two alternatives: (1) recommend amending Section 1301 to maintain the franchising procedure for utility companies, but permit codification of a streamlined procedure for waste haulers in the NBMC; or (2) recommend no change. Appendix N provides the background information the Commission used in forming its recommendation.

Recommendation: Amend Charter Section 1301.

The Commission recommends that Charter Section 1301 be amended to streamline franchising procedures for solid waste haulers, and that concurrently, Newport Beach Municipal Code Section 12.63.030 be updated to set forth franchise procedures applicable to waste haulers.

7. Centralized Purchasing

Charter Section 1106 establishes a centralized purchasing system for all departments of the City under the direction of the City Manager. Charter Section 1111 allows the City Council to approve rules and regulations for purchasing by ordinance, and specifies that when making purchases, merchants within City limits be given preference so long as the quality and price are equal. Other than these two sections, the Charter gives broad discretion to the City Manager to implement a centralized purchasing system as he or she sees fit.

When this issue was first identified, there was a question as to whether decentralized purchasing might be a less expensive alternative. However, centralized purchasing represents a good business practice to ensure the acquisition of goods and services for the lowest total cost, to

promote fair and open competition among suppliers, and to ensure good internal controls exist to prevent unnecessary or duplicative expenditures of public funds.

The Commission considered two alternatives: (1) recommend elimination of the Section and rely on the City's existing codes, policies, and administrative procedures to establish purchasing roles and responsibilities, or (2) recommend no change. Appendix O provides the background information the Commission used in forming its recommendation.

Recommendation: No Change to Charter Section 1106

The Commission recommends that Charter Section 1106 be unchanged.

8. Misdemeanor Penalties

Section 1404 of the City's Charter only sets forth the maximum penalties that could be imposed for violations of the City's Charter. However, it does not reflect maximum penalties for violations of the City's ordinances. The Commission considered two alternatives: (1) recommend an amendment to Section 1404 to 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, or (2) recommend no change. Appendix P provides the background information the Commission used in forming its recommendation.

Recommendation: Amend

The Commission recommends that Charter Section 1404 be amended to allow for flexibility in the establishment of misdemeanor penalties.

III. Policy Matters

The following recommendations pertain to matters in the Charter or an initiative measure that may warrant a review and update for policy reasons.

1. City Council Vacancies

Charter Section 403 provides the process by which a vacancy on the City Council is filled, giving the City Council the option to either appoint a qualified person within 30 days or cause an election to fill such a vacancy. This policy issue was first raised to determine whether the Charter section should be amended to clarify the application of term limits for Council members appointed to complete a partial vacated term. However, Section 1.32.020 of the NBMC clarifies term limits for such appointees. Appendix Q provides the background information the Commission used in forming its recommendation.

Recommendation: No Change to Charter Section 403

The Commission recommends that Charter Section 403 be unchanged.

2. Restrictions on Oil Drilling

Oil well production and drilling activity have been ongoing on City and County land on and in the immediate vicinity of Banning Ranch for more than 50 years and prior to the enactment of the City's Charter. Over that period of time, many things have changed. In 2006, the voters approved a new General Plan which establishes goals for the re-use of Banning Ranch as either fully or mostly open space, the achievement of which will require changes in current oil drilling activity. In addition, productivity of oil wells and methods of oil extraction have changed since the Charter was enacted.

Charter Section 1401 prohibits new oil drilling within the City, including land annexed to the City, without a vote of the people. The Charter language is ambiguous with regard to the scope of activities that are allowed to continue oil production from an existing oil extraction area. This makes it difficult for the City to move forward with consolidation of oil drilling on the Banning

Ranch property to allow its reuse for either open space or development, or to implement new oil extraction techniques on the City's own oil wells to increase revenue from them.

The Commission considered three alternatives: (1) recommend no change, (2) recommend deletion of Section 1401, or (3) recommend that Section 1401 be amended to define geographic areas in which oil drilling may occur after the areas are annexed to Newport Beach. Three areas are recommended: the two City oil well sites and the two consolidation sites proposed for Banning Ranch (one of which is an existing City oil well site). The land area on which oil drilling could occur would be reduced from roughly 360 acres in use today to roughly 20 acres. Appendix R provides the background information the Commission used in forming its recommendation.

Recommendation: Amend Charter Section 1401

The Commission recommends that Charter Section 1401 be amended to designate certain geographic areas as the only locations in which new oil drilling may be allowed upon annexation to the land in Newport Beach, and to eliminate all other provisions with the exception of the three geographic areas.

3. Fundraising Requests from Chambers of Commerce

The City of Newport Beach provides financial assistance and dedicates thousands of hours of staff time each year in support of events, programs and activities to a number of community organizations. Included among the organizations that receive City assistance are the Newport Beach Chamber of Commerce and the Corona Del Mar Chamber of Commerce. However, the City is limited by NBMC Section 3.24.010 in the financial assistance it may provide to the Chambers. This section was added by voter initiative in 1955 and limits the amount of funds that may be appropriated by the City to the local chambers of commerce for promotion, publicity, advertising, and entertainment purposes to \$2,400 annually. This amount has never been adjusted for inflation.

The Commission considered two alternatives: (1) recommend the repeal of NBMC Section 3.24.010 and evaluate Chamber funding requests according to Council Policy and the NBMC language in effect at the time the request is made, or (2) recommend increasing the appropriation limit. Appendix S provides the background information the Commission used in forming its recommendation.

Recommendation: Repeal NBMC Section 3.24.010

The Commission recommends that Newport Beach Municipal Code Section 3.24.010 be removed and that Chamber of Commerce funding requests be evaluated on the same basis as requests from other community organizations according to Council policy and the Municipal Code language in existence at the time the request is made.

Acknowledgements

City staff and consultants were an invaluable resource to the Commission. Without exception, these individuals were well organized, well prepared, responsive to requests from the Commission and cordial to work with. The Commission expresses its deep gratitude to the staff and consultants for a job well done.

Appendices


- A – History of the Newport Beach City Charter
- B – Resolution No. 2009-91: Establishing a Charter Update Commission
- C – Resolution No. 2010-16: Amending the Membership, Purpose and Responsibilities of the Charter Update Commission and Confirming Appointments to the Commission
- D – Staff Report: City Manager Residency Requirement (Charter Section 501)
- E – Staff Report: Timing of Redistricting (Charter Section 1005)
- F – Staff Report: Tax Limits (Charter Section 1107)
- G – Staff Report: Sale of Waterfront Property (Charter Section 1402)
- H – Staff Report: Gender Neutral Language (Charter Sections 500-504, 602, 603, 605-611, and 704)
- I – Staff Report: Public Works Contracts (Charter Section 1110)
- J – Staff Report: Civil Service Board and Civil Service System (Charter Sections 711, 800-803; Ordinance No. 866)
- K – Staff Report: Ordinance Publication Requirements (Charter Section 414)
- L – Staff Report: Publication of Legal Notices (Charter Section 419)
- M – Staff Report: Restrictions on Long-Term Contracts and Leases (Charter Section 420)
- N – Staff Report: Franchise Procedures (Charter Article XIII)
- O – Staff Report: Centralized Purchasing (Charter Section 1106)
- P – Staff Report: Misdemeanor Penalties (Charter Section 1404)
- Q – Staff Report: City Council Vacancies (Charter Section 403)
- R – Staff Report: Restrictions on Oil Drilling (Charter Section 1401)
- S – Staff Report: Funding Requests from Chambers of Commerce (NBMC Section 3.24.010)

Appendix A

City of Newport Beach Charter History

Dates	Creation of the Newport Beach Charter																
3/8/48	A petition with about 1,000 signatures was presented to Council for the submission to the electors requesting an election for the purpose of electing a Board of Freeholders to frame a proposed Charter for the City.																
3/22/48	City Clerk certified the sufficiency of the petition.																
5/17/48 Special Election	<p>Special Election conducted to select the 15 Board of Freeholders and to vote on the following question:</p> <p style="text-align: center;"><i>Shall a Board of Freeholders be elected to frame a proposed new Charter for the City of Newport Beach?</i></p>																
5/18/48	<p>City Clerk certified election results</p> <p style="text-align: center;">Yes – 490 No – 62</p> <p style="text-align: center;">Board of Freeholders consisted of:</p> <table style="margin-left: auto; margin-right: auto; border: none;"> <tr> <td style="padding: 2px;">John Allen</td> <td style="padding: 2px;">Ralph Maskey</td> </tr> <tr> <td style="padding: 2px;">Isabelle Andrews</td> <td style="padding: 2px;">J. B. McNally</td> </tr> <tr> <td style="padding: 2px;">J. A. Beek</td> <td style="padding: 2px;">R. I. Patterson</td> </tr> <tr> <td style="padding: 2px;">Rex Brandt</td> <td style="padding: 2px;">Mrs. J. W. Peyton, Jr.</td> </tr> <tr> <td style="padding: 2px;">Louis Briggs</td> <td style="padding: 2px;">Jack Raub</td> </tr> <tr> <td style="padding: 2px;">Marion Dodd</td> <td style="padding: 2px;">Earl Stanley</td> </tr> <tr> <td style="padding: 2px;">Braden Finch</td> <td style="padding: 2px;">Roland Wright</td> </tr> <tr> <td style="padding: 2px;">Irvin G. Gordon</td> <td></td> </tr> </table>	John Allen	Ralph Maskey	Isabelle Andrews	J. B. McNally	J. A. Beek	R. I. Patterson	Rex Brandt	Mrs. J. W. Peyton, Jr.	Louis Briggs	Jack Raub	Marion Dodd	Earl Stanley	Braden Finch	Roland Wright	Irvin G. Gordon	
John Allen	Ralph Maskey																
Isabelle Andrews	J. B. McNally																
J. A. Beek	R. I. Patterson																
Rex Brandt	Mrs. J. W. Peyton, Jr.																
Louis Briggs	Jack Raub																
Marion Dodd	Earl Stanley																
Braden Finch	Roland Wright																
Irvin G. Gordon																	
10/21/48	<p>Board of Freeholders published an outline of the <i>Tentative Draft Proposed Charter Under Consideration</i> (First Draft of the Charter).</p> <p>They pointed out that the Charter constitutes the City's basic law and has the same effect with respect to the City government as do the Federal and State Constitutions with respect to the Federal and State governments.</p>																
11/22/48	<p>Board of Freeholders Chair Finch spoke briefly stating that the provisions of the City Charter were, in the opinion of the Freeholders, for the beset and considered interest of the City. He outlined the Charter and presented it to Council.</p> <p>Council announced that, following publication of the final Charter in the <i>Newport-Balboa Press</i>, it would be placed on the Special Election ballot of February 8, 1949, as follows:</p> <p style="text-align: center;"><i>Shall the proposed Charter for the City of Newport Beach, as prepared by the duly elected Board of Freeholders of said City and filed in the office of the City Clerk on November 22, 1948, be adopted?</i></p>																
2/14/49	<p>City Clerk certified the February 8, 1949 Special Election:</p> <p style="text-align: center;">Yes – 1,174 No – 1,325</p>																

City of Newport Beach Charter History

8/17/53	Council and City Attorney discussion ensued relative to who should draft a Charter, Committee, Board of Freeholders.
10/13/53	City Clerk received petition with 1,333 signatures for the election of a Board of Freeholders to draft a proposed Charter.
10/28/53	City Clerk certified the sufficiency of the petition.
12/22/53	<p>Shall a Board of Freeholders be elected to frame a proposed Charter for the City of Newport Beach? Yes – 1,214 No – 148</p> 
3/29/54	Board of Freeholders Chairman, J. Leslie Steffensen, presented five copies of the proposed Charter to the City Council.
6/8/54 Consolidated Charter Issue w/County's Primary Election	<p>Shall the proposed Charter of the City of Newport Beach be adopted? Yes – 3,703 No – 864</p> <p>Results certified in Resolution No. 4260, adopted 7/26/54. The resolution also ordered the transmittal of the proposed charter to the legislature of the State of California for approval.</p>
9/13/54	A letter from Senator John Murdy, Jr. was ordered received which states that he was having the Legislative Counsel prepare the required concurrent resolution for introduction of the City's Charter
1/10/55	Council received telegram from Frank M. Jordan, Secretary of State, notifying Council that the City Charter had become effective at 3:00 p.m. on 1/7/55 . Council also received a letter from Senator John A. Murdy, Jr., stating that the State Senate had ratified the Charter on January 6 th . A copy of Assembly Concurrent Resolution No. 1, being the City Charter, together with the Secretary of State's certificate of transcript and filing, also was received.

**City of Newport Beach
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Charter Amendments (1954-2008)	
3/15/55 General Municipal Election	<p><u>Proposition No. 1</u> (Appropriation to Chamber of Commerce) - Failed Shall Section 2601.1 be added to the Municipal Code of the City of Newport Beach, providing that the amount of the funds which the City Council may appropriate for use by the local Chamber of Commerce for the promotion, publicity, advertising and entertainment purposes for the benefit of the City remain in the discretion of said City Council? Yes – 1,425 No – 2,111</p> <p><u>Proposition No 2</u> (Amount to Appropriate to Chamber of Commerce) - Passed Shall Ordinance No. 743, referred to in initiative petition as "Ordinance A," providing as follows: "The funds which the City Council may in its discretion appropriate to the local Chamber of Commerce for promotion, publicity, advertising, and entertainment purposes for the benefit of the City shall be limited to the sum of Two Thousand Four Hundred (\$2,400.00) annually", be adopted? Yes – 2,185 No – 1,294</p> <p><u>Proposition No. 3</u> (Amount to Appropriate to Chamber of Commerce) - Failed Shall Ordinance No. 744, referred to in initiative petition as "Ordinance B," providing as follows: "Section 1. The funds which the City Council may in its discretion appropriate to the local Chamber of Commerce for promotion, publicity, advertising, and entertainment purposes for the benefit of the City shall be limited to the sum of Twenty-Five Thousand Dollars (\$25,000.00) annually. Section 2. This Ordinance shall become effective only in the event that the total vote cast in favor of this Ordinance shall exceed the total vote cast in favor of Ordinance "A" submitted concurrently herewith", be adopted? Yes – 331 No – 3,067</p> <p><u>Proposition No. 4</u> (Boards or Commissions) - Passed Charter Amendment No. 1: Shall Section 702 of the Charter be amended to read as follows: "Section 702. Appointments, Terms. The members of each of such boards or commissions shall be appointed by the City Council from the qualified electors of the City, none of whom shall hold any paid office or employment in the City government. They shall be subject to removal by motion of the City Council adopted by at least four affirmative votes. The members thereof shall serve for a term of four years and until their respective successors are appointed and qualified. "The members first appointed to such boards and commissions shall so classify themselves by lot that the term of one of each of their number shall expire each succeeding July First. Where the total number of members of a board or commission to be appointed exceeds four, the classification by lot shall provide for the pairing of terms to such an extent as is necessary in order that the terms of at least one and not more than three shall expire in each succeeding year. Thereafter, any appointment to fill an</p>

**City of Newport Beach
Charter History**

	<p>unexpired term shall be for such unexpired period."? Yes – 2,829 No – 409</p> <p><u>Proposition No. 5</u> (Planning Commission) - Passed Charter Amendment No. 2: Shall Section 706 of the Charter be amended to read as follows: "Section 706. Planning Commission. Members. There shall be a Planning Commission consisting of nine members. The City Engineer and City Attorney, or their assistants, shall meet with and participate in the discussions of the Planning Commission but shall not have a vote."? Yes – 2,927 No – 379</p>
<p>12/6/55 Special Municipal Election</p>	<p><u>Proposed Charter Amendment</u> (Elective Officers) - Failed Shall the proposed Charter Amendment amending the first paragraph of Section 400 of the Charter of the City of Newport Beach, to read as follows: "Section 400. Elective Officers. The elective officers of the City shall consist of a City Council of seven members. Candidates for City Council shall be nominated from and by the electors of each of the seven districts referred to in Article X of this Charter, and one shall be elected from each of such districts by the voters of the district nominating such candidates at the times and in the manner provided in this Charter. They shall serve for a term of four years and until their respective successors are elected and qualified, " be ratified? Yes – 957 No – 1,832</p>
<p>4/10/56 General Municipal Election</p>	<p><u>Proposed Charter Amendment No. 1</u> (Bay Front Land) - Passed Shall Section 1402 of the Charter of the City of Newport Beach be amended by adding the following paragraph? "There shall be reserved forever to the people the public use of a strip of bay front land above mean high tide not less than 85 feet in depth of the city-owned water front property bounded on the west by the southeasterly line of Nineteenth Street and bounded on the east by a line parallel thereto lying 349.90 feet northwesterly of the northwesterly line of Fifteenth Street, said frontage to be bay front frontage." Yes – 2,852 No – 973</p> <p><u>Proposed Charter Amendment No. 2</u> (City Council Compensation) - Failed Shall Section 402 of the Charter of the City of Newport Beach be amended to read as follows? "Section 402. Compensation. Each member of the City Council shall receive as compensation for his services the sum of Two Hundred Dollars per month, except the member selected as Mayor who shall receive as compensation for his services the sum of Three Hundred Dollars per month. Absence of a member of the City Council from all regular and special meetings of the Council during any calendar month shall render such member ineligible to receive such sum for such calendar month. In addition, members of the City Council shall receive reimbursement on order of the City Council for council authorized traveling and other expenses when on official duty."</p>

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	Yes – 786 No – 3,041
4/8/58 General Municipal Election	<p><u>Proposed Charter Amendment No. 1</u> (City Name Change) - Failed Shall the title, the Preamble and Sections 100, 101, 413, 1006, 1008, 1009, 1011, 1012, 1400 and 1401 of the Charter be name of the city from City of Newport Beach to City effective upon ratification by the Legislature? Yes – 2,841 No – 3,030</p> <p><u>Proposed Charter Amendment No. 2</u> (City Council Qualifications) - Passed Shall Section 401 of the Charter be amended to provide that a person, in order to be eligible to hold office as a member of the City Council, must have been a qualified elector of his district for one year and a registered qualified elector of the City for three years immediately preceding his nomination or appointment? Yes – 4,767 No – 974</p> <p><u>Proposed Charter Amendment No. 3</u> (City Council Out-of-Pocket Expenditures) - Passed Shall Section 402 of the Charter be amended to increase the reimbursement to members of the City Council for out-of-pocket expenditures and costs from Fifty to One Hundred Dollars per month? Yes – 2,932 No – 2,735</p> <p><u>Proposed Charter Amendment No. 4</u> (Oil Well Drilling) - Passed Shall the first paragraph of Section 1401 of the Charter be amended to read: “Section 1401. Oil Well Drilling. No drilling for, exploration work of any kind, production or refining of, oil, gas or other hydrocarbon substances shall be permitted within that area of the City of Newport Beach as such limits exist as of the effective date of this Charter. The prohibitions shall include the City of Newport Beach.” (If Charter Amendment Number One is approved, Newport Beach shall be Newport Harbor.) Yes – 4,607 No – 1,188</p>
6/2/59 Special Municipal Election	<p><u>Proposed Charter Amendment</u> (Fee for Garbage, Refuse and Cuttings) - Passed Shall the ordinance requiring the cost and expense of collecting, hauling away and disposal of garbage, refuse and cuttings to be defrayed exclusively from the ad valorem tax revenues of the City of Newport Beach be adopted? Yes – 3,573 No – 1,001</p>
4/12/60 General Municipal Election	<p><u>Proposed Charter Amendment No. 1</u> (Sale of Rivo Alto Canal Property) - Passed Shall the Charter be amended to add Section 1402 (a) to permit the City Council to sell and convey that parcel of City property fronting on the Rivo Alto Canal consisting of Lot 4, Block 434, Canal Section, Newport Beach? Yes – 3,320 No – 1,652</p> <p><u>Proposed Charter Amendment No. 2</u> (Sale of City Property on Newport Bay) - Passed Shall the Charter be amended to add Section 1402 (b) to permit the City Council to sell and convey that parcel of City property fronting on Newport Bay lying easterly of Newport Boulevard and southerly of 26th Street, being a portion of Blocks 222 and 223,</p>

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	<p>as shown upon a map of Section "A", Newport Bath, recorded in Book 4, page 21, of Miscellaneous Maps, Records of Orange County, California? Yes – 3,093 No – 1,855</p>
<p>4/10/62 General Municipal Election</p>	<p><u>Proposed Charter Amendment</u> (NBMC) – Passed Shall Section 415. of the Charter be amended, to confirm the authority of the City to revise, recompile, recodify and index the Newport Beach Municipal Code and adopt the same by reference by the passage of an ordinance for that purpose? Yes – 4,094 No – 2,057</p>
<p>4/14/64 General Municipal Election</p>	<p><u>Proposed Charter Amendment No. 1</u> (Service on Council after Redistricting) - Passed Shall Section 1005 of the Charter be amended to assure that no Councilman will be disqualified from serving as Councilman from his district for the remainder of the period of time for which he was elected or appointed because of redistricting? Yes – 6,529 No – 777</p> <p><u>Proposed Charter Amendment No. 2</u> (Sale of Bay Avenue Property) - Passed Shall the Charter be amended to add Section 1402 (c) to authorize the City Council to sell and convey that parcel of City-owned real property, on the south side of Bay Avenue between 18th and 19th Streets described as follows, to wit: Lot 6, Block 218, as shown upon a map of Section "B", Newport Beach, recorded in Miscellaneous Maps, Book 4, page 27, Records of Orange County, California, together with a portion of Lot 4, Section 33, Township 6 South, Range 10 West, S. B. B. & M. , bounded on the south by the northerly line of said Lot 6, on the north by the easterly extension of the northerly line of Lot 4 in said Block 218, on the east by the northerly prolongation of the easterly line of said Lot 6, and on the west by the easterly lines of Lots 3 and 4 of said Block 218? Yes – 5,770 No – 1,379</p>
<p>4/12/66 General Municipal Election</p>	<p><u>Charter Amendment No. 1</u> (Increases Council Expense Allowance) - Passed Yes – 3,556 No – 3,021</p> <p><u>Charter Amendment No. 2</u> (Increases Additional Expense Allowance to Mayor) - Passed Yes – 3,888 No – 2,647</p> <p><u>Charter Amendment No. 3</u> (Provides for Prosecution of State Misdemeanor Offenses by City Attorney) - Passed Yes – 5,206 No – 1,099</p> <p><u>Charter Amendment No. 4</u> (Extends Prohibitions Against Nepotism to Civil Service Employees) - Passed Yes – 3,969 No – 2,252</p> <p><u>Charter Amendment No. 5</u> (Adds Planning Director as Advisor to Planning Commission and Reduces Size of Planning Commission) - Passed Yes – 5,543 No – 799</p>

**City of Newport Beach
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	<p><u>Charter Amendment No. 3</u> (Changes Title of Head of the Parks, Beaches and Recreation Department) - Passed Yes – 5,391 No – 843</p> <p><u>Charter Amendment No. 7</u> (Deletes Description of Councilmanic Districts from the Charter) - Passed Yes – 5,257 No – 790</p> <p><u>Charter Amendment No. 8</u> (Increases Maximum Library Tax Limit) - Passed Yes – 3,682 No – 2,752</p> <p><u>Charter Amendment No. 9</u> (Increases Minimum Dollar Amount of Public Works Contracts Subject to Public Bid Requirements) - Passed Yes – 3,971 No – 2,196</p> <p><u>Charter Amendment No. 10</u> (Shortens Minimum Time for Publication of Notice for Public Works Contracts) - Passed Yes – 4,405 No – 1,762</p> <p><u>Charter Amendment No. 11</u> (Changes Term “Capital Outlays” to “Capital Improvements”) - Passed Yes – 4,916 No – 1,162</p> <p><u>Charter Amendment No. 12</u> (Changes Procedures for Filing Damage Claims Against the City and Repeals Section Concerning Lawsuits Against the City) - Passed Yes – 5,324 No – 776</p> <p><u>Charter Amendment No. 13</u> (Authorizes Sale of City-owned Waterfront Property) - Passed Yes – 5,068 No – 1,049</p>
<p>11/8/66 General Municipal Election</p>	<p><u>Proposed Charter Amendment</u> – Passed Shall the Charter be amended to add Section 1402(e) to permit the City Council to sell and convey that parcel of City property fronting on Newport Bay lying easterly of Newport Boulevard and southerly of 26th Street, being a portion of Lot 2 in Section 33, Township 6 South, Range 10 West, of the San Bernardino meridian, lying northeasterly of the northeasterly line of Blocks 222 and 223 in Section A, Newport Beach, as per map recorded in Book 4, page 21, of Miscellaneous Maps, Records of Orange County, California? Yes – 14,289 No – 2,989</p>
<p>4/9/68 General Municipal Election</p>	<p><u>Charter Amendment No. 1</u> (Decreases the District Residence Requirement for Eligibility for Council Seat) - Passed Shall Section 401 of the Charter, requiring that to be eligible to hold office as a member of the City Council a person shall have been a qualified elector of the district from which he is nominated or appointed for at least one year immediately preceding his nomination or appointment, be amended to change the one-year requirement to ninety</p>

**City of Newport Beach
Charter History**

	<p>days? Yes – 4,103 No – 3,671</p> <p><u>Charter Amendment No. 2</u> (Authorizes Payment of Expense Allowances to Members of City Boards and Commissions) - Failed Shall Section 705 of the Charter be amended to authorize the City Council to provide by ordinance for payment of an allowance of not to exceed Fifty Dollars in any month to members of City boards or commissions established by the Charter to defray out-of-pocket costs? Yes – 2,629 No – 5,076</p> <p><u>Charter Amendment No. 3</u> (Changes Eligibility Requirement for Signers of Council Nominating Petitions) - Passed Shall Section 1004 of the Charter be amended to provide that to be eligible to sign a petition nominating a person to the office of Councilman the signer must be a registered voter instead of merely an elector of the district from which such person is to be nominated? Yes – 6,448 No – 1,168</p> <p><u>Charter Amendment No. 4</u> (Restricts Time for Changing Boundaries of Council Districts) - Passed Shall Section 1005 of the Charter be amended to prohibit the adoption of any ordinance changing and redefining the boundaries of any Councilmanic district within six months prior to any regular Councilmanic election? Yes – 6,166 No – 1,435</p>
<p>3/9/71 Special Municipal Election</p>	<p><u>Charter Amendment</u> – Passed Shall the Charter be amended to Add Section 422 to require that the city council shall not enter into any contract with the State of California, or any of its agencies, for the construction of a freeway or the closure of any City street to accommodate a freeway without first obtaining the approval of a majority of the voters of the City at a general or special election? Yes – 10,914 No – 2,333</p>
<p>4/9/74 General Municipal Election</p>	<p><u>Proposition No. 1</u> (Charter Amendment Update to Bring it Into Conformity with Existing Laws) - Passed Shall Proposition 1, which amends, deletes and updates certain sections of the City Charter to bring it into conformity with existing laws and to eliminate duplication and conflict, be ratified? Yes – 6,791 No – 1,223</p> <p><u>Proposition No. 2</u> (Council Reimbursement for Expenses) - Passed Shall Proposition 2, which amends certain sections of the City Charter pertaining to the maximum amounts allowed as reimbursement for expenses incurred by the Mayor and Councilmen; authorizing the City Council to fix an amount as reimbursement for expenses for members of boards and commissions; and delegating authority to the City Council to adjust said maximum amounts based on the Consumer Price Index, be</p>

**City of Newport Beach
Charter History**

	<p>ratified? Yes – 4,963 No – 2,394</p> <p><u>Proposition No. 3</u> (Contract or Lease of Property to 55 from 25 Years) - Failed Shall Proposition 3, which ends Section 420 of the City Charter to authorize the City Council to enter into contracts or lease property for a period of 55 years instead of 25 years, subject to certain restrictions, be ratified? Yes – 2,614 No – 4,477</p> <p><u>Proposition No. 4</u> (Increase Total Amount of Expenditures on Public Works Contracts) – Passed Shall Proposition 4, which amends Section 1110 of the City Charter to increase from \$5,000 to \$12,000 the total amount of expenditures on public works contracts required to be let by the City Council, to conform with increased construction costs, be ratified? Yes – 5,319 No – 2,419</p> <p><u>Proposition No. 5</u> (Sale of Waterfront Property) – Failed Shall Proposition 5, which amends Section 1402 of the City Charter to permit the sale of waterfront property upon prior voter approval, be ratified? Yes – 3,011 No – 5,653</p>
<p>11/6/84 General Municipal Election</p>	<p><u>Measure L</u> (Date of Newly-Elected Councilmembers) – Passed Shall the City Charter of the City of Newport Beach be amended to change the date on which the term of a newly elected Councilmember commences from January 1st to the date on which the Council receives certification of election results? Yes – 22,163 No – 7,997</p> <p><u>Measure M</u> (Date in which the Mayor is Selected) – Passed Should the City Charter of the City of Newport Beach be amended to change the date on which the Mayor is selected from the first Tuesday following any General or Special Municipal Election to the date on which newly elected Councilmembers are sworn and qualified? Yes – 22,340 No – 7,671</p>
<p>11/4/86 General Municipal Election</p>	<p><u>Measure C</u> (Change Dollar Amount of Public Works Contracting Procedures) - Passed Shall the City Charter of the City of Newport Beach be amended to change the dollar amount of work requiring formal public works contracting procedures from the present \$12,000 to \$30,000? Yes – 13,353 No – 10,037</p>
<p>11/3/92 General Municipal Election</p>	<p><u>Measure M</u> (Lease of City Owned Property) - Passed Shall the Newport Beach City Charter be amended so the lease of City owned property is limited to the term permitted by State law? Yes – 22,407 No – 12,621</p>

**City of Newport Beach
Charter History**

	<p><u>Measure N</u> (Sale of 4210 River Avenue) - Passed Shall the Newport Beach City Charter be amended to grant the Council authority to sell the property at 4210 River Avenue? Yes – 22,217 No – 12,927</p> <p><u>Measure O</u> (City Arts Commission Membership) - Passed Shall the Newport Beach City Charter be amended so that the number of members of the City Arts Commission is determined by ordinance or resolution? Yes – 21,573 No – 11,805</p> <p><u>Measure P</u> (Two Term Limit on Office of City Council) - Passed Shall the Newport Beach City Charter be amended to establish a two term limit on the Office of City Council? Yes – 30,184 No – 6,746</p>
11/8/94 General Municipal Election	<p><u>Measure G</u> (Composition and Duties of the Library Board of Trustees) – Failed Shall the Newport Beach City Charter be amended to modify the composition and duties of the Library Board of Trustees? Yes – 11,774 No – 15,424</p>
11/7/00 General Municipal Election	<p><u>Measure S</u> (Greenlight) - Passed Shall the Charter be amended to add Section 423 to require voter approval of certain amendments to the Newport Beach General Plan? Yes – 21,355 No – 12,465</p> <p><u>Measure T</u> (Traffic Phasing Ordinance) - Failed Shall the Charter be amended to add Section 423 to require voter approval of any amendment or repeal of certain provisions of the Traffic Phasing Ordinance? Yes – 11,641 No – 21,075</p>
11/7/06 General Municipal Election	<p><u>Measure W</u> (Eminent Domain) – Passed Shall the Charter be amended to add Section 424 to prohibit the City of Newport Beach and/or any City-Affiliated Agency from exercising the power of eminent domain to acquire real property for the sole purpose of transferring the property to another person to further private economic development? Yes – 22,517 No – 6,961</p>
2/5/08 Special Municipal Election	<p><u>Measure B</u> (Location of City Hall) – Passed Shall the City of Newport Beach Charter be amended to require City Hall, city administrative offices and related parking to be located on City property which is bounded by Avocado Avenue on the west, San Miguel Drive on the north, and MacArthur Boulevard on the east, and Newport Beach Central Library on the south? Yes – 16,938 No – 15,092</p>

Appendix B

RESOLUTION NO. 2009-91

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH CREATING A CHARTER UPDATE COMMISSION OF LIMITED DURATION AND FOCUSED JURISDICTION

WHEREAS, the Charter of the City of Newport Beach was passed and adopted by the citizens of the City of Newport Beach effective January 7, 1955;

WHEREAS, substantial changes have occurred in the law since the approval and adoption of the Charter leaving some of its provisions outdated and unenforceable;

WHEREAS, modern municipal government has moved forward in many ways to allow more efficiency in addressing the needs of the City and the Charter should not be impediment to efficient municipal government;

WHEREAS, it is appropriate to appoint a citizens' commission for review of Charter update and modernization issues in order to maximize the benefit to the City and its citizens and to move the work program for such an update and modernization forward in a limited period of time;

WHEREAS, the Charter cannot be amended without the vote of a people;

WHEREAS, the next general election currently scheduled in the County of Orange is on November 2, 2010 and its general election is the most cost efficient matter to bring issues to the voters of the City of Newport Beach and it is recommended that all necessary ballot measures that must be voted upon be forwarded to the County of Orange no later than June 28, 2009;

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: A Charter Update Commission is hereby created and enabled in order to carry out the tasks of updating the City of Newport Beach Charter and modernizing it in order to maximize the efficiency of municipal government.

Section 2: The Commission shall be made up of seven members of the public appointed by the City Council. The City Council shall make an effort to appoint one member from each district of the City, but if there are no qualified applicants from any district that position can be filled by an applicant from another district.

Section 3: The Commission is empowered and instructed to review the issues set forth on Exhibit "A" for the purpose of updating and modernizing the Charter. The Commission may also review the Charter and initiative enacted ordinances of the City and make recommendations to the City Council for expanding the list of issues to be addressed. The Commission shall not, however, expend resources on pursuing issues that have not been approved for review by the City Council.

Section 4: Due to the limited amount of time available, the work program for this effort, allowing for reasonable flexibility, shall proceed on the following schedule:

Date	Action
December 8, 2009	Council Adopts Resolution Creating Commission, Identifying Issues to be Addressed, and Soliciting Applications; Mayor Appointing Council Subcommittee
December 12, 2009	City Clerk Advertises for Applications for Appointment to Commission
January 8, 2010	Application Period Closes
January 11 – 15, 2009	Council Subcommittee Conducts Interviews of Applicants
January 26, 2009	Commission Appointed
February 2, 2010	First Meeting of the Commission – Work Plan Discussed
February 16, 2009	Commission Meeting – Discuss Issues

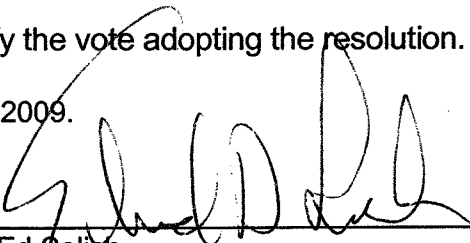
March 2, 2009	Commission Meeting – Discuss Issues
March 16, 2009	Commission Meeting – Discuss Issues
April 6, 2009	Commission Meeting – Discuss Issues
April 20, 2009	Commission Meeting – Action on Recommendations
May 4, 2009	Commission meeting – Action on Recommendations (meeting held only if needed)
May 12, 2009	Complete staff report for Council meeting of May 25, 2009
May 25, 2009	Council study session: Present staff report with Commission recommendations to Council
June 8, 2009	Council discussion and possible action on Resolutions on Ballot Measures
June 22, 2009	Final Council discussion and adoption of Resolutions re Ballot Measures (if action is not taken on June 8)

Based upon this work program schedule, the Commission shall complete its final report to the City Council with the Commission’s recommendations on or before May 4, 2010. The final report of the Commission shall be presented to the City Council at the Council’s May 25th, 2010 Council meeting. The final report does not need to be unanimous. Minority opinions or reports may be presented on any given issue.

Section 5: The Commission shall conduct its meetings consistent with the Ralph M. Brown Act (California Government Code sections 54950 *et. seq.*) A presiding officer shall be appointed to preside over the meetings of the Commission. The Commission shall be supported by the City Manager’s Office and the Office of the City Attorney. An analysis shall be provided to the Commission by staff on all issues being considered by the Commission and staff shall assist the Commission in preparing the majority report and recommendations.

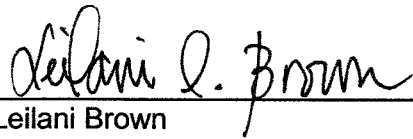
Section 6: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 8th day of December, 2009.



Ed Selich
Mayor

ATTEST:



Leilani Brown
City Clerk



Exhibit A

[A09-00673] Charter Update Issues – 2009/10 – M&CC from DRH 12.08.09 CC Mtg

<u>Issue</u>	<u>Detail</u>	<u>Context</u>
<i>Clean-Up: Those matters in which the Charter or Initiative Measure is Inconsistent with Existing Law.</i>		
C1. <u>City Manager Residency Requirement:</u>	Charter section 501 requires that a City Manager become a resident of the City.	As determined during the recent recruitment process, this requirement is now inconsistent with federal law.
C2. <u>Redistricting Committee:</u>	Charter section 1005 requires the City Council to appoint a committee to study and report on possible redistricting.	This section has not been uniformly followed and creates an administrative burden. Statewide redistricting takes place every ten years when the census results are published. It may be appropriate to clean-up this section to be consistent with current practice and statewide practice. <i>[We should retain the ability to redistrict after annexations.]</i>
C3. <u>Tax Limits:</u>	Charter section 1107 sets limitations on the taxing authority of the City.	These limitations have been largely, if not entirely, superseded by state law through Proposition 13 and Proposition 218 as well as other statewide initiative measures. Duplication of restrictions can cause confusion and a trap for the unwary.
C4. <u>Sale of Bay Front Property:</u>	Charter section 1402 provides that Bay Front property, except with limited exceptions, cannot be sold.	Several times in the past the City has enacted Charter amendments in order to allow for the sale of Bay Front property. This procedure can be avoided simply by amending the prohibition to allow for the sale upon an affirmative vote of the electorate.
C5. <u>Gender References</u>	Several sections of the Charter refer to the City Manager, City Attorney, City Clerk, Finance Director, department heads,	These references could be exchanged with the person's title instead of a gender reference.

	“Chairmen,” or City Council as males. (Section 500, 501, 502, 503, 504, 602, 603, 605, 606, 607, 608, 609, 610, 611, 704.	
<u>Modernization and Efficiency: Those matters in which the Charter is not consistent with current municipal practice and efficiency in government can be achieved through modernization.</u>		
M1. <u>Contracting Authority:</u>	Charter section 1110 requires all Public Works’ projects with total expenditures over \$30,000.00 go to formal bid.	Should the City revise this amount in light of the substantial increase of construction costs and then provide for adjustment based upon CPI?
M2. <u>Civil Service System:</u>	Charter sections 800 through 803 provide for a Civil Service System within the City and Ordinance 866, passed by the voters on November 4, 1958 (codified as Municipal Code Chapter 2.24).	Currently the City’s Civil Service System is administered by the City’s Civil Service Board that was created via ordinance adopted in 1958 and has not been updated in over fifty years. The entire law governing public employment has changed dramatically in that time leaving some of the provisions of our system inconsistent with state and federal law (for example section 2.24.170 prohibiting political activities by employees is now unconstitutional based upon appellate case authority from the state and federal courts) and at least one requirement of the ordinance, the provision of appellate rights to candidates for original employment with the City, has been recommended for change by the Civil Service Board. These concerns may warrant a review and modernization of the system.
M3. <u>Ordinance Publication Requirements.</u>	Charter section 414 requires that an ordinance be published at least once in the official newspaper.	Publication of ordinances in their entirety can be extremely expensive. State law (Government Code section 36933) allows for summaries of ordinances to be published as a cost savings device.

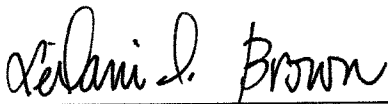
M4. <u>Publication of Legal Notices:</u>	Charter section 419 requires the City Clerk to go to bid annually for contracting out publication of legal notices.	Annual bid process has not produced any noticeable savings and has created a difficult administrative burden on the City Clerk's Office.
M5. <u>Time for Contracting:</u>	Charter section 420, with some exceptions, restricts the length of time for municipal contracting to not in excess of 25 years.	This requirement potentially limits the City's ability to enter into modern financial transactions.
M6. <u>Franchise Procedures:</u>	Article XIII of the Charter creates franchising procedures and requirements.	Franchising procedures are now governed by the municipal code. Allowing for municipal code regulation of the procedures as opposed to Charter regulation provides for flexibility in a changing economic environment.
M7. Centralized Purchasing	Charter section 1106 requires the City to continue a process of centralized purchasing.	Centralized purchasing may work in some cases, but not in all. Advances in technology and controls may make decentralized purchasing less expensive.
<i>Policy: Those matters in the Charter that may warrant a review and update for policy reasons.</i>		
P1. <u>Appointment to Vacant Council Seat:</u>	Charter section 403 directs that vacancies on the Council shall be filled by appointment within thirty days, or set an election, and the appointee shall sit until the next general municipal election and his or her successor is qualified.	Does the Council wish to address this issue, either to clarify how this provision falls within term limits or to otherwise modify the provisions?
P2. Review Mechanics of Restrictions on Oil Drilling within the City:	Charter 1401 effectively provides that there is to be no new oil exploration, drilling, production, or refining in the City that was not in existence at the effective date of the Charter or on the effective date of newly annexed properties.	Consider ways to make these provisions more flexible in order to allow for modification of existing drilling while not opening the City as a whole for new oil exploration or drilling.

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2009-91 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 8th day of December, 2009, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Henn, Rosansky, Curry, Webb, Gardner, Daigle, Mayor Selich
Noes: None
Absent: None
Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 9th day of December, 2009.



City Clerk
Newport Beach, California

(Seal)



Appendix C

RESOLUTION NO. 2010-16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH AMENDING RESOLUTION
NO. 2009-91 REGARDING THE MEMBERSHIP AND PURPOSE
AND RESPONSIBILITIES OF THE CHARTER UPDATE
COMMISSION**

WHEREAS, the City Council established the Charter Update Commission on December 8, 2009, through the adoption of Resolution No. 2009-91; and

WHEREAS, the membership of the Charter Update Commission includes seven (7) citizens of the community appointed by the City Council. Council shall make an effort to appoint one member from each district of the City, but if there are no qualified applicants from any district that position can be filled by an applicant from another district; and

WHEREAS, the purpose and responsibilities of the Charter Update Commission requires that the Commission members attend meetings on specific dates; and

WHEREAS, the City Council wishes to amend the membership of the Charter Update Commission to also include a non-voting Council liaison and an alternate non-voting Council liaison; and

WHEREAS, the City Council wishes to amend the purpose and responsibilities of the Charter Update Commission to allow for more flexibility in scheduling meetings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newport Beach that

1. The Council hereby expands the membership of the Charter Update Commission to include a non-voting Council liaison and an alternate non-voting Council liaison, and amends the meeting attendance requirement, as reflected in Attachment A.

2. The Council hereby expands the list of issues to be addressed by the Charter Update Commission by adopting the Revised List of Issues attached as Attachment B to this resolution.

ADOPTED this 26th day of January, 2010.



Keith D. Curry
Mayor

ATTEST:



Leilani I. Brown
City Clerk



Attachment A

CHARTER UPDATE COMMISSION

AUTHORIZATION: Established by Resolution No. 2009-91, adopted on December 8, 2009; and amended by Resolution No. 2010-16, adopted on January 26, 2010.

MEMBERSHIP: The Commission shall consist of seven (7) citizens of the community appointed by the City Council. Council shall make an effort to appoint one member from each district of the City, but if there are no qualified applicants from any district that position can be filled by an applicant from another district.

The Commission shall also include a non-voting Council liaison and liaison alternate.

TERM: This will be a short-term obligation, as the Commission is currently scheduled to complete its work by June 2010.

**PURPOSE &
RESPONSIBILITIES:**

A. To consider possible updates to the City Charter and to City Ordinances that have been adopted by initiative measure so that updated measures can be placed on the November 2010 ballot.

B. The Commission is empowered and instructed to review the issues approved by the City Council, may also review the Charter and initiative enacted ordinances and make recommendations to the City Council for expanding the list of issues to be addressed.

C. The Commission shall not, however, expend resources on pursuing issues that have not been approved for review by the City Council.

D. The Commission members shall make every effort to attend meetings on February 2, February 16, March 2, March 16, April 6, April 20, and May 4, 2010, or recommend alternative dates if unable to attend.

ATTACHMENT B

CHARTER UPDATE: REVISED LIST OF ISSUES TO ADDRESS

(Revised for January 26, 2010 Council Meeting)

<u>Issue</u>	<u>Detail</u>	<u>Context</u>
<i>Clean-Up: Those matters in which the Charter or Initiative Measure Is Inconsistent with Existing Law.</i>		
C1. <u>City Manager Residency Requirement:</u>	Charter section 501 requires that a City Manager become a resident of the City.	As determined during the recent recruitment process, this requirement is now inconsistent with federal law.
C2. <u>Redistricting Committee:</u>	Charter section 1005 requires the City Council to appoint a committee to study and report on possible redistricting.	This section has not been uniformly followed and creates an administrative burden. Statewide redistricting takes place every ten years when the census results are published. It may be appropriate to clean-up this section to be consistent with current practice and statewide practice. <i>[We should retain the ability to redistrict after annexations.]</i>
C3. <u>Tax Limits and Procedures:</u>	Charter section 1107 sets limitations on the taxing authority of the City. Charter section 1113 sets out procedures for enactment of a capital improvement tax.	These limitations and procedures have been largely, if not entirely, superseded by state law through Proposition 13 and Proposition 218 as well as other statewide initiative measures. Duplication of restrictions can cause confusion and a trap for the unwary.
C4. <u>Sale of Bay Front Property:</u>	Charter section 1402 provides that Bay Front property, except with limited exceptions, cannot be sold.	Several times in the past the City has enacted Charter amendments in order to allow for the sale of Bay Front property. This procedure can be avoided simply by amending the prohibition to allow for the sale upon an affirmative vote of the electorate.
C5. <u>Gender References:</u>	Several sections of the Charter refer to the City Manager, City Attorney, City Clerk, Finance Director, department heads, "Chairmen," or City Council as males. (Section 500, 501, 502, 503, 504, 602, 603, 605, 606, 607, 608, 609, 610, 611, 704.	These references could be exchanged with the person's title instead of a gender reference.

<u>Modernization and Efficiency: Those matters in which the Charter is not consistent with current municipal practice and efficiency in government can be achieved through modernization.</u>		
M1. <u>Contracting Authority:</u>	Charter section 1110 requires all Public Works' projects with total expenditures over \$30,000.00 go to formal bid.	Should the City revise this amount in light of the substantial increase of construction costs and then provide for adjustment based upon CPI?
M2. <u>Civil Service System:</u>	Charter sections 800 through 803 provide for a Civil Service System within the City and Ordinance 866, passed by the voters on November 4, 1958 (codified as Municipal Code Chapter 2.24).	Currently the City's Civil Service System is administered by the City's Civil Service Board that was created via ordinance adopted in 1958 and has not been updated in over fifty years. The entire law governing public employment has changed dramatically in that time leaving some of the provisions of our system inconsistent with state and federal law (for example section 2.24.170 prohibiting political activities by employees is now unconstitutional based upon appellate case authority from the state and federal courts) and at least one requirement of the ordinance, the provision of appellate rights to candidates for original employment with the City, has been recommended for change by the Civil Service Board. These concerns may warrant a review and modernization of the system.
M3. <u>Ordinance Publication Requirement:</u>	Charter section 414 requires that an ordinance be published at least once in the official newspaper.	Publication of ordinances in their entirety can be extremely expensive. State law (Government Code section 36933) allows for summaries of ordinances to be published as a cost savings device.
M4. <u>Publication of Legal Notices:</u>	Charter section 419 requires the City Clerk to go to bid annually for contracting out publication of legal notices.	Annual bid process has not produced any noticeable savings and has created a difficult administrative burden on the City Clerk's Office.

M5. <u>Time for Contracting:</u>	Charter section 420, with some exceptions, restricts the length of time for municipal contracting to not in excess of 25 years.	This requirement potentially limits the City's ability to enter into modern financial transactions.
M6. <u>Franchise Procedures:</u>	Article XIII of the Charter creates franchising procedures and requirements.	Franchising procedures are now governed by the municipal code. Allowing for municipal code regulation of the procedures as opposed to Charter regulation provides for flexibility in a changing economic environment.
M7. <u>Centralized Purchasing:</u>	Charter section 1106 requires the City to continue a process of centralized purchasing.	Centralized purchasing may work in some cases, but not in all. Advances in technology and controls may make decentralized purchasing less expensive.
M8. <u>Misdemeanor Penalties:</u>	Charter section 1404 limits misdemeanor penalties to \$1,000 and/or six months imprisonment.	Currently this provision is consistent with the California Penal Code. It may be helpful to amend it with general language that allows for the penalties to be raised so long as they do not exceed those provided by California law.
<u>Policy: Those matters in the Charter that may warrant a review and update for policy reasons.</u>		
P1. <u>Appointment to Vacant Council Seat:</u>	Charter section 403 directs that vacancies on the Council shall be filled by appointment within thirty days, or set an election, and the appointee shall sit until the next general municipal election and his or her successor is qualified.	Does the Council wish to address this issue, either to clarify how this provision falls within term limits or to otherwise modify the provisions?
P2. <u>Review Mechanics of Restrictions on Oil Drilling within the City:</u>	Charter 1401 effectively provides that there is to be no new oil exploration, drilling, production, or refining in the City that was not in existence at the effective date of the Charter or on the effective date of newly annexed properties.	Consider ways to make these provisions more flexible in order to allow for modification of existing drilling while not opening the City as a whole for new oil exploration or drilling.

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2010-16 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 26th day of January, 2010, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Selich, Rosansky, Henn, Webb, Gardner, Daigle, Mayor Curry

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27th day of January, 2010.

Leilani I. Brown

City Clerk
Newport Beach, California

(Seal)



Appendix D

CITY OF NEWPORT BEACH CHARTER UPDATE COMMISSION STAFF REPORT

Agenda Item No. 4
February 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: CHARTER SECTION 501 – CITY MANAGER RESIDENCY
REQUIREMENT**

RECOMMENDATION:

Recommend repeal of Charter Section 501 due to its inconsistency with the California Constitution and to allow the City Council to determine in each recruitment the appropriate distance from City Hall that a particular City Manager may live.

DISCUSSION:

The full text of Charter Section 501 is appended as Attachment “A.” A “white paper” with relevant background information and suggested alternatives for the Commission to consider is appended as Attachment “B.”

Staff is recommending the repeal of Charter Section 501 in order to bring it into conformity with the California Constitution and to give the Council the latitude to make the best decision for the City in recruiting a City Manager.

The quality of the transportation system and the quality of communications have changed dramatically since the adoption of Charter Section 501. In addition, a provision in the Charter restricting the City Council’s choice between viable candidates for the position of City Manager could result in the City having to pass up the best candidate based upon an arbitrary limit. For these reasons staff recommends simple repeal of the Charter provision, thus bringing our Charter into conformity with the California Constitution and allowing the City Council the latitude for making the best recruitment decision for the City based upon individual circumstances.

Should the Commission wish to consider setting a “reasonable and specific” limitation as allowed under the California Constitution, staff recommends considering whether a particular distance provides a City Manager candidate with a reasonable opportunity to

live outside of the City and meets the City's need to have its City Manager within a reasonable response time to City Hall. We have appended as Attachment "C" maps for consideration by the Commission identifying locations within 10, 15, and 30 miles of the current City Hall location and the new City Hall site. The Commission may recommend that a reasonable radius is one in which the City Manager can arrive at the City Hall within a specified period of time (*such as 30 minutes, for instance*) and choose a distance based upon that determination.

ENVIRONMENTAL REVIEW: Not applicable.

Prepared by:

Submitted by:

OFFICE OF THE CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY

By 
David R. Hunt, City Attorney

By 
David R. Hunt, City Attorney

Attachments: "A" - Charter Section 501

"B" - Charter Section 501 White Paper

"C" - Maps

ATTACHMENT “A”

Charter Section 501

February 2, 2010 Charter Commission Staff Report

CHARTER OF THE CITY OF NEWPORT BEACH

Article V City Manager

Section 501. Residence.

The City Manager need not be a resident of the City at the time of his appointment, but he shall establish his residence within the City within ninety days after his appointment, unless such period is extended by the City Council, and thereafter maintain his residence within the City during his tenure of office.

[A09-00673] – Charter Section 501 – 100202 Commission Mtg

ATTACHMENT “B”

Charter Section 501 White Paper

February 2, 2010 Charter Commission Staff Report

City Manager Residency Requirement

Charter Section 501

STATEMENT OF THE ISSUE:

How should the City modify Charter Section 501 governing City Manager residency within the City in order to make it consistent with current law.

RELEVANT BACKGROUND:

Section 501 of the City's charter was adopted with the original enactment of the Charter effective on January 7, 1955 and it has not been amended since that time. It provides that the City Manager shall reside within the City during his tenure in office. This provision was consistent with the California Constitution at the time of its enactment.

The law changed, however, with the enactment of California Constitution Article XI, Section 10(b) in 1974, and its reenactment in 1976. Now, as discussed in the memorandum from Assistant City Attorney Mynette Beauchamp dated July 28, 2009 and attached hereto as Exhibit "A," cities may not require their employees to reside within the city's corporate boundaries. Thus, Charter section 501 is unconstitutional and not enforceable.

California Constitution Section 10(b), however, allows for the adoption of requirements that an employee reside within a reasonable distance of their place of employment. Specifically, Section 10(b) provides:

A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location.

Thus, the Section 501 can be modified to provide that the City Manager must reside within a "reasonable and specific" distance from City Hall.

ALTERNATIVES:

The Commission has the following alternatives identified by staff:

Alternative 1: Recommend repeal of the Charter Section 501.

This approach is by far the simplest approach. It then allows the City Council to exercise discretion balancing the need of the City for a City Manager to live close to City Hall with the requirements of the law. The factors to consider in such a determination, such as the quality of the transportation system, have changed over the years that may make it more appropriate for the City Council to have the authority to make the decision. Additionally, the Council may wish to appoint a City Manager for a limited term that lives outside of Newport Beach but, who, for good business reasons, would make the best

City Manager. Moreover, a City Manager could need to live outside a specified radius for family reasons, while still providing excellent service to the City. Giving the City Council the authority to make that decision enables the City to have the best City Manager appointed and serving at the time.

Alternative 2: Recommend amendment of Charter Section 501 to bring it into conformance with the California Constitution by establishing a “reasonable and specific” distance from City Hall that a City Manager must live.

If the Commission chooses to make this recommendation, it must set the “reasonable and specific” distance.

Exhibit “A” - Memorandum from Assistant City Attorney Mynette Beauchamp dated July 28, 2009

[A09-00673] – Charter section 501 – White Paper – 100202 Commission Mtg

CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY

TO: David R. Hunt, City Attorney

FROM: Mynette D. Beauchamp, Assistant City Attorney

MATTER: City Charter's Unconstitutional Residency Requirement for City Manager; A09-00545

DATE : July 28, 2009



Issue:

Is the City Charter's residency requirement for the City Manager constitutional?

Short Answer:

Article XI, Section 10(b) of the California Constitution prohibits cities and counties, including charter cities and counties, from requiring that their employees be residents of such city or county. Therefore, the City may not require that the City Manager become a resident of Newport Beach.

Discussion:

Section 501 of the City Charter, as originally enacted, provides: "The City Manager need not be a resident of the City at the time of his appointment, but he shall establish his residence within the City within ninety days after his appointment, unless such period is extended by the City Council, and thereafter maintain his residence within the City during his tenure of office."

Article XI, Section 10(b) of the California Constitution ("Section 10(b)") states: "A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location."

Prior to the adoption of Section 10(b) of the California Constitution, the California Supreme Court upheld a city's general requirement that all of its employees live within its borders. In *Ector v. City of Torrance* (1973) 10 Cal.3d 129, 109 Cal.Rptr. 849, 514 P.2d 433, the Supreme Court found that no fundamental rights or suspect classes were involved, and applied the traditional equal protection test, which requires only that a law bear a rational relationship to a legitimate governmental objective. The court listed as some of the possible legitimate objectives: "[T]he promotion of ethnic balance in the community; reduction in high unemployment rates of inner-city minority groups; improvement of relations between such groups and city employees; enhancement of the quality of employee performance by greater personal knowledge of the city's

conditions and by a feeling of greater personal stake in the city's progress; diminution of absenteeism and tardiness among municipal personnel; ready availability of trained manpower in emergency situations; and the general economic benefits flowing from local expenditure of employees' salaries." *Id.* at 135. The court held that the city's residency requirement bore a rational relationship to the governmental objectives, and thus did not violate the equal protection clause of the state Constitution. *Id.*

The *Ector* opinion, however, inspired the Legislature and the electorate to pass a Constitutional amendment, Section 10(b), prohibiting any city or county, including those established by charter, from requiring its employees to be residents.¹ The amendment was intended to improve local government by increasing the pool of qualified applicants. In *Wall v. Municipal Court of South Orange Judicial District of Orange County* (1990) 223 Cal.App.3d 247, 272 Cal.Rptr. 702, in which an applicant for a traffic trial commissioner was rejected because he was not a resident of Orange County, the Court of Appeal noted that Section 10(b) "clearly prohibits ... a city, county or public district from imposing residency requirements on its employees..." but distinguished similar residency restrictions imposed by state law in finding in favor of the Municipal Court. *Id.* at 250.

Similarly, in *Cooperrider v. San Francisco Civil Service Commission* (1979) 97 Cal.App.3d 495, 158 Cal.Rptr. 801, the Court of Appeal held that the city of San Francisco's (a charter city) one-year residency requirement for applicants for public employment violated Section 10(b) as well as the equal protection provisions of the state Constitution. Plaintiff Candis Cooperrider, a resident of Piedmont, attempted to apply for a position with the City as an aquarist, but her application was refused solely on the basis that she was not a resident of San Francisco; she was otherwise fully qualified for the position. The court explained that San Francisco's residency requirement was in direct contravention of the mandate of Section 10(b), and was thus unconstitutional on that basis. *Id.* at 502-03.

Conclusion:

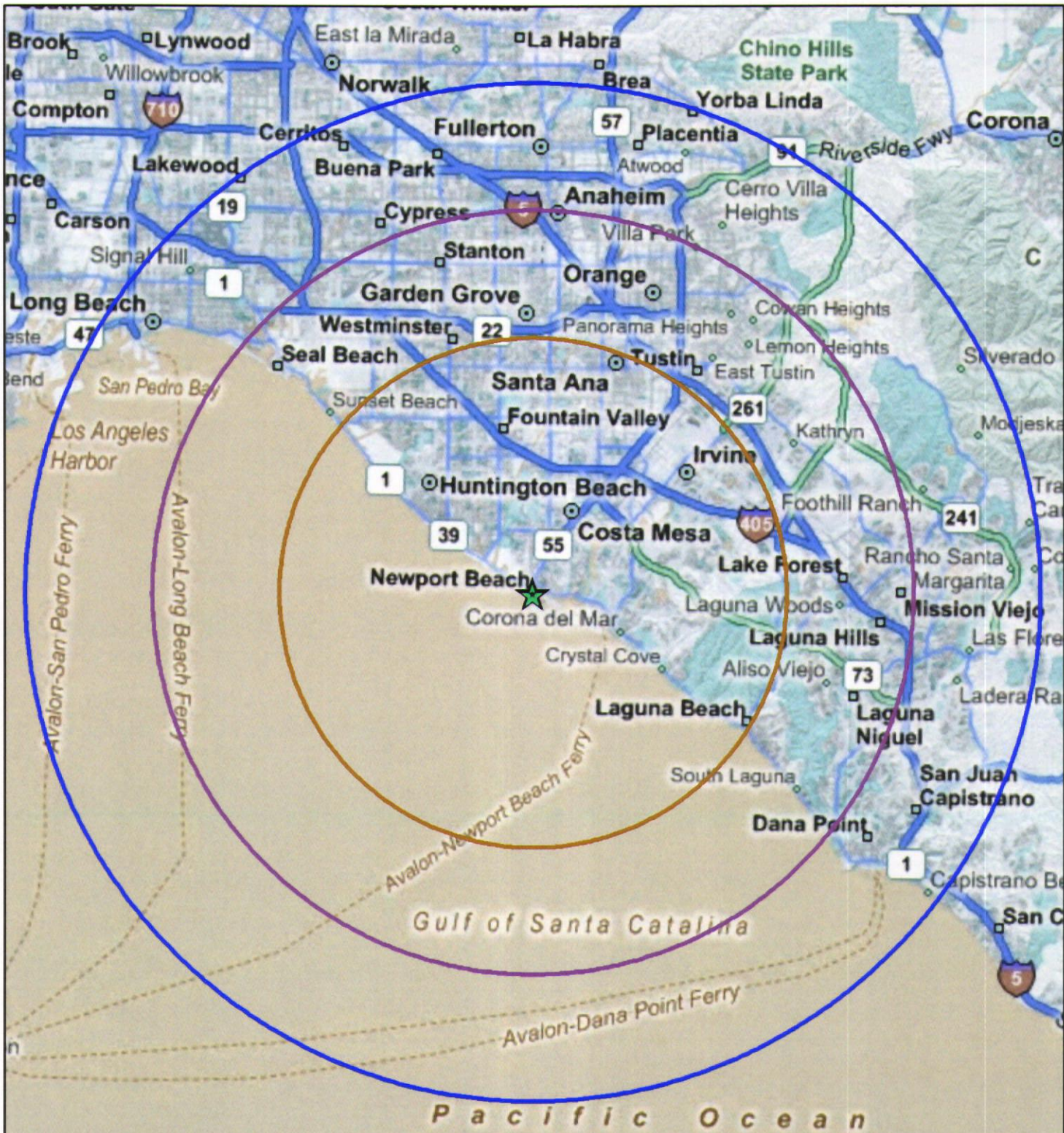
Although the City Charter residency requirement for the City Manager was enacted prior to the adoption of Section 10(b) to the state Constitution, the Constitutional amendment now preempts the City Charter provision. As a result, the residency requirement is unconstitutional and unenforceable, and the City may not require a new City Manager to become a resident of the City.

¹ Subsection (b) is former section 10.5, as adopted by the voters on November 5, 1974; in 1976, it was repealed (Stats. 1976, Res., ch. 5, ACA 40, effective July 9, 1976) and reenacted as subdivision (b) (Stats. 1976, Res., ch. 24, ACA 90, effective July 8, 1976). (See Stats. 1976, p. 6659.)




ATTACHMENT “C”

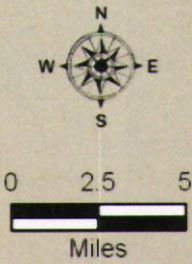
Maps

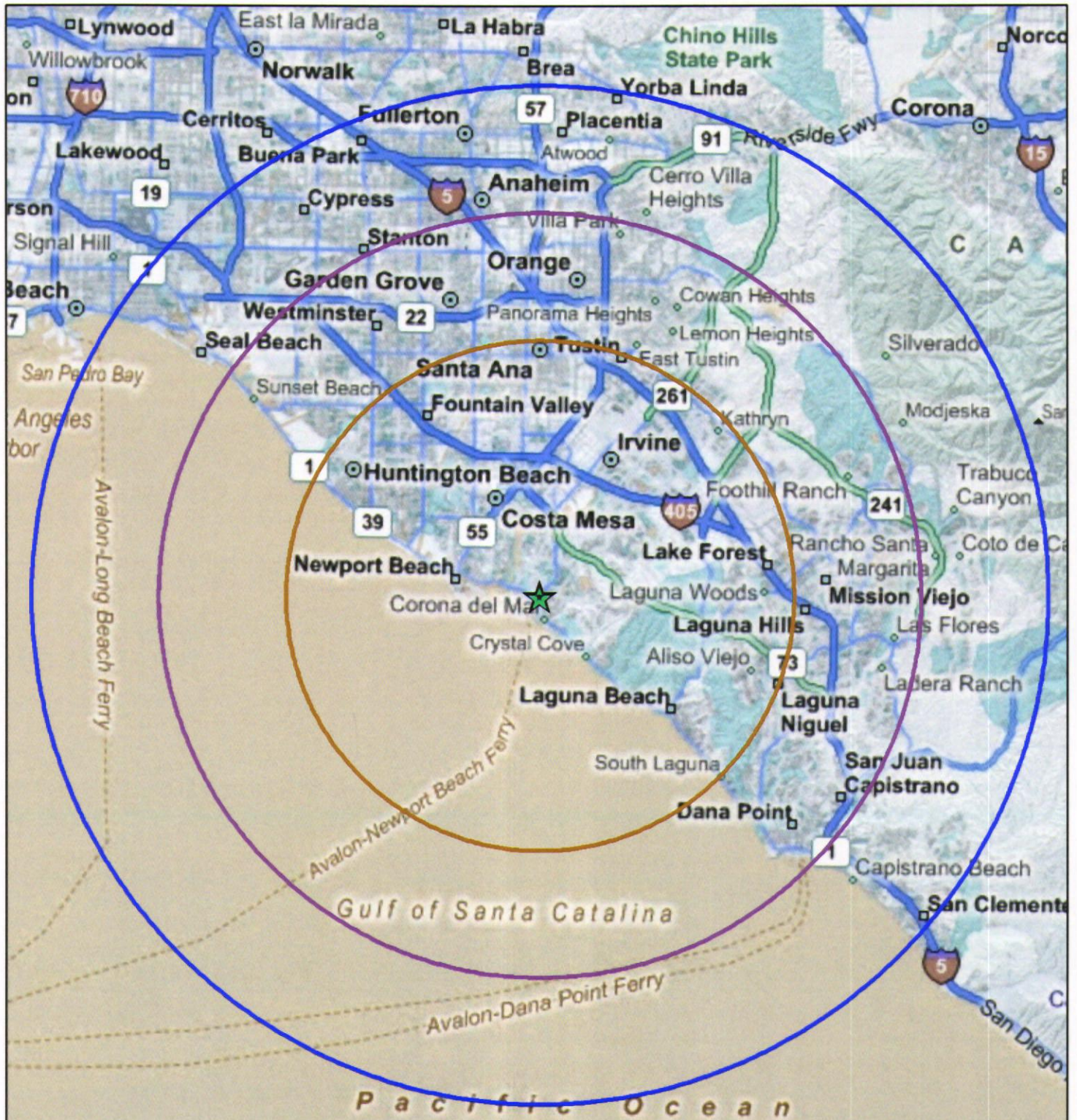
February 2, 2010 Charter Commission Staff Report



Current Newport Beach City Hall Location

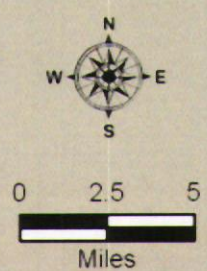
-  Current City Hall
-  10 Miles
-  15 Miles
-  20 Miles





New Newport Beach City Hall Location

-  New City Hall
-  10 Miles
-  15 Miles
-  20 Miles



Appendix E

CITY OF NEWPORT BEACH CHARTER UPDATE COMMISSION STAFF REPORT

Agenda Item No. 5
February 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: CHARTER SECTION 1005 – TIMING OF APPOINTMENT OF
REDISTRICTING COMMITTEE**

RECOMMENDATION:

Recommend amendment of Charter Section 1005 so that it requires the City Council appoint a committee to study and report on the advisability of redistricting the City every ten years after the completion of the national census and not every four years as presently provided.

DISCUSSION:

The full text of Charter Section 1005 is appended as Attachment “A.” A “white paper” with relevant background information and suggested alternatives for the Commission to consider is appended as Attachment “B.”

Presently Charter Section 1005 provides in pertinent part, “In 1959 and each fourth year thereafter the City Council shall appoint a committee to study and report to the City Council on the advisability of redistricting the City.” Under this section, the next committee would be appointed in 2011, with the following committees being appointed in 2015, 2019, and 2023.

Staff is recommending the amendment of the Charter provision so that the committee needs only be appointed every ten years, coinciding with completion of the national census. Staff makes this recommendation in order to provide for more efficient government. Proceeding in this manner will reduce the expense and effort to the City two and half times. In addition, appointing the committee after completion of the national census would allow the committee’s work to be more effective and efficient since the committee could rely on the information developed in the census for making its recommendations.

ENVIRONMENTAL REVIEW: Not applicable.

Prepared by:

Submitted by:

OFFICE OF THE CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY

By 
David R. Hunt, City Attorney

By 
David R. Hunt, City Attorney

Attachments: "A" - Charter Section 1005
"B" - Charter Section 1005 White Paper

ATTACHMENT “A”

Charter Section 1005

February 2, 2010 Charter Commission Staff Report

Charter of the City of Newport Beach
(Redistricting)

Article X
Elections

Section 1005. Districts.

The City is hereby divided into seven districts, the names and respective boundaries of which shall be as established by ordinance. No ordinance changing and redefining the boundaries of any district shall be enacted within six months prior to any regular Councilmanic election.

In 1959 and each fourth year thereafter the City Council shall appoint a committee to study and report to the City Council on the advisability of redistricting the City. Upon receipt of any such committee report, and at any other time deemed necessary or desirable in order that the district boundaries be fair and logical, the City Council may by ordinance change and redefine the boundaries of any or all of the seven districts herein established. The boundaries so defined shall be established in such manner that the district shall, as nearly as practicable, constitute natural areas of contiguous and compact territory and provide fair representation on the City Council. Notwithstanding the provisions of Section 401, no redistricting shall disqualify any Councilman from serving as Councilman from the district from which he was nominated or appointed for the remainder of his term, if elected, or until the next general municipal election, if appointed. Any territory hereafter annexed to or consolidated with the City shall, at the time of such annexation or consolidation, be added by ordinance of the City Council to an adjacent district or districts. (As amended effective June 19, 1968).

(Sections 1006 through 1012, entitled "FIRST DISTRICT" through "SEVENTH DISTRICT," deleted by amendment effective April 28, 1966)

ATTACHMENT “B”

Charter Section 1005 White Paper

February 2, 2010 Charter Commission Staff Report

Timing of Redistricting

(Charter Section 1005)

STATEMENT OF THE ISSUE:

Should the City modify Charter Section 1005 to provide that the City Council shall appoint a committee to study and report on possible redistricting every ten years coinciding with the completion of the national census instead of every four years as the provision currently provides?

RELEVANT BACKGROUND:

Section 1005 of the City's Charter was adopted with the original enactment of the Charter effective on January 7, 1955 and the provisions of that section governing the appointment of a committee to consider possible redistricting has never been changed.¹

The provisions of Section 1005 provide for the appointment of a committee every four years to study and report on the advisability of redistricting within the City. Specifically the Section states,

In 1959 and each fourth year thereafter the City Council shall appoint a committee to study and report to the City Council on the advisability of redistricting the City.

This injunction by the Charter has not been consistently carried out. The necessary committee has been appointed in 1959 (Reso 5025), 1963 (Reso 5733), continued meeting through 1967, 1979 (Reso 9500), 1983 (Reso 83-21), 1987 (Reso 87-19), 1991 (Reso 91-52), 1995 (Reso 95-64) and 2000 (Resolution 2002-2). Redistricting occurred in 1963 (Ordinance 1050), 1984 (Ordinance 83-29), 1987 (Ordinance 87-43), 1991 (Ordinance 91-37), 1995 (Ordinance 95-51), and 2003 (Ordinance 2003-11).

The state of California, and most agencies, redistrict after the completion of the national census. The census is completed every ten years on the decade. The next census is scheduled to be conducted in 2010 with the results to be issued in 2011.

There is an expense to the City associated with the operation of committees. All committees require data development, staff support, meeting accommodations, document preparation and transmittal, and other support that carries with it a monetary expense. In addition, developing data regarding population distribution and other demographic information necessary for redistricting is not easily available to the City until after the completion of the national census. Thus, appointing a committee to

¹ The section itself has been amended three times. The first amendment occurred in 1964, changing the provisions so that Council Members will not be disqualified from serving in mid-term due to redistricting. The second occurred in 1966, deleting specific descriptions of council districts from the Charter. The third amendment occurred in 1968, adding a provision that prohibits the changing of council districts within six months prior to a regular Council election.

review and consider redistricting the city every four years causes these expenses to be incurred two and a half times more often than if it is done every ten years.

ALTERNATIVES:

The Commission has the following alternatives identified by Staff:

Alternative 1: Recommend no change.

Such a recommendation would mean the Council should appoint a committee to consider redistricting every four years, the next year for the appointment based upon this provision would be 2011. The next committees would then be appointed in 2015, 2019, and then 2023.

Alternative 2: Recommend a change to appoint the committee every ten years upon receipt of the final results of the national census.

This approach would lead to consideration of redistricting in using the data produced by the national census and would be consistent with the redistricting analysis conducted by the state of California. The next committee to consider redistricting would also be appointed in 2011. The next committee after that would be appointed in 2021.

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)

Appendix G

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

Agenda Item No. 3
February 16, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Harbor Resources Office
Chris Miller, Harbor Resources Manager
949-644-3043, cmiller@newportbeachca.gov

SUBJECT: CHARTER SECTION 1402 - Sale of Waterfront Property

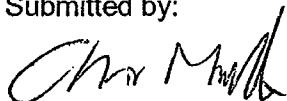
RECOMMENDATION:

Recommend to the City Council to amend Charter Section 1402 to allow for the sale or conveyance of waterfront property upon affirmative vote of the electorate (Alternative 1).

DISCUSSION:

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

Submitted by:



Chris Miller
Harbor Resources Manager

Attachments: Section 1402 White Paper
Charter Section 1402
Map of City Owned Property
Beacon Bay Bill/State Tidelands Grant (pp.1-2)
Council Guidelines Section F-7/Income Property

The Sale of Waterfront Property

Charter Section 1402

Statement of the Issue:

Currently, Charter Section 1402 prohibits the sale or conveyance of any waterfront property with limited exceptions. However, over the years, Section 1402 has been amended six times in order to allow for the sale of waterfront property at various locations throughout the harbor.

Should the City modify Charter Section 1402 to provide for the sale or conveyance of waterfront property?

Relevant Background:

Section 1402 was adopted with the original Charter effective January 7, 1955. Since then, Section 1402 has been amended six times to allow for the sale of specifically identified parcels:

- The first (1402.a) and second (1402.b) amendments were added effective January 25, 1961
- The third (1402.c) amendment was added effective May 4, 1964
- The fourth (1402.d) amendment was added effective April 28, 1966
- The fifth (1402.e) was added January 12, 1967
- The sixth (1402.f) and final amendment was effective November 3, 1992

Each amendment required an affirmative vote of the electorate to modify the Charter and add the exception. In principle, Charter amendments should be reserved for consideration of significant changes to public policy or City governance. The number of exceptions made to Section 1402 since 1961 indicate that there can be a compelling public reason to sell waterfront property, and brings into question whether the Charter provision is overly restrictive.

Historical City records do not reveal any relevant information or discussions on these amendments except that 1402 (f) states that the proceeds from the sale of the property be placed in a special fund to be used solely for the completion of the new central library. In addition, after reviewing past parcel maps, we can see that most of the City parcels previously sold were extremely small or unusually shaped, providing little public value. In these cases, the property was usually sold to the adjacent property owner as a matter of convenience or lot-line practicality.

Waterfront properties currently owned by the City are identified on the attached map. Excluded from this map are the dozens of public street ends and oceanfront beaches which would never be sold. The areas shaded in red represent the City's waterfront property, including some smaller beaches, that could potentially be considered for sale. The areas shaded in green are also City property but currently have long term leases (income property) associated with them (Beacon Bay, Balboa Bay Club, American

Legion, Basin Marine and North Star Beach which is jointly owned by the City/County). Some of these areas may not be sold per the provisions of the Tideland Trust (Beacon Bay Bill). Council Policy F-7 addresses the management of income properties including those that are tidelands, filled tidelands or waterfront by stating that "...the City is the steward of a public trust and state law requires the City to maximize returns..." Therefore, the City must view this income property as a potential revenue generator and a means to benefit the community.

In a review of six California Chartered cities holding waterfront property, all had charter provisions allowing for the sale of waterfront property (Alameda, Huntington Beach, Long Beach, San Diego, Santa Barbara and Ventura).

Alternatives:

Alternative 1: Amend Charter Section 1402 to allow for the sale or conveyance of waterfront property upon an affirmative vote of the electorate.

This alternative would simplify the process by allowing the electorate to continue to vote on the sale of waterfront property by the City, but without requiring a Charter amendment to do so.. The electorate would retain the right to determine whether waterfront property should be conveyed by the City.

Alternative 2: Do not amend Charter Section 1402. Continue the current practice of not allowing City owned waterfront property to be sold or conveyed except to the State or County for use as a public beach or park.

This alternative would continue the practice of making exceptions to Charter Section 1402 each time waterfront or beach front property is sold. The advantage is that this would require no change to the current Charter section. The disadvantage is that Charter amendments in principle should be reserved for significant questions related to public policy or governance, not the transfer of property for compelling public reasons.

Charter Section 1402

Section 1402. Water-front Property.

The City Council shall not sell or convey any water-front or beach property, excepting to the State or to the County for use as a public beach or park.

Notwithstanding any other provision of this Charter, the City Council shall have the authority to lease City-owned property, including tide and submerged lands so long as the lease is limited to the term permitted by State law.

Nothing in this Section shall invalidate any lease of such property in existence at the time of the effective date of the Charter nor the future leasing or re-leasing of any such property under lease at the effective date of this Charter.

There shall be reserved forever to the people the public use of a strip of bay front land above mean high tide not less than eighty-five feet in depth of the city-owned water front property bounded on the west by the southeasterly line of Nineteenth Street and bounded on the east by a line parallel thereto lying 349.90 feet northwesterly of the northwesterly line of Fifteenth Street, said frontage to be bay front frontage. (As amended effective January 11, 1957, and November 3, 1992)

Section 1402(a). Exception to Section 1402.

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned property fronting on the Rivo Alto Canal described as Lot 4, Block 434, Canal Section, Newport Beach, as per map recorded in Book 4, Page 98, Miscellaneous Maps, Records of Orange County, California. (Added by amendment effective January 25, 1961)

Section 1402(b). Exception to Section 1402.

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned property fronting on Newport Bay described as follows:

All of Lot 1, Block 223, as shown upon a map of Section "A," Newport Beach, recorded in Book 4, Page 21, of Miscellaneous Maps, Records of Orange County, California, and all that portion of Block 222 of said Section "A" described as follows: Beginning at the most northerly corner of said Block 222; running thence south 46° 50' 30" East along the Northeasterly line of said Block 222 to the most northerly corner of Lot 1, Tract 814, as shown upon a map recorded in Book 24, page 36, Records of said County; running thence southwesterly along the Northwesterly line of said Lot 1, Tract 814, to a point in the Southwesterly line of said Block 222; thence Northwesterly along the Southwesterly line of said Block 222 to the most Westerly corner of said Block 222; thence Northeasterly along the Northwesterly line of said Block 222 to the point of beginning.

(Added by amendment effective January 25, 1961)

Section 1402(c). Exceptions to Section 1402.

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned real property described as follows, to-wit:

Lot 6, Block 218, as shown upon a map of Section "B," Newport Beach, recorded in Miscellaneous Maps, Book 4, page 27, Records of Orange County, California, together with a portion of Lot 4, Section 33, Township 6 South, Range 10 West, S.B.B. & M., bounded on the south by the northerly line of said Lot 6, on the north of the easterly

extension of the northerly prolongation of the easterly line of said Lot 6, and on the west by the easterly lines of Lots 3 and 4 of said Block 218.

(Added by amendment effective May 4, 1964)

Section 1402(d). Exception to Section 1402.

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned real property described as follows, to wit:

That portion of Section Thirty-five (35) in Township Six (6) South, Range Ten (10) West, San Bernardino Base & Meridian together with that portion of Fractional Section Two (2), in Township Seven (7) South, Range Ten (10) West, San Bernardino Base & Meridian shown as Parcel "A" on the map recorded in Book 80, Page 48 of Record of Surveys in the office of the County Recorder of Orange County, California, and described as follows:

Beginning at the most westerly corner of Lot 8, Block 22, Eastside Addition to Balboa Tract as shown on the map recorded in Book 4, Page 20 of Miscellaneous Maps in the office of the County Recorder of said County; thence S 70° 10' 00" E. 3.78 feet to the True Point of Beginning; thence continuing S 70° 10' 10" E. 26.22 feet; thence N 19° 50' 00" E 9.46 feet; thence West 27.87 feet to the True Point of Beginning.

(Added by amendment effective April 28, 1966)

Section 1402(e). Exception to Section 1402.

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City-owned property fronting on Newport Bay described as follows:

That portion of Lot 2 in Section 33, Township 6 South, Range 10 West, of the San Bernardino meridian, in the City of Newport Beach, County of Orange, State of California, according to the official plat of said land filed in the District Land Office, August 4, 1890, lying northeasterly of the northeasterly line of Blocks 222 and 223 in Section A, Newport Beach, as per map recorded in Book 4, page 21 of Miscellaneous Maps, in the office of the County Recorder of said County and between the northeasterly prolongations of the northwesterly line of Lot 1 in Block 223 of said Tract and of the northwesterly line of Lot 1 of Tract No. 814, as per map recorded in Book 24, pages 35 and 36, of said Miscellaneous Maps.

(Added by amendment effective January 12, 1967)

Section 1402(f). Exception to Section 1402.

Notwithstanding the provisions of Section 1402, the City Council may sell and convey that parcel of City owned property fronting on the Rivo Alto with the legal description as follows:

Lot 6, Block 242, Canal Section Tract filed in Book 4, Page 98 of Miscellaneous Maps in the Office of the Recorder of Orange County, California.

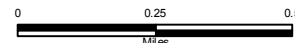
The proceeds of the sale of this property shall be deposited in a special fund to be used solely for the completion of the new central library.

(Added by amendment effective November 3, 1992)



Waterfront City Property

- ★ Exceptions to Section 1402
- Waterfront City Property
- Leased Waterfront City Property



Chapter 74 (Statutes of 1978)

An act relating to tide and submerged lands in the City of Newport Beach, and in this connection repealing Chapter 494 of the Statutes of 1919, Chapter 70 of the Statutes of 1927, Chapter 142 of the Statutes of 1929, Chapter 574 of the Statutes of 1929, Chapter 813 of the Statutes of 1929, and Chapter 200 of the Statutes of 1931, and declaring the urgency thereof, to take effect immediately.

The PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

Section 1. There is hereby granted to the City of Newport Beach and its successors all of the right, title, and interest of the State of California held by the state by virtue of its sovereignty in and to all that portion of the tidelands and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay in the County of Orange, which were within the corporate limits of the City of Newport Beach, a municipal corporation, on July 25, 1919; the same to be forever held by the city and its successors in trust for the uses and purposes and upon the following express conditions:

(a) The lands shall be used by the city and its successors for purposes in which there is a general statewide interest, as follows:

(1) For the establishment, improvement, and conduct of a public harbor; and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.

(2) For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.

(3) For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.

(b) Except as otherwise provided in this section, the city or its successors shall not, at any time, grant, convey, give, or alienate the lands, or any part thereof, to any individual, firm, public or private entity, or corporation for any purposes whatever; except that the city or its successors may grant franchises thereon for a period not exceeding 50 years for wharves and other public uses and purposes and may lease the lands, or any part thereof, for terms not exceeding 50 years for purposes consistent with the trust upon which the lands are held by the state and with the uses specified in this section.

(c) The lands shall be improved without expense to the state; provided, however, that nothing contained in this act shall preclude expenditures for the development of the lands for the purposes authorized by this act, by the state, or any board, agency, or commission thereof, or expenditures by the city of any funds received for such purpose from the state or any board, agency, or commission thereof.

(d) In the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(e) The state shall have the right to use without charge any transportation, landing, or storage improvements, betterments, or structures constructed upon the lands for any vessel or other watercraft or railroad owned or operated by the state.

(f) There is hereby reserved to the people of the state the right to fish in the waters on the lands with the right of convenient access to the waters over the lands for such purpose, which rights shall be subject, however, to such rules and regulations as are necessary for the accomplishment of the purposes specified in subdivision (a).

(g) Notwithstanding any provision of this section to the contrary, the city may lease the lots located within Parcels A, B, and C described in Section 6 of this act for the purposes set forth in this act and for terms not to exceed 50 years. The consideration to be received by the city for such leases shall be the fair market rental value of such lots as finished subdivided lots with streets constructed and all utilities installed. The form of such leases and the range of consideration to be received by the city shall be approved by the State Lands Commission prior to the issuance of any such lease. All money received by the city from existing and future leases of those lots shall be deposited in the city tideland trust funds as provided in Section 2.

(h) With the approval of the State Lands Commission, the city may transfer portions of the lands granted by this act, or held pursuant to this act, to the state acting by and through the State Lands Commission, for lease to the Department of Fish and Game for an ecological reserve or wildlife refuge, or both, and other compatible uses to be undertaken by the department; provided, however, that, if at any time the Department of Fish and Game no longer uses those portions of the lands so transferred by the city to the state for those purposes, the lands so transferred shall revert to the city to be held pursuant to the provisions of this act. Upon approving such a transfer from the city to the state, the State Lands Commission shall lease the lands so transferred to the Department of Fish and Game. The public benefits shall be the sole consideration to be received by the State Lands Commission from the Department of Fish and Game for that lease. Any and all income received by the Department of Fish and Game from the lands so leased shall be used only in connection with the department's improvement and administration of the leased lands.

(i) The city shall establish a separate tidelands trust fund or funds in such a manner as may be approved by the State Lands Commission, and the city shall deposit in the fund or funds all money received directly from, or indirectly attributable to, the granted tidelands in the city.

INCOME PROPERTY

The City owns and manages an extensive and valuable assortment of property including streets, parks, beaches, public buildings and service facilities. The City also owns and operates a yacht basin, a mobile home park, a luxury residential development and various other income properties. Most of the income property is tidelands, filled tidelands or waterfront. Unencumbered fee value of income property is estimated at upwards of one hundred million dollars, and income typically contributes ten percent of all City revenues.

As owner of property, the City is the steward of a public trust, and state law requires the City to maximize its returns or be subject to a charge of making a gift of public funds. Nevertheless, the City Council recognizes the importance of this property not only as a revenue generator, but also as a means to provide otherwise unfeasible uses and facilities to benefit the community.

In managing its property, the City will continually evaluate the potential of all City owned property to produce revenue. This may include leasing unused land, renting vacant space, and establishing concessions in recreation areas or other similar techniques. The City Council will evaluate the appropriateness of establishing new income properties using sound business principals and after receiving input from neighbors and users.

The policy of the City Council is that income property be managed in accordance with the following:

- A. Whenever a lease, management contract, concession, sale or similar action regarding income property is considered by the City, an analysis shall be conducted to determine the maximum or open market value of the property. This analysis shall be conducted using appraisals or other techniques to determine the highest and best use of the property and the highest value of the property.
- B. All negotiations regarding the lease, management contract, concession, sale or similar action regarding income property shall include review of an appraisal or analysis of the use being considered for the property conducted by a reputable and independent professional appraiser, real estate consultant or business consultant.

- C. The City shall seek, whenever practical and financially advantageous, to operate or manage all property and facilities directly with City staff or contractors.
- D. In all negotiations regarding the lease, management contract, concession, sale or similar action regarding a non-residential income property, the City shall seek revenue equivalent to the open market value of the highest and best use; and, whenever possible the City shall conduct an open bid or proposal process to insure the highest financial return.
- E. Whenever less than the open market or appraised value is received or when an open bid process is not conducted, the City shall make specific findings setting forth the reasons thereof.

Such findings may include but need not be limited to the following:

1. The City is prevented by tideland grants, Coastal Commission guidelines or other restrictions from selling the property or converting it to another use.
2. Redevelopment of the property would require excessive time, resources and costs which would outweigh other financial benefits.
3. Converting the property to another use or changing the manager, concessionaire or lessee of the property would result in excessive vacancy, relocation or severance costs, which would outweigh other financial benefits.
4. Converting residential property to another use or opening residential leases to competitive bid would create recompensable liabilities and other inequities for long-term residents.
5. The property provides an essential or unique service to the community that might not otherwise be provided were full market value of the property be required.
6. The property serves to promote other goals of the City such as affordable housing, preservation of open space or marine related services.

- F. Generally, lengths of leases, management contracts, concessions or similar agreements will be limited to the minimum necessary to meet market standards and will contain appropriate reappraisal and inflation protection provisions. Also, all agreements shall contain provisions to assure complete audits periodically through their terms.
- G. All negotiations regarding the lease, management contract, concession, sale or similar action regarding income property shall be conducted by the City Manager or his designee under the direction of any appropriate City committees prior to consideration by the City Council.
- H. To provide an accurate accounting of actual net revenues generated by the City's income property, all costs and charges directly attributable to the management of a specific income property shall be debited against the gross revenues collected on that property in the fiscal year the costs are incurred. Costs and charges include property repairs and maintenance, property appraisals, and consultant fees, as authorized by the City Council, City Manager or by this Income Property Policy.
- I. The City Manager is authorized to sign an amendment to the lease, management contract, concession or similar agreement in order to correct any errors or discrepancies in the agreement, or to clarify provisions in the agreement. The City Manager is also authorized to sign an amendment if circumstances arise that were not reasonably foreseeable by the parties, which need to be addressed in an amendment. Notwithstanding the foregoing, the City Council shall authorize any amendment which increases or decreases the annual revenues in the agreement by \$10,000 or more.

Adopted - July 27, 1992

Amended - January 24, 1994

Amended - February 27, 1995

Amended - February 24, 1997

Amended - May 26, 1998

Amended - August 11, 2009

Formerly F-24

Appendix H

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

Agenda Item No. 1

February 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: GENDER NEUTRAL LANGUAGE – CHARTER SECTIONS 500, 501, 502, 503, 504, 602, 603, 605, 606, 607, 608, 609, 610, 611 AND 704

RECOMMENDATION:

Recommend to the City Council that the above-captioned Charter Sections be changed to reflect gender neutral language.

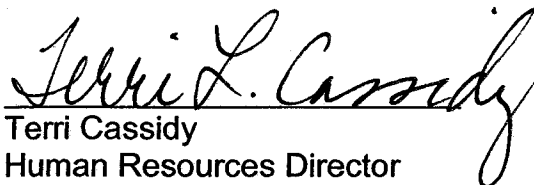
DISCUSSION:

Rather than rewording the sections to utilize only position titles, plural references or eliminate personal pronouns altogether, our recommendation is to include a reference to the female gender rather than the sole reference to the male gender in the current language. These changes will retain the intended meaning of the original Charter language and lessen the chance of creating confusion or ambiguity.


Additionally, it is our recommendation that Councilmember replace Councilman and Chairperson replace Chairman.

Attached are the sections identified by the committee that do not reflect gender neutral language with our recommended changes highlighted in grayscale to correct the issue.

Prepared by:


Terri Cassidy
Human Resources Director

Submitted by:


David R. Hunt
City Attorney

Attachments: City of Newport Beach Charter Sections 500, 501, 502, 503, 504, 602, 603, 605, 606, 607, 608, 609, 610, 611 and 704

**City of Newport Beach Charter Sections 500, 501, 502, 503, 504, 602, 603, 605, 606, 607,
608, 609, 610, 611 and 704**

Section 500. City Manager.

There shall be a City Manager appointed by the City Council who shall be the chief administrative officer of the City. In the selection of a City Manager the City Council shall screen all qualified applicants and other qualified persons known by the Council to be available. It shall appoint by a majority vote, the person that it believes to be best qualified on the basis of his or her executive and administrative qualifications, with special reference to his or her experience in, and his or her knowledge of, accepted practice in respect to the duties of the office as set forth in this Charter. The City Manager shall serve at the pleasure of the City Council.

Section 501. Residence.

The City Manager need not be a resident of the City at the time of his or her appointment, but he or she shall establish his or her residence within the City within ninety days after his or her appointment, unless such period is extended by the City Council, and thereafter maintain his or her residence within the City during his or her tenure of office.

Section 502. Eligibility.

No person shall be eligible to receive appointment as City Manager while serving as a member of the City Council nor within one year after he or she has ceased to be a City Councilmember.

Section 503. Compensation and Bond.

The City Manager shall be paid a salary commensurate with his or her responsibilities as chief administrative officer of the City, which salary shall be established by ordinance or resolution. The City Manager shall furnish a corporate surety bond in such form and in such amount as may be determined by the City Council.

Section 504. Powers and Duties.

The City Manager shall be the head of the administrative branch of the City government. He or she shall be responsible to the City Council for the proper administration of all affairs of the City. Without limiting the foregoing general grant of powers, responsibilities and duties, the City Manager shall have power and be required to:

(a) Appoint, and he or she may suspend or remove, subject to the provisions of this Charter, all department heads and officers of the City except elective officers and those department heads and officers the power of whose appointment is vested by the Charter in the City Council, and approve or disapprove all proposed appointments and removals of subordinate employees by officers or department heads.

(b) Prepare the budget annually, submit such budget to the City Council and be responsible for its administration after its adoption.

(c) Prepare and submit to the City Council as of the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding fiscal year.

(d) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem to him or her desirable.

(e) Establish a centralized purchasing system for all City offices, departments and agencies.

(f) Prepare rules and regulations governing the contracting for, purchasing, storing, distribution, or disposal of all supplies, materials and equipment required by any office, department or agency of the City government and recommend them to the City Council for adoption by it.

(g) See that the laws of the State pertaining to the City, the provisions of this Charter and the ordinances of the City are enforced.

(h) Exercise control of all administrative offices and departments of the City and of all appointive officers and employees except those directly appointed by the City Council and prescribe such general rules and regulations as he or she may deem necessary or proper for the general conduct of the administrative offices and departments of the City under his or her jurisdiction.

(i) Perform such other duties consistent with this Charter as may be required of him or her by the City Council.

Section 602. City Attorney. Powers and Duties.

To become and remain eligible for City Attorney the person appointed shall be an attorney at law duly licensed as such under the laws of the State of California, and shall have been engaged in the practice of law for at least three years prior to his or her appointment. The City Attorney shall have power and may be required to:

(a) Represent and advise the City Council and all City Officers in all matters of law pertaining to their offices.

(b) Prosecute on behalf of the people any or all criminal cases arising from violation of the provisions of this Charter or City ordinances. He or she shall prosecute misdemeanor offenses arising under State law if authorized and directed to do so by ordinance or resolution adopted by the City Council.

(c) Represent and appear for the City in any or all actions or proceedings in which the City is concerned or is a party, and represent and appear for any City officer or employee, or former City officer or employee, in any or all actions or proceedings in which any such officer or employee is concerned or is a party for any act arising out of his or her employment or by reason of his or her official capacity.

(d) Attend all regular meetings of the City Council and give his or her advice or opinion in writing whenever requested to do so by the City Council or by any of the boards or officers of the City.

(e) Approve the form of all contracts made by and all bonds given to the City, endorsing his or her approval thereon in writing.

(f) Prepare any and all proposed ordinances and resolutions for the City and amendments thereto.

(g) Devote such time to the duties of his or her office as may be specified in the ordinance or resolution fixing the compensation for such office.

(h) Surrender to his or her successor all books, papers, files and documents pertaining to the City's affairs.

The City Council shall have control of all legal business and proceedings and may employ other attorneys to take charge of any litigation or matter or to assist the City Attorney therein. (As amended effective April 28, 1966)

Section 603. City Clerk. Powers and Duties.

The City Clerk shall have power and be required to:

(a) Attend all meetings of the City Council unless excused and be responsible for the recording and maintaining of a full and true record of all of the proceedings of the City Council in books that shall bear appropriate titles and be devoted to such purpose.

(b) Maintain separate books, in which shall be recorded respectively all ordinances and resolutions, with the certificate of the Clerk annexed to each thereof stating the same to be the original or a correct copy, and as to an ordinance requiring publication, stating that the same has been published or posted in accordance with this Charter; keep all books properly indexed and open to public inspection when not in actual use.

(c) Maintain separate books, in which a record shall be made of all written contracts and official bonds.

(d) Be the custodian of the seal of the City.

(e) Administer oaths or affirmations, take affidavits and depositions pertaining to the affairs and business of the City and certify copies of official records.

(f) Be ex-officio Assessor, unless the City Council has availed itself, or does in the future avail itself, of the provisions of the general laws of the State relative to the assessment of property and the collection of City taxes by county officers, or unless the City Council by ordinance provides otherwise.

(g) Have charge of all City elections.

(h) Perform such other duties consistent with this Charter as may be required of him or her by ordinance or resolution of the City Council. (Section 604. City Treasurer, deleted by amendment effective January 20, 1959)

Section 605. Director of Finance.

There shall be a Director of Finance appointed by the City Manager and subject to suspension or removal by the City Manager who shall have power and shall be required to:

(a) Have charge of the administration of the financial affairs of the City under the direction of the City Manager, and be head of the Finance Department of the City.

(b) Compile the budget expense and income estimates for the City Manager.

(c) Maintain a general accounting system for the City government and each of its offices, departments and agencies.

(d) Receive all taxes, assessments, license fees and other revenues of the City, or for whose collection the City is responsible, and receive all taxes or other money receivable by the City from the County, State or Federal Government, or from any Court, or from any office, department, or agency of the City.

(e) Have custody of all public funds belonging to or under control of the City or any office, department or agency of the City government and deposit all funds coming into his or her hands in such depository as may be designated by resolution of the City Council, or, if no such resolution be adopted, then in such depository designated in writing by the City Manager, and in compliance with all of the provisions of the State Constitution and laws of the State governing the handling, depositing and securing of public funds.

(f) Supervise and be responsible for the disbursement of all moneys and have control of all expenditures to insure that budget appropriations are not exceeded; audit all purchase orders before issuance; audit, approve and provide for the payment of all bills, invoices, payrolls, demands or charges against the City and, with the advice of the City Attorney, when necessary, determine the regularity, legality and correctness of such claims, demands or charges.

(g) See that all taxes, assessments, license fees and other revenues of the City, or for whose collection the City is responsible, and all other money receivable by the City from the County, State or Federal Government, or from any court, office, department or agency of the City are collected.

(h) Through the City Manager submit to the City Council and to the certified public accountant employed by the City as an independent auditor a monthly statement of all receipts, disbursements and fund balances in sufficient detail to show the exact financial condition of the City; and, as of the end of each fiscal year, submit a complete financial statement and report.

(i) Supervise the keeping of current inventories of all property of the City by all City departments, offices and agencies.

(j) Assume the title of and act as City Treasurer and with the approval of the City Manager appoint deputies as necessary to act under the provisions of any law requiring or permitting action by a City Treasurer.

(k) Perform such other duties consistent with this Charter as may be required of him or her by ordinance or resolution of the City Council. (As amended effective January 20, 1959)

Section 606. Administering Oaths.

Each department head and his or her deputies shall have the power to administer oaths and affirmations in connection with any official business pertaining to his or her department.

Section 607. Department Heads. Appointment Powers.

Each department head and appointive officer shall have the power to appoint, suspend and remove such deputies, assistants, subordinates and employees as are provided for by the City Council for his or her department or office, subject to the provisions of this Charter and of any personnel, merit or civil service system adopted hereunder. Any such appointment or removal by a department head appointed by the City Manager shall be subject to approval by the City Manager.

Section 608. Illegal Contracts. Financial Interest.

No member of the City Council, department head or other officer of the City (except a member of any board or commission), shall be financially interested, directly or indirectly, in any contract, sale or transaction to which the City is a party.

No member of any board or commission shall be financially interested directly or indirectly, in any contract, sale or transaction to which the City is a party and which comes before the board or commission of which such person is a member for approval or other official action or which pertains to the department, office or agency of the City with which such board or commission is connected.

Any contract, sale or transaction in which there shall be such an interest, as specified in this Section, shall become void at the election of the City when so declared by resolution of the City Council.

No member of the City Council, department head or other officer of the City, or member of any board or commission shall be deemed to be financially interested, within the meaning of the foregoing provisions, in any contract made with a corporation where his or her only interest in the corporation is that of a stockholder and the stock owned by him or her shall amount to less than three percent (3%) of all the stock of such corporation issued and outstanding.

If any member of the City Council, department head or other officer of the City, or member of a board or commission shall be financially interested as aforesaid, upon conviction thereof he or she shall forfeit his or her office in addition to any other penalty which may be imposed for such violation of this Charter.

Section 609. Acceptance of Other Office.

Any elective officer of the City who shall accept or retain any other elective public office, except as provided in this Charter, shall be deemed thereby to have vacated his or her office under the City Government.

Section 610. Nepotism.

The City Council shall not appoint to a salaried position under the City government any person who is a relative by blood or marriage within the third degree of any one or more of the members of such City Council, nor shall any department head or other officer having appointive power appoint any relative of his or her within such degree to any such position. (As amended effective April 28, 1966)

Section 611. Official Bonds.

The City Council shall fix by ordinance or resolution the amounts and terms of the official bonds of all officials or employees who are required by this Charter or by ordinance to give such bonds. All bonds shall be executed by responsible corporate surety, shall be approved as to form by the City Attorney, and shall be filed with the City Clerk. Premiums on official bonds shall be paid by the City.

There shall be no personal liability upon, or any right to recover against, a superior officer, or his or her bond, for any wrongful act or omission of his or her subordinate, unless such superior officer was a party to, or conspired in, such wrongful act or omission.

Section 704. Meetings. Chairperson.

As soon as practicable, following the first day of July of every year, each of such boards and commissions shall organize by electing one of its members to serve as presiding officer at the pleasure of such board or commission. Each board or commission shall hold regular meetings at least once each month and such special meetings as such board or commission may require. All proceedings shall be open to the public.

Except as may be otherwise provided in this Charter, the City Manager shall designate a secretary for the recording of minutes for each of such boards and commissions, who shall keep a record of its proceedings and transactions. Each board or commission may prescribe its own rules and regulations which shall be consistent with this Charter and copies of which shall be kept on file in the office of the City Clerk where they shall be available for public inspection. Each board or commission shall have the same power as the City Council to compel the attendance of witnesses, to examine them under oath, to compel the production of evidence before it and to administer oaths and affirmations.

Appendix I

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

Agenda Item No. 2
February 16, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Public Works Department
Stephen G. Badum, Public Works Director
949-644-3311, SBadum@newportbeachca.gov

SUBJECT: CHARTER SECTION 1110 – PUBLIC WORKS CONTRACTS

RECOMMENDATION:

Recommend to the City Council that Charter Section 1110 1) be amended to increase the contract cost limits requiring formal bidding to \$125,000 (Alternative 1); and 2) include a provision granting City Council the power to regulate all aspects of public works projects, including the bidding, award and performance of public works contracts, through ordinance or resolution.

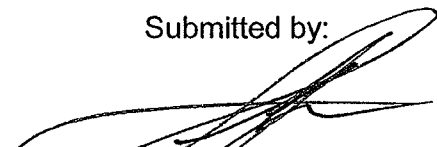
DISCUSSION:

A "white paper" with relevant background information and suggested alternatives for the Commission's consideration is appended as Attachment "A." Charter Section 1110 is appended as Attachment "B." Public Contracts Code Section 22032 is appended as Attachment "C." A summary providing an overview of charter cities who establish contract award authority by resolution or ordinance is appended as Attachment "D."

Prepared by:


Angela Liu,
Management Assistant

Submitted by:


Stephen G. Badum,
Public Works Director

Attachments: Section 1110 White Paper
Charter Section 1110
Public Contracts Code Section 22032
Charter Cities Summary

EXHIBIT A

CONTRACTING AUTHORITY FOR PUBLIC WORKS PROJECTS

Statement of Issue:

Should Charter Section 1110 be amended to increase the threshold requirement of formal bidding for public works projects over \$30,000?

Relevant Background:

Charter Section 1110 currently provides that all public works projects over \$30,000 are required to undergo formal bidding procedures and to be let by Council. The formal bidding process requires compliance with a number of set procedures, including written proposals and specific notice requirements. The contract is then awarded to the lowest responsible bidder. Please refer to Attachment B.

Over the years, the threshold requirement of formal bidding for public works contracts has been raised to account for inflation and rising construction costs. In 1974, Section 1110 was amended to increase the dollar limit from \$5,000 to \$12,000. In 1986, the dollar limit was raised to \$30,000. As the last adjustment was made over twenty years ago, this \$30,000 limit contrasts sharply with existing state law and standards adopted by other charter cities.

California Public Contracts Code Section 22032 provides that public works projects of \$30,000 or less may be performed by negotiated contracts. Public work contracts of \$125,000 or less may be awarded through informal bidding procedures. Public projects exceeding \$125,000 shall be awarded through formal bidding procedures. Please refer to Attachment C.

A brief review of the public works projects awarded by the City within the past two years revealed the following:

Fiscal Year 2008: 32 Public Works Projects Awarded

\$30,000 or less	\$50,000 or less	\$125,000 or less	Over \$125,000
1 project	2 projects	7 projects	22 projects

Fiscal Year 2009: 20 Public Works Projects Awarded

\$30,000 or less	\$50,000 or less	\$125,000 or less	Over \$125,000
0 projects	0 projects	6 projects	14 projects

The City has only had one public works project under \$30,000 and two projects under \$50,000. Most public works projects were priced between \$50,000 and \$125,000, or higher.

Alternatives:

The Commission has the following alternatives identified by staff:

Alternative 1:

Recommend a change to increase the threshold requirement for formal bidding of public works contracts from \$30,000 to \$125,000, consistent with the guidelines provided by state law in Public Contracts Code Section 22032 and standards adopted by other charter cities. Recommend the inclusion of a provision granting City Council the authority to adopt ordinances and resolutions as needed, to regulate all aspects of public works contracts.

By using California Public Contracts Code Section 22032 as a guide, any contracts for projects valued under \$125,000 would be let by City staff on an informal basis. Informal bidding would still avail these smaller projects the benefits of competitive bidding but the process would be more timely and cost effective.

While this represents a significant jump in dollar value, it should be noted that the \$30,000 figure was last adjusted over twenty years ago. Consequently, a recalibration of this figure is long overdue. Furthermore, Charter Section 1110 applies only to budgeted capital projects which would have already been approved by City Council during the budget process.

As a mechanism to ensure that the formal bidding threshold limit continues to stay relevant to current market conditions, Charter Section 1110 could also be amended to include a provision with the following language:

“The City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the bidding, award and performance of any public works contracts, including, but not limited to, compensation paid for performance of such work.”

This provision would grant City Council authority to establish resolutions or ordinances as needed to oversee the administration of public works contracts. For example, if market climate necessitates a need to readjust the threshold limit on public works contracts, Council can establish a new threshold limit based on the Consumer Price Index or construction indices via a simple resolution.

This approach has already been utilized by a number of cities throughout the state. Please refer to Attachment D for a sampling of charter cities that have adopted this approach.

Reducing the administrative burden of formal bidding for lower cost projects will achieve savings in staff time and City resources. Adoption of this amendment allows the City to use the same authority that other cities and counties employ to enter into cost-effective and efficient public works contracts. The benefits of competitive procurement would remain unchanged.

Alternative 2:

Recommend no change to Charter Section 1110. All public works projects over \$30,000 will continue to be subject to formal bidding procedures.

EXHIBIT B

SECTION 1110. CONTRACTS ON PUBLIC WORKS.

Every project for the construction or improvement of public buildings, works, streets, drains, sewers, utilities, parks or playgrounds, and every purchase of supplies or materials for any such project, when the total expenditures required for the project exceed Thirty Thousand Dollars (\$30,000), or such lesser amount as may be established by ordinance, shall be let by the City Council by contract to the lowest responsible bidder after notice by publication in the official newspaper by one or more insertions, the first of which shall be at least ten days before the time for opening bids. Projects for the maintenance or repair of such facilities are excepted from the requirements of this paragraph if the City Council determines that such work can be performed more economically by a City department than by contracting for the doing of such work.

All bids shall be accompanied by either a certified or cashier's check, or a bidder's bond executed by a corporate surety authorized to engage in such business in California, made payable to the City. Such security shall be in an amount not less than that specified in the notice inviting bids or in the specifications referred to therein, or if no amount be so specified then in an amount not less than ten percent (10%) of the aggregate amount of the bid. If the successful bidder neglects or refuses to enter into the contract, within the time specified in the notice inviting bids or in the specifications referred to therein, the amount of his or her bidder's security shall be declared forfeited to the City and shall be collected and paid into its general fund, and all bonds so forfeited shall be prosecuted and the amount thereof collected and paid into such fund.

The City Council may reject any and all bids presented and may readvertise in its discretion.

The City Council, without advertising for bids, or after rejecting bids, or if no bids were received, may declare and determine that, in its opinion, based on estimates approved by the City Manager, the work in question may be performed better and more economically by the City with its own employees or the supplies or materials may be purchased more economically on the open market, and after the adoption of a resolution to this effect by at least five affirmative votes of the Council may proceed to have said work done or said supplies or materials purchased in the manner stated, without further observance of the provisions of this Section. Such contracts likewise may be let without advertising for bids, if such work or supplies or materials shall be deemed by the City Council to be of urgent necessity for the preservation of life, health or property, and shall be authorized by resolution passed by at least five affirmative votes of the Council and containing a declaration of the facts constituting such urgency.

(As amended by amendments effective April 28, 1966, June 6, 1974, and November 4, 1986)

EXHIBIT C

**CALIFORNIA CODES
PUBLIC CONTRACT CODE
SECTION 22032**

22032. (a) Public projects of thirty thousand dollars (\$30,000) or less may be performed by the employees of a public agency by force account, by negotiated **contract**, or by purchase order.

(b) Public projects of one hundred twenty-five thousand dollars (\$125,000) or less may be let to **contract** by informal procedures as set forth in this article.

(c) Public projects of more than one hundred twenty-five thousand dollars (\$125,000) shall, except as otherwise provided in this article, be let to **contract** by formal bidding procedure.

EXHIBIT D

CONTRACTS ON PUBLIC WORKS

§ LIMIT SET BY CHARTER

City	County	\$ Limit
Newport Beach	Orange	\$30,000
Placentia	Orange	\$25,000
Huntington Beach	Orange	\$25,000

§ LIMIT SET BY ORDINANCE OR RESOLUTION

City	County	Charter Language	Ordinance Limit
Rancho Mirage	Riverside	City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contracts, including, but not limited to, the compensation rates to be paid for the performance of such work.	Use of PCC\$22032 Guidelines. \$125,000 or less, City Manager approval.
Carlsbad	San Diego	The City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the award and performance of contracts, including contracts for the construction of public improvements, including, but not limited to, compensation paid for performance of such work.	Use of PCC\$22032 Guidelines. \$125,000 or less, City Manager approval. City Manager may delegate awarding authority by memorandum or by administrative order.

Anaheim	Orange	Every contract involving an expenditure in excess of an amount as specified in Division 2, Part 3, Chapter 1, Article 4 of the Public Contracts Code of California shall be let to the lowest responsible bidder after notice by publication in the official newspaper by two or more insertions, the first of which shall be at least ten days before the time for opening bids.	Use of PCC§22032 Guidelines. \$125,000 or less, City Manager approval.
Pomona	Los Angeles	...city shall not be bound by any contracts unless made in writing and authorized by the Council. The Council shall adopt all necessary requirements to implement this section.	\$125,000 or less, City Manager approval.
Redwood City	San Mateo	All contracts entered into by the city shall be signed by the city manager and any other officer or officers of the city as the council may by ordinance provide.	\$100,000 or less, City Manager approval.
Irvine	Orange	Except as otherwise provided by law, the Purchasing Agent will contract for the purchase of all supplies, equipment, and services in a manner that is consistent with sound professional practices and which allows for open competition; provided that the Purchasing Agent will only purchase items that have been specifically identified as not requiring further approval, including but not limited to City Council or City Manager approval, without first obtaining such approval.	Via Resolution. Up to \$100,000, Dept. Director approval. \$100,000 - \$1mil, City Manager approval. \$1mil + City Council approval.

San Mateo	San Mateo	The City Manager or an officer authorized by City Manager shall purchase or contract for...public works required by the city in the manner prescribed by ordinance.	Less than \$100,000 City Manager may award or delegate authority to dept head at designated dollar levels. *PW Director has awarding authority for contracts up to \$4 million for projects funded with Federal Economic Stimulus Plan funds.
San Marcos	San Diego	The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work.	\$100,000 or less, City Manager approval.
Buena Park	Orange	Charter not posted.	Award of public projects of a value less than established by city council resolution. Per/TC with PW director. Under \$30,000 City Manager approval.
Santa Ana	Orange	The City Council shall adopt by ordinance rules and procedures for competitive bidding for all public works contracts, which rules and procedures shall establish limits for public works contracts approved by the City Manager.	\$25,000 or less, City Manager approval
La Quinta	Riverside	The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work.	The city council may, by resolution , prescribe specific procedures and rules governing the solicitation of bids and award of contracts for public works projects. (Ord. 315 § 4 (part), 1998)

Appendix J

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

Agenda Item No. _____
April 20, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Human Resources
Terri L. Cassidy, Human Resources Director
949-644-3303, tcassidy@newportbeachca.gov

City Manager's Office
David A. Kiff, City Manager
949-644-3000, dkiff@newportbeachca.gov

**SUBJECT: CHARTER SECTIONS 710-711 – CIVIL SERVICE BOARD
CHARTER SECTIONS 800-803 – CIVIL SERVICE SYSTEM
ORDINANCE 866**


RECOMMENDATION:

Recommend to the City Council that Charter Sections 711 and 800-803 be amended to clarify and strengthen the scope of the Civil Service Board and System; repeal Ordinance 866 and replace with a new Ordinance to comply with current local, state and federal law and the best practices in personnel which would not require a vote of the electorate (Alternative 1).

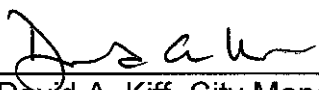
DISCUSSION:

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

Submitted By:
Human Resources Department

By 
Terri L. Cassidy, HR Director

Submitted By:
City Manager's Office

By 
David A. Kiff, City Manager

Attachments: Charter Sections 710-711, 800-803, and Ordinance 866 White Paper

Civil Service Board & System

(Charter Sections 710-711, 800-803, and Ordinance 866)

STATEMENT OF THE ISSUE:

Should the City modify the Sections of the Charter and repeal Ordinance 866 to modernize the City's personnel system and conform to local, state and federal laws that have been enacted since 1942 (when Ordinance 511 established the Civil Service System), 1954 (Charter) or 1958 (Ordinance 866 discussing and outlining the roles/responsibilities of the Civil Service Board and System)?

RELEVANT BACKGROUND:

The proposal to amend Charter Sections 710-711 & 800-803 and repeal Ordinance 866, was thoroughly discussed at the following meetings:

Charter Update Commission

February 16, 2010
March 16, 2010

Civil Service Board

January 4, 2010
February 1, 2010
March 1, 2010
March 8, 2010
April 12, 2010

The discussions held at these meetings were effective in bringing about consensus and a well analyzed recommendation, including suggestions for language changes. The focus was primarily on the duties of the Civil Service Board, Charter Section 711 (a) – (d), which have been reiterated and strengthened. There are no recommended changes to Charter Section 710. The significant changes include the deletion of recruitment oversight, applicant/candidate appeals, and the addition of Assistant Chiefs to exempt positions. The changes will require a substantial rewrite of the Rules and Regulations and the creation of a new Ordinance to be completed in the future as a coordinated effort between the Civil Service Board and Staff.

As requested at the March 16th Charter Update Commission meeting, attached is a matrix that serves as a comprehensive analysis of all documents addressing the Civil Service Board, Civil Service System and City Manager's responsibilities. It also depicts where the protections previously afforded in Ordinance 866 will be preserved. Incorporated into this matrix are the recommendations for Charter amendments and Ordinance replacement from Staff, City Manager, and Civil Service Board. Prior to coming to this recommendation the exclusively recognized employee associations covered by Civil Service were afforded the opportunity to give feedback and they support the recommendations as of the date of this report.

The recommendation is as follows: amend the City Charter, specifically the language covering the Powers and Duties of the Civil Service Board (a draft is attached for your review and to clarify these issues), and repeal Ordinance 866 to be replaced with a new Ordinance to be reviewed by Civil Service Board and taken to City Council for approval.

Staff is available to answer any questions the Commission may have on the above.

ALTERNATIVES:

The commission has the following alternatives identified by staff. Alternative 1 is recommended by staff:

Alternative 1: Recommend to the City Council that Charter Sections 711 and 800-803 be amended to clarify and strengthen the scope of the Civil Service Board and System; repeal Ordinance 866 and replace with a new Ordinance to comply with current local, state and federal law and the best practices in personnel which would not require a vote of the electorate (Alternative 1).

Alternative 2: Recommend removal of the Civil Service Board and System (Charter Sections 710-711 and 800-803) and repeal Ordinance 866.

Alternative 3: Recommend no changes.

Attachments: Civil Service System Matrix
Draft of Charter Revision – Articles VII & VIII

Civil Service System

Ordinance 866 – Implemented Civil Service System in 1958

Section of Ordinance 866 (as codified in the Municipal Code)	Covered by FBOR/POBR	Covered by Skelly	Covered by CS Rules and Regulations	Covered by EPM/EERR*	Covered by MOUs/SOPs	Already in City Charter	Add/Revise City Charter	Add to Rules and Regulations	Add to EPM	Not Needed
Section 1 (NBMC 2.24.010) Definitions.			X Section III	X Section 2 of EPM						
Section 2 (NBMC 2.24.020) Inclusion in the System. All full-time, regular, and permanent positions and employment in the Police and Fire Departments are included in the system, except those positions excluded by Section 802, of the City Charter. The City Council, by ordinance, may include in the system positions in other departments.			X Section IV (401)			X Section 802	X ⁴ Section 802			
Section 3 (NBMC 2.24.030) Purpose of the System.			X Section IV (400)				X ⁵ Section 801			
Section 4 (NBMC 2.24.040) Board Established.			X Section V (500)			X Section 710				
Section 5 (NBMC 2.24.050) Responsibilities and Authority of Board.			X Section V (500)			X Section VII (704)				
A. Meetings. ... hold regular meetings at least once a month ...										
B. Rules and Regulations. ... rules and regulations to implement the provisions of this chapter... such rules and regulations shall have the force and effect of law.			X Section V (501.6)			X Section 704 & 711(a)	X ⁵ Section 711(a)			
C. Appeals. To receive and hear appeals ... relative to ...appointment, promotion, dismissal, demotion, suspension and other disciplinary actions...			X Section V (501.3.2)			X Section 711(c)	X ⁵ Section 711(c)			
D. Advisory Role. To act in an advisory capacity to the City Council on personnel administration in the City service.			X Section V (501.5)			X Section 711 (a, b)				

* EPM = Employee Policy Manual, EERR = Employee/Employer Relations Resolution

Section of Ordinance 866 (as codified in the Municipal Code)	Covered by FBOR/POBR	Covered by Skelly	Covered by CS Rules and Regulations	Covered by EPM/EERR*	Covered by MOUs/SOPs	Already in City Charter	Add/Revise City Charter	Add to Rules and Regulations	Add to EPM	Not Needed
E. Recruitment and Selection. ... to establish policies and approve procedure for ...recruitment and selection of ..personnel, including, .. the posting of ...notices, the preparation/scoring of exams, and the establishment and certification of employment lists.			X Section V (501.2)	X Section 5 of EPM	X SOPs					X
F. Investigations. To make any investigation concerning the administration of personnel in the City service ... when requested to do so ... examine witnesses under oath ... compel their attendance or the production of evidence before it by subpoenas power to administer oaths to witnesses.			X Section V (501.4)			X Section 704 & 711 (d)				
Section 6 (NBMC 2.24.060) Responsibilities and Authority of City Manager.			X Section VI (600)	X Section 4 of EPM, EERR		X Section 504				
Section 7 (NBMC 2.24.070 A) Appointments. A. General Policy. Appointments shall be based on merit and fitness ...				X Section 6 of EPM				X		
Section 7 (B) (NBMC 2.24.060 B). Employment Lists. ...with respect to reemployment lists and the selection of the Police and Fire Chiefs, ... highest three eligibles ... in the order which they appear ... appointment shall be limited to these eligibles.			X Section V (501.2.3.1 A-G)					X ⁶		
Section 7 (C – G) (NBMC 2.24.060 C-G). Acting Appointments, Temporary Positions, During Suspension, Transfers, Reinstatement.			X Section V (501.2.3.2)	X Section 6 of EPM	X MOUs					
Sections 8 – 13 (NBMC 2.24.080 to 2.24.130) – (CSB’s role in) Recruitment and Selection (generally), including selection of Police and Fire Chiefs.			X Section V (501.2.3.2) and Section VII (700-701)	X Section 5 of EPM & EERR						X
Section 14 (NBMC 2.24.140) Employee Appeals. (review) appeals of regular employees as follows: Any regular employee ...who has been suspended, demoted, or discharged may....(request a closed-door hearing before the CSB).	X ^{2, 3}	X ¹	X Section V (501.3)	X Section 13 of EPM	X SOPs			X ⁷		

* EPM = Employee Policy Manual, EERR = Employee/Employer Relations Resolution

Section of Ordinance 866 (as codified in the Municipal Code)	Covered by FBOR/POBR	Covered by Skelly	Covered by CS Rules and Regulations	Covered by EPM/EERR*	Covered by MOUs/SOPs	Already in City Charter	Add to City Charter	Add to Rules and Regulations	Add to EPM	Not Needed
Section 15 (NBMC 2.24.150) Grounds for Demotion, Suspension or Discharge. Employees in ... may be demoted, suspended, or discharged (due to): Incompetency; inefficiency; dishonesty; misconduct; insubordination; or failure to observe ...rules and regulations.			X Section V (501.3)	X Section 13 of EPM	SOPs					
Section 16 (NBMC 2.24.160) Board Hearings. A. In General. B. Right to Counsel. The employee may be represented by counsel and shall have the right to produce witnesses to testify in his behalf. The Board shall issue subpoenas and compel the attendance of all witnesses.	X ^{2, 3}	X ¹	X Section V (501.3.3)	X Section 13 of EPM						
Section 16 (NBMC 2.24.160 – C). Modification of Disciplinary Action. The Board may modify or revoke a disciplinary action only on the following grounds: 1. The facts do not justify the action taken. 2. Substantive violation or omission of procedure was made. 3. The action taken was unreasonable, capricious or arbitrary in view of the offense, the circumstances surrounding the offense, and the past record of the employee.			X Section V (501.3.3 C)	X Section 13 of EPM			X ⁵			
Section 16 (NBMC 2.24.160 – D). Reimbursement. An employee shall be reimbursed for a loss of pay arising from a disciplinary action ... to the extent that it is ...revoked or modified by the Board.			X Section V (501.3.3 D)							
Section 16 (NBMC 2.24.160 – E). Findings. The Board shall certify copies of its findings ...The Board’s decision shall be final.			X Section V (501.3.3 F)	X Section 13 of EPM			X ⁵	X ⁷		
Section 17 (NBMC 2.24.170). Political Activities.	X ^{2, 3}			X Section 3.3 of EPM						X
Section 18 (NBMC 2.24.180). Status of Prior (Present) Employees.										X

Section of Ordinance 866 (as codified in the Municipal Code)	Covered by FBOR/POBR	Covered by Skelly	Covered by CS Rules and Regulations	Covered by EPM/EERR*	Covered by MOUs/SOPs	Already in City Charter	Add to City Charter	Add to Rules and Regulations	Add to EPM	Not Needed
Section 19 – Severability			X Section IX							X
Section 20 (NBMC 2.24.190). Conflicting Legislation, Conflicts with City Charter.										X
Section 21 (NBMC 2.24.200). Codification Amendment; Codification Conditions—Amendments.										X
Section 22 (NBMC 2.24.210). Penalty for Violation.										X
Section 23 – Effective Date										X

¹ **What Skelly Says:** 1975 California Supreme Court decision – generally, *Skelly* requires that the employer provide a written pre-disciplinary notice to include:

- A statement regarding the charges;
- The effective date of the proposed discipline;
- The reasons for the disciplinary action;
- The specific policy or rule violated;
- A copy of the materials upon which the action is based;
- A statement of the employee’s right to be represented in a Skelly hearing;
- A statement of the employee’s right to respond to the authority imposing discipline (usually a manager above the level of the employee’s supervisor.)

The purpose of Skelly is to provide due process for employees

² **Firefighters Procedural Bill of Rights (FBOR).** AB 220 (Bass, 2007) generally says that fire fighters have the following rights (not an exhaustive list):

1 – Privacy Rights

- No forced disclosure of personal financial information unless required by law or a court order.
- No forced submission to a lie detector test, or discipline for refusing to submit to one.
- No locker or private space search without consent (except under certain circumstances).
- May participate in off-duty political activity.
- May serve on school or local agency board (other than employer).

2 – Investigative Procedures

- No physical or psychological intimidation, offensive language, threats or extortion during interrogation.
- Advance notice required of the nature of any investigation and who is doing the interrogation.
- Interrogations may be recorded, and employee must be provided copies of all recordings and transcripts.

- Interrogations must take place on-duty, at a reasonable time (or compensated, if it takes place off-duty).
- In possible criminal investigation, employee must be advised of constitutional rights.
- Employee is entitled to representation prior to being questioned on any potential case involving charges or a criminal probe.
- Testimony can't be compelled on potentially incriminating questions without a *written* offer of immunity from criminal prosecution.

3 – Due Process Requirements

- Employee can't be punished if investigation isn't finished within a year.
- Employee can only be reassigned to other normal departmental jobs.
- Fire Chief required to provide written notice of removal, including reasons and appropriate administrative appeal.
- Firefighter must have access to any adverse comment in personnel records before it is submitted.
- Adverse comments must be signed by firefighter before going into personnel record. Employee response must also go in record.
- Fire chief must provide opportunity for administrative appeal before removing an individual from their job.
- Appeals process must conform with protections contained in Administrative Procedures Act.

³ **Public Safety Officers Procedural Bill of Rights Act (POBR)** – Government Code §3300-3312 generally says that sworn peace officers have the following rights (not an exhaustive list):

- No forced submission to a lie detector test, or discipline for refusing to submit to one.
- No forced disclosure of personal financial information unless required by law or a court order.
- No locker or private space search without consent (except under certain circumstances).
- Employer cannot force a peace officer to take a photograph where the employer would use it for promotional or other reasons.
- Right to review personnel records, right to ask to correct personnel records
- Officer must have access to any adverse comment in personnel records before it is submitted.
- Adverse comments must be signed by officer before going into personnel record. Employee response must also go in record.
- May participate in off-duty political activity.
- May serve on school or local agency board (other than employer).
- No physical or psychological intimidation, offensive language, threats or extortion during interrogation.
- Advance notice required of the nature of any investigation and who is doing the interrogation.
- Interrogations may be recorded, and employee must be provided copies of all recordings and transcripts.
- Interrogations must take place on-duty, at a reasonable time (or compensated, if it takes place off-duty).
- In possible criminal investigation, employee must be advised of constitutional rights.
- Employee is entitled to representation prior to being questioned on any potential case involving charges or a criminal probe.
- Testimony can't be compelled on potentially incriminating questions without a written offer of immunity from criminal prosecution.
- Right to wear an American flag pin.

⁴ **Section 802 – Add Assistant Chief to list of Exempt Positions and remove the exclusion of Library personnel.**

⁵ **Incorporate Ordinance 866 language to Charter.**

- Special Note: When revising Section 711(c) – do not include the following language from Ordinance 866 (NBMC 2.24.050 C) “original appointment” in the new Charter language.

⁶ **Change language in Rules & Regs to clarify “highest three eligibles” so it may include the highest three scores rather than specific three names when there may be a tie.**

⁷ **Change language in Rules & Regs to be consistent with the Employee Policy Manual.**

Draft of Charter Revision – Articles VII & VIII

Newport Beach City Charter

Article VII

Appointive Boards and Commissions

Section 700. In General.

There shall be the following named boards and commissions which shall have the powers and duties herein stated. In addition, the City Council may create by ordinance such additional advisory boards or commissions as in its judgment are required, and may grant to them such powers and duties as are consistent with the provisions of this Charter.

Section 701. Appropriations.

The City Council shall include in its annual budget such appropriations of funds as in its opinion shall be sufficient for the efficient and proper functioning of such boards and commissions.

Section 702. Appointment. Terms.

The members of each of such boards or commissions shall be appointed by the City Council from the qualified electors of the City, none of whom shall hold any paid office or employment in the City Government. They shall be subject to removal by motion of the City Council adopted by at least four affirmative votes. The members thereof shall serve for a term of four years and until their respective successors are appointed and qualified.

The members first appointed to such boards and commissions shall so classify themselves by lot that the term of one of each of their number shall expire each succeeding July first. Where the total number of the members of a board or commission to be appointed exceeds four, the classification by lot shall provide for the pairing of terms to such an extent as is necessary in order that the terms of at least one and not more than three shall expire in each succeeding year. Thereafter, any appointment to fill an unexpired term shall be for such unexpired period.

Section 703. Existing Boards.

The respective terms of office of all members of the boards and commissions in existence at the time this Charter takes effect shall terminate upon the effective date of this Charter. The present members of the boards and commissions which will continue in effect under this Charter shall be deemed reappointed to the respective boards and commissions of which they are members as first appointed members thereof under this Charter.

Section 704. Meetings. Chairmen.

As soon as practicable, following the first day of July of every year, each of such boards and commissions shall organize by electing one of its members to serve as presiding officer at the pleasure of such board or commission. Each board or commission shall hold regular meetings at least once each month and such special meetings as such board or commission may require. All proceedings shall be open to the public.

Except as may be otherwise provided in this Charter, the City Manager shall designate a secretary for the recording of minutes for each of such boards and commissions, who shall keep a record of its proceedings and transactions. Each board or commission may prescribe its own rules and regulations which shall be consistent with this Charter and copies of which shall be kept on file in the office of the City Clerk where they shall be available for public inspection. Each board or commission shall have the same power as the City Council to compel the attendance of witnesses, to examine them under oath, to compel the production of evidence before it and to administer oaths and affirmations.

Section 705. Compensation. Vacancies.

The members of boards and commissions shall serve without compensation for their services as such but may receive reimbursement for necessary traveling and other expenses incurred on official duty when such expenditures have received authorization by the City Council. In addition, the City Council may by resolution fix an amount as reimbursement of other expenditures incurred by the members of boards and commissions while in the performance of their official duties.

Any vacancies in any board or commission, from whatever cause arising, shall be filled by appointment by the City Council. Upon a vacancy occurring leaving an unexpired portion of a term, any appointment to fill such vacancy shall be for the unexpired portion of such term. If a member of a board or commission absents himself from three consecutive regular meetings of such board or commission, unless by permission of such board or commission expressed in its official minutes, or is convicted of a crime involving moral turpitude, or ceases to be a registered elector of the City, his office shall become vacant and shall be so declared by the City Council.

Section 706. Planning Commission. Members.

There shall be a Planning Commission consisting of seven members.

Section 707. Planning Commission. Powers and Duties.

The Planning Commission shall have the power and be required to:

- (a) After a public hearing thereon, recommended to the City Council the adoption, amendment or repeal of a Master Plan, or any part thereof, for the physical development of the City.
- (b) Exercise such control over land subdivisions as is granted to it by ordinance not inconsistent with the provisions of this Charter.
- (c) Make recommendations to the City Council concerning proposed public works and for the clearance and rebuilding of blighted or substandard areas within the City.
- (d) Exercise such functions with respect to zoning and land use as may be prescribed by ordinance not inconsistent with the provisions this Charter.

Section 708. Board of Library Trustees. Powers and Duties.

There shall be a Board of Library Trustees consisting of five members which shall have the power and duty to:

- (a) Have charge of the administration of City libraries and make and enforce such by-laws, rules and regulations as may be necessary therefor.
- (b) Designate its own secretary.
- (c) Consider the annual budget for library purposes during the process of its preparation and make recommendations with respect thereto to the City Council and City Manager.
- (d) Purchase and acquire books, journals, maps, publications and other supplies peculiar to the needs of the library, subject, however, to the limitations of the budget for such purposes. The expenditure and disbursement of funds for such purchases shall be made and approved as elsewhere in this Charter provided.
- (e) Approve or disapprove the appointment, suspension or removal of the Librarian, who shall be the department head.
- (f) Accept money, personal property or real estate donated to the City for library purposes, subject to the approval of the City Council.
- (g) Contract with schools, county or other governmental agencies to render or receive library services or facilities, subject to the approval of the City Council.

Section 709. Parks, Beaches and Recreation Commission. Powers and Duties.

There shall be a Parks, Beaches and Recreation Commission consisting of seven members.

The Parks, Beaches and Recreation Commission shall have the power and duty to:

- (a) Act in an advisory capacity to the City Council in all matters pertaining to parks, beaches, recreation, parkways and street trees.
- (b) Consider the annual budget for parks, beaches, recreation, parkways and street tree purposes during the process of its preparation and make recommendations with respect thereto to the City Council and the City Manager.
- (c) Assist in the planning of parks and recreation programs for the inhabitants of the City, promote and stimulate public interest therein, and to that end solicit to the fullest extent possible the cooperation of school authorities and other public and private agencies interested therein.
- (d) Establish policies for the acquisition, development and improvement of parks, beaches and playgrounds and for the planting, care and removal of trees and shrubs in all parks, playgrounds and streets, subject to the rights and powers of the City Council.
- (e) Perform such other duties as may be prescribed by ordinance not inconsistent with the provisions of this Charter.

Section 710. Civil Service Board.

The Civil Service Board shall consist of five members, none of whom while a member of the board, or for a period of one year after he has ceased for any reason to be a member, shall occupy or be eligible for appointment to any salaried office or employment in the service of the City.

The members of the Civil Service Board shall be nominated and appointed in the following manner. Two members shall be appointed by the City Council from a list of five persons to be nominated by vote of the employees in the Classified Service, two members shall be appointed by the City Council directly, and the fifth shall be appointed by the City Council from a list of three persons nominated by a majority of the four thus appointed. The successor of any member of the board shall be nominated and appointed in the same manner as such member was nominated and appointed.

Section 711. Civil Service Board. Powers and Duties.

The Civil Service Board shall have the power and duty to:

- (a) Recommend to the City Council, ~~after approval by the City Attorney and~~ after a public hearing thereon, the adoption, amendment or repeal of ~~civil service~~ rules and regulations. ~~After adoption by the City Council, the rRules and regulations as are adopted from time to time by the City Council shall have the force and effect of law.~~
- (b) Act in an advisory capacity to the City Council on problems concerning personnel administration.
- (c) ~~Receive and hear~~ ~~Hear~~ appeals submitted by any person employed by the City relative to any appointment, promotion, suspension, demotion or dismissal and any disciplinary actions and to make determinations thereon. The Board's determination shall be final for persons included in the Civil Service System. ~~make findings and recommendations thereon.~~ The Board may modify or revoke a disciplinary action only on the following grounds:
 - 1. The facts do not justify the action taken, the action is unlawful or the action is superseded by law, local, state or federal law.
 - 2. Substantive violation or omission of procedure was made.
 - 3. The action taken was unreasonable, capricious or arbitrary in view of the offense, the circumstances surrounding the offense, and the past record of the employee.
- (d) Make any investigation concerning the administration of personnel in the municipal service and report its findings to the City Council and City Manager when requested to do so by the City Council, the City Manager or by any organized City Employees' association.
- (e) Perform such other duties as may be prescribed by ordinance.

Section 712. City Arts Commission.

There shall be a City Arts Commission with the number of members to be established by ordinance or resolution and it shall have the power and duty to:

- (a) Act in an advisory capacity to the City Council in all matters pertaining to artistic, aesthetic and cultural aspects of the City.
- (b) Recommend to the City Council the adoption of such ordinances, rules and regulations as it may deem necessary for the administration and preservation of fine arts, performing arts, historical, aesthetic and cultural aspects of the community.
- (c) On behalf of the City, actively encourage programs for the cultural enrichment of the community.
- (d) Perform such other duties relating to the Arts as the City Council may require.

Article VIII Civil Service System

Section 800. Continuance of Present System.

~~The civil service system existing at the time this Charter takes effect, to the extent that the same is not inconsistent with any of the provisions of this Charter, is hereby continued in existence subject to all of the terms and provisions of this Charter and subject to amendment by proper authority as in this Charter provided.~~

Section 8001. Civil Service System to Be Maintained.

There shall be a Civil Service System to establish an equitable and uniform procedure for dealing with personnel matters; to attract to the City service the most competent persons available, to assure that the appointment and promotion of employees will be based on merit and fitness, and to provide reasonable security for employees.

The City Council shall by ordinance continuously maintain ~~a civil service~~ this system for the ~~selection~~, employment, classification, advancement, suspension and discharge of those appointive officers and employees who shall be included in the system. The system shall comply with all other provisions of this Charter.

Section 8012. Positions Included in the System.

The civil service system shall include all full time, regular and permanent positions or employment on the Police and Fire Department of the City and may, by ordinance, include any other appointive officers or positions in the service of the City except the following:

1. All elective officers.
2. City Manager, Assistant City Manager, if any, one ~~private secretary executive assistant~~ to the City Manager, City Attorney, Assistant City Attorney, if any, City Clerk, Director of Finance, City Engineer, all Department Heads, and Assistant Chiefs in Police or Fire, ~~and all employees of the Library Department, including the Librarian.~~
3. All members of boards and commissions.
4. Positions in any class or grade created for a special or temporary purpose and which may exist for a period of not longer than six months in any one calendar year.
5. Persons employed to render professional, scientific, technical or expert service.
6. Persons who render part-time service without pay or who are paid on an hourly or per diem basis.

Section 802

3. Withdrawal From System.

After inclusion in the system, any departments or appointive officers or employees shall not be withdrawn therefrom, either by an outright repeal of the civil service ordinance or otherwise, unless such withdrawal has been submitted to the city electors at a special or regular municipal election and approved by a majority of two-thirds of those electors voting on the proposition.

###

Appendix K

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

Agenda Item No. 2
February 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: City Clerk's Office
Leilani I. Brown, City Clerk
949-644-3005, lbrown@newportbeachca.gov

SUBJECT: CHARTER SECTION 414 – PUBLICATION OF ORDINANCES

RECOMMENDATION:

Recommend to the City Council that Charter Section 414 be removed and follow Government Code Section 36933.

DISCUSSION:

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

Submitted by:

Leilani I. Brown, MMC
City Clerk

Attachments: Section 414 White Paper
Charter Section 414
Government Code Section 36933

ORDINANCE PUBLICATION REQUIREMENTS

Statement of Issue:

Currently, Charter Section 414 requires that an ordinance be published in its entirety at least once in the official newspaper. However, publication of ordinances in their entirety can be extremely expensive. Government Code Section 36933 allows for summaries of ordinances to be published as a cost savings measure for local governments.

Relevant Background:

The California State Legislature has approved legislation to balance the need for public disclosure of local government ordinances with the need for cost savings. Government Code Section 36933 gives cities the ability to publish a summary of a proposed ordinance (ordinance for introduction), as long as a certified copy of the full text of the proposed ordinance is posted in the Office of the City Clerk at least five days prior to the City Council meeting at which the proposed ordinance will be considered. Section 36933 further requires that a summary of the adopted ordinance be published within 15 days after adoption and a certified copy of the ordinance to be posted in the Office of the City Clerk.

Currently, consistent with Government Code Section 40806, the City Clerk keeps a book marked "ordinances." In addition, the Office of the City Clerk scans the ordinances into the City's document imaging system. Both the original hard copy version and the scanned version are considered permanent records and are never to be destroyed. The scanned ordinances are also accessible via the City's webpage and, once the ordinance goes into effect, it is codified into the Newport Beach Municipal Code (NBMC), which is also available on the City's webpage.

The *Daily Pilot* is the current official newspaper of the City. The cost to have the ordinance introduction summary and the ordinance adoption summary published can range from \$100 to \$200 a summary. In 2008 and 2009, 49 ordinances were adopted. The cost to publish a two-page ordinance in its entirety is about \$400. Over the last two years, the 49 adopted ordinances totaled 712 pages, of which 18 ordinances were over 12 pages long. Publishing all of the ordinances in their entirety cost the City about \$142,400 during that two-year period. Publishing ordinance summaries would have cost the City about \$10,000, a significant cost savings.

In a survey conducted of Orange County cities, most municipalities only publish ordinance summaries. One city publishes ordinances in their entirety unless the ordinance is too lengthy. In such cases, a summary is published. One city only posts ordinances since there is not a newspaper of general circulation operating in the jurisdiction.

Alternatives:

Alternative 1: Remove Section 414 and follow Government Code Section 36933.

This alternative would allow the City to publish summaries of adopted ordinances and realize a significant cost savings, using the procedures set forth in Government Code Section 36933. All other procedures to ensure public disclosure of adopted ordinances would continue unchanged. Citizens who rely primarily on the printed newspaper for information would have to use the City's website or come to City Hall to read the full text of adopted ordinances.

Alternative 2: Do not amend Section 414 and continue to publish adopted ordinances in their entirety at least once in the official newspaper of the City.

This alternative will allow those residents who rely on the printed newspaper for text of adopted ordinances to continue to obtain the information in this manner. However, the City would not be able to realize any cost savings associated with the publishing of ordinances summaries. Further, this alternative is not the standard practice followed by most other cities in Orange County.

NEWPORT BEACH CHARTER SECTION 414

Section 414. Ordinances. Publication.

The City Clerk shall cause each ordinance to be published at least once in the official newspaper within fifteen days after its adoption.

GOVERNMENT CODE SECTION 36933

36933. (a) Within 15 days after its passage, the city clerk shall cause each ordinance to be published at least once, with the names of those city council members voting for and against the ordinance, in a newspaper of general circulation published and circulated in the city, or if there is none, he or she shall cause it to be posted in at least three public places in the city or published in a newspaper of general circulation printed and published in the county and circulated in the city. In cities incorporated less than one year, the city council may determine whether ordinances are to be published or posted. Ordinances shall not be published in a newspaper if the charge exceeds the customary rate charged by the newspaper for publication of private legal notices, but these ordinances shall be posted in the manner and at the time required by this section.

(b) Except as provided in Section 36937, an ordinance shall not take effect or be valid unless it is published or posted in substantially the manner and at the time required by this section.

(c) The publication or posting of ordinances, as required by subdivision (a), may be satisfied by either of the following actions:

(1) The city council may publish a summary of a proposed ordinance or proposed amendment to an existing ordinance. The summary shall be prepared by an official designated by the city council. A summary shall be published and a certified copy of the full text of the proposed ordinance or proposed amendment shall be posted in the office of the city clerk at least five days prior to the city council meeting at which the proposed ordinance or amendment or alteration thereto is to be adopted. Within 15 days after adoption of the ordinance or amendment, the city council shall publish a summary of the ordinance or amendment with the names of those city council members voting for and against the ordinance or amendment and the city clerk shall post in the office of the city clerk a certified copy of the full text of the adopted ordinance or amendment along with the names of those city council members voting for and against the ordinance or amendment; or

(2) If the city official designated by the city council determines that it is not feasible to prepare a fair and adequate summary of the proposed or adopted ordinance or amendment, and if the city council so orders, a display advertisement of at least one-quarter of a page in a newspaper of general circulation in the city shall be published at least five days prior to the city council meeting at which the proposed ordinance or amendment or alteration thereto is to be adopted. Within 15 days after adoption of the ordinance or amendment, a display advertisement of at least one-quarter of a page shall be published. The advertisement shall indicate the general nature of, and provide information about, the proposed or adopted ordinance or amendment, including information sufficient to enable the public to obtain copies of the complete text of the ordinance or amendment, and the names of those city council members voting for and against the ordinance or amendment.

Appendix L

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

Agenda Item No. 3
February 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: City Clerk's Office
Leilani I. Brown, City Clerk
949-644-3005, lbrown@newportbeachca.gov

SUBJECT: CHARTER SECTION 419 – PUBLICATION OF LEGAL NOTICES

RECOMMENDATION:

Recommend to the City Council that Charter Section 419 be removed and handle legal advertising as a contract or purchase agreement.

DISCUSSION:

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

Submitted by:

Leilani I. Brown
City Clerk

Attachments: Section 419 White Paper
Charter Section 419

PUBLICATION OF LEGAL NOTICES

Statement of Issue:

Charter Section 419 requires the City Clerk to go out to bid annually for publication of legal notices. Legal notices include Public Hearing Notices, Notices of Vacancies, and Notices Inviting Bids. Annual bidding is not the City's current practice for other similar professional service agreements. For professional service agreements, the standard timeframe between bids ranges between three and five years.

The annual bidding process for legal notices has not produced any noticeable savings and has created a difficult administrative burden on the City Clerk's Office. A survey of Orange County cities revealed that cities generally publish legal notices in a local newspaper that is a subsidiary of the *Orange County Register* or the *Los Angeles Times*. In some cases, cities do not publish legal notices at all in a newspaper of general circulation, but post the notices in three public locations instead.

Relevant Background:

For the last 18 fiscal years, the *Daily Pilot*, a subsidiary of the *Los Angeles Times*, has published the City's legal notices. Publishing a legal notice in the classified section costs \$9.50/column inch, which has been the *Daily Pilot's* rate since FY 1999-2000. Under the annual bidding process, normally only the *Daily Pilot* and the *Orange County Register* have submitted bids. Legal notices are also posted at City Hall, in the City Clerk's Office, and on the City's webpage.

The current annual bid process for legal notices consists of:

- Preparing a staff report for the City Council requesting authorization to advertise for bids
- Advertising the Notice Inviting Bids twice at a total cost of \$180
- Posting of the Notice Inviting Bids in two locations
- Mailing the three bid packages to all the newspapers of general circulation published and circulated in the City of Newport Beach
- Evaluating bids submitted to compare costs and identify recommended vendor
- Preparing a staff report to the City Council to award the bid to the recommended vendor

Alternatives:

Alternative 1: Amend Section 419 to require the City Clerk to go out to bid at an interval to be determined by the City Council, rather than annually, for contracting out of publication of legal notices.

This alternative remains consistent with the intent of the existing Charter Section to go out to bid for the service, but delegates the authority to the City Council to determine an appropriate bid interval based on best practices, the state of the print media industry, etc. The bidding process would remain the same but would allow the bid price to be established for longer periods of time. Maintaining bidding requirements by City charter provides less flexibility to bid and negotiate an appropriate contract as the print media industry continues to decline. The City has existing policies and procedures for the procurement of professional service agreements which achieve the same results without a Charter requirement.

Alternative 2: Remove Section 419 from the City Charter and handle legal advertising as a contract or purchase agreement.

This alternative would allow the City Clerk to handle the publication of legal advertising as a standard professional services agreement governed by the existing regulations and policies of the City. The bidding process would stay the same, but would be timed to be consistent with best practices for such services. With print media in decline as an industry, this alternative also provides greater flexibility to increase or decrease the timeframe between bids depending on the number of local newspapers operating in the City.

CHARTER SECTION 414 – Publishing of Legal Notices

Section 419. Publishing of Legal Notices.

In the event that there is more than one newspaper of general circulation published and circulated in the City, the City Council, annually, prior to the beginning of each fiscal year, shall publish a notice inviting bids and contract for the publication of all legal notices or other matter required to be published in a newspaper of general circulation in said City, during the ensuing fiscal year. In the event there is only one newspaper of general circulation published and circulated in the City, the City Council shall have the power to contract with such newspaper for the printing and publishing of such legal notices or matter without being required to advertise for bids therefor. The newspaper with which any such contract is made shall be designated the official newspaper for the publication of such notices or other matter for the period of such contract.

In no case shall the contract prices for such publication exceed the customary rates charged by such newspaper for the publication of legal notices of a private character.

In the event there is no newspaper of general circulation published and circulated in the City, then all legal notices or other matter may be published by posting copies thereof in at least three public places in the city.

No defect or irregularity in proceedings taken under this Section, or failure to designate an official newspaper, shall invalidate any publication where the same is otherwise in conformity with this Charter or law or ordinance.

Appendix M

**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
Tracy McCraner, Administrative Services Director
949-644-3123, tmccraner@newportbeachca.gov
Dick Kurth, Deputy Administrative Services Director
949-644-3124, dkurth@newportbeachca.gov

**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.~~

Appendix N

CITY OF NEWPORT BEACH CHARTER UPDATE COMMISSION STAFF REPORT

Agenda Item No. 4

March 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Administrative Services Department
Evelyn Tseng, Acting Revenue Division Manager
949-644-3153, etseng@newportbeachca.gov

SUBJECT: CHARTER SECTION 13 – FRANCHISE PROCEDURES

RECOMMENDATION:

Recommend to the City Council to amend Charter Section 13 in order to streamline franchising procedures (Alternative 1).

DISCUSSION:

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

Submitted by:



Evelyn Tseng
Acting Revenue Division Manager

Attachments: Section 13 White Paper
Charter Section 13

Franchise Procedures
(Charter Section 13)

Statement of the Issue

Should the City modify Charter Section 13 to allow solid-waste franchising procedures to be regulated by the Municipal Code instead of the Charter?

Relevant Background

Section 13 of the Charter provides that any entity furnishing the City with transportation, communication, terminal facilities, water, light, heat, electricity, gas, power, refrigeration, storage, or any other public utility or service, or using the public streets, ways, alleys, may be required to have a franchise. Currently, Southern California Edison, the Gas Company, cable communications companies and 29 solid waste haulers have franchise agreements with the City.

Despite the permissive language of the Charter (“may be required”), Municipal Code Section 12.63.030 requires waste haulers to obtain a franchise by Municipal Code Section 12.63.030.

Currently, Section 1301 sets forth the notice and hearing requirements for potential franchisees in the City. Before granting a franchise:

- 1) City Council shall pass a resolution declaring its intention to grant the franchise. This resolution shall also provide proposed grantee information and set a date and time allowing for persons to object to the proposed franchise;
- 2) City Clerk shall publicize the resolution at least once;
- 3) City Council shall hear any protests and make a decision regarding the proposed franchise at the proposed date;
- 4) City Council shall grant the franchise by resolution.

This above-described franchising procedure takes approximately three months from start to finish.

Public Resources Code Section 40059 permits cities to regulate solid waste handling through “franchise, contract, license, permit or otherwise, either with or without competitive bidding. The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the governing body of the local governmental agency by resolution or ordinance.”

Currently, there are 29 waste haulers who are franchised in the City. The City Council has never denied a proposed grantee, presumably because General Services has vetted the proposed grantee prior to Council's consideration.

All waste haulers are required to comply with the City's franchising requirement, even if they are hauling from only one demolition site. The current process set forth in the Charter is a detriment to the proposed grantee and the City. Waste haulers may elect not to undertake certain projects in the City and because of the time required to obtain a franchise, thus possibly eliminating healthy competitors to the waste hauling business in the City. Streamlining the franchising process may provide more competition, reduced costs to customers, and better waste hauling service in the City.

ALTERNATIVES

The Commission has the following alternatives identified by Staff:

Alternative 1: Add the following language to Section 1301 of the Charter (new language underlined):

Unless a different procedure is mandated by the Municipal Code, before granting any franchise, the City Council shall pass a resolution declaring its intention to grant the same, stating the name of the proposed grantee, the character of the franchise and the terms and conditions upon which it is proposed to be granted.

This alternative maintains the franchise procedure for the utility companies, but would permit codification of the procedure for waste haulers in the Municipal Code.

Under this alternative, Chapter 12.63 of the Municipal Code will be revised concurrently to set forth the franchise procedure to be applicable to waste haulers.

Waste haulers, pursuant to this alternative, would still apply for a franchise, but it takes less time than current process. This would increase competition for the commercial solid waste collection system in the City and potentially provide better service to the City's citizens. All other requirements, including the franchise fee and General Services grantee review, would remain the same.

Because the franchise process would still be intact, Council would be able to grant or refuse a potential grantee based on the grantee's merits, and the City would remain protected by the conditions of the franchise agreement.

Alternative 2: No change.

Although the franchise procedure in the Charter is awkward and time consuming, it does work – as evidenced by the existing 29 franchised waste haulers in the City.

Article XIII Franchises

Section 1300. Granting of Franchises.

Any person, firm or corporation furnishing the City or its inhabitants with transportation, communication, terminal facilities, water, light, heat, electricity, gas, power, refrigeration, storage, or any other public utility or service, or using the public streets, ways, alleys or places for the operation of plants, works or equipment for the furnishing thereof, or traversing any portion of the City for the transmitting or conveyance of any such service elsewhere, may be required by ordinance to have a valid and existing franchise therefor. The City Council is empowered to grant such franchise to any person, firm or corporation, whether operating under an existing franchise or not, and to prescribe the terms and conditions of any such grant. It may also provide, by procedural ordinance, the method of procedure and additional terms and conditions of such grants, or the making thereof, all subject to the provisions of this Charter.

Nothing in this Section, or elsewhere in this Article, shall apply to the City, or to any department thereof, when furnishing any such utility or service.

Section 1301. Resolution of Intention. Notice and Public Hearing.

Before granting any franchise, the City Council shall pass a resolution declaring its intention to grant the same, stating the name of the proposed grantee, the character of the franchise and the terms and conditions upon which it is proposed to be granted. Such resolution shall fix and set forth the day, hour and place when and where any persons having any interest therein or any objection to the granting thereof may appear before the City Council and be heard thereon. It shall direct the City Clerk to publish said resolution at least once, within fifteen days of the passage thereof, in the official newspaper. Said notice shall be published at least ten days prior to the date of hearing.

At the time set for the hearing the City Council shall proceed to hear and pass upon all protests and its decision thereon shall be final and conclusive. Thereafter it may by ordinance grant the franchise on the terms and conditions specified in the resolution of intention to grant the same, subject to the right of referendum of the people, or it may deny the same. If the City Council shall determine that changes should be made in the terms and conditions upon which the franchise is proposed to be granted, a new resolution of intention shall be adopted and like proceedings had thereon.

Section 1302. Terms of Franchise.

Every franchise shall state the term for which it is granted, which, unless it be indeterminate as provided for herein, shall not exceed twenty-five years.

A franchise grant may be indeterminate, that is to say, it may provide that it shall endure in full force and effect until the same, with the consent of the Public Utilities Commission of the State of California, shall be voluntarily surrendered or abandoned by its possessor, or until the State of California, or some municipal or public corporation, thereunto duly authorized by law, shall purchase by voluntary agreement or shall

condemn and take, under the power of eminent domain, all property actually used and useful in the exercise of such franchise and situate within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until the franchise shall be forfeited for noncompliance with its terms by the possessor thereof.

Section 1303. Grant to be in Lieu of all Other Franchises.

Any franchise granted by the City with respect to any given utility service shall be in lieu of all other franchises, rights or privileges owned by the grantee, or by any successor of the grantee to any right under such franchise, for the rendering of such utility service within the limits of the City as they now or may hereafter exist, except any franchise derived under Section 19 of Article XI of the Constitution of California as said section existed prior to the amendment thereof adopted October 10, 1911. The acceptance of any franchise hereunder, shall operate as an abandonment of all such franchises, rights and privileges within the limits of the City as such limits shall at any time exist, in lieu of which such franchise shall be granted.

Any franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by the grantee thereof with the City Clerk. Such acceptance shall be filed within ten days after the adoption of the ordinance granting the franchise, or any extension thereof granted by the City Council, and when so filed, such acceptance shall constitute a continuing agreement of such grantee that if and when the City shall thereafter annex, or consolidate with, additional territory, any and all franchises, rights and privileges owned by the grantee therein, except a franchise derived under said constitutional provision shall likewise be deemed to be abandoned within the limits of such territory. No grant of any franchise may be transferred or assigned by the grantee except by consent in writing of the City Council and unless the transferee or assignees thereof shall covenant and agree to perform and be bound by each and all of the terms and conditions imposed in the grant or by procedural ordinance and by this Charter.

Section 1304. Eminent Domain.

No franchise grant shall in any way, or to any extent, impair or affect the right of the City to acquire the property of the grantee thereof either by purchase or through the exercise of right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge, either for a term or in perpetuity, the City's right of eminent domain with respect to any public utility.

Section 1305. Duties of Grantees.

By its acceptance of any franchise hereunder, the grantee shall covenant and agree to perform and be bound by each and all of the terms and conditions imposed in the grant, or by procedural ordinance and shall further agree to:

(a) Comply with all lawful ordinances, rules and regulations theretofore or thereafter adopted by the City Council in the exercise of its police power governing the construction, maintenance and operation of its plants, works or equipment.

(b) Pay to the City on demand the cost of all repairs to public property made necessary by any of the operations of the grantee under such franchise.

(c) Indemnify and hold harmless the City and its officers from any and all liability for damages proximately resulting from any operations under such franchise.

(d) Remove and relocate without expense to the City any facilities installed, used and maintained under the franchise if and when necessary by any lawful change of grade, alignment or width of any public street, way alley or place, including the construction of any subway or viaduct, or if the public health, comfort, welfare, convenience, or safety so demands.

(e) Pay to the City during the life of the franchise a percentage, to be specified in the grant, of the gross annual receipts of the grantee within the limits of the City, or such other compensation as the City Council may prescribe in the grant.

Section 1306. Exercising Rights Without Franchise.

The exercise by any person, firm or corporation of any privilege for which a franchise is required, without possessing a valid and existing franchise therefor, shall be a misdemeanor and shall be punishable in the same manner as violations of this Charter are punishable and each day that such condition continues to exist shall constitute a separate violation.

Appendix O

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

Agenda Item No. 3
April 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: Administrative Services Department
Tracy McCraner, Administrative Services Director
949-644-3123, tmcraner@newportbeachca.gov

SUBJECT: CHARTER SECTION 1106– CENTRALIZED PURCHASING

RECOMMENDATION:

Recommend to the City Council to leave Charter Section 1106 unchanged (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

Attachments: Section 1106 White Paper
Charter Section 1106

Centralized Purchasing
(Charter Section 1106)

Statement of the Issue

Should the City modify or eliminate Charter Section 1106 which establishes a centralized purchasing system for all departments of the City under the direction of the City Manager?

Relevant Background

Section 1106 of the Charter provides that “under the control and direction of the City Manager there shall be established a centralized purchasing system for all City departments and agencies, except as otherwise in this Charter provided.” Charter Section 1111 states that “the City Council may prescribe by ordinance rules and regulations for the purchasing of supplies, materials and equipment” and specifies that when making such purchases, merchants within City limits shall be given preference so long as the quality and prices are equal.

Other than these two sections, the Charter currently gives broad discretion to the City Manager to implement a centralized purchasing system as he or she sees fit. The Charter places limitations on public works contracts and contracts for legal advertisements, both of which the Charter Update Commission has considered separately. Existing City Council policies limit the City Manager’s authority to enter into agreements or make purchases over a set dollar amount.

Historically, cities establish centralized purchasing systems to ensure the acquisition of goods and services at the lowest total cost, to promote fair and open competition among suppliers, and to ensure good internal controls exist to prevent unnecessary or duplicative expenditures of public funds. Because centralized purchasing controls are considered to be good business practices, it is common for the establishment of a centralized purchasing system to be included in a city’s charter.

When this issue was first identified, there was a question as to whether decentralized purchasing could be a less expensive alternative. For example, technology now makes it possible to purchase goods and materials on-line, which can shorten the time between ordering and delivery and improve efficiency. However, even with the advances in technology, the principles underlying the rationale for having a centralized purchasing system remain valid. Upon further review of these principles, staff recognizes that having a centralized point for the negotiation of contracts with specified vendors, such as for discounted purchase of commodities like office supplies, does not preclude the delegation of authority for departments to make direct online purchases within established procedures and spending limits.

Newport Beach Municipal Code Section 2.12.040 specifies the Administrative Services Department as being financially responsible for the “purchase of supplies, equipment, training and services used by City departments.” The Administrative Services Director is delegated authority by the City Manager to manage the centralized purchasing system within the limits of the City Charter, the Municipal Code, City

Council Policies, and other administrative policies and procedures approved by the City Manager. These administrative policies include purchasing procedures, and the handling of expenditure approvals for departments. Together, these provide the City Manager and Administrative Services Manager with the flexibility needed to effectively operate the City in the most efficient manner.

ALTERNATIVES

The Commission has the following alternatives identified by Staff:

Alternative 1: Recommend that Charter Section 1106 remain unchanged.

This alternative acknowledges the benefits of having a centralized purchasing system, and the broad authority and flexibility currently given to the City Manager to manage the system as effectively and efficiently as possible.

Alternative 2: Recommend elimination of the Section, leaving the Charter silent on the matter, thereby relying on the City's existing codes, policies and administrative procedures to establish roles and responsibilities as deemed necessary by the City Manager.

As stated above, having a centralized purchasing system is considered to be good business practice for local governments. Although there is no legal requirement for a centralized purchasing to be established by charter, Charter Section 1106 does not dictate how the centralized purchasing system is to be implemented, merely that there be one.

The City Manager has recently created an internal committee to review all contracting and purchasing processes and policies citywide. The Administrative Services Director, City Attorney and representatives from many other city departments are serving on the committee to review policy limits, contracting processes and approvals to streamline those processes and enhance internal controls over purchasing. This committee will be drafting a report of recommended changes to the existing policies which will be forwarded to the City Manager for review and approval. The final report will be presented to Council for their information. In light of this internal review, it appears that elimination of Charter Section 1106 would be premature at this time.

Charter Section 1106 – Centralized Purchasing

Section 1106. Centralized Purchasing.

Under the control and direction of the City Manager there shall be established a centralized purchasing system for all City departments and agencies, except as otherwise in this Charter provided.

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

Agenda Item No. _____
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: Update of Misdemeanor Penalty Provisions of the Charter

RECOMMENDATION:

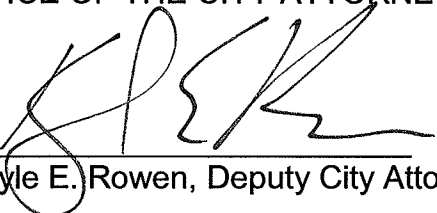
Staff recommends the updating of the Charter to allow for flexibility in the establishment of misdemeanor penalties (Alternative No. 1).

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.

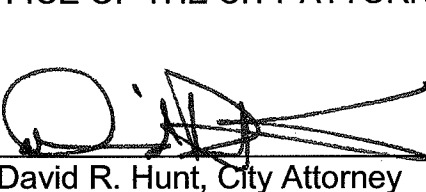
ENVIRONMENTAL REVIEW: Not applicable

Prepared by:
OFFICE OF THE CITY ATTORNEY

By 

Kyle E. Rowen, Deputy City Attorney

Prepared by:
OFFICE OF THE CITY ATTORNEY

By 

David R. Hunt, City Attorney

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.

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

Agenda Item No. _____
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.

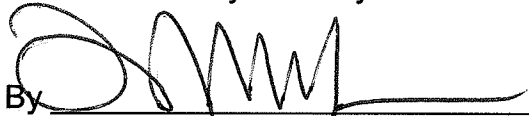
DISCUSSION:

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)

(c) "County" is the County of Orange.

(d) "State" is the State of California.

Section 1401. Oil Well Drilling.

No drilling for, exploration work of any kind, production or refining of, oil, gas or other hydrocarbon substances shall be permitted within that area of the City of Newport Beach as such limits exist as of the effective date of this Charter. The prohibitions shall include the City of Newport Beach.

This Section shall not prohibit the drilling for, production or refining of oil, gas or other hydrocarbon substances within any territory annexed to the City after the effective date of this Charter if such drilling, production or refining was being conducted in such territory at the date of the annexation thereof; but no such drilling, production or refining shall be permitted within any territory annexed to the City after the effective date of this Charter if such activities were not being conducted in such territory at the date of the annexation thereof.

This Section shall not prohibit the continuance of production of any well slant drilled under property within the City from a location outside the City and in existence at the time this Charter takes effect. Nor shall this section preclude the City Council from permitting the slant drilling of wells under the surface of property within the City from surface locations located either outside the City or within future annexations to the City wherein the drilling for and production of oil, gas and other hydrocarbon substances is permitted, provided that such slant drilling shall first be approved by a majority of the electors voting on such proposition at any special or general municipal election, and provided further that all of the following conditions shall be complied with:

(a) The holding of a public hearing upon any application for a permit to conduct such drilling;

(b) The requiring of the removal of all derricks and other surface structures used in the drilling of such well upon completion or abandonment of such well;

(c) The furnishing of a faithful performance surety bond and the maintenance of public liability and property damage insurance by the permittee in amounts deemed adequate by the City Council;

(d) The screening by landscaping and the beautification of any production and maintenance facilities used in the operation of any such well;

(e) Provisions for the payment to the City of such amounts as in the sound discretion of the Council are adequate amounts for the consideration or granting of such permit, the holding of such hearing, the making of initial and periodic inspections, the granting of easements under City property and for royalties or rentals;

(f) The requirement that no such well shall traverse any land under the area of the City wherein drilling is prohibited at a vertical depth of less than 400 feet from the surface of the ground; and

(g) Such other conditions as the City Council may prescribe by ordinance. (As amended effective April 23, 1958)

Restrictions on Oil Drilling
Charter Section 1401

STATEMENT OF THE ISSUE:

Oil well production and drilling activity have been on-going on City and County land on and in the immediate vicinity of Banning Ranch for over 50 years, and prior to enactment of the current City Charter. Over that period of time, many things have changed. The voters approved a new General Plan in 2006 that sets goals for the re-use of Banning Ranch as either fully or mostly open space, the achievement of which will require changes in current oil drilling activity. In addition, productivity of oil wells and methods of oil extraction have changed since the Charter was enacted. The original Charter language is ambiguous with regard to the scope of activities that are allowed to continue oil production from an existing oil extraction area. This makes it difficult for the City to move forward with consolidation of oil drilling on the Banning Ranch property to allow its reuse as called for in the General Plan or to implement new oil extraction techniques such as water injection on the City's own oil wells. Should the City modify Charter Section 1401 to clarify and simplify its provisions, to facilitate the achievement of General Plan goals and to allow current oil extraction activities to continue with greater efficiency and productivity, and on smaller areas of land?

RELEVANT BACKGROUND:

Charter Provisions:

Restrictions on oil drilling were part of City ordinances before enactment of the City's charter, at least as early as 1929. These restrictions comprised Charter Section 1401 when the charter was originally adopted by the voters on June 8, 1954.

Section 1401 of the charter prohibits drilling for, exploration and production or refining of oil, gas or other hydrocarbon substances within the City boundaries as of the effective date of the charter, January 7, 1955. (For the purposes of this white paper, the activities described in the charter will be referred to collectively as "oil drilling.") For territory annexed to the City after the charter's effective date, oil drilling is not prohibited, as long as that activity was occurring in the territory prior to the annexation. Section 1401 was amended by the voters on April 8, 1958 to add the sentence, "The prohibitions shall include the City of Newport Beach." The purpose of the amendment was to close what the Freeholders considered to be a loophole, which could allow the City Council to allow oil exploration without a vote of the people. In a letter received by the City Council on January 14, 1957, which started the amendment process, the Freeholders said that they had intended that Section 1401 should apply to both individuals and legislative bodies.

There are additional provisions in the charter that apply to slant drilling under property within the City boundaries from a drill location outside the City boundaries. Slant drilling is a process whereby the drill shaft travels vertically from the surface for a distance, and then travels at an angle (or slants) to reach oil resources under property other than the location of the surface well, including locations

under the ocean floor. Slant drilling that was occurring prior to the effective date of the charter is allowed to continue. The City Council may permit new slant drilling under property within the City boundaries from drill locations outside the City or within future annexations to the City, only if that slant drilling is first approved by the voters. Additional conditions for new slant drilling include the holding of a public hearing, the removal of all surface structures upon abandonment of wells, the screening of oil facilities, payment to the City for the permit process, inspections and easements under City property, maintaining a minimum well distance of 400 feet below the surface, and other requirements established by ordinance. However, it is unclear how the City could enforce these conditions when the only activity that occurs on the surface, the drilling itself, occurs outside City boundaries and City jurisdiction.

City Wells:

The City owns and operates 16 oil wells that were drilled between 1953 and 1958. Fourteen are operating today, with one used for water injection to increase productivity from other wells, and one completely out of service. The well heads are located on two sites in unincorporated County territory along West Coast Highway (See Exhibit A), and the wells are slant drilled under property within the City, into the area under the ocean which is called the West Newport Offshore Oil Field.

Oil production has declined since the 1980's (when the City acquired the wells) from approximately 60,000 barrels per year to 30,000 barrels per year in 2009. Oil revenue generated is influenced by the price volatility of the oil commodity market. Oil prices have ranged from a low of \$9.05 in 1999 to a high of \$85.92 in 2008. Since 1990, the City has collected approximately \$19.9 million in oil and gas revenue, with operation and maintenance expenditures of \$9.2 million. (Oil and gas revenue is deposited into the Tidelands Fund because the source of the oil is the tidelands area that the City holds in trust for the people of California. The Tidelands Fund may be used only for eligible expenditures that support and maintain the tidelands, such as improvements to tidelands property including dredging Lower Newport Bay, lifeguards, beach cleaning, etc.) Net oil income to the Tidelands Fund since 1990 amounts to \$10.7 million. Since 2007, over \$1 million of net income has been generated per year due to the dramatic increase in oil commodity prices, even with the declining oil production.

The City has been advised that the productivity of its wells will continue to decline unless new oil extraction techniques are used. These techniques may include reconditioning of existing oil wells, converting existing oil wells to water injection wells, drilling new water injection wells or drilling new oil wells. Charter Section 1401 requires a vote of the people for slant drilling new oil wells under property within City boundaries, but there is an exemption for activities that comprise the "continuance of production." It is unclear what "continuance of production" includes and how expansively or limited it may be interpreted.

Banning Ranch Wells:

Over 460 producing/potentially producing and abandoned oil wells are located on the Banning Ranch property, in the County unincorporated area comprising roughly 360 acres of the total of 402-acre

Banning Ranch property, as shown on Exhibit B. The wells are a combination of vertical and slant drilled. The mineral rights and the surface rights on this property are owned by different parties, and there are agreements between the parties regarding use of the surface for oil extraction, drilling new wells, and consolidation of oil operations if the property is developed as allowed in the City's General Plan.

The General Plan includes two alternatives for reuse of the Banning Ranch property: restored open space, and a residential village with the majority of the land preserved as open space. The City is currently reviewing an application for the residential village alternative. The proposed development plan includes the consolidation of Banning Ranch's oil operations on two sites comprising roughly 20 acres, significantly less land than is currently occupied by oil wells (See Exhibit C). To remediate areas planned for open space preservation or development, new wells are proposed to be drilled at the consolidation sites to replace wells removed from larger areas proposed for development and open space preservation. Although it is not known whether the open space preservation (without development) option would require the same oil drilling consolidation, it is likely that consolidation would be desired by the property owners before sale to an open space owner to ensure proper remediation and indemnification; and equally desired by the open space owner to maximize the amount of area and safety associated with public access to the land.

Both proposed consolidation sites are in unincorporated County territory, and both sites currently have oil wells., The City currently has no ability to restrict drilling of new vertical wells on Banning Ranch, and Charter Section 1401 would allow oil operations existing at the time of annexation to continue at those sites after annexation. Because Charter Section 1401 is not clear regarding the scope of activities that are allowed without a vote of the people for the "continuance of production," it is possible that new wells slant drilled under land in the City for consolidation purposes could require a vote of the people, if they are drilled after annexation of the land to Newport Beach.

The property owners have agreed to City review and approval of their development application for the entire property, even though the majority of the site is not within City boundaries; and their application includes a Pre-Annexation and Development Agreement. This agreement is intended to provide for annexation of the entire County portion of the property in one action, thereby ensuring that the City of Newport Beach would be the land use and permitting authority for all development.

The uncertainty regarding the need for a vote on oil drilling for consolidation could affect the property owner's decision to annex the property prior to remediation for open space preservation and/or development. This would result in the County, rather than the City, being the land use and permitting authority. Annexation after development would mean the City may be accepting the responsibility to maintain and serve an area developed under County standards, and annexation after occupancy of the development would require a vote of the residents.

ALTERNATIVES:

The Commission has the following alternatives identified by staff:

Alternative 1: Recommend no change.

This alternative would continue to require a vote of the people for new slant drilling under property within existing City boundaries or newly annexed areas. The existing ambiguity with regard to the need for a vote on activities to continue existing production would remain. This would make it difficult for the City to achieve its General Plan goals for the Banning Ranch property, or to use new oil extraction techniques such as water injection to preserve or enhance oil revenues available to Tidelands areas such as Newport Harbor.

Alternative 2: Recommend deletion of Section 1401.

Without the charter provisions regulating oil drilling, it is certain that a vote of the people would not be required for drilling new City wells, drilling Banning Ranch replacement wells, or drilling in other locations if oil resources were discovered.

Alternative 3: Recommend that Section 1401 be amended to define geographic areas in which oil drilling may occur after the areas are annexed to Newport Beach. The recommended areas are the two City sites (Exhibit A) and the two consolidation sites proposed for Banning Ranch (Exhibit C).

This alternative would clarify the charter by simplifying its provisions and eliminating the existing ambiguity with regard to the need for a vote on activities that comprise “continuance of production.” At the same time, the charter’s environmental protections against proliferation of oil wells would be preserved. The land area on which oil drilling could occur would be reduced from roughly 360 acres in use today to roughly 20 acres, ensuring that visual and noise impacts from oil drilling would be minimized. This alternative would facilitate the City’s achievement of its General Plan goals for Banning Ranch, and would provide greater flexibility for current oil extraction activities to continue with greater efficiency and productivity and to change as new oil extraction methods are developed in the future. Finally, it would provide the City with the opportunity to increase revenue from its oil resources, which by law are dedicated to tidelands uses, including the maintenance and improvement of Newport Harbor.

Attachments: Exhibit A: City Oil Well Locations
Exhibit B: Banning Ranch Oil Well Locations
Exhibit C: Banning Ranch Proposed Land Use Plan

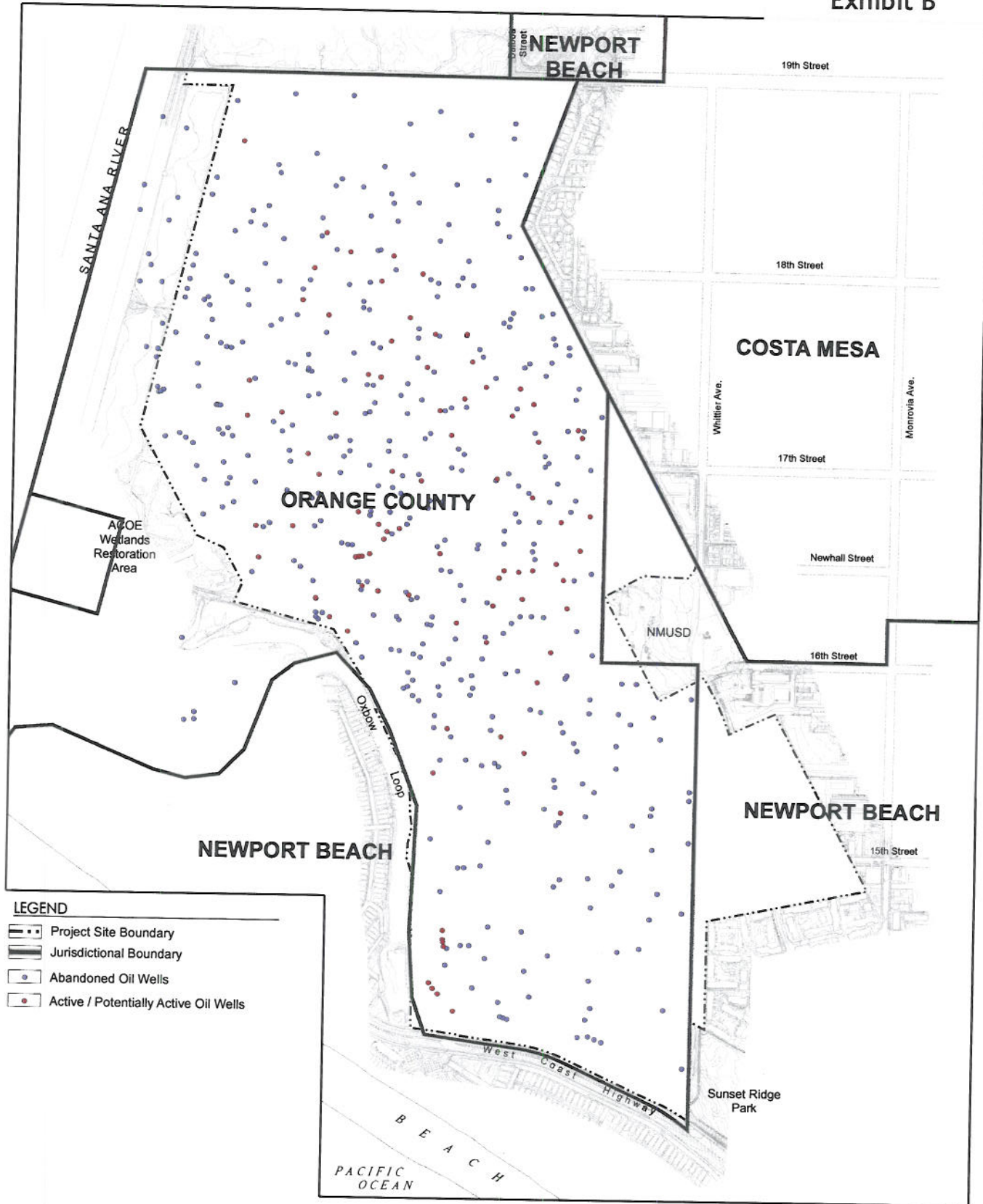



City of Newport Beach
Utilities Department Oil Field

West Coast Highway



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Feet



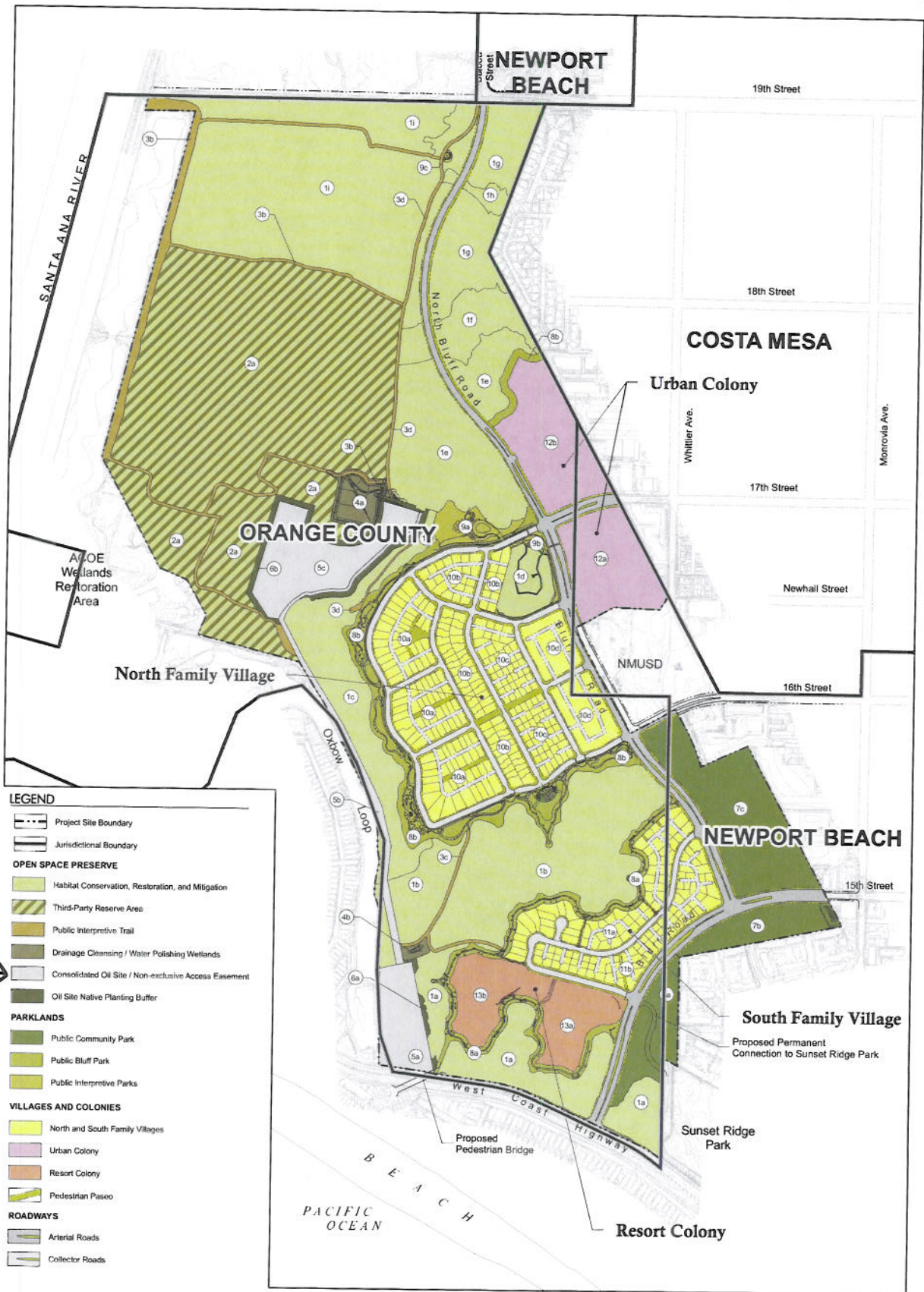
- LEGEND**
- Project Site Boundary
 - Jurisdictional Boundary
 - Abandoned Oil Wells
 - Active / Potentially Active Oil Wells



Existing Oil Wells Inventory Map

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Appendix S

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

Agenda Item No. 5

April 6, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

FROM: City Manager's Office
Tara Finnigan, Public Information Manager
949-644-3035, tfinnigan@newportbeachca.gov

SUBJECT: NEWPORT BEACH MUNICIPAL CODE SECTION 3.24.010

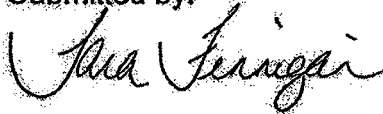
RECOMMENDATION:

Recommend to the City Council to remove Newport Beach Municipal Code Section 3.24.010 and evaluate Chamber funding requests according to Council Policy and the Code language in existence at the time the request is made (Alternative 1).

DISCUSSION:

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

Submitted by:



Tara Finnigan
Public Information Manager

Attachments: Section 3.24.010 White Paper
Code Section 3.24.010
Letter from the Newport Beach Chamber of Commerce

Chapter 3.24 Limits on Expenditures of City Funds

Statement of the Issue:

The City of Newport Beach (City) provides financial assistance and dedicates thousands of hours of staff time each year in support of events, programs and activities to a number of community organizations. Included among the organizations that receive City assistance are the Newport Beach Chamber of Commerce and the Corona Del Mar Chamber of Commerce. However, the City is limited in the amount of financial assistance it may provide to the Chambers. Specifically, Newport Beach Municipal Code (Code) Section 3.24.010, added by voter initiative in 1955, limits the amount of funds that may be appropriated by the City to the local chambers of commerce for promotion, publicity, advertising, and entertainment purposes to \$2,400 annually. The Newport Beach Chamber of Commerce requested, and the City Council approved, the Charter Update Commission's consideration of the continuing necessity of Code Section 3.24.010.

Relevant Background:

The \$2,400 funding limitation was established in 1955 and has never been adjusted for inflation. Using the consumer price index (CPI) to calculate the value in 2010 dollars, today, the adjusted amount would be approximately \$19,400. To place this dollar amount in context, provided below are three examples of recent contributions made by the City to local community organizations:

- The annual Newport Beach Film Festival received a \$100,000 Council grant and an \$8,000 City arts grant last year.
- The Orange County marathon obtained a \$50,000 Council grant in 2009.
- The Newport to Ensenada Yacht Race received a \$25,000 Council grant in 2009.

The \$2,400 limitation in Code Section 3.24.010 restricts the City's ability to assist the Chambers in a manner that is not applicable to other similarly situated organizations.

Alternatives:

Alternative 1: Repeal Code Section 3.24.010, Appropriation of Funds to Chamber of Commerce, and evaluate Chamber funding requests according to Council Policy and the Code language in existence at the time the request is made.

The Code provides specific guidelines for waiver limits and cost recovery. Several Council policies also pertain to special events and grants. These two sources provide sufficient direction to both the Special Events Advisory Committee and the City Council as to how funds should be allocated for community events and activities. The existing Code Section 3.24.010 creates a disadvantage for the Chambers of Commerce.

Alternative 2: Increase the appropriation limit.

Should the Commission or Council determine that Code Section 3.24.010 be revised rather than eliminated, the appropriation limit could be increased to enable the Chambers of Commerce to receive funding at a level similar to what other community organizations receive. That level varies by event and organization, and the Chambers may request funding consistent with Council policy in effect at the time of application.

Newport Beach Municipal Code Section 3.24.010

3.24.010 Appropriation of Funds to Chamber of Commerce.

The funds which the City Council may in its discretion appropriate to the local Chamber of Commerce for promotion, publicity, advertising, and entertainment purposes for the benefit of the City shall be limited to the sum of two thousand four hundred dollars (\$2,400.00) annually. (Initiative Ord. 743; adopted by a vote of the people on March 15, 1955)

LAW OFFICES OF
**WATKINS, BLAKELY &
TORGERSON, LLP**

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AUTHOR'S EXTENSION 2108

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<http://www.lawfriend.com>

File No. Administration

February 2, 2010

Marian Bergeson, Chair
Charter Update Commission
c/o City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Re: Charter Update Commission

Dear Honorable Chair Bergeson:

I am the current Chair of the Newport Beach Chamber of Commerce.

Charter Amendment 743 (Newport Beach Municipal Code Section 3.24.010) (which was adopted almost 55 years ago) reads as follows:

"3.24.010 Appropriation of Funds to Chamber of Commerce.

The funds which the City Council may in its discretion appropriate to the local Chamber of Commerce for promotion, publicity, advertising, and entertainment purposes for the benefit of the City shall be limited to the sum of two thousand four hundred dollars (\$2,400.00) annually. (Initiative Ord. 743; adopted by a vote of the people on March 15, 1955)"

It is my understanding that the City now provides financial support and sponsorship to a number of civic-spirited events/organizations, such as:

- (1) The Toshiba (\$50,000);
- (2) Restaurant Week (\$160,000);
- (3) the Newport/Ensenada Race (\$50,000);

- (4) the Film Festival (\$50,000); and
- (5) the OC Marathon (\$100,000).

The Chamber is not requesting funds at present, but believes that - in light of the benefits and favorable publicity the City receives from such events as the Boat Parade, Police Appreciation Breakfast, Mentor for a Day Program, Athletic Awards Breakfast, Scholarship Awards Breakfast, Flight of the Lasers Boat Race, Ensign Intermediate School Character Counts Awards, Citizen of the Year Gala, Fire and Marine Appreciation Beach Party, Sandcastle Contest, the Taste of Newport and other civic-spirited Chamber-sponsored events – the Chamber should not be any less eligible to apply for City support than the other events/organizations listed above.

Accordingly, the Chamber respectfully requests that the Charter Update Commission consider the repeal of Charter Amendment 743 (Newport Beach Municipal Code Section 3.24.010) and the addition of a Charter provision along the following lines:

“Not-for-profit community organizations shall be permitted to apply for City financial support and sponsorship of particular events presented by such organizations where such events promote, publicize, enhance the image and reputation of, and otherwise benefit the City.”

Thank you for considering this request.

Sincerely,



Paul K. Watkins
Chair,
Newport Beach Chamber of Commerce

PKW:jbag