



City of Huntington Beach

Charter Review Commission

AGENDA

Tues., Sept.1 2009, 6:00 PM
City Hall, Room B-8

I. Roll Call: Bame, Bauer, Bixby, Brenden, Dettloff, Harlow, Hartnett, Johnson, Kutscher, Shaw, Silver, Sneddon, Stuart, Sullivan, Whiteside

II. Public Comments

An opportunity for the public to comment on any item of interest, either in general or specific to this agenda, that is within the subject matter or jurisdiction of the Commission. Comments will be limited to no more than 3 minutes. Speakers are encouraged to submit their comments in writing. Each Commission Member will receive a copy of all the submitted comments.

III. Approval of Minutes August 18 (Bauer, Hartnett, Silver, & Stuart absent)

IV. Review and Approval of the Charter Review Timeline

V. Proposed Criteria for Charter Measures and Process for Public Meetings – Sonenshein

VI. Review Charter Sections 303, 308, 312, 313, 500-503, 600-602, 605, 607-611, 615-616, and 808-803 for review and possible straw votes on recommended amendments - Sonenshein and City Staff

VII. Commissioner Requests: Questions, comments, or suggestions for discussion at a subsequent meeting of the Commission

VIII. Adjourn to the next scheduled meeting at 6 PM on Tues., September 15 in the City Council Chambers to take public testimony on Sections 300, 302, 304, 305, 306, 309, 310, 311, & 800 which relate to the city's elected office

Attachments: *

- **Minutes from 08/18/09 Meeting**
- **Draft Charter Review Timeline**
- **Copy of the Charter**
- **Proposals for changes or additions to the agendized Charter sections**

* Material related to the Charter Sections to be discussed that is submitted prior to the posting of the agenda will be included in the agenda packet. Items received after posting of the agenda will be distributed at the Commission meeting as late communications.



City of Huntington Beach

Charter Review Commission

MINUTES

Tues., August 18, 2009, 6:00 PM
City Hall, Room B-8

- I. Roll Call: Bame, Bauer, Bixby, Brenden, Dettloff, Harlow, Hartnett, Johnson, Kutscher, Shaw, Silver, Sneddon, Stuart, Sullivan, Whiteside**

All members present except Bauer, Harnett, Silver, & Stuart (Silver and Harnett requested their absence be excused.)

II. Public Comments

An opportunity for the public to comment on any item of interest, either in general or specific to this agenda, that is within the subject matter or jurisdiction of the Commission. Comments will be limited to no more than 3 minutes. Speakers are encouraged to submit their comments in writing. Each Commission Member will receive a copy of all the submitted comments.

James Adams distributed an article about Palmdale and the inclusion of prevailing wage language in the charter and requested that the Commission include similar language in the city's charter.

Doug Mangione also spoke on inclusion of prevailing wage language in the Charter.

A copy of the materials submitted by both are attached here for inclusion in the minutes.

- III. Approval of Minutes from the July 22 (all present) and August 4 (Brenden & Hartnett absent)**

On a motion from Gary Kutscher and 2nd from Shane Whiteside the minutes for both meetings were approved 11-0-4 (11-0-4 Bauer, Harnett Silver, and Stuart absent.)

- IV. Public Outreach – Laurie Payne, Community Relations Officer (30 Mins,)**

August 18, 2009

Presented to the Huntington Beach Charter City Review Commission.

Good Evening Mr. Chairman, Madam Co-Chair, Commissioners.

My name is Jim Adams, I am a Council Representative for the Los Angeles/Orange Counties Building and Construction Trades Council.

As all of you know we have submitted prevailing wage language to the Commission and requested your consideration for the inclusion into the City Charter.

I would like to make you aware that the City of Buena Park incorporated the same language last year in their new Charter that was approved by the voters.

And I would like to hand out a copy of a newspaper article, from the Antelope Valley News dated August 6, 2009.

The article reports that the Palmdale City Council for the City of Palmdale has also included the same language into their proposed Charter.

Building Trades Representative, Robbie Hunter on behalf of our affiliated Unions had submitted the language. We are very excited about that and wanted to share it with you. Thank you.

Residents speak: Keep 'prevailing wage' language

*This story appeared in the Antelope Valley Press
Thursday, August 6, 2009.*

By BOB WILSON and CHARLES F. BOSTWICK
Valley Press Staff

PALMDALE - More than 200 union construction workers and others turned out Wednesday night to make sure the proposed new city charter retains a requirement that city public works contracts require contractors pay their employees so-called "prevailing wages."

Union members lined up at the podium to speak about the necessity for fair wages to afford houses, raise families and send their children to college, although city officials had already said they planned to retain the "prevailing wage" requirement in order to avoid a divisive battle while trying to get the charter passed.

"Every city wants a strong middle class. Prevailing wage helps to do that," said Richard Slawson, executive secretary of the Los Angeles and Orange Counties Building and Construction Trades Council. "We are happy you will retain the prevailing wage language. I'm sure we'll be there to support the charter as it is presently written and will help to make it go through."

The City Council voted 5-0 to put the proposed charter before Palmdale voters Nov. 3. The charter would lay out a basic framework for the municipal government, which since its incorporation in 1962 has been a general-law city, subject to rules set by the state Legislature.

As a charter city, Palmdale would have greater autonomy than it has now under state rules, city officials contend.

"I hope you all will support this charter. We need it to keep the state off our backs," Councilman Mike Dispenza told the crowd that packed the council chambers.

The charter, plus any future amendments, requires approval in a vote by the citizens.

The four-page draft charter proposes no drastic change in how Palmdale's government operates. It retains the current council-manager administration, in which the City Council sets policy and the appointed city manager carries it out. It retains City Council and mayoral salaries at the levels set by state law. It retains the at-large system of electing councilmembers citywide, rather than creating a district

that each council seat would represent.

At their July 20 meeting, councilmembers discussed exempting Palmdale from prevailing-wage requirements - which essentially require union pay scales - for construction projects funded by the city in the absence of federal or state money.

The public discussion prompted protests from various quarters, including union officials and Mayor Jim Ledford.

Before Wednesday night's meeting, the mayor said he did not want to drop the prevailing-wage requirement and also said he was interested in whether the city could encourage contractors to hire local workers and also whether the city could give any preference to local businesses competing for city work.

Without the prevailing-wage exemption, the city still could save money by engaging in "design-build" practices, officials said.

Instead of hiring one company to design a project, then seeking bids from other companies to build it at the lowest cost, the same company would design and build the project to city specifications, he said.

A draft of the proposed charter is available for review on Palmdale's Web site, www.cityofpalmdale.org, by clicking the "Charter City Information" button.

Of 478 cities in the state, 116 have opted to operate under home-rule charters.

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EFFECTS OF PREVAILING WAGE

I would like to discuss the broader issues of paying prevailing wages to your city and to the surrounding area. There are always consequences to actions and using public funds for city projects resonates throughout the community. Paying family sustaining wages has a positive multiplier effect while paying cheap wages can have a negative effect.

A working family making a sustainable wage with health benefits usually makes good neighbors, they have a stake in the community, and they can rent a nice apartment or own a home. They have discretionary income that can be used to buy local goods and services other than just food and shelter and they contribute back to the city in tax revenue. When they get sick they can go to the doctor without using public funds.

On the other hand paying cheap wages has an opposite effect. While appearing to reduce cost to the city it actually can have a negative impact. Without health benefits all of us pay through higher premiums for the uninsured and if all a family can do is buy shelter and food they are not helping all of the businesses that cater to the discretionary income market.

Orange County has some of the highest housing and apartment affordability rates in the country and low wage contribute to overcrowding in poor neighborhoods in yours and the surrounding cities .Anaheim and Santa Ana are developing areas were two and three families are crowding into one house or apartments .Think about were these workers go after work. We shouldn't exacerbate poverty for short term gains ,We sould'nt commit economic apartied by bringing low paid workers from outside Huntington Beach and then told to leave after work

Orange County is Among Nation's Most Expensive Rental Markets

STATE OF THE COUNTY 2008-2009

Description of Indicator

The rental affordability indicator measures the Housing Wage - the hourly wage a resident would need to afford Fair Market Rent.¹ This indicator also shows fair market rents for a typical Orange County apartment.

Why is it Important?

Rental housing can provide low and moderate-income workers with affordable places to live. Lack of affordable rental housing can cause high occupancy levels, leading to crowding and household stress. Less affordable rental housing also restricts the ability of moderate-income renters to save for a down payment on a home, limiting their ability to become home owners and build personal wealth through housing appreciation. Ultimately, a shortage of affordable housing for renters can instigate a cycle of poverty with potentially debilitating effects throughout the County.

How is Orange County Doing?

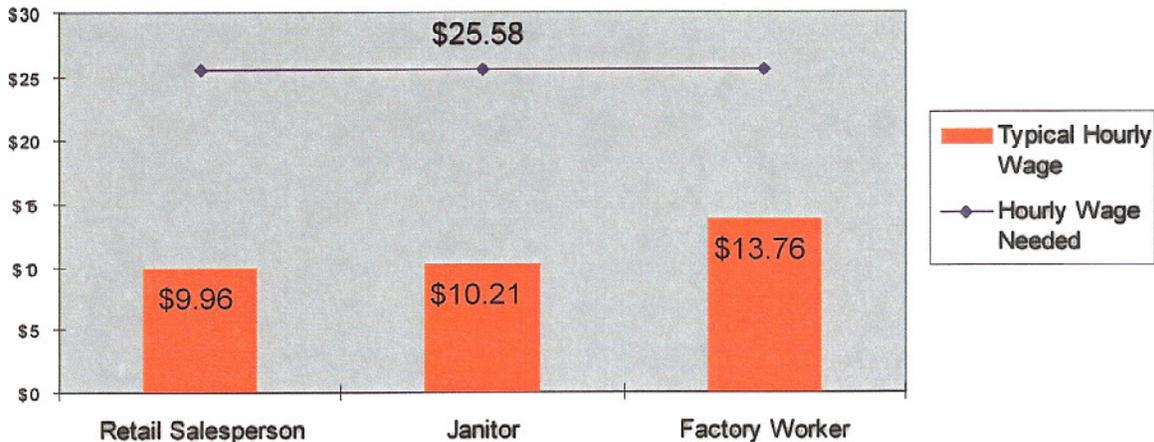
The Housing Wage in Orange County ranges from \$25.58 per hour for a one-bedroom housing unit to \$43.88 per hour for a three-bedroom housing unit. The hourly wage needed for a one-bedroom housing unit (\$25.58) is equivalent to an annual income of \$53,206. Orange County's Housing Wage rates have increased since 2000, when Housing Wages were \$15.23, \$18.85, and \$20.86 for one-bedroom, two-bedroom, and three-bedroom housing units, respectively. According to the National Low Income Housing Coalition, an Orange County household earning minimum wage can afford to pay no more than \$416 per month in rent. A household earning 30 percent of the Orange County median family income (\$25,230) can only afford to pay \$631 in rent. Among state and national peer metropolitan areas, Orange County has the highest Housing Wages (in other words, the least affordable rental housing).



Orange County has affordable rented housing rates for all income levels. *Rental affordability declined this year.*

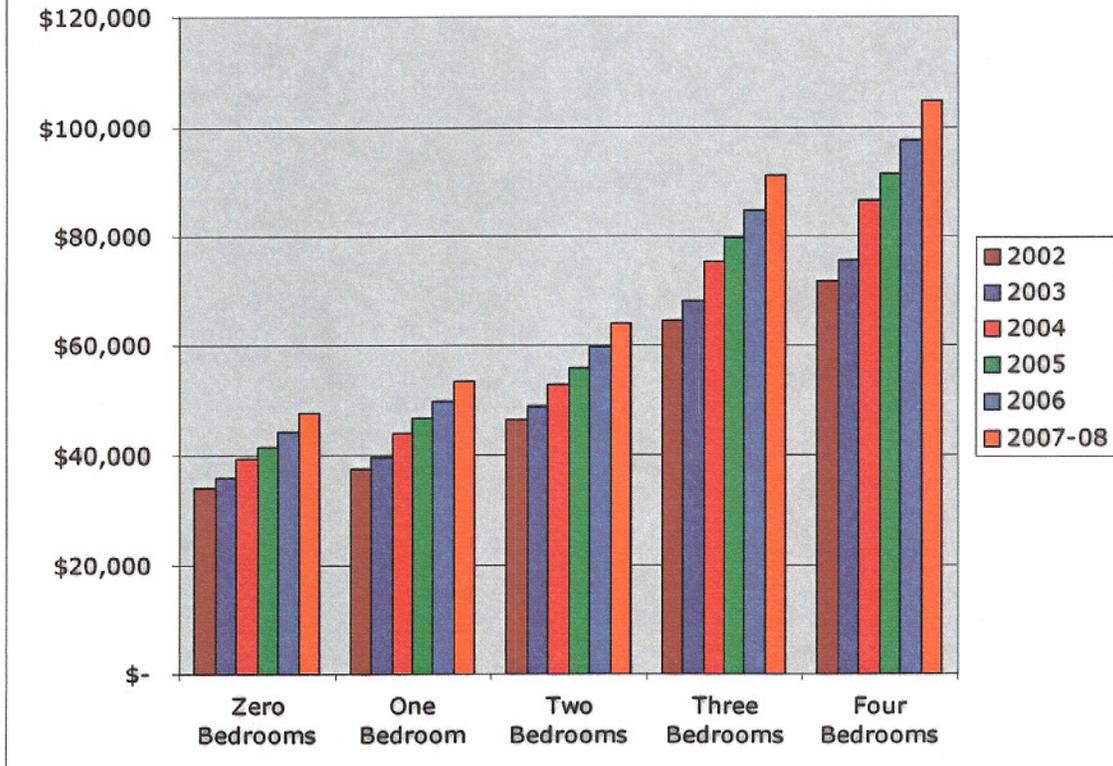
¹ Fair Market Rent is the 50th percentile (or median) rent in the market.

Hourly Wage Needed to Afford a One-Bedroom Unit Compared to Typical Hourly Wages Orange County 2007-08



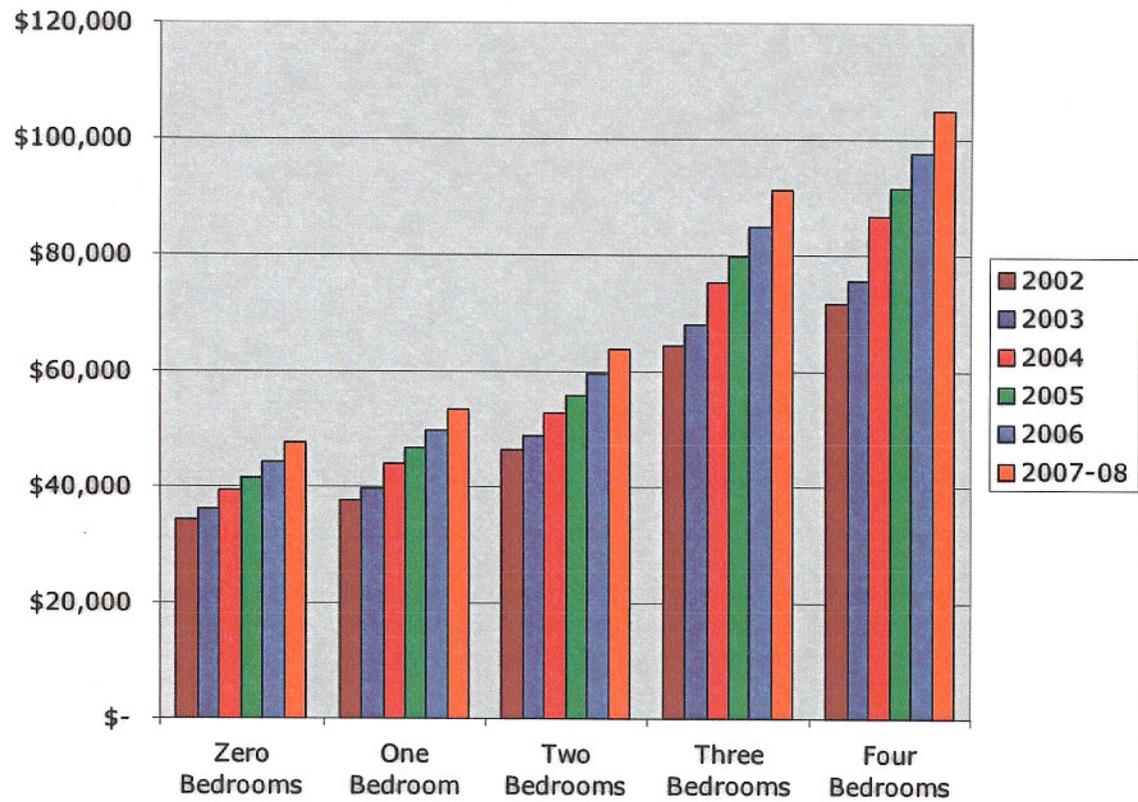
Source: California Employment Development Department and National Low Income Housing Coalition

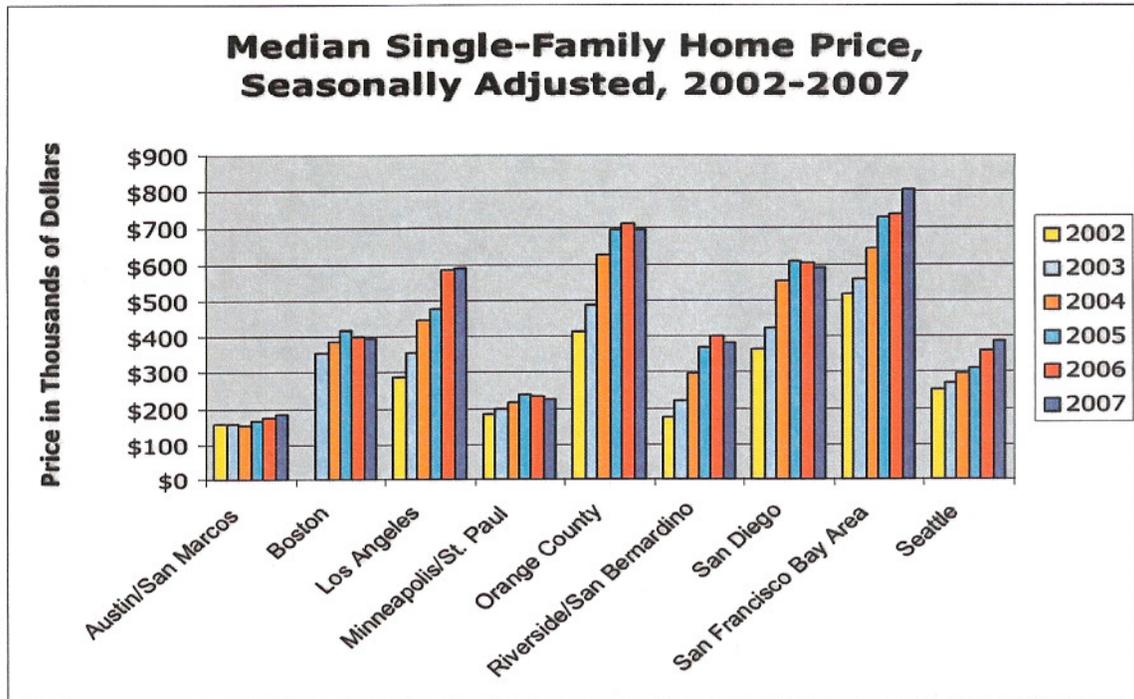
Annual Income Needed to Afford Fair Market Rent in Orange County, 2002-2008



Source: National Low Income Housing Coalition

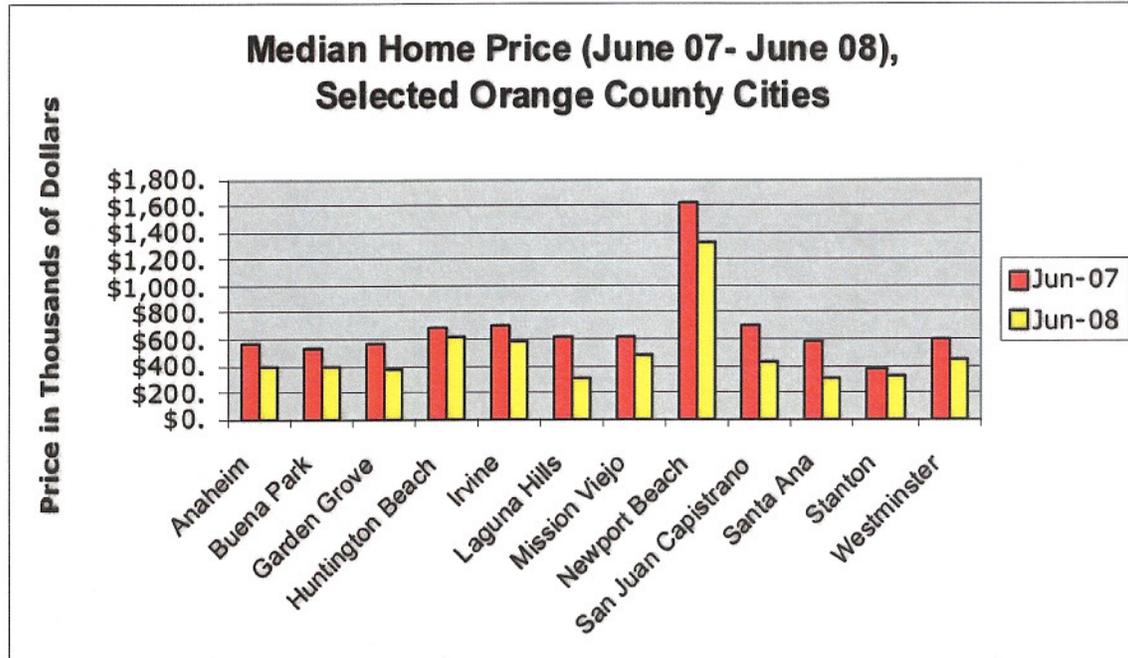
Annual Income Needed to Afford Fair Market Rent in Orange County, 2002-2008





Source: National Association of REALTORS

*Note: Data from National Association of Realtors is of Single Family Home Prices while California Association of Realtors data is of all homes, single family as well as condominiums and town-homes.



Source: California Association of Realtors



Orange County has sufficient affordable housing for all income levels and maintains a competitive home purchasing power of wages compared to other innovation-driven economies. *Orange County remains one of the most expensive places to purchase a home, even though prices are now dropping.*

CHARTER REVIEW COMMISSION TIMELINE:

Topic	8/18	9/01	9/15	10/06	10/20	11/03	11/17	12/01	12/15	1/06	1/19*	2/02	2/16*	Status
Consent Items Sects. 101-105 , 301, 306, ,312, 404, 405, 603, 604, & 606	X													Q
Section 200 – Council-Administrator Form of Government														ED
Section 300, Elective Offices Discussion on Elected Mayor				X										ED
Section 302 Council Compensation -				X										ED
Section 303 - Meetings Possible set by Ordinance or Resolutions		X												Q
Section 304 Subsection (b) Council control of all legal business of the city														D
Section 305 – Mayor’s Role – Review and discuss adding language on Mayor’s Rotation				X										ED
Section 307 Non-Interference with Administration														
Section 308 – Bonds -Compliance with State Law		X												Q
Section 309 City Attorney - Discuss Making Appointed														ED
Section 310 City Clerk - Discuss Making Appointed Format for Maintaining Records														ED
Section 311 – City Treasurer - Discuss Making Appointed Qualifications														ED
Section 312- Vacancies - What is Moral Turpitude?		X												Q
Section 313 - Conflict of Interest – Nepotism- See Municipal Code and Adm. Reg. 411		X												Q

Topic	8/18	9/01	9/15	10/06	10/20	11/03	11/17	12/01	12/15	1/06	1/19*	2/02	2/16*	Status
Section 400 – 404 City - Administrator /Asst. City Adm. Change/Update Titles - Hire/Fire Dept. Heads														ED
Sections 500-503 – Ordinances, Resolutions, Publication, Legal Notices - Second Reading of Ordinances		X												Q
Sections 600-602 -City Budget - Change in Fiscal Year Submission to Council 30 not 60 days		X												Q
Sections 605 - City Budget - Allow Capital Projects to be Carried forward from one FY to the Next		X												Q
Section 607, 608, 610, 611- Taxes Update to conform with State Law		X												Q
Section 609 – Estate Transfer Tax - Possible Elimination		X												Q
Section 612 – Measure C - Possibly Increase and Index Dollar Amount														ED-PH
Sections 613-614 – Contracts <ul style="list-style-type: none"> • Increase/Eliminate Dollar Amount & Possibly Index to CPI • Financial Viability of Bidders • Prevailing Wage Discussion 														ED
Section 615- City Franchises		X												Q
Section 616- Independent Audit - Higher Level Audit		X												Q
Section 617 – Infrastructure (c) Update Board Name														D
Article 7- Elections - Campaign Finance Reform														D
Section 800- Transitions – Review after Election Sections														D

Conflicts with Holiday & Rescheduled Council Meeting
 ** 5th Tues. of the Month-Possibility for Extra Meetings

Topic	8/18	9/01	9/15	10/06	10/20	11/03	11/17	12/01	12/15	1/06	1/19*	2/02	2/16*	Status
Section 801 – Definitions Possibly Eliminate Subsection (e) – Masculine includes Feminine		✗												Q
Section 802 – Charter Violations Discuss eliminating dollar amount & setting fines by ordinance/reso		✗												Q
Section 803- Property Rights Policy Question		✗												D

Items not included in the current Charter and Timeline will be reviewed and discussed at the appropriate time and before any final action is taken. If items have anything to do with the current sections of the Charter, they will be discussed at that time.

LEGEND	
Q	No Substantive Issue – Possibly Quick Decision
D	Discussion Needed
ED	Extended Discussion Needed
S	Straw Vote Taken
C	Completed
PH	Public Hearing
✗	Recommended Date for Discussion
	Date Unavailable

CHARTER REVIEW COMMISSION TIMELINE:

Topic	8/18	9/01	9/15	10/06	10/20	11/03	11/17	12/01	12/15	1/05	01/21*	2/02	2/18*	3/2	3/16	Status				
Consent Items Sects. 101-105 , 301, 404, 405, 603, 604, & 606	X		Town Hall Meeting on Sections 300,302, 304, 305, 306, 309, 310, 311, & 800 – Elected City					Town Hall Meeting – Section 612 – Measure C			Town Hall Meeting – Prevailing Wage		Town Hall Meeting – Overall Charter			S				
Section 200 – Council-Administrator Form of Government							X													ED
Section 300, Elective Offices Discussion on Elected Mayor					X	X														ED
Section 302 Council Compensation -					X	X														ED
Section 303 - Meetings Possible set by Ordinance or Resolutions		X																		Q
Section 304 Subsection (b) Council control of all legal business of the city					X	X														D
Section 305-306– Mayor’s Role – Review and discuss adding language on Mayor’s Rotation					X	X														ED
Section 307 Non-Interference with Administration									X											
Section 308 – Bonds -Compliance with State Law		X																		Q
Section 309 City Attorney - Discuss Making Appointed					X	X														ED
Section 310 City Clerk - Discuss Making Appointed Format for Maintaining Records				X	X											ED				
Section 311 – City Treasurer - Discuss Making Appointed Qualifications				X	X											ED				
Section 312- Vacancies – Moral Turpitude		X														Q				

Topic	8/18	9/01	9/15	10/06	10/20	11/03	11/17	12/01	12/15	1/05	01/21*	2/02	2/18*	3/2	3/16	Status				
Section 313 - Conflict of Interest – Nepotism- See Municipal Code and Adm. Reg. 411		X	Town Hall Meeting on Sections 300, 302, 304, 305, 306, 309, 310, 311, & 800 – Elected City					Town Hall Meeting – Section 612 – Measure C			Town Hall Meeting – Contracts & Prevailing		Town Hall Meeting - Overall Charter			Q				
Section 400 – 404 City - Administrator /Asst. City Adm. Change/Update Titles - Hire/Fire Dept. Heads							X													ED
Sections 500-503 – Ordinances, Resolutions, Publication, Legal Notices - Second Reading of Ordinances		X																		Q
Sections 600-602 -City Budget - Change in Fiscal Year Submission to Council 30 not 60 days		X																		Q
Sections 605 - City Budget - Allow Capital Projects to be Carried forward from one FY to the Next		X																		Q
Section 607, 608, 610, 611- Taxes Update to conform with State Law		X																		Q
Section 609 – Estate Transfer Tax - Possible Elimination		X																		Q
Section 612 – Measure C - Possibly Increase and Index Dollar Amount																				ED
Sections 613-614 – Contracts • Increase/Eliminate Dollar Amount & Possibly Index to CPI • Financial Viability of Bidders • Prevailing Wage Discussion															X					ED
Section 615- City Franchises		X																		Q
Section 616- Independent Audit - Higher Level Audit		X														Q				

* Meeting Moved to THURSDAY

Topic	8/18	9/01	9/15	10/06	10/20	11/03	11/17	12/01	12/15	1/05	01/21*	2/02	2/18*	3/2	3/16	Status				
Section 617 – Infrastructure (c) Update Board Name			Town Hall Meeting					Town Hall Meeting			Town Hall Meeting	X	Town Hall Meeting			D				
Article 7- Elections - Campaign Finance Reform						X													D	
Section 800- Transitions – Review after Election Sections					X	X														D
Section 801 – Definitions Possibly Eliminate Subsection (e) – Masculine includes Feminine		X																		Q
Section 802 – Charter Violations Discuss eliminating dollar amount & setting fines by ordinance/reso		X																		Q
Section 803- Property Rights Policy Question		X																		D
Proposed Miscellaneous Additions to the City Charter														X						ED
Review of Language														X		ED				

LEGEND	
Q	No Substantive Issue – Possibly Quick Decision
D	Discussion Needed
ED	Extended Discussion Needed
S	Straw Vote Taken
C	Completed
PH	Public Hearing
X	Recommended Date for Discussion

* Meeting Moved to THURSDAY

Huntington Beach City Charter

Incorporated, February 17, 1909

(Election February 9, 1909; 94 votes cast for incorporation and 25 votes against)

Charter Amendments

Charter Election Certified - Res. No. 773 Results 05/03/37...05/17/37

Amendments.....02/02/40

Amendments.....01/29/47

Amendments.....01/27/49

Amendments.....05/09/49

Revised.....05/01/50

New Charter.....02/10/66

Amendments.....01/18/71

Amendments.....06/05/75

Amendments.....12/10/76

Amendments.....07/17/78

Amendments.....(Consolidation November).....12/09/82

Amendments.....12/07/84

Amendments.....12/07/90

Amendments.....04/22/02

**CITY CHARTER
TABLE OF CONTENTS**

ARTICLE I. INCORPORATION AND POWERS OF THE CITY

- Section 100. Name
- Section 101. Seal
- Section 102. Boundaries
- Section 103. Powers of City
- Section 104. Construction
- Section 105. Intergovernmental Relations

ARTICLE II. FORM OF GOVERNMENT

- Section 200. Council-Administrator Form of Government

ARTICLE III. ELECTIVE OFFICES

- Section 300. City Council, Attorney, Clerk and Treasurer. Terms
- Section 301. Powers Vested in City Council
- Section 302. Compensation
- Section 303. Meetings and Location
- Section 304. Quorums, Proceedings and Rules of Order
- Section 305. Presiding Officer
- Section 306. Mayor Pro Tempore
- Section 307. Non-interference with Administration
- Section 308. Official Bonds
- Section 309. City Attorney. Powers and Duties
- Section 310. City Clerk. Powers and Duties
- Section 311. City Treasurer. Powers and Duties
- Section 312. Vacancies, Forfeitures and Replacement
- Section 313. Conflict of Interest, Nepotism

ARTICLE IV. APPOINTIVE OFFICES AND PERSONNEL

- Section 400. City Administrator. Composition, Term, Eligibility, Removal
- Section 401. Powers and Duties
- Section 402. Acting City Administrator
- Section 403. Personnel
- Section 404. Retirement System
- Section 405. Boards, Commissions and Committees

ARTICLE V. ORDINANCES AND RESOLUTIONS

- Section 500. Regular Ordinances. Enactment, Adoption, Publication, Amendment, When Effective and Codification
- Section 501. Emergency Ordinances
- Section 502. Resolutions
- Section 503. Publishing of Legal Notices

ARTICLE VI. FISCAL ADMINISTRATION

- Section 600. Fiscal Year
- Section 601. Annual Budget, Preparation by the City Administrator
- Section 602. Annual Budget. Submission to the City Council
- Section 603. Annual Budget. Public Hearing
- Section 604. Annual Budget. Further Consideration and Adoption
- Section 605. Annual Budget Appropriations
- Section 606. Determination of City Tax Rate
- Section 607. Tax Limits
- Section 608. Vote Required for Tax Measures
- Section 609. Real Estate Transfer Tax
- Section 610. Bonded Debt Limit
- Section 611. Revenue Bonds

*Section 612. Public Utilities and Parks and Beaches *

Section 613. Execution of Contracts
Section 614. Contracts on Public Works
Section 615. Granting of Franchises
Section 616. Independent Audit
Section 617. Infrastructure Fund

ARTICLE VII. ELECTIONS

Section 700. General Municipal Elections
Section 701. Special Municipal Elections
Section 702. Procedure for Holding Elections
Section 703. Initiative, Referendum and Recall
Section 704. Nomination Papers

ARTICLE VIII. MISCELLANEOUS

Section 800. Transition
Section 801. Definitions
Section 802. Violations
Section 803. Property Rights Protection Measure

(*) Following is a motion adopted by the City Council on July 11, 1994. Inclusion of this motion on this page of the Charter is for recordkeeping purposes. Should the City Council rescind this motion, reference to it on this page of the Charter must be removed: It is the intent of Charter Section 612, the Measure "C" amendment, that a vote of the people be the final approval of projects approved by the city for construction on park land or beaches. Therefore, all projects falling under the criteria of Charter Section 612 must obtain all city approvals prior to being submitted to a vote of the people. The cost for the ballot measure shall be borne by the applicant for the project. If the project requires a lease or other financial consideration, the terms and conditions of the lease and/or financial aspect of the project shall be included in the information provided for the Charter Section 612 vote. (City Council Minute Action of July 11, 1994)

CHARTER

We, the people of the City of Huntington Beach, State of California, do ordain and establish this Charter as the fundamental law of the City of Huntington Beach under the Constitution of the State of California.

ARTICLE I
INCORPORATION AND POWERS OF THE CITY

Section 100. NAME.

The municipal corporation now existing and known as the City of Huntington Beach shall remain and continue to exist as a municipal corporation under its present name of "City of Huntington Beach."

Section 101. SEAL.

The City shall have an official seal which may be changed from time to time by ordinance. The present official seal shall continue to be the official seal of the City until changed in the manner stated.

Section 102. BOUNDARIES.

The boundaries of the City shall continue as now established until changed in the manner authorized by law.

Section 103. POWERS OF CITY.

The City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter or in the Constitution of the State of California.

Section 104. CONSTRUCTION.

The general grant of power to the City under this Charter shall be construed broadly in favor of the City. The specific provisions enumerated in this Charter are intended to be and shall be interpreted as limitations upon the general grant of power and shall be construed narrowly. If any provisions of this Charter, or the application thereof to any person or circumstance is held invalid, the remainder of the Charter and the application of such provision to other persons or circumstances, shall not be affected thereby.

Section 105. INTERGOVERNMENTAL RELATIONS.

The City may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or agencies thereof, or the United States or any agency thereof.

ARTICLE II
FORM OF GOVERNMENT

Section 200. COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT.

The municipal government provided by this Charter shall be known as the Council-Administrator form of government.

ARTICLE III
ELECTIVE OFFICES

Section 300. CITY COUNCIL, ATTORNEY, CLERK AND TREASURER. TERMS.

The elective officers of the City shall consist of a City Council of seven members, a City Clerk, a City Treasurer and a City Attorney, all to be elected from the City at large at the times and in the manner provided in this Charter and who shall serve for terms of four years and until their respective successors qualify. Subject to the provisions of this Charter, the members of the City Council in office at the time this Charter takes effect shall continue in office until the expiration of their respective terms and until their successors are elected and qualified. Four members of the City Council shall be elected at the general municipal election held in 1966, and each fourth year thereafter. Three members of the City Council shall be elected at the general municipal election held in 1968, and each fourth year thereafter. No person shall be elected as a member of the City Council for more than two consecutive terms and no person who has been a member for more than two years of a term to which some other person was elected a member shall be elected to the City Council more than one further consecutive term.

Subject to the provisions of this Charter, the City Clerk, City Treasurer and City Attorney in office at the time this Charter takes effect shall continue in office until the expiration of their respective terms and the qualification of their successors. A City Clerk and City Treasurer shall be elected at the general municipal election held in 1968, and each fourth year thereafter. A City Attorney shall be elected in 1966, and each fourth year thereafter. The term of each member of the City Council, the City Clerk, the City Treasurer and the City Attorney shall commence on the first Monday following his election. Ties in voting among candidates for office shall be settled by the casting of lots.

Section 301. POWERS VESTED IN CITY COUNCIL.

All powers of the City shall be vested in the City Council except as otherwise provided in this Charter.

Section 302. COMPENSATION.

The members of the City Council including the Mayor shall receive as compensation for their services as such a monthly salary in the sum of One Hundred Seventy-five Dollars per month. In addition, each member of the City Council shall receive reimbursement on order of the City Council for Council authorized traveling and other expenses when on official duty upon submission of itemized expense accounts therefor. In addition, members shall receive such reasonable and adequate amounts as may be established by ordinance, which amounts shall be deemed to be reimbursement to them of other routine and ordinary expenses, losses and costs imposed upon them by virtue of their serving as City Councilmen.

Section 303. MEETINGS AND LOCATION.

(a) Regular Meetings. The City Council shall hold regular meetings at least twice each month at such time as it shall fix by ordinance or resolution and may adjourn or re-adjourn any regular meeting to a date and hour certain which shall be specified in the order of adjournment and when so adjourned each adjourned meeting shall be a regular meeting for all purposes. If the hour to which a meeting is adjourned is not stated in the order of adjournment, such meeting shall be held at the hour for holding regular meetings. If at any time any regular meeting falls on a holiday such regular meeting shall be held on the next business day.

(b) Special Meetings. A special meeting may be called at any time by the Mayor, or by a majority of the members of the City Council, by written notice to each member of the City Council and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered personally or by mail at least twenty-four hours before the time of such meeting as specified in the notice.

The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meeting. If any person entitled to such written notice files a written waiver of notice with the City Clerk, it may be dispensed with. Such waiver may be given by telegram. This notice requirement shall be considered fulfilled as to any person who is actually present at the meeting at the time it convenes. In the event of an emergency affecting the public peace, health or safety, a special meeting may be called as provided in this section with less than twenty-four hours written notice by the Mayor Pro Tem in the Mayor's absence or by any member of the City Council in the absence of both the Mayor and Mayor Pro Tem provided that the nature of the emergency is set forth in the minutes of the meeting.

(c) Place of Meetings. All regular meetings shall be held in the Council Chambers of the City or in such place within the City to which any such meeting may be adjourned. If, by reason of fire, flood or other emergency, it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place within the City as is designated by the Mayor, or, if he should fail to act, by a majority of the members of the City Council.

(d) Open Meetings. All regular and special meetings of the City Council shall be open and public, and all persons shall be permitted to attend such meetings, except that the provisions of this section shall not apply to executive sessions. Subject to the rules governing the conduct of City Council meetings, no person shall be denied the right to be heard by the City Council.

Section 304. QUORUMS, PROCEEDINGS AND RULES OF ORDER.

(a) Quorum. A majority of the members of the City Council shall constitute a quorum to do business but a lesser number may adjourn from time to time. In the absence of all the members of the City Council from any regular meeting or adjourned regular meeting, the City Clerk may declare the same adjourned to a stated day and hour. The City Clerk shall cause written notice of a meeting adjourned by less than a quorum or by the City Clerk to be delivered personally or by mail to each Council member at least twenty-four hours before the time to which the meeting is adjourned, or such notice may be dispensed with in the same manner as specified in this Charter for dispensing with notice of special meetings of the City Council.

(b) Proceedings. The City Council shall judge the qualification of its members as set forth by the Charter. It shall judge all election returns. Each member of the City Council shall have the power to administer oaths and affirmations in any investigation or proceeding pending before the City Council. The City Council shall have the power and authority to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it. Subpoenas shall be issued in the name of the City and be attested by the City Clerk. They shall be served and complied with in the same manner as subpoenas in civil actions. Disobedience of such subpoenas, or the refusal to testify (upon other than constitutional grounds), shall constitute a misdemeanor, and shall be punishable in the same manner as violations of this Charter are punishable. The City Council shall have control of all legal business and proceedings and all property of the legal department, and may employ other attorneys to take charge of or may contract for any prosecution, litigation or other legal matter or business.

(c) Rules of Order. The City Council shall establish rules for the conduct of its proceedings and evict or prosecute any member or other person for disorderly conduct at any of its meetings. Upon adoption of any ordinance, resolution, or order for payment of money, or upon the demand of any member, the City Clerk shall call the roll and shall cause the ayes and noes taken on the question to be entered in the minutes of the meeting.

Section 305. PRESIDING OFFICER.

At the Council meeting at which any Council member is installed following any general or special municipal election, and at any time when there is a vacancy in the office of Mayor, the City Council shall meet and shall elect one of its members as its presiding officer, who shall have the title of Mayor. The Mayor may make and second motions and shall have a voice and vote in all its proceedings. The Mayor shall be the official head of the City for all ceremonial purposes; shall have the primary but not the exclusive responsibility for interpreting the policies, programs and needs of the City government to the people, and as occasion requires, may inform the people of any major change in policy or program; and shall perform such other duties consistent with the office as may be prescribed by this Charter or as may be imposed by the City Council. The Mayor shall serve in such capacity at the pleasure of the City Council.

Section 306. MAYOR PRO TEMPORE.

The City Council shall also designate one of its members as Mayor Pro Tempore, who shall serve in such capacity at the pleasure of the City Council. The Mayor Pro Tempore shall perform the duties of the Mayor during the Mayor's absence or disability or at the Mayor's request.

Section 307. NON-INTERFERENCE WITH ADMINISTRATION.

Except as otherwise provided in this Charter, no member of the City Council shall order, directly or indirectly, the appointment by the City Administrator, or by any of the department heads in administrative service of the City, of any person to any office or employment, or removal therefrom. Except for the purpose of investigation and inquiry, the members of the City Council shall deal with the administrative service under the jurisdiction of the City Administrator solely through the City Administrator, and no member of the City Council shall give orders to any subordinate of the City Administrator, either publicly or privately.

Section 308. 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. A blanket bond may be used if it provides the same protection as the required separate bond would provide.

In all cases wherein an employee of the City is required to furnish a faithful performance bond, there shall be no personal liability upon, or any right to recover against, the employee's superior officer or other officer or employee or the bond of the latter, unless such superior officer, or other officer or employee is a party to the act or omission, or has conspired in the wrongful act directly or indirectly causing the loss.

Section 309. CITY ATTORNEY. POWERS AND DUTIES.

To become and remain eligible for City Attorney the person elected or 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 in this State for at least three years prior to his election or appointment. The City Attorney shall have the 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 of City ordinances and such state misdemeanors as the City has the power to prosecute, unless otherwise provided 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 civil actions or proceedings in which such officer or employee is concerned or is a party for any act arising out of his employment or by reason of his official capacity.
- (d) Attend all regular meetings of the City Council, unless excused, and give his advice or opinion orally or 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 and insurance given to the City, endorsing his approval thereon in writing.
- (f) Prepare any and all proposed ordinances and City Council resolutions and amendments thereto.
- (g) Devote such time to the duties of his office and at such place as may be specified by the City Council.
- (h) Perform such legal functions and duties incident to the execution of the foregoing powers as may be necessary.
- (i) Surrender to his successor all books, papers, files, and documents pertaining to the City's affairs.

Section 310. CITY CLERK. POWERS AND DUTIES.

The City Clerk shall have the power and shall 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.
- (c) Maintain separate records of all written contracts and official bonds.
- (d) Keep all books and records in his possession properly indexed and open to public inspection when not in actual use.
- (e) Be the custodian of the seal of the City.
- (f) Administer oaths or affirmations, take affidavits and depositions pertaining to the affairs and business of the City and certify copies of official records.

(g) 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.

(h) Have charge of all City elections.

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

The City Clerk may, subject to the approval of the City Council, appoint such deputy or deputies to assist him or act for him, at such salaries or compensation as the Council may by ordinance or resolution prescribe.

The minimum qualifications for the position of City Clerk shall be three years of relevant work experience which demonstrates record management skills and practice of administrative procedures. (12/7/84)

Section 311. CITY TREASURER. POWERS AND DUTIES.

The City Treasurer shall have the power and shall be required to:

(a) Receive on behalf of the City all taxes, assessments, license fees and other revenues of the City, or for the collection of which the City is responsible, and receive all taxes or other money receivable by the City from the County, State or Federal governments, or from any court, or from any office, department or agency of the City.

(b) Have and keep 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 or cause to be deposited all funds coming into his 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 Administrator, 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.

(c) Pay out moneys only on proper orders or warrants in the manner provided for in this Charter.

(d) Prepare and submit to the Director of Finance monthly written reports of all receipts, disbursements and fund balances, and shall file copies of such reports with the City Administrator and City Council.

(e) Perform such other duties consistent with this Charter as may be required by ordinance or resolution of the City Council.

The City Treasurer may, subject to the approval of the City Council, appoint such deputy or deputies to assist him or act for him, at such salaries or compensation as the Council may by ordinance or resolution prescribe.

The minimum qualifications for the position of City Treasurer shall be a combination of education and experience in an area relative to fiscal management. (Charter Amendment 12/7/84)

Section 312. VACANCIES, FORFEITURES AND REPLACEMENT.

(a) Vacancies. A vacancy in the City Council or in any other office designated as elective by this Charter, from whatever cause arising, shall be filled by appointment by the City Council.

(b) Forfeiture. If a member of the City Council is absent from all regular meetings of the City Council for a period of thirty consecutive days 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, the office shall become vacant. If an elected City officer is convicted of a crime involving moral turpitude or ceases to be an elector of the City, the office shall become vacant. The City Council shall declare the existence of such vacancy. 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 the office under the City Government.

(c) Replacement. In the event it shall fail to fill a vacancy by appointment within sixty days after such office shall become vacant, the City Council shall forthwith cause an election to be held to fill such vacancy for the remainder of the unexpired term.

Section 313. CONFLICT OF INTEREST, NEPOTISM.

(a) Conflict of Interest. The City Council shall adopt or approve rules and regulations regulating conflicts of interest and promoting fair dealing in all City business.

(b) 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 the City Administrator or any department head or other officer having appointive power appoint any relative of such person or of any Council member within such degree to any such position.

This provision shall not affect the employment or promotional status of a person who has attained a salaried position with the City prior to the existence of a situation contemplated by this provision; however, Council members or officers with appointive powers in such a situation shall disqualify themselves from all decisions affecting the employment and promotional status of such person.

ARTICLE IV

APPOINTIVE OFFICES AND PERSONNEL

Section 400. CITY ADMINISTRATOR. COMPOSITION, TERM, ELIGIBILITY, REMOVAL.

(a) Composition. There shall be a City Administrator who shall be the chief administrative officer of the City.

(b) Term. The Administrator shall be appointed by the affirmative vote of at least a majority of the members of the City Council and shall serve at the pleasure of the City Council; provided, however, that the person occupying the office shall not be removed from office except as herein provided.

(c) Eligibility. The Administrator shall be chosen on the basis of executive and administrative qualifications, with special reference to actual experience in and knowledge of accepted practice as regards the duties of the office as herein set forth. No person shall be eligible to be appointed City Administrator or Acting City Administrator while serving as a member of the City Council nor within one year following the termination of membership on the City Council.

(d) Removal. The City Administrator shall not be removed from office during or within a period of ninety days next succeeding any municipal election at which a member of the City Council is elected. At any other time the City Administrator may be removed only at a regular meeting of the City Council and upon the affirmative vote of a majority of the members of the City Council. At least thirty days prior to the effective date of removal, the City Administrator shall be furnished with a written notice stating the Council's intentions and, if requested by the City Administrator, the reasons therefor. Within seven days after receipt of such notice, the City Administrator may by written notification to the City Clerk request a public hearing before the City Council, in which event the Council shall fix a time for a public hearing which shall be held at its regular meeting place before the expiration of the thirty-day period above referred to. The City Administrator shall appear and be heard at such hearing. After furnishing the City Administrator with written notice of the intended removal, the City Council may suspend the Administrator from duty, but his compensation shall continue until removal as herein provided. In removing the City Administrator, the City Council shall use its uncontrolled discretion and its action shall be final and shall not depend upon any particular showing or degree of proof at the hearing, the purpose of which is to allow the City Council and the City administrator to present to each other and to the public all pertinent facts prior to the final action of removal.

Section 401. POWERS AND DUTIES.

Except as otherwise provided in this Charter, the City Administrator shall be responsible to the City Council for the proper administration of all affairs of the City. Without limiting this general grant of powers and responsibilities, the City Administrator shall have the power and be required to:

(a) Appoint, promote, demote, suspend or remove department heads, officers and employees of the City except elective officers. However, no department head shall be appointed or removed until the City Administrator shall first have reviewed such appointment or removal with the City Council and have received approval for such appointment or removal by a majority vote of the full City Council.

- (b) Prepare the budget annually, submit it to the City Council, and be responsible for its administration upon adoption.
- (c) Prepare and submit to the City Council as of the end of each fiscal year, a complete report on the finances of the City, and annually or more frequently, a current report of the principal administrative activities of the City.
- (d) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable.
- (e) Maintain a centralized purchasing system for all City offices, departments and agencies.
- (f) Prepare, administer and enforce rules and regulations recommended to and adopted by the City Council governing the contracting for, purchase, inspection, storage, inventory, distribution and disposal of all supplies, materials and equipment required by any office, department or agency of the City government.
- (g) Be responsible for the compliance by the City with the laws of the State pertaining to the City, the provisions of this Charter and the ordinances, franchises and rights of the City.
- (h) Subject to policy established by the City Council, 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 may deem necessary or proper for the general conduct of the administrative offices and departments of the City under his jurisdiction.
- (i) Perform such other duties consistent with this Charter as may be required by the City Council.

Section 402. ACTING CITY ADMINISTRATOR.

During any temporary absence or disability of the City Administrator, the Assistant City Administrator shall serve as Acting City Administrator. During any temporary absence or disability of both the City Administrator, and the Assistant City Administrator, the City Administrator shall appoint one of the other officers or department heads of the City to serve as Acting City Administrator. In the event the City Administrator fails to make such appointment, such appointment may be made by the City Council.

Section 403. PERSONNEL.

In addition to the City Council, a City Clerk, a City Treasurer, a City Attorney and City Administrator, the officers and employees of the City shall consist of such other officers, assistants, deputies and employees as the City Council may provide by ordinance or resolution. The City Council shall establish such reasonable compensation and fringe benefits as are appropriate by ordinance or resolution for such offices, officials and employees except as herein provided.

The City Council shall maintain by ordinance a comprehensive personnel system for the City. The City Administrator, Assistant City Administrator and any officers designated as elective by the Charter shall be exempt. The system shall consist of the establishment of minimum standards of employment and qualifications for the various classes of employment and procedures to be followed in advancement, demotion, suspension and discharge of employees included within the system, as the City Council shall determine to be for the best interest of the public service. The ordinance shall designate the appointive officers and employees who shall be included within the system. By subsequent ordinances the City Council may amend the system or the list of appointive officers and employees included within the system, provided, however, that once included within the system, no officer or employee shall be withdrawn therefrom (unless the office or position is actually abolished or eliminated) without the approval of such withdrawal at a regular or special election by a majority of the voters voting on such proposition. The system shall comply with all other provisions of this Charter.

Section 404. RETIREMENT SYSTEM.

The City shall participate in a retirement system.

Section 405. **BOARDS, COMMISSIONS AND COMMITTEES.**

The City Council shall establish such boards, commissions and committees as are deemed necessary for the orderly functioning of the City. All such boards, commissions and committees shall report directly to the City Council.

ARTICLE V
ORDINANCES AND RESOLUTIONS

Section 500. **REGULAR ORDINANCES. ENACTMENT, ADOPTION, PUBLICATION, AMENDMENT, WHEN EFFECTIVE AND CODIFICATION.**

(a) **Enactment.** In addition to such other acts of the City Council as are required by this Charter to be taken by ordinance, every act of the City Council establishing a fine or other penalty, or granting a franchise, shall be by ordinance. The enacting clause of all ordinances shall be substantially as follows: "The City Council of the City of Huntington Beach does ordain as follows:." No order for the payment of money shall be adopted or made at other than a regular or adjourned regular meeting. Upon introduction and second reading, an ordinance shall be read by title only. Unless a higher vote is required by other provisions of this Charter, the affirmative vote of at least four of the City Council shall be required for the enactment of any ordinance or for the making or approving of any order for the payment of money. All ordinances shall be signed by the Mayor and attested by the City Clerk.

(b) **Adoption.** A regular ordinance shall be adopted only at a regular or adjourned regular meeting held no less than five days after its introduction. In the event that any ordinance is altered after its introduction, it shall be finally adopted only at a regular or adjourned regular meeting held no less than five days after the date it was so altered. The correction of typographical or clerical errors shall not constitute the making of an alteration within the meaning of the foregoing sentence.

(c) **Publication.** The City Clerk shall cause each ordinance to be posted in three places designated by the City Council within the City and to be published by title with a brief summary at least once within fifteen days after its adoption in a daily, semiweekly or weekly newspaper, published in the County or the City and circulated in the City, which is selected by the City Council for that purpose.

(d) **Amendment.** The amendment of any section or subsection of an ordinance may be accomplished solely by the re-enactment of such section or subsection at length, as amended.

(e) **When Effective.** Every ordinance shall become effective thirty days from and after the date of its adoption, except the following, which shall take effect upon adoption:

- (1) An ordinance calling or otherwise relating to an election;
- (2) An improvement proceeding ordinance adopted under some special law or procedural ordinance relating thereto;
- (3) An ordinance declaring the amount of money necessary to be raised by taxation, or fixing the rate of property taxation, or levying the annual tax upon property.
- (4) An emergency ordinance adopted in the manner provided in this Charter.

(f) **Codification.** Detailed regulations pertaining to any subject and comprehensive codifications of valid ordinances may be adopted by reference, with the same effect as an ordinance, in the manner set forth herein; however, such regulations and codifications need not be published in the manner required for other ordinances, but not less than three copies thereof shall be filed for use and examination by the public in the office of the City Clerk prior to adoption. Ordinances codified shall be repealed as of the effective date of the codification. Amendments to the code shall be enacted by ordinance.

Section 501. **EMERGENCY ORDINANCES.**

Any ordinance declared by the City Council to be necessary as an emergency measure for the immediate preservation of the public peace, health, or safety, and containing a statement of the reasons for its urgency, may be adopted in the manner provided in Section 500 except that such emergency ordinance may be introduced, enacted and adopted at one and the same regular or special meeting and shall take effect immediately upon adoption if passed by at least five affirmative votes.

Section 502. RESOLUTIONS.

The City Council may act by resolution or minute order in all actions not required by this Charter to be taken by ordinance.

Section 503. PUBLISHING OF LEGAL NOTICES.

The City Council shall cause to be published all legal notices and other matters required to be published by law in a daily, semiweekly or weekly newspaper published in the County or the City and circulated in the City which is selected by the City Council for that purpose. No defect or irregularity in proceedings taken under this section shall invalidate any publication where it is otherwise in conformity with this Charter or law or ordinance.

ARTICLE VI

FISCAL ADMINISTRATION

Section 600. FISCAL YEAR.

The fiscal year of the City shall be from July 1 to June 30 unless otherwise established by ordinance.

Section 601. ANNUAL BUDGET, PREPARATION BY THE CITY ADMINISTRATOR.

At such date as the City Administrator shall determine, each board or commission and each department head shall furnish to the City Administrator, personally, or through the Director of Finance, estimates of the department's, board's or commission's revenue and expenditures for the ensuing fiscal year, detailed in such manner as may be prescribed by the City Administrator. In preparing the proposed budget, the City Administrator shall review the estimates, hold conferences thereon with the respective department heads, boards or commissions as necessary, and may revise the estimates as may be deemed advisable.

Section 602. ANNUAL BUDGET. SUBMISSION TO THE CITY COUNCIL.

The City Administrator shall submit the proposed budget to the City Council at least sixty days prior to the beginning of each fiscal year. After reviewing the proposed budget and making such revisions as it may deem advisable, the City Council shall hold a public hearing thereon at least fifteen days prior to the beginning of each fiscal year and shall cause to be published a notice thereof not less than ten days prior to said hearing. Copies of the proposed budget shall be available for inspection by the public in the office of the City Clerk at least ten days prior to said hearing.

Section 603. ANNUAL BUDGET. PUBLIC HEARING.

At the time so advertised or at any time to which such public hearing shall from time to time be adjourned, the City Council shall hold a public hearing on the proposed budget, at which interested persons desiring to be heard shall be given such opportunity.

Section 604. ANNUAL BUDGET. FURTHER CONSIDERATION AND ADOPTION.

At the conclusion of the public hearing the City Council shall further consider the proposed budget and make any revisions thereof that it may deem advisable and on or before the last day of the fiscal year it shall adopt the budget with revisions, if any, by the affirmative vote of at least a majority of the total members of the Council. Upon final adoption, the budget shall be in effect for the ensuing fiscal year. Copies thereof, certified by the City Clerk, shall be filed with the City Administrator, Director of Finance, City Treasurer and the person retained by the City Council to perform the post audit function, and a further copy shall be placed, and shall remain on file in the office of the City Clerk where it shall be available for public inspection. The budget so certified shall be reproduced and copies made available for the use of the public and of departments, offices and agencies of the City.

Section 605. ANNUAL BUDGET APPROPRIATIONS.

From the effective date of the budget, the several amounts stated therein as proposed expenditures shall be and become appropriated to the several departments, offices and agencies for the respective objects and purposes therein named; provided, however, that the City Administrator may transfer funds from one object or purpose to another within the same

department, office or agency. All appropriations shall lapse at the end of the fiscal year to the extent that they shall not have been expended or lawfully encumbered.

At any public meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative vote of at least a majority of the total members of the City Council.

Section 606. DETERMINATION OF CITY TAX RATE.

The City Council shall prescribe by ordinance for the assessment, levy and collection of taxes upon property which is taxable for municipal purposes. If the City Council fails to fix the rate and levy taxes on or before August 31 in any year, the rate for the next preceding fiscal year shall thereupon be automatically adopted and a tax at such rate shall be deemed to have been levied on all taxable property in the City for the current fiscal year.

Section 607. TAX LIMITS.

(a) The City Council shall not levy a property tax for municipal purposes in excess of One Dollar annually on each One Hundred Dollars of the assessed value of taxable property in the City, except as otherwise provided in this section, unless authorized by the affirmative vote of a majority 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 not subject to the above limitation, if no other provision for payment thereof is made:

1. A tax sufficient to meet all liabilities of the City of 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 for the retirement system in which the City participates, due and unpaid or to become due during the ensuing fiscal year.

(c) Special levies, in addition to the above and not subject to the above limitation, may be made annually, based on City Council approved estimates, for the following specific purposes, but not to exceed the following respective limits for those purposes for which limits are herein set forth, to wit: parks and recreation and human services not to exceed \$0.20 per One Hundred Dollars; Libraries not to exceed \$0.15 per One Hundred Dollars; promotional interests and cultural affairs not to exceed \$0.07 per One Hundred Dollars; and civil defense and disaster preparedness not to exceed \$0.03 per One Hundred Dollars. The proceeds of any special levy shall be used for no other purpose than that specified.

Section 608. VOTE REQUIRED FOR TAX MEASURES.

No tax, property tax, or other measure whose principal purpose is the raising of revenue, or any increase in the amount thereof, shall be levied, enacted or established except by ordinance adopted by the affirmative vote of at least five (5) members of the City Council; provided, however, that any tax levied or collected pursuant to Section 607(b) of this Charter shall be exempt from the minimum voting requirement of this section.

This section shall not apply to any license, permit, or any other fee or charge whose principal purpose is to pay or reimburse the City for the cost of performing any regulatory function of the City under its police power in connection with the City's duty to preserve or maintain the public peace, health, safety and welfare.

This section shall not apply to any user or service fee or charge provided such fee or charge is directly related to such use or service, is charged to the user or person receiving such service, and is to pay or reimburse the City for the costs of providing such use or service. This section shall not apply to any fee or charge relating to any franchise or proprietary function of the City.

Section 609. REAL ESTATE TRANSFER TAX.

The City Council shall not levy a tax on the transfer or conveyance of any interest in real property unless authorized by the affirmative vote of a majority of the electors voting on a proposition submitted to the electors to authorize such tax at a general or special election.

Section 610. BONDED DEBT LIMIT.

The City shall not incur an indebtedness evidenced by general obligation bonds which shall in the aggregate exceed the sum of 12 percent of the total assessed valuation, for purposes of City taxation, of all the real and personal property within the City.

No bonded indebtedness which shall constitute a general obligation of the City may be created unless authorized by the affirmative vote of the majority required by law of the electors voting on such proposition at any election at which the question is submitted to the electors.

Section 611. REVENUE BONDS.

Bonds which are payable only out of such revenues, other than taxes, as may be specified in such bonds, may be issued when the City Council by ordinance shall have established a procedure for the issuance of such bonds. Such bonds, payable only out of revenues, shall not constitute an indebtedness or general obligation of the City. No such bonds payable out of revenues shall be issued without the assent of the majority of the voters voting upon the proposition for issuing the same at an election at which such proposition shall have been duly submitted to the registered voters of the City.

It shall be competent for the City to make contracts and covenants for the benefit of the holders of any such bonds payable only from revenues and which shall not constitute a general obligation of the City for the establishment of a fund or funds, for the maintaining of adequate rates or charges, for restrictions upon further indebtedness payable out of the same fund or revenues, for restrictions upon transfer out of such fund, and other appropriate covenants. Money placed in any such special fund for the payment of principal and/or interest on any issue of such bonds or to assure the application thereof to a specific purpose shall not be expended for any other purpose whatever except for the purpose for which such special funds were established and shall be deemed segregated from all other funds of the City and reserved exclusively for the purpose for which such special fund was established until the purpose of its establishment shall have been fully accomplished.

Section 612. PUBLIC UTILITIES AND PARKS AND BEACHES.

(a) No public utility or park or beach or portion thereof now or hereafter owned or operated by the City shall be sold, leased, exchanged or otherwise transferred or disposed of unless authorized by the affirmative votes of at least a majority of the total membership of the City Council and by the affirmative vote of at least a majority of the electors voting on such proposition at a general or special election at which such proposition is submitted.

(b) No golf course, driving range, road, building over three thousand square feet in floor area nor structure costing more than \$100,000.00 may be built on or in any park or beach or portion thereof now or hereafter owned or operated by the City unless authorized by the affirmative votes of at least a majority of the total membership of the City Council and by the affirmative vote of at least a majority of the electors voting on such proposition at a general or special election at which such proposition is submitted.

(c) Section 612(a) and 612(b) shall not apply;

(1) to libraries or piers;

(2) to any lease, franchise, concession agreement or other contract where;

- the contract is to perform an act or provide a service in a public park or beach AND

- such act was being performed or service provided at the same location prior to January 1, 1989 AND

- the proposed lease, franchise, concession agreement or other contract would not increase the amount of parkland or beach dedicated to or used by the party performing such act or providing such service.

(d) If any section, subsection, part, subpart, paragraph, clause or phrase of this amendment, or any amendment or revision of this amendment, is for any reason held to be invalid or unconstitutional, the remaining sections, subsections, parts, subparts, paragraphs, clauses or phrases shall not be affected but shall remain in full force and effect. (12/7/90)

Section 613. EXECUTION OF CONTRACTS.

Except as hereinafter provided, the City shall be bound by a contract only if it is made in writing, approved by the City Council and signed on behalf of the City by the Mayor and City Clerk or by a City officer designated by the City Council and only upon the direction of the City Council. Exceptions to this procedure are as follows:

(a) By ordinance or resolution the City Council may authorize the City Administrator or other officer to bind the City, with or without a written contract, for the acquisition of equipment, materials, supplies, labor, services or other items included within the budget approved by the City Council, and may impose a monetary limit upon such authority.

(b) By ordinance or resolution, the City Council may provide a method for the sale or exchange of personal property not needed in the City service or not fit for the purpose for which intended, and for the conveyance of title thereto.

(c) Contracts for the sale of the products, commodities or services of any public utility owned, controlled or operated by the City may be made by the manager of such utility or by the head of the department or City Administrator upon forms approved by the City Administrator and at rates fixed by the City Council.

Section 614. CONTRACTS ON PUBLIC WORKS.

Except as hereinafter expressly provided, every contract involving an expenditure of more than Twenty-five Thousand Dollars (\$25,000) for the construction or improvement (excluding maintenance and repair) of public buildings, works, streets, drains, sewers, utilities, parks and playgrounds, and each separate purchase of materials or supplies for the same, where the expenditure required for such purchase shall exceed the sum of Twenty-five Thousand Dollars (\$25,000), shall be let to the lowest responsible bidder after notice by publication in accordance with Section 503 by two or more insertions, the first of which shall be at least ten days before the time for opening bids.

The City Council may reject any and all bids presented and may readvertise in its discretion. After rejecting bids, or if no bids are received, or without advertising for bids if the total amount of the contract or project is less than Twenty-five Thousand Dollars (\$25,000), the City Council may declare and determine that in its opinion, the work in question may be performed better or more economically by the City with its own employees, or that the materials or supplies may be purchased at lower price in the open market, and after the adoption of a resolution to this effect by the affirmative vote of a majority of the total members of the City Council, it may proceed to have said work done or such materials or supplies purchased in the manner stated without further observance of the provisions of this section.

All public works contracts exceeding the sum of Twenty-five Thousand Dollars (\$25,000) may be let and purchases exceeding the sum of Twenty-five Thousand Dollars (\$25,000) may be made without advertising for bids if such work or the purchase of such materials or supplies 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 at least five affirmative votes of the City Council.

Projects for the extension, replacement or expansion of the transmission or distribution system of any existing public utility operated by the City or for the purchase of supplies or equipment for any such project or any such utility may be excepted from the requirements of this section by the affirmative vote of a majority of the total members of the City Council.

Section 615. GRANTING OF FRANCHISES.

The City Council shall by ordinance regulate the granting of franchises for the City.

Section 616. INDEPENDENT AUDIT.

The City Council shall provide for an independent annual audit of all City accounts and may provide for such more frequent audits as it deems necessary. Such audits shall be made by a

certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. The Council may, without requiring competitive bids, designate such accountant or firm annually provided that the designation for any particular fiscal year shall be made no later than thirty days after the beginning of such fiscal year. As soon as practicable after the end of the fiscal year, a final audit and report shall be submitted by such accountant to the City Council, one copy thereof to be distributed to each member. Additional copies of the audit shall be placed on file in the office of the City Clerk where they shall be available for inspection by the general public, and a copy of the financial statement as of the close of the fiscal year shall be published in the official newspaper.

Section 617. INFRASTRUCTURE FUND.

(a) All revenue raised by vote of the electors or imposed by vote of the City Council on or after March 5, 2002, by a measure which states that the revenue to be raised is for the purpose of infrastructure, as said term is defined in this paragraph, shall be placed in a separate fund entitled "Infrastructure Fund." The term "Infrastructure" shall mean long-lived capital assets that normally are stationary in nature and normally can be preserved for significantly greater number of years. They include storm drains, storm water pump stations, alleys, streets, highways, curbs and gutters, sidewalks, bridges, street trees, landscaped medians, parks, beach facilities, playgrounds, traffic signals, streetlights, block walls along arterial highways, and all public buildings and public ways. Interest earned on monies in the Infrastructure Fund shall accrue to that account. Monies in said Fund shall be utilized only for direct costs relating to infrastructure improvements or maintenance, including construction, design, engineering, project management, inspection, contract administration and property acquisition. Monies in said Fund shall not be transferred, loaned or otherwise encumbered for any other purpose.

(b) Revenues placed in the Infrastructure Fund shall not supplant existing infrastructure funding. The average percentage of general fund revenues utilized for infrastructure improvements and maintenance, for the five- (5) year period of 1996 to 2001, is and was 14.95%. Expenditures for infrastructure improvements and maintenance, subsequent to 2001, shall not be reduced below 15% of general fund revenues based on a five- (5) year rolling average.

(c) The City Council shall by ordinance establish a Citizens Infrastructure Advisory Board to conduct an annual review and performance audit of the Infrastructure Fund and report its findings to the City Council prior to adoption of the following fiscal-year budget.

ARTICLE VII ELECTIONS

Section 700. GENERAL MUNICIPAL ELECTIONS.

General municipal elections shall be held in the city on the first Tuesday after the first Monday in November in each even-numbered year. (12/9/82)

Section 701. SPECIAL MUNICIPAL ELECTIONS.

All other municipal elections that may be held by authority of this Charter, or of any law, shall be known as special municipal elections.

Section 702. PROCEDURE FOR HOLDING ELECTIONS.

All elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exists or hereafter may be amended, for the holding of municipal elections, so far as the same are not in conflict with this Charter.

Section 703. INITIATIVE, REFERENDUM AND RECALL.

There are hereby reserved to the electors of the City the powers of the initiative and referendum and of the recall of municipal elective officers. The provisions of the Elections Code of the State of California, as the same now exists or hereafter may be amended, governing the initiative and referendum and the recall of municipal officers, shall apply to the use thereof in the City so far as such provisions of the Elections Code are not in conflict with the provisions of this Charter.

Section 704. NOMINATION PAPERS.

Nomination papers for candidates for elective municipal office must be signed by not less than twenty nor more than thirty electors of the City.

ARTICLE VIII
MISCELLANEOUS

Section 800. TRANSITION.

Elective officers and elective officers whose offices are made appointive of the City shall continue to hold such offices until the completion of their current terms and the election or appointment and qualification of their respective successors under this Charter. All boards, commissions and committees presently in existence shall continue to act in accordance with their original grant of authority until such time as the City Council adopts appropriate ordinances pertaining to their activities or for one year, whichever occurs first. All lawful ordinances, resolutions, rules and regulations, and portions thereof, in force at the time this Charter takes effect and not in conflict or inconsistent herewith, are hereby continued in force until the same shall have been duly repealed, amended, changed or superseded by proper authority.

Section 801. DEFINITIONS.

Unless the provisions or the context otherwise requires, as used in this Charter:

- (a) "Shall" is mandatory, and "may" is permissive.
- (b) "City" is the City of Huntington Beach and "department," "board," "commission," "agency," "officer," or "employee" is a department, board, commission, agency, officer or employee, as the case may be, of the City of Huntington Beach.
- (c) "County" is the County of Orange.
- (d) "State" is the State of California.
- (e) The masculine includes the feminine and the feminine includes the masculine.
- (f) The singular includes the plural and the plural the singular.
- (g) "Person" includes firm and corporation.

Section 802. VIOLATIONS.

The violation of any provision of this Charter shall be a misdemeanor and shall be punishable upon conviction by a fine not exceeding Five Hundred Dollars (\$500) or by imprisonment for a term of not exceeding six months or by both such fine and imprisonment, and each day that any such violation continues shall constitute a separate violation.

Section 803. PROPERTY RIGHTS PROTECTION MEASURE.

- (a) The City shall not enact or enforce any measure which mandates the price or other consideration payable to the owner in connection with the sale, lease, rent, exchange or other transfer by the owner of real property. Any such measure is hereby repealed.
- (b) The word "mandates" as used in subsection (a) includes any measure taken by ordinance, resolution, administrative regulation or other action of the City to establish, continue, implement or enforce any control or system of controls on the price or other terms on which real property in the city may be offered, sold, leased, rented, exchanged or otherwise transferred by its owner. The words "real property" as used in subsection (a) refer to any parcel of land or site, either improved or unimproved, on which a dwelling unit or residential accommodation is or may be situated for use as a home, residence or sleeping place.
- (c) This Section 803 shall not apply to:
 - (1) any real property which contains serious health, safety, fire or building code violations, excluding those caused by disasters, for which a civil or criminal citation has been issued by the City and remains unabated for six months or longer;
 - (2) any real property owned by a public entity, and real property where the owner has agreed by contract with the public entity, including the City and any of its related agencies, to accept a financial contribution or other tangible benefit including without limitation, assistance under the Community Redevelopment Law;
 - (3) any planning or zoning power of the City as relates to the use, occupancy or improvement of real property and to any real property which the City or any of its related agencies may acquire by eminent domain, purchase, grant or donation;

- (4) any power of the City to require a business license for the sale or rental of real property, whether for regulation or general revenue purposes;
- (5) any dwelling unit or accommodation in any hotel, motel or other facility when the transient occupancy of that dwelling unit or accommodation is subject to a transient occupancy tax; or
- (6) to impair the obligation of any contract entered into prior to the enactment of this Section 803 or otherwise required by State law."

COMMISSIONER BIXBY'S PROPOSALS:

Attached is information submitted by Commissioner Mark Bixby that relates to the Charter Sections scheduled for the Commission's September 1 Meeting.

The Charter Sections scheduled for September 1 are: 303, 308, 312, 313, 500-503, 600-602, 605, 607-611, 615-616, and 800-803

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 303 (Meetings and Locations) or add new section to address closed sessions.

Statement of Issue: Improve accountability and transparency by requiring all closed session actions to occur by roll call votes to be publicly disclosed when the matter is finalized. Also requires electronic recordings of the closed session to be kept for a period of at least two years.

Recommended Action: Motion to:

Amend Huntington Beach charter section 303 (Meetings and Locations) or add new section as follows:

The City Council and other city public boards and commissions may meet in legally authorized closed sessions as permitted by the Ralph M. Brown Act. All actions taken in closed session shall be by roll call vote, and each individual vote shall be made public at the meeting at which it is taken or at the next public meeting, except as set forth following:

Votes taken at such sessions pertaining to non-personnel matters are exempted from disclosure if such disclosure will, in the opinion of the City Attorney, jeopardize the City's position; however, individual votes shall be made public after determination, on advice of the City Attorney, that such matters have been finalized. In that event, disclosure of votes shall be made public at the meeting during which the matter becomes final, or the next public meeting.

An electronic recording shall be taken at all closed sessions. The recording shall be retained for a period of at least two years. Such recordings are not public records and shall be kept confidential. The recordings shall be made available to qualified members of the legislative body involved or a court of competent jurisdiction if a violation of the Brown Act is alleged to have occurred.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

Analysis:

City officials should be held accountable by residents for their actions during closed sessions. This amendment requires that action votes be publicly disclosed once the matter becomes final and such disclosure will no longer jeopardize the city's position.

This amendment also requires that electronic recordings be made and retained for a period of at least two years. These recordings are not public records and may only be made available to qualified officials in order to assess whether or not a Brown Act violation has occurred.

From time to time, closed session Brown Act violation allegations surface in other California cities, and such disputes tend to be prolonged and bitter due to the absence of evidence. The electronic recordings required by this amendment will be able to quickly confirm or deny such allegations.

Note that this amendment applies to any body (not just the city council) that holds closed sessions subject to the Brown Act.

Most of the amendment is copied as-is from Monterey charter section 4.25 with the addition of the two-year retention period copied from Riverside charter section 408.

References:

- Monterey charter - <http://www.codepublishing.com/ca/monterey/>
- Riverside charter - <http://www.riversideca.gov/municode/city-charter.asp>

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 303 (Meetings and Locations) or add new section to address Internet publishing of meeting agendas.

Statement of Issue: Improve transparency by publishing all meeting agendas on the Internet.

Recommended Action: Motion to:

Amend Huntington Beach charter section 303 (Meetings and Locations) or add new section as follows:

All meeting notices subject to the Ralph M. Brown Act shall also be published via the City's official Internet presence according to the same Brown Act timelines and shall include all contents of the agenda packet that are available at publication time.

Alternatives:

Extend the above recommended action to include some provision for online publication of late communications (see analysis below).

Analysis:

Current city Internet publication of agendas is fairly good, but timeliness of Internet publication and completeness of the online agenda packet can vary according to the legislative body.

This custom amendment requires Internet publication according to the deadlines of the Brown Act, and requires all applicable content available at the time of publication to be included in the online agenda packet.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

No provision is made to require online posting of “late communications” that arrive after the Brown Act deadlines, though staff should be encouraged to publish such communications online whenever feasible (in a perfect world with streamlined IT processes, late communications would be posted online the same day they are received). Because of the long lead time currently required for city council agendas, it is increasingly common for substantive staff content to be submitted as late communications. The only way for members of the public to know that late communications have been submitted (to any legislative body) is to poll the staff person(s) responsible for the agenda on a daily basis after publication. This is inefficient for the public and inefficient for staff, and not very transparent either since most members of the public probably don’t know how to go about this.

Agendas containing controversial issues can cause a large number of late communications to be received after initial publication of the agenda. So a charter provision requiring the publication of late communications could be burdensome. Perhaps a middle-ground approach would be to require online publication of a summary of late communications (similar to what the city clerk announces at the start of city council meetings) rather than all of the actual late communication content. This way the public would at least know whether late communications were available without having to poll staff, and if the public was interested in any specific late communications, staff could be contacted to request a copy.

If a charter clause were going to address late communications, I would choose a late communication publication deadline of the close of business on the last business day before the day of the meeting. I would not want to burden staff with a requirement for online publication of late communication on the day of the meeting (though again, it would be first-rate service from staff if that goal could be attained some day).

I look forward to discussing the late communication issue further with the rest of the commission, staff, and members of the public.

Note that this amendment applies to all bodies subject to the Brown Act, not just the city council.

This amendment is part of a group of amendments that require Internet publication of any content that requires public or news media notification. I wish it were otherwise, but newspapers are dying, and radio and TV news media rarely cover

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

Huntington Beach city hall news. Thus the broader goal here is to get the city started down the road of using the Internet as a primary means of public notification so the city will be ready when print newspapers finally die.

I prefer the phrase “City’s official Internet presence” instead of “City’s official Internet web site” for the following reasons:

- “Web site” is specific Internet nomenclature and communications protocols which may or may not exist in the future. It’s much more flexible to say “Internet presence” instead which allows for future use of Internet functionality that hasn’t even been dreamed up yet and does not restrict publishing to a single technology (web sites).
- “Official Internet presence” also allows for distributed, outsourced publication that the city might wish to contract for (i.e. NetFile, Granicus, numerous code publication companies, etc) whereas “official Internet web site” could be interpreted to just mean content directly hosted by the web server www.surfcity-hb.org. Even though NetFile, Granicus, and the like are not the official city web site, they are however an extension of the city’s official Internet presence.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 303 (Meetings and Locations) or add new section to address Internet publishing of meeting minutes.

Statement of Issue: Improve transparency by publishing all meeting minutes on the Internet.

Recommended Action: Motion to:

Amend Huntington Beach charter section 303 (Meetings and Locations) or add new section as follows:

Minutes shall be taken for all non-closed session meetings subject to the Ralph M. Brown act and shall be published via the City's official Internet presence.

Analysis:

Current city Internet publication of minutes is fairly good. This amendment aims to ensure that the practice continues. Note that this amendment applies to all legislative bodies subject to the Brown Act, not just the city council.

This amendment is part of a group of amendments that require Internet publication of any content that requires public or news media notification. I wish it were otherwise, but print newspapers are dying, and radio and TV news media rarely cover Huntington Beach city hall news. Thus the broader goal here is to get the city started down the road of using the Internet as a primary means of public notification so the city will be ready when print newspapers finally die.

I prefer the phrase "City's official Internet presence" instead of "City's official Internet web site" for the following reasons:

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

- “Web site” is specific Internet nomenclature and communications protocols which may or may not exist in the future. It’s much more flexible to say “Internet presence” instead which allows for future use of Internet functionality that hasn’t even been dreamed up yet and does not restrict publishing to a single technology (web sites).
- “Official Internet presence” also allows for distributed, outsourced publication that the city might wish to contract for (i.e. NetFile, Granicus, numerous code publication companies, etc) whereas “official Internet web site” could be interpreted to just mean content directly hosted by the web server www.surfcity-hb.org. Even though NetFile, Granicus, and the like are not the official city web site, they are however an extension of the city’s official Internet presence.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 303 (Meetings and Locations) or add new section to address open meetings.

Statement of Issue: Improve transparency by extending the reach of the Ralph M. Brown Act and the Public Records Act to additional city bodies.

Recommended Action: Motion to:

Amend Huntington Beach charter section 303 (Meetings and Locations) or add new section as follows:

City agencies, boards, commissions, committees, officials, staff and officers, including the Mayor and members of the City Council, exist to conduct the people's business. It is fundamental that the people have full access to information, not to just what decisions have been made in their name but how those decisions were reached and how they were deliberated. The people insist on remaining informed so that they may retain control over the instruments they have created. The people do not give their agencies or public servants the right to decide what is good for the people to know and what is not good for them to know.

Our values lie in a government that helps its citizens in a timely way to obtain information. Our values lie in a broadening base of public participation, involvement and interest, providing new ideas and energy.

Our values lie not in hiding embarrassment and unpleasant occurrences. Our values lie not in preventing dissent.

To carry out the purposes set forth in this section, the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.) and the Public Records Act (California Government Code Section 6250 et seq.) shall apply to the City Council, and any commission, committee, board or other body *(including ad-hoc advisory committees, composed solely of the members of the legislative body*

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

that are less than a quorum of the legislative body) created by Charter, ordinance, resolution or formal action of the City Council, or the Mayor, *or any other legislative body of the city.*

Special circumstances dictate that there must be exceptions to access. But those exceptions should be narrowly drawn and narrowly exercised. Public employees must be protected from unwarranted invasions of privacy while the public's right to fundamental information must be protected. Citizen right to privacy must be protected with the knowledge that involvement in government matters necessarily reduces an expectation of privacy.

In general, the value of access should be given a strong presumption of public benefit.

Alternative Action(s):

Amend as above in the recommended action, but omit the first three paragraphs.

Analysis:

This amendment as originally stated by Riverside charter section 201 largely restates the scope of the Brown Act and the Public Records Act as a reminder of their importance to city officials and residents. While the first three paragraphs are beautifully written as to how government should aspire to interact with those governed, they are not legally enforceable and could be omitted from the amendment (though I hope they will be included because they set an excellent tone for the city to aspire to). The core of this amendment lies in the last three paragraphs stating the scope of the Brown Act and the Public Records Act, the narrow presumption for exceptions, and the broad presumption for public benefit.

I have added two custom clauses as indicated by bold italics in the recommended action above:

1. The first custom clause extends the reach of the Brown Act to sub-quorum ad-hoc advisory committees, bodies which are normally exempt from the Brown Act.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

2. The second custom clause fixes a loophole in the original Riverside language that seemed to exempt bodies created by bodies other than the city council or mayor. My custom clause makes clear that this shall apply to any subcommittees created by any of the any various assorted boards and commissions.

For the civic issues that I have personally been involved in to-date, my experience has been that city compliance with the Brown Act and Public Records Act is fairly good. However, two Brown Act problem areas do come to mind – the Environmental Assessment Committee and the Subdivision Committee. Both of these committees were created by ordinance (HBZSO) and as such should be subject to the provisions of the Act. However, members of the public who have attended these meetings report that the level of public participation provided for by the Act is not allowed to occur by staff. It is the intent of this charter amendment to apply to both of these committees.

Note that this amendment extends the reach of the Brown Act to ad-hoc advisory committees consisting of less than a quorum of members of a legislative body – normally such advisory committees are exempt from the Act. I feel it is important for these committees to be subject to the Act because it is in these types of meetings that policy gets created, and that there is a strong public benefit for public involvement in the earliest stages of policy creation. Otherwise when public participation is restricted to the latter stages of policy formation, oftentimes such a strong “policy momentum” has developed that public input is easier for the decision makers to ignore.

Making ad-hoc advisory committees subject to the Brown Act should not pose an undue burden upon such committees. It should already be good meeting practice to have agendas, and so the main significant change is to make the agendas available to the public. The other significant change is that the public must be allowed to attend the meetings and to comment upon them (i.e. public comments). Better policy always results when diverse points of view are considered.

References:

- Riverside charter - <http://www.riversideca.gov/municode/city-charter.asp>

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 313(d) to prohibit nepotism for all appointments.

Statement of Issue: Charter section 313(d) currently prohibits nepotism only for appointments to salaried positions. This proposed amendment reduces familial conflict of interest by prohibiting nepotism for all appointments.

Recommended Action: Motion to:

Amend Huntington Beach charter section 313(d) to prohibit nepotism for all appointments, not just salaried appointments (no specific language recommended at this time).

Alternative Action(s):

Include in the amendment a prohibition against appointing business associates.

Analysis:

The city's current ban on third-degree nepotism is stronger than many other charter cities which only ban second-degree nepotism and provide for exceptions.

However, the city's ban currently only applies to salaried positions. It is my opinion that the ban should extend to all positions, not just salaried positions, because the family relationship between appointer and appointee (or council and appointee) could result in undue influence contrary to the long-term best interests of the city.

Stockton charter section 405 extends their nepotism ban to also ban the appointment of "business associates" which is a laudable goal for reducing self-interest, but the term "business associates" is not defined, and my experience in the campaign finance space is that business relationships are hard to objectively

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

determine due to a lack of public data. So I am not so sure that a ban on the appointment of “business associates” would be very workable, but if any members of the commission or staff or the public have any ideas, I’m willing to consider them.

References:

- Stockton charter - <http://qcode.us/codes/stockton/>

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 500(c) (Regular Ordinances – Publication) to require Internet publishing of ordinances.

Statement of Issue: Maintain transparency by publishing all ordinances on the Internet.

Recommended Action: Motion to:

Amend Huntington Beach charter section 500(c) as follows:

(c) Publication. The City Clerk shall cause each ordinance to be posted in three places ~~designated by the City Council within the City~~ within the City as designated by the City Council by ordinance and to be published by title with a brief summary at least once within fifteen days after its adoption in a daily, semiweekly or weekly newspaper, published in the County or the City and circulated in the City, which is selected by the City Council for that purpose. Each ordinance shall also be published via the City's official Internet presence.

Alternate Action:

Amend the above recommended action to give the city clerk the option of publishing ordinances in a newspaper rather than making it a requirement.

Analysis:

The city currently does an excellent job of publishing ordinances on the Internet. It is the goal of this amendment to see that excellent job continue.

Note that there is a bill currently pending in the legislature, AB 715 (Caballero), which seeks to allow cities to opt-out of publishing ordinances in newspapers and instead rely on online publication. The alternate action above modifies the charter

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

amendment to make newspaper publication optional in order to allow the city to take advantage of AB 715 if it should become law at some point in the future.

The amendment also adds language to designate the three places for physical posting by ordinance as inspired by Santa Clara charter section 815. Even though I am very deeply involved in civic issues, I confess that I do not know where all three places are. I know that one of the places is the city hall lobby. I also know that one of the places is the Central Library (only because my wife works there). But I have no clue about where the third place is.

Establishing the list of places by ordinance will help to ensure public knowledge of the locations.

This amendment is part of a group of amendments that require Internet publication of any content that requires public or news media notification. I wish it were otherwise, but newspapers are dying, and radio and TV news media rarely cover Huntington Beach city hall news. Thus the broader goal here is to get the city started down the road of using the Internet as a primary means of public notification so the city will be ready when print newspapers finally die.

I prefer the phrase “City’s official Internet presence” instead of “City’s official Internet web site” for the following reasons:

- “Web site” is specific Internet nomenclature and communications protocols which may or may not exist in the future. It’s much more flexible to say “Internet presence” instead which allows for future use of Internet functionality that hasn’t even been dreamed up yet and does not restrict publishing to a single technology (web sites).
- “Official Internet presence” also allows for distributed, outsourced publication that the city might wish to contract for (i.e. NetFile, Granicus, numerous code publication companies, etc) whereas “official Internet web site” could be interpreted to just mean content directly hosted by the web server www.surfcity-hb.org. Even though NetFile, Granicus, and the like are not the official city web site, they are however an extension of the city’s official Internet presence.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 501 (Emergency Ordinances) to provide for the automatic repeal of emergency ordinances.

Statement of Issue: Improve transparency and accountability by automatically repealing emergency ordinances.

Recommended Action: Motion to:

Amend Huntington Beach charter section 501 as follows:

Any ordinance declared by the City Council to be necessary as an emergency measure for the immediate preservation of the public peace, health, or safety, and containing a statement of the reasons for its urgency, may be adopted in the manner provided in Section 500 except that such emergency ordinance may be introduced, enacted and adopted at one and the same regular or special meeting and shall take effect immediately upon adoption if passed by at least five affirmative votes.

Emergency ordinances automatically shall be repealed as of the 61st day following the date on which it was adopted, but such automatic repeal shall not prevent reenactment of the ordinance in the manner specified in this Charter if the emergency still exists, or:

- 1) Repealed or replaced by adoption of another ordinance in the manner specified in this Charter; or
- 2) Repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

Alternative Action(s):

Increase the automatic repeal trigger to 90 or 120 days.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

Analysis:

Emergency ordinances by their urgent nature may require adoption without normal public visibility. It is the expectation of residents that city officials will work to minimize the duration of the emergency and expeditiously work to return to a normal situation.

This charter amendment improves transparency and accountability by requiring all emergency ordinances to auto-repeal after a fixed period. If the emergency still exists, the council may simply re-adopt the ordinance. The re-adoption process will cause the public to be aware the emergency is still ongoing, and the public may use the re-adoption process to hold the city council accountable for their handling of the emergency.

References:

- Lindsay charter section 3.10(C) – <http://www.bixby.org/charter/charters/Lindsay.pdf>

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 503 (Publishing of Legal Notices) to require Internet publishing of legal notices.

Statement of Issue: Improve transparency by publishing all legal notices on the Internet.

Recommended Action: Motion to:

Amend Huntington Beach charter section 503 as follows:

The City Council shall cause to be published all legal notices and other matters required to be published by law in a daily, semiweekly or weekly newspaper published in the County or the City and circulated in the City which is selected by the City Council for that purpose. All such content shall also be published via the City's official Internet presence. No defect or irregularity in proceedings taken under this section shall invalidate any publication where it is otherwise in conformity with this Charter or law or ordinance.

Analysis:

This custom amendment improves transparency by publishing all legal notices on the Internet.

This amendment is part of a group of amendments that require Internet publication of any content that requires public or news media notification. I wish it were otherwise, but newspapers are dying, and radio and TV news media rarely cover Huntington Beach city hall news. Thus the broader goal here is to get the city started down the road of using the Internet as a primary means of public notification so the city will be ready when print newspapers finally die.

I prefer the phrase "City's official Internet presence" instead of "City's official Internet web site" for the following reasons:

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

- “Web site” is specific Internet nomenclature and communications protocols which may or may not exist in the future. It’s much more flexible to say “Internet presence” instead which allows for future use of Internet functionality that hasn’t even been dreamed up yet and does not restrict publishing to a single technology (web sites).
- “Official Internet presence” also allows for distributed, outsourced publication that the city might wish to contract for (i.e. NetFile, Granicus, numerous code publication companies, etc) whereas “official Internet web site” could be interpreted to just mean content directly hosted by the web server www.surfcity-hb.org. Even though NetFile, Granicus, and the like are not the official city web site, they are however an extension of the city’s official Internet presence.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 615 (Granting of Franchises) to impose minor restrictions.

Statement of Issue: Improves accountability and fiscal prudence by requiring determinate franchises that do not exceed a maximum term. Improves transparency by forbidding the granting of franchises by emergency ordinance.

Recommended Action: Motion to:

Amend Huntington Beach charter section 615 as follows:

The City Council shall by ordinance regulate the granting of franchises for the City. Every franchise shall state the term for which it is granted, which shall not exceed twenty five years. No franchise shall be granted by emergency ordinance.

Alternative Action(s):

Approve the recommended action, but alter the maximum franchise term.

Analysis:

Recent city practice appears to favor determinate franchise terms of fifteen to twenty five years. The longest determinate franchises I have been able to locate in city records are for forty year terms, the last being granted back in 1970.

I have only been able to find three indeterminate franchises, which were all granted during the period 1949 through 1961. An indeterminate franchise is one of no fixed term, whereby the agreement is terminated by the grantee abandoning the franchise, the city or some other government entity doing a voluntary buyout of the franchise, or by the city or some other government entity exercising eminent domain over the franchise.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

Most Huntington Beach city franchises are for petroleum or gas products for which the market value has increased dramatically in recent years and can be expected to increase further in the future. By limiting franchises to a maximum of twenty five years, the city will have the option of renegotiating pricing to reflect future market conditions at renewal time rather than being stuck for extra decades at pricing that is no longer favorable to the city. Several other city charters limit their franchises to determinate terms of various lengths.

Several city charters also forbid the granting of franchises by emergency ordinance. Due to the long-term duration of franchise agreements and the amount of money involved, franchises should always be granted by regular ordinances in order to provide for maximum transparency of these agreements.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

SUBMITTED TO: HB Charter Review Commission

SUBMITTED BY: Mark D. Bixby, Charter Review Commissioner *MDB*

SUBJECT: Amend charter section 802 (Charter Violations) to require forfeiture of office for elected officials.

Statement of Issue: Improves accountability by requiring elected officials to forfeit office for willful charter violations.

Recommended Action: Motion to:

Amend Huntington Beach charter section 802 as follows:

The violation of any provision of this Charter shall be a misdemeanor and shall be punishable upon conviction by a fine not exceeding Five Hundred Dollars (\$500) or by imprisonment for a term of not exceeding six months or by both such fine and imprisonment, and each day that any such violation continues shall constitute a separate violation.

Notwithstanding the criminal and civil procedures and penalties provided for herein, an elected official shall forfeit office pursuant to this Charter if a court of law has found, after the judgment has become final and all appeals exhausted, that the elected official has willfully violated this Charter or any provision thereof, or willfully failed to carry out any provision of this Charter.

Analysis:

The charter is the very foundation of city government, and the consequences of a willful violation should be severe. The consequences should be especially severe for elected officials who serve as direct representatives of the people.

Granted, the city is willfully violating several sections of the current charter for various reasons, more out of necessity rather than any ill intent, and largely as a side-effect of not updating the charter more frequently as conditions change.

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 09/01/2009

For these kinds of technical violations it seems extremely unlikely that the city attorney, the district attorney, or the attorney general would move to prosecute such violations. It is also extremely unlikely that any private citizen would commit the money and time required to pursue a civil lawsuit over such violations.

Thus I don't expect forfeiture of office to occur for any but the most egregious of violations. And note that forfeiture only results if a court has found that a willful violation has occurred and all appeals have been exhausted. So that is a very high bar indeed.

This amendment is derived from Exeter charter section 5.3 and Woodlake charter section 5.3 (these two neighboring Central Valley cities share nearly identical charters) but made more generalized to include all elected officials instead of just the city council.

References:

- Exeter charter - <http://www.bixby.org/charter/charters/Exeter.pdf>
- Woodlake charter - <http://www.bixby.org/charter/charters/Woodlake.pdf>

August 24, 2009

To: Dick Harlow, Chair
Charter Review Commission

From: Richard Hart

Subject: Proposed Change to Charter Section 605-Annual Budget Appropriations

Charter Section 605 currently states, in part, that "All appropriations shall lapse at the end of the fiscal year to the extent that they shall not have been expended or lawfully encumbered." City staff has proposed that this section be amended to permit capital improvement appropriations to be carried forward.

There has been no further explanation as to the basis for this proposal or the problem that it is trying to solve. Given that capital improvement projects may extend over many budget years, it may be that the purpose of the proposed amendment is to reduce staff's administrative workload by eliminating the need for Council to reappropriate unexpended capital improvement funds each year. I am concerned that this proposal may deny the Council and public important information about the status of the capital improvement program and may do more harm than good.

Going through the process of the Council reappropriating unspent capital improvement funds each year does have a benefit. First, it provides a good mechanism for the Council to review the status of the various capital improvement projects. Unspent funds could signal project problems or surpluses. If unspent funds are automatically carried forward, Council loses out on this built-in review. Second, transparency in government. The public has the right to know how its dollars are being spent. If there are problems with a project or surplus funds that may be available for other projects, they have a right to know. If unspent funds are automatically carried forward, the public loses out on being informed.

While the proposed charter amendment may reduce some administrative workload it may cause bigger problems. The proposal may do more harm than good and should be reviewed very carefully.