

Attachment D

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

Agenda Item No. 4
March 2, 2010

TO: HONORABLE MEMBERS OF THE CHARTER UPDATE COMMISSION

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

SUBJECT: CHARTER SECTION 13 – FRANCHISE PROCEDURES

RECOMMENDATION:

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

DISCUSSION:

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

Submitted by:



Evelyn Tseng
Acting Revenue Division Manager

Attachments: Section 13 White Paper
Charter Section 13

Franchise Procedures
(Charter Section 13)

Statement of the Issue

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

Relevant Background

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

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

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

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

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

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

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

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

ALTERNATIVES

The Commission has the following alternatives identified by Staff:

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

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

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

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

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

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

Alternative 2: No change.

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

Article XIII Franchises

Section 1300. Granting of Franchises.

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

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

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

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

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

Section 1302. Terms of Franchise.

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

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

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

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

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

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

Section 1304. Eminent Domain.

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

Section 1305. Duties of Grantees.

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

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

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

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

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

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

Section 1306. Exercising Rights Without Franchise.

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