

REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 12/15/2009

SUBMITTED TO: HB Charter Review Commission

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

SUBJECT: Various amendments to charter section 612 (Measure C)

Statement of Issue: Fixes to strengthen Measure C

Recommended Action: **Motion to:**

Amend Huntington Beach charter section 612 as follows:

- Formally include all of the requirements of the July 11, 1994 city council minute action into the body of section 612.
- Add new public vote trigger to the list in section 612(a) when entering into any form of agreement which results in reduced public recreational opportunities.

Analysis:

Incorporate City Council Minute Action of July 11, 1994

On July 11, 1994, the city council approved by a vote of 4-1-2 (ayes: Bauer, Moulton-Patterson, Winchell, Sullivan; noes: Silva; absent: Robitaille, Leipzig) the following minute action to clarify the intent of charter section 612 as noted immediately prior to the preamble of the current charter:

“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

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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.”

On July 3, 2006, when the city council approved placing the Central Park senior center on the ballot for a Measure C vote, the council also exempted the city from complying with the “must obtain all city approvals prior to being submitted to a vote of the people” clause of the minute action.

This exemption (specifically from complying with CEQA) became one of the causes of action in the lawsuit of *Parks Legal Defense Fund v. City of Huntington Beach*. Although the judge dismissed this cause of action from the lawsuit due to the statute of limitations, the judge did rule that the city should have complied with CEQA prior to the Measure C vote. Thus because of this ruling, the city is already obligated to have completed CEQA approvals prior to future Measure C votes.

I propose that the charter review commission go one step further and incorporate all of the July 11, 1994 minute action language into section 612. There were various other city approvals in addition to CEQA that occurred after the senior center Measure C vote, as well as revealing the Pacific City Quimby fee diversion that would be used to fund construction of the senior center. Only by incorporating the minute action language into section 612 would all approvals and financial disclosures be forced to occur before future Measure C votes so that the public will truly understand what they are being asked to vote on.

Add Vote Trigger for Agreements that Reduce Public Recreation

Section 612(a) forces a public vote whenever public utilities, parks, or beaches are “leased” (emphasis added) in whole or in part:

“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

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electors voting on such proposition at a general or special election at which such proposition is submitted.”

This finite list of actions leaves a loophole whereby the city can evade a Measure C vote by labeling the action something other than a sale, lease, exchange, transfer or disposal. The city has exploited this loophole to lease portions of certain parks to wireless companies for cell phone towers by calling such agreements “site licenses”. It is telling to note that the cell phone company documents for these agreements refer to them as “leases” and not “site licenses”. Thus it is obvious that the city is playing semantic games to avoid the word “lease” to avoid Measure C votes.

I propose to close this loophole by adding an additional vote trigger to section 612(a) – “...or any form of agreement which results in reduced public recreational opportunities...”.

It is not my intent to abrogate any existing agreements, or to prevent the renewal of such existing agreements. This will only apply to future agreements.

Note that agreements that DO NOT reduce public recreational opportunities are exempt from this vote trigger. Thus, for example it would be permissible to add a cell antenna to an existing lighting pole or other structure (does not impact any recreational opportunities), but it would not be permissible to add a new cell tower in the middle of a grassy play area (reduces recreational opportunities) without a vote.

Finally, note that this proposed additional language does not create any new exemptions to the section 612(b) size/cost vote trigger. Any construction or agreement that did not reduce public recreational opportunities would still be subject to the size/cost trigger.