

PUBLIC HEARING

TITLE: PROPOSAL FOR AN AMENDMENT TO THE FREEHOLDERS CHARTER OF THE CITY OF PORTERVILLE, CONCERNING LEASES OF CITY PROPERTY

SOURCE: CITY ATTORNEY

COMMENT: As directed at the November 17, 2009, City Council Meeting, a public hearing has been set to consider an amendment to Section 68 of the Porterville City Charter related to leases of City property.

At the November 17 meeting, the Council directed that the proposed amendment to Section 68 contain similar provisions to those applicable to "general law" cities. Attached is a draft of the proposed amended section. The draft contains similar substantive requirements to the general law requirements including 1) An initial, unrestricted term limit of 55 years, 2) an allowance for leases for up to 99 years on condition that the lease provides for periodic review in light of market conditions, and the lease is established by ordinance after holding a public hearing with notice.

This draft eliminates the requirement that all leases contain a clause that allows the city council to terminate the lease at its pleasure and repossess the premises with three month's notice, and upon payment of market value of the improvements made by the lessee (as determined by a board of appraisers – one picked by the council, one picked by the lessee). The new draft also extends the allowed term limits; the current overall limit for long-term leases (notwithstanding the three month termination clause) is 50 years.

The draft section also eliminates the explicit requirements for payment of fair market value for the lease/tenant-owned improvements. However, as we discussed, in the event the City were to terminate a long term lease by condemning the leasehold interest, compensation of the fair market value of the improvements is required by operation of State law.

The City's Municipal Election is June 8, 2010. At least 120 days prior to the Election (approximately February 8, 2010), the City should submit a Resolution Ordering the Election and provide specifications concerning the ballot measure to the County Elections Official. The City Attorney will also prepare an Impartial Analysis of the ballot measure for filing. Arguments for and against the measure must be filed by approximately March 2, 2010. Rebuttal arguments are due by approximately March 12, 2010.

RECOMMENDATION: That the City Council:

- 1) Hold the public hearing concerning the proposed Charter Amendment and consider public testimony; and
- 2) Consider approval of the Resolution Ordering Submission of a Proposition of an Amendment to the Freeholders Charter of Porterville Concerning Leases of City Property to the Qualified Voters of the City at a Special Election to be Held for that Purpose, Requesting Consolidation with a General Municipal Election Scheduled on June 8, 2010, and Authorizing the Filing of an Impartial Analysis and Written Arguments.

ATTACHMENT: Porterville Municipal Charter, Section 68
Proposed Amended Charter Section 68
Resolution No. _____-2009

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Porterville City Charter

Sec. 68. Leases Of City Property.

In every lease of city property the basic amount of rental shall be fixed by the council.

All indentures of lease shall provide that the council may terminate the same at its pleasure and repossess the premises therein described upon three months' notice thereof and upon paying to the lessee the market value of any improvements made or put upon said premises by the lessee. The market value of such improvements shall be determined by a board of appraisers consisting of one appraiser appointed by the council, and a lessee appraiser appointed by the lessee.

In the event of their failure to agree upon the market value of the improvements within thirty days from and after their appointment, said two appraisers may appoint a third appraiser as a member of said board, and the determination of the majority of said board of appraisers, as to the market value of the improvements, shall be final and conclusive and binding on all concerned. Should the two appraisers appointed by the council and the lessee respectively, fail for forty days from and after their appointment to agree upon the market value of the improvements or to appoint a third appraiser, then upon the petition in writing of either party to any such lease, a judge of the superior court of Tulare County is hereby empowered to appoint the third appraiser upon such board; provided, however, that the council shall not terminate any such lease or repossess any such premises except for a public use and purpose; provided, further, that no lease of city property shall be made for a maximum term of more than fifty years. (4-2-1963; 4-6-1971)

Amendment note _ The second paragraph of § 68 was amended April 6, 1971, by substituting "maximum term" in lieu of "term" in the last proviso clause.

Proposed Charter Language – Section 68

Section 68. Leases of City Property

The City may lease property owned or held or controlled by it, or any of its departments, for a term not to exceed 55 years. Furthermore, the City may lease property owned or held or controlled by it, or any of its departments for a term exceeding 55 years but not exceeding a terms of 99 years, if all of the following conditions are met: a) The lease is subject to periodic review, established in the lease provisions, taking into consideration current market conditions; b) the lease shall be authorized by ordinance adopted by the City Council, and shall be therefore subject to referendum in the manner prescribed by law or local regulation; and c) the City Council shall hold a public hearing prior to adoption of said ordinance, in accordance with Government Code Section 6066, said notice shall be published in one or more newspapers of general circulation within the City, and notice shall be mailed to any person requesting special notice, to any present tenant of the property, and to all owners of land adjoining the property.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ORDERING SUBMISSION OF A PROPOSITION OF AN AMENDMENT TO THE FREEHOLDERS CHARTER OF SAID CITY OF PORTERVILLE RELATED TO LEASES OF CITY PROPERTY, TO THE QUALIFIED VOTERS OF THE CITY AT A SPECIAL ELECTION TO BE HELD FOR THAT PURPOSE, REQUESTING CONSOLIDATION WITH A GENERAL MUNICIPAL ELECTION SCHEDULED ON JUNE 8, 2010 AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS AND WRITTEN ARGUMENTS

WHEREAS, pursuant to Elections Code Sections 9255 et seq., the City of Porterville may make amendments to its City Charter; and

WHEREAS, the City Council of the City of Porterville on its own motion, desires to propose to the electors of the City of Porterville an amendment to the Charter of the City of Porterville, which shall amend Section 68, concerning leases of City property;

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

A. Section 68 of the Charter of the City of Porterville is hereby proposed to be amended to read as follows:

Sec. 68 Leases of City Property.

The City may lease property owned or held or controlled by it, or any of its departments, for a term not to exceed 55 years. Furthermore, the City may lease property owned or held or controlled by it, or any of its departments for a term exceeding 55 years but not exceeding a terms of 99 years, if all of the following conditions are met: a) The lease is subject to periodic review, established in the lease provisions, taking into consideration current market conditions; b) the lease shall be authorized by ordinance adopted by the City Council, and shall be therefore subject

to referendum in the manner prescribed by law or local regulation; and c) the City Council shall hold a public hearing prior to adoption of said ordinance, in accordance with Government Code Section 6066, said notice shall be published in one or more newspapers of general circulation within the City, and notice shall be mailed to any person requesting special notice, to any present tenant of the property, and to all owners of land adjoining the property.

B. A special municipal election is hereby authorized, whereby the citizens of Porterville may approve or disapprove the proposed charter amendment, to be held on June 8, 2010, to be consolidated with the general municipal election scheduled to be held that same day.

C. On the ballot to be used at the special municipal election, insofar as the same pertains to the proposed amendments to the Freeholders Charter of the City of Porterville, in addition to any matters required by law, there shall be printed substantially the following:

1. Measure ___ to amend Section 68 of the Freeholders Charter of the City of Porterville, eliminating the requirement that all leases contain a clause allowing the City Council to terminate the lease with 3 months notice, extending the allowed term of lease from 50 to 55 years, and allowing leases for up to 99 years if the lease provides for periodic review in light of market conditions, and the lease is established by ordinance after a noticed public hearing, and is therefore subject to referendum.

D. The City Clerk of the City of Porterville is hereby authorized and instructed to publish said proposed amendment, to the Charter of the City of Porterville, in the Porterville Recorder, a newspaper of general circulation, as required by the provisions

of California Elections Code Section 12114 and California Government Code Section 6066, and as required pursuant to the City's regulations.

E. The polls for an election shall be open on the day of said election in accordance with the California Elections Code.

F. The special municipal election hereby called for June 8, 2010, shall be and is hereby ordered consolidated with the general municipal election to be held within the City on said date, and within the territory affected by the consolidation. The election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted, and returned, returns canvassed, results declared, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the election as specified herein. The Board of Supervisors of Tulare County, and the Tulare County Registrar of Voters, are hereby requested to order the consolidation of the special municipal election hereby called with the general election to be held within the City on said date, and within the territory affected by the consolidation, and the Board and the Registrar of Voters are hereby authorized to canvass the returns of said special municipal election, and said municipal election shall be held in all respects as if there were only one election and the form of ballot shall be as provided for the general election. The County shall certify results of the canvass of the returns of said special municipal election to the City Council which shall thereafter declare the results thereof. The measure submitted by the Resolution shall be designated on each ballot by a letter printed on the left margin of the square containing the description of the measure as provided by the California Elections Code.

G. All persons qualified to vote at special municipal elections in the City upon the date of the election herein provided shall be qualified to vote upon the proposition submitted at said special election.

H. Ballots for the election shall be provided in the form and in the number provided by law. On said ballots, in addition to any other printed matter which may be required by law, two voting squares shall be set off to the right of the proposition submitted at the election, one having the word "YES" printed before it, and the other having the word "NO" printed before it.

I. Each voter to vote for the proposition and for the Charter Amendment shall stamp or write a cross, or indicate by hole punch, or other means, in the blank space opposite the word "YES" on the ballot to the right of the proposition, and each voter to vote against the proposition and against the Charter Amendment shall stamp or write a cross, or indicate by hole punch, or other means, in the blank space opposite the word "NO" on the ballot to the right of the proposition.

J. The Clerk is hereby authorized and directed to publish the resolution or any required notice as required by law and to transmit, for receipt no later than the applicable deadline, a certified copy of this resolution to the Tulare County Clerk, Elections Division, and to any other appropriate office of Tulare County.

K. The City Attorney is hereby authorized and directed to prepare an impartial analysis of the proposition specified in this resolution showing the effect and operation of the measure. The analysis is to be submitted by the City Attorney to the Tulare Registrar of Voters, or other appropriate official for printing as required by law. The analysis shall not exceed 500 words in length.

L. The City Council hereby authorizes the filing of a ballot argument in favor of the proposition to be submitted to the voters at the special election. Said written argument for the proposition shall not exceed 300 words in length. If any person submits an argument against said proposition, the City Council authorizes the submittal of a rebuttal argument not exceeding 250 words. The argument and rebuttal shall otherwise conform to and comply with all applicable provisions of the California Elections Code. The deadline for submittal of the arguments, in favor or in opposition, shall be as required by the Tulare County Registrar of Voters, or other appropriate County official.

PASSED, ADOPTED AND APPROVED this ____ day of _____, 2009.

Pete McCracken, Mayor

ATTEST:

John Lollis, City Clerk

By: Patrice Hildreth, Chief Deputy City Clerk

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