



CITY COUNCIL AGENDA REPORT

MEETING DATE: JANUARY 10, 2012

ITEM NUMBER:

SUBJECT: COMMUNITY PUBLIC HEARING ON PROPOSED CITY CHARTER**DATE: JANUARY 5, 2012****FROM: BILL LOBDELL, COMMUNICATIONS DIRECTOR
THOMAS R. HATCH, CEO****PRESENTATION THOMAS R. HATCH
BY:****FOR FURTHER INFORMATION CONTACT: Bill Lobdell at (714) 754-5288****RECOMMENDATION:**

Hold a public hearing on the proposed City charter for Costa Mesa and receive community comments and suggestions and provide direction on any changes to the first draft of the proposed charter (Attachment 1).

BACKGROUND:

In the fall of 2011, City Council asked the City Attorney to investigate the benefits and variations of the Charter form of city government that would shift control over strictly municipal affairs from Sacramento to Costa Mesa. On December 6, 2011 (staff report included as Attachment 2), the City Council voted to move forward the process to consider placing a charter on the June 5, 2012 ballot. Using an initial first draft of the proposed charter as a starting point, the City has sought comments on the charter through various media; the City's website, social media and media outlets; through public comments at the December 6, 2011 and January 3, 2012 City Council meetings; and at a charter informational meeting held at the Costa Mesa Neighborhood Community Center on January 5, 2012. The suggested additions and/or deletions to the charter and a summary of the comments are included in Attachment 3.

ANALYSIS:

The City of Costa Mesa is currently a general law city. The general law form allows cities to act only based upon the authority given by the California Constitution and the California Legislature. The alternative type of city government used by 120 California cities is the charter form (see Attachment 4 for the League of California Cities' primer on charter cities). A charter city is one that has adopted a set of bylaws, called the charter, which acts as a local constitution for the city. Similarly to the federal and State constitutions, a charter may only be adopted, amended, or repealed by a majority vote of a city's residents.

Charter cities have more authority over their municipal affairs, strengthening the City's home rule.¹ By adopting a charter, the City will have greater flexibility in the operations of its municipal government, which, if properly utilized, can translate to greater efficiency, effectiveness, and innovation.

A charter city has more options when considering how to handle a number of municipal affairs. These include, but are not limited to, the following:

1. Construction and maintenance contracting;
2. Land use;
3. City finances;
4. State mandates; and
5. City government structure.

For example, the current draft of the Costa Mesa charter states that the City would not be required to pay prevailing, or union, wage for projects that are locally funded. To give the City Council and residents an idea of the potential savings, City staff has looked at several past and future construction projects and calculated the potential savings (see Attachment 5).

Limitations and safeguards:

Notwithstanding these advantages, there are several limitations and safeguards upon a charter city's powers. In particular, a charter city's decision-making authority is specifically limited to only municipal affairs and does not extend to matters of "state-wide concern." Generally speaking, a matter of state-wide concern is something that is determined, by the courts, to be of an importance to the entire state. In those cases, state law preempts local regulations. For example, many traffic regulations are matters of state-wide concern. A charter city would not be able to adopt local traffic regulations that would conflict with those enacted by the Legislature.

Also, recent charters passed by California cities have included "anti-City of Bell measures" that limit council member and city employee compensation to what's allowed under state law. The first draft of Costa Mesa's charter also includes this provision.

It is important to note that an adoption of a charter does not change the way the City operates. Like the state and federal constitutions, a charter would only provide the City a general set of guidelines and an opportunity to make community-specific decisions. Any changes to existing ordinances and regulations may be made so long as they are within the parameters found in the charter.

What is different in Costa Mesa's draft charter:

Charters for California cities, especially those adopted within the past decade, are remarkably similar because the primary goal is the same—local control—and the charter language used by other cities has been legally tested. Costa Mesa's proposed charter is what could be termed as generic, except in the following three areas.

¹ "Home rule" refers to the relative degree of decision-making authority a city has regarding its local or municipal affairs.

1. Section 301. Purchasing and Contracts. This section allows the City to decide whether or not to pay prevailing, or union, wage on public works projects that use only local funds.
2. Section 602. Employee Retirement Benefits. This section requires increases in employee retirement pensions to be approved by the majority of Costa Mesa voters.
3. Section 603. Voluntary Municipal Employee Political Contributions. This section ensures that city employee association dues collected directly from city paychecks will not be used for political activities.

Adoption process:

The State legislature recently approved a bill (AB1344) that provided for more public input on proposed city charters, both before and after the measures are placed on the ballot. The City's timeline of events (see Attachment 6) provides for public meetings on the proposed charter on January 10, February 14 and March 6, 2012.

The City has encouraged interested parties to submit potential changes to the proposed charter before the January 10, 2012 meeting, so the City Council and residents will have the maximum time to review a draft charter. However, additions and deletions to the proposed charter can be made at the Feb. 14, 2012 meeting, and the City will continue to solicit input until then for Council consideration. (This is a correction from the Dec. 6, 2011 staff report on the proposed charter).

ALTERNATIVES CONSIDERED:

Council can choose to direct staff and the City Attorney to discontinue the process of putting a Proposed Charter on the June 5, 2012.

FISCAL REVIEW:

If the proposed charter is placed on the June 2012 ballot, the Registrar of Voters estimates the cost to consolidate to be in the range of \$97,500 to \$123,500. If placed on the November 2012 ballot, the Registrar of Voters estimates the cost to consolidate to be in the range of \$78,500 to \$97,500.

LEGAL REVIEW:

The City Attorney's office has reviewed this report and attachments and approves as to the form found therein.

CONCLUSION:

Council is requested to hold a public hearing on the proposed City charter for Costa Mesa and listen to community comments and suggestions and provide direction on any changes to the first draft of the proposed charter.

THOMAS R. HATCH
Chief Executive Officer

THOMAS P. DUARTE
City Attorney

- ATTACHMENTS:
- 1 [Sample Charter for Costa Mesa](#)
 - 2 [City Council Staff Report – December 6, 2011](#)
 - 3 [Comments and Suggestions Submitted to the City Council on Proposed Charter Through January 5, 2012](#)
 - 4 [A Charter Primer from the League of California Cities](#)
 - 5 [Potential Savings as a Charter City](#)
 - 6 [Charter Timeline of Events](#)

CHARTER OF THE CITY OF COSTA MESA

WE THE PEOPLE of the city of Costa Mesa declare our intent to restore to our community the historic principles of self-governance inherent in the doctrine of home-rule. Sincerely committed to the belief that local government has the closest affinity to the people governed and firm in the conviction that the economic and fiscal independence of our local government will better serve and promote the health, safety and welfare of all of the citizens of this City, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the city of Costa Mesa.

Article I Municipal Affairs

Section 100. Name of City; Perpetual Succession

The city of Costa Mesa shall continue to be a municipal corporation known as the city of Costa Mesa. The boundaries of the city of Costa Mesa shall continue as now established until changed in the manner authorized by law.

Section 101. Rights and Liabilities of Cities; Prior Contracts, Liabilities, Etc., Continued in Effect

The city of Costa Mesa shall remain vested with and shall continue to own, have, possess, control and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled or enjoyed by it at the time this Charter takes effect, and is hereby declared to be the successor of same. It shall be subject to all debts, obligations and liabilities, which exist against the City at the time this Charter takes effect. All lawful ordinances, resolutions, rules and regulations, or portions thereof, in force at the time this Charter takes effect and not in conflict with or inconsistent herewith, are hereby continued in force until the same have been duly repealed, amended, changed or superseded by proper authority.

Section 102. Municipal Affairs

Each of the responsibilities of governance set forth and described in this Charter, and as established by the Constitutional, statutory and judicially defined law of the State of California, is hereby declared to be a municipal affair of concern, the performance of which is unique to the benefit of the citizens of the city of Costa Mesa.

Section 103. General Powers; Seal

The city of Costa Mesa, by and through its legislative body and other officials, shall have and exercise all powers necessary or appropriate to a municipal corporation and the general welfare of its inhabitants, which are not prohibited by the Constitution of the State of California, and which it would be competent for this Charter to set forth particularly or specifically, as fully and completely as though they were specifically enumerated in this Charter. The enumeration in this

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Charter of any particular power, duty or procedure shall not be held to be exclusive of, or any limitation or restriction upon, this general grant of power. General powers of the city include, but are not limited to, the powers necessary or appropriate to promote the health, welfare and safety of its inhabitants. The city shall have and use a common seal and the official seal hereinbefore adopted and now in use by said city shall continue to be the official seal of the city.

Article 2
Form of Government

Section 200. Form of Government

The municipal government established by this Charter shall be known as the “Council-Manager” form of government. The City Council will establish the policy of the City and the City Manager will carry out that policy.

Section 201. Legislative Body; Composition

The legislative body of the City shall consist of five (5) council members elected at large. This legislative body shall be known as the City Council, and each of its members shall be known as “Council Members.” The number of terms a member of the city council may serve on the city council shall be limited to two (2) consecutive terms of four (4) years each. The City Council shall choose one of its members as mayor and one of its members as mayor pro tempore at the meeting at which the declaration of the municipal election results. The term of service for both mayor and mayor pro tempore shall be for a period of two (2) years from the date of appointment.

The Council Members shall be elected by the qualified voters of the City at a general municipal election. Their terms shall be staggered in the manner as existing at the time of the adoption of this Charter. They shall hold office for the period of four years from and after the date of certification of election results by the City Council, and until their successors are elected, and qualified.

The members of the City Council shall not be eligible to any other office or employment with the City during the period of their incumbency, and for a period of one year following the termination of their position on the City Council.

Section 202. Time and Place of Meetings; Rules of Conduct of Proceedings

The City Council shall provide by ordinance for the time and place of holding its meetings. Special and emergency meetings shall be called in accordance with the provisions of general law. There shall be at least one regular meeting in each calendar month. Any regular meeting may be adjourned to a date and hour certain, and such adjourned meeting shall be a regular meeting for all purposes.

Meeting locations and rules for notice of, and conduct of, meetings of the City Council and all subordinate legislative bodies in the City shall be conducted in accordance with state laws and such rules for procedure as established by ordinance of the City Council.

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Section 203. Administrative Officers; Appointment and Removal; Grounds

The following administrative officers are hereby established, each of whom shall be appointed by the City Council: a City Manager and a City Attorney.

Except as may be otherwise provided in this Charter the affirmative three (3) members of the City Council shall be required for the appointment of or the removal of any administrative officer for cause. "For cause" includes, but is not limited to, refusal to perform the duties of his or her office; being adjudged mentally incompetent; or being convicted of a felony, or crime of moral turpitude. The administrative officer is entitled to a hearing before the City Council on the validity of the grounds providing the basis for removal for cause.

The City Council may remove any of its administrative officers at its pleasure, without cause stated or hearing had, by the affirmative vote of four members in favor of such removal, and the determination of the council in such matters shall be final and conclusive.

Section 204. Administrative Officers; Qualifications and Duties

The City Manager shall be the administrative head of the City government. The duties of the City Manager shall be as prescribed by this Charter or by ordinance of the City Council

The City Attorney shall be the chief legal advisor to the City and the City Council. The City Attorney shall be an attorney-at-law, admitted to practice as such before the supreme court of the state, and who has been in actual practice therein for at least three years next preceding appointment. All other things being equal, an attorney who has had special training or experience in municipal corporation law shall be appointed to the office if practicable. The City Attorney shall, within his or her discretion, prosecute all violations of city ordinances and shall draft or approve all contracts and other legal documents and instruments.

Section 205. Interference With Performance of Duties of City Manager

No member of the City Council shall in any manner attempt to influence or coerce the City Manager in the making of any appointment or the purchase of supplies in accordance with the Charter, City ordinance, or applicable state and federal law.

Except for such direction that it provides to the City Attorney, the City Council shall deal with the administrative functions of the City through the City Manager. The City Council shall only have direct contact with the directors of the City's departments for the purpose of asking questions.

No Council Member, and no officer, board or member of any board or commission, shall recommend the appointment of, appoint, vote for or elect, to any office, position of employment, in any department of the City government, any person related by consanguinity or connected by marriage with such Council Member. A breach of this section shall be cause for removal of any such Council Member, officer, board or member of such board or commission.

**Article 3
Legislative Authority**

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Section 300. Ordinances

The City Council shall act by ordinance, resolution, or motion. Except for urgency ordinances, except for ordinances calling for or otherwise relating to an election, and except for other ordinances identified in the general laws of the State that do not require introduction prior to adoption, no ordinance shall be passed by the City Council on the date of its introduction, nor within five (5) days thereafter, nor at any time other than at a regular meeting. Nothing herein shall be construed as prohibiting minor changes, amendments or modifications of a proposed ordinance between the time of its introduction and final passage, providing its general scope and original purpose are retained. The affirmative vote of three (3) members shall be necessary to the passage of any ordinance. All ordinances and resolutions shall be signed by the Mayor and attested by the City Clerk.

The enacting clause of all ordinances shall be, “The City Council of the City of Costa Mesa does ordain as follows”. All ordinances, with the exception of the annual appropriation ordinance, shall contain but one subject, which shall clearly be stated in the title.

Fines and other penalties for the violation of City ordinances shall be in such amounts as established by the City Council in the City’s Municipal Code, but no civil fine or penalty shall exceed \$2,500 for each day of the same violation provided, however, that any civil fines or penalties established by any state or federal agency, which can be imposed on the City for violations of statutes or regulations adopted by that state or federal agency, may be imposed by the City against any person, entity, or organization violating any City ordinance related to such state or federal law or regulation, in like amount. The maximum amount of any civil fines or penalties shall not be limited to those amounts established by State law for criminal fines or penalties.

Article 4
Fiscal Matters

Section 400. Economic and Community Development

The City shall encourage, support, and promote economic development and community development in the City.

Section 401. Purchasing and Contracts

“Public Works Contract,” as used in this section, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind, which is paid for in whole with tax revenue paid by residents of the City of Costa Mesa.

“Other Public Contract” as used in this section means any contract, purchase order, or other agreement used to procure services and supplies of any kind, that are paid for in whole with tax revenue paid by the residents of the City of Costa Mesa.

The City is exempt from the provisions of all California statutes regulating public contracting and purchasing, except as provided by this Charter, City ordinance, or by agreement approved by the City Council.

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Annually, the City Council shall set a value at which Public Works Contracts shall be exempt from public bidding and shall follow such procedures for open market sale or purchase as set by the City Council.

The City Council shall establish all standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any Public Works Contract greater than the value set by the Council, including but not limited to, the compensation rates to be paid for the performance of such work.

The City may, without exception, enter into Other Public Contracts. Other Public Contracts shall follow such procedures as set by the City Council.

No City Public Works Contract or Other Public Contract shall require payment of the prevailing wage schedule unless: the prevailing wage is legally required and constitutionally permitted to be imposed by the requirements of federal grants, state grants, redevelopment law, or other federal or state law; or the project is considered by the City Council not to be a municipal affair of the City; or payment of the prevailing wage schedule is authorized by resolution of the City Council. Payment of the prevailing wage schedule, if authorized hereunder, shall use the pertinent rates published by the State of California.

The City will promote fair and open competition for all City construction projects so that all contractors and workers, whether union or non-union, are treated equally in the bidding and awarding of City construction contracts.

Section 402. Miscellaneous Provisions Relating to Appropriations

Upon the request of the City Manager the City Council may, by resolution, transfer any part of an unencumbered balance of any appropriation to another purpose or object, or may, by resolution, authorize a transfer to be made between items appropriated to the same office or department. At the close of each fiscal year, the unexpended balance of each appropriation, against which no contracts or works or supplies are outstanding, shall revert to the City's general fund. Any money in the general fund otherwise unappropriated may be appropriated by the City Council at any time by resolution.

Article 5
Revenue Retention

Section 500. Reductions Prohibited

Revenues raised and collected by the City shall not be subject to subtraction, retention, attachment, withdrawal or any other form of involuntary reduction by any other level of government.

Section 501. Mandates Limited

No person whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of government, unless and until funds sufficient for the performance of such function are provided by said mandating authority.

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Article 6 General Laws

Section 600. General Law Powers

The City shall have the power and authority: to adopt and enforce all legislation, laws, and regulations; and to take all actions necessary to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted, or prescribed by any law of the State of California, or by any other lawful authority. In the event of any conflict between the provisions of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control.

Section 601. Council Member Compensation

Notwithstanding the previous paragraph, salary of the Mayor and Council Members will continue to be set by California Government Code §36516, as that statute provides as of the date of the adoption of this Charter, where the formula considers city population and state law.

Section 602. Employee Retirement Benefits

At the time of this Charter's adoption, no ordinance increasing any employee, legislative officer or elected official's existing retirement benefits, other post-employment benefits, or employer contributions, with the exception of Cost of Living Adjustments, shall be adopted without the majority approval of qualified voters of the City at a general municipal election. The City Council may reduce retirement benefits, other post-employment benefits, or employer contributions as provided in state law without an amendment to this section.

Section 603. Voluntary Municipal Employee Political Contributions

Unless otherwise required by law, a city employee labor union, city contractor, or city employer ("Organization") may only make expenditures for political activities if the Organization establishes a separate segregated fund that meets the requirements of this chapter. The Organization shall ensure that: (a) In soliciting contributions for the fund, the Organization discloses, in clear and unambiguous language on the face of the solicitation, that contributions are voluntary and that the fund is a political fund and will be expended for political activities; (b) Union dues are not used for political activities, transferred to the fund, or intermingled in any way with fund moneys; (c) The cost of administering the fund is paid from fund contributions and not from union dues; (d) Each contribution is voluntary and shall be made by the member or employee and may not come from or be remitted by the employer of the member; (e) The solicitations are written and mailed to the residence of the member or employee; (f) The Organization shall not exceed two written solicitations for the fund per calendar year; and, (g) The solicitations are designed such that the Organization cannot determine who makes a contribution of less than \$100 as a result of such solicitation and who does not make such a contribution. The Organization has the burden of proof to establish that the requirements above are met.

Article 7 Interpretation

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Section 700. Construction and Interpretation

The language contained in this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter which is a municipal affair.

Section 701. Severability

If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

**Article 8
Amendment**

Section 800. Amendment to Charter, Revised or Repealed

This Charter, and any of its provisions, may be amended by a majority vote of the electors voting on the question. Amendment or repeal may be proposed by initiative or by the governing body.

**AUTHENTICATION
AND
CERTIFICATION**

Authenticated and certified to be a true copy by Mayor _____ and City Clerk _____.

Date of Municipal Election:

ATTEST:

_____, Mayor

_____, City Clerk



CITY COUNCIL AGENDA REPORT

MEETING DATE: DECEMBER 6, 2011

ITEM NUMBER:

SUBJECT: INFORMATION REGARDING PROPOSED CHARTER**DATE: DECEMBER 1, 2011****FROM: BILL LOBDELL, INTERIM COMMUNICATIONS DIRECTOR
THOMAS R. HATCH, CHIEF EXECUTIVE OFFICER****PRESENTATION BY: BILL LOBDELL****FOR FURTHER INFORMATION CONTACT: Bill Lobdell at (714) 754-5288****RECOMMENDATION:**

Direct staff and the City Attorney to begin the process of drafting a Proposed Charter and required supplemental documents.

BACKGROUND:

In the fall of 2011, City Council asked the City Attorney to investigate the benefits and variations of the Charter form of city government. This report and the attached documents outline the differences between a general law city (Costa Mesa's current form of government), and a charter law city; the advantages of the Charter form of city government; and various other relevant issues regarding the decision to use the Charter form of city government. Any proposed charter would need to be placed on the ballot and approved by the voters.

ANALYSIS:

The City of Costa Mesa is currently a general law city. The general law form allows cities to act only based upon the authority given by the California Constitution and the California Legislature. The alternative type of city government used by approximately 120 California cities is the charter form. A charter city is one that has adopted a set of bylaws, called the charter, which acts as a local constitution for the city. Similarly to the federal and State constitutions, a charter may only be adopted, amended, or repealed by a majority vote of a city's residents.

General Law vs. Charter

Charter cities have more authority over their municipal affairs, strengthening the City's home rule.¹ By adopting a charter, the City will have greater flexibility in the operations of its municipal government, which, if properly utilized, can translate to greater efficiency, effectiveness, and innovation.

A charter city has more options when considering how to handle a number of municipal affairs. This includes, but is not limited to, the following:

1. Construction and maintenance contracting.
2. Land use.
3. City finances.
4. State mandates.
5. City government structure.

Notwithstanding these advantages, there are several limitations and safeguards upon a charter city's powers. In particular, a charter city's decision-making authority is specifically limited to only municipal affairs and does not extend to matters of "state-wide concern." Generally speaking, a matter of statewide concern is something that is determined, by the courts, to be of an importance to the entire state. In those cases, state law preempts local regulations. For example, many traffic regulations are matters of state-wide concern. A charter city would not be able to adopt local traffic regulations that would conflict with those enacted by the Legislature.

Also, recent charters passed by California cities have included "anti-City of Bell measures" that limit council member and city employee compensation to what's allowed under state law.

It's important to note that an adoption of a charter does not change the way the City operates. Like the state and federal constitutions, a charter would only provide the City a general set of guidelines and an opportunity to make community-specific decisions. Any changes to existing ordinances and regulations may be made so long as they are within the parameters found in the charter.

Adoption

The state Legislature recently approved a bill (AB1344) that provided for more public input on proposed city charters, both before and after the measures are placed on the ballot. The City's proposed timeline of events (see attached) adds significantly more meetings than the required two public hearings over a two-month period and allows for the proposed charter to be submitted 95 days prior to the June 5, 2012 election (previously, the minimum had been 88 days).

It's important to note that during the process of creating a proposed charter, language and items can be edited and deleted, ~~but after the first public hearing, no new measures can be added.~~ Therefore, the first drafts of city charters are usually broadly written and then refined through public input during the process.

ALTERNATIVES CONSIDERED:

¹ "Home rule" refers to the relative degree of decision-making authority a city has regarding its local or municipal affairs.

Council can choose to not direct staff and the City Attorney to begin the process of drafting a Proposed Charter and required supplemental documents.

FISCAL REVIEW:

If the proposed charter is placed on the June 2012 ballot, then the Registrar of Voters estimates the cost to consolidate to be in the range of \$97,500 to \$123,500. If placed on the November 2012 ballot, the Registrar of Voters estimates the cost to consolidate to be in the range of \$78,500 to \$97,500.

LEGAL REVIEW:

The City Attorney's office has reviewed this report and attachments and approves as to the form found therein.

CONCLUSION:

Council is requested to provide staff and the City Attorney's office direction whether it wants to move forward in drafting a proposed charter and the required supplemental documents for voter consideration.

THOMAS R. HATCH
CHIEF EXECUTIVE OFFICER

THOMAS P. DUARTE
CITY ATTORNEY

- ATTACHMENTS:
- 1 Sample Charter for Costa Mesa
 - 2 A charter primer from the League of California Cities
<http://www.cacities.org/index.jsp?displaytype=11&story=26279>
 - 3 Timeline of events for creating a city charter
AB1344.pdf (http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1301-1350/ab_1344_bill_20110920_enrolled.pdf)

CITY CHARTER SUGGESTIONS/COMMENTS (through Jan. 5, 2011)

Since December 6, 2011, the City of Costa Mesa has been soliciting input from residents and other interested parties on the initial draft of a proposed charter, or local constitution, for the City.

The City has compiled the suggestions and comments below for the City Council's consideration.

SUGGESTIONS TO THE CITY COUNCIL

Suggested additions, edits: the Preamble

1. **Suggested amend:** WE THE PEOPLE of the City of Costa Mesa, California, believe fiscal responsibility and the prudent stewardship of public funds is essential for confidence in government, that ethics and integrity are the foundation of public trust and that just governance is built upon these values. Through the enactment of this Charter, we declare our intent...enact and adopt this Charter for the City of Costa Mesa. It is incumbent upon those who govern and make decisions for and on behalf of the City of Costa Mesa to legally, as well as morally, abide by the provisions of this Charter, in its strictest sense, to assure the continued success and well-being of our City.

Suggested additions, edits: Municipal Affairs, Section 100

1. **Suggested amend to Section 101:** Rights and Liabilities of Cityies; Prior Contracts, Liabilities, Etc., Continued in Effect The City of Costa Mesa shall remain vested.... All lawful ordinances, resolutions, rules and regulations and contracts, or portions thereof, in force at the time this Charter takes effect...are hereby continued in force until...superseded by proper authority.
2. **Suggested addition:** Section 101(a). Pending Actions and Proceedings No action or proceeding, civil or criminal, pending at the time when this Charter takes effect, brought by or against the City or any officer, office, department or agency thereof, shall be affected or abated by adoption of this Charter or by anything herein contained.
3. **Suggested amend to Section 102:** Municipal Affairs Each of the responsibilities of governance set forth and described in this Charter, ~~and~~ as established to the extent allowed by the Constitutional, statutory and judicially defined law of the State of California, is hereby declared to be a

municipal affair ~~of concern~~, the performance of which is unique to the benefit of the citizens of the city of Costa Mesa. Unless specifically provided for in this Charter, the general laws of the State of California shall apply to the City of Costa Mesa.

Suggested additions, edits: Form of Government, Section 200

1. **Suggested addition to Section 201:** The parts that are here are fine but a specific qualification section should be added. City Council members should be U.S. citizens, at least 18 years old, a registered voter, resident of the City of Costa Mesa for at least 2 years and remain a resident as long as they are on the Council. Include language about City Council's compensation/expenses; include language about Council vacancies, forfeitures (absenteeism); felony convictions; rules for conflict of interest and nepotism.
2. **Suggested addition to Section 201:** The Mayor of the city shall be elected by the qualified voters of the City at a general municipal election. The term of service for the mayor and shall be for a period of two (2) years from the date of election.
3. **Suggested amend to Section 201:** The members of the City Council shall not be eligible to hold any other office or employment with the City during the period of their incumbency, and for a period of two years following the termination of their position on the City Council.
4. **Suggested addition Section 201:** Council Member Qualification - 5 year Minimum Residency requirement.
5. **Suggested amend to Section 202:** Change from requiring 1 public meeting a month to at least 2 public meetings a month. The meetings, many times, end after midnight now. With only one meeting a month public input wouldn't have a chance. Second paragraph, please define and be specific about "state laws," such as "open and public" include specific language about dissemination of information about council meetings.
6. **Suggested addition to Section 202.** Time and Place of Meetings; Rules of Conduct of Proceedings (Add third paragraph) No citizen shall be denied the right, personally or through counsel, to present grievances at any regular meeting of the City Council, or to offer suggestions for the betterment of municipal affairs, subject always to the rules of the City Council, governing the conduct of Council meetings.

7. **Suggested amend to Sections 203/204:** Be consistent. If we aren't having a title of City Manager anymore then change it everywhere to CEO. Paragraph 3, remove "without cause stated or hearing had." This language puts way too much power in the hands of the City Council. What specific power and duties of the City Manager? What about language that explains/describes an "acting" city manager? Line 2 "as prescribed by this Charter" Where? What about language describing personnel, boards, commissions, committees?
8. **Suggested addition to Section 203:** Administrative Officers; Appointment and Removal; Grounds (Add fourth paragraph) The City Manager shall not be removed from office during or within a period of ninety days after any municipal election at which a member of the City Council is elected. No person shall be eligible to receive appointment as City Manager while serving as a member of the City Council or any City commission, board, or committee, nor within one year after such person has ceased to be a member of the City Council.
9. **Suggested amend to Section 203:** Concerned about 4 Council Members being able to dismiss an employee with no hearing and no stated reason.
10. **Suggested amend to Section 204:** Administrative Officers; Qualifications and Duties The City Manager shall be the administrative head...by ordinance of the City Council. The City Manager shall be chosen on the basis of his or her executive and administrative qualifications, with special reference to actual experience in, and knowledge of, accepted principles and practices of organizational design and development, long-range planning, public administration, public financing, municipal budgeting, financial administration, program and policy formulation, purchasing, maintenance of public records, and applicable state and federal laws and regulations governing the administration and operations of a municipal agency.
11. **Suggested amend to Section 205:** Interference With Performance of Duties of City Manager No member of the City Council shall in any manner attempt to influence or coerce the City Manager in the ~~making of~~ any appointment or removal of any officer or employee, in the purchase of supplies or services, or in any other administrative matter in accordance with the Charter, City ordinance, or applicable state and federal law.
12. **Suggested clarification to Section 205:** Second line, "in accordance with the Charter," where is this language in the charter about attempt to influence/coerce? What about specific language about a city clerk and city treasurer?

13. **Suggested addition: Section 206:** Code of Ethics and Conduct The City Council shall adopt a Code of Ethics and Conduct for elected officials and members of appointed commissions, boards and committees to assure public confidence in the integrity of local government elected and appointed officials. The City Council shall adopt said Code of Ethics and Conduct by ordinance or resolution within six months of the effective date of this Charter.

14. **Suggested addition:** Should include a Court of Review – akin to the U.S. and California Supreme Courts – to provide local checks and balances on the City Council by splitting governance into three equal branches; the executive, legislative and judicial branches. The Court could be established, for example, with three judges elected by vote of the citizens of Costa Mesa, and hold office for six years in staggered terms. The Court would sit only as needed, when a petition for review is filed. Suitable compensation of judges could be established for their part-time work. The City would provide a venue, materials, and equipment for the Court's operation, and fund it as needed. This Court is needed to supplement the cumbersome and expensive routes of appeal that have been traditionally available – lawsuits and the Referendum. A more rapid response is needed, in case a Council greatly empowered by a charter succumbs to dangerously unfettered activism.

15. **Suggested addition:** City Council may consider organizations (Commission) to participate in decisions affecting the City as a whole, a commission (such as Planning Commission) is given the power to make decisions, or take actions. Some or all such powers may be limited or effectively unlimited. Candidates must be at least 18 and willing to participate for a two-year term. Candidates also should demonstrate a history of participating in community activities, ideally with emphasis on city related activities. The City Council conducting the recruitment program will screen all applications and recommend qualified candidates for membership and their selections will be made by drawing from eligible residents.

16. **Suggested addition:** In the event the Council takes any action that has a significant negative impact upon the City's finances, including causing legal action resulting in fines or penalties, said Council will be held personally financially responsible for said costs.

17. **Suggested addition:** Include a provision that the municipal elections shall continue to be governed by state law, or alternatively, have the charter spell out with specificity the exact manner in which all election matters, including initiatives, referenda and recalls will be conducted. As written the charter leaves the door wide open for the council, by a mere vote of 3, to

alter the local election laws. This includes setting forth qualifications for office, percentage of registered voters' signatures required for an initiative, referendum or recall to be changed (lowered or increased, at the whim of any given council, since any such election ordinances can be enacted and/or repealed by Council and not the voters.

18. **Suggested addition:** All provisions of the general law of the State of California as they now exist or as amended in the future shall govern matters concerning elections including, but not limited to, election dates, initiatives, referenda, recall, eligibility to vote, and qualifications for office, and no other provisions shall apply, except that the time for filing a petition for a referendum shall be ninety days from the final reading of the legislative action, and no such action, other than an urgency ordinance as defined by general law, shall take effect until the time for filing of a referendum petition has expired and no valid petition has been filed.

Suggested additions, edits: Legislative Authority, Section 300

1. **Suggested addition to Section 300:** add specific language about special elections article.
2. **Suggested amend to Section 300.** Ordinances (Amend first paragraph) The City Council shall act by ordinance, resolution, or motion. Except for urgency ordinances,...nor at any time other than at a regular meeting, and no ordinance shall become effective until thirty (30) days from and after the date of its final passage. Nothing herein...signed by the Mayor and attested by the City Clerk.
3. **Suggested addition:** Section 301. Initiative, Referendum and Recall The provisions of the Elections Code of the State of California, as the same now exists or may hereafter be amended, governing the initiative and referendum and the recall of municipal officers, shall apply to the use thereof in the City of Costa Mesa.
4. **Suggested addition:** Section 302. Planning and Zoning The Zoning Code, land use designations of properties as shown on the official Zoning Map, and land use decisions (including, but not limited to, subdivisions, variances, conditional use permits, and administrative zoning approvals) shall be consistent with the General Plan and any applicable Specific Plan. In the event that a zoning ordinance or zoning map becomes inconsistent with the General Plan or Specific Plan by reason of amendment to the General Plan or Specific Plan, the zoning ordinance or zoning map shall be amended within a reasonable time so that it is consistent with the General Plan or Specific Plan as amended.

5. **Suggested addition:** City Council powers limited, not to be liberally or broadly interpreted, with all other Charter rights/powers reserved for the Citizens of Costa Mesa.
6. **Suggested addition:** Include the manner for the enactment of ordinances to remain the same as under state law, and for the charter to specifically so provide.

Suggested additions, edits: Fiscal Matters, Section 400

1. **Suggested amend to Section 400:** Economic and Community Development The City shall encourage, support, and promote economic development and community development in the City, while balancing the benefits of such development with potential impacts on residents, in terms of traffic, noise, pollution and other factors that affect the quality of life.
2. **Suggested amend to Section 401:** Public works contracts should not be exempt from public bidding. Prevailing wage should be paid even with “fair and open competition.” Bids lower than the prevailing wage allow the bidder to pay employees much less than the going rate for the work an employee is doing. This would allow the owner of the business to make a larger profit on the backs of his workers. This kind of language encourages the contractor to hire undocumented workers at minimum wage or even lower than minimum wage.
3. **Suggested amend to 401 section:** Council shall be required to maximize contracting out all City services, except above Police/Fire/EMT minimum Street Patrol services, to most qualified bidder that provides best value to City over the life of each such contract.
4. **Suggested amend to Section 401:** Retain all language to Project Labor Agreements and the ability to keep the City protected from strikes by unions. PLA's give the City the chance to ensure the most qualified bidder gets the award.
5. **Suggested addition amend to Section 401:** Competitive bids shall be solicited for all contracts with public or private entities, and contracts shall be awarded to the lowest responsible and responsive bidder. No changes to an Invitation to Bid or Request for Proposal shall be made after the Invitation or Request has been issued, and non-responsive bids shall be rejected; provided, however, that after a contract has been awarded, the City Council, at a regular public meeting, may modify the contract by adding or deleting specific items of work within the general scope of the contract and adjusting compensation accordingly. Contracts for legal, accounting, engineering or architectural services shall be awarded with

- due consideration for the specific skills and expertise required, in addition to the financial and other aspects of the proposals.
6. **Suggested addition to Section 401:** Every contract awarded by the City of Costa Mesa which is not limited by its terms to one year or less shall include a specific amount of maximum compensation, per year and overall. The maximum compensation shall not be exceeded or increased except by a vote of at least three members of the City Council at a regular public meeting, before goods or services in excess of the maximum are provided to the City.
 7. **Suggested addition to Section 401:** All construction and maintenance contracts awarded by the City shall provide that all persons providing services under the contract shall be legally entitled to perform the work and shall possess all required licenses and permits needed for the work. The contracts shall require the contractor to provide adequate proof of compliance prior to the start of the work and monthly thereafter until the work is completed.
 8. **Suggested addition:** Fiscal matters need language about annual budget preparation, submission, public hearing, public consideration, City tax rates, and audits.
 9. **Suggested addition:** Council will minimize hiring Consultants, but in no event to exceed 0.5% of GF.
 10. **Suggested addition:** Section 403. Conflict of Interest No member of the City Council shall be financially interested, as that term is defined at Government Code Section 87103, as it is presently worded or may hereafter be amended, in any contract, sale or transaction to which the City is a party, and neither shall any member of any City commission, board, or committee, or any City official or employee be financially interested in any contract, sale or transaction to which the City is a party and which comes before said commission, board, committee or said official or employee or department of the City with which he or she is connected, for official action.

Suggested additions, edits: General Laws, Section 600

1. **Suggested amend to Section 601:** Council Member Compensation now includes salary benefits, medical benefits and pension benefits. Since Council members are only here part-time, they should only receive a part-time salary. Council members should pay for their own medical insurance. Councilmember Total Compensation- \$150 per member per Council meeting.

2. **Suggested amend to Section 601:** Council Member Compensation Notwithstanding the previous paragraph, salary of the Mayor and Council Members will continue to be set by California Government Code §36516, as that statute provides as of the date of the adoption of this Charter, where the formula considers city population and state law. Elected Council members are not entitled to city benefits' benefits, employment benefits, or employer contributions without the majority approval of qualified voters of the City at a general municipal election.
3. **Suggested addition:** Section 602.1 – The City is a right to work City. No employee is required to join a union or the OC Employee Assn.
4. **Suggested deletion** to Section 602: Delete the last sentence. If voters must approve increases they should also have to approve decreases. Add that sentence to the section. The way it reads the City Council has too much power in their hands.
5. **Suggested addition to Section 602:** Retirement age for each new City employee will be 65 years of age, except for active Police/Fire/EMT on street patrol, whose Retirement Age will be 59 years of age.
6. **Suggested addition:** Section 602.2 – Total benefits (retirement, health, +) contributions shall be shared 50% by the City and the employee. The City's total contribution shall not exceed 10% of the employees pay.
7. **Suggested deletion to Section 603:** Delete. City employees should make that change within their own union or association. They have the power to make that change themselves if they are unhappy with the way their dues are being spent.
8. **Suggested deletion to Sections 602 & 603.** Delete entirely. They are punitive and unnecessary.
9. **Suggested addition:** Taxpayer Payroll Committee would establish rates of compensation for all employees. The compensation would be based on the Bureau of Labor Statutes for private employers (not union wages). Local benefits shall not be greater than those provided by Social Security (rate of contribution by employee and employer, age of retirement).
10. **Suggested addition:** Need General Fund Appropriate limits specific in Charter – e.g., maximum 50% of GF for Salaries/Benefits; Minimum 10% of GF for Reserve; Minimum of 10% of GF for Infrastructure; Minimum of 5% of GF for Telecommunications; Minimum of 5% of GF for Police/Fire Vehicles. Total City employee headcount not to exceed 200, including

- FTEs, of those, minimums of 100 Police Street Patrol, 40 Firefighters, and 5 EMTs, with a maximum 55 in other City jobs.
11. **Suggested addition:** Except for the City Manager, and a Public Safety Administrator (to head up Police/Fire/EMT), maximum annual salary for any City employee not to exceed \$150K, including all incentives and bonuses, excluding City PERS contribution.
 12. **Suggested addition:** City's Contribution to PERS for each new City employee not to exceed 20%.
 13. **Suggested addition:** Each new City employee to pay 100% of City-offered medical/hospital plans.
 14. **Suggested addition:** Council will minimize Overtime, but in no event exceed 0.5% of GF.
 15. **Suggested addition:** Add language that protects our status as a "Rule of Law" City and continues to oppose illegal immigration violations and so-called "Safe Harbor" cities.
 16. **Suggested addition:** In any doctrine reinforcing the historic principles of self governance and home-rule, it is of the utmost importance to include the right of law abiding citizens to keep and bear arms. Laws can come and go depending on the elected officials but it is crucial that no law can be passed that would infringe on that primal right for law abiding citizens.
 17. **Suggested addition:** Include a provision that spells out exactly how the zoning and land use laws will be changed and have them contained in the charter, or have the charter provide that state law will continue to govern zoning and land use (including use of public parklands).
 18. **Suggested addition:** The charter to specifically prohibit Council from seeking voter approval to impose a real property transfer tax.
 19. **Suggested addition:** All zoning ordinances and zoning variances shall conform to and be consistent with the general plan in effect at the time of adoption or approval and to any applicable specific plan, and to general law in regard to the rules governing general and specific plans and zoning.
 20. **Suggested addition:** All provisions of the general law of the State of California pertaining to conflict of interest, including but not limited to Government Code Section 1090, shall apply to and be binding upon the City Council and all officers and employees of the City of Costa Mesa.

21. **Suggested addition:** Whenever a valid petition for a referendum has been filed, the City Council shall either vacate the action that is the subject of the referendum or submit the matter to a vote of the electorate at the next general election.
22. **Suggested addition:** Any citizen initiative for which a valid petition has been filed shall be submitted to a vote of the electorate at the next general election.
23. **Suggested addition:** No proposed amendment to this charter shall be adopted unless approved by a majority of those voting on the matter at a general election held in an even-numbered year.
24. **Suggested addition:** All matters not expressly included in this charter shall be governed by the general law of the State of California.
25. **Suggested addition:** All communications concerning City of Costa Mesa business between a Council member and any individual or organization other than City of Costa Mesa employees shall be disclosed at the next regular Council meeting. The disclosure shall include the names of all persons participating, the dates of such communications, the form of communication, the subject of the communication and a summary of the substance of the communication.

Suggested additions, edits: Amendment, Section 800

1. **Suggested amend to Section 800:** Amendment to Charter, Revised or Repealed This Charter, and any of its provisions, may be amended by a majority two thirds vote of the electors voting on the question. Amendment or repeal may be proposed by initiative or by the governing body.
2. **Suggested amend Section 800:** Replace with: A volunteer Charter Revision, Amendment and Oversight Committee (CRAOC) will be established. The city is to remain a General Law city until the CRAOC is established. The CRAOC will consist of a number of individuals elected by the voters of Costa Mesa and will have service terms and limits. Committee members will be elected/re-elected by the voters of Costa Mesa every TBD years. The CRAOC can propose revisions, amendments, and all other form of changes to the charter or repeal it. The CRAOC provides oversight by having the authority, through majority CRAOC vote, to approve for placement on the ballot any proposal for power or authority that is outside of that specifically defined in the charter. If placed on the ballot, a majority of Costa Mesa voters must approve the proposal. The proposed changes or proposal for repeal can be put on the ballot without the city council's approval if 60% or more of CRAOC committee members

agree. All other CRAOC rules for selecting a leader of the CRAOC, and for operation and approval of proposals will be established by the CRAOC. If the charter changes or proposal for repeal are approved by the CRAOC for the ballot, the changes must be approved by a majority of the Costa Mesa electors voting on the issue before they become effective.

3. Suggested addition: Section 801. Charter Review The City Council shall hold a public hearing to determine if there is a need to convene a citizens' Charter Review Commission to conduct a review of the City Charter no less frequently than every ten years.

SUMMARY OF GENERAL COMMENTS

Slow down - 19

No charter – 11

The draft charter should written by a citizen commission that is elected by the citizens of Costa Mesa – 8

Yes charter – 1

Don't use other cities' charters-1

Possible day meetings scheduled for those who do not drive at night-1

Please schedule more town hall meetings at various places and times, so more people can be educated.-1

Public funding of election campaigns should be unlawful. Could not find where that was included-1

There are huge problems allowing Council to establish their own salaries.-1
[Note: The proposed Charter prevents this under Section 601.]

Very concerned about the clause regarding the public financing of election campaigns as being "lawful.-1

Needs more detailed information. Charters from other OC cities: Anaheim, 50 pages; Cypress, 29; Huntington Beach, 20; Irvine, 10; NB (contracts for services only) 6; Placentia, 24; Santa Ana, 5; Seal Beach, 24.

Information from the nonpartisan California League of Cities:
<http://www.cacities.org/chartercities>

Introduction

Charter Cities

Did you know that, under certain home rule provisions in California's state constitution, voters can exercise a greater degree of local control than that provided by the California Legislature? Becoming a charter city allows voters to determine how their city government is organized and, with respect to municipal affairs, enact legislation different than that adopted by the state.

In 2001, the Institute for Local Government, the League's research arm, teamed up with the Hastings Public Law Research Institute to create an informational resource for those interested in understanding more about this special form of local control. The League is grateful to everyone who helped with this project including Phillip Hall of UC Hastings and the Hastings Public Law Research Institute; Karl Berger of Jenkins & Hugin LLP; Betsy Strauss (Attorney at Law); John Cook (Former City Attorney, Indian Wells); and Harvey Levine (City Attorney, Fremont). In 2007, the League updated these resources and the new documents can be found below. The League would like to thank Hilda Cantú Montoy (Attorney at Law) for her help with the update.

Charter Cities: A Quick Summary for the Press and Researchers

The following summary was drafted by the League of California Cities' legal staff, in an attempt to give the press and research communities a primer on some frequently asked questions regarding charter cities.

Charter Cities vs. General Law Cities -- The Basics

The California Constitution gives cities the power to become charter cities.¹ The benefit of becoming a charter city is that charter cities have supreme authority over "municipal affairs."² In other words, a charter city's law concerning a municipal affair will trump a state law governing the same topic.³

Cities that have not adopted a charter are general law cities. General law cities are bound by the state's general law, even with respect to municipal affairs. Of California's 478 cities, 108 of them are charter cities.

The charter city provision of the State Constitution, commonly referred to as the "home-rule" provision, is based on the principle that a city, rather than the state, is in the best position to know what it needs and how to satisfy those needs.⁴ The home-rule provision allows charter cities to conduct their own business and control their own affairs.⁵ A charter maximizes local control.

A city charter, in effect a city's constitution, need not set out every municipal affair the city would like to govern. So long as the charter contains a declaration that the city intends to avail itself of the full power provided by the California Constitution, any city ordinance that regulates a municipal affair will govern over a general law of the state.⁶

Defining 'Municipal Affairs'

Determining what is and is not a "municipal affair" is not always straightforward. The California Constitution does not define "municipal affair." It does, however, set out a nonexclusive list of four "core"

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categories that are, by definition, municipal affairs.⁷

These categories are 1) regulation of the "city police force"; 2) "subgovernment in all or part of a city"; 3) "conduct of city elections"; and 4) "the manner in which . . . municipal officers [are] elected."⁸ Beyond this list, it is up to the courts to determine what is and is not a municipal affair.

To determine if a matter is a municipal affair, a court will ask whether there are good reasons, grounded on statewide interests, for the state law to preempt a local law.⁹ In other words, courts will ask whether there is a need for "paramount state control" in the particular area of law.¹⁰ The Legislature's intent when enacting a specific law is not determinative.¹¹

The concept of "municipal affairs" is fluid and may change over time.¹² Issues that are municipal affairs today could become areas of statewide concern in the future.¹³ Nonetheless, there are some areas that courts have consistently classified as municipal affairs. These include:

- Municipal election matters¹⁴
- Land use and zoning decisions (with some exceptions)¹⁵
- How a city spends its tax dollars¹⁶
- Municipal contracts, provided the charter or a city ordinance exempts the city from the Public Contract Code, and the subject matter of the bid constitutes a municipal affair.¹⁷ Thus, a charter may exempt a city from the State's competitive bidding statutes.

Likewise, there are some areas that courts have consistently classified as areas of statewide concern, including:

- Traffic and vehicle regulation¹⁸
- Tort claims against a governmental entity¹⁹
- Regulation of school systems²⁰

How to Become a Charter City

To become a charter city, a city must adopt a charter. There are two ways to adopt a charter:

- The city's voters elect a charter commission.²¹ The commission has the responsibility of drafting and debating the charter.
- The governing board of the city, on its own motion, drafts the charter.²²

In either case, the charter is not adopted by the city until it is ratified by a majority vote of the city's voters.²³

For more information about charter cities, please visit the "Charter Cities" section of the League's Web site at <http://www.cacities.org/chartercities>.

¹ Cal. Const. art. XI, § 3(a).

² Cal. Const. art. XI, § 5(a).

³ *Johnson v. Bradley*, 4 Cal. 4th 389, 399 (1992).

⁴ *Fragley v. Phelan*, 126 Cal. 383, 387 (1899).

⁵ *Id.*

Information from the nonpartisan California League of Cities:

<http://www.cacities.org/chartercities>

⁶ There are some exceptions to this rule. For example, a charter city is bound by the Public Contract Code unless the city's charter expressly exempts the city from the Code's provisions or a city ordinance conflicts with a provision in the Code. *See* Cal. Pub. Cont. Code § 1100.7.

⁷ Cal. Const. art. XI, § 5(b); *Johnson*, 4 Cal. 4th at 398.

⁸ Cal. Const. art. XI, § 5(b).

⁹ *Johnson*, 4 Cal. 4th at 405.

¹⁰ *Id.* at 400.

¹¹ *Id.* at 405.

¹² *Cal. Fed. Savings & Loan Ass'n v. City of Los Angeles*, 54 Cal. 3d 1, 16 (1991); *Isaac v. City of Los Angeles*, 66 Cal. App. 4th 586, 599 (1998).

¹³ *Isaac*, 66 Cal. App. 4th at 599.

¹⁴ *Mackey v. Thiel*, 262 Cal. App. 2d 362, 365 (1968).

¹⁵ *See Brougher v. Bd. of Pub. Works*, 205 Cal. 426, 440 (1928).

¹⁶ *Johnson*, 4 Cal. 4th at 407.

¹⁷ Pub. Cont. Code § 1100.7; *R & A Vending Services, Inc. v. City of Los Angeles*, 172 Cal. App. 3d 1188, 1191 (1985); *Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.*, 71 Cal. App. 4th 38, 51 (1998).

¹⁸ Cal. Veh. Code § 21.

¹⁹ *Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 247 (1942).

²⁰ *Whisman v. San Francisco Unified Sch. Dist.*, 86 Cal. App. 3d 782, 789 (1978).

²¹ Cal. Gov't Code § 34451.

²² Cal. Gov't Code § 34458.

²³ Cal. Gov't Code §§ 34457, 34462.

General Law City v. Charter City

Characteristic	General Law City	Charter City
Ability to Govern Municipal Affairs	Bound by the state's general law, regardless of whether the subject concerns a municipal affair.	Has supreme authority over "municipal affairs." Cal. Const. art. XI, § 5(b).
Form of Government	State law describes the city's form of government. For example, Government Code section 36501 authorizes general law cities be governed by a city council of five members, a city clerk, a city treasurer, a police chief, a fire chief and any subordinate officers or employees as required by law. City electors may adopt ordinance which provides for a different number of council members. Cal. Gov't section 34871. The Government Code also authorizes the "city manager" form of government. Cal. Gov't Code § 34851.	Charter can provide for any form of government including the "strong mayor," and "city manager" forms. See Cal. Const. art. XI, § 5(b); Cal. Gov't Code § 34450 <i>et seq.</i>
Elections Generally	Municipal elections conducted in accordance with the California Elections Code. Cal. Elec. Code §§ 10101 <i>et seq.</i>	Not bound by the California Elections Code. May establish own election dates, rules, and procedures. See Cal. Const. art. XI, § 5(b); Cal. Elec. Code §§ 10101 <i>et seq.</i>
Methods of Elections	Generally holds at-large elections whereby voters vote for any candidate on the ballot. Cities may also choose to elect the city council "by" or "from" districts, so long as the election system has been established by ordinance and approved by the voters. Cal. Gov't Code § 34871. Mayor may be elected by the city council or by vote of the people. Cal. Gov't Code §§ 34902.	May establish procedures for selecting officers. May hold at-large or district elections. See Cal. Const. art. XI, § 5(b).
City Council Member Qualifications	<p>Minimum qualifications are:</p> <ol style="list-style-type: none"> 1. United States citizen 2. At least 18 years old 3. Registered voter 4. Resident of the city at least 15 days prior to the election and throughout his or her term 5. If elected by or from a district, be a resident of the geographical area comprising the district from which he or she is elected. <p>Cal. Elec. Code § 321; Cal. Gov't Code §§ 34882, 36502; 87 Cal. Op. Att'y Gen. 30 (2004).</p>	Can establish own criteria for city office provided it does not violate the U.S. Constitution. Cal. Const. art. XI, § 5(b), 82 Cal. Op. Att'y Gen. 6, 8 (1999).

Characteristic	General Law City	Charter City
Public Funds for Candidate in Municipal Elections	No public officer shall expend and no candidate shall accept public money for the purpose of seeking elected office. Cal. Gov't Code § 85300.	Public financing of election campaigns is lawful. <i>Johnson v. Bradley</i> , 4 Cal. 4th 389 (1992).
Term Limits	May provide for term limits. Cal. Gov't Code § 36502(b).	May provide for term limits. Cal. Const. art. XI, § 5(b); Cal Gov't Code Section 36502 (b).
Vacancies and Termination of Office	An office becomes vacant in several instances including death, resignation, removal for failure to perform official duties, electorate irregularities, absence from meetings without permission, and upon non-residency. Cal. Gov't Code §§ 1770, 36502, 36513.	May establish criteria for vacating and terminating city offices so long as it does not violate the state and federal constitutions. Cal. Const. art. XI, § 5(b).
Council Member Compensation and Expense Reimbursement	Salary-ceiling is set by city population and salary increases set by state law except for compensation established by city electors. See Cal. Gov't Code § 36516. If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235.	May establish council members' salaries. See Cal. Const. art. XI, § 5(b). If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235.
Legislative Authority	<p>Ordinances may not be passed within five days of introduction unless they are urgency ordinances. Cal. Gov't Code § 36934.</p> <p>Ordinances may only be passed at a regular meeting, and must be read in full at time of introduction and passage except when, after reading the title, further reading is waived. Cal. Gov't Code § 36934.</p>	May establish procedures for enacting local ordinances. <i>Brougher v. Bd. of Public Works</i> , 205 Cal. 426 (1928).
Resolutions	May establish rules regarding the procedures for adopting, amending or repealing resolutions.	May establish procedures for adopting, amending or repealing resolutions. <i>Brougher v. Bd. of Public Works</i> , 205 Cal. 426 (1928).
Quorum and Voting Requirements	<p>A majority of the city council constitutes a quorum for transaction of business. Cal. Gov't Code § 36810.</p> <p>All ordinances, resolutions, and orders for the payment of money require a recorded majority vote of the total membership of the city council. Cal. Gov't Code § 36936. Specific legislation requires supermajority votes for certain actions.</p>	May establish own procedures and quorum requirements. However, certain legislation requiring supermajority votes is applicable to charter cities. For example, see California Code of Civil Procedure section 1245.240 requiring a vote of two-thirds of all the members of the governing body unless a greater vote is required by charter.

Characteristic	General Law City	Charter City
<p>Rules Governing Procedure and Decorum</p>	<p>Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).</p> <p>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i></p>	<p>Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).</p> <p>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i></p> <p>May provide provisions related to ethics, conflicts, campaign financing and incompatibility of office.</p>
<p>Personnel Matters</p>	<p>May establish standards, requirements and procedures for hiring personnel consistent with Government Code requirements.</p> <p>May have "civil service" system, which includes comprehensive procedures for recruitment, hiring, testing and promotion. See Cal. Gov't Code § 45000 <i>et seq.</i></p> <p>Meyers-Milias-Brown Act applies. Cal. Gov't Code § 3500.</p> <p>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, § 10(b).</p>	<p>May establish standards, requirements, and procedures, including compensation, terms and conditions of employment for personnel. See Cal. Const. art. XI, § 5(b).</p> <p>Procedures set forth in Meyers-Milias-Brown Act (Cal. Gov't Code § 3500) apply, but note, "[T]here is a clear distinction between the <i>substance</i> of a public employee labor issue and the <i>procedure</i> by which it is resolved. Thus there is no question that 'salaries of local employees of a charter city constitute municipal affairs and are not subject to general laws.'" <i>Voters for Responsible Retirement v. Board of Supervisors</i>, 8 Cal.4th 765, 781 (1994).</p> <p>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, section 10(b).</p>
<p>Contracting Services</p>	<p>Authority to enter into contracts to carry out necessary functions, including those expressly granted and those implied by necessity. See Cal. Gov't Code § 37103; <i>Carruth v. City of Madera</i>, 233 Cal. App. 2d 688 (1965).</p>	<p>Full authority to contract consistent with charter.</p> <p>May transfer some of its functions to the county including tax collection, assessment collection and sale of property for non-payment of taxes and assessments. Cal. Gov't Code §§ 51330, 51334, 51335.</p>

Characteristic	General Law City	Charter City
Public Contracts	<p>Competitive bidding required for public works contracts over \$5,000. Cal. Pub. Cont. Code § 20162. Such contracts must be awarded to the lowest responsible bidder. Pub. Cont. Code § 20162. If city elects subject itself to uniform construction accounting procedures, less formal procedures may be available for contracts less than \$100,000. See Cal. Pub. Cont. Code §§ 22000, 22032.</p> <p>Contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms need not be competitively bid, but must be awarded on basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of services. Cal. Gov't Code § 4526.</p>	<p>Not required to comply with bidding statutes provided the city charter or a city ordinance exempts the city from such statutes, and the subject matter of the bid constitutes a municipal affair. Pub. Cont. Code § 1100.7; see <i>R & A Vending Services, Inc. v. City of Los Angeles</i>, 172 Cal. App. 3d 1188 (1985); <i>Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.</i>, 71 Cal. App. 4th 38 (1998).</p>
Payment of Prevailing Wages	<p>In general, prevailing wages must be paid on public works projects over \$1,000. Cal. Lab. Code § 1771. Higher thresholds apply (\$15,000 or \$25,000) if the public entity has adopted a special labor compliance program. See Cal. Labor Code § 1771.5(a)-(c).</p>	<p>Historically, charter cities have not been bound by state law prevailing-wage requirements so long as the project is a municipal affair, and not one funded by state or federal grants. <i>Vial v. City of San Diego</i>, 122 Cal. App. 3d 346, 348 (1981). However, there is a growing trend on the part of the courts and the Legislature to expand the applicability of prevailing wages to charter cities under an analysis that argues that the payment of prevailing wages is a matter of statewide concern. The California Supreme Court currently has before them a case that will provide the opportunity to decide whether prevailing wage is a municipal affair or whether it has become a matter of statewide concern.</p>

Characteristic	General Law City	Charter City
Finance and Taxing Power	<p>May impose the same kinds of taxes and assessment as charter cities. See Cal. Gov't Code § 37100.5.</p> <p>Imposition of taxes and assessments subject to Proposition 218. Cal. Const. art.XIIIC.</p> <p>Examples of common forms used in assessment district financing include:</p> <ul style="list-style-type: none"> • Improvement Act of 1911. Cal. Sts. & High. Code § 22500 <i>et seq.</i>. • Municipal Improvement Act of 1913. See Cal. Sts. & High. Code §§ 10000 <i>et seq.</i>. • Improvement Bond Act of 1915. Cal. Sts. & High. Code §§ 8500 <i>et seq.</i>. • Landscaping and Lighting Act of 1972. Cal. Sts. & High. Code §§ 22500 <i>et seq.</i>. • Benefit Assessment Act of 1982. Cal. Gov't Code §§ 54703 <i>et seq.</i>. <p>May impose business license taxes for regulatory purposes, revenue purposes, or both. See Cal. Gov't Code § 37101.</p> <p>May not impose real property transfer tax. See Cal. Const. art. XIII A, § 4; Cal. Gov't Code § 53725; <i>but see</i> authority to impose documentary transfer taxes under certain circumstances. Cal. Rev. & Tax. Code § 11911(a), (c).</p>	<p>Have the power to tax.</p> <p>Have broader assessment powers than a general law city, as well as taxation power as determined on a case-by case basis.</p> <p>Imposition of taxes and assessments subject to Proposition 218, Cal. Const. art. XIIIC, § 2, and own charter limitations</p> <p>May proceed under a general assessment law, or enact local assessment laws and then elect to proceed under the local law. See <i>J.W. Jones Companies v. City of San Diego</i>, 157 Cal. App. 3d 745 (1984).</p> <p>May impose business license taxes for any purpose unless limited by state or federal constitutions, or city charter. See Cal. Const. art. XI, § 5.</p> <p>May impose real property transfer tax; does not violate either Cal. Const art. XIII A or California Government Code section 53725. See <i>Cohn v. City of Oakland</i>, 223 Cal. App. 3d 261 (1990); <i>Fielder v. City of Los Angeles</i>, 14 Cal. App. 4th 137 (1993).</p>
Streets & Sidewalks	State has preempted entire field of traffic control. Cal. Veh. Code § 21.	State has preempted entire field of traffic control. Cal. Veh. Code § 21.
Penalties & Cost Recovery	May impose fines, penalties and forfeitures, with a fine not exceeding \$1,000. Cal. Gov't Code § 36901.	May enact ordinances providing for various penalties so long as such penalties do not exceed any maximum limits set by the charter. <i>County of Los Angeles v. City of Los Angeles</i> , 219 Cal. App. 2d 838, 844 (1963).

Characteristic	General Law City	Charter City
<p>Public Utilities/Franchises</p>	<p>May establish, purchase, and operate public works to furnish its inhabitants with electric power. <i>See</i> Cal. Const. art. XI, § 9(a); Cal. Gov't Code § 39732; Cal. Pub. Util. Code § 10002.</p> <p>May grant franchises to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city to allow use of city streets for such purposes. The grant of franchises can be done through a bidding process, under the Broughton Act, Cal. Pub. Util. Code §§ 6001-6092, or without a bidding process under the Franchise Act of 1937, Cal. Pub. Util. Code §§ 6201-6302.</p>	<p>May establish, purchase, and operate public works to furnish its inhabitants with electric power. <i>See</i> Cal. Const. art. XI, § 9(a); <i>Cal. Apartment Ass'n v. City of Stockton</i>, 80 Cal. App. 4th 699 (2000).</p> <p>May establish conditions and regulations on the granting of franchises to use city streets to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city.</p> <p>Franchise Act of 1937 is not applicable if charter provides. Cal. Pub. Util. Code § 6205.</p>
<p>Zoning</p>	<p>Zoning ordinances must be consistent with general plan. Cal. Gov't Code § 65860.</p>	<p>Zoning ordinances are not required to be consistent with general plan unless the city has adopted a consistency requirement by charter or ordinance. Cal. Gov't. Code § 65803.</p>

Information from the nonpartisan California League of Cities:

<http://www.cacities.org/chartercities>

Foundational aspects of charter cities

What is the Constitutional Framework for Charter Cities?

Article XI, section 3(a) of the California Constitution authorizes the adoption of a city charter and provides such a charter has the force and effect of state law. Article XI, section 5(a), the "home rule" provision, affirmatively grants to charter cities supremacy over "municipal affairs." However, the California Constitution does not define the term "municipal affair."

What are "Municipal Affairs?"

The home rule provision of the California Constitution authorizes a charter city to exercise plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations. See Cal. Const. art. XI § 5(a); *Ex Parte Braun*, 141 Cal. 204, 209 (1903); *Bishop v. City of San Jose*, 1 Cal. 3d 56, 61 (1969); *Comm. of Seven Thousand v. Super. Ct. (City of Irvine)*, 45 Cal.3d 491 (1988).

How Do the Courts Distinguish Between Municipal and Statewide Concerns?

Whether a given activity is a municipal affair over which a city has sovereignty, or a statewide concern, over which the legislature has authority, is a legal determination for the courts to resolve. Thus, the determination of whether a given activity is a municipal affair or statewide concern is done on a case-by-case basis. The court's determination will depend on the particular facts and circumstances of each case. See *In Re Hubbard*, 62 Cal. 2d 119, 128 (1964). Keep in mind that the concept of "municipal affairs" is a fluid one that changes over time as local issues become statewide concerns. See *Issac v. City of Los Angeles*, 66 Cal. App. 4th 586 (1998).

What Activities Have the Courts Classified As Municipal Affairs?

There are some areas that the courts have consistently classified as municipal affairs. Examples include the following:

- Municipal Election Matters. See *Mackey v. Thiel*, 262 Cal. App. 2d 362 (1968).
- Procedures for Initiative, Referendum and Recall. See *Lawing v. Faul*, 227 Cal. App. 2d 23, 29 (1964).
- Procedures for Adopting Ordinances. See *Brougher v. Board of Public Works*, 205 Cal. 426 (1928).
- Compensation of City Officers and Employees. Cal. Const. art. XI, § 5(b); See *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296 (1979); but see *San Leandro Police Officers Association v. City of San Leandro*, 55 Cal. App. 3d 553 (1976) (labor relations is not a municipal affair; Charter cities are subject to the Meyers-Millias Brown Act. Cal. Gov't Code § 3500).
- Processes Associated with City Contracts. See *First Street Plaza Partners v. City of Los Angeles*, 65 Cal. App. 4th 650 (1998); but see *Domar Electric, Inc. v. City of Los Angeles*, 41 Cal. App. 4th 810 (1995) (state law establishing employment policy may preempt local regulation of bidding criteria).

Information from the nonpartisan California League of Cities:

<http://www.cacities.org/chartercities>

- Financing Public Improvements. See *City of Santa Monica v. Grubb*, 245 Cal. App. 2d 718 (1996).
- Making Charitable Gifts of Public Funds for Public Purposes. See Cal. Const. art. XVI, § 6; *Tevis v. City and County of San Francisco*, 43 Cal. 2d 190 (1954).
- Term Limits for Council Members. See *Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212 (1993); but see Cal. Gov't Code § 36502(b) (regulating term limits).
- Land Use and Zoning Decisions (with a few exceptions). See *Brougher v. Bd. of Pub. Works*, 205 Cal. 426 (1928).

What Activities Have the Courts Classified as Statewide Concerns?

The following have consistently been classified by the courts as matters of statewide concern:

- School Systems. *Whisman v. San Francisco Unified Sch. Dist.*, 86 Cal. App. 3d 782, 789 (1978).
- Traffic and Vehicle Regulation. Cal. Veh. Code § 21.
- Licensing of Members of a Trade or Profession. *City and County of San Francisco v. Boss*, 83 Cal. App. 2d 445 (1948).
- Tort Claims Against a Governmental Entity. *Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 247 (1942).
- Open and Public Meetings. Ralph M. Brown Act. Cal. Gov't Code §§ 54951, 54953(a).
- Exercise of the Power of Eminent Domain. *Wilson v Beville*, 47 Cal. 2d 852, 856 (1957).

Information from the nonpartisan California League of Cities:

<http://www.cacities.org/chartercities>

What is a charter?

A city charter is a unique document that, in many ways, acts like a constitution for the city adopting it. It can only be adopted, amended or repealed by a majority vote of a city's voters. The primary advantage of a charter is that it allows greater authority for a city's governance than that provided by state law. For example, a city may tailor its organization and elective offices, taking into account the unique local conditions and needs of the community.

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

It is the scope of the term "municipal affairs" that provides the opportunity for uncertainty. No easy analytical test exists. The threshold issue is whether there is a conflict between state law and a charter city enactment. The next issue is whether the state regulation addressed an issue of "state wide concern." Courts analyze these conflicts on a case-by-case basis.

Information from the nonpartisan California League of Cities:

<http://www.cacities.org/chartercities>

What is in a charter?

While a city charter is not required to have any particular provisions in it, a city will often reserve for itself the greatest amount of power it can when it adopts a charter. To accomplish this goal, the charter must include a declaration that it is the intention of the city to avail itself of the full power provided by the state constitution to charter cities. However, the city is not required to extend the breadth of its charter any further than it wishes.

Some of the common areas that are explicitly regulated in a charter are:

- The date and conduct of city elections;
- Regulations on the appointment of municipal officials;
- The terms and payment of municipal officials;
- The process for removal of municipal officials;
- Form of government;
- Budget adoption;
- The number, pay, qualifications, and appointment of deputies, clerks, and other employees that each municipal officer will have;
- Sub-government in all or part of the city;
- The tenure of office for deputies, clerks, and other employees;
- The process for removal of such deputies, clerks, and other employees; and
- The constitution, regulation, and government of the local police force.

A number of California cities' charters are available online. The National Civic League also has a model charter project.

Information from the nonpartisan California League of Cities:
<http://www.cacities.org/chartercities>

Process used to adopt a charter

There are two ways to draft and adopt a city charter. The first is to elect a charter commission. The commission then has the responsibility of debating over the provisions and the drafting of the charter. The other alternative allows the governing board of the city, on its own motion, to draft the charter. In either case, the charter is not adopted by the city until it is ratified by a majority vote of the city's voters.

When using the charter commission approach, the first step is to elect the commission. The vote to elect a charter commission is called for by either a majority vote of the city's governing body or by a petition signed by not less than fifteen percent of the registered voters within the city. If the formation of a charter commission is requested by a petition, the authority in charge of the city's registration records must verify the signatures on the petition. The expense of this verification must be paid for by the city's governing board. If the petition is verified, the city's governing board must call for an election in accordance with sections 1000 and 10403 of the California Elections Code. See Cal. Gov't Code section 34452.

Once it has been decided that a charter commission election will take place, candidates for commissioners must be nominated. Candidates for the office of charter commissioner are nominated either in the same manner as officers of the city or by petition. A candidate for charter commissioner must be a registered voter of the city. After the election of commissioners, any vacancy on the commission will be filled by a mayoral appointment. See Cal. Gov't Code section 34452.

At an election for charter commission members, the voters will vote first on the following question: "Shall a charter commission be elected to propose a new charter?" After voting on this question, the voters will then vote for the charter commission candidates. If a majority of the voters vote for the formation of a charter commission, then the top fifteen candidates for the office of charter commissioner will be organized as the city's charter commission. No commission will be formed if a majority of voters vote against the election of a charter commission. See Cal. Gov't Code section 34453.

Once formed, the charter commission will have the responsibility of developing the city's charter. After a simple majority of commissioners have decided that the proposed charter is appropriate, they file the charter with the city's clerk in preparation for a vote by the city's electorate. See Cal. Gov't Code section 34455. However, instead of sending the whole charter at once, periodically the commission may send portions of the charter to the city's electorate for a vote. See Cal. Gov't Code section 34462.

After the charter (or portions of it) has been filed, it must be copied in type greater than 10 point and either mailed to all the voters of the city or made available to those citizens who wish to review it before the election. The city may show the difference between existing provisions of law and the new charter through the use of distinguished type styles, but this is not required. See Cal. Gov't Code section 34456.

After the charter has been filed with the city clerk, the city's governing board must decide whether to call a special election or to wait until the next established municipal election to submit the charter to the voters. If the city's governing board determines that a

Information from the nonpartisan California League of Cities:
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special election should be held, then they must call for that special election within 14 days of the charter being filed. The special election must be set at least 95 days after the date from which the special election was called. See Cal. Gov't Code section 34457. In any case, the charter commission must send the charter to the voters within two years of the vote that formed the commission. Upon the expiration of the two-year time period, the commission is abolished. See Cal. Gov't Code section 34462.

The alternative to electing a charter commission is to have the city's governing board develop and draft the charter. An election to decide on the adoption of a charter may be called by initiative or the city council. See Cal. Const. art. XI, § 3. On its own motion, the city's governing board may propose a charter and submit it to the voters for adoption. See Cal. Gov't Code section 34458. With this option, the governing board can call a special election or allow the charter to be voted on at any established election date, as long as that election date is at least 88 days after the proposed charter was filed with the city clerk. See Cal. Gov't Code section 34458. As a practical matter, an election may have to be called sooner than 88 days before the election in order to meet certain notice and ballot printing deadlines.

In either case, the majority of voters must vote in favor of the proposed charter for it to be ratified. The charter will not go into effect until it has been filed and accepted by the Secretary of State. See Cal. Gov't Code section 34459. After a charter is approved by a majority vote of the voters, the mayor and city clerk shall certify that the charter was submitted to the voters of the city and that it was approved by a majority vote. See Cal. Gov't Code section 34460. One copy of the approved charter shall be filed with the County Recorder's office and one shall be kept in the City's archive. See Cal. Gov't Code section 34460. A third copy of the charter must be submitted to the Secretary of State with (1) copies of all publications and notices in connection with the calling of the election; (2) certified copies of any arguments for or against the charter proposal which were mailed to the voters; (3) a certified abstract of the vote at the election on the charter. See Cal. Gov't Code section 34460.

Information from the nonpartisan California League of Cities:
<http://www.cacities.org/chartercities>

How to amend or repeal a charter

If a citizens group, or the city's governing body, wishes to amend or repeal a portion of the city's charter, the steps remain largely the same as they are for drafting a charter. There are, however, two notable exceptions. First, the petition calling for the repeal or amendment needs only ten percent of the electorate's signatures, instead of the previous fifteen percent. See Cal. Elec. Code sections 9215 and 9255. The other notable difference has to do with the charter itself. A city charter may establish different rules for the municipal elections process than those laid out by the state legislature in the Elections Code. If this is the case, the city's charter will govern the elections process used to appeal or amend the city's charter, instead of the general laws laid out in the Elections Code.

Information from the nonpartisan California League of Cities:

<http://www.cacities.org/chartercities>

Charter Cities

Adelanto	Lemoore
Alameda	Lindsay
Albany	Loma Linda
Alhambra	Long Beach
Anaheim	Los Alamitos
Arcadia	Los Angeles
Bakersfield	Marina
Bell	Marysville
Berkeley	Merced
Big Bear Lake	Modesto
Buena Park	Monterey
Burbank	Mountain View
Carlsbad	Napa
Cerritos	Needles
Chico	Newport Beach
Chula Vista	Norco
Compton	Oakland
Culver City	Oceanside
Cypress	Oroville
Del Mar	Pacific Grove
Desert Hot Springs	Palm Desert
Dinuba	Palm Springs
Downey	Palmdale
El Centro	Palo Alto
Eureka	Pasadena
Exeter	Petaluma
Folsom	Piedmont
Fortuna	Placentia
Fresno	Pomona
Gilroy	Port Hueneme
Glendale	Porterville
Grass Valley	Rancho Mirage
Hayward	Redondo Beach
Huntington Beach	Redwood City
Indian Wells	Richmond
Industry	Riverside
Inglewood	Roseville
Irvine	Sacramento
Irwindale	Salinas
King City	San Bernardino
Kingsburg	San Diego
Lancaster	San Francisco
La Quinta	San Jose

Information from the nonpartisan California League of Cities:

<http://www.cacities.org/chartercities>

San Leandro	Signal Hill
San Luis Obispo	Solvang
San Marcos	Stockton
San Mateo	Sunnyvale
San Rafael	Temple City
San Ramon	Torrance
Sand City	Truckee
Santa Ana	Tulare
Santa Barbara	Vallejo
Santa Clara	Ventura
Santa Cruz	Vernon
Santa Maria	Victorville
Santa Monica	Visalia
Santa Rosa	Vista
Santee	Watsonville
Seal Beach	Whittier
Shafter	Woodlake

Total Cities: 120

CITY OF COSTA MESA

Department of Public Services / Administration

INTER OFFICE MEMORANDUM

To: Honorable City Council

From:  Ernesto Munoz, Interim Director, Public Services Department

Date: January 6, 2012

Subject: **PREVAILING WAGE VS. NON-PREVAILING WAGE FOR CAPITAL IMPROVEMENT PROJECTS**

At the December 6, 2011 meeting, the City Council requested staff to provide an analysis of potential cost savings the City may realize if it was not required to meet prevailing wage rate requirements on the labor costs associated with its capital improvement projects.

Staff examined the past two years' project records and analyzed the cost for five non-Federally funded projects, since projects with a Federally-funded match must pay prevailing wage rates.

The following five projects were funded with local revenues and, therefore, were not subject to Federal wage rate requirements. However, prevailing wages were paid pursuant to State labor code requirements. The weighted average cost savings of a non-prevailing wage contract for these projects is approximately \$232,752 or 6.7% over total project costs.

PROJECT	TOTAL COST	PREVAILING WAGE LABOR COST	NON-PREVAILING WAGE LABOR COST	TOTAL LABOR COST SAVINGS	% SAVINGS ON LABOR COST	% SAVINGS ON TOTAL CONTRACT COST
WALNUT DRAINAGE IMPROVEMENTS	\$377,589	\$69,831	\$20,725	\$49,106	70.32%	13.00%
FARM SPORTS COMPLEX LIGHTING	\$42,940	\$7,538	\$6,505	\$1,033	13.70%	2.40%
BRENTWOOD PARK LANDSCAPING	\$80,803	\$42,858	\$30,402	\$12,456	29.06%	15.40%
PARKING LOT NO. 1 REHABILITATION	\$292,744	\$61,646	\$26,172	\$35,474	57.54%	12.10%
CITYWIDE STREET MAINT. 2010/2011	\$2,678,033	\$928,847	\$794,164	\$134,683	14.50%	5.03%
TOTAL	\$3,472,109	\$1,110,720	\$877,968	\$232,752		

Based on the listed projects, the potential savings over the total project costs could have ranged between 2.4% and 15.4% if non-prevailing wage rates would have been paid by the City.

It would be reasonable to assume (without further project-specific detailed analysis) that comparable theoretical savings may have been realized on a project such as the Police Department Expansion and Renovation in the range of \$500,000 to \$3 million. Staff feels that savings for the Police Department Expansion and Renovation Project, with a total construction contract cost of \$19,964,780, could have been in the middle of this range given the high labor component of this contract or approximately \$1.8 million.

The **potential savings** to the City increase relative to the project size and the size of the project labor component. For further illustration, on a larger facility-type project, such as the construction of a new public library facility (assuming a hypothetical \$30 million budget), the potential savings could be as much as \$2.7 million.

Attached also find other information you may find useful relative to the prevailing wage issue and its impact on public works contract costs.

Please feel free to contact me should you have any questions regarding the above information.

Attachments

c: Thomas R. Hatch, Chief Executive Officer
Peter Naghavi, Economic Development Director/Deputy CEO

M E M O R A N D U M

Development Services Department

To: Honorable Mayor and City Councilmembers

Through: Peter Weiss, City Manager *W*

By: Gary Kellison, Senior Civil Engineer *GK*
Greg Blakely, Water Utilities Division Manager *GB*

Date: April 1, 2010

Subject: Relative Portion of Local versus Federally Funded Capital Projects

Councilmember Kern requested a breakdown of the relative portion of current capital projects funded with local or regional funds versus those with State or Federal funds. Currently, Oceanside pays prevailing wages on both kinds of projects.

Fund	Description	Local	Federal
751	Harbor – Lot 11 Restroom	\$250,000	
591	Redevelop. – Drainage Improvements; Tyson parking lot	\$2,800,000	
520	Drainage fee, TransNet – Loma Alta Crk detention basins	\$4,490,000	
216	State Prop 42 – Sidewalk repairs; storm drains	\$290,000	
212	TransNet – Street maintenance and new construction	\$10,840,000	
212	TransNet – Federal match for Pacific Street bridge		\$770,000
561	Thoroughfare fee – College Blvd median storm drain	\$100,000	
508	Traffic Signal fee – various traffic signals	\$1,670,000	
501	Misc Capital Projects – 1617 Mission Ave bldg remodel	\$310,000	
501	Misc Capital Projects – Pacific Street bridge		\$450,000
237	Housing (HUD)– CBDG and ARRA (housing grants)		\$500,000
272	Public Works – State Prop 50 grant (arundo removal)		\$80,000
	Public Works – DOE ARRA (energy efficiency grants)		\$1,500,000
	Water Utilities – water and sewer projects	\$8,560,000	\$490,000
Total		\$29,310,000	\$3,790,000

The table above lists the current-year budget for various types of projects split between local and Federal fund sources. TransNet and some State programs, such as gas tax, are categorized as "local" because they defer to local rules. Local funds that are budgeted on Federal projects are counted as "Federal" because those funds become subject to Federal rules when spent on Federal projects.

In the previous two years, Oceanside received Federal reimbursements of approximately \$18 million for the Pacific Street Bridge. The next largest project over the same period was El Corazon Senior Center, which was built with \$10 million in local funds.

cc: George Buell, Development Services Department Director
Loren Wasserman, Interim Water Utilities Director

From: Peter Weiss
Sent: Monday, April 05, 2010 7:41 AM
To: City Council

Cc: Gary Kellison; Scott Smith
Subject: FW: Questions regarding Mance Buchanan Park

Mayor and Council:

Council Member Kern requested information regarding the costs for Mance Buchanan Park and an estimate of savings if prevailing wages would not have been required. The following is staff's response.

From: Gary Kellison
Sent: Friday, April 02, 2010 1:14 PM
To: Peter Weiss; Scott Smith
Cc: David Toschak
Subject: RE: Questions regarding Mance Buchanan Park

Peter and Scott,

The construction of Mance Buchanan Park cost \$11,753,000 and its design cost \$775,000 for a total of \$12,528,000.

Prevailing wage savings are difficult to estimate. At the high end, the cost of a consultant providing construction staking or field testing would be 30% without prevailing wages. For a large general contractor, the savings would be smaller because of his fixed material costs and an inability to fully reduce salaries of skilled employees. I think a reasonable savings rate would be 10% at the low end and 20% at the high end. For Mance Buchanan Park, that translates to a savings of \$1,175,000 to \$2,350,000.

Gary Kellison

Council Member Kern would like to know how much money was spent to build Mance Buchanan Park?

Can you estimate what the savings would be to the taxpayers if the City of Oceanside did not have to pay prevailing wages on this project?

Ben Sullivan



Memorandum
DEVELOPMENT SERVICES DEPARTMENT
Engineering Division

TO: Honorable Mayor and City Councilmembers

THROUGH: Peter Weiss, City Manager *PW*

FROM: Gary Kellison, Senior Civil Engineer *GK*

DATE: September 15, 2010

SUBJECT: Harbor Aquatics Center Project Bid Results and Cost Comparison

This memo provides information similar to the memo dated September 7, 2010, on the Library Renovation bid results.

The City first bid the Harbor Aquatics Center in May 2008. Then, the low bid was \$4,353,000, but was not awarded because it exceeded the City's budget at that time.

The Aquatics Center was rebid last month with a low bid of \$3,530,249. It is on the September 22, 2010, City Council agenda with a staff recommendation to award.

The \$822,751 (19% difference) price difference between the 2008 and 2010 bid prices is due to a combination of:

- Depressed conditions in the current construction market
 - No prevailing wages on the current bid

The Harbor Aquatic Center bid is a "lump sum" price without a breakdown between labor and material, or the individual trades. In response to the City's inquiry about the impact of no prevailing wages on the bid results, the contractor replied with the attached e-mail indicating a savings of 12 to 18% for omitting prevailing wages.

If additional information is needed, please contact Gary Kellison.

c: Don Hadley
 George Buell
 Scott Smith
 Frank Quan
 Nathan Mertz

Don Hadley

From: Ben Menasherov [BMenasherov@SMCCON.com]
 Sent: Wednesday, September 08, 2010 11:00 AM
 To: Nathan Mertz
 Cc: Gary Kellison; Scott Smlth; Don Hadley; Frank Quan; Al Chegini
 Subject: RE: Harbor Aquatics Center Prevailing Wage vs Non-Prevailing Wage Projects

Nathan,

I just checked with my estimating department and please keep in mind that each subcontractor and contractor's wages are different regarding non prevailing rates. We have seen that there is a cost savings of anywhere from 12 to 18% versus prevailing wage work.

In addition the material and equipment costs have also dropped significantly in the past couple of years.

In summary projects in Southern California are coming in approximately 20 to 30% less than they were two years ago.

Hope this helps,

Take care,

Ben Menasherov
 General Manager
 20 Morgan, Ste. 100
 Irvine CA 92618
 tel #949.916.3500
 fax #949.916.3510
Ben@smcccon.com
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-----Original Message-----

From: Nathan Mertz [mailto:NMertz@ci.oceanside.ca.us]
 Sent: Wednesday, September 08, 2010 10:34 AM
 To: Ben Menasherov
 Cc: Gary Kellison; Scott Smith; Don Hadley; Frank Quan
 Subject: Harbor Aquatics Center Prevailing Wage vs Non-Prevailing Wage Projects

Hi Ben

As discussed will you please send information in regards to any opinions on cost savings for non-prevailing wage vs. prevailing wage projects. General percentages or specific percentages to our project will work -- thanks!

Nathan Mertz

OCEANSIDE CITY COUNCIL MEMBER JERRY KERN
NEWS RELEASE

Contact: Ben Sullivan
Aide to Council Member Jerry Kern
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Oceanside, CA 92054
Phone (760) 435-3042
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For Release September 16, 2010
NOTE:
5 PAGES WITH ATTACHMENTS

**COST SAVINGS NEAR \$1 MILLION ON PUBLIC WORKS
PROJECTS WITH ADOPTION OF THE CITY CHARTER**

OCEANSIDE CITY STAFF ANNOUNCED THAT COST SAVINGS RELATED TO PROVISIONS WITHIN THE RECENTLY ADOPTED OCEANSIDE CITY CHARTER HAS SAVED A TOTAL OF \$970,355 ON TWO CITY PROJECTS.

ACCORDING TO STAFF THE CITY REALIZED \$147,604 IN SAVINGS FOR THE LIBRARY RENOVATION PROJECT DUE PRIMARILY TO SAVINGS IN LABOR COSTS.

COUNCIL MEMBER JERRY KERN SAID, "THESE SAVINGS PROVED HELPFUL IN SEEING THE OCEANSIDE CIVIC CENTER LIBRARY RENOVATIONS PROJECT BECOME A REALITY.

ADDITIONAL GOOD NEWS BY CITY STAFF ANNOUNCED SAVINGS OF \$822,751 ON THE HARBOR AQUATICS CENTER, WHICH TURNED OUT TO BE A 19 PERCENT REDUCTION OVER AN EARLIER BID WHEN PREVAILING WAGES WERE REQUIRED WHEN OCEANSIDE WAS A "GENERAL LAW" CITY.

"THE CITIZENS OF OCEANSIDE SHOULD FEEL REALLY GOOD ABOUT SAVING NEARLY \$1 MILLION ON THE FIRST TWO PROJECTS SINCE THE RECENTLY ADOPTED CITY CHARTER WAS ENACTED,"KERN SAID.

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"WITH THE ON-GOING BENEFITS OF LOWER LABOR RELATED COSTS ON APPROXIMATELY \$30 MILLION A YEAR IN DAY-TO DAY PUBLIC WORKS PROJECTS, THE TAXPAYERS OF OCEANSIDE SHOULD REALIZE ANNUAL SAVINGS IN THE AMOUNT OF \$3 -6 MILLION PER YEAR," KERN SAID.

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Memorandum
DEVELOPMENT SERVICES DEPARTMENT
Engineering Division

TO: Honorable Mayor and City Councilmembers

THROUGH: Peter Welss, City Manager *DM*

FROM: Nathan Mertz, Parks Development Manager

DATE: September 7, 2010

SUBJECT: Civic Center Library Renovation Project Cost Savings

At the request of Councilmember Lowery, the following information regarding cost savings for the Library Renovation Project is being provided.

As part of the library project re-bid process, a reduced base bid schedule with the inclusion of additive and deductive alternates was prepared. At the time of the project re-bid process the CA State Prevailing Wage provisions were deleted.

I have provided a simple spread sheet from both of the base bids received (see attached). For further description of the individual bid items please refer to the attached bid schedule for the project. The base bids were used in determining the low bidder at the time of the bid opening. I have outlined the "re-bid" base bid items in comparison to the respective "original" base bid items (deductive and additive alternates for the project are not included within the spreadsheet). There is \$147,604 in savings which is primarily based on labor.

The project bid items (line items) are inclusive of equipment, materials and labor. Bids received by the City from a general contractor do not include the breakdown of equipment, materials and labor. In addition, most of the bid items for this project are performed by sub-contractors. Proposals provided by sub-contractors to the general contractor do not include a breakdown of equipment, material and labor either.

Please feel free to contact me with any other questions.

Cc: George Buell
 Deborah Polich

REVISED (01/03/11) Timeline of Events for Creating Proposed Charter

Before Costa Mesa residents can vote on whether their municipality should become a charter city, state law requires a three-month public hearing process so the issue can be thoroughly vetted by the public.

Here is the relevant text from the state law:

Prior to approving the submission to the voters of a proposal to adopt a charter, the governing body shall hold at least two public hearings on the matter of the proposal of a charter and the content of the proposed charter. Notice of the public hearings shall be given by publication pursuant to Section 6066, in a newspaper designated by the governing body and circulated throughout the city, and by posting the notice in three public places within the jurisdiction at least 21 calendar days prior to the date of each public hearing. The second public hearing shall be held at least 30 days after the first public hearing. At least one of the public hearings shall be held outside of normal business hours to facilitate public participation. The governing body shall not conduct a vote on whether to approve the submission to the voters of the proposal to adopt a charter until 21 days after the second public hearing.
[Cal. Gov. Code 34458(b) (effective on January 1, 2012)]

Between December 6, 2011 and March 6, 2012, the City of Costa Mesa will hold a series of City Council meetings, study sessions, informational town hall meetings, and mandatory hearings (pursuant to state statute) to provide information and receive input on the proposed charter.

The City will also provide on its website and through other information outlets information about the potential charter and the process of getting it on the ballot for the June 5, 2012 election.

Below is the tentative schedule of meetings, study sessions, town hall meetings, and mandatory hearings.

Dec. 6, City Council meeting: Report on possible City charter, including introduction to what's a charter, pros and cons of becoming a charter city, and procedure for being a charter city (including proposed timeline); first draft of the charter will be presented and discussed; public comment will be taken.

Dec. 20, deadline for notice posted for the mandatory First Hearing of proposed charter on Jan. 10, 2012.

Jan. 4, Wednesday, Informational Town Hall meeting: 7 p.m. at the Costa Mesa Neighborhood Community Center. City staff will provide information on charters, the charter process, the sample charter for Costa Mesa and how to participate in the process.

Jan. 10, Special City Council meeting (First Hearing): The City Council will look at potential provisions to include in a charter for Costa Mesa, take public comment and may vote on a first draft of a charter, which can be edited by the council throughout the process.

Jan. 23, deadline for notice posted for the mandatory Second Hearing of proposed charter on Feb. 14, 2012.

Jan. 24 and/or Jan. 31, Potential informational meetings on charter: If needed, the City of Costa Mesa will present information on the charter and charter process.

Feb. 14, Special City Council meeting (Second Hearing): City Council will receive public comment and may continue to hone the draft charter toward completion.

March 6, COUNCIL MEETING to vote upon resolution directing that the Charter be submitted to the Voters: This is the earliest date in which Council may adopt a resolution directing the charter to be submitted to the voters.