



CITY COUNCIL AGENDA REPORT

MEETING DATE: MAY 7, 2013

ITEM NUMBER:

NB-2

SUBJECT: PROPOSED CHARTER
DATE: MAY 1, 2013
FROM: CITY ATTORNEY'S OFFICE
PRESENTATION BY: KIMBERLY HALL BARLOW

FOR FURTHER INFORMATION CONTACT: Thomas R. Hatch, CEO @ 714-754-5328

RECOMMENDATION:

Staff recommends the following:

1. Formation of a committee to draft a proposed charter for the City of Costa Mesa;
2. The size and selection process of the committee to consist of thirteen (13) members chosen in the manner set forth below; and
3. Authorize the CEO to select facilitator(s), subject to City Council approval, to assist in drafting the proposed charter.

BACKGROUND:

At its April 23, 2013 Study Session, the City Council received information from the City Attorney's Office regarding a proposed charter for the City of Costa Mesa. The information provided by the City Attorney's Office included the various aspects of the charter process:

- 1 Whether a commission or committee should draft the proposed charter;
- 2 The appropriate selection process if using a committee;
- 3 Whether to use a facilitator; and
- 4 The selection of special counsel.

The City Council provided guidance to the City Attorney's office and this staff report follows up on the outstanding issues.

ANALYSIS:

1. Charter Committee or Commission

The City Attorney's Office presented the City Council with the options for the type of governing body responsible for drafting the proposed charter. These options include utilizing a committee or commission. If the City used a commission, the process is governed by state law whereby fifteen (15) commissioners are elected prior to the drafting process. On the other hand, a committee provides the City with greater flexibility in that it is appointed by the City Council and is a less expensive and less time-consuming process. With a committee, the City Council could determine its size and the selection process. Following the Council's discussion on this matter, staff recommends

a committee to draft a charter that would meet the first and third Wednesday of each month.

It is noteworthy to point out that the use of a committee or commission does not change the public's participation in this process. For example, during the drafting phase, the City must make documents, meetings and other information available to the public. Further, once the charter is drafted, the public can participate in the public hearings required under state law. And finally, Costa Mesa voters must ultimately approve the charter.

2. Number of Members

If the City Council approves staff's recommendation and utilizes a committee approach to draft a charter, the City Council must determine the size of the committee and the process for selecting committee members. A committee should be large enough to include a broad sampling of the community while manageable enough to ensure the work accomplished. In light of these interests, staff recommends a committee of thirteen (13) members chosen in the following manner:

- First Five (5): Each City Council member appoints one person.
- Second Five (5): Five members will be selected through the nomination process.
- Final Three (3): Each City Council member selects one person whose name is entered into a lottery. The first three (3) names pulled from the lottery are the final three appointments to the committee.

If the City Council approves this selection approach, staff recommends soliciting charter committee applicants through its website, social media outlets and traditional media beginning May 8, 2013. The staff recommends an application deadline of May 28, 2013 with the final selection to take place at the City Council's June 4, 2013 meeting.

3. Independent Facilitator

Staff recommends the City Council authorize the Chief Executive Officer to select a facilitator or facilitators for Council consideration. This approach will allow the Chief Executive Officer to explore the various options available to the City and bring his final recommendation to the City Council at the June 4, 2013 meeting.

4. Legal Counsel

Staff recommends Kimberly Hall Barlow and Yolanda Summerhill serve as special counsel and assistant special counsel to the City of Costa Mesa regarding the proposed city charter.

ALTERNATIVES CONSIDERED:

The City Council can choose not to proceed with the charter process or to proceed with a charter commission election.

FISCAL REVIEW:

It's estimated that a facilitator for the charter committee would cost between \$4,000 and \$8,000. The estimated cost to get a charter measure on the June 2014 primary election ballot is \$85,500 to \$106,500. Other fiscal impacts include staff time involved in the charter committee process.

LEGAL REVIEW:

The City Attorney's office has reviewed this report and attachments.

CONCLUSION:

Staff recommends the City Council approve the formation of a 13 member committee chosen as set forth above, along with authorizing the City Manager to interview and choose a Facilitator(s) for the charter drafting process.



THOMAS R. HATCH
Chief Executive Officer



THOMAS P. DUARTE
City Attorney

DISTRIBUTION: CEO
 City Attorney
 City Clerk
 Staff

ATTACHMENTS: City Council Study Session Staff Report



CITY COUNCIL STUDY SESSION AGENDA REPORT

MEETING DATE: APRIL 23, 2013

ITEM NUMBER: 1

SUBJECT: INFORMATION REGARDING PROPOSED CHARTER
DATE: APRIL 17, 2013
FROM: CITY ATTORNEY'S OFFICE
PRESENTATION BY: KIMBERLY HALL BARLOW
FOR FURTHER INFORMATION CONTACT: Thomas R. Hatch, CEO @ 714-754-5328

RECOMMENDATION:

Provide staff with direction on the following issues regarding the drafting of a city charter to be placed on the ballot:

1. Should the City pursue becoming a charter city?
2. If so, should the City use a charter committee or charter commission to draft the proposed charter?
3. Under state law, a charter commission is comprised of fifteen (15) members. However, if the City Council opts for a charter committee, how many committee members should be appointed and how should they be chosen?
4. Should the City appoint an independent facilitator to assist in drafting the proposed charter? If so, who should serve as the facilitator to the charter committee or charter commission?
5. Who should serve as legal counsel for the charter committee or charter commission?
6. What is the timeline for drafting a proposed charter?

BACKGROUND:

Members of the Costa Mesa City Council expressed interest in pursuing a proposed charter for submission to the voters of the City of Costa Mesa that would give the City more authority over municipal affairs. To that end, staff is providing information regarding charter commissions, charter committees, and the composition thereof. Furthermore, certain issues were raised related to the drafting and adoption of a proposed charter that are addressed in this report.

ANALYSIS:

1. Charter City v. General Law City

Becoming a charter city rests with the voters' decision whether to retain greater decision making authority over local matters. In general law cities such as Costa Mesa, California Constitution art. XI, Section 2 prescribes the California Legislature to create uniform laws and procedures governing municipalities. Beyond those laws and procedures set forth by the Legislature, a city may make and enforce within its limits all local, police, sanitary and other

ordinances and regulations not in conflict with the general law. As a general law city, a city's authority to act is limited by the general laws enacted by the Legislature.

An alternative form of local government allowing cities independence from the laws enacted by the Legislature is a charter city. Of the 482 cities within the State of California, approximately 121 of those cities use the charter form of government.¹ Whereas, general law cities derive their authority from the laws adopted by the Legislature, charter cities derive their authority to govern locally from the California Constitution so that the city has control over municipal affairs. A municipal affair is defined as areas within the exclusive control of a city and include, but are not limited to, the following:

- Construction and maintenance contracting,
- Land use,
- City finances,
- City government structure,
- Negotiating with employee organizations,
- Franchise fees with certain utilities,
- Control over municipal elections, and
- Certain land use and zoning decisions.

Notwithstanding these advantages, there are several limitations 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 statewide concern. Generally speaking, a matter of statewide concern is something that is determined, by the courts or the Legislature, to be of importance to the entire state and, thus, preempting any local laws or regulations. For example, many traffic regulations are matters of statewide concern. Additionally, the State of California's Penal Code maintains primacy in all respects. Thus, a charter city is prohibited from adopting local traffic regulations or criminal statutes that conflict with state law.

Adopting a charter does not change the way a city operates. Like the State of California and U.S. Constitutions, a charter would provide a framework to make community-specific decisions regarding municipal affairs. Any changes to existing ordinances and regulations are permissible so long as they are consistent with the charter.

Staff seeks direction from the City Council as to whether the City will pursue a charter.

2. Council, Charter Committee, or Charter Commission

If the City Council decides to pursue a charter, the first step in the process is what type of governing body will draft the proposed charter. The three options include: City Council, City Council by way of a charter committee, or an elected charter commission.

In the first of these scenarios, a charter can be proposed by the City Council and drafted by the City Attorney. Alternatively, the City Council may create a committee that would hold meetings subject to the public as a Brown Act body, draft a charter, and then submit the proposed charter as a recommendation to the City Council. The City Council and stakeholders would then have an opportunity to deliberate over the proposed charter at public meetings. The City Council could make changes to the proposed charter during this deliberation and decide whether to submit the proposed charter to voters.

Its members would be appointed by, and report directly to, the City Council. The City Council can limit its existence to a set amount of time or continue until its purpose is achieved.

¹ www.cacities.org/charter-cities

The third method of proposing a charter is by way of an elected commission, also a Brown Act body. In order to form a commission, the City Council must call for an election whereby Costa Mesa voters choose fifteen (15) commissioners. An election of charter commissioners can take place at either a general or special election subject to the following format:

- The voters first vote on the following question: "Shall a charter commission be elected to propose a new charter?"
- If this question receives a majority vote, then the 15 candidates receiving the highest number of votes will then organize as the Commission.

The soonest statewide election to elect commissioners would be June 2014 thus pushing any proposed charter to Costa Mesa voters to 2016. In the case of a vacancy, that seat is filled by appointment of the Mayor. Any charter proposal coming from the commission requires the signature of the majority of its members that is then filed with the City Clerk's office. Once filed, the proposed charter is submitted to the voters of the city at the next established statewide general, statewide primary, or regularly scheduled municipal election. Once formed, the commission has two years from the date of the election of the charter commissioners to complete and submit a proposed charter. At the end of that two-year period, the commission is dissolved even if it has not completed its work in drafting a proposed charter.

Martin & Chapman Co., which provides election consulting services to cities throughout Southern California, states that "[m]odernly, cities have not used the charter commission approach for many years..." The City Attorney's office compiled a list of cities that have pursued charters over the past ten (10) years along with what form of governing body was utilized to come up with the following results. Currently, the City of Arroyo Grande is using a committee to draft and revise its proposed charter. The cities of Desert Hot Springs (2003), Buena Park (2008), and El Centro (2009) each used a committee to draft their proposed charters. Alternatively, the city councils in Solvang (2006), Vista (2007), Victorville (2008), Carlsbad (2008), El Centro (2009), Oceanside (2010), and El Cajon (2012) each drafted their proposed charters with assistance from the City Attorney.

As to the use of a commission, in 2009, the City of Elk Grove utilized a charter commission to prepare a charter that was ultimately struck down by its voters. Use of a committee eliminates the time spent electing members that a commission requires so that the city can begin the process of drafting a charter.

Whether utilizing a committee or a commission, the City should provide stakeholders with maximum transparency during the drafting process, including videotaping the commission or committee meetings, posting online drafts of the proposed charter (or even draft sections of the proposed charter), generating public input through the City's website, and providing a Charter section on the City's website that would provide detailed background information on charters in general and the process in Costa Mesa in particular.

If the City Council proceeds with a proposed charter, staff requests direction on the type of governing body the City will utilize in drafting a charter.

3. Number of Members

If a commission is utilized, state law requires 15 members elected by the voters. However, if a committee is utilized, the City Council must determine how many members will serve and how those members will be chosen. The City Council has various options at its disposal for choosing committee members. One example is the following:

- First Five (5): Each City Council member appoints one person.
- Second Five (5): Each City Council member places a name into a lottery. Each name pulled will require a motion, second, and a vote in order to be appointed. The process will continue until five (5) more are selected.
- Final Three (3): Selection by way of a simple lottery. The first three (3) names pulled from the lottery will be the final three members of the committee.

Other alternatives to choosing committee members include:

- Each City Council member chooses a set number of committee members;
- Names of applicants are placed in a hat and chosen randomly; or
- In the same manner to choose Parks and Recreation and Planning Commissioners are chosen.

These are just some examples of the manner that committee members may be chosen.

Furthermore, if a committee is utilized, the City Council must determine the number of members taking into consideration that the group should be a manageable size and oddly numbered in order to work together and prepare a comprehensive document. Staff recommends between five (5) and fifteen (15) committee members.

If the City Council opts for a commission, then it will consist of fifteen (15) members under state law. However, if the City Council opts for a committee approach, staff requires direction regarding the number of members and manner of choosing members.

4. Independent Facilitator

The City may consider utilizing an independent facilitator to assist in the preparation of a proposed charter. A facilitator can assist a committee or commission in understanding and focusing on common objectives, developing a plan on how to achieve those objectives and also working towards a consensus over areas of disagreement. The role of the facilitator involves facilitating solutions between its members while also providing administrative functions (e.g. interfacing with staff, coordinating schedules, gathering documents, and attending meetings). If the City Council opts for a facilitator, then staff requests direction on who should be chosen.

5. Legal Counsel

The Committee/Commission will require legal counsel for the purpose of ensuring Brown Act compliance, researching and answering questions regarding the charter approval process. It is proposed that Kimberly Hall Barlow serve as special counsel to the Charter Committee/Commission. As former City Attorney and special counsel to the City of Costa Mesa in 2012 regarding the proposed city charter, Ms. Barlow is familiar with the community and has the requisite knowledge and legal experience to fulfill this role. It is also proposed that Yolanda Summerhill serve as assistant special counsel. Ms. Summerhill has worked in municipal law since 2000 and has served as Deputy City Attorney within the City on a number of matters over the past several years. Ms. Barlow and Ms. Summerhill work together on a number of projects making for a good team to fulfill the role as Special Counsel if the City pursues a charter.

If the City Council proceeds with a proposed charter, staff seeks direction from the City Council on the appointment of special counsel.

6. Timeline

The timeline for approval of the charter depends on whether a commission or committee is chosen to draft the proposed charter. Using a commission, the City Council could adopt a resolution calling for a special election to elect commissioners during the June 3, 2014 statewide primary. The resolutions must be submitted on or before March 7, 2014. Because a commission requires an election of its fifteen (15) member board, the process can take anywhere from several months to more than a year. Utilizing a commission, the earliest any proposed charter could be brought to Costa Mesa voters is 2016. The commission would be tasked with drafting a proposed charter within two years that must be approved by a majority of its members and submitting it to the City Clerk.

Utilizing a committee, the City Council must hold at least two public hearings at least thirty-days (30) apart before placing the proposed charter on the ballot for Costa Mesa voters to decide. Each public hearing must provide the public with at least twenty-one (21) days' notice of the hearing and the vote to propose the charter must occur at least twenty-one (21) days after the second public hearing. Furthermore, preparing drafts, disseminating the information to the public, receiving comments from the public coupled with argument and rebuttal submission deadlines must also be taken into consideration when projecting a timeline.

If a charter is proposed for the next statewide primary election in 2014, then the first public hearing could be scheduled as late as January 2014 or as early as December 2013. If a charter is proposed for the next statewide general election in 2014, then the first public hearing must occur on or before May 25, 2014.²

ALTERNATIVES CONSIDERED:

The City Council can choose not to proceed with a proposed charter.

FISCAL REVIEW:

Staff is obtaining a cost estimate of conducting an election of commissioners and placing a proposed charter on the ballot during the 2014 statewide primary and general elections. When that information is received, staff will provide a supplemental staff report with the cost estimates. Additionally, the City will have some costs for the services of an independent facilitator and other miscellaneous expenses if a Charter process is conducted. A facilitator may cost between \$4,000 and \$8,000 depending on how many meetings are held with the Committee or Commission.

LEGAL REVIEW:

The City Attorney's office has reviewed this report and attachments.

CONCLUSION:

The City Attorney's office seeks direction from the City Council regarding the questions set forth in the Recommendations above.

² These dates are only estimates and may change depending upon due dates from the Orange County Registrar of Voters and requirements of State law.



THOMAS R. HATCH
Chief Executive Officer



THOMAS P. DUARTE
City Attorney

DISTRIBUTION: CEO
 City Attorney
 City Clerk
 Staff

ATTACHMENTS: 1 Chart General Law v. Charter Cities
 2 Charter Cities - A Quick Summary for the Press & Researchers
 3 Charter Cities List
 4 Foundational Aspects of Charter Cities

(All attachments referenced here can be obtained online at
<http://www.cacities.org/resources/charter-cities.>)

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	Ordinances may not be passed within five days of introduction unless they are urgency ordinances. Cal. Gov't Code § 36934. 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.	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	A majority of the city council constitutes a quorum for transaction of business. Cal. Gov't Code § 36810. 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.	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-Millas-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-Millas-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. XIII C.</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. XIII C, § 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
Public Utilities/Franchises	<p>May establish, purchase, and operate public works to furnish its inhabitants with electric power. See 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. See 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>
Zoning	<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>

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” 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

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.*

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.

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>.

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.

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 Cajon	Palo Alto
El Centro	Pasadena
Eureka	Petaluma
Exeter	Piedmont
Folsom	Placentia
Fortuna	Pomona
Fresno	Port Hueneme
Gilroy	Porterville
Glendale	Rancho Mirage
Grass Valley	Redondo Beach
Hayward	Redwood City
Huntington Beach	Richmond
Indian Wells	Riverside
Industry	Roseville
Inglewood	Sacramento
Irvine	Salinas
Irwindale	San Bernardino
King City	San Diego
Kingsburg	San Francisco
Lancaster	San Jose
La Quinta	San Leandro

San Luis Obispo
San Marcos
San Mateo
San Rafael
San Ramon
Sand City
Santa Ana
Santa Barbara
Santa Clara
Santa Cruz
Santa Maria
Santa Monica
Santa Rosa
Santee
Seal Beach
Shafter
Signal Hill

Solvang
Stockton
Sunnyvale
Temple City
Torrance
Truckee
Tulare
Vallejo
Ventura
Vernon
Victorville
Visalia
Vista
Watsonville
Whittier
Woodlake

Total Cities: 121

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).

- 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).



CITY COUNCIL AGENDA REPORT

MEETING DATE: APRIL 23, 2013

ITEM NUMBER:

SUBJECT: SUPPLEMENTAL STAFF REPORT RE: ESTIMATED COST OF PROPOSED CHARTER

DATE: APRIL 23, 2013

FROM: CITY ATTORNEY'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW

FOR FURTHER INFORMATION CONTACT: Thomas R. Hatch, CEO @ 714-754-5328

BACKGROUND:

The City Attorney's Office submitted its staff report last week in preparation for today's study session regarding the proposed charter. At the time the staff report was submitted to the City Clerk's office, this office had not received the cost estimate. The City Attorney's office is providing this Supplemental Staff Report providing the Orange County Registrar of Voters estimated costs of the proposed charter.

DISCUSSION:

If the City Council proceeds with the proposed charter, there are two (2) items that may require voter approval. First, assuming the City Council opts for a commission as the governing body to draft a proposed charter, an election for the voters to choose the commission's fifteen (15) members must be placed on the ballot.

The second item requiring voter approval is an election for approval of the proposed charter.

The Orange County Registrar of Voters provides the following cost estimate for placing either of these items on the ballot.¹

- Consolidated Primary Election (June 2014); \$85,500 - \$106,500.
- Consolidated General Election (November 2014); \$11,000 in additional to the regular General Election costs of \$68,500 - \$85,500.

¹ The Orange County Registrar of Voters makes clear that the cost proposed are merely an estimate and that actual costs will be applied in compliance with OMB A-87.

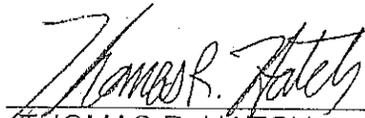
FISCAL REVIEW

If the City Council uses the June 2014 primary election to either elect charter commissioners or put a charter measure on the ballot, the cost would be an estimated \$85,500 and \$106,500.

If the City Council uses the November 2014 general election to either elect charter commissioners or put a charter measure on the ballot, the cost would be an estimated \$11,000 (the City would already be paying an estimated \$68,500 to \$85,500 for its municipal election).

LEGAL REVIEW:

The City Attorney's office has reviewed this report.



THOMAS R. HATCH
Chief Executive Officer



THOMAS B. DUARTE
City Attorney