Charter City Toolkit

THE LEAGUE OF CALIFORNIA CITIES

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Chapter 1

HISTORY OF MUNICIPAL HOME RULE

The desire for home rule is an important part of the history of California. There is a common misconception among even some California city officials that only charter cities possess home rule powers. Both general law and charter cities possess home rule. This chapter describes the historical evolution of the constitutional municipal home rule doctrine in California in three separate stages before embarking in later chapters on explaining in more detail the additional home rule powers of charter cities. The tension between cities and the state has been with us since the dawn of statehood, and it has manifested itself in various state constitutional amendments over time that reiterate how home rule is really the birthright of every California city.

A. Before Home Rule — 1850–1879

City governments already existed when California became a state in 1850. In some areas they took the form of the Mexican alcades (who embodied the role of mayor, judge, and sheriff) or local legislative bodies like the 15-member assembly created in San Francisco before it was declared illegal by a military governor in June 1849 when he called the first Constitutional Convention.[1] The 1849 California Constitution gave the Legislature the exclusive power to establish cities and to enlarge or restrict city powers.[2] This naturally led to extensive state involvement in city affairs, including the appointment of special commissions to actually manage the property and funds of Sacramento, San Jose, and San Francisco, as well as other legislation directing cities to pay special claims of parties that provided political inducements to the Legislature.[3]

The desire for home rule is an important part of the history of California.

B. All Cities Granted Inherent Home Rule Powers to Legislate Without Legislative Grant of Authority — 1879

State meddling in city affairs in those first 30 years caused the deep resentment throughout the state that ultimately led to the 1879 Constitutional Convention. During that convention, delegates borrowed heavily from the home rule provisions of the constitution of Missouri, the first state to grant home rule powers to its cities. Incorporating that constitution's provisions almost verbatim, the California Constitution of 1879 banned special legislation, banned special act incorporations, and granted the power to frame freeholder charters to communities with at least 100,000 people[4] The 1879 Constitution also took the power to impose local taxes away from the Legislature with the intention "to bring matters of a local concern home to the people."[5]

In addition to these changes, the most significant home rule provision in the 1879 amendments was article XI, section 11 (now art. XI, § 7), which provides a general grant of inherent home rule power to *every* city — general and charter cities alike — to "make or enforce within its limits all local, police, sanitary, and other ordinances or regulations not in conflict with the general laws." Sometimes this provision of the California Constitution is called the police power. The California Supreme Court declared later that the drafters' intent was " … to emancipate municipal governments from the authority and control formerly exercised over them by the Legislature."[6]

The 1879 home rule amendment finally freed cities from the need to seek specific state legislation to authorize their legislative acts on traditional municipal matters. Since the constitution empowered them to act without prior permission of the Legislature, cities instead simply had to inquire whether a proposed ordinance conflicted with a general state law. Years later the California Court of Appeal described the effect of this amendment: "[t]he constitution has, by direct grant, vested in them [cities] plenary power to provide and enforce such … regulations as they determine shall be necessary for the health, peace, comfort and happiness of their inhabitants, provided such regulations do not conflict with the general law. And the Legislature has no authority to limit the exercise of the power thus directly conferred upon cities, counties and towns by the organic law."[7]

The 1879 home rule amendment finally freed cities from the need to seek specific state legislation to authorize their legislative acts on traditional municipal matters.

Former California Supreme Court Associate Justice and Hastings College of the Law Professor Joseph Grodin, in his authoritative study of the California Constitution, explains how section 7 changed everything for cities and counties:

> Section 7 presents the most widely used of the home rule provisions of the California Constitution. In contrast to sections 4 and 5, it applies equally to all cities and counties, regardless of their charter status. Section 7 empowers cities and counties to use their general authority, called their police power, to control and regulate any matter or activity that is otherwise an appropriate subject for governmental concern.
>
> The drafters intended that local authorities "ought to be left to do all those things that in their judgment are necessary to be done, and that are not in conflict with the general laws of the state." The decision was made then not to restrict local governments narrowly to those specified powers that are overtly granted to them by the legislature *but to allow them to exercise whatever powers appeared necessary, without the need to request legislative authorization before taking action*."[8] *(Emphasis added.)*

In summary, under article XI, section 7, all cities are free to legislate on a matter unless it conflicts with a general law of the state and is, therefore, said to be preempted by the state law. What constitutes a conflict? The California Supreme Court articulated the basic analysis in upholding the validity of a city ordinance banning medical marijuana dispensaries and cultivation. In summary, it said:

- Cities have constitutionally granted powers to regulate land use and other traditional local matters. Absent a clear indication of preemptive intent from the Legislature, local regulations are not preempted.
- A local law conflicts with a general state law if the local legislation (1) duplicates the state law, (2) contradicts the state law (i.e., requires what state law forbids or prohibits what state law requires), or (3) enters an area that is fully occupied by general state law. A local ordinance does not conflict with state law if it is reasonably possible to comply with both the state and local laws.
- The courts are reluctant to infer legislative intent to preempt local regulations, and there is a presumption of validity of the local ordinance against an attack of state preemption when there is a significant local interest to be served that may differ from one locality to another.[9]

C. Voter Approved Charters Allowed to Trump State Law Over Municipal Affairs — 1896–1914

While the 1879 Constitution gave all cities basic home rule powers subject to conflicting state laws, over the following decade it became clear that cities needed the ability to engage in certain core municipal functions despite the conflicting general laws of the state. The 1896 Constitution introduced the concept of municipal affairs. The authority to adopt a charter is found in section 3 of article XI, which also contains this provision in subparagraph (a) explaining the status of the charter vis-à-vis state law: "The provisions of a charter are the law of the State and have the force and effect of legislative enactments." In 1899, the California Supreme Court explained that provisions relating to charter cities "were enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs."[10]

"The provisions of a charter are the law of the State and have the force and effect of legislative enactments." Cal. Const., art. XI, § 3(a).

The 75 years of constitutional history leading to the authorization for voters to approve city charters that could, depending on the subject, supersede the general laws of the state, was explained by the California Supreme Court in 1992:

- [I]n 1896 article XI was amended in two significant respects. Former section 6 was revised to read as follows: "Cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of the constitution, *except in municipal affairs,* shall be subject to and controlled by general laws." (emphasis added.) In addition, former section 8 was adopted, allowing consolidated charter city and county governments to regulate "the manner in which, the times at which, and the terms for which the several county officers shall be elected ... [and] for their compensation ... ."
- "What was the good to be gained by this amendment? The answer is common, every-day history. It was to prevent existing provisions of charters from being frittered away by general laws. It was to enable municipalities to conduct their own business and control their own affairs to the fullest possible extent in their own way. *It was enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs.* ... This amendment, then, was intended to give municipalities the *sole* right to regulate, control, and govern their internal conduct independent of general laws ... ."
- [A]rticle XI [in 1914] was revised to give charter cities the power "to *make and enforce all laws and regulations in respect to municipal affairs,* subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws." (Former section 8 of the same article was likewise amended by the insertion of a similar provision: "It shall be competent in any charter framed under the authority of this section to provide that the municipality governed thereunder may *make and enforce all laws and regulations in respect to municipal affairs,* subject only to the restrictions and limitations provided in their several charters and in respect to all other matters they shall be subject to general laws."[11]

In addition to the jurisdiction granted in subdivision (a) of section 5 of article XI to make and enforce all ordinances and regulations concerning municipal affairs, subdivision (b) of section 5 of article XI specifically identifies four subjects that can be included in a charter: (1) a city police force; (2) subgovernment in all or part of the city; (3) conduct of city elections; and (4) election, appointment, removal, and compensation of municipal officers and employees whose compensation is paid by the city.[12]

The California Constitution provides no definition of what is or is not a municipal affair. The California Supreme Court noted that "the constitutional concept of municipal affairs is not a fixed or static quantity … [but one that] changes with the changing conditions upon which it is to operate … our cases display a growing recognition that home rule is a means of adjusting the political relationship between state and local governments in discrete areas of conflict."[13] What was once a matter of local concern can later become a matter of statewide concern, controlled by the general laws of the state.[14] The Court also made it clear that this is a legal matter of state constitutional interpretation for the courts and not solely a factual one.[15] Later chapters will address the options available for adopting a charter and what are and are not municipal affairs as determined by the California Supreme Court.

D. Home Rule Authority Granted to All Cities over Public Works, Utilities and Public Property, Improvements and Funds — 1911–1970

Until 1911, it was believed that only charter cities could operate a public utility, so the Legislature proposed and the people enacted section 9 (formerly section 19) of article XI, providing broad plenary authority to any city to "establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communications."[16] The section allows cities to provide similar services in other cities with their consent.

In 1970, voters further amended this section to effectively allow cities to issue franchises to persons or corporations to provide such services " … upon conditions and under regulations that the city may prescribe under its organic law." These franchise powers must be construed, however, in conjunction with the broad authority over such activities granted to both the Legislature and the Public Utilities Commission by article XII. On the distribution of powers between the state and cities on this subject, however, article XII, section 8 is quite clear:

> A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power of the Commission. This section does *not* affect the power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter existing on October 10, 1911, unless that power has been revoked by the city's electors, or the right *of any city* to grant franchises for public utilities or other businesses on terms, conditions, and in the manner prescribed by law. *(Emphasis added.)*

Finally, general law and charter cities alike are protected by the provisions of article XI, section 11, subdivision (a), of the California Constitution that prohibits just the types of special commissions to control local property and funds that so outraged Californians prior to the 1879 Constitutional Convention. It states: "the Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions." This provision was one of the two constitutional limitations on the power of the Legislature over cities and counties that compelled the California Supreme Court to strike down a 2000 state law that attempted to delegate final decisions in public safety labor negotiations to a private arbitration panel.[17]

E. California Home Rule Today

Today the California Constitution authorizes both general law and charter cities to: (1) make and enforce all local laws and regulations not in conflict with general state laws (art. XI, *§* 7); (2) to establish, purchase, and operate public works and utilities or franchise others to do so (art. XI, *§* 9); and to be free from state legislation delegating to a private person or body control over city property, funds, tax levies and municipal functions (art. XI, *§* 11).

Cities with voter-approved charters have additional home rule authority or supremacy over their municipal affairs, police, subgovernments, city elections, and their elected and appointed city officials and employees (art. XI, *§* 5). The provisions of a city charter and the ordinances adopted by a charter city prevail over general state law in areas that a court determines are municipal affairs, including the specific areas enumerated in section 5, subdivision (b) of article XI.[18] As to matters of statewide concern, however, charter cities remain subject to state law.[19] Therefore, whether a charter city may act independent of state general law in a particular domain, including the specific areas enumerated in section 5, subdivision (b) of article XI, depends upon a court's determination of whether it is a municipal affair or a matter of statewide concern.

ENDNOTES

1 See Detweiler, *Home Rule: An Historical Perspective* (Jan. 1997) Western City, at page 15.

2 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 394-395.

3 See Thomas, *California Cities and the Constitution of 1879: General Laws and Municipal Affairs* (1980) 7 Hastings Const. L. Q. 642.

4 See Detweiler, *supra* note 1, at p. 16.

5 *People v. Martin* (1882) 60 Cal. 153; See Cal. Const., art. XIII, § 24, subd. (b).

6 *People v. Hoge* (1880) 55 Cal. 612, 618.

7 *In re Walter Ackerman* (1907) 6 Cal.App. 5, 9–10.

8 Grodin et al., The Cal. State Constitution: A Reference Guide (1993) pp. 192 (citing remarks of Mr. Eli Blackmer during debates at the California constitutional convention).

9 *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 742-744. It is worthy of note that this case involves the regulatory legislation of a charter city, the City of Riverside, since charter cities as well as general law cities exercise home rule under the inherent police power granted to all cities by article XI, section 7. In other words, the City of Riverside did not rely on its status as a charter city under article XI, section 5, but rather on its home rule authority under article XI, section 7.

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

11 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 395-397. (Emphasis in original) Empty brackets [] denote omitted language from the Supreme Court opinion.

12 In some cases, the courts have narrowly construed the subject matter described in section 5, subdivision (b) of article XI. See, e.g., *Baggett v. Gates* (1982) 32 Cal.3d 128 (applying the Public Safety Officers Procedural Bill of Rights to charter cities because it was limited to providing "procedural safeguards" to police officers and did not interfere with a charter city's authority to set compensation).

13 *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 557.

14 *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61; *California Fed. Sav. & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 13 (rejecting static and compartmentalized description of "municipal affairs" in favor of a more dialectical one); *Codding Enterprises v. City of Merced* (1974) 42 Cal.App.3d 375, 377.

15 *State Building and Construction Trades Council of California v. City of Vista*, *supra*, 54 Cal.4th at 558.

16 *California Apartment Association v. City of Stockton* (2000) 80 Cal.App.4th 699, 707.

17 *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278.

18 Cal. Const., art. XI, § 5; *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 315.

19 *Bishop v. City of San Jose*, *supra,* 1 Cal.3d at p. 61.

Chapter 2

A CHARTER CITY'S ADDITIONAL HOME RULE AUTHORITY

This chapter will discuss more fully the origins of city charters, why a city may want to have a charter, how the charter home rule provision has been interpreted by the courts and ultimately, for practical purposes, what power a charter city possesses.

A. What is a Charter?

Charters have been used since medieval times in Europe and more recently in the United States and elsewhere to establish and empower cities and other institutions such as colleges and universities, companies, academies, and clubs. The British Crown has reportedly issued over 980 royal charters — the first of which was for the Town of Tain in 1066 — and continues to issue charters today.[1]

A charter is granted by a sovereign authority such as a monarch, parliament, legislature, or by direct public vote. After only a few months of difficulty with granting city charters in early 1850, the California Legislature gave the job to county courts and then in 1856 to county boards of supervisors.[2] In 1879, the California Constitution was amended to authorize voters to approve freehold charters[3] in cities with over 100,000 residents.[4] This authority was subsequently expanded through later amendments to give the voters in any city the right to approve a charter for their city.

Preamble of Downey City Charter: "We, the people of the City of Downey, State of California, do ordain and establish this Charter as the organic law of said City under the State Constitution."

The dictionary defines a charter as "a document issued by a government that gives rights to a person or group; a document which declares that a city, town, school, or corporation has been established; and a document that describes the basic laws, principles, etc. of a group."[5] California city charters today most closely resemble the last definition in that the municipal charter provides the highest legal framework for the purpose, governance, and operation of the city government in all its most fundamental dimensions. There is one important difference between the dictionary definition of a charter and the charter of a California city: the charter of a California city is a limitation on authority, not a grant. The grant of authority over municipal affairs is found in the Constitution itself.

The purpose of a city charter, as one of the authors of the National Civic League's *Model City Charter*, Luther H. Gulick, wrote: "is to present, in the form of a legal document, a general plan of municipal government which is (a) democratic — that is to say responsive to the electorate and the community — and at the same time (b) capable of doing the work of the city effectively and translating the voters' intentions into efficient administrative action as promptly and economically as possible."[6]

A city charter can have two purposes: to explain how the city will exercise its discretion over the matters affecting the city, and to limit or constrain the ways in which the city is governed and its municipal affairs are managed. It is what some charters refer to as the organic law of the city with city-council adopted ordinances containing many of the detailed laws and regulations.

B. Interpretation of a Charter: Limitation of Authority not a Grant of Authority

As noted in Chapter 1, California's charter home rule provision is contained in the California Constitution, article XI, section 5. This section reserves to a charter city the right to adopt and enforce laws (i.e. ordinances) regarding municipal affairs, subject only to the conflicting provisions in the state or federal constitutions, federal laws, or state statutes in matters of statewide concern.[7]

There is a common misconception that the authority of a charter city is derived from its charter. The home rule authority of a charter city flows directly from the California Constitution; the charter itself defines and limits how the city will use that authority. "The charter operates not as a grant of power, but as an instrument of limitation and restriction on the exercise of power over all municipal affairs which the city is assumed to possess; and the enumeration of powers does not constitute an exclusion or limitation."[8]

In plain English this means that a charter city has authority over all municipal affairs and does not need to enumerate those powers in the charter.

Rather, the charter describes how those powers are carried out and may limit how those powers are exercised. A charter often addresses some but not all municipal affairs. For example, a charter might provide for a strong mayor form of government, but a council-adopted ordinance might provide for elections by district. As the California Supreme Court said: "accordingly, the city is empowered to exercise full control over its municipal affairs unaffected by general [state] laws on the same subject matters and subject only to the limitations found in the Constitution and the City Charter."[10]

A city charter is sometimes described as the city's constitution. However, it is important to dig a little deeper into this comparison. A city charter is similar to the California Constitution and not to the federal Constitution. Unlike the U.S. Constitution, which operates as a grant of power to Congress, the California Constitution is a limitation or restriction on the power of the Legislature.[11] Congress may not legislate in an area unless it finds authority in the federal Constitution. On the other hand, the California Legislature may legislate in any area unless it finds a restriction or limitation on its authority in the California Constitution. A city charter is comparable to the California Constitution, is governed by the same principles, and operates as a limitation or restriction on the inherent power of the city council of a charter city to legislate on municipal affairs.[12]

Limitations and restrictions in a city charter are interpreted in favor of the city council's exercise of power over municipal affairs and against any limitation or restriction that is not expressly stated in the charter.[13] This means that a city council or its voters looking to limit a city council's authority to act should draft the restrictions as explicitly as possible. The courts will not imply a restriction on the exercise of a charter city's power over municipal affairs.[14] The restrictions placed by the voters in a charter are an expression of the singularly local character of the community. Here are a few examples:

- The Porterville City Charter limits the purposes for which special taxes may be imposed to the support and maintenance of the fire department, acquisition of public improvements, public libraries, parks, and music and entertainment.[15]
- The voters of the City of Napa amended the city charter to prohibit a city-owned park from being used or developed for any purpose other than passive recreation and open space.[16]

Example: The Napa City Charter includes a typical city charter provision to explicitly implement this constitutional authority. It provides: The City of Napa shall have and may exercise all powers which now are or may hereafter be conferred upon municipalities by the Constitution and laws of the State of California, and which it would be lawful for this Charter specifically to enumerate, as fully and completely as though such powers were specifically enumerated herein, and no enumeration of particular powers in and by this Charter shall be held to be exclusive.[9]

- The voters of the City of Newport Beach prohibited the city council from authorizing any red light camera or other automated traffic enforcement system.[17]
- The Santa Barbara City Charter prohibits the city council from approving development that exceeds established building height limits in various parts of the city.[18]
- The Watsonville City Charter includes a limitation on the total dollar amount of bonded debt that may be issued.[19]

In addition to being contrary to the legal underpinnings of a charter, using a charter as a grant of authority will not necessarily prevail over a limitation otherwise imposed on the authority of the city council. For example, the provision of the Los Angeles City Charter that vested authority to manage the fiscal affairs of the city in the city council did not trump the binding arbitration provision of an MOU agreed to by the city council.[20]

C. Municipal Affairs

The California Constitution gives charter cities the power to "make and enforce all ordinances and regulations in respect to municipal affairs;" however, it does not define the term municipal affair. And although the Constitution enumerates four (sometimes called core) municipal affairs, what is a municipal affair is not limited to this enumeration and these four subjects are not unassailable municipal affairs.[21] The phrase municipal affairs has defeated efforts at a defining formulation since it was added to the Constitution in 1896. The courts continue to discern whether a particular subject is a municipal affair, over which a charter city has authority, or is a matter of statewide concern, over which the Legislature has authority, on a case-by-case basis. Although the courts give the Legislature's intentions in this regard great weight, the Legislature is neither empowered to determine what a municipal affair is nor to transform a municipal affair into one of statewide concern.[22]

Until 1991, the approach employed by courts in defining a municipal affair was to categorize certain subjects as municipal affairs. More recently, however, the courts have treated what is a municipal affair as fluid and changing over time as local issues may become statewide concerns, and vice versa. The constitutional concept of municipal affairs is not a fixed quantity, but one that changes with the changing conditions upon which it is to operate. The California Supreme Court has said the task of determining whether a given activity is a municipal affair or one of statewide concern is an ad hoc inquiry in light of the facts and circumstances surrounding each case and entails a four-step analysis to determine what is a municipal affair, which can be summarized as follows:[23]

Step One: Does an actual conflict exist between the local law and the state law? (If the answer is no, there is no need to go further and determine if the matter is municipal affair or statewide concern.)

Step Two: If yes, does the local law implicate a municipal affair?

Step Three: If yes, does the state law involve extramural concerns that require paramount state control?

Step Four: If yes, is the state statute reasonably related and narrowly tailored to the resolution of the statewide concern?

If the answer to all of the questions is yes, then it is a matter of statewide concern and the city is preempted from adopting and enforcing an ordinance or charter provision that conflicts with the state law. If the answer to either of the last two questions is *no*, then the state law does not address an area of statewide concern and the local law addresses a municipal affair that is beyond reach of the Legislature and state statutes.

1. Municipal Affairs Listed in the Constitution

California Constitution, article XI, section 5, subdivision (b), approved at the special election in June 1970, also provides a non-exclusive list of four municipal affairs: (1) regulation and government of a city police force; (2) sub-government in all or part of the city; (3) conduct of city elections; and (4) election, appointment, removal and compensation of municipal officers and employees whose compensation is paid by the city. Each of these areas is subject to the four-step test explained above.

a. Regulation and government of a city police force

In a general law city, the police department is under the control of the chief of police.[24] In contrast, under article XI, section 5, subdivision (b), a charter city may, for example, establish a police commission that is authorized to review and make recommendations to the public, city council and city manager concerning policies, practices and procedures in relation to the city's police department.[25] The San Jose City Charter establishes the office of independent police auditor to review police department investigations of complaints against police officers, to make recommendations with regard to police department policies and procedures, and to conduct public outreach to assist the community with the process and procedures for investigation of complaints against police officers. The San Jose City Charter prohibits the city council and mayor from dictating the appointment or removal of any employee appointed by the independent police auditor.[26] The San Bernardino City Charter places the police and fire departments under the supervision of the mayor.[27] Be aware that the specific reference to this municipal affair in the Constitution has not prevented the courts from determining that the Police Officers Procedural Bill of Rights applies to a charter city because the state law interfered "only minimally on a charter city's authority to regulate and govern its police force."[28]

b. Sub-government

The Government Code prescribes the form of a general law city's government. The government of a general law city is vested in a city council of at least five members, a city clerk, a city treasurer, a police chief, a fire chief, and any subordinate officers or employees provided by law.[29] A general law city's registered voters may adopt an ordinance that provides for a different number of councilmembers.[30] Absent formal action by the city council or the voters of a general law city, the council retains authority over the management of the city. However, the city council or voters may pass an ordinance establishing a city manager form of government.[31] In a charter city, the charter can provide for any number of council members, a directly elected mayor, term limits, and any form of government that a general law city may have.[32] In addition to these options, a charter city can opt for a strong mayor form of government, which typically gives the mayor the unilateral authority to hire and fire the city manager and department heads and present a budget to the city council.

There are many examples of sub-government structures in charter cities. Here are a few:

- Santa Rosa: Section 10 of the city charter requires the city council to establish a district commission encompassing the entire city. The commission is composed of representatives of seven to 14 districts whose boundaries are established by the council. The representatives of each district advise the council regarding various city matters including public safety issues, capital improvement budget priorities for their district, and neighborhood planning matters.
- Chula Vista: Section 609 of the city charter establishes a civil service commission.
- Santa Clara: Section 1012 of the city charter establishes a board of library trustees.
- Riverside: Section 810 of the city charter establishes a community police review commission.

For a general law city, the Government Code states that a majority of the city council constitutes a quorum for the transaction of business.[33] Additionally, resolutions, orders for the payment of money, and all ordinances require a recorded majority vote of the total membership of the city council.[34] Certain actions require a supermajority vote.

In contrast, charter cities may establish their own voting and quorum requirements. For example, the Richmond City Charter requires five members to vote affirmatively to authorize expenditures of $1,000 or more.[35] However, there is certain legislation requiring supermajority votes that applies to charter cities as well as to general law cities. For example, a charter city may not commence an eminent domain proceeding until its city council has adopted a resolution of necessity by a vote of two-thirds of all the members of the city council, unless a greater vote is required by statute, charter, or ordinance.[36]

General law cities may establish their own rules regarding the procedures for adopting, amending, or repealing resolutions,[37] other than the rule that resolutions require a recorded majority vote of the total membership of the city council.[38] The same is not true for adopting ordinances, which procedures are governed by the Government Code for general law cities. Ordinances require two readings: one introduction and, at least five days thereafter, a second reading and vote.[39] Ordinances may be introduced at any type of meeting but must be passed only at a regular meeting, not at a special meeting.[40] There is an exception to that rule for urgency ordinances, which may be passed immediately upon introduction and either at a regular or special meeting with a four-fifths vote of the city council and an urgency finding.[41] Ordinances must be signed by the mayor and attested by the city clerk.[42] The city clerk must cause publication of each ordinance, within 15 days after passage, in a newspaper of general circulation published and circulated in the city.[43] Ordinances take effect 30 days after their final passage, with certain listed exceptions.[44]

Like general law cities, charter cities may establish their own procedures for adopting, amending or repealing resolutions.[45] Unlike general law cities, however, charter cities also have the authority to opt out of general laws for enacting local ordinances, as the mode and manner of passing ordinances have been deemed a municipal affair.[46] The Seal Beach City Charter recognizes that in periods of emergency resulting from a disaster, the city council needs the power to provide for the continuity of city operations, etc. Section 107 of the

charter requires the city council to conform to the provisions of the charter except so as to allow the council to make purchases and enter into contracts without calling for bids, to the extent the emergency so requires.

c. Elections

Conduct of city elections gives charter cities the authority to regulate the manner of electing municipal officers. It provides plenary authority over the manner in which, the method by which, the times at which, and the terms for which the several municipal officers shall be elected. Of course, this does not absolve a charter city from complying with the equal protection clauses and other parts of the state and federal Constitutions. For example, a charter city may not ban write-in voting[47] or allow incumbents on a ballot to state occupations but disallow challengers from doing the same.[48] Further, courts have held that at least some portions of the California Voting Rights Act apply to charter cities.[49] (See discussion in Chapter 4.)

A charter city, so long as it does not violate the state and federal constitutions as described above, is free to establish election rules if those rules do not actually conflict with general law. For example, the San Jose City Charter makes the city council the judge of the election and qualifications of its members with the power to subpoena witnesses, require production of evidence, etc.[50] Likewise, a number of charter cities provide for a redistricting commission to establish city council districts in accordance with the census.[51] If there is a conflict with general law, the charter city provisions prevail unless the Legislature has found a need for paramount state control over the issue and the general law is both reasonably related to the area of statewide concern and narrowly tailored to resolve the problem being addressed as a statewide concern.[52]

In the context of local elections, the balancing of those issues has led courts to uphold many charter city rules for local elections.

Example: Courts have upheld the following charter provisions:

- A comprehensive charter elections program that did not require the mailing of candidate qualification statements where a statewide Elections Code rule purported to require a city clerk to mail such statements.[53]
- A comprehensive local campaign charter provision that limited campaign expenditures for local office as a condition of receiving public funds for such campaigning where there was a statewide prohibition against public funding of election campaigns.[54]
- A charter city placing a general tax before the voters by simple majority vote of the city council as opposed to the two-thirds vote requirement for a general law city council.[55]

Likewise, the California Attorney General has opined that a charter city may provide for a partisan municipal election (where the candidates are identified by their political party affiliation) whereas a general law city may not.[56]

d. Officers and Employees

California Constitution, article XI, section 5, subdivision (b) grants extensive authority over municipal officers and employees as follows:

> It shall be competent in all city charters to provide … the manner in which, the method by which, the times at which and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

The California Constitution does not mandate what city offices and subordinate offices a charter city has to have, but it recognizes the right of a charter city to make this choice. That fact does not relieve charter cities from complying with preemptive state laws on matters of statewide concern. For example, the courts have recognized that, in a charter city, the charter controls the organization of the police department.[57] As the California Attorney General has opined, there is no constitutional or statutory requirement that a charter city have a chief of police.[58] Further, where a charter city does in fact establish the office of chief of police, the chief, like all subordinate officers, is subject to the Public Safety Officers Procedural Bill of Rights.[59]

Example: An example of a municipal officer created by charter that is not identified in the general law can be found in the Stockton City Charter. Stockton has created the position of city auditor, who is responsible for the annual post audits of fiscal transactions, performance audits, special audits and investigations, and is given other duties and specified powers.[60] In addition, the Folsom City Charter and the Shafter City Charter give the authority to appoint the city attorney to the city manager and not the city council.

A charter city is likewise able to establish rules and conditions for service by its municipal officials.[61] General law does cover how to fill a vacancy in public office and applies to charter cities in only limited respects.[62] A charter city has plenary authority to legislate in this area as well.[63] In addition, a charter may establish different rules than mandated by general law for dealing with officials holding incompatible offices,[64] for conflicts of interest,[65] and for incompatible activities, which may result in a forfeiture of public office.[66] Further, several charter cities have charter provisions that limit city council members from being paid city employees during their term of office or for some period after leaving office.[67] Several city charters include provisions for impartial arbitration for fire department employees.[68] Other charters create offices such as city auditor[69] or public information officer.[70] The Santa Cruz City Charter includes a section on the process the city council must follow for layoffs.[71]

2. More About Municipal Affairs

In addition to these four core municipal affairs listed in California Constitution, article XI, section 5, subdivision (b), from time to time, courts have determined that certain other areas are municipal affairs. These provide examples of how courts have evaluated the distinction between a municipal affair and a statewide concern, based on the four-step analysis summarized above. Occasionally, the face of a state statute identifies a conflict between the local law and the state law (step one of the four-step analysis) when the statute specifically excludes charter cities from its scope.

a. Public Contracting

The Public Contract Code requires that a general law city and any charter city that has not explicitly exempted itself from the Public Contract Code (see below) publicly bid any project that exceeds $5,000.[72] There are requirements for public notice, and then the city must award the contract for that project to the lowest responsible bidder.[73] Alternatively, a city may adopt the Uniform Public Construction Cost Accounting Act (UPCCAA).[74] Under those statutes, there are three tiers of contracts: (1) the least expensive public projects may be performed by the employees of a public agency by force account, negotiated contract, or purchase order; (2) more expensive public projects may be awarded to a contractor by following an expedited bid procedure; and (3) the most expensive public projects must be awarded to a contractor after following more timely and onerous bidding procedures.[75] Either way, a city operating under the standard public bidding statutes or the UPCCAA has to publicly bid at least some of its public works project agreements, and must follow strict procedures for all of its public works contracts.

Charter cities, however, may opt out of the Public Contract Code's public bidding requirements.[76] To opt out, the city's charter or an ordinance must expressly exempt the city from the Public Contract Code or include a provision that conflicts with a provision in the Public Contract Code.[77] This allows charter cities to have different noticing requirements, use different claims resolution procedures,[78] and generally structure their public works bidding process as they see fit, if they even require public bidding. This can be time-saving and cost-cutting. For examples of charter cities that have opted out of the Public Contract Code's public bidding requirements, see section 608 of the Placentia City Charter and section 1217 of the San Jose City Charter.

Additionally, while contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms do not need to be competitively bid, general law cities must award such contracts "on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required."[79] There is no clear court opinion on whether charter cities may opt out of this statute, but a San Diego City Attorney's opinion suggests that charter cities may establish their own rules for awarding professional services contracts that are locally funded and local in nature.[80]

b. Prevailing Wage

Prevailing wage law requires contractors and subcontractors on public works projects over $1,000 to pay their workers' wages as set by the Director of Industrial Relations.[81] In this context, the term public works refers to construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, with particular exceptions.[82] General law cities must require that their contractors and subcontractors pay prevailing wages on public works projects.

It is unclear how much higher prevailing wages are from standard industry wages. In a case between the State Building and Construction Trades Council of California and the City of Vista, city staff estimated up to a 20 percent increase in the cost of public works projects due to the payment of prevailing wages.[83] The California Institute for County Government has conducted research and determined that "prevailing wages are substantially higher than market wages. In fact, California's published prevailing wage rates are about one-third to one-half higher than comparable market wages."[84] The executive summary of that study explains:

> We found that the prevailing wage requirements increased overall project costs by about 11 percent, even while controlling for other factors known to influence costs such as regional variations in construction costs and characteristics of the structures themselves. We further found that the impact from these expanded prevailing wage requirements varies across the state, with some areas expected to experience cost increases of as little as six percent while others will likely experience increases of more than 15 percent.

Thus, requiring prevailing wages may affect the cost of a public works project significantly. Additionally, prevailing wage law includes many other regulations, such as the requirement that contractors on public works projects hire apprentices from state-approved apprenticeship programs.

The California Supreme Court has determined that the wage levels of contract workers constructing locally funded public works were a municipal affair rather than a matter of statewide concern.[85] Thus, charter cities are not subject to the state's prevailing wage law for locally funded public works projects and have the discretion to require or not require the payment of prevailing wages for such projects. Prevailing wages may still be required where such payment is compelled by the terms of a state or a federal grant or the contract does not involve a municipal affair. Examples of contracts that do not involve municipal affairs include regional projects such as a regional municipal utility project located outside of the jurisdiction, an animal services facility that serves multiple cities, or a regional sewer plant. Where cities have formed a joint powers authority (JPA), it is unclear whether the JPA must pay prevailing wages on a JPA project, particularly where there is at least one charter city and one general law city. In such cases, however, a JPA project is likely to be a regional project, and thus subject to payment of prevailing wages on that ground.

Although charter cities may opt not to require the payment of prevailing wages, Senate Bill 7 (Stats. 2013, ch. 794 adding section 1782 to the Labor Code) imposes consequences for doing so. For further discussion on prevailing wages and Senate Bill 7, see Chapter 5.

c. Fiscal Affairs

1. Taxes

Until the early 1990s, charter cities were able to rely on a broad power of taxation as a municipal affair.[86] For example, courts have upheld charter cities' license taxes[87] and real estate transfer taxes (also referred to as documentary transfer taxes.)[88] But then three things changed. First, in 1982 (in the wake of Proposition 13), the Legislature passed a statute allowing a general law city to levy any tax a charter city may levy.[89] Thus, as a general rule, charter cities do not have any distinct taxation authority that is unavailable to general law cities. However, courts have upheld the authority of charter cities to establish and impose real estate transfer taxes that exceed the limits imposed on general law cities under Government Code section 53725 and Revenue and Tax Code sections 11911 et seq., as long as other constitutional requirements for voter approval are satisfied.[90] Second, the California Supreme Court recognized that sometimes aspects of local taxation have an effect outside the city's jurisdiction that implicates a matter of statewide concern.[91] Finally, charter cities must comply with Propositions 13, 26 and 218, which require certain procedures, including voter approval on taxes.[92]

2. Investments

State law allows general law cities having money in their treasuries not required for immediate needs to invest in particular types of investments.[93] Charter cities may set up their own investment policies and programs, and they are only constrained by basic constitutional limitations.

3. Appropriations

Local appropriations are another area that has not been tested as to whether it applies to charter cities.

An appropriation is an authorization to expend funds. The appropriations of general law and charter cities are limited by a formula found in the Constitution that adjusts annual appropriations by cost of living and change in population (Gann limit).[94] The formula involves a base year with allowable adjustments based on increases in population and inflation. There are certain items that are exempt from the Gann limit, such as indebtedness and treatment of certain income as proceeds of taxes. The Gann limit applies to charter cities.[95]

Cities set apart a named sum of money in the treasury and make it available for the payment of particular claims or demands through an appropriation. A city may accomplish this by adopting a budget or passing an appropriations ordinance or resolution.[96] General law cities are then authorized to pay funds through the warrant process.[97] The custodian of funds issues a warrant, which is an order authorizing the bank or other depository of city funds to pay a particular sum of money. If funds are available for the payment of an approved claim, the warrant becomes a check directing the bank or depository of city funds to pay the funds to the payee. When funds are unavailable, the warrant becomes an interest-bearing municipal obligation.

4. Expenditures

There are three main limitations on expenditures of general law cities. First, a general law city may not make a gift of public funds.[98] Any expenditure with a public purpose, however, is not a gift of public funds. The prohibition on gifts of public funds provision does not apply to charter cities.[99] Second, a city may not pay extra compensation to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed to any degree, or to authorize the payment of a claim against the city under an illegally made agreement.[100] This provision applies to charter cities by virtue of California Constitution article XI, section 10.[101] Finally, the constitutional debt limitation states that no city may incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose.[102] This limitation includes several exceptions such as the long-term lease exception.[103] This limit applies to charter cities.[104]

The gift of public funds clause of the California Constitution states: "The Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever."[105] The general rule is that a contribution from one public agency to another entity for a purely local purpose is not allowed unless the contribution serves the public purpose of the donor agency,[106] regardless of the benefit to the donee agency or incidental benefits to private persons.[107] A city's discretion to determine what constitutes a public purpose generally is not disturbed by the courts if that determination has a reasonable basis.[108]

The constitutional prohibition against a gift of public funds is a restriction on the powers of the Legislature. The powers of charter cities, however, are not derived from the Legislature but rather from their respective charters, which are directly provided for in the California Constitution. Thus, the constitutional prohibition against making gifts of public funds does not apply to a charter city.[109]

d. Land Use and Planning

Government Code section 65700, which relates to local planning, generally exempts charter cities from its coverage, with some exceptions.[110] Government Code section 65803 includes similar provisions.

Attachment 1

Unless the legislation states that it applies to charter cities in this area it likely does not. For example0 Government Code section 65860 requires a general law city to conform its zoning ordinances to its general plan. The section states that it shall apply to a charter city with a population of 2 million or more, which includes Los Angeles only. For charter cities other than Los Angeles, the mandatory elements of a general plan must be internally consistent,[111] there is no similar requirement that there be consistency between the general plan and zoning.[112] However, the California Environmental Quality Act may require a charter city to identify inconsistencies between a project, its zoning, and the charter city's general plan.

It is therefore incumbent upon charter cities to carefully review state legislation regarding zoning and planning to determine what sections purportedly apply to charter cities and which do not.

Examples: Some examples of Government Code provisions relating to planning and zoning which apply to charter cities are: scope of general plan (§ 65301); the Housing Accountability Act (§ 65589.5); conduct of zoning hearings (§ 65804); senior citizen housing (§ 65852.1); requirements for roof overhang manufactured home (§ 65852.5); mobile home park as permitted land use (§ 65852.7); interim ordinance procedures (§ 65860); variances (§ 65863.5); mobile home park conversion (§ 65863.5); wind energy systems (§ 65909.5); and processing fees for permits etc. (§ 65909.5). This list is not exhaustive.

3. Matters of Statewide Concern

As explained earlier, there are certain areas of California law that apply to charter cities if a court determines that the area is a matter of statewide concern. In these areas state legislation preempts local legislation. Below are some areas that courts have held to be matters of statewide concern. For further discussion, see Chapter 5.

a. School systems

Education and the operation of public schools have repeatedly been held by courts to be a matter of statewide concern rather than a municipal affair.[113] As one court has pointed out: "The Legislature's power over the public school system has been variously described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints."[114] Thus, charter provisions, ordinances and regulations regarding schools are preempted.[115] However, education may be made a municipal affair when the city acts "in promotion and not in derogation of the legislative school plans and purposes of the state."[116] Thus, although a general law city is prohibited by the gifts of public funds clause of the Constitution, a charter city, which is not subject to this constitutional prohibition, may choose to render financial assistance to education.[117]

b. Licensing of members of a trade or profession

If the state has provided a broad and comprehensive plan for examining and licensing members of a specific trade or profession, such licensing is a matter of statewide concern. Thus, charter cities and general law cities may not impose additional requirements on these trades or professions. The rationale is that the statewide scheme is intended not just to be prohibitory, but also permissive, authorizing licensed individuals to engage in their occupations anywhere in the State, and local requirements conflict with that intent.[118] Courts have applied this general rule regarding the licensing of electrical contractors,[119] painting contractors,[120] plumbing contractors,[121] attorneys,[122] psychiatrists,[123] civil engineers and land surveyors,[124] and fire insurance adjusters.[125]

c. Regulation of Traffic and Vehicles

Although courts have recognized that the regulation of traffic upon public streets is of special interest to municipalities, they have refused to treat such regulation as a municipal affair.[126] The state has claimed plenary power over the entire field of traffic control in California Vehicle Code Section 21. Thus, unless expressly provided by the Legislature, a city has no authority over vehicular traffic control.[127] Ordinances inconsistent with state regulation of vehicles and traffic are invalid.[128] Therefore, the authority of a charter city to regulate traffic on public streets is equivalent to the authority of a general law city, and subject to state law.

d. Government Claims Act

The Government Claims Act establishes procedures for any person who seeks money or damages from a city, and it establishes substantive requirements to establish liability against a city.[129] "It is undisputed that the matter of the liability of and payment by a city for its tort is not a municipal affair."[130] Even if damage or injury results from a charter city taking action that is clearly a municipal affair (such as the faulty maintenance of a city building), the charter city's liability for that action is a matter of statewide concern.[131] Therefore, a charter city may not establish its own procedural or substantive requirements for filing claims against the city that are in conflict with the Government Claims Act.

e. The Brown Act

The Ralph M. Brown Act, more commonly known as the Brown Act, is California's sunshine law for local government.[132] In essence, the Brown Act requires local government business to be conducted at open and public meetings, except in certain limited situations, and includes agenda requirements. The Brown Act declares that it applies to a "city, whether general law or chartered."[133] Additionally, a court has held that the Brown Act does not impermissibly infringe on a charter city's control over its municipal affairs and "addresses a genuine and pure matter of statewide concern."[134]

f. The Meyers-Milias-Brown Act

The Meyers-Milias-Brown Act (MMBA) is intended "to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations."[135] The MMBA requires a city council or its designated representative to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations.[136] If agreement is reached by the two parties, the meet and confer process concludes in a jointly prepared written memorandum of understanding, which must be approved by the city council to become binding.[137]

The California Supreme Court has held that "the procedures set forth in the MMBA are a matter of statewide concern, and are preemptive of contradictory local labor-management procedures."[138] However, the California Supreme Court has clarified that:

> [T]here is a clear distinction between the substance of a public employee labor issue and the procedure 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.' [Citation.] Nevertheless, the process by which salaries are fixed is obviously a matter of statewide concern and none could … argue that a charter city need not meet and confer concerning its salary structure.[139]

Thus, like general law cities, charter cities must meet and confer in good faith with their public employee labor unions and attempt to reach mutual agreements. For further discussion on the MMBA and charter cities, see Chapter 5.

g. CEQA

The California Environmental Quality Act (CEQA) establishes detailed procedures by which a city is required to analyze the potential impacts of its actions upon the environment.[140] The Legislature has stated that CEQA is a matter of statewide concern, and that governmental agencies at all levels, which includes charter cities, are required to comply with its provisions.[141]

h. Eminent Domain

The power of eminent domain is a matter of statewide concern, not a municipal affair — it must be exercised in accordance with state law.[142] Cities have no inherent power of eminent domain and can exercise it, if at all, only when expressly authorized by law.[143] Therefore, a charter city must comply with the California Constitution, the Eminent Domain Law and the relocation assistance statutes.[144]

i. Annexations

The Legislature establishes policies and procedures for setting territorial boundaries of cities, including the annexation of territory to a city, which are generally implemented through local agency formation commissions.[145] The annexation of territory by a city is a statewide concern.[146] Therefore, a charter city may not adopt provisions of a local ordinance or charter "pertaining to annexation which are contrary to the general laws of statewide application."[147]

j. Public Records Act

The California Public Records Act (CPRA) codifies the procedures by which any person may gain access to a city's public records, including particular definitions for what constitutes a public record, and exemptions from access for specified types of records.[148] The CPRA expressly applies to all cities, "whether general law or chartered."[149] In 2004, the California Constitution was amended to broadly construe existing legislation that furthers the people's right of access to public information (such as the CPRA), and to narrowly construe any limits to access, and it specifically provides that: "The people have the right of access to information concerning the conduct of the people's business, and therefore … the writings of public officials and agencies shall be open to public scrutiny." In 2014, the California Constitution was amended again to require each local agency to comply with the CPRA and the Brown Act as they might be amended by the Legislature in the future. [150]

ENDNOTES

1 *Royal Charter,* Wikipedia <http://en.wikipedia.org/wiki/Royal_charter> [as of April 20, 2016].

2 Detweiler, *Home Rule: An Historical Perspective* (January 1997) Western City, page 15.

3 A freeholders charter is a charter that originates with the municipality's electors as compared to a legislative charter, which is created by statute. 2A McQuillin, The Law of Municipal Corporations (3d ed. 2006) § 9.7, p. 230.

4 Detwiler, *supra* note 2, at p. 15.

5 *Charter,* Merriam Webster's Online Dictionary, <http://www.merriam-webster.com/dictionary/charter> [as of April 20, 2016].

6 National Civic League, Model City Charter (8th ed. 2011), p. xii.

7 *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 161.

8 *Grass Valley v. Walkinshaw* (1949) 34 Cal.2d 595, 598-599.

9 Napa City Charter, § 4.

10 *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 135.

11 *Methodist Hospital of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.

12 *Adams v. Wolff* (1948) 84 Cal.App.2d 435, 441.

13 *Domar Electric Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161.

14 *City of Glendale v. Trondsen* (1957) 48 Cal.2d 93, 99.

15 Porterville City Charter, § 44.

16 Napa City Charter, § 185.

17 Newport Beach City Charter, § 426.

18 Santa Barbara City Charter, § 1506.

19 Watsonville City Charter § 1116.

20 *City of Los Angeles v. Superior Court* (2013) 56 Cal.4th 1086, 1104.

21 The phrase "municipal affair" was once referred to by a justice of the California Supreme Court as those "wild words." *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 7.

22 *State Building and Construction Trades Council v. City of Vista* (2012) 54 Cal.4th 547, 558.

23 *California Fed. Savings & Loan Assn. v. City of Los Angeles, supra,* 54 Cal.3d at p. 16.

24 Gov. Code, § 38630.

25 *Brown v. City of Berkeley* (1976) 57 Cal.App.3d 223.

26 San Jose City Charter, §§ 809, 809.1.

27 San Bernardino City Charter, § 180.

28 *Baggett v. Gates* (1982) 32 Cal.3d 128.

29 Gov. Code, § 36501.

30 Gov. Code, §§ 36501, 34871.

31 Gov. Code, § 34851.

32 Cal. Const., art. XI, § 5.

33 Gov. Code, § 36810.

34 Gov. Code, § 36936.

35 Richmond City Charter, art. III, § 7.

36 Code of Civ. Proc., §§ 1245.220, 1245.240; *City and County of San Francisco v. Ross* (1955) 44 Cal.2d 52, 55.

37 See, e.g., *Pasadena v. Paine* (1954) 126 Cal.App.2d 93, 96.

38 Gov. Code, § 36936. Orders for the payment of money also require a recorded majority vote of the membership of the city council.

39 Gov. Code, § 36934.

40 *Ibid.*

41 *Ibid.*

42 Gov. Code, § 36932.

43 Gov. Code, § 36933.

44 Gov. Code, § 36937.

45 *Brougher v. Board of Public Works* (1928) 205 Cal. 426, 438-39; *Sacramento Paving Co. v. Anderson* (1905) 1 Cal.App. 672, 673.

46 *Brougher v. Board of Public Works, supra,* 205 Cal. at 438; *Morton v. Broderick* (1897) 118 Cal. 474, 486-87.

47 *Canaan v. Abdelnour* (1985) 40 Cal.3d 703, 710.

48 *Rees v. Layton* (1970) 6 Cal.App.3d 815, 822-823.

49 *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781.

50 San Jose City Charter, § 405.

51 See, e.g., Santa Barbara City Charter, § 515; Compton City Charter, § 505; Newport Beach City Charter, § 1005; San Jose City Charter, § 403; Watsonville City Charter, § 413; San Francisco City Charter, § 13.110; San Diego City Charter, § 5.1.

52 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 404.

53 *Mackey v. Thiel* (1968) 262 Cal.App.2d 362 (under former art. XI, § 8 1/2).

54 *Johnson v. Bradley*, *supra*, 4 Cal.4th at pp. 410-411.

55 *Trader Sports v. City of San Leandro* (2001) 93 Cal.App.4th 37.

56 56 Ops.Cal.Atty.Gen 289 (1973).

57 *Brown v. City of Berkeley* (1976) 57 Cal. App. 3d 223.

58 63 Ops.Cal.Atty.Gen. 829 (1980).

59 *Ibid.*

60 Stockton City Charter, art. XV, § 1501.

61 Cal. Const., art. XI, § 5, subd. (b).

62 Gov. Code, § 1770, subd. (m)(1) (provision applying to charter cities).

63 *Ector v. City of Torrance* (1973) 10 Cal. 3d 129, 132-133. This decision was subsequently overruled by a 1976 amendment to California Constitution article XI, section 10, subdivision (b) prohibiting any city or charter city from requiring "that its employees be residents of such city … except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location."

64 73 Ops.Cal.Atty.Gen. 357, 361 (1990).

65 See also Gov. Code § 87300 et seq. (requiring the adoption and updating of local conflict of interest codes).

66 81 Ops.Cal.Atty.Gen. 207 (1998).

67 See Sacramento City Charter, art. III, § 35; San Jose City Charter, § 406; Santa Rosa City Charter, § 5. General law cities are subject to the provisions of Government Code section 53227 et seq.

68 Salinas City Charter, § 120; Santa Rosa City Charter, § 56; Watsonville City Charter, § 1007; Redwood City City Charter, § 96; Hayward City Charter, § 809.

69 San Jose City Charter, § 805.

70 San Jose City Charter, § 808.

71 Santa Cruz City Charter, § 1112.

72 Pub. Contract Code, § 20162.

73 *Ibid*.

74 Pub. Contract Code, § 22030.

75 Pub. Contract Code, § 22032.

76 Pub. Contract Code, § 1100.7.

77 *Ibid*.

78 Pub. Contract Code, § 20104 et seq.

79 Gov. Code, § 4526.

80 See Memorandum of Law, "Selection for Professional Services; Application of California's 'Little Brooks Act,'" from John W. Witt, San Diego City Attorney, to Jack McGrory, City Manager (April 9, 1991) <http://docs.sandiego.gov/memooflaw/ML-91-28.pdf> [as of April 20, 2016].

81 Lab. Code, § 1771.

82 Lab. Code, §§ 1720-1720.6.

83 See California Construction Compliance Group, Are Charter Cities Taking Advantage of State-Mandated Construction Wage Rate ("Prevailing Wage") Exemptions (3d Ed. Summer 2012).

84 California Institute for County Government, Impact of Prevailing Wage Rate Requirements on the Costs of Affordable Housing in California (June 9, 2004).

85 *State Building and Construction Trades Council v. City of Vista* (2012) 54 Cal.4th 547.

86 *West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal.2d 516, 524.

87 *Id.*; *City of Los Angeles v. A.E.C. Los Angeles* (1973) 33 Cal.App.3d 933, 939.

88 *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 145-46; *Cohn v. City of Oakland* (1990) 223 Cal.App.3d 261, 262.

89 Gov. Code, § 37100.5.

90 *Fielder v. City of Los Angeles, supra*, 14 Cal.App.4th at 145-46; *Cohn v. City of Oakland* (1990) 223 Cal. App.3d 261; Gov. Code, § 53275; Rev. & Tax. Code, § 11911.

91 The local taxation of savings and loans is a matter of statewide concern. *Cal. Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 6.

92 *Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374, 391.

93 Gov. Code, § 53601.

94 Cal. Const., art. XIIIB, § 1.

95 *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

96 See, e.g.,Watsonville City Charter, § 1103; Ventura City Charter, § 1216; Gilroy City Charter, § 1101.

97 Gov. Code, §§ 53910-53914.

98 Cal. Const., art. XVI, § 6.

99 *Los Angeles Gas & Elec. Corp. v City of Los Angeles* (1922) 188 Cal. 307, 317.

100 Cal. Const., art. IV, § 17.

101 *Nelson v. City of Los Angeles* (1971) 21 Cal.App.3d 916, 918.

102 Cal. Const., art. XVI, §18.

103 *City of La Habra v. Pellerin* (1963) 216 Cal.App.2d 99, 102.

104 See *Shelton v. Los Angeles* (1929) 206 Cal. 544; *Redondo Beach v. Taxpayers, Property Owners, Citizens & Electors* (1960) 54 Cal.2d 126, 136.

105 The gift clause was originally adopted in 1879 as article IV, section 31 of the California Constitution. From 1966 until 1974 it was located in article XIII, section 25. From 1974 to the present it has been located in article XVI, section 6. This explains why over the years the cases dealing with gifts of public funds refer to different sections of the Constitution.

106 *City of Oakland v. Garrison* (1924) 194 Cal. 298, 304; *Golden Gate Bridge & Highway Dist. v. Luehring* (1970) 4 Cal.App.3d 204, 208.

107 *Board of Supervisors v. Dolan* (1975) 45 Cal.App.3d 237, 243.

108 *Ibid*.

109 *Los Angeles Gas & Electric Corp. v. City of Los Angeles, supra*, 188 Cal. at 317; *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, 637 n.5; *Mullins v. Henderson* (1946) 75 Cal.App.2d 117, 132.

110 Government Code sections 65590-65590.1 apply generally to the destruction of residential structures in the coastal zone.

111 Gov. Code § 65300.5.

112 *City of Irvine v Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868.

113 *Cobb v. O'Connell* (2005) 134 Cal.App.4th 91; *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524; *Whisman v. San Francisco Unified Sch. Dist.* (1978) 86 Cal.App.3d 782, 789; *Esberg v. Badaracco* (1927) 202 Cal. 110, 115; *Butterworth v. Boyd* (1938) 12 Cal.2d 140, 152.

114 *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524.

115 *Whisman v. San Francisco Sch. Dist., supra*, 86 Cal.App.3d at 789.

116 *Whitmore v. Brown* (1929) 207 Cal. 473, 480; see also *Madsen v. Oakland Unified School Dist*. (1975) 45 Cal.App.3d 574, 579.

117 *Madsen*, *supra*, 45 Cal.App.3d at 579; *Berkeley Unified Sch. Dist. v. City of Berkeley* (1956) 141 Cal. App.2d 841, 846-47.

118 *Agnew v. City of Los Angeles* (1952) 110 Cal.App.2d 612, 621; *N. Cal. Psychiatric Soc'y v. City of Berkeley* (1986) 178 Cal.App.3d 90, 108.

119 *Horwith v. City of Fresno* (1946) 74 Cal.App.2d 443, 447; *Agnew v. City of Los Angeles* (1952) 110 Cal. App.2d 612, 623.

120 *City and County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445.

121 *Collins v. Priest* (1949) 95 Cal.App.2d 179, 181-82.

122 *Baron v. Los Angeles* (1970) 2 Cal.3d 535, 540-41.

123 *N. Cal. Psychiatric Soc'y v. City of Berkeley , supra*, 178 Cal.App.3d at p. 108.

124 *Verner, Hilby & Dunn v. City of Monte Sereno* (1966) 245 Cal.App.2d 29, 35.

125 *Robillwayne Corp. v. City of Los Angeles* (1966) 241 Cal.App.2d 57, 62-63.

126 *Ex parte Daniels* (1920) 183 Cal. 636, 639.

127 *Rumford v. City of Berkeley* (1982) 31 Cal. 3d 545, 550.

128 *Ex parte Daniels*, *supra*, 183 Cal. at p. 641.

129 Gov. Code, § 810 *et seq*.

130 *Dept. of Water & Power v. Inyo Chem. Co.* (1940) 16 Cal.2d 744, 753.

131 *Helbach v. City of Long Beach* (1942) 50 Cal.App.2d 242, 246.

132 Gov. Code, § 54950 *et seq*.

133 Gov. Code, § 54951.

134 *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 958.

135 Gov. Code, § 3500.

136 Gov. Code, § 3505.

137 Gov. Code, § 3505.1.

138 *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 781.

139 *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 600 n.11.

140 Pub. Resources Code, § 21000 et seq.

141 Pub. Resources Code, §§ 21000, 21001, 21003, 21062 and 21063.

142 *Wilson v. Beville* (1957) 47 Cal.2d 852, 859.

143 *San Francisco v. Ross* (1955) 44 Cal.2d 52, 55.

144 See Cal. Const., art I, § 19. The Eminent Domain Law may be found at Code of Civil Procedure section 12310.010 et seq. and the relocation assistance statutes may be found at Government Code section 7260 et seq.

145 Cal. Const., art. XI, § 2; Gov. Code, § 56300 et seq.

146 *Ferrini v. City of San Luis Obispo* (1983) 150 Cal.App.3d 239, 246.

147 *Id.* at p. 247.

148 Gov. Code, § 6250 *et seq*.

149 Gov. Code, § 6252, subd. (a).

150 Cal. Const., art. I, §3, subd. (b).

Chapter 3

DRAFTING, ADOPTING, AMENDING AND CHALLENGING A CHARTER

This chapter addresses the various ways in which a charter can be drafted or amended; the pros and cons of each option; the degree to which a proposed charter should be flexible versus restrictive and how much detail it should contain; what steps must be taken before submitting a proposed charter or amendment to the voters; and what happens after the voter approval of any charter measure.

A. Adopting, Amending, and Repealing a Charter

A charter may only be adopted, amended, or repealed by majority voter approval.[1] A ballot measure to approve a charter may be submitted to the voters by either an elected charter commission or by the city council. Once a charter is in place, there are three ways that amendments (including repeal) can be submitted to the voters: by an elected charter commission, by initiative, or through action of the city council.[2] Although an amendment to an existing charter can be proposed directly by initiative, adoption of a charter cannot. However, an initiative may propose election of a charter commission, which would then draft a charter for submittal to the voters, as discussed below.

The process for adopting and amending a charter is a matter of statewide concern governed exclusively by general laws that supersede conflicting provisions in a city or county charter.[3] The argument that the procedure for putting charter amendments on the ballot is immune from conflicting state laws has been rejected.[4]

B. Drafting the Charter

A charter may be drafted by charter commission (elected by voters), a charter committee (appointed by the city council), or the city council itself.[5] When a charter is drafted by a charter committee or the city council, then the city council decides whether or not to submit the draft charter to the voters. Although the city council will have input into the work of a charter commission, the draft of a charter commission is submitted to the voters with or without city council approval. When a charter is submitted to the voters, the ballot must include a description of new city powers that result from adoption of the charter including whether the city council will have the power to raise its own compensation and the compensation of other city officials without voter approval.[6]

1. Elected Charter Commission

The members of a 15-member charter commission are elected by the voters as set forth in Government Code section 34450 et seq. Either the council calls an election to form a charter commission[7] or formation of the commission is proposed by initiative.[8] Such an initiative may only be on the ballot at a general election.[9] The format of the ballot measure is as follows:

- 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 organize as the charter commission.[10]

Once formed, a charter commission has two years from the date of the election to complete and submit a proposed charter. At the end of that two year period, the charter commission is abolished.[11] A failure to submit a charter proposal within the two years could mean that the commission would have nothing to submit at the end of the term, and could not continue its work. A charter commission may, however, submit portions of a proposed charter to the voters from time to time during its term.[12] A vacancy on the charter commission is filled by an appointment by the mayor.[13] Finally, the charter commission is subject to the Brown Act.

Any charter proposal from the charter commission requires the signature of a majority of charter commissioners, and is then filed with the city clerk's office.[14] Once filed, the proposed charter must be submitted to the voters of the city at the next established statewide general election, provided there are at least 95 days before the election.[15]

2. City Council

A city council may submit a draft charter to the voters without a charter commission or charter committee.

3. Appointed Charter Committee

The members of a charter committee are appointed by the city council. There is no fixed number of members, nor is there a fixed time for the charter committee to complete its work. When its work is completed, the charter committee submits the proposed charter as a recommendation to the city council. This allows the city council an opportunity to modify a proposed charter or totally reject the proposed charter and not submit it to the voters.

While the charter commission must complete its work within two years, a charter committee could take more time, if needed, to draft a charter or revision. On the other hand, the charter commission process provides for an absolute end point in which to complete the work of drafting a charter proposal.

C. Length

There is no prescribed length for a city charter. Some charters that have been passed are very short (e.g., Buena Park, at just over one page); others may be very long (e.g., Newport Beach, at over 100 sections). The length will be determined by how much detail the voters wish to put into the charter.

Consideration should be given to including in the charter two broad categories:

- Provisions relating to the four core municipal affairs (elections; matters relating to labor relations including compensation for officers and employees; governance structure; and regulation of the police force). Not every charter city will include each "core" municipal affair. But many charter cities will have an interest in including provisions regarding the governance structure and elections.
- The constraints on legislative authority that are relevant to the voters of the particular charter city. For examples, see Chapter 2.

D. How Much Detail?

The goal of becoming a charter city is to exert control over municipal affairs in the interests of the community. In order to become a charter city, the voters must approve a charter. However the charter is a limitation on a city council's control over municipal affairs. Thus, a simple charter that establishes the city as a charter city and provides that all matters deemed municipal affairs may be controlled by ordinance enacted by the city council, provides maximum flexibility (and thus power) to the city council. However, such a charter does not explain how the voters intend the control to be exercised and therefore provides no policy direction to the city council. A more complex charter, which explains in more detail how to exercise control over municipal affairs, will restrict future councils' power with respect to municipal affairs.

There are risks of both being too prescriptive and not being prescriptive enough. Rules built into the charter can provide protection against abuse, but at the same time be unduly restrictive in light of changed circumstances. For example, one city charter enacted in the 1950s contained a provision which requires public bidding for all public works contracts over $5,000. At the time, that certainly may have seemed an appropriate safeguard to prevent against contracting abuse by council members or staff. However, with the passage of time and inflation, the provision severely limited the city's ability to use more modern statutory methods such as the Uniform Public Construction Cost Accounting Act Procedures (allowing for less formal bidding for contracts up to $175,000) or design/build contracting. On the other hand, areas that are less susceptible to change over time, such as governance structure, election procedures, voting systems, etc. may be appropriate to include in a charter to provide stability to the municipal organization. For further discussion related to the role charter provisions for police and fire employees' salaries played in the bankruptcy of San Bernardino, see Chapter 5.

Thus, it is recommended that *a prescriptive charter provision be evaluated with the ultimate goal of imposing the desired safeguard without overly restricting the ability to address changed social or economic circumstances*. In the case of public works contracts, for example, use of a formula that takes inflation into account (rather than a fixed amount) as the threshold for public bidding would provide the requisite safeguard without being unduly restrictive in the future. Or there could be a charter provision that allows the amount for a bid requirement to be set by ordinance. Or perhaps the goal of a charter provision is to allow much more leeway in whether public bidding is necessary or to allow exemptions that are not provided for in the general law. The important point is that limiting language should be carefully evaluated to ensure an appropriate amount of flexibility for the future. The amount of detail that is included in a proposed charter is a policy decision to be made by each city.

E. CEQA Compliance

When a city council votes to place a citizen-sponsored initiative concerning the question of whether to create a charter commission, or to amend or repeal a charter, on a ballot, it is not a project which is subject to the California Environmental Quality Act (CEQA).[16] The ministerial duty CEQA exemption also applies to a situation where the city council has a mandatory option to either submit the initiative to the voters or to simply adopt the measure[17] because it has a ministerial duty to do one or the other under the Elections Code.[18] Thus, in the situation where the city council acts to place a voter initiative on the ballot to either create a charter commission or to amend or repeal a charter, or where it acts to place a charter prepared and approved by an elected charter commission on a ballot, any of these actions are exempted from CEQA.

However, where the council acts on its own to place a proposed charter on a ballot (or to amend or repeal a charter), it is a project, and full compliance with CEQA will be required before placing the matter on the ballot.[19] Exactly what must be done to comply with CEQA will vary depending upon the provisions contained in a proposed charter. Land use restrictions in a charter could obviously have at least a potential impact on the environment. Other provisions will have to be evaluated through an initial study unless the common sense exemption or some other CEQA exemption applies. Under the common sense exemption, CEQA does not apply if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." [20]

F. Meyers-Milias-Brown Act Compliance for Labor Items

The Meyers-Milias-Brown Act (Government Code section 3500 et seq., MMBA) requires good faith bargaining regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations prior to making a policy decision which could affect those issues.

Prior to the city council submitting a charter to the voters, a determination must be made as to whether any proposed element may affect wages, hours or other terms and conditions of employment for employees in one or more employee organizations. If so, the city will be required to meet and confer in good faith, which means that a public agency and recognized employee organizations have the obligation to personally meet and confer promptly upon request by either party and continue for a reasonable period to try and reach agreement on matters within the scope of representation prior to proposing a charter or amendments thereto.[21] The process should include adequate time for the resolution of impasses when applicable or when such procedures are used by mutual consent.[22]

The requirement to meet and confer prior to submitting a charter proposal or amendment to the voters does not abridge the council's power to propose charter amendments under California Constitution article XI, section 3, subdivision (b). Although the statutory requirement of the MMBA encourages binding agreements resulting from bargaining, the governing body retains the ultimate power to refuse an agreement and to make its own decision.[23] "This power preserves the council's rights under article XI, section 3, subdivision (b) — it may still propose a charter amendment if the meet-and-confer process does not persuade it otherwise." Thus, the meet-and-confer requirement is compatible with the city council's constitutional power to propose charter amendments.[24]

G. Voter Approval

Prior to seeking voter approval of a charter committee or council-drafted charter, there must be at least two public hearings of the city council concerning the fact that a charter is being proposed and on the content of the proposed charter. Public hearing notice must be posted in three public places at least 21 calendar days prior to each public hearing.[25] The meetings must be at least 30 days apart, and at least one of them must be held outside normal business hours. No vote by the council can occur to place the proposed charter on a ballot until at least 21 days after the second public hearing.[26]

Thereafter, if the council determines to move forward with a proposed charter measure, it may proceed under either Government Code section 34458 or Elections Code section 1415. A council proposed charter and a charter commission proposed charter must be placed before the voters "at the next established statewide general election" under Elections Code section 1200, if there are least 88 days prior to the election.[27]

A charter (or charter amendment) proposed by a charter commission, once signed by a majority of the commissioners and filed with the city clerk, is required to be placed before the voters for consideration. If proceeding under Government Code section 34450 et seq., section 34457 requires submission of the measure at the next established statewide general election under Elections Code section 1200, if there are at least 95 days prior to the election.[28]

Public funds may not be used to advocate in favor of the passage or the defeat of any ballot measure, including a proposed charter measure. Informational materials are allowed.[29]

The description of the ballot measure proposing the charter must enumerate the new city powers that result from the adoption of the charter, including whether the city council will have the power to raise its own compensation and the compensation of other city officials without voter approval.[30]

The charter must be approved by a majority vote of the city's voters.[31] Following certification of the election results, the charter does not take effect until it is filed with and accepted by the Secretary of State in accordance with Government Code section 34460.[32] After a charter is adopted by the voters, three copies of the adopted charter are signed by the mayor and city clerk. One copy is recorded with the county recorder, one is retained in the city archives, and the third is filed with the Secretary of State. Those recorded and filed in the city's archives must include certified copies of all publications and notices required by law relating to the calling of the election and the charter process, certified copies of arguments for and against the measure, and a certified abstract of the vote.[33] A charter is also published in the State Statutes at Large.[34]

H. Procedures for Amended or Repealed Charter

The procedure for amending, revising, and repealing a charter is essentially the same as the adoption of a charter, with some exceptions.[35] First, unlike adoption of a charter, an amendment, revision or repeal of a charter can be proposed by initiative.[36]

Second, certain types of amendments must be presented at statewide general elections, while others may be placed on municipal or state primary election ballots. Charter amendments must be placed before the voters "at the next established statewide general election" under Elections Code section 1200, if there are least 88 days prior to the election[37] unless the proposed amendment (or repeal) falls into one of two categories: (1) one which does not alter a procedural or substantive employment right of an employee or retiree; or (2) one which is proposed to amend the charter to comply with an injunction, consent decree or state or federal voting rights laws. These two types of charter amendments may be scheduled for "the next regularly scheduled general municipal election … or at any established statewide general or statewide primary election" at least 88 days away.[38] This amendment was designed to preclude consideration of charter amendments affecting employee rights from being considered other than at a statewide general election.

A Case Study: Los Angeles Dueling Charter Revision Committee and Commission[39]

In the opinion of some, Los Angeles' 1925 charter provided for a weak form of mayor-council government because the mayor needed council concurrence to appoint and dismiss department heads and shared some of the administrative functions. In the mid-to-late 1990s, charter reform was championed as a way of solving Los Angeles' problems by seeking to strengthen the mayor's role. At the same time, a secessionist movement in the San Fernando Valley, San Pedro and Hollywood was gaining momentum and charter reform was seen as a method to stymie that movement. The Los Angeles City Charter had not been extensively revised since 1925, although there were amendments through the years. Unfortunately, the mayor and city council could not agree on how to proceed.

In 1996, the council rejected the idea of an elected charter commission and instead appointed a charter committee. Other interests sponsored an elected charter commission initiative, which was approved by the voters in April 1997. For the next year and a half, both the charter committee and charter commission worked independently and held separate hearings. In November 1998, both the committee and commission formed a subcommittee to attempt to mediate and propose a unified charter.

A comprehensive proposal was reached. This unified charter proposal was sent back to the committee and commission for their review and approval. The compromise did not give the mayor complete authority to fire department heads but rather allowed an appeal to the council, which could reinstate a department head by two-thirds vote. The charter committee approved the unified charter but, the charter commission rejected it. After a ground swell of public outcry, the charter commission reversed itself and approved the unified charter. Thereafter, the city council approved it unaltered for the June 1999 election.

Even though the council placed the unified charter on the ballot, the council and others opposed its passage. The mayor, city attorney, city controller, secessionist's leaders, Chamber of Commerce, NAACP, churches, other nonprofits, three leading newspapers and chairs of the committee and commission endorsed the unified charter. The unified charter passed by 60 percent of the vote.

The unified charter created a system of neighborhood councils and area planning commissions. These changes gave residents more decision making authority in land use matters, delivery of services and the budget process. The new charter took much of the structure of government out of the charter and into administrative and municipal codes. And as mentioned, the charter made the mayor stronger than under the previous charter. Lastly, the revised charter focused on general principles, so as not to be so prescriptive.

Attachment 1

I. Challenging Adoption, Amendment or Repeal of a Charter

Once a proposed charter adoption, amendment, or repeal takes effect (i.e., it is approved by the voters and filed with the Secretary of State), the only way to challenge its procedural regularity, such as whether the city council was required to meet and confer prior to submitting the measure to the voters, is through a quo warranto action pursuant to Code of Civil Procedure section 803 et seq.[40] In determining whether to grant a private party the authority to file an action in quo warranto, the Attorney General's office looks to whether the application thereof would present a substantial issue of fact or law that would warrant resolution by the courts, and whether such an action would ultimately be in the public's interest.[41]

ENDNOTES

1 Cal. Const., Art. XI, §3, subd. (a).

2 *Id*.; Elec. Code, § 9255, subd. (b).

3 *Id*.

4 *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 598-99.

5 The procedure for submitting a charter to the voters by a charter commission or the city council itself is found at Government Code sections 34450-34462. The procedure for a city council-appointed charter committee is found at Elections Code sections 9255-9268.

6 Gov. Code, § 34458.5.

7 Gov. Code, § 34452, subd. (a).

8 Gov. Code, § 34452.

9 *Ibid.* (citing Elec. Code, §§ 1000 & 10403).

10 See Gov. Code, § 34452.

11 Gov. Code, § 34462, subd. (a).

12 Gov. Code, § 34462, subd. (b)

13 Gov. Code, § 34452, subd. (b).

14 Gov. Code, § 34456.

15 Gov. Code, § 34457.

16 Cal. Code Regs., tit. 14, § 15378, subd. (b)(3); *Stein v. City of Santa Monica* (1980) 110 Cal.App.3d 458.

17 CEQA review is not required before direct adoption of an initiative. *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029.

18 *Native American Sacred Site & Environmental Prot. Assn. v. City of San Juan Capistrano* (2004) 120 Cal. App.4th 961.

19 *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 191 (finding that initiatives placed on the ballot by a city are subject to CEQA).

20 Cal. Code. Regs., tit. 14, § 15061, subd. (b)(3).

21 *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591.

22 Gov. Code, § 3505.

23 *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach, supra,* 36 Cal.3d at p. 601.

24 *Ibid.*

25 Gov. Code, § 6066.

26 Gov. Code, § 34458, subd. (b).

27 Gov. Code, §§ 34457 & 34458, subd. (a); Elec. Code, § 1415, subd. (a)(1). In an interesting, but perhaps minor, quirk of the law, it appears that if a council acts to submit without revision a charter proposed by a charter commission that is appointed by the council, such a charter proposal would be subject to the 95-day time period pre-election rather than the 88-day period for charters proposed by the governing body. See Elec. Code, § 9255, subd. (a) (providing for charter or amendment proposed by either elected or appointed commission to be submitted at statewide election held at least 95 days away); cf. Elec. Code, § 9255, subd. (b) (charter proposals of governing board submitted at statewide general election held at least 88 days away).

28 Gov. Code, § 34457.

29 *Vargas v. City of Salinas* (2009) 46 Cal.4th 1; *Stanson v. Mott* (1976) 17 Cal.3d 206.

30 Gov. Code, § 34458.5. Copies of the proposed charter must be printed in at least 10-point type. Gov. Code, § 34456.

31 Cal. Const., art. XI, § 3, subd. (a). If more than one conflicting charter measures are on the same ballot and both receive a majority vote, the one receiving the highest affirmative vote is the one which is deemed passed. Cal. Const. art. XI, § 3, subd. (d).

32 Cal. Const., art. XI, § 3, subd. (a); Gov. Code, § 34459.

33 Gov. Code, § 34460.

34 Cal. Const., art. XI, § 3, subd. (a).

35 *Ibid.*

36 Cal. Const., art. XI, § 3, subd. (b).

37 Elec. Code, § 1415, subd. (a)(1).

38 Elec. Code, § 1415, subd. (a)(2); Gov. Code, § 34458, subd. (a).

39 Information for this case study came from League of Women Voters of Los Angeles, "Los Angeles: Structure of City Government" by Ralph J. Sonenshein, Ph.D. (2006) and "Richard Riordan & Los Angeles Charter Reform" by Matthew J. Parlow & James T. Keane (2002).

40 95 Ops.Cal.Atty.Gen. 31 (2012); *International Assn. of Fire Fighters, Local 55, AFL-CIO v. City of Oakland* (1985) 174 Cal.App.3d 687.

41 96 Ops.Cal.Atty.Gen. 1 (2013).

Attachment 1

Chapter 4

CHARTER CITY ORGANIZATION AND ELECTIONS

Charter cities may create their own governmental structure and establish procedures for local elections. This chapter describes the different types of governmental structures available to charter cities and discusses the organizational issues that must be addressed when varying from the typical general law city structure. This chapter also discusses different election systems and summarizes the California Voting Rights Act, a state law being used to attack the traditional "at large" voting structure in local governments across California.

A. Form of Government

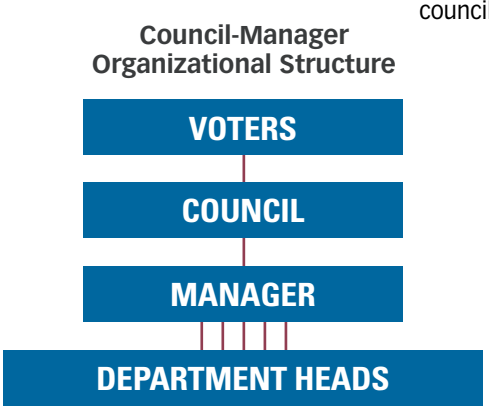
State law vests authority to manage a general law city in a city council of at least five members, a city clerk, a city treasurer, a police chief, a fire chief, and any subordinate officers or employees provided by law. However, all general law cities may elect to be governed by the city manager (or council-manager) form of government that is established by an ordinance adopted by the council or voters. Such an ordinance must define the powers and duties of the city manager, which may include the power to hire and fire city employees except the city attorney. When the offices of city clerk and city treasurer are appointive, appointments to such offices are made by the city council unless the city council vests such power in the city manager by ordinance. The ordinance may also fix the city manager's compensation or the minimum amount he or she is to receive.

As stated in Chapter 2, a charter city is not limited by the general laws and, therefore, can provide for any form of government, including the council-manager and strong mayor and other forms. This means that a charter city may adopt, for example, a city manager form of government that looks and operates quite differently from a general law city because the charter city is not limited by the provisions of the Government Code described in the above paragraph.

1. Council-Manager Form of Government

Born out of the United States progressive reform movement at the turn of the 20th century, the council-manager form of government was designed to combat corruption and unethical activity in local government by promoting effective management within a transparent, responsive, and accountable structure. Since its establishment, the council-manager form has become the most popular structure of local government in the United States.

In the council-manager form of government, the elected city council is the policy making, governing body of the city. The council hires the professional manager to carry out the policies it establishes.



The council provides legislative direction while the manager is responsible for day-to-day administrative operations of the city based on the council's policy input. The mayor and council collectively set policy and approve the budget. The manager serves at the pleasure of the council, as the council's chief management advisor and is responsible for preparing the budget, directing day-to-day operations, and hiring and firing personnel. The city attorney reports directly to the council as the council's chief legal advisor.

In a council-manager form of government, the mayor is recognized as the political head of the municipality, but is a member of the legislative body who does not have special authority such as the power to veto legislative actions. In some cities, the mayor is directly elected by the voters. In other cities, the mayor is appointed by the city council often on a rotational basis.

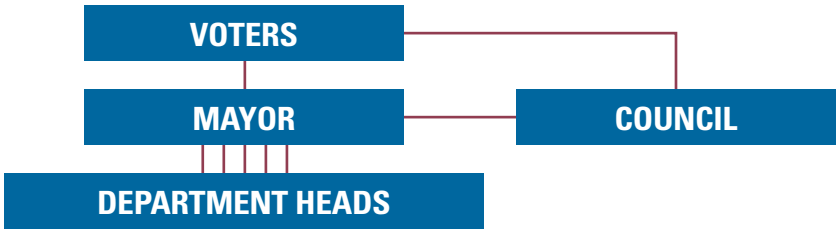
2. Strong Mayor Form of Government

The strong mayor-council form of government is the form that most closely parallels the federal government (and California government) with an elected legislature and a directly elected executive. It is called strong mayor because the mayor has more authority than the mayor in a city manager form of government.

The mayor is designated as the head of the executive branch of the city government and the extent of his or her authority can range from purely ceremonial functions to full scale responsibility for day-to-day operations. The duties and powers can include: hiring and firing department heads, preparation and administration of the budget, and veto power (which may be overridden) over council actions. The office of mayor in such a circumstance is typically a full-time job, and the mayor is therefore more involved in the day-to-day management of the city. The council has the following responsibilities: adoption of the budget, passage of legislation, auditing the performance of the government, and adoption of general policy positions.

In some cities, however, the mayor may assume a larger policy-making and political leadership role, and responsibility for day-to-day operations is delegated to a manager or chief administrator appointed by and responsible to the mayor.

Strong Mayor-Council Organizational Structure



In California, five charter cities have adopted the strong mayor-council structure: San Francisco (population 837,442), Fresno (population 509,924), Los Angeles (population 3.9 million), Oakland (population 406,253), and San Diego (population 1,355,896).

B. Organization Considerations

1. Council Size

General law cities must have at least five council members.[8] If the council is elected by or from districts (see section C below), the number of districts must be five, seven or nine, unless there is an elected mayor, in which case the number is four, six or eight.[9]

Charter city councils are not limited by the state law size requirements and council size can be set by charter or ordinance.

2. Elected Mayor

The mayor of a general law city is generally selected by a vote of the members of the city council.[10] However, upon a vote of its citizens, a general law city may establish a system for direct election of the mayor by voters and whether an elected mayor serves for two or four years.[11]

Charter cities have authority to determine the procedures for selecting a mayor and such charter provisions override any conflict in state law.[12]

Case Studies: Two examples of the strong mayor form of government are found in the cities of San Diego and Fresno. The San Diego City Charter makes the mayor the chief executive officer of the city.[1] He or she has the authority to execute and enforce all laws, ordinances, and policies of the city, including the right to promulgate and issue administrative regulations that give controlling direction to the administrative service of the city.[2] He or she has the sole authority to appoint the city manager (subject to council confirmation), exercises direct control over the city manager, and may dismiss the city manager, chief of police or chief of the fire department.[3] The mayor has the sole authority to appoint most city representatives to boards, commissions, committees and governmental agencies.[4] In Fresno, the mayor has the sole authority to appoint and remove the chief administrative officer and exercises control over him or her.[5] In both cities, the mayor may veto any legislation passed by the city council.[6] In both cities, the mayor prepares the annual city budget to submit to the council, and in Fresno, he or she and may veto a particular budgetary line item.[7]

3. Term Limits

For general law cities, state law gives the voters the option to impose (or repeal) term limits on council members, an elected mayor, or both.[13] Prior case law held that charter cities can establish term limits either by charter or ordinance.[14] The statute enacted in 1995 specifically refers to charter cities.[15] As of publication, there were no cases determining that this statute is applicable to charter cities.

4. Compensation

The California Constitution gives charter cities plenary authority to establish the salaries of its officials, including council members and employees. California Constitution, article XI, section 5, subdivision (b) provides:

> … (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide … the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

For general law cities, council member compensation is prescribed by state law unless otherwise approved by vote of the electors.[16] The maximum monthly compensation level depends upon the city's population. These monthly rates range from $300 (for cities with populations up to 35,000) to $1,000 (for cities with populations over 250,000).[17] Further, these amounts may be increased by ordinance; however, the amount of the increase may not exceed an amount equal to 5 percent for each calendar year from the operative date of the last salary adjustment in effect when the ordinance was enacted.[18] Furthermore, increases may only take effect upon the seating of newly elected council members.[19]

The compensation limit that applies to general law cities includes any compensation a council member receives for serving on any city board or commission and for the most part such compensation is limited to a stipend of up to $150 per month for each commission or board.[20] Compensation does not include payments by a city for retirement, health and welfare, and federal social security benefits. For general law cities, salary of appointed officers and employees is set by the city council.[21]

Scandals regarding excessive salaries for elected and some other officials in the City of Bell, a charter city, led to the passage of several general laws regarding compensation. Among the new rules that purport to apply to charter cities, as well as general law cities, is a section of the Brown Act requiring that any decisions regarding compensation be made at a regular meeting in open session.[22] Additional sections prohibit both an automatic renewal of a contract that provides an automatic increase in level of compensation that exceeds a cost of living adjustment and a maximum cash settlement that exceeds levels set in the Government Code.[23] As of publication, no cases have analyzed whether these statutes apply to charter cities.[24]

Other legislation adopted as a result of the Bell scandal requires any new proposal to adopt a charter include in the ballot description an enumeration of new city powers as a result of the adoption of the charter, including whether the city council will have the power under the new charter to raise its own compensation without voter approval.[25] Lastly, the Brown Act was further modified to require that, prior to holding a serial or simultaneous meeting, the clerk or a member of the legislative body must verbally announce the amount of compensation that members of the legislative body will receive for attending the serial or simultaneous meeting.[26] The Brown Act applies to charter cities.

5. Council Qualifications

For general law cities, council member qualifications are:

- Be a United States citizen;
- Be at least 18 years old;
- Be a registered voter;
- Be a resident of the city at least 15 days prior to the election and throughout his or her term; and
- If elected by or from a district, be a resident of the geographical area comprising the district from which he or she is elected.[27]

Charter cities can establish their own qualifications for holding city office provided they do not violate the federal Constitution.[28] However, the most common eligibility requirements are residency within the city (or district as appropriate) at the time of the election.[29]

C. Elections

In general law cities, municipal elections are conducted in accordance with the California Elections Code.[30] The Constitution grants charter cities plenary authority over how the city council and other officers are elected.[31]

1. At-Large vs. By-District vs. From-District

There are three primary ways in which council members are elected. The first is at-large where candidates live anywhere within the jurisdiction of the city, and all voters vote for all councilmembers. The second is by-district where candidates live in a particular district and are elected only by voters in that district. The third is from-district where candidates live in the district, but are elected by voters citywide.

2. Other Election Processes

a. Instant Runoff or Ranked Choice

Four charter cities in California currently use some form of instant runoff or ranked-choice voting: San Francisco, Oakland, San Leandro and Berkeley. In instant runoff voting, voters rank the candidates in order of preference. The ballots are initially counted as one vote for the voter's first choice candidate. If a candidate secures a majority of votes cast, that candidate wins. If no majority is achieved, the candidate with the fewest votes is eliminated, and a new round of counting takes place, with each ballot counted as one vote for the highest ranked candidate that has not been eliminated. The process continues until the winning candidate receives a majority of the votes against the remaining candidates.

b. Cumulative Voting

Voters may vote for separate candidates or cast all of their votes for a single candidate. Cumulative voting can help minority candidates because their supporters can single-shot all their votes behind one candidate, while majority voters may be more likely to spread out their votes among several candidates. Cumulative voting is a form of at-large voting.

c. Seat-Based Voting

Under a seat-based system, council positions remain at-large, however, candidates are allowed to designate which particular seat they are running for, depending on which seats are open. Seats are often denominated by number. Voters are allowed to vote for a candidate for each available seat. Such a method arguably allows candidates a greater chance of being elected because they are running only against other candidates for that same seat; however, there is no assurance of how many candidates may choose to run for particular seats.

d. Limited Voting

Regardless of how many seats are open, voters only cast one vote.

3. Timing and Method of Municipal Elections

In general law cities, the timing and method of local elections are conducted in accordance with the Elections Code.[32] While the Legislature recently passed two laws significantly limiting the timing of elections relating to certain charter changes, charter cities may still establish their own election dates (other than elections relating to certain charter changes) and may still adopt their own election rules and procedures.[33] Another recently-passed bill that goes into effect on January 1, 2018 (AB 415) requires cities to hold general elections on a statewide election date if an election held on a non-statewide election date in the past four elections had less than a 25 percent voter turnout. On its face, the bill does not directly state that it applies to charter cities.

Furthermore, charter cities may conduct all mail-in ballot elections, rather than the traditional polling place method of voting. The City of Burbank has its own election code and has conducted all mail-in ballot elections since 2001.[34] The Santa Barbara City Charter allows the city council to conduct all mail-in ballot elections.[35] Both cities use all mail-in ballot elections, in part, as a way to contain municipal election costs.

4. Campaign Reform

In *Johnson v. Bradley*, the Supreme Court considered the City of Los Angeles' amendments to the city charter that adopted a comprehensive campaign, election and ethics reform plan (Measure H), which included direction to the city council to adopt a system of using public funds to fund campaigns under certain specified circumstances. A lawsuit was brought challenging Measure H arguing it was in conflict with state law imposing various campaign contribution restrictions.[36] The California Supreme Court upheld Measure H. First the court found that the city's public financing system was a municipal affair and then determined that although state law reflected a statewide concern regarding the integrity of the electoral process, its ban on public financing was not reasonably related to this concern.[37]

5. California Voting Rights Act Challenges

a. Violations

The California Voting Rights Act (CVRA) was enacted to implement the equal protection and voting guarantees of the California Constitution. The Act sets forth the circumstances where an at-large electoral system may not be imposed to dilute or abridge a protected class's opportunity to elect candidates.[38] Protected class means a class of voters who are members of a race, color or language minority group, as defined in the federal Voting Rights Act.[39]

When at-large or from-district voting dilutes the vote of a protected class in California, the CVRA provides a private right of action.[40] To prove a CVRA violation, the plaintiffs must show that the voting was racially polarized.[41] However, they do not need to show either that members of a protected class live in a geographically compact area or demonstrate a discriminatory intent on the part of voters or officials.[42]

b. CVRA Applicability to Charter Cities

The CVRA, purports to apply to cities without making any explicit distinction between general law or charter cities.[43] The City of Palmdale, a charter city, was sued for violating the CVRA in its at-large elections. Although the city raised as a defense its charter status, both the Superior Court and the Court of Appeal held that the CVRA applied to charter cities. The Superior Court found that Palmdale's at-large system violated minority voting rights. The Court found that Palmdale's system was designed to protect current incumbents and that the city had a history of racially polarized voting. As a remedy the court issued an injunction prohibiting the city from certifying the results from its at-large election of council members, ordered by-district elections, and required new elections for all existing council members who were deemed unlawfully elected.[44]

The Court of Appeal began its analysis of whether the CVRA applies to a charter city by acknowledging that how city council members are elected is the "essence of a municipal affair."[45] Then it noted that since Palmdale's system of at-large elections diluted minority voting rights, it was in conflict with the CVRA that prohibited such dilution. The Court analyzed whether there was a basis for the Legislature to act in what otherwise was a local affair — city council elections — and concluded that implementing the equal protection and voting rights provision of the California Constitution was a matter of statewide concern.[46]

c. Standing

Any voter who is a member of a protected class and who resides in a political subdivision where a violation of the CVRA is alleged may file a lawsuit.[47]

d. Remedy

Upon finding a violation of the CVRA, a court must implement appropriate remedies, including the imposition of district-based elections tailored to remedy the violation.[48] The fact that members of a protected class are not geographically compact or concentrated, while not supporting a violation of the CVRA, may be a factor in determining an appropriate remedy.[49] The scope of the court's ability to fashion a remedy will likely be the subject of future litigation and legislative efforts.

e. Attorney's Fees

A successful CVRA plaintiff is entitled to reasonable attorney's fees and litigation expenses, including expert witness fees and expenses. A prevailing city, by contrast, is not entitled to recover any costs unless the court finds the action to have been frivolous, unreasonable or without foundation.[50]

f. District Elections

The CVRA does not apply to by-district elections in which the council member candidate resides within an election district and is elected only by voters residing within that district. California's counties and most of its largest cities, including Los Angeles, San Diego and Long Beach, elect council members by geographic district.[51] The CVRA does not mandate the abolition of at-large election systems, but makes the use of at-large election systems more susceptible to a legal challenge.

ENDNOTES

1 San Diego City Charter, art. XV, § 265, subd. (b)(1).

2 San Diego City Charter, art. XV, § 265, subd. (b)(2).

3 San Diego City Charter, art. XV, § 265, subds. (b)(7), (b)(8), (b)(9) & (b)(10).

4 San Diego City Charter, art. XV, § 265, subd. (b)(12).

5 Fresno City Charter, § 400, subds. (b) & (c).

6 San Diego City Charter, art. XV, § 265, subd. (b)(5); Fresno City Charter, § 400, subd. (e).

7 San Diego City Charter, art. XV, § 265, subd. (b)(14); Fresno City Charter, § 400, subds. (d) & (f).

8 Gov. Code, § 36501. Prior to January 1, 2001, a general law city could only have 5 members. The law was changed in 2000 to provide for "at least five members." The vast majority of general law cities were incorporated prior to 2000 and therefore have only five members.

9 Gov. Code, § 34871, subds. (a)-(d).

10 Gov. Code, § 36801.

11 Gov. Code, §§ 34900-34906.

12 *Rees v. Layton* (1970) 6 Cal.App.3d 815.

13 Gov. Code, § 36502, subd. (b).

14 *Cawdrey v. City of Redondo Beach* (1993) 15 Cal.App.4th 1212 (term limits are a municipal affair).

15 Gov. Code, § 36502, subd. (b).

16 Gov. Code, § 36516.

17 Gov. Code, § 36516.

18 *Ibid.*

19 Gov. Code, § 36516.5

20 Gov. Code, § 36516.

21 Gov. Code, § 36506.

22 Gov. Code, § 54596, subd. (b).

23 Gov. Code, §§ 3511.1, 3511.2.

24 Government Code section 3511.1, subdivision (c) defines "local agency" to include "charter city." However, as explained in Chapter 2, the courts, not the Legislature, make the final determination of whether this is a matter of statewide concern or a municipal affair. The analysis would begin with the clear statement found in article XI, section 5, subdivision (b) that a charter city has plenary authority over establishing compensation for its officers and employees. However, the courts give "great weight" to the intent of the Legislature that the statute applies to charter cities.

25 Gov. Code, § 34458.5.

26 Gov. Code, § 54952.3.

27 Elec. Code, § 321; Gov. Code, §§ 34882, 36502; 87 Ops.Cal.Atty.Gen. 30 (2004).

28 Cal. Const., art. XI, § 5, subd. (b); 82 Ops.Cal.Atty.Gen. 6, 8 (1999).

29 See, e.g., Riverside City Charter, §401; San Jose City Charter, § 404; Santa Barbara City Charter, § 501.

30 Elec. Code, § 10101.

31 Cal. Const., art. XI, § 5, subd. (b). Just as in other municipal affairs, a charter city's enactments may not violate other provisions of the California or federal Constitution such as the First Amendment, or the equal protection clause. Note that in some cases the courts are reluctant to rely on the "plenary" authority granted for these "core" areas. For example, in *Johnson v. Bradley* (1992) 4 Cal.4th 389, a case challenging the City of Los Angeles' charter provisions regarding election campaign finance reform, the California Supreme Court relied on section 5, subdivision (a) to determine that how a city spends its tax dollars was a "municipal affair" rather than finding that election campaign finance reform was related to a "core" area under section 5, subdivision (b).

32 Elec. Code, § 10101.

33 Cal. Const., art. XI, § 5, subd. (b); Elec. Code § 10101 *et seq*.

34 Burbank City Charter, § 800 and Burbank Municipal Code, T. 2, Ch. 3.

35 Santa Barbara City Charter, § 1306.

36 Gov. Code, § 85300 ("No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking office.")

37 *Johnson v. Bradley* (1992) 4 Cal.4th 389.

38 Elec. Code, §§ 14026, subd. (a), 14027.

39 42 U.S.C. § 1973 et seq.

40 *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667.

41 "Racially polarized voting" is defined in the California Voting Rights Act (CVRA) to mean voting in which there is a difference, as defined in case law under the federal Voting Rights Act (FVRA), in the choice of candidates or other electoral choices preferred by voters in a protected class, as compared to the rest of the electorate. The methodologies for estimating group voting behavior that may be used to prove that elections are characterized by racially polarized voting are those approved in federal cases enforcing the FVRA. Elec. Code, § 14026, subd. (e).

42 *Id.*; *Rey v. Madera Unified Sch. Dist. (2012)* 203 Cal.App.4th 1223, 1228-29. "Protected class" is defined in the CVRA to mean a class of voters who are members of a race, color or language minority group, as referenced and defined in the FVRA. Elec. Code, § 14026, subd. (d).

43 Elec. Code, § 14026, subd. (c).

44 The court did not order a new election for the City's directly elected mayor.

45 *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781 (2014).

46 *Id.* at p. 798.

47 Elec. Code, § 14032.

48 Elec. Code, § 14029.

49 Elec. Code, § 14028, subd. (c).

50 Elec. Code, § 14030.

51 Merl, *Voting Rights Act leading California cities to Dump At-large Elections* (September 14, 2013) L.A. Times <http://www.latimes.com/local/la-me-local-elections-20130915,0,295413.story> [as of Apr. 20, 2016].

Chapter 5

COMMON CONCERNS ABOUT CHARTER CITIES

Considering adopting a charter can become a charged and controversial proposal. Proponents tout the potential for more local autonomy from the state and considerable budgetary savings. Opponents are concerned about the expense to adopt a charter, the risk of councilmembers running amok in paying themselves excessive salaries, employee unions taking control of the budget, higher taxes, and even bankruptcy. Additionally, some may argue that becoming a charter city does not really change a city's status because of the growth of the statewide concern doctrine. This chapter discusses some of the most common concerns raised about becoming a charter city or being a charter city, to help frame the issues and the law.

A. Growth of Statewide Concerns

One often hears that there has been a loss of local control or home rule for California cities and that the state has taken more and more control over local government autonomy. There is an argument that this is true for both general law and charter cities.[1] For example, the loss of fiscal control by all cities in the state is well documented. It occurred through a series of actions and events that started with Proposition 13, later followed by Proposition 218, and most recently by Proposition 26 and the state's dissolution of redevelopment agencies.[2]

Some argue that charter cities are more protected from a loss of local control.[3] Others argue that, at least for purposes of protecting local revenue or creating revenue, there is no real benefit to being a charter city.[4]

There are still a number of advantages to being a charter city, but there is no question that the Legislature will continue to enact legislation that purports to apply to charter cities and that the judicial response to these enactments will be difficult to predict.

1. What Does *Growth of Statewide Concerns* Mean?

As described in Chapter 2, the measure of a charter city's autonomy from the state, and thus the real benefit to being a charter city is captured by the phrase municipal affairs.[5] A charter city's authority over municipal affairs, free from conflicting state statutes and regulations, is the difference between a charter city and a general law city. However, a matter of statewide concern developed as the conceptual limitation on the scope of municipal affairs and thus the supremacy of charter city measures over conflicting state legislative enactments. The courts have not made an attempt to define municipal affairs but rather have endeavored to adopt a judicial procedure to follow in analyzing whether a challenged ordinance adopted as a municipal affair must defer to a matter of statewide concern.

Therefore, when growth in statewide concerns is discussed, it means more cases in which the courts have struck down a charter city's local enactment because the matter was of statewide concern. Examples are included in the chart below:

1948	**Regulation of Trades**	Court ruled that licensing of a trade or profession was a matter of statewide concern. Court overturned a San Francisco ordinance requiring every contractor to obtain a business certificate or license and also included additional regulation as to the quality and character of installations. Court found local ordinance conflicted with State Contractor's Laws (Bus. & Prof. Code, § 7000 et seq.) and was not a municipal affair.[6]
1957	**Eminent Domain**	Court held that power of eminent domain was not a municipal affair but a matter of statewide concern and charter cities only had the power if given by the Legislature.[7]
1959	**Regulation of Telephone Systems**	Court ruled that regulation of telephone system was a matter of statewide concern.[8]
1961	**Telephone Franchises**	Court held that regulation of telephone communication was a matter of statewide concern, and a city cannot require a telephone company to obtain a franchise from the city.[9]
1963	**Labor**	Court held that the organizational rights of firefighters are a statewide concern.
1976	**Labor**	Court held that charter cities are subject to the Meyers-Milias-Brown Act.[10] Court found that even though the general rule is that the fixing of compensation for city employees is a municipal legislative function, local legislation may not conflict with statutes such as the Meyers-Milias-Brown Act, which are intended to regulate the entire field of labor relations of affected public employees throughout the state.
1982	**Labor**	Court found that Public Safety Officer's Procedural Bill of Rights applies to charter cities.[11]
1991	**Taxing of Financial Institutions**	Court ruled that charter city's tax on savings and loan institutions was not a municipal affair.[12]
1995	**Public Contracting**	Court found that, although a public works contract was a municipal affair, a provision in a bid specification did enter into an area of statewide concern related to minority and women's outreach programs.
1998	**Utility Liens**	Court ruled that an ordinance allowing the city to create and record a super-priority lien on property for unpaid utility charges was not a municipal affair.[13]

2. A New Try with an Old Tactic

There has always been a tug-of-war between the state and charter cities over local control. The Legislature often attempts to stake out its authority in an area by stating a matter is of statewide concern, and as such, controlling on charter cities.[14] The California Supreme Court has stated that the Legislature does not have the power to transform a municipal affair into a statewide concern,[15] by its own declaration. However, historically the courts give great weight to the Legislature's stated intent.[16] The Legislature usually prefers that a particular policy to be followed uniformly throughout the state. Usually this is accomplished by enacting a law that the Legislature asserts applies to charter cities because it is a matter of statewide concern. A lesser-used technique is for the Legislature to tie the receipt of state funds to charter city's compliance with a state law that otherwise intrudes into an area that has been determined to be a municipal affair.

In 1978, the Legislature bailed-out cities and counties with state surplus funds to make up for the significant decrease in property taxes caused by Proposition 13. However the distribution of state surplus funds was prohibited to any local public agency granting to its employees a cost-of-living wage or salary increase for the 1978–79 fiscal year that exceeded the cost-of-living increase provided for state employees. Long Beach and Santa Clara challenged the statute as interfering with their autonomy as charter cities. The court recognized that a charter city's right to determine how much to pay its employees was a core municipal affair over which a charter city has plenary authority. The court rejected the state's argument that compensation of city employees was a matter of statewide concern because of the fiscal emergency occasioned by Proposition 13.[17]

A more recent example of this tactic can be found in the area of prevailing wage law. Charter cities are not required to pay prevailing wages on public works projects that are not funded by state or federal funds and that serve the municipality rather than a regional project.[18] What this means in practical effect is that the charter city and its city council and voters have the ability to determine if and when to pay prevailing wage on local public works contracts. Charter cities have taken a variety of approaches on this issue and based the decision on what they believe best meets the needs of their community. Some charter cities have express provisions in their charter opting out of prevailing wage rate law and others have a local ordinance, resolution, or other policy expressly opting out of prevailing wage rate law. However, it is not necessary for a charter city to have a charter provision or local ordinance to not be subject to prevailing wage rate law; it is an inherent part of home rule granted by the state constitution.[19] Consequently, a charter city can elect to not be subject to prevailing wage rate law by not requiring it in its public works contracts, so long as the project does not use state or federal funds[20] and only serves local versus regional interests.[21]

In 2012, the California State Supreme Court held that payment of prevailing wages by a charter city is a municipal affair, regardless of the language in the statute.[22]

In 2013, the Legislature enacted Senate Bill 7 (SB 7) adding section 1782 to Labor Code to:

- Prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has a charter provision or an ordinance that authorizes a contractor to not comply with state prevailing wage rate law.
- Prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has awarded within the prior two calendar years a public works contract without requiring the contractor to comply with the State prevailing wage rate law.[23]

- Allow a charter city to receive or use state funding or financial assistance for a construction project if the charter city has adopted an ordinance that includes requirements that in all respects are equal to or greater than state prevailing wage rate law.

The legality and constitutionality of SB 7 was challenged in court by a group of cities (El Centro, Carlsbad, El Cajon, Fresno, and Vista). The Court of Appeal concluded that SB 7 was constitutional, finding that SB 7 "does not conflict with these charter city laws as it does not mandate or require that charter cities do anything, such as paying prevailing wages for its public works projects. Rather, [SB 7] provides the Cities with a choice, to meet the requirements set forth in [SB 7] to obtain state funding or financial assistance on its public works projects, or forgo eligibility for those funds."[24]

3. Uncertainty and Ambiguity

Charter cities and general law cities considering becoming charter cities live with the reality of the Legislature continuing to apply new laws to charter cities based upon legislative declarations and findings that the matter is of statewide concern. Some of these laws do not get challenged in court. A charter city must then make a decision about whether to follow the state law or adopt a local ordinance in conflict with the state law based upon its city attorney's legal opinion that a court would ultimately determine that the area was a municipal affair that did not require deference to the legislative enactment.

For example, state law has extensive regulatory schemes limiting cities' ability to adopt regulations for the retrieval of shopping carts.[25] It requires a city that retrieves a shopping cart to hold it for the owner for 30 days. The city cannot collect its costs or fine the owner as long as the owner retrieves the cart. The state statute expressly provides that "The Legislature hereby finds that the retrieval by local government agencies of shopping carts … is in need of statewide regulation and constitutes a matter of statewide concern."[26]

It seems arguable that the Legislature could demonstrate the retrieval of a shopping cart "under the historical circumstances" indicates "the state has a more substantial interest in the subject than a charter city." [27] The legislative analysis for the bill identified the rationale for making it applicable to charter cities:

> Cart owners are concerned that a multiplicity of local cart retrieval regulations, along with expensive fees, are bad for business and fail to acknowledge their diligent retrieval efforts. Grocers want state law to limit local officials' cart retrieval regulations.[28]

There are no published cases where a court has determined that shopping cart retrieval is a matter of statewide concern on the basis that local regulations may be bad for business. Therefore, a charter city must weigh the legal risks, benefits, and consequences of adopting an ordinance in conflict with this state law and act accordingly.

4. It Is About More than the Growth of Statewide Concerns

As hopefully has been made clear by now, being a charter city does not mean complete autonomy from the Legislature nor does it mean that areas that are now considered municipal affairs will be considered municipal affairs forever. Being a charter city is not only about how much autonomy the city has from state control. Being a charter city also means providing the city's voters with a vehicle and forum for proposing their vision for how the city should provide services and regulate conduct. It is an opportunity for the voters to clearly identify what is most important to the community, the types of issues that make the community different from its neighbors, and how they would like to see the city governed.

B. Compensation of Elected Officials

The California Constitution gives plenary authority for charter cities to establish the salaries of its officials and employees. By contrast, the salaries of general law cities' officials and employees are controlled by the provisions of the Government Code. For a more in-depth discussion, see the Compensation section of Chapter 3.

1. Concerns about Excessive Compensation

The scandal in the City of Bell raised the issue of compensation of city officials in charter cities.[29] The small City of Bell, where part-time council members paid themselves salaries of $100,000 per year and their city manager was paid at least $800,000 per year, has made many ask if part of the issue was the city being a charter city.[30] Some have used what happened in the City of Bell to help defeat proposals for charter adoptions.

In 2012, the voters of the City of Auburn rejected a ballot measure to make the city a charter city. The second most often cited reason for opposing the charter amendment in the voter guide was that council members could pay themselves thousands of dollars in extra compensation.[31] Opponents of the measure argued the charter would open the door to corruption and even possibly bankruptcy.[32]

The Legislature responded to concerns about council members in charter cities paying themselves excessive compensation by adopting a state law that requires a proposal to amend or adopt a charter to include whether the city council will, pursuant to the adopted charter, have the power to raise its own compensation and the compensation of other city officials without voter approval.[33]

Of course, salaries only tell part of the story and often not the largest part of the city's outlay. Benefit packages can create the larger liability for a city. The *Los Angeles Times* in 2011 looked at reported salary and benefit information for the councils of charter cities and general law cities and found that, if the salary and benefits were combined, almost 50 percent of charter cities were paying over the salary cap set by state law. In contrast, less than a third of the general law cities were paying, combined in salary and benefits, over what the state law caps for salaries.[34] As noted above, the state law does not include benefits in the compensation caps.[35]

The *Los Angeles Times* also found that generally most cities, including charter cities, paid under the state cap set in the Government Code. But charter cities tended to pay their council members higher salaries than general law cities and were more likely to exceed the state law cap.[36]

TIPS FOR CHARTER CITIES ABOUT CITY COUNCIL COMPENSATION

When drafting a charter proposal, consideration might be given to the following regarding city council compensation:

- Review the state law schedule for council compensation to gauge whether city council compensation will be in line with general law cities of the same size.
- Review the limitation in state law on the amount of compensation the city council can receive for service on other city boards, commissions, and authorities and determine whether a limitation on this amount is appropriate.
- Consider whether adjustments to city council salary should require voter approval; should be made automatically through an annual cost of living adjustment; or may be adopted by city council ordinance.[39]
- Consider whether council compensation should be established by another method or point of comparison. For example, section 407 of the San Jose City Charter provides for council salary setting by the Council Salary Setting Commission. Section 24 of the San Bernardino City Charter provides that the mayor's salary shall be 50 percent of the salary of a Superior Court Judge in San Bernardino County.

In response to the Bell scandal, the State Controller in 2010 required all cities, including charter cities, to disclose all salary information in their financial reports to the state and posted the results on the state's website.[37] The program referred to as the Government Compensation in California Program is intended to capture the salary, compensation, and benefit information for every compensated employee in any city, county, or independent special district who receives a W-2. The website is: http://publicpay.ca.gov.

2. Inadequate Salaries

As charters may only be amended by a vote of the electors, some cities' compensation for elected officers can be locked in at amounts that might limit who can afford to serve. For example, the City of Needles provides in their charter that council salaries are limited to $1 per month.[38] In less affluent communities where city council compensation is nominal, the expenses associated with service, as well as the potential loss of income from the council member's regular business and occupation, may skew the composition of the council toward those citizens that can afford it.

C. Bankruptcy

Declaring bankruptcy for a city comes at a heavy cost. The initial transaction costs, which can run into the millions, are only the start. Filing can bring a stigma to the city.[40] A city's credit rating will likely be suspended or downgraded. Borrowing costs can increase for years to come. Businesses will be dissuaded from locating in the community, resulting in fewer jobs and a decline in the real estate market.[41] In the last thirty years, only forty-nine cities or counties in the nation declared bankruptcy.[42]

Since 2008, three of those have been California cities: Vallejo (2008), Stockton (2012) and San Bernardino (2012). All three cities are charter cities.[43] Some have asked if this were more than a coincidence.[44] The answer suggests that while being a charter city was not the sole or principal reason these cities went bankrupt, provisions in each of the cities' charters played a role in placing the city on a fiscally unsustainable path.

More specifically, the problematic charter provisions (1) acted to limit the authority of the city councils to reduce police and fire salaries and benefits, and (2) placed restrictions on city council authority that could not have been placed on a general law city.

> **San Bernardino** has a charter provision that ties public safety employees' salaries to an average of similar employees' salaries paid by 10 other, mostly, more affluent cities. In 2014 the voters rejected a ballot proposal to amend the charter to remove this provision.[45] Additionally, San Bernardino had an unusual government structure that diffused executive authority between the council, the mayor, and the city manager and arguably made it difficult to change the status quo even when the status quo could lead to financial ruin. When the city filed for bankruptcy, the budget for public safety salaries alone was $10 million more than the city's expected revenues. Police and fire employee salaries made up 72 percent of the budget.[46]

Stockton's charter, until recently, allowed for binding arbitration for fire fighters' compensation. This tied the city's hands when the city and employees' associations could not come to an agreement on reductions. Public Safety employee salaries and benefits made up 76 percent of the city's budget.[47] In November 2010, this charter provision was repealed by the voters. [48]

Vallejo's charter mandated binding arbitration for all of its unions.[49] Employee salaries made up 85 percent of the city's budget, with the largest share going towards police and fire employees. Between 2006 and 2008 (the year Vallejo declared bankruptcy), salaries of public safety employees had scheduled increases of over 21 percent, while all other employees had scheduled increases of approximately 10 percent.[50] On June 8, 2010 voters repealed this charter provision. [51]

Only three of the 121 California charter cities have declared bankruptcy. Being a charter city does not necessarily mean a city will be fiscally unsustainable and being a general law city does not necessarily save a city from potential bankruptcy.[52]

Additionally, some argue that being a charter city can help a city maintain a stronger financial footing.[53] Historically, some charter cities have saved money by not paying prevailing wages[54] and by contracting out for municipal services.[55] On the other hand, some cities' charters restrict such authority.

Employment costs can get out of control in general law cities as well as charter cities. However, if provisions of a charter affect the financial stability of a city, then voter approval is required to amend or repeal them. Changing identical provisions in a general law city may simply require a vote by the majority of the city council, or a renegotiation of an MOU under the Meyers-Milias-Brown Act.

TIPS FOR AVOIDING BANKRUPTCY FOR CHARTER CITIES

Those drafting a charter may want to consider whether the following provisions/language should or should not be included in your charter:

- Salary formulas. If salary formulas are included, consider provisions that allow the city council flexibility to adjust during times of financial crisis.
- Requiring a balanced budget.
- Requiring a two-year budget.
- Requiring a reserve percentage of the general fund budget as a minimum unless there is a super majority vote of the city council.
- Reserving the authority to contract out for general services.

D. Labor Relations

A common concern about becoming a charter city centers on the effect on labor relations. However, in many ways, charter cities are subject to the same or similar requirements as general law cities in the area of labor relations. For example, the major public sector labor relations statute applicable to local government, i.e., the Meyers-Milias-Brown Act (MMBA)[56] applies to charter cities.[57] In addition, the Public Safety Officers Procedural Bill of Rights (POBR)[58] has been found to apply to charter cities.[59] Similarly, the Firefighters Procedural Bill of Rights (FFBOR)60 also applies to charter cities.[61]

1. Wages and Benefits

A concern about becoming a charter city is that the charter itself can circumvent the collective bargaining process. This can include items like binding arbitration as well as limiting wages and benefits based on a survey of comparable cities.[62] These items are usually the subject of negotiations under the MMBA, but can be added to city charters by either a city council-sponsored initiative or by a petitioned initiative. However, this same process can work both ways. For example, the City and County of San Francisco successfully defended its charter provision requiring increases or decreases in employee benefits to be approved by the voters. The court found in favor of San Francisco by determining that nothing in the MMBA prohibited the San Francisco Board of Supervisors from executing an agreement changing employee benefits and making final approval subject to approval by the voters as required by the charter.[63]

City charters can also be used as vehicles to set salaries of some (like public safety) or all city employees based upon those salaries provided to employees of similarly-sized cities (or any other criteria). Such charter provisions take the salary-setting authority from the city council and place it into a formula that may or may not consider the overall financial condition of the city in the short or long term. Charter provisions might constrain the financial flexibility of the city council.[64] The City of Fresno was able to amend its charter to delete a provision requiring a survey of specified cities as the basis of the city's opening bargaining position. This was accomplished during the window between when all collectively bargaining units had a memorandum of understanding (MOU) and before the time the city and the bargaining units opened collective bargaining for subsequent MOU's. This allowed the city to avoid violating the MMBA's meet and confer requirements because the provision merely set the city's initial bargaining position and not wages.[65]

Another city provided an additional management benefit (3 percent of salary) to a group of management employees electing not to be in an employee association, but denied this benefit to those in the same job classifications electing to be in the employee association. The court determined this management benefit discriminated against employees electing to exercise their rights to collectively bargain with the city and being a charter city did not prevent this outcome. The court directed the city to take one of two actions to remedy the situation — either extend the additional management benefit to those employees who otherwise qualify but who are in the employee association or discontinue the management benefit for those declining to join the employee association.[66]

City charters can also be utilized to adopt agreements with employee associations that conflict with provisions of the Labor Code. For example, the County of Los Angeles adopted a MOU with its probation officers' association that provided a different method to compensate employees for meal periods and working through meal periods than provided under the Labor Code. The Court denied the probation officer's legal challenge, indicating that the charter county's status coupled with an MOU provision covering the same issue was sufficient for the county to prevail.[67]

2. Pension Benefits

A number of charter cities have been exploring the ability to alter the pension benefits offered to their employees, including both those vested in the system and new hires. Notably both San Diego (Initiative Proposition B passed in June 2012 with 65 percent approval) and San Jose (Council Submitted Measure B passed in June 2012 with 69 percent approval) have had initiatives designed to change the pension benefit allocation between the employer and employee and to reduce the benefits long-term.[68] Legal challenges have been made to both efforts, including by the Public Employment Relations Board (PERB) for failure to collectively bargain the changes. San Diego won its pre- and post-election court challenges by PERB,[69] but it faced additional charges of unfair labor practices in connection with the measure by PERB. In proceedings against San Jose, PERB also found the city failed to bargain in good faith under the MMBA before putting the measure on the ballot. Those proceedings are still pending. In a separate lawsuit by employee unions challenging Measure B, a superior court judge held that invalidated the parts of the measure that required higher contributions from current employees but upheld other parts of the measure.[70] The city has appealed the ruling.

Similarly, in the City of Bakersfield, the police officer association was also given authority by the California Attorney General to sue in the name of the People of the State of California to challenge a charter amendment and implementing ordinances. The amendment and ordinances resulted in a different pension benefit formula and contribution level for new police department hires, as well as providing that the new formula and contribution level could only be changed by the voters. The legal challenge alleges that this charter amendment violates the meet-and-confer obligations of the MMBA.[71]

3. Binding Arbitration

The Legislature cannot require binding arbitration for charter or general law cities.[72] This limitation applies even when the legislation allows the general law city, charter city, county, or city and county to bypass the arbitrator's decision by a unanimous vote of the governing body.[73]

General law cities and charter cities have the authority to agree to binding arbitration as part of a MOU with labor organizations. The voters in a charter city have the authority to adopt binding arbitration as a part of a city charter. As reported earlier, some cities' voters are repealing such provisions under threat of bankruptcy (cities of Vallejo and Stockton.[74]) and others are doing this as a proactive measure to ensure city council control over labor relations.[75]

E. Cost to Become a Charter City

In addition to weighing the policy costs and benefits of becoming a charter city, there are a significant number of transactional costs associated with becoming a charter city that cities are advised to factor in as well. Although the amount of those costs will vary depending on the particular situation, general law cities considering becoming charter cities should expect to incur the following transactional costs:

1. Becoming a Charter City

The process to become a charter city is typically a multi-year process with significant resources expended. There are costs associated with all of the following activities:

- Legal, administrative and staffing costs to draft the charter.
  - Costs can vary depending upon the charter process used. For example, the use of a formal charter commission with direct authority to place something on the ballot can be higher based on the complexity and time such a process can take.
  - If subjects impacting wages, hours or other terms and conditions of employment are included in the proposed charter, there may be a cost to meet and confer with employee associations under the MMBA.
  - Costs may also be necessary under the California Environmental Quality Act.
- Public education outreach.
- Holding an election.
  - The cost can vary greatly depending on whether the city holds a stand-alone election or consolidates with another election, such as a statewide election, which may be required in light of new legislation.[76] Consolidating with another election can save a substantial amount of money.
  - Election cost estimates by cities have ranged from $5,000 and higher.

- Associated costs can include hiring election consultants, purchasing election supplies, labor costs for election workers, and paying the county registrar or election official to hold the election.

2. After Becoming a Charter City

There are also many costs that will be incurred above those a general law city would incur after charter adoption. These include costs associated with the following:

- Training staff on new processes and procedures and what it means to be a charter city.
- Implementing required procedural changes, including adopting ordinances and amending the municipal code to take advantage of new charter authority. If the charter is drafted with flexibility in mind, these changes can be made over a number of years to spread the cost of the changes and staff retraining, so that it is manageable given other city priorities.
  - If public contracting is addressed in the charter and new bid thresholds are established, contract documents and bid packets will also need to be updated.
  - Any financial or accountability procedures included in the charter will require implementing procedures by the city finance department, including a review to ensure that proper internal and external controls are in place.
  - Any personnel, civil service, or labor relations changes will require changes to existing processes, procedures, and rules and may require a meet and confer process with recognized employee associations.
- Lawsuits arising from exercising charter powers.
  - Gray areas in the law invite lawsuits. As charters can be different and may vary in their provisions, there is no case law on how to interpret specific charter provisions. However, a charter city is typically aware of these gray areas and can legislate based upon an analysis of risks and benefits.
- All charter amendments and repeal, including those mandated by changes in the law, require an election. Often, consolidation with regularly-scheduled elections will reduce the cost.

ENDNOTES

1 For a discussion of the loss of home rule for general law cities, see Albuquerque, *California and Dillon: The Times They Are A-Changing* (1998) 25 Hastings Const. L.Q. 187, 191.

2 See, e.g., Strauss & Coleman, *Waiting for the State to Get Its House in Order: The Origin of Cities' Fiscal Relationship with the State* (1998) <http://www.californiacityfinance.com/HouseWC9811.pdf> [as of Apr. 20, 2016]; see also Hogen-Esch, *Fragmentation, Fiscal Federalism, and the Ghost of Dillon's Rule: Municipal Incorporation in Southern California, 1950-2010* (2011) Vol. 3, No. 1 Cal. Journal of Pol. & Policy; Coleman & Colantuono, *The Origin & Devolution of Local Revenue Authority* (June 2003) Western City, at page 22; Saxton, Hoene, & Erie, *Fiscal Constraints and the Loss of Home Rule: The Long-Term Impacts of California's Post-Proposition 13 Fiscal Regime* (2002) Vol. 32, No. 4 Am. Rev. of Pub. Admin. 423-454.

3 Albuquerque, *supra* note 1, at p. 190 (arguing that recent cases have given new life and vibrancy to the constitutional powers of charter cities).

4 Miadich & Daniels, *The Illusion of Autonomy: Why Charter City Status Does Not Protect Local Revenue* (June 18, 2013) <http://www.smartcitiesprevail.org/resources/Illusion_of_Autonomy_full_report.pdf> [as of Apr. 20, 2016].

5 Grodin et al., The California State Constitution: A Reference Guide (1993) p. 188.

6 *City and County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445.

7 *Wilson v. Beville* (1957) 47 Cal.2d 852, 856.

8 *Pacific Tel. & Tel. Co. v. City of Los Angeles* (1955) 44 Cal.2d 272, 280.

9 *Pacific Tel. & Tel. Co. v. City and County of San Francisco* (1961) 197 Cal.App.2d 133, 148.

10 *San Leandro Police Officers Assoc. v. City of San Leandro* (1976) 55 Cal.App.3d 553.

11 *Baggett v. Gates* (1982) 32 Cal.3d 128, 140 ("There must always be doubt whether a matter which is of concern to both municipalities and the state is of sufficient statewide concern to justify a new legislative intrusion into an area traditionally regarded as 'strictly a municipal affair.' Such doubt, however, 'must be resolved in favor of the legislative authority of the state.'")

12 *Cal. Fed. Savings & Loan Assn. v. Los Angeles* (1991) 54 Cal.3d 1.

13 *Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 600.

14 Grodin, *supra* note 5, at p. 190.

15 *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 64.

16 Grodin, *supra* note 5; *Baggett v. Gates* (1982) 32 Cal.3d 128.

17 *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296.

18 *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547.

19 *Minor v. City of Sacramento* (1977) 66 Cal.App.3d 863, 867-868; *City and County of San Francisco v. Callanan* (1985) 169 Cal.App.3d 643, 647-648.

20 *Young v. Superior Court of Kern County* (1932) 216 Cal. 512; *Southern California Roads Company v. McGuire* (1934) 2 Cal.2d 115.

21 *Wilson v. City of San Bernardino* (1960) 186 Cal.App.2d 603; *Pacific Telephone and Telegraph Company v. City and County of San Francisco* (1959) 51 Cal.2d 766. On November 1, 2013, the Department of Industrial Relations determined that a charter city's use of state gasoline sales tax revenues, in whole or in part for a project, subjects the entire project to the payment of prevailing wages.

22 *City of Pasadena v. Charleville* (1932) 215 Cal. 384, 389; *State Building and Construction Trades Council of California v. City of Vista, supra*, 54 Cal.4th at p. 557. Note that the basis of the City of Vista decision — that a charter city should be able to determine the best use of its tax dollars — is very similar to the basis used in the decision upholding the Los Angeles City Charter provision allowing City of Los Angeles funds to be contributed to local election campaigns.

23 This prohibition does not apply to contracts awarded or advertised for bids prior to January 1, 2015. Lab. Code, § 1782, subd. (f).

24 *City of El Centro v. Lanier* (March 29, 2106, D066755) __ Cal.App.4th __ [2016 WL 1221948].

25 Bus. & Prof. Code, § 22435 *et seq*.

26 Bus. & Prof. Code, § 22435.7.

27 *C.f., Pac. Tel. & Tel. Co. v. City and County of San Francisco, supra*, 51 Cal.2d at p. 771.

28 Sen. Local Gov. Com., Bill Analysis on Assem. Bill No. 317 (1995-1996 Reg. Sess.) (June 26, 1996) <http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_0301-0350/ab_317_cfa_960624_173000_sen_comm.html> [as of Apr. 20, 2016].

29 St. John, *California Cities Shift to Charters, Raising Questions About Officials' Salaries*. (August 6, 2010) KPBS <http://www.kpbs.org/news/2010/aug/06/officials-salaries-charter-cities/> [as of Apr. 20, 2016].

30 *See, e.g.*, Gang & Begley, *Inland Charter Cities Offer Similar Pay to Managers, Council* (August 1, 2010) The Press Enterprise <http://www.pe.com/local-news/local-news-headlines/20100802-inland-charter-cities-offer-similar-pay-to-managers-council.ece> [as of Apr. 20, 2016].

31 Placer County Ballot Guide, Special Elec. (June 5, 2012) analysis of Measure A by county counsel <http://www.placerelections.com/uploads/documents/06052012/06052012_Measure_A-City.pdf> [as of Apr. 20, 2016].

32 *Ibid.*

33 Gov. Code, § 34458.5.

34 *California City Council Compensation Scorecard* (Aug. 1, 2011) LA Times <http://spreadsheets.latimes.com/city-council-salaries/> [as of Apr. 20, 2016].

35 Gov. Code, § 36516, subd. (d).

36 *California City Council Compensation Scorecard, supra* note 34; Henry, *Berkeley City Council Paid More Than State Guideline.* (Aug. 3, 2011) Berkeley Patch <http://berkeley.patch.com/groups/politics-and-elections/p/berkeley-city-council-paid-more-than-state-guideline> [as of Apr. 20, 2016].

37 Cal. State Controller's Office, *Press Release, Controller Requires Cities, Counties to Report Salaries of Government Officials* (Aug. 2010) <http://www.sco.ca.gov/eo_pressrel_controller_requires_salary_reporting.html> [as of Apr. 20, 2016].

38 Gang, *supra* note 30.

39 For example, section 402 of the Newport Beach City Charter provides for an annual cost of living adjustment for council compensation.

40 Watkins, *Note: In Defense of Chapter 9 Option: Exploring the Promise of Municipal Bankruptcy as Mechanism for Structural Political Reform* (2012-2013) 39 J. of Legis. 89, 94.

41 *Ibid.*; *see also* Knox & Levinson, *Municipal Bankruptcy: Avoiding and Using Chapter 9 in Times of Fiscal Stress* (2009)

<http://www.orrick.com/Events-and-Publications/Documents/1736.pdf> [as of Apr. 20, 2016].

42 Watkins, *supra* note 40.

43 A fourth California city, Mammoth Lakes, also filed for bankruptcy during this period of time. However, the Mammoth Lakes case was somewhat unusual, as the small town with a budget of $19 million filed bankruptcy seeking protection from a developer lawsuit seeking $43 million in damages. The city won a dismissal of the bankruptcy case after it settled the lawsuit. Church, *Mammoth Lakes Bankruptcy Case Ends After Accord in Suit* (November 19, 2012) Bloomberg <http://www.bloomberg.com/news/2012-11-19/mammoth-lakes-bankruptcy-case-ends-after-accord-in-suit.html> [as of Apr. 20, 2016].

44 Audi, White & Traves, *California's 'Charter' Cities Are Under the Microscope* (July 18, 2012) Wall Street Journal <http://online.wsj.com/article/SB10001424052702303612804577531181167707276.html> [as of Apr. 20, 2016]; see also Rozansky, *The Problem and Promise of Charter Cities* (August 22, 2012) City Journal <http://www.city-journal.org/2012/cjc0817jr.html> [as of Apr. 20, 2016].

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48 Ballotpedia, *City of San Bernardino Public Safety Employees Salary Charter Amendment, Measure Q* (Nov. 2014) <http://ballotpedia.org/City_of_Stockton_Binding_Arbitration_for_Fire_Department_Employees,_Measure_H_(November_2010)> [as of Apr. 20, 2016].

49 George Mason University, San Bernardino Full Case Study *supra* note 46.

50 Evans, Kosenko & Polyakov, *supra* note 47.

51 Ballotpedia, *City of Vallejo Repeal of Binding Arbitration, Measure A* (June 2010) <http://ballotpedia.org/City_of_Vallejo_Repeal_of_Binding_Arbitration,_Measure_A_(June_2010)> [as of Apr. 20, 2016].

52 Compare Welch, *These California Cities Could Be Next in Bankruptcy* (May 15, 2013) USA Today <http://www.usatoday.com/story/news/nation/2013/05/15/ten-california-cities-in-distress/2076217/> [as of Apr. 20, 2016] (naming five general law cities in California that may be facing bankruptcy); with Moore, *20 Cities That May Face Bankruptcy After Detroit* (August 8, 2013) Newsmax <http://www.newsmax.com/Newsfront/cities-bankruptcy-after-detroit/2013/08/06/id/519081> [as of Apr. 20, 2016] (citing to three California cities that may be facing bankruptcy, all of them charter cities).

53 Vo, *Costa Mesa Charter Issue to be Decided by Voters* (Aug. 1, 2012) Orange County Register.

54 This may change with the enactment of SB 7 in 2013.

55 Vo, *supra* note 53.

56 Gov. Code, § 3500 *et seq.*

57 *International Association of Firefighters, Local 230 v. City of San Jose* (2011) 195 Cal.App.4th 1179, 1187; *People ex. Re. Seal Beach Police Officers Association v. City of Seal Beach* (1984) 36 Cal.3d 591, 597.

58 Gov. Code, §§ 3300-3311.

59 *Baggett, supra* note 11.

60 Gov. Code, §§ 3250-3262.

61 *International Association of Firefighters, Local 230 v. City of San Jose* (2011) 195 Cal. App.4th 1179, 1206.

62 City of Auburn, Report to City Council, Pros and Cons of Adopting a City Charter (June 28, 2010) at page 3.

63 *United Public Employees, Local 390/400, SEIU, AFL-CIO v. City and County of San Francisco* (1987) 190 Cal.App.3d 419, 426.

64 Audi, White & Traves, *supra* note 44.

65 76 *Ops.Cal.Atty.Gen Gen.* 169 (1993); *City of Fresno v. the People ex. rel. Fresno Firefighters, IAFF Local* 753 (1999) 71 Cal.App.4th 82.

66 *San Leandro Police Officers Association v. City of San Leandro* (1976) 55 Cal.App.3d 553.

67 *Dimon v. County of Los Angeles* (2008) 166 Cal.App.4th 1276, 1283.

68 See San Jose City Charter, § 1501-A; San Diego City Charter, art. IX, §§ 140-151.

69 Clingen, *Pension Reform: San Jose and San Diego Voters Weigh In* (Oct. 15, 2013) Ballotpedia <http://ballotpedia.org/Pension_reform:_San_Jose_and_San_Diego_voters_weigh_in> [as of Apr. 20, 2016].

70 Mendel, *San Jose Pension Reforms Ruled Violation of Rights* (Dec. 30, 2013) Calpensions <http://calpensions.com/2013/12/30/san-jose-pension-reforms-ruled-violation-of-rights/> [as of Apr. 20, 2016].

71 95 Ops.Cal.Atty.Gen. 31 (2012); see also 95 Ops.Cal.Atty.Gen. 50 (2012) (regarding challenge to City and County of San Francisco).

72 *County of Riverside v. Superior Court (Riverside County Sheriff's Association, R.P.I.)* (2003) 30 Cal.4th 278.

73 *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322.

74 Audi, *supra* note 44.

75 In 2011, San Luis Obispo and Palo Alto voters removed binding arbitration from their charters.

76 Stats. 2013, ch 184 (SB 311).

Attachment 1

Chapter 6:

CONCLUDING THOUGHTS

Each city has its unique culture and set of issues. This makes it difficult to generalize about whether any particular general law city should or should not become a charter city. With this in mind, the following is offered for your consideration:

1. **Each city's unique culture and set of issues.** A review of a variety of charter provisions reiterates the variety of issues facing cities statewide and the unique culture of each city. Charters include provisions varying from height limits to offshore drilling to red-light camera enforcement to pension reform. A charter is a forum for expressing the voters' wishes on issues they wish to reserve for themselves (by limiting city council discretion).
2. **Times change.** The extent of a charter city's authority is directly related to whether or not an area that otherwise is a municipal affair is deemed a matter of statewide concern. The courts determine whether an area is a matter of statewide concern. As times change, matters of statewide concern change. To be a charter city means to be a city that lives with change.
3. **More or less?** As discussed in Chapter 2, the provisions of a charter are a limitation on the authority of a charter city, not a grant of authority. This has led some cities to adopt a "short-form" charter that includes very few limitations. Other cities have decided to adopt more comprehensive charters that provide detailed provisions with respect to the city's exercise of its municipal affairs. Ultimately, the decision of how much limitation to include in a charter is a policy question that will be answered based on the input and recommendations received during the public drafting and review process.
4. **Words don't mean what they say.** Section 5, subdivision (a) of article XI of the Constitution grants a charter city authority over municipal affairs. Section 5, subdivision (b) grants plenary authority over four specific municipal affairs sometimes called core municipal affairs. The courts' decisions do not necessarily seem to be influenced by whether a charter city is relying upon section 5, subdivision (a) or section 5, subdivision (b) and have not been influenced, historically, by whether charter city was acting with plenary authority under section 5, subdivision (b).
5. **Some things seem pretty certain.** A few areas seem to consistently withstand a challenge:
   - Municipal organization: The form of government and sub-government;
   - Spending local funds: How a charter city decides to use its own tax dollars;
   - Elections: Timing, qualifications, balloting, etc.;
   - Salary and benefits (including retirement): City council, other officers and employees.

Attachment 1

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