Action Item

Agenda Item No. 14

# *Report to the Auburn City Council*

City Manager's Approval

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| **To:** | Honorable Mayor and City Council Members |
| **From:** | Kevin Hanley, Councilmember |
| **Date:** | June 13, 2011 |
| **Subject:** | Home Rule for Auburn Charter of 2012 |

## The Issue

Shall the City Council direct the City Manager to ensure that on the city's website it is easy for residents and business owners to read all the written materials that have been submitted related to the Home Rule for Auburn Charter of 2012 and make it easy for residents and business owners to submit their comments to city staff and council members?

## Conclusion and Recommendation

By **MOTION**, direct the City Manager to ensure that on the city's website that there is an easy-to-navigate way for residents and business owners to access all the written materials submitted related to the Home Rule for Auburn Charter of 2012 and an easy way for residents and business owners to email, write or telephone their comments and suggestions to city staff and City Council Members.

## An Open and Public Process to Examine the Charter

This will be the first public hearing to give the public and Council Members an opportunity to comment, ask questions, or make suggestions on the draft Home Rule for Auburn Charter of 2012 (Exhibit A). By previous motion, the City Council will take no action to approve a Charter prior to August 8th. I believe that putting materials related to the proposed Charter in a prominent place on the city's website will make it easier for residents and business owners to comment and make suggestions.

This will be the 5th public hearing conducted by the City Council in the last 15 months related to an examination of a potential Charter for the City of Auburn. At three public meetings - March 13, April 11 and May 23 - the City Council decided to examine a potential Charter at a minimum of 3 regularly scheduled meetings on June 13, July 11 and August 8. Three public hearings spread over three months was approved to ensure that residents and Council Members have a full compliment of city staff available to answer any questions raised by city residents or Council Members. The City Council has also left itself the option to require additional public hearings after August 8 if needed. The deadline for action by the City Council if it wants to place a Charter on the June 2012 ballot is November 2, 2011.

## Background

I have enclosed a two-page document that outlines some of the key reasons why Auburn should become a Charter City (Exhibit B). Additional materials include information from the California League of Cities on how charter cities operate as compared to general law cities and a list of the 120 charter cities (Exhibit C); the league's Major Bill List (Exhibit D); and the June 22, 2010 report from the City Manager and City Attorney outlining the pros and cons of charter city status (Exhibit E).

## Alternatives Available to Council

Don't display information related to the Charter in a conspicuous way on the city's website. Interested persons can find the charter information by researching each city agenda and packet materials.

## Fiscal Impact

No additional costs.

# Exhibit A

# CHARTER
OF THE
CITY OF AUBURN

## PREAMBLE

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

## CHARTER
## Article I
## Municipal Affairs

**Section 100. Municipal Affairs**
Each of the responsibilities of governance set forth and described in this Charter, and as established by the Constitutional, statutory and common law of the State of California, is hereby declared to be a municipal affair or concern, the performance of which is unique to the benefit of the citizens of the City of Auburn.

**Section 101. Powers**
The City shall have all powers that a City can have under the Constitution and laws of the State of California as fully and completely as though they were specifically enumerated in this Charter. The enumeration in this Charter of any particular power, duty or procedure shall not be held to be exclusive of, or any limitation or restriction upon, this general grant of power.

**Section 102. Incorporation and Succession**
The City shall continue to be a municipal corporation known as the City of Auburn. The boundaries of the City of Auburn shall continue as now established until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, possess, control and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled or enjoyed by it at the time this Charter takes effect. It shall be subject to all debts, obligations and liabilities, which exist against the City at the time this Charter takes effect. All lawful ordinances, resolutions, rules and regulations, or portions thereof, in force at the time this Charter takes effect and not in conflict with or inconsistent herewith, are hereby continued in force until the same have been duly repealed, amended, changed or superceded by proper authority.

## Article 2

## Form of Government

**Section 200. Form of Government**
The municipal government established by this Chapter shall be known as the "Council-Manager" form of government. The City Council will establish the policy of the City and the City Manager will carry out that policy.

**Section 201. Elected Officials**
The City Council shall consist of five members, each elected at-large and who shall be the sole elected officials in the city. The City Council shall enact an ordinance providing for the appointment or election of a Council Member in the case of a vacancy. The minimum qualifications for a Council Member shall be the same as that provided in the Election Code and Government Code for Council Members of general law cities.

**Section 202. Council Member Compensation**
The salary of the Mayor and Council Members shall continue to be set pursuant to the California Government Code where the formula considers city population and state law. No Council Member shall receive a pension or unemployment insurance.

**Section 203. Elections**
The election of the City Council shall be conducted in accordance with the state Election Code. The powers of initiative, referendum and recall shall apply in the City as they do in general law cities under the applicable provisions of state and federal law.

## Article 3
## Fiscal Accountability and Transparency

**Section 300. Performance-Based Management and Budget**
The City shall each year enact a Performance-Based Budget, which shall include, but not be limited to, information about revenues, expenditures, assets, liabilities, Council-established goals, department and program objectives and measurable service levels provided to city residents and business owners. The City shall place on its Internet Website up-to-date budgetary and other information that shows how tax and fee revenues received by the City are being used to provide services to Auburn residents and business owners.

**Section 301. Economic and Community Development**
The City shall encourage, support, and promote economic development and community development and preserve and enhance the small town character of Auburn.

**Section 302. Public Works Contracts**
The City shall comply with state law applicable to general law cities with regard to competitive bidding for public works contracts and contracts for professional services based on demonstrated competence and professional qualifications.

**Section 303. Prevailing Wage**

No City contract shall require payment of the prevailing wage schedule unless: the prevailing wage is legally required, and constitutionally permitted to be imposed, by federal or state grants pursuant to federal or state law; or the project is considered by the City Council to be a municipal affair of the City; or payment of the prevailing wage schedule is authorized by resolution of the City Council. Payment of the prevailing wage schedule, if authorized hereunder, shall use the pertinent rates published by the State of California.

**Section 304. Bid Preferences for Placer County-Based Firms.**
The City may, by ordinance, establish bid preferences for firms that are based in Placer County to the extent permitted by state and federal law. The City shall establish all standards, procedures, rules or regulations to regulate all other aspects of public contracting.

**Section 305. Supporting Volunteers in Auburn**
The City seeks to support volunteers in creating a higher quality of life for Auburn citizens and as such declares itself exempt from any state laws or regulations that would make it more difficult or expensive for volunteers to participate in any community project, whether funded with city revenues or not.

**Section 306. Limits on Taxing Authority**
This Charter shall not be interpreted as giving the City greater authority to raise the level of taxes or fees or to create new taxes or fees beyond the powers granted to general-law cities.

## Article 4
## Revenue Retention

**Section 400. Reductions Prohibited**
Revenues raised and collected by the City shall not be subject to subtraction, retention, attachment, withdrawal or any other form of involuntary reduction by any other level of government.

**Section 401. Mandates Limited**
No person, whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of government, unless and until funds sufficient for the performance of such function are provided by said mandating authority.

## Article 5
## General Laws

**Section 500. General Law Powers**
In addition to the power and authority granted by the terms of this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise and enforce all legislation, laws and regulations and to take all

actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between the provisions of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control.

## Article 6
## Interpretation and Amendment

**Section 600. Construction & Interpretation**
The language contained in this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter that is a municipal affair. Every reference in this Charter to state or federal law shall mean that law as it exists when this Charter takes effect or as it may thereafter be amended.

**Section 601. Title**
This Act shall be known as the "Home Rule for Auburn Charter of 2012."

**Section 602. Severability**
If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

**Section 603. Amendment to Charter, revised or repealed**
This Charter, and any of its provisions, may be amended by a majority vote of the electors voting on the question. Amendment or repeal may be proposed by initiative or by the City Council.

# Exhibit B

# *Home Rule for Auburn Charter of 2012*

**Why Auburn Should Become A Charter City?**

- Because it would save money for Auburn residents and job-creators, provide more local control over how Auburn is run and guarantee support for volunteers working on projects to improve the quality of life in our small town.

**What's the Problem?**

- The California Legislature, which is too often controlled by special interest groups, writes municipal laws that increase sewer rates, housing costs, impose costly mandates, and threaten volunteer-led community projects in Auburn.

- Most of the 120 state legislators who pass municipal laws that a general-law city like Auburn must obey don't represent or care about Auburn residents or their future.

- Since the City of Auburn has very limited commercially-zoned, vacant land left and faces rising costs, the city needs as much flexibility as possible from costly and ill-conceived state mandates in order to maximize its ability to provide police protection, fire and emergency response, good roads, sidewalks and affordable sewer services for Auburn residents. Auburn must do more with less money.

**Shift Accountability and Authority from Sacramento to Auburn**

- The home-rule provision of California Constitution allows a general-law city like Auburn to, with a majority vote of its residents, convert to a Charter City and thereby gain supreme authority over its "municipal affairs."

- The home-rule principle is based on a belief that local government has a closer affinity to the people and can best promote the health, safety and welfare of local residents. A Charter City has greater flexibility to adopt ordinances that meet the needs of local residents.

- A Charter is a city's "constitution," which empowers local residents by shifting power from the dysfunctional California Legislature to local city officials who they can more easily replace is they make bad decisions.

- So far, 120 cities in California, including Roseville and Grass Valley, have become charter cities and this number goes up by two or three cities each election cycle as voters realize that the dysfunction California Legislature is not improving and more local control makes sense.

- Enacting the *Home Rule for Auburn Charter of 2012* is <u>not</u> a panacea for the many challenges that face our small town, but it would provide city leaders, local job-creators and Auburn residents with an additional tool to address local needs.

**The Home Rule for Auburn Charter is Good for Auburn**

- Guarantees the benefit of volunteerism in Auburn by *permanently* exempting Auburn from a counterproductive state law and potential court orders that require volunteers on public projects to either refrain from participation or to be paid a state-imposed prevailing wage. There should be *no uncertainty* as whether we can organize volunteers to put on an AMGEN Tour of California Bike Race, spruce up our town in a *Project Auburn* or protect our residents from a catastrophic fire with a *Project Canyon Safe.* (Section 305).

- Save at least $2 million in ratepayer dollars over the next 6 years by allowing the city to contract for sewer repairs by paying the market rate in Placer County rather than the artificially high, state-imposed prevailing wage rate. This will also allow more Placer County firms to win these contracts and provide local jobs. (Section 303)

- Allows the City Council craft an ordinance that would provide a "Think Placer First" bid preference to firms based in Placer County and thereby support local jobs. (Section 304)

- Requires a *Performance-Based Budget* to ensure more transparency and accountability on how Auburn resident tax dollars are spent and the level of services that are provided by the city to residents and business owners. (Section 300)

- Gives the city additional flexibility to craft ordinances to improve police and fire services and lower the regulatory costs for housing and land use management and all other "municipal affairs." (Preamble, Sections 100, 101, 500, 600)

- Prevents the reduction of revenues and new mandates imposed by other governments. (Sections 400, 401)

- Prevents the City Council from imposing new types of taxes and fees. (Section 306)

- Prevents the City Council Members from giving themselves a pension or collecting unemployment insurance.

- Saves taxpayer dollars by eliminating the duplicative positions of the City Treasurer and City Clerk. (Section 201)

- Ensures that all five members of the Auburn City Council are elected at-large and thus are to be held accountable by all Auburn voters. (Section 201, 203)

- Keeps all current Auburn ordinances in place. (Section 102).

- Establishes a mission statement for the city: "The City shall encourage, support, and promote economic and community development and preserve and enhance the small town character of Auburn." (Section 301).

# Exhibit C

## What is a charter?

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

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

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

## Charter Cities: A Quick Summary for the Press and Researchers

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

### Charter Cities vs. General Law Cities – The Basics

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

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

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

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

### Defining 'Municipal Affairs'

Determining what is and is not a "municipal affair" is not always straightforward. The California Constitution does not define "municipal affair." It does, however, set out a nonexclusive list of four "core" categories that are, by definition, municipal affairs.[7]

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

To determine if a matter is a municipal affair, a court will ask whether there are good reasons, grounded on statewide interests, for the state law to preempt a local law.[9] In other words, courts

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[1] Cal. Const. art. XI, § 3(a).
[2] Cal. Const. art. XI, § 5(a).
[3] *Johnson v. Bradley*, 4 Cal. 4th 389, 399 (1992).
[4] *Fragley v. Phelan*, 126 Cal. 383, 387 (1899).
[5] *Id.*
[6] There are some exceptions to this rule. For example, a charter city is bound by the Public Contract Code unless the city's charter expressly exempts the city from the Code's provisions or a city ordinance conflicts with a provision in the Code. *See* Cal. Pub. Cont. Code § 1100.7.
[7] Cal. Const. art. XI, § 5(b); *Johnson*, 4 Cal. 4th at 398.
[8] Cal. Const. art. XI, § 5(b).
[9] *Johnson*, 4 Cal. 4th at 405.

will ask whether there is a need for "paramount state control" in the particular area of law.[10] The Legislature's intent when enacting a specific law is not determinative.[11]

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

- Municipal election matters[14]
- Land use and zoning decisions (with some exceptions)[15]
- How a city spends its tax dollars[16]
- Municipal contracts, provided the charter or a city ordinance exempts the city from the Public Contract Code, and the subject matter of the bid constitutes a municipal affair.[17] Thus, a charter may exempt a city from the State's competitive bidding statutes.

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

- Traffic and vehicle regulation[18]
- Tort claims against a governmental entity[19]
- Regulation of school systems[20]

**How to Become a Charter City**

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

- The city's voters elect a charter commission.[21] The commission has the responsibility of drafting and debating the charter.

- The governing board of the city, on its own motion, drafts the charter.[22]

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

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

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[10] *Id.* at 400.
[11] *Id.* at 405.
[12] *Cal. Fed. Savings & Loan Ass'n v. City of Los Angeles*, 54 Cal. 3d 1, 16 (1991); *Isaac v. City of Los Angeles*, 66 Cal. App. 4th 586, 599 (1998).
[13] *Isaac*, 66 Cal. App. 4th at 599.
[14] *Mackey v. Thiel*, 262 Cal. App. 2d 362, 365 (1968).
[15] *See Brougher v. Bd. of Pub. Works*, 205 Cal. 426, 440 (1928).
[16] *Johnson*, 4 Cal. 4th at 407.
[17] Pub. Cont. Code § 1100.7; *R & A Vending Services, Inc. v. City of Los Angeles*, 172 Cal. App. 3d 1188, 1191 (1985); *Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.*, 71 Cal. App. 4th 38, 51 (1998).
[18] Cal. Veh. Code § 21.
[19] *Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 247 (1942).
[20] *Whisman v. San Francisco Unified Sch. Dist.*, 86 Cal. App. 3d 782, 789 (1978).
[21] Cal. Gov't Code § 34451.
[22] Cal. Gov't Code § 34458.
[23] Cal. Gov't Code §§ 34457, 34462.

# General Law City v. Charter City

| Characteristic | General Law City | Charter City |
|---|---|---|
| **Ability to Govern Municipal Affairs** | Bound by the state's general law, regardless of whether the subject concerns a municipal affair. | Has supreme authority over "municipal affairs." Cal. Const. art. XI, § 5(b). |
| **Form of Government** | State law describes the city's form of government For example, Government Code section 36501 authorizes general law cities be governed by a city council of five members, a city clerk, a city treasurer, a police chief, a fire chief and any subordinate officers or employees as required by law. City electors may adopt ordinance which provides for a different number of council members. Cal. Gov't section 34871. The Government Code also authorizes the "city manager" form of government. Cal. Gov't Code § 34851. | Charter can provide for any form of government including the "strong mayor," and "city manager" forms. *See* Cal. Const. art. XI, § 5(b); Cal. Gov't Code § 34450 *et seq.* |
| **Elections Generally** | Municipal elections conducted in accordance with the California Elections Code. Cal. Elec. Code §§ 10101 *et seq.*. | Not bound by the California Elections Code. May establish own election dates, rules, and procedures. *See* Cal. Const. art. XI, § 5(b); Cal. Elec. Code §§ 10101 *et seq.*. |
| **Methods of Elections** | Generally holds at-large elections whereby voters vote for any candidate on the ballot. Cities may also choose to elect the city council "by" or "from" districts, so long as the election system has been established by ordinance and approved by the voters. Cal. Gov't Code § 34871. Mayor may be elected by the city council or by vote of the people. Cal. Gov't Code §§ 34902. | May establish procedures for selecting officers. May hold at-large or district elections. *See* Cal. Const. art. XI, § 5(b). |
| **City Council Member Qualifications** | Minimum qualifications are:<br>1. United States citizen<br>2. At least 18 years old<br>3. Registered voter<br>4. Resident of the city at least 15 days prior to the election and throughout his or her term<br>5. If elected by or from a district, be a resident of the geographical area comprising the district from which he or she is elected.<br><br>Cal. Elec. Code § 321; Cal. Gov't Code §§ 34882, 36502; 87 Cal. Op. Att'y Gen. 30 (2004). | Can establish own criteria for city office provided it does not violate the U.S. Constitution. Cal. Const. art. XI, § 5(b), 82 Cal. Op. Att'y Gen. 6, 8 (1999). |

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

| Characteristic | General Law City | Charter City |
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| **Rules Governing Procedure and Decorum** | Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).<br><br>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 *et seq.*. | Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).<br><br>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 *et seq.*.<br><br>May provide provisions related to ethics, conflicts, campaign financing and incompatibility of office. |
| **Personnel Matters** | May establish standards, requirements and procedures for hiring personnel consistent with Government Code requirements.<br><br>May have "civil service" system, which includes comprehensive procedures for recruitment, hiring, testing and promotion. See Cal. Gov't Code § 45000 et seq.<br><br>Meyers-Milias-Brown Act applies. Cal. Gov't Code § 3500.<br><br>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, § 10(b). | May establish standards, requirements, and procedures, including compensation, terms and conditions of employment for personnel. *See* Cal. Const. art. XI, § 5(b).<br><br>Procedures set forth in Meyers-Milias-Brown Act (Cal. Gov't Code § 3500) apply, but note, "[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.'" *Voters for Responsible Retirement v. Board of Supervisors*, 8 Cal.4th 765, 781 (1994).<br><br>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, section 10(b). |
| **Contracting Services** | Authority to enter into contracts to carry out necessary functions, including those expressly granted and those implied by necessity. *See* Cal. Gov't Code § 37103; *Carruth v. City of Madera*, 233 Cal. App. 2d 688 (1965). | Full authority to contract consistent with charter.<br><br>May transfer some of its functions to the county including tax collection, assessment collection and sale of property for non-payment of taxes and assessments. Cal. Gov't Code §§ 51330, 51334, 51335. |

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| **Public Contracts** | Competitive bidding required for public works contracts over $5,000. Cal. Pub. Cont. Code § 20162. Such contracts must be awarded to the lowest responsible bidder. Pub. Cont. Code § 20162. If city elects subject itself to uniform construction accounting procedures, less formal procedures may be available for contracts less than $100,000. *See* Cal. Pub. Cont. Code §§ 22000, 22032.<br><br>Contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms need not be competitively bid, but must be awarded on basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of services. Cal. Gov't Code § 4526. | Not required to comply with bidding statutes provided the city charter or a city ordinance exempts the city from such statutes, and the subject matter of the bid constitutes a municipal affair. Pub. Cont. Code § 1100.7; *see R & A Vending Services, Inc. v. City of Los Angeles*, 172 Cal. App. 3d 1188 (1985); *Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.*, 71 Cal. App. 4th 38 (1998). |
| **Payment of Prevailing Wages** | In general, prevailing wages must be paid on public works projects over $1,000. Cal. Lab. Code § 1771. Higher thresholds apply ($15,000 or $25,000) if the public entity has adopted a special labor compliance program. *See* Cal. Labor Code § 1771.5(a)-(c). | Historically, charter cities have not been bound by state law prevailing-wage requirements so long as the project is a municipal affair, and not one funded by state or federal grants. *Vial v. City of San Diego*, 122 Cal. App. 3d 346, 348 (1981). However, there is a growing trend on the part of the courts and the Legislature to expand the applicability of prevailing wages to charter cities under an analysis that argues that the payment of prevailing wages is a matter of statewide concern. The California Supreme Court declined an opportunity to resolve the issue. *See City of Long Beach v. Dept.of Indus. Relations*, 34 Cal. 4th 942 (2004). |

| Characteristic | General Law City | Charter City |
|---|---|---|
| **Finance and Taxing Power** | May impose the same kinds of taxes and assessment as charter cities. *See* Cal. Gov't Code § 37100.5.<br><br>Imposition of taxes and assessments subject to Proposition 218. Cal. Const. art.XIIIC.<br><br>Examples of common forms used in assessment district financing include:<br><br>• Improvement Act of 1911. Cal. Sts. & High. Code § 22500 *et seq.*.<br><br>• Municipal Improvement Act of 1913. *See* Cal. Sts. & High. Code §§ 10000 *et seq.*.<br><br>• Improvement Bond Act of 1915. Cal. Sts. & High. Code §§ 8500 *et seq.*.<br><br>• Landscaping and Lighting Act of 1972. Cal. Sts. & High. Code §§ 22500 *et seq.*.<br><br>• Benefit Assessment Act of 1982. Cal. Gov't Code §§ 54703 *et seq.*.<br><br>May impose business license taxes for regulatory purposes, revenue purposes, or both. *See* Cal. Gov't Code § 37101.<br><br>May not impose real property transfer tax. *See* Cal. Const. art. XIIIA, § 4; Cal. Gov't Code § 53725; *but see* authority to impose documentary transfer taxes under certain circumstances. Cal. Rev. & Tax. Code § 11911(a), (c). | Have the power to tax.<br><br>Have broader assessment powers than a general law city, as well as taxation power as determined on a case-by case basis.<br><br>Imposition of taxes and assessments subject to Proposition 218, Cal. Const. art. XIIIC, § 2, and own charter limitations<br><br>May proceed under a general assessment law, or enact local assessment laws and then elect to proceed under the local law. *See J.W. Jones Companies v. City of San Diego*, 157 Cal. App. 3d 745 (1984).<br><br>May impose business license taxes for any purpose unless limited by state or federal constitutions, or city charter. *See* Cal. Const. art. XI, § 5.<br><br>May impose real property transfer tax; does not violate either Cal. Const art. XIIIA or California Government Code section 53725. *See Cohn v. City of Oakland*, 223 Cal. App. 3d 261 (1990); *Fielder v. City of Los Angeles*, 14 Cal. App. 4th 137 (1993). |
| **Streets & Sidewalks** | State has preempted entire field of traffic control. Cal. Veh. Code § 21. | State has preempted entire field of traffic control. Cal. Veh. Code § 21. |
| **Penalties & Cost Recovery** | May impose fines, penalties and forfeitures, with a fine not exceeding $1,000. Cal. Gov't Code § 36901. | May enact ordinances providing for various penalties so long as such penalties do not exceed any maximum limits set by the charter. *County of Los Angeles v. City of Los Angeles*, 219 Cal. App. 2d 838, 844 (1963). |

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

## Foundational aspects of charter cities

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

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

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

**What Activities Have the Courts Classified As Municipal Affairs?**
There are some areas that the courts have consistently classified as municipal affairs. Examples include the following:

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

- Financing Public Improvements. *See City of Santa Monica v. Grubb*, 245 Cal. App. 2d 718 (1996).

- Making Charitable Gifts of Public Funds for Public Purposes. *See* Cal. Const. art. XVI, § 6; *Tevis v. City and County of San Francisco*, 43 Cal. 2d 190 (1954).

- Term Limits for Council Members. *See Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212 (1993); *but see* Cal. Gov't Code § 36502(b) (regulating term limits).

- Land Use and Zoning Decisions (with a few exceptions). *See Brougher v. Bd. of Pub. Works*, 205 Cal. 426 (1928).

**What Activities Have the Courts Classified as Statewide Concerns?**
The following have consistently been classified by the courts as matters of statewide concern:

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

- Traffic and Vehicle Regulation. Cal. Veh. Code § 21.

- Licensing of Members of a Trade or Profession. *City and County of San Francisco v. Boss*, 83 Cal. App. 2d 445 (1948).

- Tort Claims Against a Governmental Entity. *Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 247 (1942).

- Open and Public Meetings. Ralph M. Brown Act. Cal. Gov't Code §§ 54951, 54953(a).

- Exercise of the Power of Eminent Domain. *Wilson v Beville*, 47 Cal. 2d 852, 856 (1957).

## Process used to adopt a charter

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

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

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

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

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

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

After the charter has been filed with the city clerk, the city's governing board must decide whether to call a special election or to wait until the next established municipal election to submit the charter to the voters. If the city's governing board determines that a special election should be held, then they must call for that special election within 14 days of the charter being filed. The special election must be set at least 95 days after

the date from which the special election was called. *See* Cal. Gov't Code section 34457. In any case, the charter commission must send the charter to the voters within two years of the vote that formed the commission. Upon the expiration of the two-year time period, the commission is abolished. *See* Cal. Gov't Code section 34462.

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

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

## How to amend or repeal a charter

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

**Charter Cities**

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

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

Total Cities: 120

# Exhibit D

2011-06-02

## League of California Cities' Major Bill List

Below is a list of bills for which the League has taken a position and flagged as a "Hot" bill as of May 13. Legislation can be considered "Hot" for a variety of reasons, including having major impacts on cities statewide, setting an important precedent for future legislation, or being particularly controversial in a committee. Cities are encouraged to send letters in support or opposition to their legislators immediately.

The League routinely takes positions on bills throughout the legislative session. Bill's tracked by the League are marked as "watch" until such time that a policy position is taken. Typically, positions are taken early in the year on bills for which the League has standing policy. These policy positions can be found in the League's *Summary of Existing Policy and Guiding Principles*. Bills identified by the League without a standing policy are referred by League staff to one or more of the League's eight policy committees for a policy recommendation and the board of directors for a full position.

All League position letters and select sample letters can be found under the bill number in our bill search function on the League's website.

### Employee Relations

**AB 400 (Ma) Employment. Paid Sick Day.** ***Oppose*** Provides that any employee, whether part-time, temporary, or seasonal, who works for seven or more days in a calendar year is entitled to paid sick days, which are accrued at a rate of one hour for every 30 hours worked. This bill does not apply to employees covered by a collective bargaining that provides for paid sick days.

**AB 438 (Williams) County Free Libraries: Withdrawal.** ***Oppose*** Requires voters to approve a city council's decision to provide library services through a private contractor. Administrative decisions are exactly the kind of decisions council members are elected by the voters to make.

**AB 455 (Campos) Public Employment: Local Public Employee Organizations.** ***Oppose*** Requires 50 percent of the membership of a personnel or merit commission that administers personnel rules or a merit system to be appointed by members of the governing board of the public agency. The other 50 percent of members would be selected from a list provided to the public agency governing body by the largest recognized employee organization.

**AB 506 (Wieckowski) Municipal Bankruptcy, Fiscal Emergencies and Employee Relations.** ***Oppose*** Prohibits any local government from filing Chapter 9 Federal Bankruptcy protection without first receiving permission from a "mediator" who should more accurately be called a "state-controlled non-governmental arbitrator." Further, the measure contains an obstacle course of criteria and conditions that are replete with bias against local agencies.

**AB 646 (Atkins) Public Employee Organizations. Impasse Procedures.** ***Oppose*** Many cities provide for impasse procedures, including mediation and fact-finding, in collective bargaining negotiations and bargain in good faith with their respective employee organizations. AB 646 removes this local authority by giving full discretion to public employee unions to request factfinding once an impasse is reached. Additionally, the significant cost that will be imposed on agencies for a process that is at the sole discretion of the local bargaining unit and not the agency is financially impractical for cities.

**SB 931 (Vargas) Public Agencies. Outside Legal Counsel.** ***Oppose*** Provides that all public agencies are forbidden to use taxpayer dollars to pay for outside consultants or legal advisors for the purpose of counseling the public employer about ways to minimize or deter the exercise of public employee union activities.

### Public Safety

**AB 604 (Skinner) Hypodermic Needles and Syringes.** ***Oppose*** Allows the state Department of Public Health to authorize local health clinics to provide needle and syringe exchange services, pre-empting the current local decision making powers of the city or county.

### Transportation and Public Works

**SB 474 (Evans) Construction contracts: indemnity.** ***Oppose*** Prohibits indemnification provisions in contracts between cities and contractors limiting a city's ability to negotiate contract terms and ultimately resulting in increased costs to the public.

### Land Use and Housing

**AB 1220 (Alejo) Land Use: Cause of Actions: Time Limitations.** ***Oppose*** Seeks to change the decision of a Court of

Appeal (*Urban Habitat v. city of Pleasanton*). The bill would create a five year statute of limitations to challenge land use planning decisions.

**SB 184 (Leno) Land Use: Zoning Regulations.** ***Support*** In response to *Palmer/Sixth Street Properties L.P. v. city of Los Angeles*, seeks to clarify that the Costa-Hawkins Act does not apply to inclusionary housing programs. This would make clear that inclusionary zoning is a permissible land use power.

**SB 444 (Evans) Land Use: Subdivisions: Rental Mobilehome Park Conversion.** ***Support*** Allows an application to convert a mobilehome park from rental to resident-owned to be subject to all requirements of the Subdivision Map Act, thus allowing local governments the opportunity to mitigate the economic displacement of residents.

**SB 469 (Vargas) Land Use: Development Project Review: Superstores.** ***Oppose*** Requires a city or county prior to approving or disapproving a "superstore retailer" to require, at applicant expense, a private consultant to prepare an exhaustive economic impact report examining 17 different detailed conditions. A "superstore" is defined as more than 90,000 square feet, selling a wide range of consumer goods, and where 10 percent of the total floor area is devoted to selling non-taxable food items. This measure contains an exemption for "discount warehouses" (with no square foot limitations) that sell over half of their items in bulk and require a membership fee.

Revenue and Taxation

**AB 153 (Skinner) State Board of Equalization: Administration: Retailer Engaged in Business in this State and AB 155 (Calderon) Use Tax: Retailer Engaged in Business.** ***Support*** Improve use tax collection through different approaches to increase the amount of state and local revenues collected from online sales.

last updated : 5/13/2011

# Exhibit E

**CITY OF AUBURN**
**OFFICE OF THE CITY ATTORNEY**
**M E M O R A N D U M**

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**TO:** Mayor Powers and Members of the City Council

**FROM:** Michael G. Colantuono, City Attorney

**DATE:** June 22, 2010

**SUBJECT:** Advantages and Disadvantages of Becoming a Charter City

As you requested, I write to analyze the advantages and disadvantages to a general law city, such as Auburn, of adopting a charter. This memorandum provides a broad overview of the differences in the authority of general law and charter cities. It concludes with a brief summary of the procedures by which a charter may be adopted.

Unlike a general law city, a charter city is generally not subject to the general laws of the State of California with respect to its municipal affairs. As a charter city, it could adopt charter provisions and ordinances concerning its own municipal affairs unconstrained by general laws on the subject. While we do not discuss in this memorandum every area in which a charter city is able to legislate without regard to the general laws, among the more important are:

- municipal elections;
- municipal initiative, referendum and recall;
- procedures for the adoption of ordinances;
- compensation for city officers and employees;
- public works contracts (both bidding procedures and, under current law, prevailing wages);
- public finance, taxes and use of public funds;
- utility franchises.

Each of these topics is discussed in more detail below.

## General

Charter cities derive their powers directly from the California Constitution. Section 3(a) of Article 11 of the California Constitution provides in part:

> "The provisions of a charter are the law of the State and have the force and effect of legislative enactments."

Section 5(a) of Article 11 provides:

> "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances 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 general laws. City charters adopted pursuant to this Constitution . . . with respect to municipal affairs shall supersede all laws inconsistent therewith."

The courts have held that this provision grants charter cities supreme authority over "municipal affairs." *See Bishop v. City of San Jose*, 1 Cal.3d 56, 61 (1969). Of course, even the actions of a charter city concerning municipal affairs are subject to constitutional limitations, such as the obligation to provide due process and equal protection of the laws. See *Wilson v. Los Angeles*, 54 Cal.2d 61 (1960). Thus, as a charter city, could exercise plenary authority over its municipal affairs free from statutory constraints, subject only to constitutional limitations.

Whether a particular subject is a "municipal affair," over which the municipality has full authority, or is a matter of "statewide concern" over which the Legislature has authority, is a matter for the courts to decide, although the Legislature's intention will be given great weight. See *Bishop*, 1 Cal.3d at 63; see also *Baggett v. Gates*, 32 Cal.3d 128, 136 (1982).

The California courts have distinguished "municipal affairs" from matters of "statewide concern" in various ways. Municipal affairs have been said to "refer to the internal business affairs of a municipality." *Fragley v. Phelan*, 126 Cal. 383, 387 (1899) (Garoutte, J., concurring). The term has been said to "include all powers appropriate for a municipality to possess." *Ex Parte Braun*, 141 Cal. 204, 209 (1903).

But none of the rules articulated by the courts is particularly helpful in determining whether a particular subject is a municipal affair or of statewide concern. As the Supreme Court put it in one of its more recent pronouncements on the subject:

> "The idea that the content of 'municipal affairs' is indefinite in its essentials is one that has taken root in our cases on the subject. We have said that the task of determining whether a given activity is a 'municipal affair' or one of statewide concern is an ad hoc inquiry; that 'the constitutional concept of municipal affairs is not a fixed or static quantity' and that the question 'must be answered in light of the facts and circumstances surrounding each case'. 'No exact definition of the term 'municipal affairs' can be formulated and the courts have made no attempt to do so, but instead have indicated that judicial interpretation is necessary to give it meaning in each controverted case.'"

*California Fed'l Savings & Loan Ass'n v. City of Los Angeles*, 54 Cal.3d 1, 16 (1991) ("*Cal. Fed.*") (citations omitted).

However, over the years, the courts have determined that certain subjects are municipal affairs about which charter cities are free to legislate, and that others are matters of statewide concern. Although this listing is not exhaustive, the following matters have been held to be of general or statewide concern, **over which the Legislature has full authority**:

- certain aspects of the school system (*Town of Atherton v. Superior Court*, 159 Cal.App.2d 417, 421 (1958));
- regulation of traffic (*Pipoly v. Benson*, 20 Cal.2d 366, 369 (1942));
- telephone franchises (*Pac. Tel. & Tel. Co. v. City of Los Angeles*, 44 Cal.2d 272, 279 (1955));
- licensing members of a trade or profession (*City and County of San Francisco v. Boss*, 83 Cal.App.2d 445 (1948) (painting contractors), *Baron v. City of Los Angeles*, 2 Cal.3d 535, 540-41 (1970) (attorneys));
- municipal responsibility for injury to the person and property of others (*Eastlick v. City of Los Angeles*, 29 Cal.2d 661 (1947)).

The Ralph M. Brown Act, Government Code §§ 54950 et seq., our local government open meeting law, has been held to be a matter of statewide concern. *San Diego Union v. City Council*, 146 Cal.App.3d 947 (1983). The exercise of the power of eminent domain is also considered a matter of statewide concern. *Wilson v. Beville*, 47 Cal.2d 852, 859 (1957). Accordingly, the adoption of a charter would generally not affect these or other matters held to be of statewide concern.

The following is a partial list of matters which the courts have declared to involve municipal affairs **over which charter cities have full authority**:

- municipal elections (*Mackey v. Thiel*, 262 Cal.App.2d 362 (1968)) and recall (*Scheafer v. Herman*, 172 Cal. 338, 340 (1916));[1]
- the method for enactment of local ordinances (*Brougher v. Board of Public Works*, 205 Cal. 426 (1928));

[1] It is common for city charters to incorporate general laws governing elections so that many charter cities use the same rules as general law cities for election matters. This is the approach taken by the very short charters recently adopted by the City of Vista and others.

- zoning (*City of Los Angeles v. California Department of Health*, 63 Cal.App.3d 473, 479 (1976));
- municipal contracting procedures (*Loop Lumber Co. v. Van Loben Sels*, 173 Cal. 228 (1916));
- the regulation of a city police force (Cal. Const. Article XI, § 5(b)(1));
- the appointment, compensation, and removal of city employees (Cal. Const. Article XI, § 5);
- the procedure for issuance of municipal bonds (*City of Santa Monica v. Grubb*, 245 Cal.App.2d 718 (1966));
- the provision of financial assistance to public schools (*Berkeley Unified School District v. City of Berkeley*, 141 Cal.App.2d 841, 846-47 (1956), *Madsen v. Oakland Unified School District*, 45 Cal.App.3d 574, 579 (1975));
- the procedure for issuance of building permits (*Lindell Co. v. Board of Permit Appeals*, 23 Cal.2d 303 (1943);
- the acquisition and establishment of municipal parks (*Reagan v. City of Sausalito*, 210 Cal.App.2d 618 (1962);
- designation of a public park as a site for a fire station (*Wiley v. City of Berkeley*, 136 Cal.App.2d 10 (1955);
- establishment of public markets (*Bank v. Bell*, 62 Cal.App. 320 (1923);
- improvement of streets (*City of San Jose v. Lynch*, 4 Cal.2d 760 (1935);
- establishment and maintenance of sewers and drains (*Cramer v. City of San Diego*, 164 Cal.App.2d 168 (1958));
- operation of a municipally owned utility (*Blum v. City and County of San Francisco*, 200 Cal.App.2d 639 (1962);
- creation of a board of health for municipal employees (*Butterworth v. Boyd*, 12 Cal.2d 140 (1938).

**Municipal Elections**

Article 11, § 5(b) of the California Constitution provides:

> "plenary authority is hereby granted . . . to provide . . . [in a charter] or by amendment thereto, 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 . . . ."

California courts have uniformly applied this section to conclude that the conduct of municipal elections is a municipal affair subject to local control. Thus the general election statutes apply to local elections in charter cities only to the extent the charter of the city so provides. See, e.g., *Mackey v. Thiel*, 262 Cal.App.2d 362 (1968) (mailing of candidate qualifications pamphlets); *Rees v. Layton*, 6 Cal.App.3d 815 (1970) (identification of candidates on ballot).

However, to avoid feeding suspicion that a charter proposal is "a political power grab," many newly chartered cities have – at least initially – adopted the elections laws that applied to them as general law cities.

**Initiative, Referendum, and Recall**

Article 4, § 1 of the California Constitution provides that "the people reserve to themselves the powers of initiative and referendum." Article 2, § 11 provides that:

> "Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. This section does not affect a city having a charter."

Thus a charter may provide any procedures for the exercise of the powers of initiative and referendum which do not interfere with the exercise those rights. See, e.g., *Atlas Hotels, Inc. v. Acker*, 230 Cal.App.2d 658 (1964); *Lawing v. Faull*, 227 Cal.App.2d 23, 29 (1964). The *Lawing* court explained as follows:

> "[W]ho best can determine what will provide most effectively a fine balance between the legislative powers delegated to the elective representatives of a city, on the one hand, and initiative and referendum powers reserved to the people of such city on the other? Certainly, it is the people of the particular cities involved who are familiar with local conditions who are best able to regulate such matters either by means of charter provisions . . . or by ordinance . . . ." *Id.*

It has also been held that

> "the subject of the removal of officers of a city and county, by means of a recall, when provided for in a special charter, is a municipal affair, within the meaning [of the State Constitution], and that, consequently, it is not subject to or controlled by general laws inconsistent therewith."

*Scheafer v. Herman*, 172 Cal. 338, 340 (1916).

For reasons similar to those regarding election laws, many city charters provide that initiative, referendum, and recall are governed by the general laws. However, it is possible for a charter to provide the powers of initiative, referendum and recall more broadly than would apply to a general law city. *E.g., Rossi v. Brown*, 9 Cal.4th 688 (1995) (San Francisco charter permitted referendum on a tax measure that would be prohibited by Article II, § 9(a) of the California Constitution in a general law city).

**Method of Enacting an Ordinance**

It is well established that the manner of enacting ordinances is a municipal affair. In *Brougher v. Board of Public Works*, 205 Cal. 426 (1928), the plaintiffs argued a zoning ordinance was invalid because the City of San Francisco failed to follow procedures prescribed by state law for the adoption of such ordinances. The court rejected this argument, stating "[i]t has repeatedly been held by this court that the manner of enacting municipal ordinances is a municipal affair." *Id.* at 438.

**Compensation of Officers and Employees**

Article 11, § 5(b) of the California Constitution, quoted in part above, also provides that charter cities have "plenary authority" to provide "for [the] compensation" of their officers and employees. The courts have enforced this provision and extended it to pension benefits. *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal.3d 296 (1979).

Therefore, charter cities are not, for example, subject to the limitations on the salaries of city councilmembers contained in Government Code § 36516 unless they choose to be. But while the compensation of city employees is a "municipal affair," labor relations between public entities and their employees are not; and the Meyers-Milias-Brown Act applies to charter cities. *San Leandro Police Officers Ass'n v. City of San Leandro*, 55 Cal.App.3d 553 (1976).

**Public Works Contracts**

The courts have held that the construction of public works is a municipal affair. Therefore, statutory public bidding requirements do not generally apply to charter cities. In *Smith v. City of Riverside*, 34 Cal.App.3d 529 (1973), the city awarded a contract for the construction of a public works project without seeking competitive bids, under authority granted

by its charter. The court concluded "the construction of city water and electrical facilities is a municipal affair." *Id.* at 534. Similar results were reached in *Piledrivers' Local Union v. City of Santa Monica*, 151 Cal.App.3d 509 (1984), and *R & A Vending Services, Inc. v. City of Los Angeles*, 172 Cal.App.3d 1188 (1985).

The Court of Appeal ruled in 2009 that the City of Vista might properly exempt locally funded public works projects from state prevailing wage requirements, although projects funded with state and federal funds remain subject to state and federal prevailing wage requirements, respectively. The unions which challenged Vista on this point obtained review in the California Supreme Court and the case remains pending there. It was fully briefed in February of this year and has not yet been set for argument. *State Building & Construction Trades Council of California, AFL-CIO v. City of Vista*, 93 Cal.Rptr.3d 95, *review granted*, 99 Cal.Rptr. 559 (2009), California Supreme Court Case No. S173586.

Therefore, a charter may authorize construction of public works by city forces, pursuant to negotiated contracts, or by other means not permitted by the Public Contract Code. This rule also applies to prevailing wage law, but charter cities may be come subject to state law requiring payment of prevailing wages depending on the outcome of the *Vista* case.

## Public Finances

A charter city may finance public improvements without complying with certain provisions of state law. In *City of Santa Monica v. Grubb*, 245 Cal.App.2d 718 (1966), Santa Monica, a charter city, enacted a procedural ordinance which incorporated the provisions of the Revenue Bond Law of 1941, excluding those which required approval of the bonds by a majority of the voters. The court held that the Santa Monica charter properly adopted only portions of the Revenue Bond Law of 1941 and ruled for the City.

General law cities may also exercise authority under the Improvement Act of 1911 or the Municipal Improvement Act of 1913 to finance public improvements through the levy and collection of special assessments. Charter cities, however, need not follow those procedures. In *J.W. Jones Cos. v. City of San Diego*, 157 Cal.App.3d 745 (1984), the court held that the charter city of San Diego was empowered to finance public improvements through assessment proceedings provided for by ordinance without complying with the 1911 Act or the 1913 Act.

## Taxes

A charter city may impose taxes for municipal purposes regardless of conflicting state statutes. This power is subject, however, to constitution limits such as Article XIII A of the California Constitution (Proposition 13) and Articles XIII C and XIII D (Proposition 218). This power has been of reduced significance since the enactment in 1982 of Government Code § 37101.5, which provides:

> "Except as provided in Section 7282 of the Revenue and Taxation Code,[2/] the legislative body of any city may levy any tax which may be levied by any charter city, subject to the voters' approval pursuant to Article XIII A of the Constitution of California."

However, what the Legislature gives, it may take away. Moreover, because they are exempt from Proposition 62, charter cities may adopt documentary transfer taxes on real estate transactions in amounts greater than state law allows general law cities. *Fisher v. City of Alameda*, 20 Cal.App.4th 120 (1993); *Fielder v. City of Los Angeles*, 14 Cal.App.4th 137 (1993).

**Gifts of Public Funds**

Article 16, § 6 of the California Constitution provides: "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." The courts have repeatedly held that this section does not apply to charter cities, reasoning as follows:

> "This provision of the constitution is in the article regulating the powers of the legislative department of the state government and is a limitation on the power of the state legislature. The powers of the city of Los Angeles are not derived from the legislature but from a freeholders' charter directly provided for by the constitution."

*Tevis v. City & County of San Francisco*, 43 Cal.2d 190, 197 (1954) (quoting *Los Angeles Gas & Elec. Corp. v. City of Los Angeles*, 188 Cal. 307 (1922)).

The courts have rejected challenges to expenditures by charter cities concerning their municipal employees on the ground that the prohibition on gifts of public funds does not apply to charter cities. In *Tevis*, the court upheld the retroactive application of a charter amendment authorizing payments for accrued vacation to certain public employees, and rejected a claim the measure was an invalid gift of public funds. In *Social Workers Union, Local 535 v. County of Los Angeles*, 270 Cal.App.2d 65 (1969), the court upheld a bonus awarded to employees who had not participated in a strike.

By contrast, similar expenditures by general law cities have been invalidated as gifts of public funds. In *Albright v. City of South San Francisco*, 44 Cal.App.3d 866 (1975), for example, the court held that a flat expense allowance was a gift of public funds to the extent it exceeded amounts actually spent by the mayor and members of the city council.

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2/ The cited section of the Revenue and Taxation Code forbids cities and counties to "levy a tax on the privilege of occupying a campsite in a unit of the state park system."

The courts have also held that contributions to charitable or civic organizations by a general law city violate the constitutional prohibition of gifts of public funds. See *Patty v. Colgan*, 97 Cal. 251 (1893) (charitable contribution to flood victims). Such restrictions would not apply to charter cities.

The inapplicability of the constitutional provision to charter cities does not authorize them to spend irresponsibly; charter city expenditures should be for a public purpose. But exemption from the constitutional prohibition against gifts of public funds gives charter cities more flexibility than general law cities with respect to expenditures of public monies.

**Utility Franchises**

A charter city has broad power to grant and regulate franchises for the use of city streets for light, water, power, heat, transportation or communications services. Article 11, § 9 of the California Constitution provides:

> "(a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.
>
> (b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law."

The power conferred by this section is limited by statute as to general law cities, but not as to charter cities. Public Utilities Code §§ 6201-6302 authorize general law cities to grant franchises, but impose restrictions on local regulations of franchisees. This statute does not apply to cities with charters that authorize the granting of franchises. Section 6205 states:

> "This chapter does not apply to any municipality having a free-holders' charter adopted and ratified under the Constitution and having in such charter provisions for the issuance of franchises by the municipality, but nothing contained in this chapter shall restrict the right of any such chartered municipality to avail itself of the provisions of this chapter wherever it may lawfully do so. The provisions of this charter relating to the payment of a percentage of gross receipts shall not be construed as a declaration of legislative judgment as to the proper compensation to be paid a chartered municipality for the right to exercise franchise privileges therein."

The City could provide in a charter for its own franchise procedures and could structure its own formula or method for compensation. The charges imposed must, of course, meet the

constitutional standards of due process and equal protection, but may exceed the limit imposed by the statute. Moreover, the City may not disregard the contract rights of holders of existing franchises. Such a charter provision could also provide broad power to regulate franchisees not available to general law cities.

## Disadvantages of a Charter

Considerations which may weigh against the adoption of a charter include:

(1) Drafting a charter will require time, effort, and expense.

(2) City officials, staff, and the public will be required to adjust to changes effected by a charter after years of operation under the general law.

(3) The uncertainty that may arise on occasion as to whether a specific matter is one of municipal concern governed by the charter, or of state-wide concern, governed by statute. This could give rise to a legal test if an issue should arise in a "gray" area when the charter and general law may differ. Of course, if the City is willing to comply with the general law provisions in the event of conflicts, this problem will arise only if the charter **requires** different action than permitted by general law.

(4) The City would not benefit from new state legislation on matters of municipal concern unless action is taken by the City to adopt it.

(5) Once adopted, the charter cannot be amended without the approval of the City's voters. Government Code § 34459, Elections Code § 4080.

(6) The charter may be amended by initiative and restrictions on the City may be imposed that the City would not impose. Such amendments could, for example, require term limits, mandate employee benefits, mandate compensation levels for City employees, etc.

## Procedures for the Adoption of a Charter

The California Constitution provides that a city may adopt a charter by a majority vote of its voters. Cal. Const. art. XI, § 3(a). A charter may be proposed for the approval of the electorate of the City by a charter commission or by the City Council. Government Code §§ 34451, 34458. An amendment or repeal of a charter may be proposed by the governing body or by initiative. The governing body's consent is not necessary in the case of an initiative. *Birkenfeld v. City of Berkeley,* 17 Cal.3d 129 (1976); see Election Code § 9255.

Under the simpler of the two procedures, the City Council may itself prepare, or direct the preparation of, a charter and submit it to the voters of the City for approval. Government

Code § 34460. Such a charter becomes effective when approved by the voters and filed with the Secretary of State. Government Code §§ 34459, 34461.

Alternatively,

> "[a]n election for choosing charter commissioners may be called by a majority vote of the governing body of a city or city and county, or on presentation of a petition signed by not less than 15 percent of the registered voters of the city or city and county."

Government Code § 34452(a). At such an election, the voters are first asked "Shall a charter commission be elected to propose a new charter?" Government Code § 34453. Candidates for the charter commission appear on the same ballot. *Id.*

If the preparation of a charter is approved and a charter commission elected, the commission then has two years to propose a charter to the voters, which takes effect when approved by the voters and filed with the Secretary of State. Government Code §§ 34462, 34459, 34461.

**Conclusion**

The adoption of a charter can grant significant additional powers to the City, as discussed above. The process of preparing a charter may be commenced by the Council, which can direct the preparation of a charter or call an election to determine if the voters wish to elect a commission to prepare a charter. The process of preparing a charter may also be commenced by a petition signed by 15% of the City's voters directing the City to place on the ballot the question of whether a charter commission should be elected and to conduct an election of commissioners.

If the City desires to pursue the process of preparing a charter, or if we can provide any additional information, please let me know.

c: Bob Richardson, City Manager

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