



Meeting Date: 04 / 20 / 10

| ACTION | TYPE OF ITEM |
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| <input type="checkbox"/> Approved Recommendation | <input type="checkbox"/> Info/Consent |
| <input type="checkbox"/> Ord. No(s). _____ | <input type="checkbox"/> Report |
| <input type="checkbox"/> Res. No(s). _____ | <input type="checkbox"/> Public Hearing |
| <input type="checkbox"/> Other _____ | <input checked="" type="checkbox"/> Study Session |

Prepared By: Martin R. Erickson, Legislative Affairs Manager Agenda Item No. R-1

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other (Specify) _____

DATE: April 10, 2010

TO: City Council

FROM: Edmund F. Sotelo, City Manager
City Manager's Office

Alan Holmberg, City Attorney
City Attorney's Office

SUBJECT: Overview of Process for Becoming a Charter City

RECOMMENDATION

That City Council consider a report on general information about charter cities, the advantages and disadvantages of becoming a charter city and the process for becoming a charter city, and provide direction to the City Manager.

DISCUSSION

In California there are two types of cities: general law cities and charter cities. The authority of a general law city is derived from the powers granted to it by the general laws adopted by the state legislature and from the police power granted to it by the state constitution. A charter city's authority, however, with respect to municipal affairs, is derived from the city's own charter. However, a city operating under a charter is still subject to the general laws of the state, as passed by the state legislature, on affairs that are of statewide concern. The powers of a charter city are also limited by the state and federal constitutions.

A city charter is not required to have any particular provisions in it. The charter must include a declaration that it is the intention of the city to either avail itself of the full power provided by the state constitution to charter cities, or to accomplish a limited or specific purpose. However, the city is not required to extend the breadth of its charter any further than it wishes.

Article XI, section 3(a) of the California Constitution authorizes the adoption of a city charter and provides such a charter 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.” 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.

Advantages to 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. One advantage of a charter is that it allows a city to tailor its organization, taking into account the unique local conditions and needs of the community. Although this report does not discuss every area in which a charter city could legislate, some areas in which a charter city could vary from the general laws include: adopting procedures for municipal elections, including municipal initiative, referendum and recall election, setting procedure for adopting ordinances, setting the compensation for city officers and employees, and setting rules for public contracting and financing. Attachment 1 of this report is a copy of the six-page chart from the League of California Cities entitled *General Law City v. Charter City*. It includes a summary of the various areas in which charters can legislate. Some of these are discussed below.

- **Zoning.** In a general law city, zoning ordinances must be consistent with the general plan. (Gov. Code, § 65860.) Under a charter city, zoning ordinances are not required to be consistent with the general plan unless the city has adopted a consistency requirement by charter or ordinance. (Gov. Code, § 65803.)
- **Compensation.** The city charter may set salaries, expense reimbursements and benefits for its council members. Note, however, that Government Code section 53208.5 provides that the health and welfare benefits of any member of a legislative body of any city, including a charter city, shall be no greater than that received by non-safety employees of that public agency.
- **Form of Government.** As a charter city, the City of Oxnard would be able to establish any form of government, including the current city manager form of government or a strong mayor form of government. The charter may also stipulate that appointed city officers convert to elected city officers. City charters may set forth unique criteria for city office so long as the criteria is not discriminatory. City charters may also establish election dates, rules, and procedures. A charter city is not bound by state election laws, but may adopt the general election law by preference.
- **Public Contracts and Prevailing Wages.** Charter cities are subject to the Public Contracts Code unless the city charter expressly provides that it does not apply. As for prevailing wages, charter cities are likely not currently subject to the prevailing wage laws unless they elect to be subject to the law or if the project involves work out of the city limits, the project is otherwise of significant state interest, or the project is funded in part by the state or federal government. However, there is a possibility that prevailing wages may eventually be considered by the Courts to be a “statewide concern.” The California Supreme Court recently has accepted for review a case presenting this issue.

- School Funding. Charter cities may render financial assistance to schools. The amount or form of financial assistance may be spelled out in the city charter, or the charter may simply allow the City Council the option to provide the amount of assistance it sees fit.

Disadvantages to a Charter

Along with the advantages there are also perceived disadvantages to converting from a general law to a charter city. Possible disadvantages of adopting a city charter include:

- The on-going election costs associated with charter amendments that must be adopted by a vote of city residents. Therefore, even “clean-up” of a charter provision requires a vote of the people.
- The uncertainty that may arise whether a specific matter is one of municipal concern governed by the charter, or one of statewide concern governed by statute. This could result in exposure to legal challenges if an issue should arise in a “gray” area where the charter and general law may differ. There is also limited case law from which to evaluate legal exposure when applying charter language.
- The expenditure of time and effort to formulate a charter.
- The time and expense of conducting an election to consider the adoption of a charter.
- The transition from many years of municipal operation under the general law.

Often a charter is supported if there is a particular problem that can be solved by adopting the charter city form of government. The adoption of a charter, however, can be divisive in a community. Charter elections can be used to limit the role of the city, to change the organization of the city government, or to pursue a particular viewpoint that may be divisive in the community. Also, as the courts review the powers of a charter city there is the possibility that the reach of “statewide concerns” will continue to limit the charter cities “municipal concerns” to the point that the perceived advantages of a charter city many ultimately disappear. Arguably, this may already be occurring in the area of prevailing wages.

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

An election to decide on the adoption of a charter may be called by initiative or the city council. On its own motion, the city’s governing board may propose a charter and submit it to the voters for adoption. With this option, the governing board can call a special election or allow the charter to be voted on at

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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. 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. After a charter is approved by a majority vote, 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. 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. 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; and (3) a certified abstract of the vote at the election on the charter.

FINANCIAL IMPACT

Potential fiscal impacts are discussed above. These include the costs from drafting a charter, holding an election on adoption of the charter, transitioning to operation under a charter, as well as on-going costs associated with any changes or modifications of the charter which require voter approval.

Attachment #1 - *General Law v. Charter City*, League of California Cities

General Law City v. Charter City

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

| Characteristic | General Law City | Charter City |
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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. <i>Johnson v. Bradley</i> , 4 Cal. 4th 389 (1992). |
| Term Limits | May provide for term limits. Cal. Gov't Code § 36502(b). | May provide for term limits. Cal. Const. art. XI, § 5(b); Cal Gov't Code Section 36502 (b). |
| Vacancies and Termination of Office | An office becomes vacant in several instances including death, resignation, removal for failure to perform official duties, electorate irregularities, absence from meetings without permission, and upon non-residency. Cal. Gov't Code §§ 1770, 36502, 36513. | May establish criteria for vacating and terminating city offices so long as it does not violate the state and federal constitutions. Cal. Const. art. XI, § 5(b). |
| Council Member Compensation and Expense Reimbursement | Salary-ceiling is set by city population and salary increases set by state law except for compensation established by city electors. See Cal. Gov't Code § 36516. If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235. | May establish council members' salaries. See Cal. Const. art. XI, § 5(b). If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235. |
| Legislative Authority | Ordinances may not be passed within five days of introduction unless they are urgency ordinances. Cal. Gov't Code § 36934. Ordinances may only be passed at a regular meeting, and must be read in full at time of introduction and passage except when, after reading the title, further reading is waived. Cal. Gov't Code § 36934. | May establish procedures for enacting local ordinances. <i>Brougher v. Bd. of Public Works</i> , 205 Cal. 426 (1928). |
| Resolutions | May establish rules regarding the procedures for adopting, amending or repealing resolutions. | May establish procedures for adopting, amending or repealing resolutions. <i>Brougher v. Bd. of Public Works</i> , 205 Cal. 426 (1928). |
| Quorum and Voting Requirements | A majority of the city council constitutes a quorum for transaction of business. Cal. Gov't Code § 36810. All ordinances, resolutions, and orders for the payment of money require a recorded majority vote of the total membership of the city council. Cal. Gov't Code § 36936. Specific legislation requires supermajority votes for certain actions. | May establish own procedures and quorum requirements. However, certain legislation requiring supermajority votes is applicable to charter cities. For example, see California Code of Civil Procedure section 1245.240 requiring a vote of two-thirds of all the members of the governing body unless a greater vote is required by charter. |

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

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

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

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