

CITY OF
ANTIOCH
CALIFORNIA

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of February 25, 2020

TO: Honorable Mayor and Members of the City Council

SUBMITTED BY: Thomas Lloyd Smith, City Attorney *TLS*

SUBJECT: Information on Charter Cities

RECOMMENDED ACTION

It is recommended that the City Council receive the information on charter cities, discuss it, and provide direction to staff concerning next steps.

STRATEGIC PURPOSE

The City Council is seeking information in order to evaluate the benefits and costs of becoming a charter city.

FISCAL IMPACT

If the City Council decides to convert from a general law city to a charter city, there are a significant number of transactional costs associated with becoming a charter city. The costs include legal, administrative and staffing costs to draft the charter. A significant planning period and staff time will be required to review and understand charter options, evaluate alternatives in accordance with City Council's direction, and develop a draft charter for City Council consideration. Additional associated costs may include public education and outreach costs, hiring election consultants, purchasing election supplies, staff costs associated with the election, and paying the county registrar or election official to hold the election. If matters impacting wages, hours or other terms and conditions of employment are included in the proposed charter, there may be a cost to meet and confer with employee associations under the Meyers-Milias-Brown Act. Once the charter is established, amendments to the charter would require ballot vote.

DISCUSSION

Antioch, similar to most California cities, is a general law city. General law cities must follow the laws set forth in the California Government Code and other relevant statutes.

Charter cities have greater autonomy than general law cities. Charter cities may adopt their own procedures, ordinances and resolutions for matters that are considered "municipal affairs" in the state of California rather than conform to State law for municipal affairs.

According to the League of Cities, there are currently 482 cities in California consisting of 121 charter cities and 361 are general law cities. Local charter cities include

Richmond, San Ramon, Oakland, Berkeley, Alameda, Albany, Piedmont, San Leandro, and San Francisco.

I. What is a City Charter?

A city charter is a legal document that operates as a city's constitution for municipal affairs to the degree allowed under the California Constitution. A city charter explains how the city is governed and how its municipal affairs are managed.

The purpose of a city charter is to have a legal framework for municipal government that (1) enables the work of the city to be carried out effectively, (2) is responsive to the electorate and the community, and (3) is capable of translating the voters' intentions into efficient administrative action.

II. What is Contained in a City Charter?

Historically, charters created a substantial number of local rules, setting up unique local situations across all aspects of city governance. Recent trend is to reserve all power over municipal affairs, focus on a few issues, and otherwise leave in place State law and the municipal code, resulting in a shorter document.

Similar to the U.S. Constitution, a charter is not a document that is designed to address every issue. A charter enables cities to have a legal framework in place for governance of municipal affairs within the city that has been approved by the voters. The charter can be amended by the voters to specifically address new issues.

City charters generally regulate the following matters: (1) the date and conduct of city elections; (2) regulations on the appointment of municipal officials; (3) the terms and payment of municipal officials; (4) the process for removal of municipal officials; (5) the form of government; (6) budget adoption processes; (7) the number, pay, qualifications, and appointment of deputies, clerks, and other employees that each municipal officer will oversee; (8) sub-government in all or part of the city; (9) the tenure of office for deputies, clerks, and other employees; (10) the process for removal of such deputies, clerks, and other employees; and (11) the constitution, regulation, and government of the local police force. (Cal. Const. art. XI § 5(b))

III. How Does a Charter City Differ from a General Law City?

A. How does authority in a general law city differ from a charter city's authority?

The decision to become a charter city impacts the degree of influence the State Legislature and the City Council have over municipal affairs as legislative bodies.

A general law city has the authority to act locally, but its local acts must be consistent with the California Constitution, state statutes, and state administrative regulations.

A charter city has additional authority to adopt laws concerning "municipal affairs" that are not consistent with state statutes for municipal affairs. That being said, a charter city must still be consistent with federal law, the California Constitution, state statutes concerning matters of "statewide concern" and the city's charter.

B. What is the home rule provision of the California constitution? Why does it matter?

The home rule provision in the California Constitution enables cities to adopt a charter and ordinances that replace state laws in areas defined as municipal affairs, subject to the limitations within the city charter.

Charter cities can exercise a greater degree of local control than general law cities, which enables voters to determine how their city government is organized and to enact legislation concerning "municipal affairs" that is different from the state laws concerning municipal affairs that bind general law cities.

At all times, the city is subject to the U.S. Constitution, federal laws, the California Constitution, and state laws regarding matters of statewide concern.

C. What is the definition of municipal affairs?

The California Constitution gives charter cities the power "to make and enforce all ordinances and regulations in respect to municipal affairs, subject to contain restrictions. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." (Article XI, § 4 and 5) Although the California Constitution uses the term "municipal affairs", it does not provide a definition of the term municipal affairs. It only provides examples of municipal affairs.

What constitutes a municipal affair as opposed to a matter of statewide concern is defined by the courts on a case-by-case basis. Legislature may not determine what is a municipal affair nor transform a municipal affair into a matter of statewide concern. This concept is fluid and changes over time.

However, the Constitution enumerates four core municipal affairs: (1) the constitution, regulation, and government of the city police force (2) sub-government in all or part of a

city (3) conduct of city elections and (4) the method, times, and terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, removed, and compensated, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees. (Cal. Const. art. XI § 5(b))

A city's charter does not need to explicitly mention every municipal affair the city seeks to govern. The charter should contain a declaration that the city intends to avail itself of the full power provided by the California Constitution to charter cities and that any city ordinance that regulates a municipal affair will preempt a general law of the state.

Adopting a charter gives a city more control over its municipal affairs, but charter cities are still subject to the same state laws as general law cities on matters of statewide concern.

D. What is the benefit of being a charter city in terms of the documentary and real property tax?

A charter city has the ability to raise the documentary and real property tax rates beyond the limits for general law cities. This tax is imposed upon the sale of real estate and is set by the State. Charter cities may, by a vote of the electorate, raise this tax.

As with all taxes, an increase in the documentary and real property transfer tax would require a vote of the people. Additionally, charter cities incur costs related to calling an election and placing an item on the ballot.

IV. How is a City Charter Adopted?

A charter can only be adopted by a vote of the people of the city. Thus, a charter may be amended or repealed by subsequent votes of the people. An amendment may be proposed either by the city council or by initiative submitted to the council by the voters. Initiatives to adopt city charters may only be placed on the ballot during a general statewide election.

There are three methods for a city to adopt a charter, each must be voted upon by the electorate of the city.

A. Adoption of a Charter Drafted by the City Council

The City Council, generally through its staff and the City Attorney's Office drafts a charter. Then, the City Council schedules, publishes notice of, and holds two public hearings. Next, the City Council votes to call an election on the proposed charter. The proposed charter is voted on at the next regularly scheduled municipal election. If approved by majority of voters, the charter is ratified and filed with the state.

B. Adoption of Charter Drafted by Charter Commission

The election is held at a regularly scheduled municipal election to form a charter commission and elect commissioners. The charter commission drafts and approves

charter within 2 years of its initial election. The city's electorate votes on the proposed charter at the next established statewide general election. If approved by majority of voters, charter is ratified and filed with the state.

C. Adoption of Charter by Citizens' Initiative

A citizens' initiative must be filed by calling for the election of a charter commission to draft the charter. If the charter is proposed by initiative, two elections are required: (1) to establish a charter commission to draft the charter and (2) to propose the actual charter.

Under each of these options, the charter would not be adopted by the city until it becomes effective when it is approved by a majority vote of city electors at a statewide general, primary or other municipal election.

V. What is a Potential Timetable for Becoming a Charter City?

If the City Council directs staff to proceed on this issue, staff will estimate the timeline for drafting a city charter. It is likely to take at least one year.

ATTACHMENTS

Attached to this staff report is substantial additional information from the League of Cities concerning charter cities, including a chart comparing and contrasting charter cities and general law cities, a summary of charter city characteristics, a list of charter cities, and foundational aspects of charter cities.

- A. Chart: General Law City vs. Charter City
- B. A Quick Summary for the Press and Researchers
- C. List of Charter Cities
- D. History of Municipal Home Rule

General Law City v. Charter City

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

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

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

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

Characteristic	General Law City	Charter City
Finance and Taxing Power	<p>May impose the same kinds of taxes and assessment as charter cities. <i>See</i> 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. <i>See</i> 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. <i>See</i> Cal. Gov't Code § 37101.</p> <p>May not impose real property transfer tax. <i>See</i> 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. <i>See 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. <i>See</i> 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. <i>See Cohn v. City of Oakland</i>, 223 Cal. App. 3d 261 (1990); <i>Fielder v. City of Los Angeles</i>, 14 Cal. App. 4th 137 (1993).</p>
Streets & Sidewalks	State has preempted entire field of traffic control. Cal. Veh. Code § 21.	State has preempted entire field of traffic control. Cal. Veh. Code § 21.
Penalties & Cost Recovery	May impose fines, penalties and forfeitures, with a fine not exceeding \$1,000. Cal. Gov't Code § 36901.	May enact ordinances providing for various penalties so long as such penalties do not exceed any maximum limits set by the charter. <i>County of Los Angeles v. City of Los Angeles</i> , 219 Cal. App. 2d 838, 844 (1963).

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

Charter Cities: A Quick Summary for the Press and Researchers

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

Charter Cities vs. General Law Cities – The Basics

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

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

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

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

Defining ‘Municipal Affairs’

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

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

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

¹ Cal. Const. art. XI, § 3(a).

² Cal. Const. art. XI, § 5(a).

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

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

⁵ *Id.*

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

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

⁸ Cal. Const. art. XI, § 5(b).

⁹ *Johnson*, 4 Cal. 4th at 405.

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

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

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

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

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

How to Become a Charter City

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

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

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

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

¹⁰ *Id.* at 400.

¹¹ *Id.* at 405.

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

¹³ *Isaac*, 66 Cal. App. 4th at 599.

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

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

¹⁶ *Johnson*, 4 Cal. 4th at 407.

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

¹⁸ Cal. Veh. Code § 21.

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

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

²¹ Cal. Gov't Code § 34451.

²² Cal. Gov't Code § 34458.

²³ Cal. Gov't Code §§ 34457, 34462.

Charter Cities

Adelanto
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 Cajon
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: 121

HISTORY OF MUNICIPAL HOME RULE

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

Before Home Rule — 1850–1879

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

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

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

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

The 1879 home rule amendment finally freed cities from the need to seek specific state legislation to authorize their legislative acts on traditional municipal matters. Since the constitution empowered them to act without prior permission of the Legislature, cities instead simply had to inquire whether a proposed ordinance conflicted with a general state law. Years later the California Court of Appeal described the effect of this amendment: "[t]he constitution has, by direct grant, vested in them [cities] plenary power to

provide and enforce such ... regulations as they determine shall be necessary for the health, peace, comfort and happiness of their inhabitants, provided such regulations do not conflict with the general law. And the Legislature has no authority to limit the exercise of the power thus directly conferred upon cities, counties and towns by the organic law."⁷

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

California Home Rule Today

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

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

Endnotes

- 1 See Detweiler, *Home Rule: An Historical Perspective* (Jan. 1997) Western City, at page 15.
- 2 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 394-395.
- 3 See Thomas, *California Cities and the Constitution of 1879: General Laws and Municipal Affairs* (1980) 7 Hastings Const. L. Q. 642.
- 4 See Detweiler, *supra* note 1, at p. 16.
- 5 *People v. Martin* (1882) 60 Cal. 153; See Cal. Const., art. XIII, § 24, subd. (b).
- 6 *People v. Hoge* (1880) 55 Cal. 612, 618.
- 7 *In re Walter Ackerman* (1907) 6 Cal.App. 5, 9-10.
- 8 Grodin et al., *The Cal. State Constitution: A Reference Guide* (1993) pp. 192 (citing remarks of Mr. Eli Blackmer during debates at the California constitutional convention).
- 9 *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 742-744. It is worthy of note that this case involves the regulatory legislation of a charter city, the City of Riverside, since charter cities as well as general law cities exercise home rule under the inherent police power granted to all cities by article XI, section 7. In other words, the City of Riverside did not rely on its status as a charter city under article XI, section 5, but rather on its home rule authority under article XI, section 7.
- 10 *Fragley v. Phelan* (1899) 126 Cal. 383, 387.
- 11 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 395-397. (Emphasis in original) Empty brackets [] denote omitted language from the Supreme Court opinion.
- 12 In some cases, the courts have narrowly construed the subject matter described in section 5, subdivision (b) of article XI. See, e.g., *Baggett v. Gates* (1982) 32 Cal.3d 128 (applying the Public Safety Officers Procedural Bill of Rights to charter cities because it was limited to providing "procedural safeguards" to police officers and did not interfere with a charter city's authority to set compensation).
- 13 *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 557.
- 14 *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61, *California Fed. Sav. & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 13 (rejecting static and compartmentalized description of "municipal affairs" in favor of a more dialectical one); *Coddling Enterprises v. City of Merced* (1974) 42 Cal.App.3d 375, 377.
- 15 *State Building and Construction Trades Council of California v. City of Vista*, *supra*, 54 Cal.4th at 558.
- 16 *California Apartment Association v. City of Stockton* (2000) 80 Cal.App.4th 699, 707.
- 17 *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278.
- 18 Cal. Const., art. XI, § 5; *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 315.
- 19 *Bishop v. City of San Jose*, *supra*, 1 Cal.3d at p. 61.