

EL CERRITO
PROPOSED CITY CHARTER
AND REAL PROPERTY
TRANSFER TAX

MAY 1, 2018



OVERVIEW

- Real Property Transfer Tax
 - What Is It? Why Do We Need It?
 - History in El Cerrito
 - In Surrounding Communities
- Review of City Charter Issues
 - Powers of General Law City vs. Charter City
 - Understanding Home Rule and Municipal Affairs
 - Statewide Concerns
- City Council Direction
- Charter Committee Overview and Recommendation
- Questions and Discussion
- Next Steps

WHY CONSIDER A CHARTER NOW?

- Being a charter city enhances local authority, including control over local funds for local needs
- The list of unfunded needs continues to grow
- Only charter cities, NOT general law cities, may levy a Real Property Transfer Tax (RPTT)
- RPTT provides critical and sustained funding for Albany, Berkeley, Richmond, Emeryville and Oakland
- Larger commercial development on SPA should pay their fair share, which they would through a RPTT
- Much of the revenue from a RPTT would be paid by corporations that benefit from low property taxes
- RPTT can help build an emergency reserve for natural disaster preparedness

WHAT ARE THE ISSUES?

- Residents tell us that they want:
 - To continue the responsiveness and quality of our 9-1-1, fire protection, and emergency medical services
 - To maintain our parks and playfields
 - To preserve our library programs for all ages in a safe and energy-efficient library
 - To offer after-school programs for children and teens
 - To provide for seniors in our own senior center
- Capital funding is well below necessary levels for facilities, parks and playfields
- Budget will likely maintain police vacancies
- City has no emergency reserves for natural disaster preparedness
- El Cerrito like most cities has long term significant pension liabilities
- Another source of revenue is necessary to meet community needs

REAL PROPERTY TRANSFER TAXES

- A “real property transfer tax” (RPTT) is a tax on the purchase/sale of real estate, both residential and commercial
- It’s a one-time tax on the sale, not an annual tax on property
- Buyers and sellers typically work out between themselves who will pay the tax
- If you own property and never sell it, you won’t pay the tax
- Would be paid as part of the purchase and sale of new development, including by developers of commercial projects
- A typical feature of the tax is a partial rebate to purchasers who use the money to pay for seismic upgrades or energy efficiency improvements
- The tax is generally rolled into the loans for a residential purchase

REAL PROPERTY TRANSFER TAXES

- El Cerrito had a RPTT until 2003 when repealed because of change in California law
- Rate was set at \$7.00 per \$1,000
- In FY2003, RPPT generated \$1.2m in revenue
- In FY 2016, would have brought in ~\$1.7m
- \$12.00 per \$1,000 brings in ~\$2.7m
- In 2017, would have brought in \$500,000 from sales of commercial property on San Pablo Avenue alone
- No noticeable impact on home prices in other cities
- City Council will set rate in July

Neighboring RPTT Rates:

	<u>Per \$1,000</u>
Alameda	\$ 12.00
Richmond	\$ 7.00
Oakland	\$ 15.00
Emeryville	\$ 12.00
Berkeley	\$ 15.00
Albany	\$ 11.50
Piedmont	\$ 13.00
AVG	\$ 12.21
Median	\$ 12.00

WHAT COULD RPTT REVENUE BE USED FOR?

- RPTT would generate approximately \$ 2.7 million annually
- RPTT is a general tax that could be used for all aspects of city operations
- Current unfunded needs include:
 - Park, clubhouses, playgrounds, fields and facility deferred maintenance
 - 2-4 sworn officer positions (depending on SRO funding)
 - Emergency reserves – currently zero
 - Affordable housing assistance
 - Public Safety Building
 - Senior Center
 - Library Hours/Operations and facility
 - Pension liabilities

AUTHORITY IN GENERAL LAW VS. CHARTER CITY

- A **General Law City** has the authority to act locally but its acts must be consistent with: the California Constitution, state statutes, state administrative regulations
- A **Charter City** has the additional authority to adopt laws regarding "municipal affairs" that are inconsistent with state statutes. Must still be consistent with US and California Constitutions and with the charter

UNDERSTANDING HOME RULE

- The home rule provision in the California Constitution allows cities to adopt a charter and ordinances that replace state laws in areas related to **municipal affairs**, subject only to the limitations within the charter
- 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
- The decision to become a charter city relates to what legislative body makes decisions regarding municipal affairs: the State Legislature or the City Council

WHAT IS A “MUNICIPAL AFFAIR”?

- Term is undefined
- Legislature may not determine what is a municipal affair nor transform a municipal affair into a matter of statewide concern
- Courts decide on a case-by-case basis
- This concept is fluid and changes over time

EXAMPLES OF MUNICIPAL AFFAIRS

- Elections
- Finance
- Planning and Land Use
- Public Contracts and Prevailing Wages
- Employment and Compensation

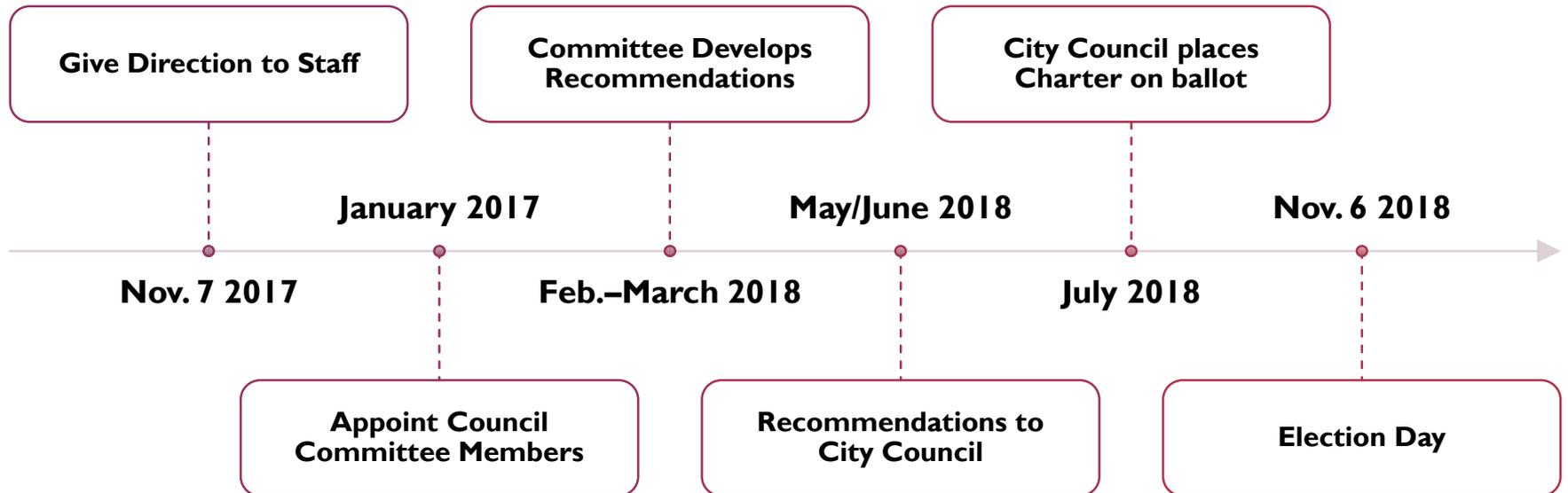
CALIFORNIA CHARTER CITIES

Currently 121 Charter Cities

361 General Law Cities

Local Charter cities include Albany, Emeryville, Berkeley, Richmond, Oakland, Alameda, Piedmont, San Francisco, San Leandro and San Rafael

CURRENT TIMELINE



CITY COUNCIL DIRECTION TO COMMITTEE

- The Charter Committee shall prepare a draft charter for the City of El Cerrito to be submitted to the City Council for consideration and potential proposal to the City's voters.
- The draft charter shall contain at least the following elements:
 - It shall reserve to the City Council the power to adopt local rules in all matters of municipal affairs.
 - It shall require the City to follow California law regarding the payment of prevailing wages for public works projects and collective bargaining with represented employee groups.
 - It shall authorize the City Council to consider the use of all available tools for generating revenue, including but not limited to a real property transfer tax.
 - The El Cerrito Municipal Code shall not be altered by the proposed charter.

ROLE OF CHARTER COMMITTEE

- Review and understand options
- Evaluate alternatives within City Council Direction
- Develop Draft Charter for City Council Consideration

CHARTER COMMITTEE

- Charter Committee made up of Seven Members
 - Two Council Members
 - Member of Financial Advisory Board (FAB)(Chair)
 - Labor Representative (Local 1230)
 - Local realtor (Vice Chair)
 - Two members of Public (FAB Member and Former Mayor)
- Committee selected Chair and Vice Chair, approved minutes and followed Brown Act and standard meeting rules of order
- Committee voted unanimously on Draft Charter

CHARTER COMMITTEE OVERVIEW

- Committee met on five separate occasions
- Meetings were noticed and advertised widely
- Public given opportunity to speak during public comment and specific items
- Committee reviewed other relevant charters and gave direction to staff
- Staff developed draft charter based on comments
- Committee reviewed, commented and provided direction on three versions
- Final version recommended unanimously to City Council

DRAFT CHARTER COMPONENTS

(DRAFT CHARTER ATTACHED)

- Statement of Purpose
- Establishment of Home Rule, Power over Municipal Affairs
- Continuation of Boundaries, Form of Government, and Existing Law
- Municipal Revenue
- Prevailing Wages for Public Works and Public Contracting
- Labor Relations
- Elections
- Interpretation, Severability, and Amendment

KEY AREAS OF COMMITTEE FOCUS

- **Statement of Purpose** – The Committee wanted to make sure it reflected the overall reason for the Charter and was written in clear terms that a lay person could readily understand.
- **Form of Government** – The Committee spent a fair amount of time understanding the current form of government and decided it was important that it be reiterated in Charter to affirm it would not change.

KEY AREAS OF COMMITTEE FOCUS

- **Municipal Revenue** – A fair amount of discussion occurred related to revenues in general and specifically the Real Property Transfer Tax. Based on the discussions, the Committee recommended flexible revenue language but also specifically called out the RPTT for transparency leaving the rate to the City Council.
- **Prevailing Wages, Labor Relations and Elections** – These were items directed by the City Council to not be changed. The Committee debated whether they should be included at all since they would remain unchanged if left out of Charter. However, Committee decided to include to strengthen the City Council priorities and make very clear these items would not change with passage of the Charter.

KEY AREAS OF COMMITTEE FOCUS

- Topics that the Committee wanted communicated to Council:
 - Public information about the Charter should describe the full range of powers as a charter city, including financial powers.
 - Explain why the form of government was addressed in the Charter even though the Council didn't provide direction on the topic.
 - The residents of El Cerrito would have the ability to change the Charter in the future should the need or desire arise.

CHARTER PROCESS

1

Develop
Framework

2

Select Charter
Committee

3

Committee Drafts
New Charter

4

Recommendation
to City Council

- Meeting Today
- Second Meeting in June

5

Council Decides
to Place on Ballot

6

Election



CITY CHARTER PROCESS

QUESTIONS, COMMENTS AND CONCERNS?



CHARTER OF THE CITY OF EL CERRITO

STATEMENT OF PURPOSE

The City of El Cerrito was incorporated as a general law city in 1917 by residents seeking the right to manage local affairs. Since then, the authority of general law cities over local affairs has diminished. Furthermore, the State has continually added mandates for cities that require local resources to address State concerns, increased its control over local matters, and redirected much needed local revenue for its own purposes. Changes in State law have limited the ability of El Cerrito to decide how to use local dollars for local needs. The power of home rule, granted by the California Constitution, makes available to charter cities a variety of tools to use to construct local policy and address local concerns. The voters of each charter city get to decide which tools to put in their tool box. With this Charter, El Cerrito will reclaim more local autonomy and expand the economic and fiscal independence of our City government to promote the health, safety, and welfare of all its residents. Therefore, 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 El Cerrito.

ARTICLE I. ESTABLISHMENT OF HOME RULE, POWER OVER MUNICIPAL AFFAIRS, GENERAL LAW POWERS

Section 100. Powers of the City. The City of El Cerrito (the “City”) shall have full power and authority to adopt, make, exercise, and enforce all legislation, laws, ordinance, resolutions, and regulations with respect to municipal affairs, subject only to the limitations and restrictions imposed on that power by this Charter, the Constitution of the State of California, and the laws of the United States.

Section 101. Municipal Affairs. Municipal affairs encompass all matters of local concern as determined by the City Council consistent with the meaning of "municipal affairs" under the constitutional, statutory, and judicially defined law of the State of California. Each of the matters set forth in this Charter are declared to be municipal affairs, consistent with the laws of the State of California. The municipal affairs set forth in this Charter are not intended to be an exclusive list of municipal affairs over which the City Council may govern. The exercise of home rule over each matter set forth in this Charter uniquely benefits the residents of the City and addresses local concerns within the City.

Section 102. Powers under State Law.

- (a) In addition to the power and authority granted by 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, ordinances, resolutions, 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 this Charter and the general laws of the State of California related to a municipal affair, this Charter shall control.

- (b) Nothing in this Charter is intended to restrict the City in exercising any right, power or authority granted under the general laws of the State of California. However, the provisions of this Charter shall prevail in the event of any conflict with the general laws of the State of California, unless preempted by state law on matters of statewide concern.

ARTICLE II. CONTINUATION OF BOUNDARIES, FORM OF GOVERNMENT, AND EXISTING LAW

Section 200. Incorporation and Succession. The City shall continue to be a municipal corporation known as the City of El Cerrito. The boundaries of the City shall continue as established prior to this Charter taking effect until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, 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. The City shall be subject to all debts, obligations, and liabilities of the City at the time this Charter takes effect.

Section 201. Form of Government. The government of the City shall continue to be the Council-Manager form of government as established by the El Cerrito Municipal Code at the time that this Charter takes effect and by the laws of the State of California. The Council-Manager form of government of the City may be changed in the same ways and using the same procedures as a general law city.

Section 202. City Council, City Manager, and City Attorney.

- (a) The City Council shall establish the policy of the City. The City Manager shall carry out that policy.
- (b) The City Council shall appoint the City Manager.
- (c) The City Manager, as the chief administrative officer of the City, shall appoint all department heads other than the City Attorney. Involvement in administrative matters by the City Council or by any individual Councilmember shall occur only through the City Manager or pursuant to direction by the City Manager to members of the administrative staff.
- (d) The City Council shall appoint the City Attorney. The City Attorney may be an employee of the City or an independent contractor providing legal services pursuant to a contract.

Section 203. Continuation of Existing Local Laws. All ordinances, codes, resolutions, regulations, rules, and portions thereof, in force at the time this Charter takes effect, and not in conflict or inconsistent herewith, shall continue in force until repealed, amended, changed, or superseded in the manner provided by this Charter and any other applicable laws.

Section 204. General State Laws. Except as provided in this Charter and in any ordinance, code, resolution, or other law adopted by the City Council regarding a matter that is a municipal affair, the City shall be governed by the general laws of the State of California.

ARTICLE III. MUNICIPAL REVENUE

Section 300. Revenue Raising Power. The City may exercise all powers of a charter city to generate revenue, including but not limited to taxes, fees, assessments, and other charges.

Section 301. Real Property Transfer Tax. Without limiting the general power of the City, as expressed in Section 300 above, to generate revenue, the City may impose a tax on the conveyance of real property, based upon the price paid for the real property (“real property transfer tax”). Any real property transfer tax imposed by the City shall be in addition to any similar tax authorized by the general laws of the State of California.

ARTICLE IV. PREVAILING WAGES FOR PUBLIC WORKS AND PUBLIC CONTRACTING

Section 400. State Prevailing Wage Law. The City shall comply with the laws of the State of California applicable to general law cities regarding the payment of prevailing wages for public works projects.

Section 401. Contracting for Public Works. The City shall comply with the laws of the State of California applicable to general law cities regarding contracting for public works. The City’s laws, ordinances, codes, resolutions, and policies implementing State laws regarding contracting for public works shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICLE V. LABOR RELATIONS

Section 500. State Labor Relations Law. The City shall comply with the laws of the State of California applicable to general law cities regarding labor relations. The City’s laws, ordinances, codes, resolutions, and policies implementing State laws regarding labor relations shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICLE VI. ELECTIONS

Section 600. State Elections Law. The City shall comply with the laws of the State of California applicable to general law cities regarding elections. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding elections shall continue to apply when this Charter takes effect and may be amended thereafter.

Section 601. Initiative, Referendum, and Recall. Without limiting the general applicability of Section 600 of this Charter, the City shall comply with the laws of the State of California applicable to general law cities regarding initiative, referendum, and recall.

ARTICLE VII. INTERPRETATION, SEVERABILITY, AND AMENDMENT

Section 700. Construction and Interpretation. The language of 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 701. 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 702. Amendment of Charter. As provided by state law, 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.

2941945.2

MEMORANDUM

DATE: March 6, 2018
TO: Charter Committee
City of El Cerrito
FROM: Sky Woodruff, City Attorney
COPY: Scott Hanin, City Manager
RE: **Summary of How Powers and Law Provisions of Draft Charter Work Together**

At its February 26, 2018 meeting, members of the Charter Committee asked for a written summary of how some of the parts of the draft Charter work together. In particular, the Committee asked for further discussion of the provisions of Article I that define generally the home rule powers of the City, as limited by California and Federal law, and Section 205, which states that even after approval of the Charter, the City would continue to be governed by general California law, except as modified by the Charter or a local law regarding a municipal affair. This memo provides a brief discussion of that issue.

Overall, as drafted, Article I of the draft Charter is intended to set forth the nature of the powers that the City would have, if voters approved the Charter. In contrast, Article II is intended to describe a set of existing legal conditions that would continue after approval of the Charter, unaffected by the City obtaining additional home rule authority over municipal affairs.

Section 100 claims for the City all available control over any legal issue that is a municipal affair. Section 102 has two parts. The first expands the general authority provided by Section 100, explaining that the City may make local laws governing municipal affairs, which will prevail over California law in the event of conflict.¹ The second part of Section 102 adds that

¹ Subsection (a) does not expressly state that if the issue is a matter of statewide concern or the conflict is with the California Constitution, then state law would prevail. But that is a basic function of the law governing home rule and does not need to be stated.

To: Charter Committee
From: Sky Woodruff, City Attorney
Re: Summary of How Powers and Law Provisions of Draft Charter Work Together
Date: March 6, 2018
Page: 2

the powers derived from the Charter do not deny to the City the powers provided under California law to general law cities. Put differently, Section 100 and 102, when read together, provide that the City has all of the powers of a charter city over municipal affairs plus all of the powers of a general law city.

Section 205 addresses a related but slightly different issue. As noted above, Article II is intended to describe a set of legal conditions that would continue to exist after approval of the Charter—the purpose being to provide information to residents of the City and future readers, as well as to avoid ambiguities. As part of that, Section 205 clarifies that, with some exceptions², the general laws of California will continue to apply and operate in El Cerrito, even after it becomes a charter city. That issue is broader than the powers of the City. It speaks to what law operates when local law is silent. If local law is silent on an issue, Section 205 informs any reader that the intent of the Charter is that California law will govern as it normally would.

Arguably, Section 205 is unnecessary to the Charter. In the absence of a Charter provision or other local law regarding a subject that is a municipal affair, general California law would continue to operate in El Cerrito, even if the Charter were approved. As we discussed at the February 26 meeting, that is true of a few other provisions. Those parts of the draft Charter help a casual reader understand what a charter means and the basics of the relationship between the Charter and other laws. They are therefore helpful but unnecessary, if the Committee finds that silence on the matter would be the better approach.

SW:sw
2935722.1

² The exceptions are those specified in the Charter itself and in any other local law that conflicts with state law regarding a matter that is a municipal affair.