



AGENDA BILL

Agenda Item No. 7(B)

Date: November 7, 2017
To: El Cerrito City Council
From: Scott Hanin, City Manager *sh*
Sky Woodruff, City Attorney
Subject: Charter City Discussion and Possible Direction

ACTION REQUESTED

Adopt a resolution creating the El Cerrito Charter Committee to prepare a recommended charter for the City and directing the City Manager and City Attorney to work with the Charter Review Committee.

DISCUSSION

Recently, the issue of El Cerrito becoming a Charter City had been brought up both by Council Member Lyman during the Strategic Planning Session and in the City's adopted Affordable Housing Strategy as something that should be considered this fiscal year as part of a long-term funding strategy for the City's many services and facility's needs. The City Council received a presentation about becoming a Charter City in 2011 but decided not to proceed at that time.

Currently in California, there are 361 General Law and 121 Charter cities. In the area, local charter cities include Albany, Emeryville, Berkeley, Richmond, Oakland, Alameda, Piedmont, San Francisco, San Leandro and San Rafael. Common reasons cited for considering a charter include:

- Allows for more options for funding local operations or capital projects (e.g., emergency reserves, affordable housing, library, public safety building, senior center, CalPERS). General law cities split the "Documentary Transfer Tax" with the county (each receives 55¢ for each \$500 of the purchase price of real property). Charter cities may adopt—with voter approval—a "Real Property Transfer Tax" at any rate. The revenue is not split with the county.
 - Neighboring charter cities maintain a Real Property Transfer Tax (RPTT) with a median rate of \$12 per \$1,000 of the purchase price.
 - EC had an RPTT, which was repealed as a general law city
 - RPTT would generate ~ \$2-3 million annually
 - Traditionally split between buyer and seller
 - A portion could be rebated for seismic and conservation upgrades

Agenda Item No. 7(B)

- Providing more flexibility in elections if desired.
- It may provide more local control, particularly on land use issues.

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

Ultimately, the issue most frequently cited in discussions of whether to become a Charter City is local control over municipal affairs pursuant to the concept of "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, the U.S. Constitution, federal laws, the California Constitution, and state laws regarding matters of statewide concern.
- The decision to become a charter city therefore turns on the question of which legislative body should make decisions regarding municipal affairs: The State Legislature or the City Council.

There is no constitutional or statutory list of municipal affairs. The legislature may not determine what is a municipal affair nor transform a municipal affair into a matter of statewide concern. The Courts decide on a case-by-case basis, which results in a concept that is fluid and changes over time. Areas that the courts have said constitute municipal affairs include:

- The form of city government.
- Procedural aspects of resolution and ordinance adoption.
- Local elections, including qualifications for office and public funding of campaigns.
- Some aspects of zoning and land use.
- The process of contracting for public works.
- Scope of authority related to taxes and assessments.

Agenda Item No. 7(B)

Potentially, the biggest impact for the City would be the revenue associated with the implementation of a Real Property Transfer Tax.

- El Cerrito had a RPTT until 2003 when repealed because of changes in law.
- Rate was set at \$7.00 per \$1,000 of sale price.
- In FY2003, RPPT generated \$1.2m in revenue.
- In FY 2016, RPPT would have brought in approximately \$1.7 million.
- If set at \$12.00 per \$1,000 of sale price, approximately \$2.7 million generated.
- General Tax that could be used for operations, reserves or debt service.
- There has been no noticeable impact on home prices in neighboring communities.

Charter City Rate Comparison	
	<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

Charter Committee

The California Constitution authorizes the voters of a city to adopt a charter. The California Government Code sets forth the procedures for the preparation and adoption of a charter. A city council may, on its own motion, propose a charter to its voters. Pursuant to that authority, the City Council may create a committee to prepare a draft charter to be considered by the City Council. The council may use the draft prepared by the committee as the basis for a charter to be proposed to the City's voters. In creating a committee to prepare a charter to propose to City voters, the City Council should provide some direction to the committee regarding components that the charter should include. Staff recommends that the Council direct the Charter Committee to draft a charter that generally provides that the City will follow California law in all areas except those stated in the charter; that the City will in particular follow California law regarding the payment of prevailing wages for public works project and collective bargaining with represented employee groups; and that the charter should authorize the City to consider the use of all available tools for generating revenue, including but not limited to a real property transfer tax.

Staff also suggests that the Charter Committee consist of two members of the City Council (Lyman and Fadelli), a member of the Financial Advisory Board, an active participant in the El Cerrito real estate community, a representative of local labor groups, and two members of the public. The members of the public could be residents or owners of businesses in El Cerrito or a combination of the two.

STRATEGIC PLAN CONSIDERATIONS

Implementing a City Charter could ultimately provide for more Financial Stability which is one of the primary Strategic Plan goals.

ENVIRONMENTAL CONSIDERATIONS

This proposed action will not result in a project as defined by the California Environmental Quality Act, (CEQA). No further environmental review is needed.

FINANCIAL CONSIDERATIONS

Should the City Council ultimately decide to go forward with a Charter City process, staff estimates that the cost will range between \$90,000-\$110,000 to cover the cost of data collection surveys, public information and the election itself. The election is the largest unknown as costs will depend on the overall election day ballot costs.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the attached resolution and will participate throughout the proposed process and lead in the development of any documents necessary for the process.

Attachment:

1. Presentation
2. Comparison
3. Overview
4. Resolution

Should El Cerrito Become a Charter City?

El Cerrito City Council
November 7, 2017



Overview

- Authority in General Law City vs. Charter City
- Understanding Home Rule
- Municipal Affairs
- Statewide Concerns
- Benefits and Detriments of Becoming a Charter City
- Real Property Transfer Tax
- Questions and Discussion
- Direction

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

Municipal Affairs Regarding Elections

- Conduct of city elections and election procedures
- City council member qualifications
- Criteria for vacating and terminating city offices
- City funding of public officers and candidates' campaigns
- However, restricted by constitutional reservations of power, such as the right to vote and powers of initiative/referendum

Municipal Affairs Regarding Finance

- Taxes for municipal purposes, e.g. payroll tax on local businesses and occupations, a property transfer tax
- All new taxes (including in charter cities) must be subjected to voter approval, pursuant to the California Constitution

Municipal Affairs: Planning and Land Use

- Some aspects of planning and land use are municipal affairs, so:
 - Zoning need not be consistent with General Plan (allows for faster changes)
 - State limits on the number of annual General Plan amendments don't apply
 - State rules for specific plans don't apply
- However, many State laws apply, and the State continues to look at ways to control local land use

Planning & Land Use: Matters of Statewide Concern—Charter Cities Must Comply

- General Plan's mandatory elements
- Zoning hearing procedures
- Requirements for low and moderate income housing within special zones
- Time limitations
- Standards for approving housing developments
- Density bonuses/zoning restrictions (e.g., parking)
- Permit Streamlining Act
- Interim zoning ordinance limits and procedures
- Subdivision Map Act
- CEQA

Municipal Affair: Public Contracts/Prevailing Wages

- Design-build construction contracts
- Public Contract Code, including bidding:
 - City must expressly exempt itself by ordinance or charter provision
 - Prevailing Wages
- City must pay prevailing wages on federal and state funded-contracts

Municipal Affairs regarding Employment and Compensation

- Appointment, qualifications, compensation and removal of city employees
- Council members' salaries, expense reimbursements, and benefits

How long is a charter?

- Historically, a charter granted authority (the details of which needed to be listed in the charter) whereas now, a charter grants all authority unless it limits the city's powers (thus, there is a recent trend towards brevity)
- Similar to the U.S. Constitution, a charter is not a document that is designed to address every issue
- Allows the Council and residents to focus on each particular issue at a time
- Municipal Code would be maintained

Advantages to Chartering

- Could allow additional revenue measure for operations or capital projects (e.g., affordable housing, library, public safety building, senior center, CalPERS)
 - Neighboring charter cities maintain a Real Property Transfer Tax (RPTT)
 - EC had an RPTT until recently - repealed as a general law city
 - RPTT would generate ~ \$2-3 million annually
 - Traditionally split between buyer and seller
 - A portion could be rebated for seismic and conservation upgrades
- More flexibility in elections
- May provide more local control

Disadvantages to Chartering

- Transition period
- Legal challenges
- Limited case law
- Charter amendments require vote
- May be divisive in community
- Municipal affairs may erode over time due to state legislation and subsequent judicial review
- Charter cities have not been spared State revenue takeaways

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

Real Property Transfer Taxes

- El Cerrito had a RPTT until 2003 when repealed
- 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
- General Tax that could be used for operations, reserves or debt service
- No noticeable impact on home prices

Neighboring RPTT Rates:

	<u>Per \$1,000</u>
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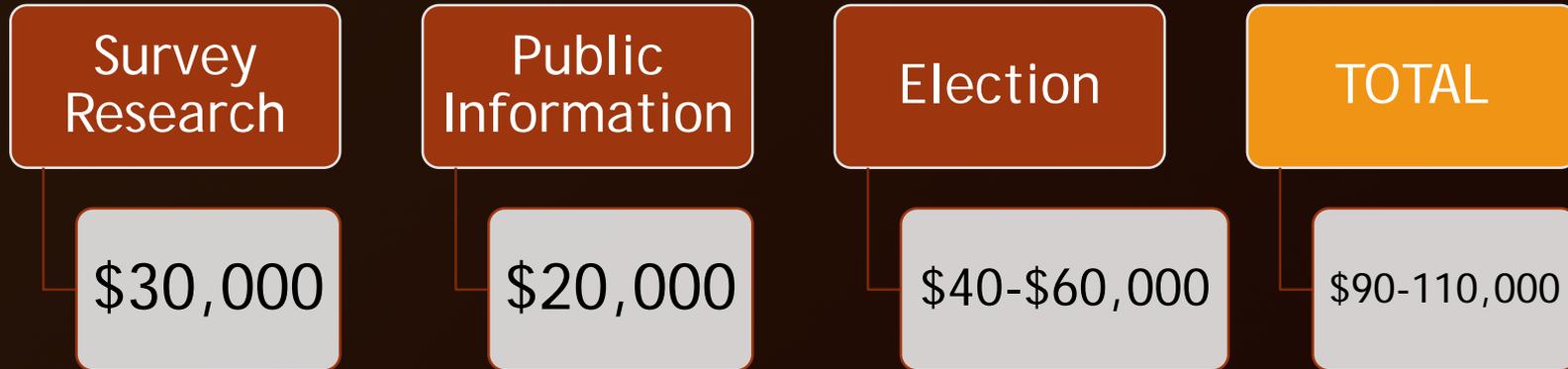
Potential Timeline



City Council/Statutory Process

- Committee must complete draft charter by April 2018
- Before putting charter on ballot Council must hold two public hearings
- Hearings must be at least 30 days apart
- 21 days' notice of hearings required
- Can't put charter on ballot until at least 21 days after second public hearing

Preliminary cost estimates



Charter Review Committee

- Is necessary in order to develop new charter
- Can be commission appointed by city council
- Could be a commission consisting of City Council Members and others appointed by City Council

Charter Development Process

- Charter can be proposed by elected commission or by City Council on its own motion
- Council-proposed charter can be prepared by an appointed committee
- The committee can consist of only Councilmembers or only members of the public appointed by Council or a combination of the two

Items for City Council Consideration

Timing

Length of Charter

Type of Charter
Committee

Make Up of
Committee

Inclusion of
Proactive Statement
on contracts, wages
and labor

Real Property
Transfer Tax

Timing

- Begin Charter Process Immediately

Length of Charter

- Brief - Maintain Municipal Code

Type of Charter Committee

- Appointed committee of Councilmembers and public

Make Up of Committee

- Lyman & Fadelli (not in an election race)
- FAB member, 1 real estate, 1 union and 2 public

Inclusion of Proactive Statement on contracts, wages and labor

- Include in New Charter and Possibly Ballot Question

Real Property Transfer Tax

- Include as part of New Charter AND Ballot Question

Staff Recommendations

Options for next steps

1

Defer any action on the charter until a later date. No further action is necessary at this time.

2

Direct a process for charter implementation with the goal of placing a charter on the ballot in November 2018. Fadelli, Lyman work with Staff

3

Other?

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	<p>Ordinances may not be passed within five days of introduction unless they are urgency ordinances. Cal. Gov't Code § 36934.</p> <p>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.</p>	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	<p>A majority of the city council constitutes a quorum for transaction of business. Cal. Gov't Code § 36810.</p> <p>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.</p>	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
<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
<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>

Characteristic	General Law City	Charter City
Finance and Taxing Power	<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.XIIIC.</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. XIIIC, § 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>
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>

Agenda Item No. 7(B) **Attachment 3 – Charter Overview**

What is a charter?

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

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

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

Foundational aspects of charter cities

What is the Constitutional Framework for Charter Cities?

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

What are "Municipal Affairs?"

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

How Do the Courts Distinguish Between Municipal and Statewide Concerns?

Whether a given activity is a municipal affair over which a city has sovereignty, or a statewide concern, over which the legislature has authority, is a legal determination for the courts to resolve. Thus, the determination of whether a given activity is a municipal affair or statewide concern is done on a case-by-case basis. The court's determination will depend on the particular facts and circumstances of each case. See *In Re Hubbard*, 62 Cal. 2d 119, 128 (1964). Keep in mind that the concept of "municipal affairs" is a fluid

Agenda Item No. 7(B) Attachment 3 – Charter Overview

one that changes over time as local issues become statewide concerns. See *Issac v. City of Los Angeles*, 66 Cal. App. 4th 586 (1998).

What Activities Have the Courts Classified As Municipal Affairs?

There are some areas that the courts have consistently classified as municipal affairs. Examples include the following:

- Municipal Election Matters. See *Mackey v. Thiel*, 262 Cal. App. 2d 362 (1968).
- Procedures for Initiative, Referendum and Recall. See *Lawing v. Faul*, 227 Cal. App. 2d 23, 29 (1964).
- Procedures for Adopting Ordinances. See *Brougher v. Board of Public Works*, 205 Cal. 426 (1928).
- Compensation of City Officers and Employees. Cal. Const. art. XI, § 5(b); See *Sonoma County Organization of Public Employees v. County of Sonoma*, 23 Cal. 3d 296 (1979); but see *San Leandro Police Officers Association v. City of San Leandro*, 55 Cal. App. 3d 553 (1976) (labor relations is not a municipal affair; Charter cities are subject to the Meyers-Milias Brown Act. Cal. Gov't Code § 3500).
- Processes Associated with City Contracts. See *First Street Plaza Partners v. City of Los Angeles*, 65 Cal. App. 4th 650 (1998); but see *Domar Electric, Inc. v. City of Los Angeles*, 41 Cal. App. 4th 810 (1995) (state law establishing employment policy may preempt local regulation of bidding criteria).
- Financing Public Improvements. See *City of Santa Monica v. Grubb*, 245 Cal. App. 2d 718 (1996).
- Making Charitable Gifts of Public Funds for Public Purposes. See Cal. Const. art. XVI, § 6; *Tevis v. City and County of San Francisco*, 43 Cal. 2d 190 (1954).
- Term Limits for Council Members. See *Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212 (1993); but see Cal. Gov't Code § 36502(b) (regulating term limits).
- Land Use and Zoning Decisions (with a few exceptions). See *Brougher v. Bd. of Pub. Works*, 205 Cal. 426 (1928).

What Activities Have the Courts Classified as Statewide Concerns?

The following have consistently been classified by the courts as matters of statewide concern:

- School Systems. *Whisman v. San Francisco Unified Sch. Dist.*, 86 Cal. App. 3d 782, 789 (1978).
- Traffic and Vehicle Regulation. Cal. Veh. Code § 21.

Agenda Item No. 7(B)

Attachment 3 – Charter Overview

- Licensing of Members of a Trade or Profession. *City and County of San Francisco v. Boss*, 83 Cal. App. 2d 445 (1948).
- Tort Claims Against a Governmental Entity. *Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 247 (1942).
- Open and Public Meetings. Ralph M. Brown Act. Cal. Gov't Code §§ 54951, 54953(a).
- Exercise of the Power of Eminent Domain. *Wilson v Beville*, 47 Cal. 2d 852, 856 (1957).

Process used to adopt a charter

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

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

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

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

Once formed, the charter commission will have the responsibility of developing the city's charter. After a simple majority of commissioners have decided that the proposed charter is appropriate, they file the charter with the city's clerk in preparation for a vote by

Agenda Item No. 7(B)

Attachment 3 – Charter Overview

the city's electorate. See Cal. Gov't Code section 34455. However, instead of sending the whole charter at once, periodically the commission may send portions of the charter to the city's electorate for a vote. See Cal. Gov't Code section 34462.

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

After the charter has been filed with the city clerk, the city's governing board must decide whether to call a special election or to wait until the next established municipal election to submit the charter to the voters. If the city's governing board determines that a special election should be held, then they must call for that special election within 14 days of the charter being filed. The special election must be set at least 95 days after the date from which the special election was called. See Cal. Gov't Code section 34457. In any case, the charter commission must send the charter to the voters within two years of the vote that formed the commission. Upon the expiration of the two-year time period, the commission is abolished. See Cal. Gov't Code section 34462.

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

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

Charter Cities

Adelanto
 Alameda
 Albany
 Alhambra
 Anaheim
 Arcadia
 Bakersfield
 Bell
 Berkeley
 Big Bear Lake
 Buena Park
 Burbank
 Carlsbad
 Cerritos
 Chico
 Chula Vista
 Compton
 Culver City
 Cypress
 Del Mar
 Desert Hot Springs
 Dinuba
 Downey
 El Centro
 Emeryville
 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

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CREATING THE EL CERRITO CHARTER COMMITTEE TO PREPARE A RECOMMENDED CHARTER FOR THE CITY

WHEREAS, in 2011, the City Council received a presentation regarding the differences between general law and charter cities in California, the powers and limitations of charter cities, the process for becoming a charter city, and options and related schedules for submitting a charter to El Cerrito voters. At that time, the City Council decided not to proceed; and

WHEREAS, during a Strategic Planning session earlier in 2017, the City Council requested that they receive another presentation regarding becoming a charter city, in particular to exercise the additional home rule powers of a charter city over local affairs, including the revenue generating powers of a charter city to fund high priority service and facility needs identified by the community; and

WHEREAS, on November 7, 2017, the City Council received a presentation regarding the powers of and process for becoming a charter city. After reviewing options for the process for drafting a proposed charter, it decided to create a committee with the membership and direction described in this resolution; and

WHEREAS, the California Constitution, Article 11, Section 3, authorizes the voters of a city to adopt a charter. The California Government Code, Title 4, Division 2, Part 1, Chapter 2, sets for the procedures for the preparation and adoption of a charter. A city council may, on its own motion, propose a charter to its voters. (Gov. Code § 34458.) Pursuant to that authority, the City Council may create a committee to prepare a draft charter to be considered by the City Council and proposed to the City's voters on the Council's own motion; and

WHEREAS, in creating a committee to prepare a charter to propose to City voters, the City Council expressed as necessary components of a draft charter that the charter generally provide that the City will follow California law in all areas except those stated in the charter; that the City will in particular follow California law regarding the payment of prevailing wages for public works project and collective bargaining with represented employee groups; and that the charter should authorize the City to consider the use of all available tools for generating revenue, including but not limited to a real property transfer tax.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby establishes a Charter Committee, with necessary staff liaison assigned by the City Manager.

BE IT FURTHER RESOLVED that the Charter Committee shall consist of two members of the City Council, a member of the Financial Advisory Board, an active participant in the El Cerrito real estate market, a representative of local labor groups, and two members of the public. The members of the public shall be residents or owners of businesses in El Cerrito or a combination of the two.

BE IT FURTHER RESOLVED that the Charter Committee shall have the following duties, responsibilities, and direction:

- 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.
- Meetings of the Charter Committee shall comply with the requirements of the Brown Act.
- The Charter Committee shall establish and publish a schedule of meetings
- The Charter Committee shall complete a draft of the charter and submit it to the City Council in sufficient time for the City Council to submit the charter to El Cerrito voters at the municipal election on November 6, 2018. The Charter Committee shall complete a draft charter and submit it to the City Council no later than April 30, 2018.
- Members of the Charter Committee shall serve until the City Council has decided whether or not to submit a charter proposal to El Cerrito voters, or until the election on the proposed charter occurs, whichever is later. The terms of the members of the Charter Committee shall end and the Committee shall be dissolved on November 30, 2018, unless extended by a resolution of the City Council.
- The Charter Committee shall support City efforts to inform and educate the El Cerrito community regarding the proposed charter submitted to voters.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 7, 2017 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

Agenda Item No. 7(B)
Attachment 4

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor