



CITY COUNCIL

For City Clerk's Use:

APPROVED DENIED

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: _____

Date: June 13, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey R. Epp, City Attorney
Jennifer K. McCain, Assistant City Attorney

SUBJECT: Proposed City Charter For Placement on the November 6, 2012 Ballot

RECOMMENDATION:

Adopt Resolution No. 2012-99 approving the form of the proposed City Charter for submission to the voters on November 6, 2012.

FISCAL ANALYSIS:

If the proposed charter is placed on the November 2012 ballot, the City Clerk estimates a cost of \$35,000 to \$40,000 for six pages in addition to \$13,200 for an informational community mailer.

PREVIOUS ACTION:

Deputy Mayor Marie Waldron and Councilmember Ed Gallo originally requested an agenda item to consider the subject of becoming a charter city on March 9, 2011. The City Council discussed becoming a charter city and on April 13, 2011, Deputy Mayor Marie Waldron presented a draft charter to the Council for public discussion. A public workshop to discuss the proposed charter and receive input from the public was held on September 28, 2011. A draft charter was placed on the City's website on September 29, 2011. A revised draft charter was posted on the City's website on January 12, 2012.

The first public hearing considering becoming a charter city was held on April 18, 2012. City staff presented background information regarding charter cities, a brief summary of issues raised at the September 28, 2011 public workshop and recent legal developments which affect both the content and the adoption requirements for a charter ballot measure. Thereafter, at a noticed public meeting, the City Council directed staff to present an evaluation and analysis regarding changing the current election method of Council members in conjunction with the proposed charter. A second public hearing was held on May 23, 2012, during which a majority of the Council approved the proposed charter with three revisions.

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BACKGROUND:

The staff reports submitted at both public hearings dated April 18, 2012 and May 23, 2012, provide background regarding charter cities in general as well as background regarding the draft charter presented to the City Council at both public hearings.

PROPOSED LANGUAGE:

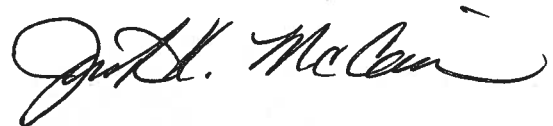
Most of the discussion regarding the proposed charter at the May 23 public hearing concerned the topic of district elections. After careful consideration of the public comments received, Councilmembers Diaz, Morasco and Gallo approved the proposed charter presented at the May 23, 2012, public hearing with three revisions. The City Attorney was directed to revise and clarify certain provisions. The attached proposed charter incorporates the three requested changes. With regard to Article 3, Section 300, language was added to ensure that the duties, responsibilities and compensation of the City Treasurer will be set by Ordinance of the City Council. Also, to be consistent with state and federal law, the eligibility requirement of being a United States citizen was added to Section 303 regarding elective office. Lastly, Section 305 was added to Article 3 to invalidate district elections in the event that the California Voting Rights Act is determined by a court of competent jurisdiction to be invalid or is repealed by the California State Legislature.

CONCLUSION:

Council is requested to adopt Resolution No. 2012-99 approving the form of the proposed charter for the City for submission to the voters on November 6, 2012.

Respectfully submitted,


JEFFREY R. EPP
City Attorney


JENNIFER K. MCCAIN
Assistant City Attorney

Attachments: Proposed Charter for Submission to the Voters (Red-lined)

CHARTER OF THE CITY OF ESCONDIDO

PREAMBLE

WE THE PEOPLE of the City of Escondido declare our intent to restore to our community the historic principles of self governance inherent in the doctrine of home-rule. Sincerely committed to the belief that local government has the closest affinity to the people governed and firm in the conviction that the economic and fiscal independence of our local government will better serve and promote the health, safety and welfare of all of the citizens of Escondido, 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 Escondido.

CHARTER

Article 1 Municipal Affairs

Section 100. Municipal Affairs

Each of the responsibilities of governance set forth and described in this Charter, and as established by the Constitutional, statutory and judicially defined law of the State of California, is hereby declared to be a municipal affair or concern, the performance of which is unique to the benefit of the citizens of the City of Escondido.

Section 101. Powers

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

Section 102. Incorporation and Succession

The City shall continue to be a municipal corporation known as the City of Escondido. The boundaries of the City of Escondido shall continue as now established 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, and is hereby declared to be the successor of same. It shall be subject to all debts, obligations and liabilities, which exist against the City at the time this Charter

takes effect. All lawful ordinances, resolutions, rules and regulations, or portions thereof, in force at the time this Charter takes effect and not in conflict with or inconsistent herewith, are hereby continued in force until the same have been duly repealed, amended, changed or superseded by proper authority.

Article 2 Form of Government

Section 200. Form of Government

This municipal government established by this Charter shall be known as the "Council-Manager" form of government. The City Council will establish the policy of the City and the City Manager will carry out that policy.

Article 3 ~~ELECTED OFFICERS~~Elected Officers

Section 300. Enumeration and Term

The elected officers of the City shall consist of:

A City Council composed of five members who are registered voters of the City, four to be residents of their respective Districts and nominated and elected only by the residents of their respective Districts. The fifth shall be nominated and elected from the City at large and shall hold the office of Mayor.

Other elected officer(s) of the City shall be:

A City Treasurer **with duties, responsibilities and compensation as provided by Ordinance of the City Council.**

All of the elected officers shall serve for a term of four years following their election. The terms of all elected officers shall commence upon installation and each shall serve until the officer's successor is elected and installed.

Section 301. Districts

For the purpose of electing the members of the Council, excepting the Mayor, the City shall be divided into four Districts. The City Council shall, by ordinance, establish four Districts that shall be used for the elections of Council members, excepting the Mayor. Said Districts shall be in compliance with applicable laws.

The ordinance establishing the boundaries of the Districts shall be adopted on or before December 31, 2013.

Section 302. Redistricting

District boundaries shall be altered when necessary as shown by the most recent federal decennial census, or by more current data certified by the City Council as sufficiently reliable and detailed to serve as a basis for district boundary alteration, or by annexation or consolidation of territory.

Section 303. Eligibility

An elected officer of the City shall be a resident, **United States citizen** and voter in the City.

In addition, every Council member or candidate shall be and remain a qualified voter in the District from which the Council member or candidate is nominated, as required by the California Elections Code. No change in the boundary or location of any district shall abolish or terminate the term of office of any Council member prior to expiration of the term of office for which the member was elected, notwithstanding any other provision of this Section. Each Council member will, during the duration of the member's term, represent the District by which the member was elected.

Section 304. Vacancies

A vacancy in any elective office, from whatever cause, shall be filled by appointment by the City Council, such appointee to hold office for the remainder of any unexpired term, and until a successor is elected and installed.

In the event the City Council shall fail to fill a vacancy by appointment within thirty days after such office is declared vacant, it shall cause an election to be held to fill such vacancy.

Section 305. Invalidation of California Voting Rights Act

Upon the invalidation or repeal of the California Voting Rights Act (California Elections Code §§ 14025-32) by a court of competent jurisdiction or the California State Legislature, the City Council shall adopt an ordinance setting forth the process and schedule for returning to an at-large method of election.

Section 306. Prior Laws

This Article shall supersede all other provisions of the laws of the City of Escondido pertaining to the office of City Treasurer, all of which shall be of no further force and effect.

Article 4 Fiscal Matters

Section 400. Economic and Community Development

The City shall encourage, support, and promote economic development and community development in the City.

Section 401. Public Works Contracts

The City is exempt from the provisions of all California statutes regulating public contracting and purchasing except as provided by ordinance or by agreement

approved by the City Council. The City shall establish all standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including but not limited to, the compensation rates to be paid for the performance of such work.

Section 402. Prevailing Wage

No City contract shall require payment of the prevailing wage schedule unless: the prevailing wage is legally required, and constitutionally permitted to be imposed, by federal or state grants pursuant to federal or state law; or the project is considered by the City Council not to be a municipal affair of the City; or payment of the prevailing wage schedule is authorized by resolution of the City Council. Payment of the prevailing wage schedule, if authorized hereunder, shall use the pertinent rates published by the State of California.

Section 403. Fair and Open Competition

The City will promote fair and open competition for all City construction projects so that all contractors and workers, whether union or non-union, are treated equally in the bidding and awarding of City construction contracts.

Section 404. Definition of Public Works

For purposes of this Article, the term "public works" means: (1) A building, road, street, sewer, storm drain, water system, irrigation system, reclamation project, redevelopment project, or other facility owned or to be owned or to be contracted for by the City of Escondido or the Escondido Community Development Commission, that is paid for in whole or in part with tax revenue paid by residents of the City of Escondido; or (2) Any other construction service or nonconstruction service.

Section 405. Voluntary Employee Political Contributions

Unless otherwise required by law, neither the City, nor its agents, shall deduct from the wages, earnings or compensation of any City employee any political contributions unless the employee has first presented, and the City has received, a signed written authorization of such deductions, which authorization must be renewed annually and may be revoked by the employee at any time by giving written notice of such revocation to the City.

**Article 5
Revenue Retention**

Section 500. Reductions Prohibited

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

Section 501. Mandates Limited

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

**Article 6
General Laws**

Section 600. General Law Powers

In addition to the power and authority granted by the terms of this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise and enforce all legislation, laws, and regulations and to take all actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between the provisions of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control.

Section 601. Council Member Compensation

Notwithstanding the previous paragraph, the salary of the Mayor and the Council Members will continue to be set pursuant to California Government Code sections 36516 and 36516.1 where the formula considers city population and state law.

**Article 7
Interpretation**

Section 700. Construction and Interpretation

The language contained in this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter which is a municipal affair.

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.

**Article 8
Amendment**

Section 800. Amendment to Charter, revised or repealed

This Charter, and any of its provisions, may be amended by a majority vote of the electors voting on the question. Amendment or repeal may be proposed by initiative or by the governing body.

AUTHENTICATION AND CERTIFICATION

Authenticated and certified to be a true copy by Mayor Sam Abed and City Clerk Diane Halverson.

Date of Municipal Election: November 6, 2012

ATTEST:

Sam Abed, Mayor

Diane Halverson, City Clerk