

CITY COUNCIL

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Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 22

Date: March 19, 2014

TO: Honorable Mayor and Members of the City Council

FROM: Jennifer K. McCain, Assistant City Attorney

SUBJECT: City Council Workshop: Charter City Proposal

The City Council adopted a Work Program on November 6, 2013, which includes the goal of resubmitting a charter city proposal to the electorate. The strategy listed in the Work Program for this goal is to hold public hearings on a revised charter city proposal for possible inclusion in the 2014 election ballot. On January 15, 2014, the City Council directed staff to proceed with a workshop and to schedule two public hearings regarding a charter city proposal. This staff report provides general background information regarding charter cities, a brief summary of the City's previous charter city proposal, recent legal developments which affect the content and adoption requirements for a charter ballot measure and a draft charter city proposal for public review and discussion.

BACKGROUND:

In California, there are two kinds of cities: charter cities and general law cities. See Cal. Gov't Code §§ 34100-34102. General law cities derive their corporate powers from general laws enacted by the legislature. See generally *Irwin v. City of Manhattan Beach* (1966) 65 Cal. 2d 13. Charter cities, on the other hand, derive their corporate powers directly from the constitution, subject to limitations of their respective charters and enactments of the legislature on matters of statewide concern. See *Johnson v. Bradley* (1992) 4 Cal. 4th 389, 394. The City of Escondido is a general law city and was incorporated in 1888. Of the 482 cities in the state, approximately 121 are charter cities. In North County, Carlsbad (adopted 2008), Oceanside (adopted 2010), Del Mar (adopted 1960), Vista (adopted 2007) and San Marcos (adopted 1994) are charter cities.

Charters can be drafted to be very broad or narrowly tailored to address a few specific local needs. For instance, the City of San Diego's charter is 121 pages and addresses many issues, including, corporate powers, nominations and elections, legislative power, the mayor, executive and administrative service, board of education, finance, civil service, retirement of employees, transfer of police and fire department employees into the retirement system, fireman's relief and pension fund, labor on public work, city police court, and the strong mayor form of governance. By contrast, Vista, Carlsbad, Oceanside, and other north San Diego County cities have adopted shorter, simplified charter documents which address specific issues including public works contracts, prevailing wage, public financing, and retirement benefits.

The authority provided in the state constitution to organize as a charter city is extended only to an existing city. An advantage of the charter form of government stems from the potential breadth of local authority which may be exercised. Since the powers of a charter city are not restricted to only those outlined in the general state municipal law, a city can adopt a charter and customize its organization and elective offices to provide for unique local conditions and needs.

A charter is a written document, approved by the electorate, which operates as a "constitution" for the adopting city. The provisions of Cal. Const. Art. XI, § 3(a) authorize the adoption of a city charter and provide that such a charter has the force and effect of state law. Charter cities have the power to make and enforce all ordinances and regulations with respect to municipal affairs, including those relating to the creation and regulation of a police force and sub-government within the city, the conduct of city elections, and the dealings with municipal officers and employees. Cal. Const. Art. XI, § 5(b). Charters act as instruments of limitation on the broad power of charter cities over matters of municipal affairs. *City of Glendale v. Trondsen* (1957) 48 Cal. 2d 93, 98. A charter can only be adopted and/or changed by a majority vote of the city residents.

The provision of Cal. Const. Art. XI, § 5(a), the "home rule" provision, affirmatively grants charter cities supremacy over "municipal affairs." However, the California Constitution does not define the term "municipal affair." The "home rule" provision of the California Constitution authorizes a charter city to exercise plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations. See Cal. Const. Art. XI, § 5(a); *Ex Parte Braun* (1903) 141 Cal. 204, 209; *Bishop v. City of San Jose* (1969) 1 Cal. 3d 56, 61; *Comm. of Seven Thousand v. Super. Ct. (City of Irvine)* (1988) 45 Cal. 3d 491. The primary advantage of a charter is that it allows greater authority for a city's governance than that provided by state law. A city charter is subject only to conflicting provisions in the state or federal constitutions and preemptive state law on matters of statewide concern.

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* (1964) 62 Cal. 2d 119, 128. The concept of "municipal affairs" is a fluid one that changes over time as local issues become statewide concerns. See *Issac v. City of Los Angeles* (1998) 66 Cal. App. 4th 586.

Municipal Affairs

There are some areas that the courts have consistently classified as municipal affairs as set forth below:

- Municipal Election Matters. See *Mackey v. Thiel* (1968) 262 Cal. App. 2d 362.
- Procedures for Initiative, Referendum and Recall. See *Lawing v. Faull* (1964) 227 Cal. App. 2d 23, 29.
- Procedures for Adopting Ordinances. See *Brougher v. Board of Public Works* (1928) 205 Cal. 426.

- Compensation of City Officers and Employees. Cal. Const. Art. XI, § 5(b); See *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal. 3d 296; but see *San Leandro Police Officers Association v. City of San Leandro* (1976) 55 Cal. App. 3d 553 (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* (1998) 65 Cal. App. 4th 650; but see *Domar Electric, Inc. v. City of Los Angeles* (1995) 41 Cal. App. 4th 810 (state law establishing employment policy may preempt local regulation of bidding criteria).
- Financing Public Improvements. See *City of Santa Monica v. Grubb* (1996) 245 Cal. App. 2d 718.
- Making Charitable Gifts of Public Funds for Public Purposes. See Cal Const art. XVI, § 6; *Tevis v. City and County of San Francisco* (1954) 43 Cal. 2d 190.
- Term Limits for Council Members. See *Cawdrey v. City of Redondo Beach* (1996) 15 Cal. App. 4th 1212; 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* (1928) 205 Cal. 426.

Matters of Statewide Concern

Alternatively, the following have consistently been classified by the courts as matters of statewide concern over which a charter city may not have local control:

- School Systems. *Whisman v. San Francisco Unified Sch. Dist.* (1978) 86 Cal. App. 3d 782, 789.
- Traffic and Vehicle Regulation. Cal. Veh. Code § 21.
- Licensing of Members of a Trade or Profession. *City and County of San Francisco v. Boss* (1948) 83 Cal. App. 2d 445.
- Tort Claims Against a Governmental Entity. *Helbach v. City of Long Beach* (1942) 50 Cal. App. 2d 242, 247.
- 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* (1957) 47 Cal. 2d 852, 856.

Process Used to Adopt a 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 Council may propose a charter and submit it to the voters for adoption. See Cal. Gov't Code § 34458. With this option, the City Council can allow the charter to be voted on at an established statewide general election. See Cal. Gov't Code § 34458.¹

¹ SB 311, effective January 1, 2014, limits a city charter proposal [as opposed to a voter initiated charter] to statewide general elections only.

A 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 § 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 § 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 § 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 § 34460.

Charters are effective when filed with the Secretary of State; the charter must also be published in the official state statutes. Amendments, revisions, and repeal of a charter are generally handled in the same manner as adoption of a charter. An amendment or repeal to a charter may be proposed by the governing body or by initiative; the governing body's consent is not needed in the case of an initiative. *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 143.

Public Hearing Requirements, Election Dates and Costs

The state legislature has more recently adopted laws addressing notice, public hearings and the type of election permissible for a charter city proposal.

AB 1344, effective January 1, 2012, sets forth the public hearing process for a charter proposal and the timelines for submission of ballot language for a charter election. AB 1344 changed the timeframes to submit ballot language to the voters by a charter commission from 88 days before the election to 95 days before an established statewide general election. A city charter proposal by a city must be submitted 88 days before the election. See Cal. Gov't Code § 34458; Cal. Elec. Code § 1415. In addition, state law mandates that the ballot language contain an enumeration of new city powers as a result of the adoption of the charter, including, but not limited to, whether the city council will, pursuant to an adopted charter, have the power to raise its own compensation and the compensation of other city officials without voter approval. See Cal. Gov't Code § 34458.5. SB 311, effective January 1, 2014, repeals a city's ability to submit a charter proposal to the electorate at a special election, statewide primary election, or regularly scheduled municipal election. With a few limited exceptions, charter proposals initiated by a city can only be submitted to the electorate during a general statewide election. See Cal. Elec. Code § 1415.

Cal. Gov't Code section 34458 requires that prior to approving the submission to the voters of a proposal to adopt a charter, the governing body shall hold at least two public hearings on the matter of the proposed charter and the content of the proposed charter. Notice of the public hearings shall be given by publication in a newspaper designated by the governing body and circulated throughout the city and by posting the notice in three public places within the jurisdiction at least 21 calendar days prior to the date of each public hearing. The second hearing shall be held at least 30 days after the first public hearing. At least one of the public hearings shall be held outside of normal business hours to facilitate public participation. The governing body shall not conduct a vote on whether to approve the submission to the voters of the proposal to adopt a charter until 21 days after the second

public hearing. Based on these specific statutory requirements and direction received from the City Council on January 15, 2014, the City Clerk has scheduled public hearings for April 9, 2014 and May 21, 2014. The matter will be presented to the City Council on June 18, 2014 for consideration and approval of the ballot language. If approved, the City Clerk will then submit the measure to the Registrar of Voters.

Further, the City Clerk estimates a cost of \$20,000 to place a charter proposal on the November 2014 ballot. Staff estimates an additional cost of \$4,000 for informational mailers to be inserted in the City water bills. The information will also be placed on the City's website.

2012 City Charter Ballot Measure

The City Council previously proposed a charter to the voters in 2012. Key provisions of the 2012 proposal included (a) district elections for Councilmembers, (b) establishing the City Treasurer's duties and compensation by ordinance, (c) exempting the City from state statutes regarding public contracts (unless required by state or federal grants), (d) prohibiting the deduction of political contributions from wages of city employees, (e) adhering to state law for Councilmember salaries, (f) promotion of fair and open competition for City construction projects, and (g) including the eligibility requirement of being a United States citizen for elective office.

State Prevailing Wage Requirements: Municipal Affair or Statewide Concern?

The Vista Case

Escondido holds a considerable advantage in being able to review the experience of other cities adopting the more limited charters, especially in the area of prevailing wages. By way of background, California law has included State prevailing wage requirements since 1931, when the Legislature adopted the Public Wage Rate Act. The current requirements are set forth in Labor Code § 1720 *et seq.* State law requires that all workers employed on a public works project of more than \$1,000 must be paid the general prevailing rate of per diem wages for the work performed. Labor Code § 1771. This requirement does not apply to work done by a public agency's own forces. *Id.* The prevailing wage rates for various job classifications in each locality are set by the State Department of Industrial Relations generally based on wage rates paid in the locality and the nearest market area to a majority or the largest number of workers in a given classification. Labor Code § 1773.9.

The prevailing wage law is designed to ensure that private contractors who enter into collective bargaining agreements can compete for public works contracts. However, the law is not applicable to private agreements. Historically, charter cities were not 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. *Vial v. City of San Diego* (1981) 122 Cal. App. 3d 346, 348. However, the League of California Cities notes 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 arguing that the payment of prevailing wages is a matter of statewide concern. And, in 2004, the California Supreme Court described the issue of whether a charter city may exempt itself from compliance with the prevailing

wage law as an "open" and "important" question. See *City of Long Beach v. Dept. of Indust. Relations* (2004) 34 Cal. 4th 942.

More recently, the California Supreme Court has provided charter cities with more certainty than years past by its decision involving a legal challenge to the City of Vista's charter status which allowed the City to exempt itself from state prevailing wage laws. In the lower courts, the City of Vista successfully defended its ordinance exempting municipal contracts from prevailing wage laws based on the City's charter status. See *State Building and Construction Trades Council of California, AFL CIO v. City of Vista* (2009) 173 Cal. App. 4th 567 rev. granted. In 2012, the California Supreme Court agreed with the lower courts thereby affirming that prevailing wages could be included in a charter and that the construction of city-operated facility for the benefit of a city's inhabitants with city funds is a municipal affair. See *State Building and Construction Trades Council of California, AFL-CIO v City of Vista* (2012) 54 Cal.4th 547.

SB 7

Notwithstanding the California Supreme Court's decision, Governor Brown signed legislation enacted by the California Legislature on October 13, 2013, bearing directly on the prevailing wage issue. SB 7 prohibits a charter city from receiving or using state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with prevailing wage provisions of any public works contract. The bill prohibits a charter city from receiving or using state funding or financial assistance for a construction project if the city has awarded, within the prior 2 years, a public works contract without requiring the contractor to comply with prevailing wage provisions. The bill authorizes charter cities to receive or use state funding or financial assistance if the city has a local prevailing wage ordinance, applicable to all of its public works contracts, that includes requirements that are equal to or greater than the state's prevailing wage requirements. The bill excludes contracts for projects of \$25,000 or less for construction work, or projects of \$15,000 or less for alteration, demolition, repair or maintenance work. The bill requests the Director of Industrial Relations to maintain a list of charter cities that receive and use state funding or financial assistance for their construction projects.

As demonstrated by SB 7, the ability of the State Legislature to influence which laws become matters of statewide concern and which cities may receive state funding will likely remain a limitation on the authority and control of a charter city. Litigation over the legality of SB 7 has been initiated and may affect the validity of a charter proposal which exempts the City from prevailing wage laws.

City Treasurer

The previous 2012 charter ballot measure included provisions to ensure that the duties, responsibilities and compensation of the City Treasurer will be set by Ordinance of the City Council.

By way of background, the government of a general law city is vested in governing officers and employees, which include a City Treasurer. Cal. Gov't Code § 36501(c). The City Treasurer may be elected or appointed. The City Council may submit to the voters whether the City Treasurer should be appointed. See Cal. Gov't Code §§ 36503, 36508-36510. A City Treasurer must be an elector of

the city at the time of assuming the office. The candidate for City Treasurer must be a registered voter of the city at the time nomination papers are issued to the candidate. Cal. Gov't Code § 36502(a).

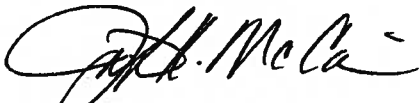
In Escondido the City Treasurer is governed by specific municipal regulations in addition to the applicable State laws. Proposition N, passed in 1986, was codified under Chapter 2, Article 4b of the Escondido Municipal Code (attached) and reflects the current municipal regulations of that office. The City Treasurer is elected at large with a term of four years. When a vacancy occurs within the first three years of the term, an election must be held to fill the vacancy between 30 days and 75 days from the occurrence. When a vacancy occurs in the last year of the City Treasurer's term, the Deputy Treasurer serves for the remainder of that term. The City Treasurer's salary must be at least 50% of the highest paid appointed department head, with the same benefits as the department head. The City Treasurer can also choose a lower salary.

The language proposed in the 2012 charter ballot measure preserved the right of the electorate to elect a City Treasurer with independent oversight of the City's finances. However, it also allowed the City Council to efficiently determine the duties, responsibilities, and compensation requirements of the City Treasurer position by ordinance. Further, it aligned the appointment process for a vacancy to be the same for all elected officials.

Draft City Charter Proposal

Based on the January 15, 2014 City Council meeting and in light of the recent redistricting process, a draft charter is attached for public comment and City Council consideration. The draft proposal mirrors the 2012 proposed charter with three exceptions. Reference to district elections has been omitted due to the recent adoption of districts pursuant to the consent decree. Reference to prevailing wages has also been omitted due to the continuing uncertainty of the law. The timeframe to fill City Council vacancies by appointment was changed from 30 days to 60 days.

Respectfully submitted,



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Attachments: Draft Charter City Proposal
Escondido Municipal Code Chapter 2, Article 4b Proposition N