

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: _____

Date: January 15, 2014

TO: Honorable Mayor and Members of the City Council

FROM: Jennifer K. McCain, Assistant City Attorney

SUBJECT: Council Work Program Item: 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. This item has been placed on the agenda by staff to ensure ample time for the City Council to consider this Work Program Item in light of the City Council meeting schedule and the strict statutory timeframes for public hearings on city charter proposals. In furtherance of the City Council's adopted goal and strategy, this staff report provides general background information regarding charter cities, a brief summary of the City's previous charter city proposal and recent legal developments which affect the content and adoption requirements for a charter ballot measure.

RECOMMENDATION:

Provide direction to staff.

FISCAL ANALYSIS:

If a charter city proposal is placed on the November 2014 ballot, the City Clerk estimates a cost of \$20,000 in addition to approximately \$4,000 for informational mailers distributed with the City water bills.

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 120 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 grant 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

If the City Council wishes to pursue the adoption of a charter, there are two alternative procedures to draft and adopt a city charter. The first is for the City Council, on its own motion, to draft the charter. The other alternative allows for the election of a charter commission which would be responsible for drafting 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 electorate.

The more expedient procedure (and the one used by the City Council in 2012) is for the City Council to 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 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

Alternatively, if the City Council opted for 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 Council or by a petition signed by not less than fifteen percent of the registered voters within the city. See Cal. Gov't Code § 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 § 34452.

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 the city's electorate. See Cal. Gov't Code § 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 § 34462.

Both approaches require that 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.

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

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, the City Clerk has estimated timelines for the November 2014 general statewide election to coincide with the required deadline to submit the district election resolutions to the Registrar of Voters as follows:

April 9, 2014	1 st Public Hearing
May 21, 2014	2 nd Public Hearing
June 18, 2014	City Council approves ballot language
June 20, 2014	Measure submitted to Registrar of Voters

The above scheduled comes well within the required statutory timeframes.

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.

2012 City Charter Ballot Measure

The City Council previously proposed a charter to the voters in 2012. A copy of the 2012 City Charter Ballot Measure is attached for your reference. 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. There has been considerable speculation that the inclusion of the district election requirement in the 2012 proposal was controversial. Moreover, as noted in the City Council Work Program, the recent establishment of districts pursuant to a Consent Decree renders any language in a proposed charter unnecessary.

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 is certain in the near future 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.

Conclusion

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 for this goal is to hold public hearings on a revised charter city proposal for possible inclusion in the 2014 election ballot. This report provides the framework for City Council discussion and possible direction to staff regarding whether to submit a charter city proposal to the electorate, the contents of such a proposal and the scheduling of the public hearings regarding the proposal in light of the statutory requirements.

Respectfully submitted,

JENNIFER K. MCCAIN
Assistant City Attorney

Attachments: 2012 City Charter Ballot Measure
Escondido Municipal Code Chapter 2, Article 4b Proposition N

Escondido Municipal Code

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Chapter 2 ADMINISTRATION

ARTICLE 4B. CITY TREASURER

Note

***Editor's note**—Art. 4B contains § c of an amendment to Proposition F (City Clerk/City Treasurer Accountability Initiative), as approved at an election held on Nov. 4, 1986. Proposition F was originally approved at an election held June 5, 1984.

Sec. 2-93. Treasurer's position created.

The office of treasurer of the City of Escondido is created as an elected position, responsible for conduct of the office in accordance with the laws of the State of California and pursuant to these provisions unless repealed, or amended by the state legislature or the people of the City of Escondido by public vote. (Prop. F., § C(1), 11-4-86)

Sec. 2-94. Term of office and filling of vacancy.

(a) If the office of Treasurer shall become vacant during the first three (3) years of the term, the city council shall set an election to be held not less than thirty (30) days nor more than seventy-five (75) days after the date on which the vacancy occurred for the purpose of selecting a treasurer to fill the remaining portion of the term.

(b) When a vacancy occurs during the fourth year of the term, the deputy treasurer shall perform all the duties of the treasurer for the remaining period of the term. (Prop. F., § C(2), 11-4-86)

Sec. 2-95. Salary and benefits.

The city council shall fix the treasurer's salary annually at no less than one-half (1/2) the highest salary paid to a city department head other than the city manager, unless a lower salary is requested by the city treasurer, with benefits equal to those provided such appointee. (Prop. F., § C(3), 11-4-86)

Sec. 2-96. Operating expenses, employees and capital expenditures.

(a) The city council shall appropriate monies for operating expenses, employee salaries and benefits, and capital expenditures as are reasonably required to fulfill the duties and responsibilities of the city treasurer.

(b) The treasurer shall be authorized to have at least two (2) employees, including one who shall be designated by the treasurer as deputy treasurer. The deputy treasurer shall be subject to the same qualifications and oath of office as the treasurer.

(c) Salaries and benefits for employees of the treasurer shall be approved by the city council in an amount equal to other city employees with the same or equivalent job classification. (Prop. F., § C(4), 11-4-86)

Sec. 2-96.1. Fiduciary bond requirements.

Fiduciary bond requirements for the treasurer and deputy treasurer shall be set by the city council after consideration of recommendations from the city treasurer and city manager. (Prop. F., § C(5), 11-4-86)

Sec. 2-96.2. Management of treasurer's office.

The treasurer shall have sole responsibility for management of that office, including, but not limited to, appointment of a deputy treasurer, hiring and discharge of employees and developing budgets for operating and capital expenditures. (Prop. F., § C(6), 11-4-86)

Sec. 2-96.3. Duties and responsibilities.

In addition to those functions, duties, and responsibilities mandated by state law and herein, the treasurer shall in accordance with all applicable provisions of state law governing the duties and responsibilities of the treasurer with respect to the handling of city funds:

(1) Receive directly or through other departments of the city all monies collected by or on behalf of the city and hold same by deposit or investment.

(2) Make disbursements for expenditures authorized by the city council.

(3) Perform all other functions necessarily incidental to the proper fulfillment of the treasurer's duties and responsibilities. Nothing in this section shall relieve the city council from its fiduciary responsibility with respect to city funds, for which both the city treasurer and city council shall be held accountable. (Prop. F., § C(7), 11-4-86)

Sec. 2-96.4. Audit.

The city treasurer and city council annually shall select an independent certified public accountant to conduct an audit of the internal controls of the office of city treasurer. (Prop. F., § C(8), 11-4-86)

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

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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

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.

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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 from 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,

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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.

2012 CITY CHARTER BALLOT MEASURE

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