

Council Meeting of
February 27, 2024

Honorable Mayor and Members
 of the City Council
 City Hall
 Torrance, California

Members of the Council:

SUBJECT: City Clerk, City Manager, and City Attorney – Consider and give direction on potential City Charter amendments.

Expenditure: None

RECOMMENDATION

Recommendation of the City Clerk, City Manager, and City Attorney that City Council:

1. Direct staff on public hearing dates for potential City Charter amendments; and
2. Direct staff on potential amendments to the City Charter.

BACKGROUND

There are two types of cities under California law: general law cities and charter cities. General law cities are bound by the State of California's general law as found in the California Constitution and the California Government Code, even with respect to municipal affairs. Municipal affairs are matters which a Charter city has control. A statewide concern is a matter over which the legislature has control.

Charter cities are governed by a charter, approved by the electorate, which operates as the "constitution" of the city. The California Constitution authorizes the adoption of a city charter. Cal. Const. art XI, §3(a). Charter cities have the power to regulate municipal affairs, including the creation and regulation of a police force, subgovernment within the city, the conduct of city elections, and dealings with municipal offices and employees. Cal. Const. art XI, §5(b). Essentially, Charter cities are subject only to conflicting provisions in the California Constitution or the United States Constitution and state law that preempts local laws on matters of statewide concern.

Agenda Item 9M from the City Council Meeting of December 20, 2022, is attached as Attachment A. The attachments to Agenda Item 9M are as follows:

- A) Information from the League of CA Cities on General Law v Charter Cities
- B) Model City Charter (9th ed. 2021) – National Civic League
- C) Charter City Toolkit (2016) – League of California Cities
- D) Torrance City Charter
- E) Agenda Item 9D on 7/23/2019
- F) Agenda Item 10B on 8/27/2019
- G) Agenda Item 10A on 10/1/2019
- H) Agenda Item 9B on 10/22/2019
- I) Agenda Item on 9E on 12/10/2019

- J) Agenda Item 9D on 4/21/2020
- K) Agenda Item 9E on 3/2/2021
- L) Arcadia City Charter
- M) Carson City Charter
- N) Chula Vista City Charter
- O) Newport Beach City Charter
- P) Pasadena City Charter

All references to attachments in this Agenda Item will be referring to the attachments to Agenda Item 9M on July 23, 2019. The Torrance City Charter is attached as Attachment D. The original Torrance City Charter was voted on and ratified by the qualified electors at an election held August 20, 1946, and filed with the Secretary of State January 7, 1947. From 1948 to 2020, the City Charter was amended over a dozen times.

In addition to amendments to the City Charter, there have been a couple of agenda items relating to elections. On April 21, 2020, the City Council considered an ordinance to allow for mailed ballot elections. (Attachment J). The ordinance was not adopted. On March 2, 2021, the City Council considered an election date change. (Attachment K). Currently, City Charter section 510 states that General Municipal Elections shall be held on the same day as the statewide direct primary election in each even numbered year. Senate Bill 970 (enacted September 18, 2020) maintains the Statewide Presidential Primary in March, but moves the Statewide Gubernatorial Primary to June. This means that the City of Torrance Municipal Election will switch every two years between March and June. The City Council decided to leave the election date alone.

Several cities have become charter cities or amended their existing city charters in the last few years. In order to give the City Council an opportunity to see what other cities have included in their city charters, Staff has attached the city charters of the following cities: Arcadia (Attachment L), Carson (Attachment M), Chula Vista (Attachment N), Newport Beach (Attachment O), and Pasadena (Attachment P).

ANALYSIS

If the Council chooses to amend the City Charter, then prior to submitting the Charter amendment to the voters, the City Council must hold at least two public hearings. The City must publish notice in the newspaper once a week for two successive weeks. Additionally, the City must post the notice in three public places within the jurisdiction at least 21 calendar days prior to the date of each public hearing. The second public hearing must be held at least 30 days after the first public hearing. One of the public hearings must be held outside of normal business hours. The City Council cannot vote on whether to submit the Charter amendment to the voters until 21 days after the second hearing. For most Charter amendments, the City Council may submit the Charter amendment to the voters at the next regularly scheduled general municipal election pursuant to Section 1301, or at any established statewide general or statewide primary election pursuant to Section 1200 or 1201, occurring not less than 88 days after the date of the order of election. Government Code § 34457, Elections Code § 1415. But, any Charter amendment that proposes to alter any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree or of any local

government employee organization must be held at the statewide general election. Elections Code § 1415.

For almost all amendments to the Charter, the election can occur at the next regularly scheduled general municipal election or at any established statewide general election or statewide primary election. But, any amendments that impact employment rights, benefits, or employment status must occur at the statewide general election. Since there are proposed amendments that impact employment rights, benefits or employment status, the proposed amendments must go to the statewide general election on November 5, 2024. It should be noted that the County suggests submitting the Measure on the Ballot the 120th day prior to the election instead of the 88th day prior to the election. This means that the City Council would need to act by July 8, 2024 instead of August 9, 2024.

Election Event & Election Code Deadline	November 5, 2024 Election
Call Election (Election – 120 days)	July 8, 2024
Consolidate Election & Put Measure on Ballot (Election – 88 days)	August 9, 2024
Deadline to Amend or Withdraw Measure & Request Letter Designation (Election – 83 days)	August 14, 2024
Impartial Analysis & Arguments For and Against (Election – 81 days)	August 16, 2022
Rebuttals (Election – 71 days)	August 26, 2024

Possible City Timeline of Events. This timeline assumes: (1) that the City Council handles the City Charter Amendment and (2) the County deadline to submit a ballot measure at least 120 days prior to the election (as opposed to the Elections Code deadline of 88 days prior to the election):

Charter Event & Date	November 5, 2024 Election
City Council action to submit charter amendment to the voters (at least 21 days after Second Public Hearing)	June 26, 2024 * would require a special meeting as it is currently a scheduled dark night or

	July 8, 2024 * would require a special meeting as this is a Monday or May 21, 2024 * if Council only held two hearings
Third Public Hearing (optional) (at least 30 days after Second Public Hearing)	June 4, 2024
Second Public Hearing (at least 30 days after First Public Hearing)	April 23, 2024
First Public Hearing	March 12, 2024

This table shows three public hearings, but only two are required by the Government Code. Staff just listed the third public hearing date as an option for the City Council. As noted in the table above, if the City Council chooses to have a third public hearing, then they would need to call a special meeting to consider whether or not to submit the measure to the voters.

Potential Amendments

Staff needs direction from City Council regarding potential amendments to the City Charter. The City Council considered various amendments to the City Charter in 2019 that can be seen in Attachments E and F. Here is the list of specific proposed amendments to the City Charter from Agenda Item 9D on July 23, 2019:

1. Charter section 603 requires the City Council to fill a vacancy in an elective office within 30 days or call election.
2. Charter section 640 allows an election to be held to make the City Clerk or the City Treasurer appointed officials instead of elected officials.
3. City Charter section 910 deals with the City Manager. There are a couple of provisions in Section 910 that the City Council could look at amending. First, the removal process in the City Charter is very complicated. If this City Charter section was amended, then the City Council would need to look at entering into an employment contract with the City Manager. Second, the City Charter provides that the City Manager can only accumulate 30 days of vacation leave and sick leave. This requires the City Manager to cash out or defer (into deferred compensation or a retirement health savings plan) all hours of vacation leave and sick leave over 30 days. This restriction requires the City of Torrance to carry a disability insurance plan for the City Manager. This could be an issue for recruitment in the future.
4. The City Attorney is covered by the Civil Service System. This is very unusual in California local government. The City Council could amend this section and make the City Attorney an at-will employee. If this City Charter section was amended, then the City Council would need to look at entering into an employment contract with the City Attorney.

5. City Charter section 1310 lists Appointive Officers, which are appointed by the City Council. Except for the City Manager and City Attorney, the City Council no longer appoints any employees that report directly to the City Council. The City Council does appoint the Finance Director, but the Finance Director reports to the City Manager. The City Council does appoint Assistant and Deputy City Attorneys, but the Assistant and Deputy City Attorneys report to the City Attorney. This section should be updated.
6. City Charter section 604 sets City Council compensation at \$100.00 per month. The City Council could amend this section to change the amount of City Council compensation.
7. Another possibility is consolidating the positions of City Treasurer and Finance Director. There are many cities that combine the two positions.
8. Any other areas of the City Charter that the City Council wants to modify.
9. The City Clerk and the City Attorney have noticed that there are some previous amendments to the City Charter that were adopted by the voters, but do not seem to be codified. We will need to research whether those City Charter Amendments were just not codified correctly or if the election results were not sent to the legislature.
10. During the meeting of July 23, 2019, the City Council added Mayor Incapacity or Vacancy as a potential amendment. This was due to the fact that Section 603 of the Charter only mentions the City Council in terms of vacancies. But, Section 610 of the Charter provides "[t]he Mayor shall be a member of the City Council for all purposes and shall have all the rights, powers and duties of a member of the City Council in addition to those powers and duties conferred upon him by virtue of his office as Mayor. Unless otherwise expressly provided to the contrary, any provision in this Charter which relates to the City Council or to members of the City Council shall be interpreted to include the Mayor as a member of the City Council."
11. The City Council has also had discussions regarding amending provisions related to the position of the City Treasurer and City Clerk in regards to the minimum requirements to hold the position and potentially the method of removal.

On March 3, 2020, the voters passed Measure U (#1 above) which gives the City Council 60 days to fill a vacancy on the City Council. Measure Q (#2 above which would have made the City Clerk an appointed position) and Measure J (#2 above which would have made the City Treasurer an appointed position) failed and the positions of City Clerk and City Treasurer remain elected positions.

Staff recommends updating the City Charter to make it gender neutral since many of the terms assume that a man will be an elected official or appointed officer. Staff further recommends updating titles of positions as well as deleting terms that are no longer used.

Please note that since one of the proposed amendments to the City Charter deals with the position of the City Attorney (#4 above) that will require outside counsel to advise the City Council on a conflict of interest that this creates for the City Attorney.

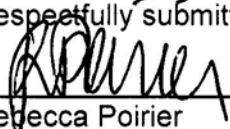
The City Council can (1) look at the proposed amendments from 2019, (2) recommend other amendments in addition to or instead of the proposed amendments from 2019, or (3) conduct a comprehensive review of the entire City Charter. If City Council wants to conduct a comprehensive review of the City Charter, then the City Council may want to look at the city charters of Arcadia (Attachment L), Carson (Attachment M), Chula Vista (Attachment N), Newport Beach (Attachment O), and Pasadena (Attachment P) as these cities have either become charter cities in the last few years or have recently amended their city charters.

CONCLUSION


The City Clerk, City Manager, and City Attorney seek direction from the City Council on

1. Public hearing dates for potential City Charter amendments; and
2. Potential amendments to the City Charter.

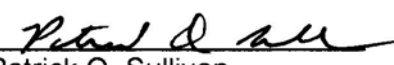
Respectfully submitted,



Rebecca Poirier
City Clerk



for: Aram Chaparyan
City Manager



Patrick Q. Sullivan
City Attorney

Attachments: A) Agenda Item 9M on 12/20/2022 (limited distribution)

ATTACHMENT A

Council Meeting of
December 20, 2022

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Clerk, City Manager, and City Attorney – Consider and give direction on potential City Charter amendments

RECOMMENDATION

Recommendation of the City Clerk, City Manager, and City Attorney that City Council:

1. Consider the methods to amend the City Charter and give direction to staff on the method that the City Council prefers;
2. Direct staff on potential timeliness and election dates; and
3. Direct staff on potential amendments to the City Charter.

BACKGROUND

There are two types of cities under California law: general law cities and charter cities. General law cities are bound by the State of California's general law as found in the California Constitution and the California Government Code, even with respect to municipal affairs. Municipal affairs are matters which a Charter city has control. A statewide concern is a matter over which the legislature has control.

Charter cities are governed by a charter, approved by the electorate, which operates as the "constitution" of the city. The California Constitution authorizes the adoption of a city charter. Cal. Const. art XI, §3(a). Charter cities have the power to regulate municipal affairs, including the creation and regulation of a police force, subgovernment within the city, the conduct of city elections, and dealings with municipal offices and employees. Cal. Const. art XI, §5(b). Essentially, Charter cities are subject only to conflicting provisions in the California Constitution or the United States Constitution and state law that preempts local laws on matters of statewide concern. Additional information from the League of California Cities on the differences between General law cities and Charter cities is attached as Attachment A. Additionally, I have attached the Model City Charter (9th ed; 2021) from the National Civil League as Attachment B. Further, I have attached the Charter City Toolkit (2016) from the League of California Cities as Attachment C.

The Torrance City Charter is attached as Attachment D. The original Torrance City Charter was voted on and ratified by the qualified electors at an election held August 20, 1946, and filed with the Secretary of State January 7, 1947. From 1948 to 1966, the City Charter was amended as follows:

Election Date:	Filed With Secretary Of State	Subject Matter Amended
April 13, 1948	January 7, 1949	<p>CHARTER AMENDMENT NO. 1 AMEND LANGUAGE CREATING BOARD OF EDUCATION</p> <p>CHARTER AMENDMENT NO. 2 ADOPTS CITY MANAGER FORM OF GOVERNMENT</p> <p>CHARTER AMENDMENT NO. 3 MAKES IT UNLAWFUL TO PLAY "DRAW POKER" IN CITY</p>
April 11, 1950	March 20, 1951	<p>CHARTER AMENDMENT NO. 2 REQUIRES CITY MANAGER TO APPROVE ALL PAYMENTS</p> <p>CHARTER AMENDMENT NO. 3 REQUIRES RESIDENCE FOR ALL EMPLOYEES AND OFFICIALS WITH EXCEPTIONS</p> <p>CHARTER AMENDMENT NO. 4 EMPLOYEES AND OFFICIALS MUST TAKE OATH AFFIRMING LOYALTY TO USA</p> <p>CHARTER AMENDMENT NO. 5 SETS FORTH LOCATION OF CITY COUNCIL MEETINGS WITHIN CITY LIMITS</p> <p>CHARTER AMENDMENT NO. 6 ESTABLISHES CONDITIONS FOR RULE BY ORDINANCE</p> <p>CHARTER AMENDMENT NO. 11 DEFINES ELIGIBILITY AND POWERS OF CITY ATTORNEY</p> <p>CHARTER AMENDMENT NO. 12 SETS TERMS FOR FILING CLAIM AGAINST THE CITY</p> <p>CHARTER AMENDMENT NO. 14 ESTABLISHES CITY COURT, JUDGE & JURISDICTION</p>

Election Date	Filed With Secretary Of State	Subject Matter Amended
April 10, 1956	January 10, 1957	<p>CHARTER AMENDMENT NO. 1 SALARY FOR CITY COUNCIL, CLERK & TREASURER</p> <p>CHARTER AMENDMENT NO. 2 APPOINTED ASSISTANT OR DEPUTY CITY ATTORNEYS</p> <p>CHARTER AMENDMENT NO. 3 EXPENDITURES GREATER THAN \$2000 AWARDED TO LOWEST BIDDER</p> <p>CHARTER AMENDMENT NO. 4 CONDITIONS FOR BRINGING SUIT OR FILING CLAIMS AGAINST THE CITY</p> <p>CHARTER AMENDMENT NO. 5 TERMS & CONDITIONS FOR AWARD OF FRANCHISE</p> <p>CHARTER AMENDMENT NO. 6 SET TERMS FOR ADOPTING AN ORDINANCE</p> <p>CHARTER AMENDMENT NO. 7 REDEFINE DUTIES OF CITY CLERK; CREATE OFFICE OF DIRECTOR OF FINANCE</p> <p>CHARTER AMENDMENT NO. 8 REDEFINE DUTIES OF CITY TREASURER</p>
October 29, 1957	February 5, 1958	<p>CHARTER AMENDMENT NO. 1 CREATE AIRPORT FUND</p> <p>CHARTER AMENDMENT NO. 2 ESTABLISH ELECTIVE MAYOR AND SIX MEMBER CITY</p>
April 10, 1962	April 26, 1962	<p>CHARTER AMENDMENT NO. 1 AIRPORT FUND/FACILITIES</p> <p>CHARTER AMENDMENT NO. 2 SCHOOL BOARD OF EDUCATION</p> <p>CHARTER AMENDMENT NO. 3 CIVIL SERVICE SYSTEM</p>

Election Date	Filed With Secretary Of State	Subject Matter Amended
April 14, 1964	May 11, 1964	CHARTER AMENDMENT NO. 1 FULL-TIME SALARIED CITY CLERK
April 12, 1966	May 25, 1966	CHARTER AMENDMENT NO. C PROHIBIT BREAST EXPOSURE

On April 17, 1973 the qualified electors of the City of Torrance approved and ratified an amended, recodified and renumbered City Charter, which was adopted in the Assembly by Assembly Concurrent Resolution No. 19 on August 9, 1973; adopted by the Senate August 13, 1973; filed with the Secretary of State on August 13, 1973 at 3:00 P.M. The City Clerk recorded said Charter in the Office of the County Recorder on September 7, 1973 at 2:47 P.M., Document No. 4140; File No. F2507. The Charter was subsequently amended as follows:

Election Date	Filed With Secretary Of State	Subject Matter Amended
November 5, 1974	January 9, 1975	PROPOSITION VV CHARTER AMENDMENT NO. 1 ELECTIVE OFFICE VACANCIES PROPOSITION WW CHARTER AMENDMENT NO. 2 GENERAL MUNICIPAL ELECTION IN MARCH OF EACH EVEN PROPOSITION XX CHARTER AMENDMENT NO. 3 COUNCIL COMPENSATION; CLERK AND TREASURER DUTIES COMPENSATION PROPOSITION YY CHARTER AMENDMENT NO. 4 POWERS & DUTIES OF CITY MANAGER; COUNCIL ACTION ON BUDGET; DEMANDS & AUDITS

Election Date	Filed With Secretary Of State	Subject Matter Amended
March 2, 1976	April 2, 1976	<p>CHARTER AMENDMENT NO. 1 30 DAY RESIDENCY FOR CITY ELECTIVE OFFICE CANDIDATES</p> <p>CHARTER AMENDMENT NO. 2 30 DAY RESIDENCY FOR BOARD OF EDUCATION CANDIDATES</p> <p>CHARTER AMENDMENT NO. 3 ALLOW CITY COUNCIL TO SET SALARY FOR CITY CLERK AND TREASURER</p> <p>CHARTER AMENDMENT NO. 4 REPEALS REQUIREMENT OF RESIDENCY FOR CITY EMPLOYEES</p> <p>CHARTER AMENDMENT NO. 5</p>
November 2, 1976	March 25, 1977	<p>CHARTER AMENDMENT NO. 1 (PROPOSITION V): TERM LIMITS (2) FOR MAYOR</p>
Election Date	Filed With Secretary Of State	Subject Matter Amended

March 7, 1978	March 27, 1978	<p>CHARTER AMENDMENT NO. 1 CODIFY DUTIES OF CITY CLERK</p> <p>CHARTER AMENDMENT NO. 2 REQUIRES MAYOR TO SIGN ONLY CONTRACTS THAT ARE REQUIRED BY ORDINANCE TO BE APPROVED BY THE CITY COUNCIL</p> <p>CHARTER AMENDMENT NO. 3 SPECIAL MEETINGS CALLED PER STATE LAW NOTICE REQUIREMENTS</p> <p>CHARTER AMENDMENT NO. 4 REPEALS SECTION 941 (INVALIDITY) OF CITY CHARTER</p> <p>CHARTER AMENDMENT NO. 5 SETS TIME LIMITS FOR CLAIMS/ACTIONS AGAINST THE CITY</p> <p>CHARTER AMENDMENT NO. 6 ALLOWS CITY CODE VIOLATIONS TO BE PROSECUTED BOTH CIVILLY AND CRIMINALLY</p> <p>CHARTER AMENDMENT NO. 6 ALLOWS CITY CODE VIOLATIONS TO BE PROSECUTED BOTH CIVILLY AND CRIMINALLY</p> <p>CHARTER AMENDMENT NO. 7 PAY CITY COUNCIL ON SAME DATE AS CITY EMPLOYEES</p>
November 8, 1988	May 1, 1988	<p>PROPOSITION QQ: CHARTER AMENDMENT ALLOWS COUNCIL TO SET VIOLATION OF AN ORDINANCE AS MISDEMEANOR OR INFRACTION</p> <p>PROPOSITION RR: CHARTER AMENDMENT ALLOWS COUNCIL TO DECIDE TO PUBLISH AN ORDINANCE IN FULL OR IN SUMMARY</p>

Amended As Follows

Ordinance No.	Date Adopted	Subject Matter Amended
3829	June 19, 2018	COUNCIL MEMBERS ELECTED BY-DISTRICT INSTEAD OF AT-LARGE

In 2019, the City Council conducted held meetings and public hearings on potential amendments to the City Charter. (Attachments E, F, G, H, and I). The City Council submitted three proposed amendments to the voters at the election on March 3, 2020:

- (1) Measure J – making the City Treasurer an appointed position instead of an elected position
- (2) Measure Q – making the City Clerk an appointed position instead of an elected position
- (3) Measure U – giving the City Council 60 days to fill a Council vacancy instead of 30 days

Measure U was passed by the voters to give the City Council 60 days to fill vacancies. Measures Q and J failed and the positions of City Clerk and City Treasurer remain elected positions.

There have been a couple of items relating to elections. On April 21, 2020, the City Council considered an ordinance to allow for mailed ballot elections. (Attachment J). The ordinance was not adopted. On March 2, 2021, the City Council considered an election date change. (Attachment K). Currently, City Charter section 510 states that General Municipal Elections shall be held on the same day as the statewide direct primary election in each even numbered year. Senate Bill 970 (enacted September 18, 2020) maintains the Statewide Presidential Primary in March, but moves the Statewide Gubernatorial Primary to June. This means that the City of Torrance Municipal Election will switch every two years between March and June. The City Council decided to leave the election date alone.

Several cities have become charter cities or amended their existing city charters in the last few years. In order to give the City Council an opportunity to see what other cities have included in their city charters, Staff has attached the city charters of the following cities: Arcadia (Attachment L), Carson (Attachment M), Chula Vista (Attachment N), Newport Beach (Attachment O), and Pasadena (Attachment P).

In 2022, the City Council requested that staff bring back an agenda item regarding potential City Charter amendments.

ANALYSIS

There are three potential ways to modify a Charter: (1) by the City Council pursuant to Government Code § 34458, (2) by a Charter Commission chosen by the voters pursuant to Government Code § 34451, or (3) by initiative (requires a petition signed by 15 percent of the registered voters in the city) pursuant to Government Code § 9255 et seq.

Procedure for the City Council method pursuant to Government Code § 34458

Prior to submitting the Charter amendment to the voters, the City Council must hold at least two public hearings. The City must publish notice in the newspaper once a week for two successive

weeks. Additionally, the City must post the notice in three public places within the jurisdiction at least 21 calendar days prior to the date of each public hearing. The second public hearing must be held at least 30 days after the first public hearing. One of the public hearings must be held outside of normal business hours. The City Council cannot vote on whether to submit the Charter amendment to the voters until 21 days after the second hearing. For most Charter amendments, the City Council may submit the Charter amendment to the voters at the next regularly scheduled general municipal election pursuant to Section 1301, or at any established statewide general or statewide primary election pursuant to Section 1200 or 1201, occurring not less than 88 days after the date of the order of election. Government Code § 34457, Elections Code § 1415. But, any Charter amendment that proposes to alter any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree or of any local government employee organization must be held at the statewide general election. Elections Code § 1415.

Procedure for Charter Commission method pursuant to Government Code § 34451

An election for choosing Charter commissioners may be called by a majority vote of the City Council or upon presentation of a petition signed by not less than 15 percent of the registered voters of the city. Government Code § 34452. The election may be held at any general or special election. There would be two questions on the ballot: (1) Shall a charter commission be elected to propose a new charter? and (2) The candidates for charter commissioner. Government Code § 34453. If the answer to the first question is yes, then the 15 candidates with the highest vote totals form as a Charter commission. The charter commission may propose amendments to the Charter and submit that to the City Clerk. Government Code § 34455. The proposed Charter shall be submitted at the next statewide general election, provided that there are at least 95 days before that election. Government Code § 34457, Elections Code § 1200.

Timelines and Election Dates

Prior to submitting the City Charter amendment to the voters, the City Council must hold at least two public hearings. The City must publish notice in the newspaper once a week for two successive weeks. Additionally, the City must post the notice in three public places within the jurisdiction at least 21 calendar days prior to the date of each public hearing. The second public hearing must be held at least 30 days after the first public hearing. One of the public hearings must be held outside of normal business hours. The City Council cannot vote on whether to submit the City Charter amendment to the voters until 21 days after the second hearing. For most City Charter amendments, the City Council may submit the City Charter amendment to the voters at the next regularly scheduled general municipal election pursuant to Section 1301, or at any established statewide general or statewide primary election pursuant to Section 1200 or 1201, occurring not less than 88 days after the date of the order of election. Government Code § 34457, Elections Code § 1415. But, any City Charter amendment that proposes to alter any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree or of any local government employee organization must be held at the statewide general election. Elections Code § 1415.

The election dates will be dependent upon the method that the City Council chooses to amend the Charter, either by the City Council or a Charter Commission. For almost all amendments to the Charter, the election can occur at the next regularly scheduled general municipal election (March 5, 2024) or at any established statewide general election (November 5, 2024) or statewide primary election (coincides with our municipal election of March 5, 2024 pursuant to Charter

section 510). But, any amendments that impact employment rights, benefits, or employment status must occur at the statewide general election.

Election Event & County Deadline	March 5, 2024 Election	November 5, 2024 Election
Call Election (Election – 120 days)	November 6, 2023	July 8, 2024
Consolidate Election & Put Measure on Ballot (Election – 88 days)	December 8, 2023	August 9, 2024
Deadline to Amend or Withdraw Measure & Request Letter Designation (Election – 83 days)	December 13, 2023	August 14, 2024
Impartial Analysis & Arguments For and Against (Election – 81 days)	December 15, 2023	August 16, 2022
Rebuttals (Election – 71 days)	December 25, 2023	August 26, 2024

Possible City Timeline of Events. This timeline assumes: (1) that the City Council handles the City Charter Amendment, (2) the County deadline to submit a ballot measure at least 88 days prior to the election, and (3) there are two council meetings a month on the second and fourth Tuesdays:

Charter Event & Date	March 5, 2024 Election	November 5, 2024 Election
City Council action to submit charter amendment to the voters (at least 21 days after Second Public Hearing)	November 28, 2023	July 23, 2024
Second Public Hearing (at least 30 days after First Public Hearing)	October 24, 2023	June 18, 2024
First Public Hearing	September 12, 2023	May 14, 2024

This table shows the minimum number of meetings required. The City Council could choose to have more meetings than the minimum required. The City Council could start earlier than these dates and staff would suggest doing so to avoid any deadline issues.

A Charter Commission would have to submit their Charter Amendments 95 days prior to the election, which would be December 21, 2023, for the election on March 5, 2024 and August 2, 2024, for the election on November 5, 2024.

Potential Amendments

Staff needs direction from City Council regarding potential amendments to the City Charter. The City Council considered various amendments to the City Charter in 2019 that can be seen in Attachments E and F. City Council can look at those proposed amendments, recommend other amendments, or conduct a comprehensive review of the entire City Charter. Staff recommends updating the City Charter to make it gender neutral since many of the terms assume that a man will be an elected official or appointed officer. Staff further recommends updating titles of positions as well as deleting terms that are no longer used.

CONCLUSION

The City Clerk, City Manager, and City Attorney seek direction from the City Council on

1. The method of Charter Amendment the City Council would prefer – City Council or Charter Commission;
2. Potential timelines and election dates; and
3. Potential amendments to the City Charter.

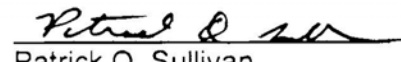
Respectfully submitted,



ecr Rebecca Poirier
City Clerk



Aram Chaparyan
City Manager



Patrick Q. Sullivan
City Attorney

Attachments (limited distribution):

- A) Information from the League of CA Cities on General Law v. Charter Cities
- B) Model City Charter (9th ed.; 2021) - National Civic League
- C) Charter City Toolkit (2016) - League of California Cities
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Introduction

Charter Cities

Did you know that, under certain home rule provisions in California's state constitution, voters can exercise a greater degree of local control than that provided by the California Legislature? Becoming a charter city allows voters to determine how their city government is organized and, with respect to municipal affairs, enact legislation different than that adopted by the state.

In 2001, the Institute for Local Government, the League's research arm, teamed up with the Hastings Public Law Research Institute to create an informational resource for those interested in understanding more about this special form of local control. The League is grateful to everyone who helped with this project including Phillip Hall of UC Hastings and the Hastings Public Law Research Institute; Karl Berger of Jenkins & Hugin LLP; Betsy Strauss (Attorney at Law); John Cook (Former City Attorney, Indian Wells); and Harvey Levine (City Attorney, Fremont). In 2007, the League updated these resources and the new documents can be found below. The League would like to thank Hilda Cantú Montoy (Attorney at Law) for her help with the update.

Charter Cities: A Quick Summary for the Press and Researchers

The following summary was drafted by the League of California Cities' legal staff, in an attempt to give the press and research communities a primer on some frequently asked questions regarding charter cities.

Charter Cities vs. General Law Cities – The Basics

The California Constitution gives cities the power to become charter cities.¹ The benefit of becoming a charter city is that charter cities have supreme authority over "municipal affairs."² In other words, a charter city's law concerning a municipal affair will trump a state law governing the same topic.³

Cities that have not adopted a charter are general law cities. General law cities are bound by the state's general law, even with respect to municipal affairs. Of California's 478 cities, 108 of them are charter cities.

The charter city provision of the State Constitution, commonly referred to as the "home-rule" provision, is based on the principle that a city, rather than the state, is in the best position to know what it needs and how to satisfy those needs.⁴ The home-rule provision allows charter cities to conduct their own business and control their own affairs.⁵ A charter maximizes local control.

A city charter, in effect a city's constitution, need not set out every municipal affair the city would like to govern. So long as the charter contains a declaration that the city intends to avail itself of the full power provided by the California Constitution, any city ordinance that regulates a municipal affair will govern over a general law of the state.⁶

Defining 'Municipal Affairs'

Determining what is and is not a "municipal affair" is not always straightforward. The California Constitution does not define "municipal affair." It does, however, set out a nonexclusive list of four "core"

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categories that are, by definition, municipal affairs.⁷

These categories are 1) regulation of the "city police force"; 2) "subgovernment in all or part of a city"; 3) "conduct of city elections"; and 4) "the manner in which . . . municipal officers [are] elected."⁸ Beyond this list, it is up to the courts to determine what is and is not a municipal affair.

To determine if a matter is a municipal affair, a court will ask whether there are good reasons, grounded on statewide interests, for the state law to preempt a local law.⁹ In other words, courts will ask whether there is a need for "paramount state control" in the particular area of law.¹⁰ The Legislature's intent when enacting a specific law is not determinative.¹¹

The concept of "municipal affairs" is fluid and may change over time.¹² Issues that are municipal affairs today could become areas of statewide concern in the future.¹³ Nonetheless, there are some areas that courts have consistently classified as municipal affairs. These include:

- Municipal election matters¹⁴
- Land use and zoning decisions (with some exceptions)¹⁵
- How a city spends its tax dollars¹⁶
- Municipal contracts, provided the charter or a city ordinance exempts the city from the Public Contract Code, and the subject matter of the bid constitutes a municipal affair.¹⁷ Thus, a charter may exempt a city from the State's competitive bidding statutes.

Likewise, there are some areas that courts have consistently classified as areas of statewide concern, including:

- Traffic and vehicle regulation¹⁸
- Tort claims against a governmental entity¹⁹
- Regulation of school systems²⁰

How to Become a Charter City

To become a charter city, a city must adopt a charter. There are two ways to adopt a charter:

- The city's voters elect a charter commission.²¹ The commission has the responsibility of drafting and debating the charter.
- The governing board of the city, on its own motion, drafts the charter.²²

In either case, the charter is not adopted by the city until it is ratified by a majority vote of the city's voters.²³

For more information about charter cities, please visit the "Charter Cities" section of the League's Web site at <http://www.cacities.org/chartercities>.

¹ Cal. Const. art. XI, § 3(a).

² Cal. Const. art. XI, § 5(a).

³ *Johnson v. Bradley*, 4 Cal. 4th 389, 399 (1992).

⁴ *Fragley v. Phelan*, 126 Cal. 383, 387 (1899).

⁵ *Id.*

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⁵ There are some exceptions to this rule. For example, a charter city is bound by the Public Contract Code unless the city's charter expressly exempts the city from the Code's provisions or a city ordinance conflicts with a provision in the Code. See Cal. Pub. Cont. Code § 1100.7.

⁷ Cal. Const. art. XI, § 5(b); *Johnson*, 4 Cal. 4th at 398.

⁸ Cal. Const. art. XI, § 5(b).

⁹ *Johnson*, 4 Cal. 4th at 405.

¹⁰ *Id.* at 400.

¹¹ *Id.* at 405.

¹² *Cal. Fed. Savings & Loan Ass'n v. City of Los Angeles*, 54 Cal. 3d 1, 16 (1991); *Isaac v. City of Los Angeles*, 66 Cal. App. 4th 586, 599 (1998).

¹³ *Isaac*, 66 Cal. App. 4th at 599.

¹⁴ *Mackey v. Thiel*, 262 Cal. App. 2d 362, 365 (1968).

¹⁵ See *Brougher v. Bd. of Pub. Works*, 205 Cal. 426, 440 (1928).

¹⁶ *Johnson*, 4 Cal. 4th at 407.

¹⁷ Pub. Cont. Code § 1100.7; *R & A Vending Services, Inc. v. City of Los Angeles*, 172 Cal. App. 3d 1188, 1191 (1985); *Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.*, 71 Cal. App. 4th 38, 51 (1998).

¹⁸ Cal. Veh. Code § 21.

¹⁹ *Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 247 (1942).

²⁰ *Whisman v. San Francisco Unified Sch. Dist.*, 86 Cal. App. 3d 782, 789 (1978).

²¹ Cal. Gov't Code § 34451.

²² Cal. Gov't Code § 34458.

²³ Cal. Gov't Code §§ 34457, 34462.

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>Procedures set forth in Meyers-Milias-Brown Act (Cal. Gov't Code § 3500) apply, but note, "[T]here is a clear distinction between the <i>substance</i> of a public employee labor issue and the <i>procedure</i> by which it is resolved. Thus there is no question that 'salaries of local employees of a charter city constitute municipal affairs and are not subject to general laws.'" <i>Voters for Responsible Retirement v. Board of Supervisors</i>, 8 Cal.4th 765, 781 (1994).</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 currently has before them a case that will provide the opportunity to decide whether prevailing wage is a municipal affair or whether it has become a matter of statewide concern.</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. XIII C.</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. XIII C, § 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>

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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 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).

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- 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.
- 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).

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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.

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What is in a charter?

While a city charter is not required to have any particular provisions in it, a city will often reserve for itself the greatest amount of power it can when it adopts a charter. To accomplish this goal, the charter must include a declaration that it is the intention of the city to avail itself of the full power provided by the state constitution to charter cities. However, the city is not required to extend the breadth of its charter any further than it wishes.

Some of the common areas that are explicitly regulated in a charter are:

- The date and conduct of city elections;
- Regulations on the appointment of municipal officials;
- The terms and payment of municipal officials;
- The process for removal of municipal officials;
- Form of government;
- Budget adoption;
- The number, pay, qualifications, and appointment of deputies, clerks, and other employees that each municipal officer will have;
- Sub-government in all or part of the city;
- The tenure of office for deputies, clerks, and other employees;
- The process for removal of such deputies, clerks, and other employees; and
- The constitution, regulation, and government of the local police force.

A number of California cities' charters are available online. The National Civic League also has a model charter project.

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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 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

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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.

Information from the nonpartisan California League of Cities:
<http://www.cacities.org/chartercities>

How to amend or repeal a charter

If a citizens group, or the city's governing body, wishes to amend or repeal a portion of the city's charter, the steps remain largely the same as they are for drafting a charter. There are, however, two notable exceptions. First, the petition calling for the repeal or amendment needs only ten percent of the electorate's signatures, instead of the previous fifteen percent. See Cal. Elec. Code sections 9215 and 9255. The other notable difference has to do with the charter itself. A city charter may establish different rules for the municipal elections process than those laid out by the state legislature in the Elections Code. If this is the case, the city's charter will govern the elections process used to appeal or amend the city's charter, instead of the general laws laid out in the Elections Code.

Information from the nonpartisan California League of Cities:
<http://www.cacities.org/chartercities>

Charter Cities

Adelanto	Lemoore
Alameda	Lindsay
Albany	Loma Linda
Alhambra	Long Beach
Anaheim	Los Alamitos
Arcadia	Los Angeles
Bakersfield	Marina
Bell	Marysville
Berkeley	Merced
Big Bear Lake	Modesto
Buena Park	Monterey
Burbank	Mountain View
Carlsbad	Napa
Cerritos	Needles
Chico	Newport Beach
Chula Vista	Norco
Compton	Oakland
Culver City	Oceanside
Cypress	Oroville
Del Mar	Pacific Grove
Desert Hot Springs	Palm Desert
Dinuba	Palm Springs
Downey	Palmdale
El Centro	Palo Alto
Eureka	Pasadena
Exeter	Petaluma
Folsom	Piedmont
Fortuna	Placentia
Fresno	Pomona
Gilroy	Port Hueneme
Glendale	Porterville
Grass Valley	Rancho Mirage
Hayward	Redondo Beach
Huntington Beach	Redwood City
Indian Wells	Richmond
Industry	Riverside
Inglewood	Roseville
Irvine	Sacramento
Irwindale	Salinas
King City	San Bernardino
Kingsburg	San Diego
Lancaster	San Francisco
La Quinta	San Jose

Information from the nonpartisan California League of Cities:
<http://www.cacities.org/chartercities>

San Leandro	Signal Hill
San Luis Obispo	Solvang
San Marcos	Stockton
San Mateo	Sunnyvale
San Rafael	Temple City
San Ramon	Torrance
Sand City	Truckee
Santa Ana	Tulare
Santa Barbara	Vallejo
Santa Clara	Ventura
Santa Cruz	Vernon
Santa Maria	Victorville
Santa Monica	Visalia
Santa Rosa	Vista
Santee	Watsonville
Seal Beach	Whittier
Shafter	Woodlake

Total Cities: 120



National Civic League
Model City Charter



Modernizing the Model City Charter:
Enhancing Equity, Engagement and Effectiveness

**Model City Charter
Ninth Edition
National Civic League
Final Draft, November 1, 2021**

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November 2021

Letter from our Co-Chairs:

The Model City Charter was first introduced to the public in 1900, a time of sweeping social and political reforms. The early versions of the model focused on addressing some of the most pressing challenges facing those growing cities—structural inefficiency, political corruption and the need for a merit system for public employees.

Given the challenges facing our communities in 2021, it is only fitting that this revised and updated edition of the Model City Charter addresses the need for heightened attention to the role of public engagement in local governance and the need to improve equity.

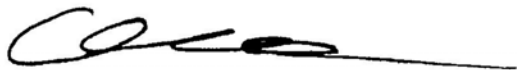
One of the results of the model-makers' early focus on professionalism and integrity is the relatively high trust levels among the public for local government in comparison to federal and state governments, as well as many other institutions. Part of this trust at the local level is due to the great work by city and county officials to engage the public and improve equity.

The Model City Charter has been used by cities and towns for over 120 years to structure their municipal governments and draft or revise their charters. With the last major revision occurring in 2000, we were honored to lead a year-long process involving dozens of thought-leaders and organization representatives to update the document and emphasize key principles, such as equity and civic engagement.

The new Model continues to advocate professional, nonpartisan city governance, with mayors and legislative bodies that work together with a manager to run city departments and solve public problems. While not all activities need to become part of the charter, we make a strong case that cities and towns need to structure all of their activities to reflect social equity and civic engagement, involving all the members of their community in civic affairs.

Please join us in the coming years in revisiting your charters to ensure that they reflect the values that we hold dear, that inclusive local governance involving everyone in our communities working together in a civil, pragmatic manner, can help our cities and towns thrive and contribute to addressing not only local matters but also the challenges that face our nation.

Signed,



Clarence Anthony, CEO &
Executive Director, National League of Cities



Marc A. Ott, CEO/Executive Director
International City/County Management
Association



Ronald Loveridge,
National Civic League
Former Mayor, City of Riverside, California



Kendra Stewart, Past President, Board Member,
American Society for Public Administration

INTRODUCTION

The Model City Charter is the product of more than 100 years of interaction of thought leaders on urban governance, practitioners in city government, and scholars who conduct research on local government. In the early editions, the thought leaders guided the others on how government should be organized. In later editions and now, they work together to refine recommendations about the ideal features city governments should have in order to achieve the highest level of governmental performance. Increasingly, community activists have been involved in the charter review process as well. In the new edition, the perspectives of all contributors are combined to develop the best current recommendations for promoting ideal city governments.

In preparing to review and revise the Model City Charter, the National Civic League recognized the need to better integrate a newer mission of promoting civic engagement and social equity with the older mission of emphasizing efficiency, expertise, and ethics. At the time of this revision, cities are operating in a context of increased consciousness around issues of inequities based on race, ethnicity, sexuality, gender, and socio-economic standing.

While national attention to police misconduct and the COVID-19 pandemic provide important background to the emphasis on equity in this edition of the Model City Charter, more persistent challenges such as disparities in access to and quality of education, housing, employment, economic opportunity, and technology motivate the emphasis on equity. Accordingly, this edition of the Model City Charter highlights the importance of using a social equity lens—paying careful attention to race, ethnicity, and other social characteristics when analyzing problems, looking for solutions, and defining success—throughout local government and stresses the urgency with which local government must govern for equity.

Current conditions also elevate the importance of active efforts to engage the public in governmental processes and community problem-solving efforts. Opportunities for community engagement have been present from the beginning of democratic governance as voters have selected officials in elections and approved certain programs in referenda. Select community members could take part in advisory bodies. These opportunities for participation have expanded but have tended to be exchanges between government and residents—providing information and receiving and soliciting resident input—rather than active engagement of residents through incorporation and collaboration.

Incorporating a full range of residents in the community regardless of their citizenship status means working directly with them throughout the governmental process to ensure that public concerns and aspirations are consistently understood and considered by staff. Collaboration involves partnering with residents in each aspect of the decision-making process, from identifying issues, developing alternatives, choosing the preferred solution, and implementation. Residents have received programs and services, but they can also be involved in addressing many community problems that can only be solved with active resident participation. Local governments have unique institutional mediating structures that can be established and leveraged toward this purpose.

As has been the case since the second edition in 1915, the ninth edition promotes the council-manager form of government as the core organizational feature. This form introduced a new governance model to American government that is based on a unitary system rather than the separation of powers, a framework that frequently results in conflicts between branches of government. All powers of the city are vested in a popularly elected council, which appoints a professional manager who is continuously responsible to the public and removable by the council. It has improved the quality of the governmental process and city government performance.

Over the next six editions of the model charter, many revisions were made to strengthen the political leadership of the mayor, increase the representativeness of the council, promote civic participation, and encourage the development of regional approaches to issues that overlapped the boundaries of urban areas. These refinements to the model and innovations by local officials have strengthened the form. This new edition of the model charter continues the interaction of theory and practice. It reviews the structure now used by a majority of cities with more than 10,000 residents and examines changes that have been introduced by some governments to respond to new challenges.

The new edition offers further enhancements for local governments to consider. It is an important guide for all cities and towns whether they need to change their form of government or revise their existing charters. It proposes refinements and identifies the importance of incorporating new features and commitments. For those council-manager cities that face a movement to change the form of government to the mayor-council form based on separation of powers, the model charter will guide them in asserting the advantages of the council-manager form and countering misleading arguments in favor of abandonment. As always, it provides the arguments to support adopting the council-manager form for cities that use a different form.

The council-manager plan combines democratic governance with the capability to operate city government with the values of effectiveness, efficiency, and economy. The council-manager form promoted these “three e’s,” a capable governing body, and a city manager accountable to the council. The manager would promote these values by proposing sound policy options to the council and by using professional expertise and experience to ensure that the city administration accomplished council-approved policies effectively while achieving the highest level of efficiency and economy in use of resources. Now it is widely recognized that the development of policy proposals should also promote equity and the process of adopting, implementing, and assessing policies should engage a full range of residents.

Commitment to Social Equity

It is important to recognize that a long history of discrimination and the challenge of fully incorporating new and recently recognized groups into American society requires more than treating all equally, although equality would address many shortcomings. Access to services, quality of services, and expanded engagement can be promoted by equal treatment. Promoting equity also requires a recognition of disparities in conditions that affect the level of need, the effectiveness of programs, and the impact of policies on different population groups. Many governments have increased the diversity of their staffs, but still do not include persons with diverse characteristics at all levels of the organization or in making a full range of decisions or recommendations. A commitment to inclusion is needed to address these shortcomings. Fundamentally, equity cannot be assured unless government officials are aware of and seek to alleviate disparities across groups with different characteristics. A comprehensive and continuous assessment of access, quality, and impact of services is needed. Some pioneering governments are incorporating a commitment to social equity, but most governments need to do more.

Attention to social equity is found in additions throughout the Model City Charter. Adopting an equity lens will reshape decisions and activities across all departments and programs. Advancing equity throughout local governments requires a fundamental reorientation of day-to-day operations.

To support such efforts, municipalities may consider creating a department, office, or agency whose sole task is to provide support to other divisions in local government with respect to the adoption of an equity lens. Given the breadth of implementation required for an equity lens to be applied—and the importance and urgency of the issue—an equity office is best organized as a direct report to the city manager’s office.

That said, equity will be best advanced through the organization if each unit has designated an individual or a small team to serve as a lead resource within their department and a liaison to the city manager's equity office. This office should be tasked with supporting the implementation of an equity lens, through the development of trainings, tools, communications, and other activities related to equity. (A companion publication is attached as an appendix that can be used as a resource for cities to implement equity recommendations.)

Expanding Public Engagement

There has been a long-standing commitment to increasing public engagement and participation. The need to expand provision of information to residents and opportunities for input was recognized in the Eighth Edition of the Model City Charter. There is increasing awareness, however, that new approaches are needed to engage residents in ongoing interactions with officials that go beyond one-way communication out of and into government.

Provisions should be made for resident input, and governments should provide information to the public, but more interaction is needed. Officials need to better understand the concerns residents have and how they would suggest addressing them at early stages in developing a proposal. They need to understand how programs and service delivery are affecting residents of all kinds in all parts of the jurisdiction. They need to be included as partners in assessing and helping to improve service delivery and in solving problems in their communities.

Community advisory boards are one tool to promote engagement, but the presence of these boards cannot be used to exclude other residents from being involved. Engagement means that residents and officials will know and understand each other better. Engagement also entails having an approach to involving residents that welcomes their participation in the implementation or "coproduction" of services and solutions to problems. Combining the two new e's, some local governments are developing principles of equitable engagement to ensure that all persons and groups have meaningful opportunities to be involved. The emphasis on engagement also indicates that existing provisions in the Model Charter regarding transparency need to be observed.

The Model City Charter includes a new Article VII on the Role of Public Engagement in Governance. It identifies the forms of engagement that should be promoted in local government and the principles that should guide the city's public participation processes. Finally, the article outlines the components that should be examined and the inclusive process that should be used to evaluate the public participation strategy and process. Public participation processes should expand the capacity for meaningful resident engagement by developing collaborative working relationships and expanded knowledge of government.

The Case for the Council-Manager form and Features that Enhance its Performance

Although the council-manager form was once thought of as being fit only for small cities, it is now used by 61 percent of cities over 100,000 in population and five of the 11 cities with over a million residents.¹ Since 1990, local governments in 32 of America's 317 cities over 100,000 in population have grappled with the question of whether they should change from council-manager to mayor-council form or vice versa and held a referendum to change the form of government. The council-manager form has been replaced with the mayor-council form in 12 cities. On the other hand, the council-manager form replaced the mayor-council form in four cities. Abandonment of the council-manager form was rejected

¹ James H. Svara and Douglas J. Watson, *More than Mayor or Manager*. Washington, D.C.: Georgetown University Press, 2010, pp. 12-16.2

during this period in 15 large cities. The campaigns in support of the council-manager form often fail to include some important advantages of the form—in particular the leadership potential of the mayor and the full range of contributions by the city manager who is commonly described as simply responsible for day-to-day management of the city.²

To inform residents of cities that may consider adopting the council-manager form, it is important to review the advantages of the council-manager form and highlight features that enhance its performance.

The council in the council-manager form is a true governing body, not just a legislative body that checks the mayor. The council sets policy, of course, but it also sets goals and priorities, reviews and revises policy proposals, and oversees the performance of the manager and staff. The council chooses the city manager—the appointed chief executive officer—who is the best qualified applicant from across the country to achieve the vision the council has established for the city, and monitors the manager’s performance. The council conducts real oversight through review of extensive information provided by the city manager.

Reference is made in the Model City Charter for the first time to the council’s responsibility to regularly evaluate the performance of the city manager. Council decisions are built on the comprehensive and objective information and advice from the city manager that is provided to all of the council members and to the public. This kind of communication contributes to the inherent transparency of the council-manager form. The features of the council-manager form make it less likely than the mayor-council form to have instances of corruption.³

In the mayor-council form the council’s role may be limited to reacting to the mayor’s proposals based on information provided by the mayor. The oversight role can be constrained by limits on the performance data that the mayor will permit departments to provide to the council. A council member could be the beneficiary of a reward from the mayor for supporting his/her proposals, but council members could be punished for taking an independent stand. As is true of separation-of-powers structures at the state and national level, conflict between the mayor and council is likely and can produce divisions within the council based on differing levels of allegiance to the mayor. Disagreement between a majority of the council but fewer than the number needed to override a mayoral veto and the mayor can produce an impasse. In the council-manager form, the council is designed to be the governing body.

In contrast to past editions, the Ninth Edition states a preference for the use of district elections or combinations of district and at-large seats to ensure that the council accurately represents the population as a whole and to promote a closer relationship between council members and residents. Attention should also be given to promoting a large turnout of voters in council elections.

It is advantageous to have off-year, November elections to focus attention on local issues. Although some argue that it would be useful to take advantage of generally higher rates of voting by holding city elections along with state and national elections, it is difficult to prevent local issues from getting

² Svava and Watson, pp. 312-320.

³ Kimberly Nelson and Whitney B. Alfonso, “Ethics by Design: The Impact of Form of Government on Municipal Corruption,” *Public Administration Review*, April, 2019.

obscured when the local election is combined with higher level offices. Also, partisan divisions in the state and national campaigns may carry over to officially nonpartisan local elections.

Action should be taken to address the impediment to turnout caused by using a two-stage process. The turnout for the primaries that narrow the field of candidates, or for run-off elections, to choose the winner if no candidate receives a majority of votes, is generally lower than the general election. A remedy is available by using ranked-choice voting—the current form of an “instant runoff”—to determine winners in a single election. In addition to increasing turnout in the single election that determines the candidates chosen for office, ranking candidates means that voters’ preferences beyond their first choice can influence the outcome if their first-choice candidate is not selected. In ranked-choice election campaigns, candidates have an incentive to be more civil toward other candidates and reach out to the supporters of other candidates rather than simply attacking the other candidates.

The council-manager mayor is not a “weak” mayor. That term refers to cities that use the weak mayor-council form in which the mayor has certain executive powers but not others. Nor is the mayor an insignificant figurehead. As the authors of the introduction to the Eighth Model City Charter explained,

the mayor in the council-manager form is the chief legislator, the leader of the policy-making team. This mayor can be a “strong” mayor who, not having to overcome the offsetting power of the council or not being bogged down with the details of managing the city’s staff, can focus on facilitative leadership. The mayor is effective by helping the council and staff perform better. High involvement by the council and the manager and constructive relationships among officials are indicators of successful leadership by the mayor. Effectiveness does not mean charting an independent path or taking over tasks from the manager.

The mayor is a comprehensive leader who draws on the features of the council-manager form of government to make it even more effective. The mayor is a community leader who interacts extensively with the public. The mayor strives to create a shared vision for the city with the support of the entire council. The facilitative mayor helps to assure that there is extensive and positive communication between the council and the manager. The mayor also focuses on communicating with the public and ensuring that their views are being incorporated in the decision made by the council and the priorities being pursued by staff. The leadership role of the mayor is supported by direct election. Candidates speak to the full population about citywide issues and the proposals they are advancing, and residents are able to indicate which candidate and proposals they support.

City managers do not just handle the day-to-day operations of city government, as the typical description of the manager’s role emphasizes, although this is a crucial contribution. They also manage achieving the long-term goals of the city and provide the council with a professional perspective on the opportunities and challenges that the city faces. Managers are a driving force for innovation and improved performance, and council-manager cities have a stronger record of innovation than mayor-council cities.

Governments are increasingly involved in partnerships to advance their goals, and top administrators must develop strategies to promote their success. John Nalbandian argues that local government managers increasingly act as facilitators, “promoting and nurturing partnerships...both within city government as well as between it and other organizations.”⁴ Compared to elected officials, managers are uniquely

⁴ John Nalbandian, “Politics and Administration in Local Government,” *International Journal of Public Administration*, 29, 1052.

positioned to carry out this function, without the risk that the activity will turn into coalition-building for political purposes.

Governments work with nonprofits, resident groups, and other governments in a complex array of activities. Local government managers are called upon to be knowledgeable about these partnerships and the interactions among them, understand their goals, and take steps to support them even though many of the participants are not members of the local government staff. In recognition of these new responsibilities, the Society of Local Authority Chief Executives in Great Britain calls its members the “chief strategic officers” in their governments (SOLACE 2005).⁵ It is the city manager who is best situated to oversee strategy by being knowledgeable about and facilitating the success of these joint endeavors.

The council-manager form with an elected mayor provides for vision, shared governance, informed advice and complete information about performance, a professional executive with the requisite experience and expertise, and continuous transparency. Local governments do not have to keep using or revert to the separation-of-powers structure used at higher levels of government nor do they have to take the chance that a mayor as chief executive is not well prepared for the office or not able to handle its broad scope of responsibilities. The council is not constrained by its subordinate position, and the performance of administrative staff is not impacted by the political interests of the mayor. The council-manager form is designed for local governments and intended to promote the best performance of all the officials. It is also more likely to be receptive to innovation and emerging values.

At the present time, addressing bitter partisanship, polarization, and a declining level of public confidence in powerful institutions requires a high level of adaptiveness and innovation. These challenging conditions call for a new framework for a twenty-first century reform movement that fosters resident-centered democratic governance that addresses institutional racism, political conflict, and declining confidence in democracy by expanding the civic agency of everyday people, and building resilient, local, multiracial democratic institutions. We hope this model charter can contribute to an environment in which local governments can rebuild confidence in democratic institutions, bridge the polarization gap and bitter partisan divides, increase our capacity for public problem-solving and move the country toward a genuine, participatory, multi-racial democracy while retaining the enhanced capacity for effective governance that has been developed over the past century.

- *James Svava, Steering Committee Member; Senior Fellow, School of Government, University of North Carolina-Chapel Hill*

⁵ Society of Local Authority Chief Executives in Great Britain, *Leadership United: Executive Summary*. London: Society of Local Authority Chief Executives and Senior Managers, 2005.

PREAMBLE

A preamble typically consists of three elements: an identification of the source of authority for the charter, a statement of the action that is to be taken, and a declaration of the intent of the charter. The source of authority for a city charter is the state constitution or statutory law. The action that is to be taken is the adoption of the charter. The declaration of the intent of the charter comprises subjective statements (not enforceable by law) that underscore or illuminate the characteristics of a municipality, such as the values of the city, lofty goals, or even the —personality of the drafting commission. Charters within the same state often use the same language in their preambles; the type of language used and the manner in which issues are addressed often provide a glimpse of regional characteristics.

Preamble

We the people of the [city/town] of _____, under the constitution and laws of the state of _____, in order to secure the benefits of local self-government and to provide for an honest and accountable council-manager government do hereby adopt this charter and confer upon the city the following powers, subject to the following restrictions, and prescribed by the following procedures and governmental structure. By this action, we secure the benefits of home rule and affirm the values of representative democracy, professional management, strong political leadership, public engagement, diversity and inclusiveness and regional cooperation.

Source of Authority

Identification of the source of authority tends to be standard: “We the people of Your City, under the constitution and laws of the state...”

Occasionally, however, the source of authority is embellished with descriptive elements that reflect valued characteristics of the community. Two examples follow:

“We the people of Your City, with our geographical and cultural diversity...”

“Treasuring the many wonders of our unique environment and realizing that the power and duty to govern and protect this region is inherent in its people, we the people of Your City...”

Action Taken

The standard phrasing for the action statement is “do hereby adopt or some variation. Following are two examples of action taken by the source of authority:

... do hereby adopt this charter

... do hereby adopt this home rule charter.

Intent

This can be the most creative section of the preamble (and of the charter itself). The standard beginning of the intent section is: “By this action, we . . .” An expression of objectives, goals, purposes, and/or values typically follows. The intent section can contain merely a reference to home rule or self-determination, or it can contain a combination of purposes, goals, values, and even civic aspirations. Preambles typically reflect values such as self-determination, diversity and inclusiveness, justice, equality, equity, efficiency, responsiveness, participation of community members, and environmental stewardship.

Diversity and inclusiveness references should address the right of every individual to equal opportunities and establish nondiscrimination rules. Examples follow.

“By this action, we:

provide for local government responsive to the will and values of the people and to the continuing needs of the surrounding communities. . .

secure the benefits of home rule, increase resident participation reflecting rights or equal opportunity of the broad diversity of the city, promote social equity, improve efficiency and effectiveness, and provide for a responsible and cooperative government. . .

“each individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the city and to have an equal opportunity to participate in all aspects of life...”

“discrimination is prohibited based on race, color, religion, national origin, gender, age, sexual orientation, gender expression, marital status, military status or physical or mental disability...”

establish a government which advances justice, equity, inspires confidence, and fosters responsibility...”

Preambles should contain all three elements. The intent section at the least should contain a reference to home rule or self-determination (very few do) and could suggest elements of contemporary governing values such as regional cooperation, economic vitality, diversity and inclusiveness, comprehensive representation, strong community leadership, and public participation.

Article I POWERS OF THE CITY

Introduction.

A charter should begin by defining the scope of the city's powers. It should address the context in which such powers operate, including the effect of state law and the desirability of cooperation with other localities.

Section 1.01. Powers of the City.

The city shall have all powers possible for a city to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter.

Commentary.

The city should lay claim to all powers it may legally exercise under the state's constitution and laws.

Nevertheless, some cities, particularly smaller ones, may not wish to exercise all available powers. Cities may restrict their own power: (1) by specific provisions in the appropriate parts of the charter; (2) by ordinance, since the section does not require that all the powers claimed be exercised; or (3) by inaction-- i.e., failure to exercise powers. The powers of the city may also be limited by state or federal court decisions.

This section ensures that the city claims the entirety of the grant of authority available to it from the state. Through this means, the charter is restricted from embracing less in its terms than the constitutional home rule grant allows or from containing an inadvertent omission or ambiguity that could open the door to restrictive judicial interpretation. This is the most that the charter can do as the extent of the powers available to the city will depend on the state's constitution and statutes and judicial decisions.

The general powers provision of a charter must be tailored to the laws of each state. The courts of some states do not give effect to a charter statement of powers expressed in general terms. Instead, they require that the charter enumerate all of the powers claimed. The words —as fully and completely as though they were specifically enumerated in this charter, at the end of § 1.01—, cannot be used in a charter in a state that requires the enumeration of powers.

Charter drafters should carefully study their state's law on local government powers before using this Model provision. To reduce the likelihood of restrictive judicial interpretation, a section like § 1.02 below should accompany this section.

Questions of restrictive court interpretation aside, and assuming that a state's law does not require an enumeration, this section may be utilized effectively under any of the existing types of home rule grant, as well as that of the Model State Constitution (6th Edition, 1968) published by the National Municipal League. It may be used regardless of whether the home rule grant appears in a constitution, optional charter law, or other general enabling act.

Section 1.02. Construction.

The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this article.

Commentary.

A charter should encourage courts to interpret the powers of the city as broadly as possible. Such a provision discourages a restrictive interpretation of the general powers statement in § 1.01. If the charter enumerates powers, this section may prevent courts from interpreting the list of specific powers as evidencing intent to exclude other or broader powers.

Section 1.03. Intergovernmental Relations.

The city may participate by contract or otherwise with any governmental entity of this state or any other state or states or the United States in the performance of any activity which one or more of such entities has the authority to undertake.

Commentary.

This section empowers the city to participate in intergovernmental relationships--to receive assistance from the federal, state, and other local governments, to be represented in regional agencies established under federal or state law or intergovernmental agreements, and to perform jointly with any other governmental jurisdiction any function which any of the participating jurisdictions may perform alone.

The nature of intergovernmental relations is rapidly changing. Most cities are an integral part of a region. In that regard, engaging in cooperative intergovernmental relations is fundamental to the effective functioning of a city and the region of which it is a part. Although the purpose of engaging in intergovernmental relations is primarily to further the ends of the city, the health of the region should also be of concern to the city.

Superior state statutes (such as a general powers provision), which cannot be altered by a charter provision, may govern an intergovernmental relations provision. States may enact these on an ad hoc basis, each dealing with a particular project, program, or regional or metropolitan agency. With intergovernmental agreements becoming more common, states may have general intergovernmental authorizing statutes or constitutional provisions.

For example, New Hampshire state law provides: N.H.R.S. Title 3, Chapter 53-A:1 Agreements between government units.

Purpose. – It is the purpose of this chapter to permit municipalities and counties to make the most efficient use of their powers by enabling them to cooperate with other municipalities and counties on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

If states have neither specific nor general authorization, charter drafters should look for court opinions on intergovernmental agreements in the state. Courts may provide guidance on the extent of a city's power to cooperate with other governments in the absence of enabling state legislation. Specific legislation on intergovernmental agreements often involves political questions and considerations of state constitutional and statutory limitations on cities' financial and borrowing powers. In joint federal-municipal projects involving substantial sums, state legislative control over municipal powers, coupled with restrictive judicial doctrines, may require specific state legislative approval.

Article II CITY COUNCIL

Introduction.

The city council, elected by, representative of, and responsible to the residents of the city is the fundamental democratic element of the council-manager plan.

Section 2.01. General Powers and Duties.

All powers of the city shall be vested in the city council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law.

Commentary.

This section does not specifically enumerate the powers of the council. An enumeration of specific powers in this article will not enlarge the powers of the council and may operate to diminish them if utilized by the courts to support restrictive interpretations (see commentary to § 1.02). In his commentary on the first Model City Charter endorsing the council-manager plan (—The City Council in The New Municipal Program, 1919), William Bennet Munro noted that:

So far as the composition and powers of the city council are concerned the plan set forth in the Model City Charter rests upon the conviction that there should be a place in the municipal framework for a body which will be avowedly deliberative, supervisory, and policy-determining, which will be wieldy enough to perform these functions properly and yet large enough to be truly representative of the community's options. . . . The Model City Charter accordingly provides for a council with a membership which can be enlarged or contracted according to the varying size and needs of different cities. This council is to be the pivot of the municipal system. It is to be the final source of local authority, not sharing its powers but delegating some of them. That is to say, to a city manager chosen by the council and holding office during the council's pleasure, it assigns the entire charge of administrative affairs. . . . As for the powers of the city council. . . . It is designed to embody, as it were, the sovereignty of the community. It is the legislative organ of the city exercising all the authority which the municipal corporation possesses—with one important exception only. This restriction is that the city council, once it selects a city manager, devolves all direct administrative authority upon him.

Recognizing that all of the powers that can be exercised by the city rest in the popularly elected city council, the charter must provide for a council that is truly representative of the community. Therefore, the Model presents several alternatives with recognition of the advantages of certain alternatives over others. Each city's population pattern— economic level, racial, ethnicity, geographical, etc.—has implications for the method of electing the council to assure equitable representation. While the Voting Rights Act governs all jurisdictions, in some cities the problem of compliance with its provisions and avoidance of court challenges is a matter of particular concern. Just as there is no absolute model for providing competent and effective legislators, there is no absolute pattern which will assure equitable representation.

As the body charged with making municipal policy, the council can create permanent or ad hoc mechanisms to assist in that process. For example, it can create planning and recreation boards or study