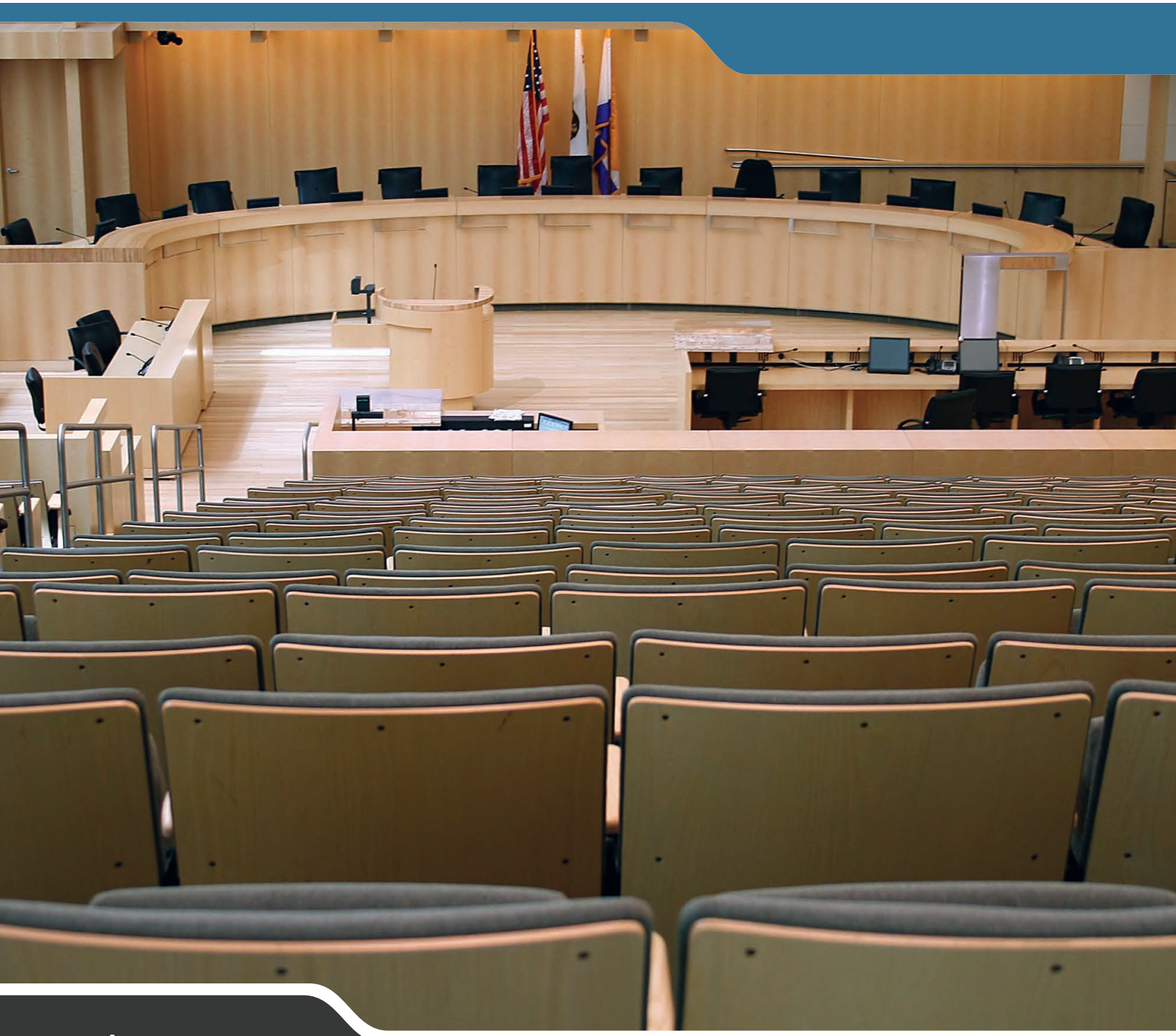
Charter City Toolkit

THE LEAGUE OF CALIFORNIA CITIES



LEAGUE OF CALIFORNIA CITIES

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Cal Cities thanks the following individuals for their work on this publication:

Charter Cities Toolkit Committee

Aaron Israel, Chair
Principal Assistant City Attorney, Glendale

Brittany Brace
Assistant City Attorney, Brentwood

Mona Ebrahimi
Partner – Kronick Moskovitz Tiedemann & Girad,
City Attorney – Placerville, Rio Vista, and Atherton

Kevin Kundinger
Assistant City Attorney, Anitoch

Heather Stroud
Senior Counsel, Colantuono Highsmith and Whatley PC

Daniel Sodergren
City Attorney, Pleasanton

Brent Richardson
Deputy City Attorney, Fresno

Sergio Rudin
Partner - Best Best & Krieger LLP, City Attorney – Sausalito

Cal Cities Staff

Sheri Chapman, *General Counsel*

Kurt Wendlenner, *Assistant General Counsel*

Emily Taylor, *Senior Deputy General Counsel*

Janet Leonard, *Executive Assistant, Legal Services*

LEAGUE OF CALIFORNIA CITIES

CHARTER CITY TOOLKIT

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Chapter 1:

HISTORY OF MUNICIPAL HOME RULE

There is a common misconception even among some California city officials that only charter cities possess "home rule" powers. In fact, both general law and charter cities possess "home rule." This chapter briefly describes the historical evolution of the constitutional municipal home rule doctrine in California. Later chapters explain the additional home rule powers of charter cities.

The desire for home rule is an important part of the history of California.

A. Before Home Rule—1850-1879

When California became a state in 1850, city governments already existed. In some areas, they took the form of the Mexican *alcades* (who embodied the role of mayor, judge, and sheriff) or local legislative bodies like the 15-member assembly created in San Francisco before it was convention.[1] The 1849 California Constitution gave the Legislature the exclusive power to establish cities and to enlarge or restrict city powers.[2] After only a few months of granting city charters in early 1850, the California Legislature gave the job to county courts and then, in 1856, to county boards of supervisors.[3] The state continued its extensive involvement in city affairs, including the appointment of special commissions to actually manage the property and funds of Sacramento, San Jose, and San Francisco, as well as other legislation directing cities to pay special claims of parties that provided "political inducements" to the Legislature.[4]

B. All Cities Granted Inherent Home Rule Powers to Legislate Without Legislative Grant of Authority—1879

State meddling in city affairs in those first 30 years of statehood caused the deep resentment that ultimately led to the 1879 constitutional convention. During that convention, the delegates borrowed heavily from the home rule provisions of the constitution of Missouri, the first state to grant "home rule" powers to its cities. Incorporating that constitution's provisions almost verbatim, the California Constitution of 1879 banned special legislation, banned special act incorporations, and granted the power to frame freeholder charters to communities with at least 100,000 people."[5] The 1879 Constitution also took the power to impose local taxes away from the Legislature with the intention "to bring matters of a local concern home to the people."[6]

1 See Detweiler, *Home Rule: An Historical Perspective* (Jan. 1997) Western City, at p. 13.
2 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 394-395.
3 Detweiler, *supra*, at p. 15.
4 See Thomas, *California Cities and the Constitution of 1879: General Laws and Municipal Affairs* (1980) 7 Hastings Const. L. Q. 642 at pp. 646-647.
5 See Detweiler, *supra*, note 1, at p. 16.
6 *People v. Martin* (1882) 60 Cal. 153, 156; See Cal. Const., art. XIII, § 24, subd. (b).

Another significant home rule provision in the 1879 Constitution is sometimes called the "police power" in article XI, section 11 (now art. XI, § 7). This provision provides a general grant of inherent home rule power to *every* city—general law and charter cities alike—to "make or enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

This home rule provision finally freed cities from the need to seek specific state legislation to *authorize* their legislative acts on traditional municipal matters. Since the constitution empowered them to act without prior permission of the Legislature, cities instead simply had to inquire whether a proposed ordinance "conflicted" with a general state law. Years later, the California Court of Appeal described the effect of this amendment: "[t]he constitution has, by direct grant, vested in them [cities] plenary power to provide and enforce such…local regulations as they may determine shall be necessary for the health, peace, comfort and happiness of their inhabitants, provided such regulations do not conflict with general laws. And the Legislature has no authority to limit the exercise of the power thus directly conferred upon cities, counties and towns by the organic law."[7]

In sum, the 1879 home rule provision finally freed cities from the need to seek specific state legislation to authorize their legislative acts on traditional municipal matters.

Former California Supreme Court Associate Justice and Hastings College of the Law Professor Joseph Grodin, in his authoritative study of the California Constitution, explained how article XI, section 7, of the California Constitution changed everything for cities and counties:

> Section 7 presents the most widely used of the home rule provisions of the California Constitution. In contrast to sections 4 and 5, it applies equally to all cities and counties, regardless of their charter status... Section 7 empowers cities and counties to use their general authority, called their "police power," to control and regulate any matter or activity that is otherwise an appropriate subject for governmental concern.
>
> . . .
>
> The drafters intended that local authorities "ought to be left to do all those things that in their judgment are necessary to be done, and that are not in conflict with the general laws of the state." The decision was made then not to restrict local governments narrowly to those specified powers that are overtly granted to them by the legislature *but to allow them to exercise whatever powers appeared necessary, without the need to request legislative authorization before taking action*."[8]
>
> (Emphasis added.) In summary, under article XI, section 7, of the California Constitution, all cities are free to legislate on a matter unless it "is in conflict with" a general law of the state and is, therefore, said to be preempted by the state law.

7 *In re Walter Ackerman* (1907) 6 Cal.App. 5, 9-10.

8 Grodin et al., *The Cal. State Constitution: A Reference Guide* (1993) at p. 192 (citing remarks of Mr. Eli Blackmer during debates at the California constitutional convention).

C. Voter Approved Charters Allowed to Trump State Law On Municipal Affairs—1896-1914

While the 1879 Constitution gave all cities basic home rule powers subject to conflicting state laws, over the following decade it became clear that cities needed the ability to engage in certain core municipal functions *despite the conflicting general laws of the state*. The 1896 Constitution introduced the concept of "municipal affairs." The authority to adopt a charter is found in section 3 of article XI, which also contains this provision in subparagraph (a) explaining the status of the charter vis-à-vis state law: "The provisions of a charter are the law of the State and have the force and effect of legislative enactments." In 1899, the California Supreme Court explained that provisions relating to charter cities were "enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs."[9]

"The provisions of a charter are the law of the State and have the force and effect of legislative enactments." Cal. Const., art. XI, § 3(a).

In 1914, article XI was revised to give charter cities additional authority over municipal affairs. The California Supreme Court explained this revision in a 1992 opinion:

> [A]rticle XI was revised to give charter cities the power "to *make and enforce all laws and regulations in respect to municipal affairs,* subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws." Former section 8 of the same article was likewise amended by the insertion of a similar provision: "It shall be competent in any charter framed under the authority of this section to provide that the municipality governed thereunder may *make and enforce all laws and regulations in respect to municipal affairs,* subject only to the restrictions and limitations provided in their several charters and in respect to all other matters they shall be subject to general laws."[10]

In addition to the jurisdiction granted in subdivision (a) of section 5 of article XI to make and enforce all ordinances and regulations concerning "municipal affairs," subdivision (b) of section 5 of article XI specifically identifies four subjects that can be included in a charter: (1) a city police force; (2) subgovernment in all or part of the city; (3) conduct of city elections; and (4) election, appointment, removal, and compensation of municipal officers and employees whose compensation is paid by the city.[11]

The California Constitution provides no definition of what is or is not a "municipal affair." The California Supreme Court has noted that "'the constitutional concept of municipal affairs is not a fixed or static quantity … [but one that] changes with the changing conditions upon which it is to operate'…our cases display a growing recognition that

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

10 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 396-397. (Emphasis in original).

11 In some cases, courts have narrowly construed the subject matter described in section 5, subdivision (b), of article XI. See, e.g., *Baggett v. Gates* (1982) 32 Cal.3d 128, 140 (applying the Public Safety Officers Procedural Bill of Rights to charter cities because it was limited to providing procedural safeguards to police officers and did not interfere with a charter city's authority to set compensation).

'home rule' is a means of adjusting the political relationship between state and local governments in discrete areas of conflict."[12] History has shown that what was once deemed a matter of local concern can later become a matter of statewide concern, controlled by the general laws of the state.[13] The Court also made it clear that determination of what is, or is not, a municipal affair is ultimately a legal question, for the courts, and not solely a factual one.[14]

Later chapters will address the options available for adopting a charter and what are and are not "municipal affairs" as determined by the California Supreme Court to date.

D. Home Rule Authority Granted to All Cities over Public Works, Utilities and Public Property, Improvements and Funds—1911-1970

Until 1911, only charter cities could operate a public utility. At that time, section 9 (formerly section 19) of article XI was amended, providing broad plenary authority to any city to "establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communications."[15] The section allows cities to provide similar services in other cities with their consent.

In 1970, section 9 of article XI was further amended by the voters to effectively allow cities to issue franchises to persons or corporations to provide such services "….upon conditions and under regulations that the city may prescribe under its organic law." These franchise powers must be construed, however, in conjunction with the broad authority over such activities granted to both the Legislature and the Public Utilities Commission by article XII. On the distribution of powers between the state and cities on this subject, however, article XII, section 8 is quite clear:

> A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission. This section does *not* affect power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter existing on October 10, 1911, unless that power has been revoked by the city's electors, or the right *of any city* to grant franchises for public utilities or other businesses on terms, conditions, and in the manner prescribed by law.

12 *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 557, quoting *Pac. Tel & Tel. Co. v. City & County of San Francisco* (1959) 51 Cal.2d 766, 771.

13 *E.g., Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61 (overruled in part on other grounds by *Mendoza v. Fonseca McElroy Grinding Co., Inc.,* (2021) 11 Cal.5th 1118, 1132-33); *California Fed. Sav. & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 13 (rejecting static and compartmentalized description of "municipal affairs" in favor of a more dialectical one); *Codding Enterprises v. City of Merced* (1974) 42 Cal.App.3d 375, 377.

14 *State Building and Construction Trades Council of California v. City of Vista*, *supra*, 54 Cal.4th at p. 558.

15 *California Apartment Association v. City of Stockton* (2000) 80 Cal.App.4th 699, 707.

(Emphasis added.) Finally, general law and charter cities alike are protected by the provisions of article XI, section 11, subdivision (a), of the constitution that prohibits just the types of special commissions to control local property and funds that so outraged Californians prior to the 1879 constitutional convention. It states: "the Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions." Citing this provision, the California Supreme Court struck down a 2000 state law that attempted to delegate final decisions in public safety labor negotiations to a private arbitration panel.[16]

E. California Home Rule Today

Today the state constitution authorizes both general law and charter cities to: (1) make and enforce all local laws and regulations not in conflict with general state laws (art. XI, § 7); (2) to establish, purchase, and operate public works and utilities or franchise others to do so (art. XI, § 9); and to be free from state legislation delegating to a private person or body control over city property, funds, tax levies and municipal functions (art. XI, § 11).

A local law conflicts with a general state law if the local legislation (1) duplicates the state law, (2) contradicts the state law (i.e., requires what state law forbids or prohibits what state law requires), or (3) enters an area that is fully occupied by general state law. A local ordinance does *not* conflict with state law if it is reasonably possible to comply with both the state and local laws.[17]

Cities with voter-approved charters have additional home rule authority or supremacy over their municipal affairs, police, subgovernments, city elections, and their elected and appointed city officials and employees (art. XI, § 5). The provisions of a city charter and the ordinances adopted by a charter city prevail over general state law in areas that a court determines are municipal affairs, including the specific areas enumerated in section 5, subdivision (b) of article XI.[18] As to matters of statewide concern, however, charter cities remain subject to state law.[19] Therefore, whether a charter city may act independent of state general law in a particular domain, including the specific areas enumerated in section 5, subdivision (b) of article XI, depends upon a court's determination of whether the issue is a municipal affair or a matter of statewide concern.

16 *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278.
17 *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743.
18 Cal. Const., art. XI, § 5; *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 315.
19 *Bishop v. City of San Jose*, *supra*, 1 Cal.3d at 61-62 (overruled in part on other grounds by *Mendoza v. Fonseca McElroy Grinding Co., Inc.* (2021) 11 Cal.5th 1118, 1132-33).

Chapter 2:

A CHARTER CITY'S ADDITIONAL HOME RULE AUTHORITY

This Chapter will further discuss the origins of city charters, the reasons a city may choose to adopt one, how courts have interpreted the charter home rule provision, and practical applications of what powers a charter city possesses.

A. What is a Charter?

The dictionary defines a "charter" as "a grant or guarantee of rights, franchises, or privileges from the sovereign power of a state or country; a written instrument that defines the franchises of a city, educational institution, or corporation; constitution."[20] Modern California city charters most closely resemble a local "constitution" in that the municipal charter provides the highest legal framework for the purpose, governance, and operation of the city government in all its most fundamental dimensions. There is one important difference between the dictionary definition of a "charter" and the "charter" of a California city: the charter of a California city is a limitation on authority, not a grant. The grant of authority over municipal affairs is found in the Constitution itself.

Preamble of Downey City Charter: "We, the people of the City of Downey, State of California, do ordain and establish this Charter as the organic law of said City under the State Constitution.

A city charter can have two purposes: 1) to explain how the city will exercise its discretion over the matters affecting the city and 2) limit or constrain the ways in which the city is governed and its municipal affairs are managed. It is what some charters refer to as "the organic law" of the city, with city-council adopted ordinances containing many of the detailed laws and regulations.

B. Interpretation of a Charter: Limitation of Authority not a Grant of Authority

As noted in Chapter 1, California's "charter home rule" provision is found in the California Constitution, article XI, section 5. This section reserves to a charter city the right to adopt and enforce laws (i.e., ordinances) regarding "municipal affairs," subject only to the conflicting provisions in the state or federal constitutions, federal laws, or state statutes in matters of statewide concern.[21]

There is a common misconception that the authority of a charter city is derived from its charter. In fact, the "home rule" authority of a charter city flows directly from the California Constitution; the charter itself simply defines and limits how the city will use that authority. "The charter operates not as a grant of power, but as an instrument of limitation and restriction on the exercise of power over all municipal affairs which the

20 *Charter,* Merriam Webster's Online Dictionary, <http://www.merriam-webster.com/dictionary/charter> [as of March 11, 2025].

21 *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 161.

city is assumed to possess; and the enumeration of powers does not constitute an exclusion or limitation."[22]

In plain English, this means that a charter city has authority over all municipal affairs and does not need to enumerate those powers in the charter. A charter often addresses some but not all municipal affairs.

Example: The Napa City Charter includes a typical city charter provision to explicitly implement this constitutional authority. It provides:

> The City of Napa shall have and may exercise all powers which now are or may hereafter be conferred upon municipalities by the Constitution and laws of the State of California, and which it would be lawful for this Charter specifically to enumerate, as fully and completely as though such powers were specifically enumerated herein, and no enumeration of particular powers in and by this Charter shall be held to be exclusive.[23]

A city charter is a limitation on power rather than a granting of power in the following ways:

1. A charter establishes the structure of government and how the city is organized. For example, a charter might provide for a "strong mayor" form of government, but a council-adopted ordinance might provide for elections by district. As discussed in Chapter 1, a "city is empowered to exercise full control over its municipal affairs unaffected by general [state] laws on the same subject matters and subject only to the limitations found in the Constitution and the city charter."[24] Since authority is assigned to specific officials (e.g., strong mayor) or roles, the city and its officials cannot act outside of the powers provided to them in the charter.
2. A charter establishes procedural limitations and processes. A charter can provide for how a city adopts an ordinance, whether to apply prevailing wages, how to negotiate agreements, and so forth. A charter could also contain requirements beyond state provisions (e.g., greater transparency, more noticing, etc.). Again, while this may seem like the granting of a power, a city is constricted by the limitations of the rules and processes it sets forth in its charter.
3. A charter can limit the city's actions. A charter can expressly prohibit the city from taking certain actions, including but not limited to, taxation.
4. A city is bound to its charter. In addition to ensuring compliance with applicable federal and state laws, a charter city must ensure compliance with its own charter. Failure to do so can result in litigation and a court can mandate that the city comply with its own charter.

A city charter is sometimes described as the "city's constitution." However, this comparison is limited. For example, while a city charter and the California Constitution both act as limitations on the power of their respective legislative bodies, the federal Constitution operates as a grant of power to Congress.[25] In other words, Congress may not legislate in an area unless it finds authority in the federal Constitution. On the other hand, the California Legislature may legislate in any area *unless* it finds a restriction or limitation on its authority in the California Constitution. In sum, a city charter is comparable to the California Constitution, is governed by the same principles, and operates as a limitation or restriction on the inherent power of the city council of a charter city to legislate on municipal affairs.[26]

22 *Grass Valley v. Walkinshaw* (1949) 34 Cal.2d 595, 598-599.
23 Napa City Charter, § 4.
24 *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 135.
25 *Methodist Hospital of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.
26 *Adams v. Wolff* (1948) 84 Cal.App.2d 435, 441.

Limitations and restrictions in a city charter are generally interpreted in favor of the city council's exercise of power over municipal affairs and against any limitation or restriction that is not expressly stated in the charter.[27] This means that a city council or its voters looking to limit a city council's authority to act should draft the restrictions as explicitly as possible, as the courts will not imply a restriction on the exercise of a charter city's power over municipal affairs.[28] The restrictions placed by the voters in a charter are an expression of the singularly local character of the community. Here are a few examples:

- The Porterville City Charter limits the purposes for which special taxes may be imposed to the support and maintenance of the fire department, acquisition of public improvements, public libraries, parks, and music and entertainment.[29]
- The voters of the City of Napa amended the city charter to prohibit a city-owned park from being used or developed for any purpose other than passive recreation and open space.[30]
- The voters of the City of Newport Beach prohibited the city council from authorizing any red-light camera or other automated traffic enforcement system.[31]
- The Santa Barbara City Charter prohibits the city council from approving development that exceeds established building height limits in various parts of the city.[32]
- The Watsonville City Charter includes a limitation on the total dollar amount of bonded debt that may be issued.[33]

C. Municipal Affairs

As touched on previously, the California Constitution gives charter cities the power to "make and enforce all ordinances and regulations in respect to municipal affairs;" however, it does not define the term "municipal affair." And, although the Constitution enumerates four (sometimes called "core") municipal affairs, these four subjects are not absolute.[34] Unfortunately, the phrase "municipal affairs" has defeated efforts at defining formulation since it was added to the Constitution in 1896. The courts continue to assess the meaning of "municipal affairs" and "matters of statewide concern" on a case-by-case basis. Although courts give the Legislature's intentions in this regard great weight, the Legislature is neither empowered to determine what a municipal affair is, nor to transform a municipal affair into one of statewide concern.[35]

27 *Domar Electric Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171.
28 *City of Glendale v. Trondsen* (1957) 48 Cal.2d 93, 99.
29 Porterville City Charter, § 44.
30 Napa City Charter, § 185.
31 Newport Beach City Charter, § 426.
32 Santa Barbara City Charter, § 1506.
33 Watsonville City Charter § 1116.
34 The phrase "municipal affair" was once referred to by a justice of the California Supreme Court as those "wild words." *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 7.
35 *State Building and Construction Trades Council v. City of Vista* (2012) 54 Cal.4th 547, 558.

Originally, the approach employed by California courts in defining a municipal affair was to specifically categorize certain subjects as municipal affairs. More recently, however, courts have treated what is a municipal affair as fluid and changing over time as local issues may evolve into statewide concerns, and vice versa. In short, the constitutional concept of "municipal affairs" is not a "fixed" concept, but one that changes with the conditions upon which it is to operate. The California Supreme Court has said the task of determining whether a given activity is a municipal affair—or one of statewide concern—must be an *ad hoc* inquiry in light of the specific facts and circumstances surrounding each case. In particular, the determination entails a four-step analysis, summarized as follows:[36]

Step One: Does an actual conflict exist between the local law and the state law? (If the answer is no, there is no need to go further and determine if the matter is municipal affair or statewide concern.)

Step Two: If yes, does the local law implicate a municipal affair?

Step Three: If yes, does the state law involve extramural concerns that require paramount state control?

Step Four: If yes, is the state statute reasonably related and narrowly tailored to the resolution of the statewide concern?

If the answer to all of the questions is *yes*, then it is a matter of statewide concern and the city is preempted from adopting and enforcing an ordinance or charter provision that conflicts with the state law. If the answer to either of the last two questions is *no*, then the state law does *not* address an area of statewide concern and the local law would likely be deemed to address a municipal affair that is beyond reach of the Legislature and state statutes.

1. Municipal Affairs Listed in the Constitution

California Constitution, article XI, section 5, subdivision (b), approved at the special election of June 1970, also provides a non-exclusive list of four "municipal affairs": (1) regulation and government of a city police force; (2) sub-government in all or part of the city; (3) conduct of city elections; and (4) election, appointment, removal and compensation of municipal officers and employees whose compensation is paid by the city. Each of these areas may still be subject to the four-step test explained above.

a. Regulation and government of a city police force

In a general law city, the police department is under the control of the chief of police.[37] In contrast, under article XI, section 5, subdivision (b), a charter city may establish another body to oversee the police department. For example, a charter city could create a police commission that is authorized to review and make recommendations to the public, city council and city manager concerning policies, practices and procedures in relation to the city's police department.[38]

36 *California Fed. Savings & Loan Assn. v. City of Los Angeles*, *supra*, 54 Cal.3d at p. 16.
37 Gov. Code, § 38630.
38 *Brown v. City of Berkeley* (1976) 57 Cal.App.3d 223.

In a charter city, the charter is what controls the organization of the police department.[39]

For example, the San Jose City Charter establishes the office of independent police auditor to review police department investigations of complaints against police officers, to make recommendations with regard to police department policies and procedures, and to conduct public outreach to assist the community with the process and procedures for investigation of complaints against police officers. The same charter also prohibits the city council and mayor from dictating the appointment or removal of any employee appointed by the independent police auditor.[40] The San Bernardino City Charter places the police and fire departments under the supervision of the mayor.[41]

But note: the discussion regarding police department governance in the Constitution has not prevented courts from applying the Police Officers Procedural Bill of Rights (POBR) to charter cities. The California Supreme Court has determined that, in the context of labor relations, POBR interferes "only minimally on a charter city's authority to regulate and govern its police force.[42]

b. Sub-government

The Government Code prescribes the form of a general law city's government. The government of a general law city is vested in a city council of at least five members, a city clerk, a city treasurer, a police chief, a fire chief, and any subordinate officers or employees provided by law.[43] A general law city's registered voters may adopt an ordinance that provides for a different number of councilmembers.[44] Absent formal action by the city council or the voters of a general law city, the council retains authority over the management of the city. However, the city council or voters may pursue an ordinance establishing a council-manager form of government.[45]

In a charter city, the charter can provide for any number of councilmembers, a directly elected mayor, term limits, and any form of government that a general law city may have.[46] In addition to these options, a charter city can opt for a mayor-council form of government, which typically gives the mayor the unilateral authority to hire and fire the city manager and department heads and present a budget to the city council.

39 *Ibid.*
40 San Jose City Charter, §§ 809, 809.1.
41 San Bernardino City Charter, § 180.
42 *Baggett v. Gates* (1982) 32 Cal.3d 128.
43 Gov. Code, § 36501.
44 Gov. Code, §§ 36501, 34871.
45 Gov. Code, § 34851.
46 Cal. Const., art. XI, § 5.

There are many examples of "sub-government" structures in charter cities. Here are a few:

- Santa Rosa: Section 10 of the city charter requires the city council to establish a district commission encompassing the entire city. The commission is comprised of representatives of seven to fourteen districts, the boundaries of which established by the council. The representatives of each district advise the council regarding various city matters including public safety issues, capital improvement budget priorities for their respective districts, and neighborhood planning matters.

- Chula Vista: Section 609 of the city charter establishes a civil service commission.
- Santa Clara: Section 1012 of the city charter establishes a board of library trustees.
- Riverside: Section 810 of the city charter establishes a community police review commission.

For a general law city, the Government Code states that a majority of the city council constitutes a quorum for the transaction of business.[47] Additionally, resolutions, orders for the payment of money, and all ordinances require a recorded majority vote of the total membership of the city council.[48] Certain actions require a supermajority vote.

In contrast, charter cities may establish their own voting and quorum requirements. For example, the Richmond City Charter requires five members to vote affirmatively to authorize expenditures of $1,000 or more.[49] However, certain legislation that applies to charter cities as well as general law cities requires a supermajority vote. For example, a charter city may not commence an eminent domain proceeding until its city council has adopted a resolution of necessity by a vote of two-thirds of all the members of the city council, unless a greater vote is required by statute, charter, or ordinance.[50]

General law cities may also establish their own rules regarding the procedures for adopting, amending, or repealing resolutions,[51] other than the rule that resolutions require a recorded majority vote of the total membership of the city council.[52] The same is not true for adopting ordinances, which procedures are governed by the Government Code for general law cities. Ordinances require two readings: one at introduction, then a second reading and vote at least five days thereafter.[53] Ordinances may be introduced at any type of meeting, but must be passed at a regular meeting, not at a

47 Gov. Code, § 36810.
48 Gov. Code, § 36936.
49 Richmond City Charter, art. III, § 7.
50 Code of Civ. Proc., §§ 1245.220, 1245.240; *City and County of San Francisco v. Ross* (1955) 44 Cal.2d 52, 55.
51 See, e.g., *Pasadena v. Paine* (1954) 126 Cal.App.2d 93, 96.
52 Gov. Code, § 36936. Orders for the payment of money also require a recorded majority vote of the membership of the city council.
53 Gov. Code, § 36934.

special meeting.[54] There is an exception to that rule for urgency ordinances, which may be passed immediately upon introduction either at a regular or special meeting with a four-fifths vote of the city council and an urgency finding.[55] Ordinances must be signed by the mayor and attested by the city clerk.[56] The city clerk must cause publication of each ordinance within fifteen days after passage in a newspaper of general circulation published and circulated in the city.[57] Ordinances take effect thirty days after their final passage, with certain listed exceptions.[58]

Like general law cities, charter cities may establish their own procedures for adopting, amending or repealing resolutions.[59] Unlike general law cities, however, charter cities can choose to opt out of general laws for enacting local ordinances, as the mode and manner of passing ordinances have been deemed a municipal affair.[60] For instance, the Seal Beach City Charter recognizes that in periods of emergency resulting from a disaster, the city council needs the power to provide for the continuity of city operations, etc. Section 107 of the charter requires the city council to conform to the provisions of the charter except to allow the council to make purchases and enter into contracts without calling for bids, to the extent the emergency so requires.

Example: An example of a municipal officer created by charter that is not identified in the general law can be found in the Stockton City Charter. Stockton has created the position of city auditor, which is responsible for the annual post audits of fiscal transactions, performance audits, special audits and investigations, and is given other duties and specified powers.[51] In addition, the Folsom City Charter and the Shafter City Charter give the authority to appoint the city attorney to the city manager and not the city council.

c. Elections and the Creation of Offices

"Conduct of city elections" gives charter cities the authority to regulate the manner of electing municipal officers. It provides plenary authority over the manner in which, the method by which, the times at which, and the terms for which the several municipal officers shall be elected. Of course, this does not absolve a charter city from complying with the equal protection clauses and other parts of the state and federal Constitutions. For example, a charter city may not ban write-in voting[61] or allow incumbents on a ballot to state occupations but disallow challengers from doing the same.[62] Further, courts have held that at least some portions of the California Voting Rights Act apply to charter cities.[63] (See discussion in Chapter 4.)

As long as a charter does not violate the state and federal Constitutions, it is free to establish election rules that do not actually conflict with general law. For example, the San Jose City Charter makes the city council the judge of the election and allows its members to subpoena witnesses, require production of evidence, etc.[64] Likewise, a number of charter cities provide for a redistricting

54 *Ibid.*
55 *Ibid.*
56 Gov. Code, § 36932.
57 Gov. Code, § 36933.
58 Gov. Code, § 36937.
59 *Brougher v. Board of Public Works* (1928) 205 Cal. 426, 438-439; *Sacramento Paving Co. v. Anderson* (1905) 1 Cal.App. 672, 673.
60 *Brougher v. Board of Public Works*, *supra,* 205 Cal. at p. 438; *Morton v. Broderick* (1897) 118 Cal. 474, 486-487.
61 *Canaan v. Abdelnour* (1985) 40 Cal.3d 703, 710.
62 *Rees v. Layton* (1970) 6 Cal.App.3d 815, 822-823.
63 *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781.
64 San Jose City Charter, § 405.

commission to establish city council districts in accordance with the census.[65] As noted above, even if there is a conflict with general law, the charter provisions prevail unless the Legislature has found a need for paramount state control over the issue and the general law is both reasonably related to the area of statewide concern and narrowly tailored to resolve the problem being addressed as a statewide concern.[66]

Example: Courts have upheld the following charter provisions:

- A comprehensive charter elections program that did not require the mailing of candidate qualification statements where a statewide Elections Code rule purported to require a city clerk to mail such statements.[67]
- A comprehensive local campaign charter provision that limited campaign expenditures for local office as a condition of receiving public funds for such campaigning where there was a statewide prohibition against public funding of election campaigns.[68]
- A charter city placing a general tax before the voters by simple majority vote of the city council as opposed to the two-thirds vote requirement for a general law city council.[69]

Likewise, the California Attorney General has opined that a charter city may provide for a partisan municipal election (where the candidates are identified by their political party affiliation) whereas a general law city may not.[70]

California courts have upheld many charter city rules for local elections.

d. Officers and Employees

California Constitution, article XI, section 5, subdivision (b) grants extensive authority over municipal officers and employees as follows:

> It shall be competent in all city charters to provide … the manner in which, the method by which, the times at which and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

The California Constitution does not mandate which officers and subordinate officers a charter city must have, but instead recognizes the right of a charter city to make this choice. That said, this recognition does not relieve charter cities from complying with preemptive state laws on matters of statewide concern. While there is no constitutional or statutory requirement that a charter city have a chief of police,[71] for example, where a charter city does establish the office of chief of police, the chief, like all subordinate officers, is sub-ject to the Public Safety Officers Procedural Bill of Rights.[72]

65 See, e.g., Santa Barbara City Charter, § 515; Compton City Charter, § 505; Newport Beach City Charter, § 1005; San Jose City Charter, § 403; Watsonville City Charter, § 413; San Francisco City Charter, § 13.110; San Diego City Charter, § 5.1.
66 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 404.
67 *Mackey v. Thiel* (1968) 262 Cal.App.2d 362 (under former art. XI, § 8 1/2).
68 *Johnson v. Bradley*, supra, 4 Cal.4th at pp. 410-411.
69 *Trader Sports v. City of San Leandro* (2001) 93 Cal.App.4th 37.
70 56 Ops.Cal.Atty.Gen 289 (1973).
71 63 Ops.Cal.Atty.Gen. 829 (1980).
72 *Ibid.*
73 Stockton City Charter, art. XV, § 1501.

General law does cover how to fill a vacancy in public office and applies to charter cities in only limited respects.[74] A charter city may also establish rules and conditions for service by its municipal officials.[75] A charter city has plenary authority to legislate in this area.[76] In addition, a charter may establish different rules than mandated by general law for dealing with officials holding incompatible offices,[77] for conflicts of interest,[78] and for incompatible activities, which may result in a forfeiture of public office.[79]

Several charter cities have charter provisions that limit city council members from being paid city employees during their terms of office or for some period after leaving office.[80] Several city charters likewise include provisions for impartial arbitration for fire department employees.[81] Other charters create offices such as city auditor[82] or public information officer.[83] The Santa Cruz City Charter includes a section on the process the city council must follow for layoffs.[84]

2. Judicially Recognized Municipal Affairs

In addition to the four "core" municipal affairs listed in California Constitution, article XI, section 5, subdivision (b), courts have determined from time to time that certain other areas are municipal affairs. Below are examples of how courts have evaluated the distinction between a municipal affair and a statewide concern, based on the four-step analysis summarized above. Note: occasionally, the face of a state statute identifies a conflict between the local law and the state law (step one of the four-step analysis) when the statute specifically excludes "charter cities" from its scope.

a. Public Contracting

The Public Contract Code requires that a general law city and any charter city that has not explicitly exempted itself from the Public Contract Code (see below) publicly bid any project that exceeds $5,000.[85] There are requirements for public notice, after which the city must award the contract for that project to the lowest responsible bidder.[86] Alternatively, a city may adopt the Uniform

74 Gov. Code, § 1770, subd. (m)(1) (provision applying to charter cities).
75 Cal. Const., art. XI, § 5, subd. (b).
76 *Ector v. City of Torrance* (1973) 10 Cal. 3d 129, 132-133. This decision was subsequently overruled by a 1976 amendment to California Constitution article XI, section 10, subdivision (b), prohibiting any city or charter city from requiring "that its employees be residents of such city…except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location."
77 73 Ops.Cal.Atty.Gen. 357, 361 (1990).
78 See also Gov. Code, § 87300, et seq. (requiring the adoption and updating of local conflict of interest codes).
79 81 Ops.Cal.Atty.Gen. 207 (1998).
80 See Sacramento City Charter, art. III, § 35; San Jose City Charter, § 406; Santa Rosa City Charter, § 5. General law cities are subject to the provisions of Government Code section 53227, et seq.
81 Salinas City Charter, § 120; Santa Rosa City Charter, § 56; Watsonville City Charter, § 1007; Redwood City City Charter, § 96; Hayward City Charter, § 809.
82 San Jose City Charter, § 805.
83 San Jose City Charter, § 808.
84 Santa Cruz City Charter, § 1112.
85 Pub. Contract Code, § 20162.
86 *Ibid.*

Public Construction Cost Accounting Act ("UPCCAA").[87] Under that statute, there are three tiers of contracts: (1) projects of $75,000 or less may be performed by the employees of a public agency by force account, negotiated contract, or purchase order; (2) projects of $220,000 or less may be awarded to a contractor by following an informal bid procedure; and (3) project of more than $220,000 must be awarded to a contractor after following more timely and onerous bidding procedures.[88] Either way, a city operating under the standard public bidding statutes or the UPCCAA must publicly bid at least some of its public works project agreements, and must follow strict procedures for all of its public works contracts.

Charter cities, however, may opt out of the Public Contract Code's public bidding requirements.[89] To opt out, the city's charter or an ordinance must expressly exempt the city from the Public Contract Code or include a provision that conflicts with a provision in the Public Contract Code.[90] This allows charter cities to have different noticing requirements, use different claims resolution procedures,[91] and generally structure their public works bidding processes as they see fit, if they even require public bidding. This can be time-saving and cost-cutting. For examples of charter cities that have opted out of the Public Contract Code's public bidding requirements, see section 608 of the Placentia City Charter and section 1217 of the San Jose City Charter.

Additionally, while contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms need not be competitively bid, general law cities must award such contracts "on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

b. Prevailing Wage

Prevailing wage law requires contractors and subcontractors on public works projects over $1,000 to pay their workers' wages set by the Director of Industrial Relations.[92] In this context, the term "public works" refers to construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, with particular exceptions.[93] General law cities must require that their contractors and subcontractors pay prevailing wages on public works projects.

87 Pub. Contract Code, § 22030.
88 Pub. Contract Code, § 22032.
89 Pub. Contract Code, § 1100.7.
90 *Ibid.*
91 Pub. Contract Code, § 20104, et seq.
92 Lab. Code, § 1771.
93 Lab. Code, §§ 1720-1720.6.

It is unclear how much higher "prevailing wages" are from "standard industry wages." In a case between the State Building and Construction Trades Council of California and the City of Vista, city staff estimated up to a twenty percent increase in the cost of public works projects due to the payment of prevailing wages.[94] The California Institute for County Government has conducted research and determined that "prevailing wages are substantially higher than market wages. In fact, California's published prevailing wage rates are about one-third to one-half higher than comparable market wages."[95] The executive summary of that study explains:

> We found that the prevailing wage requirements increased overall project costs by about 11 percent, even while controlling for other factors known to influence costs such as regional variations in construction costs and characteristics of the structures themselves. We further found that the impact from these expanded prevailing wage requirements varies across the state, with some areas expected to experience cost increases of as little as six percent while others will likely experience increases of more than 15 percent.

Thus, requiring prevailing wages may affect the cost of a public works project significantly. Additionally, prevailing wage law includes many other regulations, such as the requirement that contractors on public works projects hire apprentices from state-approved apprenticeship programs.

The California Supreme Court has determined that the wage levels of contract workers constructing locally funded public works are a municipal affair rather than a matter of statewide concern.[96] Thus, charter cities are not subject to the state's prevailing wage law for locally funded public works projects and have the discretion to require or not require the payment of prevailing wages for such projects. Prevailing wages may still be required where such payment is compelled by the terms of a state or a federal grant, or the contract does not involve a municipal affair. Examples of contracts that do not involve municipal affairs include regional projects such as a regional municipal utility project located outside of the jurisdiction, an animal services facility that serves multiple cities, or a regional sewer plant. Where cities have formed a joint powers authority (JPA), it is unclear whether the JPA must pay prevailing wages on a JPA project, particularly if the JPA includes at least one charter city and one general law city. In such cases, however, a JPA project is likely to be a regional project and, thus, subject to payment of prevailing wages on that ground.

Although charter cities may opt not to require the payment of prevailing wages, Senate Bill 7 (Stats. 2013, ch. 794 adding Section 1782 to the Labor Code)

94 See California Construction Compliance Group, Are Charter Cities Taking Advantage of State-Mandated Construction Wage Rate ("Prevailing Wage") Exemptions (3d Ed. Summer 2012).

95 California Institute for County Government, Impact of Prevailing Wage Rate Requirements on the Costs of Affordable Housing in California (June 9, 2004).

96 *State Building and Construction Trades Council v. City of Vista* (2012) 54 Cal.4th 547.

imposes consequences for doing so. For further discussion on prevailing wages and Senate Bill 7, see Chapter 5.

c. Fiscal Affairs

1. Taxes

Until the early 1990's, charter cities were able to rely on a broad power of taxation as a municipal affair.[97] For example, courts have upheld charter cities' license taxes[98] and real estate transfer taxes (also referred to as documentary transfer taxes).[99]

But then three things changed: first, in 1982 (in the wake of Proposition 13), the Legislature passed a statute allowing a general law city to levy any tax a charter city may levy.[100] Thus, as a general rule, charter cities do not have any distinct taxation authority unavailable to general law cities. However, courts have upheld the authority of charter cities to establish and impose real estate transfer taxes that exceed the limits imposed on general law cities under Government Code section 53725 and Revenue and Tax Code section 11911, et seq., as long as other constitutional requirements for voter approval are satisfied.[101] Second, the California Supreme Court recognized that, sometimes, aspects of local taxation have an effect outside the city's jurisdiction that implicates a "matter of statewide concern."[102] Finally, charter cities must comply with Propositions 13, 26 and 218, which require certain procedures, including voter approval, on taxes.[103]

2. Investments

State law allows general law cities having money in their treasuries not required for immediate needs to invest in particular types of investments.[104] Charter cities may set up their own investment policies and programs, and they are only constrained by basic constitutional limitations.

3. Appropriations

The area of local appropriations has not been tested as to whether it applies to charter cities.

An "appropriation" is an authorization to expend funds. The appropriations of both general law and charter cities are limited by a formula found in the Constitution that adjusts annual appropriations by cost of living and change in

97 *West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal.2d 516, 524.
98 *Ibid.*; *City of Los Angeles v. A.E.C. Los Angeles* (1973) 33 Cal.App.3d 933, 939.
99 *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 145-146; *Cohn v. City of Oakland* (1990) 223 Cal.App.3d 261, 262.
100 Gov. Code, § 37100.5.
101 *Fielder v. City of Los Angeles*, *supra*, 14 Cal.App.4th at pp. 145-146; *Cohn v. City of Oakland* (1990) 223 Cal.App.3d 261; Gov. Code, § 53275; Rev. & Tax. Code, § 11911.
102 The local taxation of savings and loans is a matter of statewide concern. *Cal. Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 6.
103 *Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374, 391.
104 Gov. Code, § 53601.

population ("Gann limit").[105] The formula involves a base year with allowable adjustments based on increases in population and inflation. There are certain items that are exempt from the Gann limit, such as indebtedness and treatment of certain income as proceeds of taxes. The Gann limit applies to charter cities.[106]

Cities set apart an identified sum of money in the treasury and make it available for the payment of particular claims or demands through an appropriation. A city may accomplish this by adopting a budget or passing an appropriations ordinance or resolution.[107] General law cities are then authorized to pay funds through the warrant process.[108] The custodian of funds issues a warrant, which is an order authorizing the bank or other depository of city funds to pay a particular sum of money. If funds are available for the payment of an approved claim, the warrant becomes a check directing the bank or depository of city funds to pay the funds to the payee. When funds are unavailable, the warrant becomes an interest-bearing municipal obligation.

4. Expenditures

There are three main limitations on expenditures of general law cities. First, a general law city may not make a gift of public funds.[109] Any expenditure with a public purpose, however, is not a gift of public funds. The prohibition on gifts of public funds provision does not apply to charter cities.[110] Second, a city may not pay extra compensation to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed to any degree, or to authorize the payment of a claim against the city under an illegally made agreement.[111] This provision applies to charter cities by virtue of California Constitution article XI, section 10.[112] Finally, the constitutional debt limitation states that no city may incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose.[113] This limitation

105 Cal. Const., art. XIIIB, § 1.
106 *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.
107 See, e.g., Watsonville City Charter, § 1103; Ventura City Charter, § 1216; Gilroy City Charter, § 1101.
108 Gov. Code, §§ 53910-53914.
109 Cal. Const., art. XVI, § 6.
110 *Los Angeles Gas & Elec. Corp. v City of Los Angeles* (1922) 188 Cal. 307, 317.
111 Cal. Const., art. IV, § 17.
112 *Nelson v. City of Los Angeles* (1971) 21 Cal.App.3d 916, 918.
113 Cal. Const., art. XVI, § 18.

includes several exceptions such as the "long-term lease exception."[114] This limit applies to charter cities.[115]

e. Land Use and Planning

Government Code sections 65700 and 65803 generally exempt charter cities from many state laws related to planning and zoning.[121] When it comes to issues of traditional planning and zoning, courts have generally upheld these exemptions for charter cities. For example, in *Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698, the court confirmed that state law's requirement that zoning ordinances be "uniform for each class of building or use of land throughout each zone" does not apply to charter cities. Similarly, charter cities are not subject to the requirements under Government Code section 65857 that all changes to a zoning ordinance are first be subject to study by a planning commission.

Charter cities are required to adopt a general plan, including all of the mandatory elements thereof, pursuant to Government Code section 65700. In addition, Government Code sections 65590 and 65590.1 regarding coastal zones apply to charter cities. The mandatory elements of general plans of charter cities are required to be internally consistent.[122] However, as acknowledged in Government Code section 65356, charter cities are not required to follow state law processes to adopt or amend a general plan or specific plan, including referral of matters to a planning commission for study, if not required by their own charters.

Nevertheless, it is incumbent upon charter cities to carefully review state legislation regarding zoning and planning to determine which laws purportedly apply to charter cities and which do not.

Example: The "gift of public funds clause" of the California Constitution states: "The Legislature shall have no power . . . to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever."[116] The general rule is that a contribution from one public agency to another entity for a purely local purpose is not allowed unless the contribution serves the public purpose of the donor agency,[117] regardless of the benefit to the donee agency or incidental benefits to private persons.[118] A city's discretion to determine what constitutes a public purpose generally is not disturbed by the courts if that determination has a reasonable basis.[119]

The constitutional prohibition against a gift of public funds is a restriction on the powers of the Legislature. The powers of charter cities, however, are not derived from the Legislature, but rather, from their respective charters, which are directly provided for in the California Constitution. Thus, the constitutional prohibition against making gifts of public funds does not apply to a charter city.[120]

114 *City of La Habra v. Pellerin* (1963) 216 Cal.App.2d 99, 102.
115 See *Shelton v. Los Angeles* (1929) 206 Cal. 544; *Redondo Beach v. Taxpayers, Property Owners, Citizens & Electors* (1960) 54 Cal.2d 126, 136.
116 The gift clause was originally adopted in 1879 as article IV, section 31, of the California Constitution. From 1966 until 1974, it was located in article XIII, section 25. From 1974 through the present it, has been located in article XVI, section 6. This explains why, over the years, the cases dealing with gifts of public funds refer to different sections of the Constitution.
117 *City of Oakland v. Garrison* (1924) 194 Cal. 298, 304; *Golden Gate Bridge & Highway Dist. v. Luehring* (1970) 4 Cal.App.3d 204, 208.
118 *Board of Supervisors v. Dolan* (1975) 45 Cal.App.3d 237, 243.
119 Ibid.
120 *Los Angeles Gas & Electric Corp. v. City of Los Angeles*, supra, 188 Cal. at p. 317; *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, 637, n.5; *Mullins v. Henderson* (1946) 75 Cal.App.2d 117, 132.
121 Government Code sections 65590 through 65590.1 apply generally to the destruction of residential structures in the coastal zone.
122 *Garat v. City of Riverside* (1991) 2 Cal.App.4th 259, 286, disapproved of by *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725.

3. Matters of Statewide Concern

As explained earlier, there are certain areas of California law that apply to charter cities if a court determines that the area is a "matter of statewide concern." In these areas, state legislation preempts local legislation. Below are some areas that courts have held to be matters of statewide concern. For further discussion, see Chapter 5.

a. Public Education

Education and the operation of public schools have repeatedly been held by courts to be matters of statewide concern rather than municipal affairs.[123] As one court has pointed out: "[t]he Legislature's power over the public school system has been variously described as exclusive, plenary, absolute, entire, and comprehensive, subject only to constitutional constraints."[124] Thus, charter provisions, ordinances and regulations regarding schools are preempted.[125] However, education may become a municipal affair when the city acts "in promotion and not in derogation of the legislative school plans and purposes of the state."[126] Thus, although a general law city is prohibited by the "gifts of public funds" clause of the Constitution, a charter city, which is not subject to this constitutional prohibition, may choose to render financial assistance to education.[127]

b. Licensing of members of a trade or profession

If the state has provided a broad and comprehensive plan for examining and licensing members of a specific trade or profession, such licensing is a matter of statewide concern. Thus, charter cities and general law cities may not impose additional requirements on these trades or professions. The rationale is that the statewide scheme is intended not just to be prohibitory, but also permissive, authorizing licensed individuals to engage in their occupations anywhere in the state, and local requirements conflict with that intent.[128] Courts have applied this general rule regarding the licensing of electrical contractors,[129]

Some examples of Government Code provisions relating to planning and zoning which apply to charter cities are:

Scope of general plan (§ 65301); the Housing Accountability Act (§ 65589.5); conduct of zoning hearings (§ 65804); senior citizen housing (§ 65852.1); requirements for roof overhang manufactured home (§ 65852.5); mobile home park as permitted land use (§ 65852.7); variances (§ 65863.5); mobile home park conversion (§ 65863.5); wind energy systems (§ 65909.5); and processing fees for permits etc. (§ 65909.5). This list is not exhaustive.

123 *Cobb v. O'Connell* (2005) 134 Cal.App.4th 91; *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524; *Whisman v. San Francisco Unified Sch. Dist.* (1978) 86 Cal.App.3d 782, 789; *Esberg v. Badaracco* (1927) 202 Cal. 110, 115; *Butterworth v. Boyd* (1938) 12 Cal.2d 140, 152.

124 *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524.

125 *Whisman v. San Francisco Sch. Dist.*, *supra*, 86 Cal.App.3d at p. 789.

126 *Whitmore v. Brown* (1929) 207 Cal. 473, 480; see also *Madsen v. Oakland Unified School Dist*. (1975) 45 Cal.App.3d 574, 579.

127 *Madsen*, *supra*, 45 Cal.App.3d at p. 579; *Berkeley Unified Sch. Dist. v. City of Berkeley* (1956) 141 Cal. App.2d 841, 846-847.

128 *Agnew v. City of Los Angeles* (1952) 110 Cal.App.2d 612, 621; *N. Cal. Psychiatric Soc'y v. City of Berkeley* (1986) 178 Cal.App.3d 90, 108.

129 *Horwith v. City of Fresno* (1946) 74 Cal.App.2d 443, 447; *Agnew v. City of Los Angeles* (1952) 110 Cal. App.2d 612, 623.

painting contractors,[130] plumbing contractors,[131] attorneys,[132] psychiatrists,[133] civil engineers and land surveyors,[134] and fire insurance adjusters.[135]

c. Regulation of Traffic and Vehicles

Although courts have recognized that the regulation of traffic upon public streets is of special interest to municipalities, they have refused to treat such regulation as a municipal affair.[136] The State has claimed plenary power over the entire field of traffic control in California Vehicle Code Section 21. Thus, unless "expressly provided" by the Legislature, a city has no authority over vehicular traffic control.[137] Ordinances inconsistent with state regulation of vehicles and traffic are invalid.[138] Therefore, the authority of a charter city to regulate traffic on public streets is equivalent to the authority of a general law city, and subject to state law.

d. Government Claims Act

The Government Claims Act establishes procedures for any person who seeks money or damages from a city, and it establishes substantive requirements to establish liability against a city.[139] "It is undisputed that the matter of the liability of and payment by a city for its tort is not a municipal affair."[140] Even if damage or injury results from a charter city taking action that is clearly a municipal affair (such as the faulty maintenance of a city building), the charter city's liability for that action is a matter of statewide concern.[141] Therefore, a charter city may not establish its own procedural or substantive requirements for filing claims against the city that are in conflict with the Government Claims Act.

e. The Brown Act

The Ralph M. Brown Act, more commonly known as the "Brown Act," is California's "sunshine" law for local government.[142] In essence, the Brown Act requires local government business to be conducted at open and public meetings, except in certain limited situations, and includes agenda requirements. The Brown Act declares that it applies to a "city, whether general law or chartered."[143] Additionally, a court has held that the Brown Act does not impermissibly infringe on a charter city's control over its municipal affairs and "addresses a genuine and pure matter of statewide concern."[144]

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130 *City and County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445.
131 *Collins v. Priest* (1949) 95 Cal.App.2d 179, 181-182.
132 *Baron v. Los Angeles* (1970) 2 Cal.3d 535, 540-541.
133 *N. Cal. Psychiatric Soc'y v. City of Berkeley*, *supra*, 178 Cal.App.3d at p. 108.
134 *Verner, Hilby & Dunn v. City of Monte Sereno* (1966) 245 Cal.App.2d 29, 35.
135 *Robillwayne Corp. v. City of Los Angeles* (1966) 241 Cal.App.2d 57, 62-63.
136 *Ex parte Daniels* (1920) 183 Cal. 636, 639.
137 *Rumford v. City of Berkeley* (1982) 31 Cal. 3d 545, 550.
138 *Ex parte Daniels*, *supra*, 183 Cal. at p. 641.
139 Gov. Code, § 810, et seq.
140 *Dept. of Water & Power v. Inyo Chem. Co.* (1940) 16 Cal.2d 744, 753.
141 *Helbach v. City of Long Beach* (1942) 50 Cal.App.2d 242, 246.
142 Gov. Code, § 54950, et seq.
143 Gov. Code, § 54951.
144 *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 958.

f. The Meyers-Milias-Brown Act

The Meyers-Milias-Brown Act ("MMBA") is intended "to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations."[145] The MMBA requires a city council or its designated representative to "meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations."[146] If agreement is reached by the two parties, the meet and confer process concludes in a jointly prepared, written memorandum of understanding, which must be approved by the city council to become binding.[147]

> The California Supreme Court has held that "the procedures set forth in the MMBA are a matter of statewide concern, and are preemptive of contradictory local labor-management procedures."[148] However, the California Supreme Court has clarified that:

[T]here is a clear distinction between the substance of a public employee labor issue and the procedure 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.' [Citation.] Nevertheless, the process by which salaries are fixed is obviously a matter of statewide concern and none could . . . argue that a charter city need not meet and confer concerning its salary structure.[149]

Thus, like general law cities, charter cities must meet and confer in good faith with their public employee labor unions and attempt to reach mutual agreements. For further discussion on the MMBA and charter cities, see Chapter 5.

g. CEQA

The California Environmental Quality Act ("CEQA") establishes detailed procedures by which a city is required to analyze the potential impacts of its actions upon the environment.[150] The Legislature has stated that CEQA is a matter of statewide concern, and that governmental agencies at all levels, which includes charter cities, are required to comply with its provisions.[151]

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145 Gov. Code, § 3500.
146 Gov. Code, § 3505.
147 Gov. Code, § 3505.1.
148 *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 781.
149 *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 600, n.11.
150 Pub. Resources Code, § 21000, et seq.
151 Pub. Resources Code, §§ 21000, 21001, 21003, 21062 and 21063.

h. Housing

Historically, charter cities were not subject to requirements that specific plans or zoning be consistent with the general plan. In 2018, however, the Legislature adopted Senate Bill 1333, making charter cities subject to a number of planning laws that previously applied only to general law cities. This legislation was adopted largely in response to *The Kennedy Commission v. City of Huntington Beach* (2017) 16 Cal.App.5th 841, which held that, for charter cities, zoning ordinances and specific plans were not required to be consistent with the general plan. Some housing advocates were concerned that the ruling would allow charter cities to take zoning and specific plan actions inconsistent with housing element law, which requires that a city's housing element be approved by the state Department of Housing and Community Development.

In addition, numerous state law laws have been passed by the Legislature that apply to charter cities in the area of housing. These include (but are not limited to):

- Housing Element Law, requiring local agencies to plan for and zone for development of housing to meet the Regional Housing Needs Allocation determined under state law (Gov. Code, §§ 65580-65589.11).
- Housing Accountability Act, limiting the ability of local agencies to deny or condition housing development projects (Gov. Code, § 65589.5).
- Housing Crisis Act, limiting the ability of an "affected city" from "reducing the intensity of land use" in a way that reduces residential development capacity, imposing new design standards that are not objective, imposing moratoriums on housing development, or imposing a cap on the number of housing developments (Gov. Code, § 66300).
- Requirements to have adopted procedures for conduct of zoning hearings (Gov. Code, § 65804).
- Accessory Dwelling Unit Law (Gov. Code, §§ 66310-66342).
- Preliminary application processing requirements and permit application processing requirements under the Permit Streamlining Act (Gov. Code, §§ 65940, 65941.1, 65943, and 65950).
- Streamlined approval for qualifying multifamily projects under Senate Bill 35 ("SB 35"), even if these projects conflict with local ordinances (Gov. Code, § 65913.4).
- Streamlined approval of Urban Lot Splits and Permitting of Residential Units in Single Family Zones, under SB 9 and SB 450 (Gov. Code, §§ 65852.21, 66411.7).
- Density Bonus Law (Gov. Code, §§ 65915-65917.5).
- Surplus Land Act (Gov. Code, §§ 54220-54234).

- Affordable Housing on Faith and Higher Education Lands Act of 2023 (Gov. Code, § 65913.16).

In legal challenges to the housing laws, the general trend has been that courts have upheld the Legislature's findings that the state has a housing shortage, and that the various state housing laws passed with intent to address that shortage reflect a matter of statewide concern.

- In *Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683, the court determined that the provisions of the state's Surplus Land Act apply to charter cities because the shortage of sites available for affordable housing development is a matter of statewide concern.
- In *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, the court determined that the state's Housing Accountability Act ("HAA") (Government Code section 65589.5) applies to charter cities. The court found that the HAA, which has the express purpose of ameliorating the housing crisis and seeks to accomplish this goal by increasing approval of housing developments, patently addresses a matter of statewide concern.
- In *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, the court held that the streamlined development approval process for housing projects contained in SB 35 addresses affordable housing as a matter of statewide concern, and, therefore, preempts the city's ability to regulate historic landmarks.
- In 2023, the City of Huntington Beach brought a federal court action against the state, arguing that SB 1333 and the HAA cannot be applied to charter cities. The city also sought declaratory and injunctive relief to invalidate and prevent the enforcement of the State of California's Regional Housing Needs Allocation Laws ("RHNA Laws"). The court held that the city lacked standing to raise federal constitutional claims against the state, based on case law that forbids political subdivisions and their officials from challenging the constitutionality of state statutes in federal court. (*City of Huntington Beach v. Newsom*, (9th Cir. October 30, 2024, No. 23-3694) 2024 LEXIS 27528).
- In *AIDS Healthcare Foundation v. Bonta* (2024) 101 Cal.App.5th 73, the court considered a challenge to Senate Bill 10 ("SB 10"), which grants counties and cities some discretion, on a parcel-by-parcel basis, to supersede local housing density caps, even if those caps have been adopted by voter initiative. In that case, the court held that the shortage of housing in California addressed by SB 10 is a matter of statewide concern, and, therefore, applies to charter cities.

One recent exception to this trend is *City of Redondo Beach, et al. v. Rob Bonta,* (22STCP1143, app. pending.), which involved a challenge to Senate Bill 9 ("SB 9"). SB 9 requires a proposed housing development containing no more than two residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements. Here, the Superior Court found that the Legislature's determination

that SB 9 constitutes a matter of statewide concern is based on the state's interest in "access to affordable housing." The court found that, although SB 9 may have addressed the shortage of housing in general, it is not reasonably related to ensuring access to "affordable housing," and, therefore, is unconstitutional because it violates of the "home rule" doctrine under Article XI, sec. 5.[152] The case was appealed, and to legislatively overturn the trial court decision in *City of Redondo Beach v. Bonta*, the Legislature added findings in SB 450 (2024) that the purpose of the laws is to increase the overall supply of housing "at all income levels."

i. Eminent Domain

The power of eminent domain is a matter of statewide concern, not a municipal affair—it must be exercised in accordance with state law.[153] Cities have no inherent power of eminent domain and can exercise it, if at all, only when expressly authorized by law.[154] Therefore, a charter city must comply with the California Constitution, the Eminent Domain Law and the relocation assistance statutes.[155]

j. Annexations

The Legislature establishes policies and procedures for setting territorial boundaries of cities, including the annexation of territory to a city, which are generally implemented through local agency formation commissions.[156] The annexation of territory by a city is a statewide concern.[157] Therefore, a charter city may not adopt provisions of a local ordinance or charter "pertaining to annexation which are contrary to the general laws of statewide application."[158]

k. Public Records Act

The California Public Records Act ("CPRA") codifies the procedures by which any person may gain access to a city's "public records," including particular definitions for what constitutes a "public record," and exemptions from access for specified types of records.[159] The CPRA expressly applies to all cities, "whether general law or chartered."[160] In 2004, the California Constitution was amended to broadly construe existing legislation that furthers the people's right of access to public information (such as the CPRA), and to narrowly construe any limits to access, and it specifically provides that: "[t]he people have the right of access to information concerning the conduct of the people's business,

152 It should also be noted that another case from the same Superior Court in Los Angeles County, *City of Rancho Palos Verdes, et al. v. Rob Bonta, et al.* (22STCP02369), rendered a tentative ruling that came to the opposite conclusion.

153 *City and County of San Francisco v. PCF Acquisitionco, LLC* (2015) 237 Cal.App.4th 90, 96; *Wilson v. Beville* (1957) 47 Cal.2d 852, 859.

154 *San Francisco v. Ross* (1955) 44 Cal.2d 52, 55.

155 See Cal. Const., art I, § 19. The Eminent Domain Law may be found at Code of Civil Procedure section 12310.010, et seq., and the relocation assistance statutes may be found at Government Code section 7260, et seq.

156 Cal. Const., art. XI, § 2; Gov. Code, § 56300, et seq.

157 *Ferrini v. City of San Luis Obispo* (1983) 150 Cal.App.3d 239, 246.

158 *Id.* at p. 247.

159 Gov. Code, § 7920.000, et seq.

160 Gov. Code, § 7920.510.

and therefore … the writings of public officials and agencies shall be open to public scrutiny."[161] In 2014, the California Constitution was amended again to require each local agency to comply with the CPRA and the Brown Act as they might be amended by the Legislature in the future.[162]

I. Immigration Enforcement Strategy

Following the passage of the California Values Act ("CVA") in 2017 (Government Code section 7284, et seq.), California courts have held that certain immigration enforcement activities address matters of statewide concern.[163] Although Article XI, section 5, subsection (b) provides that a core municipal affair is "the constitution, regulation, and government of the city police force," the treatment and welfare of immigrants is a matter of statewide concern, and the "uniform application of the CVA throughout the state is necessary to ensure it adequately addresses these statewide concerns."[164] Thus, any charter provision relating to the police force must be consistent with the CVA.

161 Cal. Const., art. I, §3, subd. (b).
162 *Ibid.*
163 *City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 275.
164 *Id*. at p. 275.

Chapter 3:

DRAFTING, ADOPTING, AMENDING, AND CHALLENGING A CHARTER

This Chapter addresses the various ways in which a charter can be drafted or amended; the pros and cons of each option; the degree to which a proposed charter should be flexible versus restrictive and how much detail it should contain; what steps must be taken before submitting a proposed charter or amendment to the voters; and what happens after voter approval of any charter measure.

A. Drafting and Submitting the Charter

A charter may be drafted through one of two primary methods: by a charter commission elected by the voters, or through a city-council-driven process, either directly by the council or with input from an advisory charter committee appointed by the city council).

When a charter is drafted by a charter committee or the city council, then the city council decides whether to submit the draft charter to the voters. Although the city council may provide input on the work of a charter commission, the commission's draft charter is submitted to the voters with or without city council approval. Regardless, when a charter is submitted to the voters, the ballot must include a description of new city powers that result from adoption of the charter, including whether the city council will have the power to raise its own compensation and the compensation of other city officials without voter approval.[165]

1. Elected Charter Commission Process

The members of a 15-member charter commission, which is subject to the Brown Act,[166] are elected by the voters as set forth in Government Code section 34450, et seq. Either the city council may call an election to form a charter commission or formation of the commission may be proposed by initiative.[167] Such an initiative may only be on the ballot in a general election.[168] The format of the ballot measure is as follows:

- The voters first vote on the following question: "Shall a charter commission be elected to propose a new charter?"
- If this question receives a majority vote, then the 15 candidates receiving the highest number of votes will organize as the charter commission.[169]

165 Gov. Code, § 34458.5.
166 Gov. Code, § 54952, subd. (a).
167 Gov. Code, § 34452.
168 *Id.*, subd. (a), citing Elec. Code, §§ 1000, 10403.
169 See Gov. Code, § 34453; see also Gov. Code, § 34452, subd. (b) (providing that any vacancies shall be filled by appointment by the mayor).

A charter commission has two years from the date of the election to prepare and submit a proposed charter, at which point the commission is abolished.[170] If a charter commission fails to submit a charter proposal within the two-year period, it cannot continue its work. A charter commission may, however, submit portions of a proposed charter to the voters from time to time during its term.[171] Those partial proposals may serve as a foundation for future commissions or other bodies to build upon.

A charter commission's full or partial charter proposal requires the signature of a majority of charter commissioners, and is then filed with the city clerk's office.[172] Once filed, the proposed charter must be submitted to the voters of the city at the next established statewide general election under Elections Code section 1200, provided there are at least 95 days before the election.[173]

2. City Council-Initiated Charter Process

A city council may submit a draft charter to the voters without a charter commission or charter committee.[174] Charter committees, if used, are appointed by the city council to assist in drafting or reviewing a proposed charter. Unlike charter commissions, which are governed by state law, charter committees are created by local policy and have no statutory authority. There is no required number of members or deadline for the charter committee to complete its work. Once finished, a charter committee submits its draft as a recommendation to the city council, which may modify, accept, or reject the proposed charter entirely.

While charter commissions must complete their work within two years, charter committees could take more time, if needed, to draft a charter or revision and, thus, offer greater flexibility. On the other hand, that flexibility can lead to a prolonged or unfocused process, with no guarantee that a workable charter will ultimately be produced within a certain time frame.

Before submitting a proposed charter to the voters, whether developed independently by the city council or with input from an advisory charter committee, the city council must strictly comply with several procedural requirements. First, the city council must conduct at least two public hearings on the matter and content of the proposal.[175] Notice of the hearings must be published and posted at least 21 days in advance, the second hearing must occur at least 30 days after the first, and at least one hearing must be held outside of normal business hours to facilitate public participation.[176] The council may not vote to approve the submission of the proposed charter to the voters until at

170 Gov. Code, § 34462, subd. (a).
171 Gov. Code, § 34462, subd. (b)
172 Gov. Code, § 34455.
173 Gov. Code, § 34457.
174 Gov. Code, § 34458, subd. (a).
175 *Ibid.*
176 *Ibid.*

least 21 days after the second hearing.[177] Once approved, the proposed charter must be submitted to the voters at the next statewide general election, provided there are at least 88 days before the election.[178]

B. Strategic Considerations in Charter Design

Before drafting the specific provisions of a charter, it is important to consider the broader strategic decisions that will shape its structure and long-term function. These include not only what the charter says, but how much it says, and how clearly and flexibly the charter says it. Striking the right balance is rarely straightforward. A charter that is too brief or vague may fail to reflect community values or provide meaningful guidance to future councils. On the other hand, a charter that is overly detailed or rigid may lock the city into outdated procedures or limit its ability to respond to changing circumstances. These are not merely legal questions, but policy judgments about how best to balance clarity, adaptability, and anticipating the future needs of the city. Two key design questions arise in nearly every charter process: how long should the charter be, and how much detail should each provision include?

1. Charter Length

There is no prescribed length for a city charter. Some charters are very short (e.g., Buena Park, at just over one page); others are very long (e.g., Newport Beach, at over 100 sections). The length will be determined by how much detail the voters will accept.

Commonly, a charter will focus on two broad categories:

- Provisions relating to the four "core" municipal affairs (elections; matters relating to labor relations including compensation for officers and employees; governance structure; and regulation of the police force). Not every charter city will include each "core" municipal affair, but many charter cities will have an interest in including provisions regarding the governance structure and elections.
- The constraints on legislative authority that are relevant to the voters of the particular charter city. For examples, see Chapter 2. As a general rule, there is a direct correlation between the number and specificity of constraints a charter seeks to impose, particularly those involving detailed procedures or substantive limitations, and the overall length of the charter.

2. Depth of Detail

In essence, the base principle of a charter is that it provides a limitation on a city council's control over municipal affairs. Thus, a simple charter that establishes the city as a charter city and provides that all matters deemed "municipal affairs" may be controlled by ordinance enacted by the city council provides maximum flexibility (and thus power) to the city council. However, such a charter does not explain how the voters intend the control to be exercised and, therefore, provides no policy direction to the city council. A more complex charter, which explains in more detail how to exercise

177 *Ibid.*
178 *Id.*, subd. (a).

control over municipal affairs, will restrict future councils' power with respect to municipal affairs. In short, there are risks associated either with being too prescriptive, or not being prescriptive enough.

Rules built into a charter can provide protection against abuse, but at the same time, can be unduly restrictive in light of changed circumstances. For example, one city charter enacted in the 1950s contained a provision that requires public bidding for all public works' contracts over $5,000. At the time, that certainly may have seemed an appropriate safeguard to prevent contracting abuse by council members or staff. However, with the passage of time and inflation, the provision severely limited the city's ability to use more modern methods of design-build contracting. On the other hand, areas that are less susceptible to change over time, such as governance structure, election procedures, voting systems, etc., may be appropriate to include in a charter to provide stability to the municipal organization. For further discussion related to the role charter provisions for police and fire employees' salaries played in the bankruptcy of San Bernardino, see Chapter 5.

Thus, it is recommended that a prescriptive charter provision be evaluated with the ultimate goal of imposing the desired safeguard without overly restricting the ability to address changed social or economic circumstances. In the case of public works contracts, for example, use of a formula that takes inflation into account (rather than a fixed amount) as the threshold for public bidding would provide a safeguard without being unduly restrictive in the future. Alternatively, a charter provision might allow the bidding threshold to be set by ordinance. In some cases, the purpose of a charter provision may be to provide broader discretion in determining whether public bidding is required at all, or to authorize exemptions beyond those allowed under general law. The important point is that limiting language should be carefully evaluated to ensure an appropriate degree of flexibility for the future. The amount of detail included in a proposed charter is a policy decision to be made by each city.

C. Regulatory Requirements

The process of drafting and adopting a charter—or amending or repealing an existing one—triggers a number of legal requirements that cities must consider. In addition to procedural obligations under the Elections Code and the state constitution, two areas that frequently arise are environmental review under the California Environmental Quality Act ("CEQA") and labor negotiations governed by the Meyers-Milias-Brown Act ("MMBA").

1. CEQA Compliance

When a city council votes to place a citizen-sponsored initiative concerning the question of whether to create a charter commission, or to amend or repeal a charter, on a ballot, it is not a project subject to CEQA.[179] The ministerial exemption under CEQA also applies when the city council has a mandatory duty under the Elections Code either to submit the initiative to the voters, or to adopt the measure.[180] Because the council lacks discretion and must do one or the other, the action remains ministerial.[181] Thus, whether the city council places on the ballot a voter initiative to create a charter commission or to amend or repeal a charter, or a proposed charter prepared by an elected charter commission, these actions are ministerial and, therefore, exempt from CEQA.

However, where the council initiates submission of a proposed charter (or the amendment or repeal of a charter) to the voters, it is a discretionary action and, thus, a project subject to CEQA.[182]

The level of environmental review required under CEQA will depend on the specific provisions contained in the proposed charter. For example, land use restrictions embedded in a charter could potentially affect the environment, thereby triggering CEQA analysis. Other provisions may not result in any environmental impacts and could qualify for a categorical exemption or the "common sense" exemption, which applies when "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."[183] An initial study may be necessary to determine whether any exemptions apply and whether further environmental review is warranted.

2. Meyers-Milias-Brown Act Compliance for Labor Items

The MMBA (Government Code section 3500, et seq.) requires good faith bargaining regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations prior to making a policy decision that could affect those issues.

Prior a city council submits a charter to voters, a determination must be made as to whether any proposed element may affect wages, hours or other terms and conditions of employment for employees in one or more employee organizations. If so, the city will be required to "meet and confer in good faith," which means that a public agency and recognized employee organizations have the obligation to personally meet and confer promptly upon request by either party, and continue for a reasonable period to try and reach agreement on matters within the scope of representation, prior to proposing a

179 Cal. Code Regs., tit. 14, § 15378, subd. (b)(3); *Stein v. City of Santa Monica* (1980) 110 Cal.App.3d 458.

180 CEQA review is not required before direct adoption of an initiative. *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1036-37.

181 *Native American Sacred Site & Environmental Prot. Assn. v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961, 966.

182 *Save our Access v. City of San Diego* (2023) 92 Cal.App.5th 819, 846 (public agency-initiated submission of a ballot measure to voters is a project subject to CEQA), citing *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 191.

183 Cal. Code. Regs., tit. 14, § 15061, subd. (b)(3).

charter or amendments thereto.[184] The process should include adequate time for the resolution of impasses, when applicable, or when such procedures are used by mutual consent.[185]

The requirement to "meet and confer" prior to submitting a charter proposal or amendment to the voters does not abridge the council's power to propose charter amendments under California Constitution article XI, section 3, subdivision (b). Although the statutory requirement of the MMBA encourages binding agreements resulting from bargaining, the governing body retains the ultimate power to refuse an agreement and to make its own decision.[186] "This power preserves the council's rights under article XI, section 3, subdivision (b) - it may still propose a charter amendment if the meet-and-confer process does not persuade it otherwise."[187] Thus, the meet-and-confer requirement is compatible with the city council's constitutional power to propose charter amendments.[188]

D. Voter Approval

As outlined in Paragraph B, the specific procedures for submitting a proposed charter to the voters differ depending on the method of proposal.

For charter commissions elected by the voters, the process is governed by Government Code sections 34450 through 34457. Elections Code section 9255, et seq. governs election timing and submission requirements for charter proposals, including those initiated by charter commissions, and city councils acting under Government Code section 34458.

If a city council determines to move forward with a proposed charter measure, it may proceed either under Government Code section 34458 or Elections Code section 1415. Either way, a council-proposed charter and a charter-commission proposed charter must be placed before the voters "at the next established statewide general election" under Elections Code section 1200, if there are least 88 days prior to the election.[189]

Public funds may not be used to advocate in favor of the passage or the defeat of any ballot measure, including a proposed charter measure. Informational materials are allowed.[190]

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184 *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 596-597.
185 Gov. Code, § 3505.
186 *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach*, *supra*, 36 Cal.3d at p. 601.
187 *Ibid.*
188 *Ibid.*
189 Gov. Code, §§ 34457, 34458, subd. (a); Elec. Code, § 1415, subd. (a)(1). In an interesting, but perhaps minor, quirk of the law, it appears that, if a council acts to submit without revision a charter proposed by a charter commission that is appointed by the council pursuant to authority expressly granted in an existing city charter, such a charter proposal would be subject to the 95-day time period pre-election rather than the 88-day period for charters proposed by the governing body. See Elec. Code, § 9255, subd. (a) (providing for charter or amendment proposed by either elected or appointed commission to be submitted at statewide election held at least 95 days away); cf. Elec. Code, § 9255, subd. (b) (charter proposals of governing body submitted at statewide general election held at least 88 days away).
190 *Vargas v. City of Salinas* (2009) 46 Cal.4th 1; *Stanson v. Mott* (1976) 17 Cal.3d 206.

The description of the ballot measure proposing the charter must enumerate the new city powers that result from the adoption of the charter, including whether the city council will have the power to raise its own compensation and the compensation of other city officials without voter approval.[191]

The charter must be approved by a majority vote of the city's voters.[192] Following certification of the election results, the charter does not take effect until it is filed with, and accepted by, the Secretary of State in accordance with Government Code section 34460.[193] After a charter is adopted by the voters, three copies of the adopted charter are signed by the mayor and city clerk. One copy is recorded with the county recorder, one is retained in the city archives, and the third is filed with the Secretary of State. Those recorded and filed in the city's archives must include certified copies of all publications and notices required by law relating to the calling of the election and the charter process, certified copies of arguments for and against the measure, and a certified abstract of the vote.[194] A charter is also published in the State Statutes at Large.[195]

E. Procedures for Adopting, Amending, or Repealing a Charter

A charter may only be adopted, amended, or repealed by majority voter approval.[196] A ballot measure to approve a charter may be submitted to the voters either by an elected charter commission or by the city council.[197] The process for adopting and amending a charter is a matter of statewide concern governed exclusively by general laws that preempt conflicting provisions in a city charter.[198] Specifically, the argument that the procedure for putting charter amendments on the ballot is immune from conflicting state laws has been rejected.[199]

The procedure for amending, revising, and repealing a charter is essentially the same as the adoption of a charter, with some exceptions.[200] First, unlike adoption of a charter, an amendment, revision or repeal of a charter can be proposed by initiative.[201]

Second, certain types of amendments must be presented at statewide general elections, while others may be placed on municipal or state primary election ballots. Charter amendments must be placed before the voters "at the next established statewide general election" under Elections Code section 1200, if there are least 88

191 Gov. Code, § 34458.5. Copies of the proposed charter must be printed in at least 10-point type. Gov. Code, § 34456.
192 Cal. Const., art. XI, § 3, subd. (a). If more than one conflicting charter measures are on the same ballot and both receive a majority vote, the one receiving the highest affirmative vote is the one which is deemed passed. Cal. Const. art. XI, § 3, subd. (d).
193 Cal. Const., art. XI, § 3, subd. (a); Gov. Code, § 34459.
194 Gov. Code, § 34460.
195 Cal. Const., art. XI, § 3, subd. (a).
196 Cal. Const., art. XI, §3, subd. (a).
197 See Gov. Code, § 34450, et seq.
198 *Ibid.*
199 *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 598-599.
200 *Ibid.*
201 Cal. Const., art. XI, § 3, subd. (b). However, an initiative may propose election of a charter commission, which would then draft a charter for submittal to the voters.

days prior to the election[202] unless the proposed amendment (or repeal) falls into one of two categories: (1) one which does not alter a procedural or substantive employment right of an employee or retiree, or (2) one which is proposed to amend the charter to comply with an injunction, consent decree or state or federal voting rights laws. These two types of charter amendments may be scheduled for "the next regularly scheduled general municipal election … or at any established statewide general or statewide primary election" at least 88 days away.[203] This amendment was designed to preclude consideration of charter amendments affecting employee rights from being considered other than at a statewide general election.

F. Challenging Adoption, Amendment, or Repeal of a Charter

Once a proposed charter adoption, amendment, or repeal takes effect (i.e., after it is approved by the voters and filed with the Secretary of State), the only way to challenge its procedural regularity, such as whether the city council was required to "meet and confer" prior to submitting the measure to the voters, is through a *quo warranto* action pursuant to Code of Civil Procedure section 803, et seq.[204]

In determining whether to grant a private party the authority to file an action in *quo warranto*, the Attorney General's office looks to whether the application thereof would present a substantial issue of fact or law that would warrant resolution by the courts, and whether such an action would ultimately be in the public's interest.[205]

202 Elec. Code, § 1415, subd. (a)(1).
203 Elec. Code, § 1415, subd. (a)(2); Gov. Code, § 34458, subd. (a).
204 95 Ops.Cal.Atty.Gen. 31 (2012); *International Assn. of Fire Fighters, Local 55, AFL-CIO v. City of Oakland* (1985) 174 Cal.App.3d 687.
205 96 Ops.Cal.Atty.Gen. 1 (2013).

Chapter 4:

CHARTER CITY ORGANIZATION AND ELECTIONS

Charter cities may create their own governmental structure and establish procedures for local elections. This Chapter describes the different types of governmental structures available to charter cities and discusses the organizational issues that must be addressed when varying from the typical general law city structure. This chapter also discusses different election systems and summarizes the California Voting Rights Act.

A. Form of Government

State law vests authority to manage a general law city in a city council of at least five members, a city clerk, a city treasurer, a police chief, a fire chief, and any subordinate officers or employees provided by law.[206] All general law cities may elect to be governed by the "city manager form of government," that is, a "council-manager" form of government, that is established by an ordinance adopted by the council or voters.[207] Such an ordinance must define the powers and duties of the city manager, which may include the power to hire and fire city employees, except the city attorney.[208] When the offices of city clerk and city treasurer are appointive, appointments to such offices are made by the city council, unless the city council vests such power in the city manager by ordinance.[209] The ordinance may also fix the city manager's compensation or the minimum amount the city manager is to receive.[210]

Charter cities are not limited by the general laws and, therefore, can provide for any form of government, including the council-manager, "mayor-council" (commonly known as "strong mayor") or another form of government.[211] This means that a charter city may adopt, for example, a council-manager form of government that looks and operates quite differently from that of a general law city, because the charter city is not limited by the above-referenced provisions of the Government Code.

1. Council-Manager Form of Government

Born out of the United States progressive reform movement at the turn of the 20th century, the council-manager form of government was designed to combat corruption and unethical activity in local government by promoting effective management within a transparent, responsive, and accountable structure.[212] Since its establishment, the council-manager form has become the most popular structure of local government

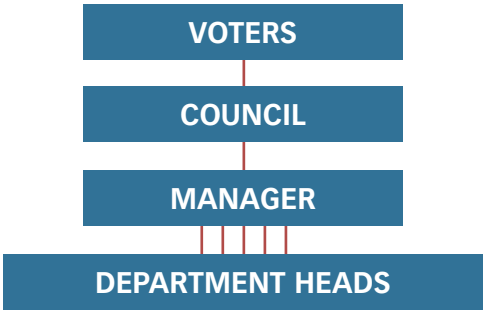
206 Gov. Code, § 36501.
207 Gov. Code, § 34851.
208 Gov. Code, §§ 34852, 34856.
209 Gov. Code, § 34856.
210 Gov. Code, § 34852.
211 See Cal. Const., art. XI, § 5, subd. (b).
212 ICMA, *Council-Manager Form of Government* (2019) <https://icma.org/sites/default/files/Council-Manager%20Form%20Brochure%20%28FINAL%29%2010-2019.pdf> [as of Aug. 3, 2025].

in the United States.[213] A publication of the International City/County Management Association, *Forms of Local Government Structure* (2008), provides the following information regarding council-manager and mayor-council forms of government, except where cited otherwise.

In the council-manager form of government, the elected city council is the policy-making, governing body of the city. The council hires the professional manager to carry out the policies it establishes.

The council provides legislative direction while the manager is responsible for day-to-day administrative operations of the city based on the council's policy direction. The mayor and council collectively set policy and approve the budget. The manager serves at the pleasure of the council as the council's chief management advisor, and is responsible for preparing the budget, directing day-to-day operations, and hiring and firing personnel. The city attorney reports directly to the council as the council's chief legal advisor.

Council-Manager Organizational Structure



In a council-manager form of government, the mayor is recognized as the political head of the municipality, but usually is an equal member of the legislative body and does not have special authority, such as the power to veto legislative actions. In some cities, the mayor is directly elected by the voters. In other cities, the mayor is appointed by the city council, often on a rotational basis.

Pursuant to the constitutional authority of charter cities to adopt distinct forms of government, however, the charters of some cities in California provide that the mayor has veto power, but not an equal vote on matters before the city council, while others do not confer veto power upon the mayor and also provide that the mayor does not have equal vote on matters before the city council.

For instance, the Long Beach City Charter provides that the mayor has veto power, subject to override by a supermajority vote of the city council, but has no vote in its proceedings.[214] The Bakersfield City Charter does not confer veto power upon the mayor, and provides that the mayor shall cast a vote on legislative matters only in case of a tie vote of the city council.[215] Finally, the Riverside and San Bernardino city charters each provide that the mayor has veto power, subject to override by a supermajority vote of the city council, but shall not vote in its proceedings except to break a tie vote.[216]

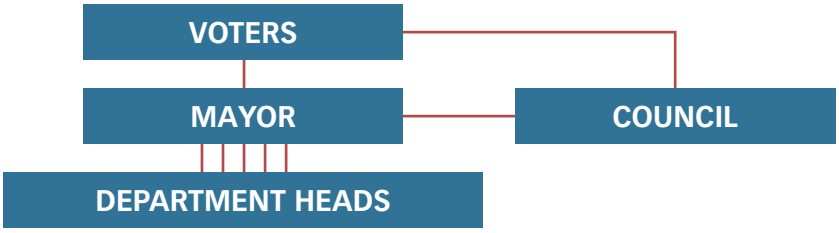
2. Mayor-Council ("Strong Mayor") Form of Government

The mayor-council form of government is that which most closely parallels the state and federal governments, with an elected legislature and a directly elected executive. The mayor-council form of government is commonly known as the strong mayor form of government because the mayor has more authority than the mayor in a council-manager form of government.

213 *Ibid.*
214 Long Beach City Charter, art II, §§ 202(a), 213(a).
215 Bakersfield City Charter, art. III, § 20(b).
216 Riverside City Charter, art. IV, §§ 405, 413; San Bernardino City Charter, art. III, §§ 302, 303(a)-(b).

The mayor is the executive arm of the city government whose authority can range from purely ceremonial functions to full scale responsibility for day-to-day operations. The duties and powers of a strong mayor can include hiring and firing department heads, preparing and administering the budget, and exercising veto power, subject to council override. Thus, the office of mayor in each city with a mayor-council form of government may be—and in California, is—a full-time job. The council has responsibility for adopting the budget, passing legislation, auditing the performance of the government, and adopting general policy positions.

Strong Mayor-Council Organizational Structure



In some cities, however, the mayor may assume a larger policy-making and political leadership role, while responsibility for day-to-day operations is delegated to an administrator or manager appointed by and responsible to the mayor.[217]

In California, five charter cities have adopted the strong mayor-council form of government: the cities of Fresno, Los Angeles, Oakland, San Diego, and the City and County of San Francisco. All five city charters provide that a chief administrator or manager has responsibility for day-to-day operations.[218]

The Fresno City Charter confers upon the mayor sole authority to appoint and remove the city manager.[219] By contrast, the Oakland and San Diego city charters confer upon the mayor authority to appoint the city administrator or manager subject to confirmation by the city council and sole authority to remove them; the Los Angeles City Charter confers upon the mayor authority to appoint the chief administrative officer subject to confirmation by the city council, to which a chief administrative officer whom the mayor has removed may appeal; and the San Francisco City and County Charter confers upon the mayor authority to appoint the city administrator subject to confirmation, and remove them subject to approval, of the board of supervisors.[220]

217 ICMA, *Forms of Local Government Structure* (2008) <http://icma.org/en/icma/knowledge_network/documents/kn/Document/9135/Forms_of_Local_Government_Structure> [as of Aug. 3, 2025].

218 *See* Fresno City Charter, art. VII, § 705; Los Angeles City Charter, vol. I, art. II, § 291; Oakland City Charter, art. V, § 504; San Diego City Charter, art. V, § 28; San Francisco City and County Charter, art. III, § 3.104.

219 Fresno City Charter, art. VII, § 702.

220 Los Angeles City Charter, vol. I, art. II, § 290, art V, § 508(b), (e); Oakland City Charter, art. V, §§ 500-501; San Diego City Charter, art. XV, § 265(b)(7), (9); San Francisco City and County Charter, art. III, § 3.104.

B. Organization Considerations

1.Council Size

General law cities must have at least five council members.[221] If the council is elected "by" or "from" districts (see section C below), the city must have five, seven or nine districts, unless the city has an elected mayor, the city must have four, six or eight districts.[222]

City councils of charter cities are not limited by the state law size requirements; rather, council size can be set by charter or ordinance.[223]

2. Elected Mayor

The mayor of a general law city is generally selected by a vote of the members of the city council.[224] However, upon a vote of the electorate, a general law city may establish a system for direct election of the mayor by voters and whether an elected mayor serves for two or four years.[225]

Charter cities have authority to determine the procedures for selecting a mayor and such charter provisions override any conflict in state law.[226]

3.Term Limits

The California Constitution provides that charter cities are empowered to determine the terms of the several municipal officers; unlike its counterpart relating to charter counties, however, the provision is silent on term limits.[227] Nevertheless, case law provides that charter cities can establish term limits either by charter or ordinance.[228] Subsequent legislation codifies the authority of voters in both general law and charter cities to impose or repeal term limits on council members, an elected mayor, or both.[229]

4.Compensation

The California Constitution gives charter cities plenary authority to establish the salaries of its officials, including council members and employees.[230]

In general law cities, council member compensation is prescribed by state law unless otherwise approved by vote of the electors.[231] The maximum monthly compensation level depends upon the city's population. Monthly compensation ranges from $950 (for cities with populations of 35,000 or less) to $3,200 (for cities with populations over 250,000).[232] These amounts may be increased by ordinance; however, the amount of the

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221 Gov. Code, § 36501.
222 Gov. Code, § 34871, subds. (a)-(d).
223 See Cal. Const., art. XI, § 5, subd. (b).
224 Gov. Code, § 36801.
225 Gov. Code, §§ 34900-34906.
226 *Rees v. Layton* (1970) 6 Cal.App.3d 815.
227 See Cal. Const., art. XI, § 5, subd. (b).
228 *Cawdrey v. City of Redondo Beach* (1993) 15 Cal.App.4th 1212 (term limits are a municipal affair).
229 Gov. Code, § 36502, subd. (b).
230 Cal. Const., art. XI, § 5, subd. (b).
231 Gov. Code, § 36516.
232 Gov. Code, § 36516.

increase may not exceed five percent for each calendar year from the operative date of the last salary adjustment in effect when the ordinance is enacted.[233] Furthermore, increases may only take effect upon the seating of newly elected council members.[234]

The compensation limit that applies to general law cities includes any compensation a council member receives for serving on any city board or commission and, for the most part, such compensation is limited to a stipend of up to $150 per month for each board or commission.[235] Compensation does not include payments by a city for retirement, health and welfare, and federal social security benefits.[236]

5. The Brown Act

The Brown Act applies to general and charter cities alike, and requires that any proposal to adopt a charter include in the ballot description an enumeration of new city powers as a result of the adoption of the charter, including whether the city council will have the power under the charter to raise its own compensation without voter approval.[237] Additionally, the Brown Act generally requires that, prior to holding a serial or simultaneous meeting, the clerk or a member of the legislative body verbally announce the amount of compensation that members of the legislative body will receive for attending the serial or simultaneous meeting.[238]

6. Council Qualifications

For general law cities, council member qualifications are:

- Be a United States citizen;
- Be at least 18 years old;
- Be a registered voter;
- Be a resident of the city at least 15 days prior to the election and throughout their term; and
- If elected by or from a district, be a resident of the geographical area comprising the district by or from which they are elected.[239]

Charter cities can establish their own qualifications for holding city office, provided the same do not violate the United States Constitution.[240] The most common eligibility requirement is residency within the city (or district, as appropriate,) at the time of the election.[241]

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233 *Ibid.*
234 Gov. Code, § 36516.5
235 Gov. Code, § 36516.
236 Gov. Code, § 36516.
237 Gov. Code, § 34458.5.
238 Gov. Code, § 54952.3.
239 Elec. Code, § 321; Gov. Code, §§ 34882, 36502; 87 Ops.Cal.Atty.Gen. 30 (2004).
240 Cal. Const., art. XI, § 5, subd. (b); 82 Ops.Cal.Atty.Gen. 6, 8 (1999).
241 See, e.g., Riverside City Charter, §401; San Jose City Charter, § 404; Santa Barbara City Charter, § 501.

C. Elections

In general law cities, municipal elections are conducted in accordance with the Elections Code.[242]

The California Constitution grants charter cities plenary authority over how the city council and other officers are elected.[243]

1. At-Large vs. By-District vs. From-District

Council members are elected in one of three primary ways. The first is "at-large," whereby candidates live anywhere within the city, and all voters vote for all councilmembers. The second is "by-district," whereby candidates live in a particular district and are elected only by voters in that district. The third is "from-district," whereby candidates live in a district, but are elected by voters citywide.

2. Other Election Processes

a. Instant Runoff or Ranked Choice

Through instant runoff voting, voters rank the candidates in order of preference. Each ballot is initially counted as one vote for the voter's first choice candidate. If a candidate secures a majority of votes cast, that candidate wins. If no majority is achieved, the candidate with the fewest votes is eliminated, and a new round of counting takes place, with each ballot counted as one vote for the highest-ranked candidate that has not been eliminated. The process continues until the winning candidate receives a majority of the votes against the remaining candidates.

b. Cumulative Voting

Through cumulative voting, voters are entitled to a number of votes equal to the number of seats open in an election. Voters may vote for separate candidates or cast all of their votes for a single candidate. Cumulative voting can help minority candidates, because the candidate's supporters can "single-shot" all of their votes behind one candidate, while majority voters may be more likely to spread out their votes among several candidates. Cumulative voting is a form of at-large voting.

c. Seat-Based Voting

Under a seat-based system, council positions remain at-large; however, candidates are allowed to designate a particular seat for which they are running, depending on which seats are open. Seats are often denoted by number. Voters are entitled to cast a vote for each open seat. Such a method arguably allows candidates a greater chance of being elected because they are running only against candidates for the designated seat. Still, candidates have no assurance as to how many others may designate a particular seat.

242 Elec. Code, § 10101.
243 Cal. Const., art. XI, § 5, subd. (b).

d. Limited Voting

Regardless of how many seats are open, voters only cast one vote.

3. Timing and Method of Municipal Elections

In general law cities, the timing and method of local elections are prescribed by the Elections Code.[244] While the Legislature has significantly limited the timing of elections relating to certain charter changes, charter cities generally may establish their own election dates and adopt their own election rules and procedures.[245] As of 2018, cities are required to hold general elections on a statewide election date if, in the past four elections, an election held on a non-statewide election date had less than a 25 percent voter turnout.[246] While the statue does not state on its face that it applies to charter cities, the Attorney General has opined that the statute applies to chartered and general law cities alike.[247]

Furthermore, charter cities may conduct elections exclusively through mail-in ballots, rather than by opening polling places.[248]

4. Campaign Reform

In *Johnson v. Bradley,* the California Supreme Court considered amendments to the Los Angeles City Charter that adopted a comprehensive campaign, election and ethics reform plan ("Measure H"), which directed the city council to adopt a system for using public funds to fund campaigns in certain circumstances. In litigation, Measure H was alleged to conflict with state law imposing various campaign contribution restrictions.[249] The California Supreme Court upheld Measure H. First, the Court found that the city's public financing system was a "municipal affair," then determined that, although state law reflected a statewide concern regarding the integrity of the electoral process, its ban on public financing was not reasonably related to this concern.[250]

5. California Voting Rights Act Challenges

a. Violations

The California Voting Rights Act (CVRA) was enacted to implement the equal protection and voting guarantees of the California Constitution. The CVRA sets forth the circumstances in which an at-large electoral system may not be imposed to dilute or abridge a protected class's opportunity to elect candidates.[251] "Protected class" means a class of voters who are members of

244 Elec. Code, § 10101.
245 Cal. Const., art. XI, § 5, subd. (b); Elec. Code § 10101, et seq.
246 Elec. Code, §§ 14501-02.
247 100 Ops. Cal. Atty. Gen. 4 (2017).
248 Burbank City Charter, art. VIII, § 800; Burbank Mun. Code, tit. 2, ch. 3; Santa Barbara City Charter, art. XIII, § 1306.
249 Gov. Code, § 85300 ("No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking office.").
250 *Johnson v. Bradley* (1992) 4 Cal.4th 389.
251 Elec. Code, §§ 14026, subd. (a), 14027.

a race, color or language minority group, as defined in the federal Voting Rights Act.[252]

When at-large or from-district voting dilutes the vote of a protected class in California, the CVRA provides a private right of action.[253] To prove a CVRA violation, the plaintiffs must show that the voting was "racially polarized."[254] However, they need not show either that members of a protected class live in a geographically compact area or demonstrate a discriminatory intent on the part of voters or officials.[255]

b. CVRA Applicability to Charter Cities

As enacted in 2002, the CVRA applied to "a city" without any distinction between chartered and general law cities.[256] In 2014, however, the Court of Appeal held that the CVRA applies to chartered and general law cities alike.[257] The following year, the Legislature passed, and the Governor signed into law, Assembly Bill 277 to codify *Jauregui*'s holding that the CVRA applies to "a general law city, general law county, charter city, charter county, [or] charter city and county . . . ."[258]

c. Standing

Any voter who is a member of a protected class and who resides in a political subdivision where a violation of the CVRA is alleged may file a lawsuit.[259]

d. Remedy

Upon finding a violation of the CVRA, a court must implement appropriate remedies, including the imposition of district-based elections tailored to remedy the violation.[260] The fact that members of a protected class are not geographically compact or concentrated, while not supporting a violation of the CVRA, may be a factor in determining an appropriate remedy.[261]

e. Attorney's Fees

A successful CVRA plaintiff is entitled to reasonable attorney fees and litigation expenses, including expert witness fees and expenses. A prevailing city, by contrast, is not entitled to recover any costs, unless the court finds the action to have been frivolous, unreasonable or without foundation.[262]

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252 42 U.S.C. § 1973, et seq.
253 *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667.
254 Elec. Code, § 14026, subd. (e).
255 *Ibid.*; see also *Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1228-29; Elec. Code, § 14026, subd. (d).
256 Stats. 2002, c. 129, § 1.
257 *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781.
258 Stats 2015, c. 724, § 2.
259 Elec. Code, § 14032.
260 Elec. Code, § 14029.
261 Elec. Code, § 14028, subd. (c).
262 Elec. Code, § 14030.

f. District Elections

The CVRA does not apply to by-district elections in which the council member candidate resides within an election district and is elected only by voters residing within that district. The CVRA does not mandate the abolition of at-large election systems, but makes the use of at-large election systems more susceptible to a legal challenge.

Chapter 5:

COMMON CONCERNS ABOUT CHARTER CITIES

This Chapter discusses some of the most common concerns raised about adopting or operating under a city charter or being a charter city.

A. "Statewide Concerns"

1. Growth of "Statewide Concerns"

As described in Chapter 2, the measure of a charter city's autonomy from the state and, thus, the real benefit to being a charter city, is captured by the term "municipal affairs."[263] A charter city's authority over municipal affairs, free from conflicting state statutes and regulations, is the central distinction between a charter city and a general law city. However, a "matter of statewide concern" developed as the conceptual limitation on the scope of "municipal affairs" and, thus, the supremacy of charter city measures over conflicting state legislative enactments. Courts have generally not endeavored to define "municipal affairs," but rather, have analyzed whether a challenged ordinance adopted as a "municipal affair" must defer to a "matter of statewide concern."

Examples include:

1948	**Regulation of Trades.**	Court ruled that licensing of a trade or profession is a matter of statewide concern. Court overturned a San Francisco ordinance requiring every contractor to obtain a business certificate or license and also included additional regulation as to the quality and character of installations. Court found local ordinance conflicted with State Contractor's Laws (Bus. & Prof. Code, § 7000, et seq.) and was not a municipal affair.[264]
1957	**Eminent Domain.**	Court held that power of eminent domain is not a municipal affair but a matter of statewide concern and charter cities only have the power if given by the Legislature.[265]
1955	**Regulation of Telephone Systems.**	Court ruled that regulation of telephone system is a matter of statewide concern.[266]
1961	**Telephone Franchises.**	Court held that regulation of telephone communication is a matter of statewide concern, and a city cannot require a telephone company to obtain a franchise from the city.[267]
1963	**Labor.**	Court held that the organizational rights of firefighters are a statewide concern.

263 Grodin et al., The California State Constitution: A Reference Guide (1993) p. 188.
264 *City and County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445.
265 *Wilson v. Beville* (1957) 47 Cal.2d 852, 856.
266 *Pacific Tel. & Tel. Co. v. City of Los Angeles* (1955) 44 Cal.2d 272, 280.
267 *Pacific Tel. & Tel. Co. v. City and County of San Francisco* (1961) 197 Cal.App.2d 133, 148.

1976	**Labor.**	Court held that charter cities are subject to the Meyers-Milias-Brown Act.[268] Court found that even though the general rule is that the fixing of compensation for city employees is a municipal legislative function, local legislation may not conflict with statutes such as the Meyers-Milias-Brown Act, which are intended to regulate the entire field of labor relations of affected public employees throughout the state.
1982	**Labor.**	Court found that Public Safety Officer's Procedural Bill of Rights applies to charter cities.[269]
1991	**Taxing of Financial Institutions.**	Court ruled that charter city's tax on savings and loan institutions was not a municipal affair.[270]
1995	**Public Contracting.**	Court found that, although a public works contract was a municipal affair, a provision in a bid specification did enter into an area of statewide concern related to minority and women's outreach programs.
1998	**Utility Liens.**	Court ruled that an ordinance allowing the city to create and record a super-priority lien on property for unpaid utility charges was not a municipal affair.[271]
2003	**Land Use.**	Court held that construction and growth of a commercial airport is a matter of statewide concern and invalidated an initiative prescribing specific circumstances in which a city could consent to airport development.[272]
2005	**Water.**	Court held that fluoridization of the drinking water supply is a matter of statewide concern and invalidated a city's ordinance prohibiting fluoridization.[273]
2008	**Firearms.**	Court held that uniform regulatory scheme for the possession, licensing, sale, and registration of firearms is a matter of statewide concern and invalidated an ordinance of the City and County of San Francisco prohibiting the sale of all firearms, and the possession of handguns, in the City and County.[274]
2014	**Elections.**	Court held that integrity of city council elections is a matter of statewide concern and that the California Voting Rights Act applies to a charter city's election of council members.[275]
2019	**Labor.**	Court held that the minimum wage is a matter of statewide concern and invalidated a city charter provision vesting a city council with authority to establish employee wages, which the council did pursuant to a collective bargaining agreement.[276]
2020	**Immigration.**	Court held that the California Values Act reflects matters of statewide concern including, but not limited to, the treatment and welfare of immigrants, and invalidated a city charter provision granting the city full constitutional power to make and enforce laws regarding municipal affairs.[277]

268 *San Leandro Police Officers Assoc. v. City of San Leandro* (1976) 55 Cal.App.3d 553.
269 *Baggett v. Gates* (1982) 32 Cal.3d 128, 140 ("There must always be doubt whether a matter which is of concern to both municipalities and the state is of sufficient statewide concern to justify a new legislative intrusion into an area traditionally regarded as 'strictly a municipal affair.' Such doubt, however, 'must be resolved in favor of the legislative authority of the state.'")
270 *Cal. Fed. Savings & Loan Assn. v. Los Angeles* (1991) 54 Cal.3d 1.
271 *Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 600.
272 *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (2003) 114 Cal.App.4th 465, 478.
273 *City of Watsonville v. State Dept. of Health Services* (2005) 113 Cal.App.4th 875, 887.
274 *Fiscal v. City and County of S.F.* (2008) 158 Cal.App.4th 895, 918-919.
275 *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 801.
276 *Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 575-576.
277 *City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243, 273.

2. A New Try with an Old Tactic: Local Control

There has been a constant tug-of-war between the state and charter cities over local control. The Legislature often attempts to stake out its authority in an area by stating that a matter is of "statewide concern" and, as such, controlling on charter cities. The California Supreme Court has stated that the Legislature does not have the power to transform a municipal affair into a statewide concern[278] by its own declaration. Historically, however, courts have given "great weight" to the Legislature's stated intent.[279] The Legislature usually prefers that a particular policy be followed uniformly throughout the state. Ordinarily, this is accomplished by the Legislature enacting a law that assertedly applies to charter cities because it is a matter of statewide concern. A lesser-used technique is for the Legislature to tie the receipt of state funds to charter cities' compliance with a state law that otherwise intrudes into an area that has been determined to be a municipal affair.

In 1978, the Legislature "bailed-out" cities and counties with state surplus funds to make up for the significant decrease in property taxes caused by Proposition 13. However, the distribution of state surplus funds was prohibited to any local public agency granting to its employees a cost-of-living wage or salary increase for the 1978-1979 fiscal year that exceeded the cost-of-living increase provided for state employees. Long Beach and Santa Clara challenged the statute as interfering with their autonomy as charter cities. The court recognized that a charter city's right to determine how much to pay its employees is a "core" municipal affair over which a charter city has "plenary" authority. The court rejected the state's argument that compensation of city employees is a matter of "statewide concern" because of the fiscal emergency occasioned by Proposition 13.

A more recent example of this tactic can be found in the area of prevailing wage law. Charter cities are not required to pay prevailing wages on public works projects that are not funded by state or federal funds and that serve the municipality rather than a regional project.[280] What this means in practical effect is that the charter city and its city council and voters have the ability to determine if and when to pay prevailing wage on local public works contracts. Charter cities have taken a variety of approaches on this issue and based the decision on what they believe best meets the needs of their communities. Some charter cities have express provisions in their charters opting out of prevailing wage rate law and others have a local ordinance, resolution, or other policy expressly opting out of prevailing wage rate law. However, it is not necessary for a charter city to have a charter provision or local ordinance not to be subject to prevailing wage rate law; it is an inherent part of home rule granted by the state constitution. Consequently, a charter city can elect to not be subject to prevailing wage rate law by

278 *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63 (overruled in part on other grounds by *Mendoza v. Fonseca McElroy Grinding Co., Inc.,* (2021) 11 Cal.5th 1118, 1132-33).

279 *State Building & Construction Trades Council of California v. City of* Vista (2012) 54 Cal.4th 547, 558; *Grodin*, *supra*, n. 5; *Baggett v. Gates* (1982) 32 Cal.3d 128, 136-137.

280 *State Building and Construction Trades Council of California v. City of Vista*, *supra*, 54 Cal.4th at p. 547.

not requiring it in its public works contracts, so long as the project does not use state or federal funds and only serves local versus regional interests.

In 2012, the California Supreme Court held that payment of prevailing wages by a charter city is a municipal affair, regardless of the language in the statute.

In 2013, the Legislature enacted Senate Bill 7 ("SB 7"), adding section 1782 to Labor Code to:

- Prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has a charter provision or an ordinance that authorizes a contractor not to comply with state prevailing wage rate law.
- Prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has awarded within the prior two calendar years a public works contract without requiring the contractor to comply with the state prevailing wage rate law.[281]
- Allow a charter city to receive or use state funding or financial assistance for a construction project if the charter city has adopted an ordinance that includes requirements that, in all respects, are equal to or greater than state prevailing wage rate law.

The legality and constitutionality of SB 7 was challenged in court by a group of cities (El Centro, Carlsbad, El Cajon, Fresno, and Vista). The Court of Appeal recently concluded that SB 7 is constitutional, finding that SB 7 "does not conflict with these charter city laws as it does not mandate or require that charter cities do anything, such as paying prevailing wages for its public works projects. Rather, [SB 7] provides the Cities with a choice, to meet the requirements set forth in [SB 7] to obtain state funding or financial assistance on its public works projects, or forgo eligibility for those funds."[282] Although charter cities can opt out of prevailing wages, therefore, they must weigh the potential savings of opting out against the risk of losing state funding for construction projects. For example, the Pacific Grove previously opted out of state prevailing wage laws, but following the enactment of SB 7, passed a resolution establishing compliance with California prevailing wage law.[283] Exeter modified its municipal code following SB 7 to state it would comply with state prevailing wage law until SB 7 is found invalidated as unconstitutional.[284]

281 Ballotpedia, San Jose, California, Pension Modification Agreement, Measure F (November 2016) <https://ballotpedia.org/San_Jose,_California,_Pension_Modification_Agreement,_Measure_F_(November_2016)> [as of April 14, 2025].

282 *City of El Centro v. Lanier* (2016) 245 Cal.App.4th 1494, 1505.

283 Pacific Grove Resolution No. 14-072 (2014), https://files.cityofpacificgrove.org/Document_Center/Resolutions%20&%20Ordinances/Resolutions/2014/14-072-resolution-prevailing-wages-clean-sk.pdf (citing the City's "financial interests are best served by compliance with California's prevailing wage law as delineated in California SB 7.").

284 Exeter Mun. Code, § 3.04.020, https://library.municode.com/ca/exeter/codes/municipal_code?nodeId=TIT3REFI_CH3.40DEWASTBEUTCOPR_3.40.020COS.7 [as of April 14, 2025].

3. Uncertainty and Ambiguity

Charter cities and general law cities considering becoming charter cities live with the reality of the Legislature continuing to apply new laws to charter cities based upon legislative declarations and findings that the matter is of statewide concern. Some of these laws do not get challenged in court. A charter city must then make a decision whether to follow the state law or adopt a local ordinance in conflict with the state law based upon its city attorney's legal opinion that a court would ultimately determine that the area is a "municipal affair" that does not require deference to the legislative enactment.

For example, state law has extensive regulatory schemes limiting cities' ability to adopt regulations for the retrieval of shopping carts.[285] It requires a city that retrieves a shopping cart to hold it for the owner for 30 days. The city cannot collect its costs or fine the owner as long as the owner retrieves the cart. The state statute expressly provides, "The Legislature hereby finds that the retrieval by local government agencies of shopping carts … is in need of statewide regulation and constitutes a matter of statewide concern…."[286]

It seems arguable that the Legislature could demonstrate that the retrieval of a shopping cart "under the historical circumstances" indicates "the state has a more substantial interest in the subject than a charter city." The legislative analysis for the bill identifies the rationale for making it applicable to charter cities:

Cart owners are concerned that a multiplicity of local cart retrieval regulations, along with expensive fees, are bad for business and fail to acknowledge their diligent retrieval efforts. Grocers want state law to limit local officials' cart-retrieval regulations.

There are no published cases in which a court has determined that shopping cart retrieval is a matter of statewide concern on the basis that local regulations may be "bad for business." Therefore, a charter city must weigh the legal risks, benefits, and consequences of adopting an ordinance in conflict with this state law.

Another example involving uncertainty, and one that will likely continue to play out in both the Legislature and courts, involves land use related to housing. Effective January 1, 2022, the Governor signed Senate Bill 9 ("SB 9"), known as the HOME Act, into law. SB 9 required, with some exceptions, that cities ministerially approve duplexes and lot splits in single-family residential zones. In Section 4 of SB 9, the Legislature made findings and declared that "ensuring access to affordable housing *is a matter of statewide concern*," thereby attempting to apply SB 9 to charter cities.

Following the enactment of SB 9, five charter cities (Redondo Beach, Carson, Torrance, Whittier, and Del Mar) ("petitioners"), sought a writ of mandate to invalidate the law.

285 Bus. & Prof. Code, § 22435, et seq.
286 Bus. & Prof. Code, § 22435.7, subd. (a).

Petitioners claimed that SB 9 violated the California Constitution because the law was not reasonably related to its stated concern of ensuring access to affordable housing, nor narrowly tailored to avoid interference with local government.

On April 22, 2024, the Superior Court for the County of Los Angeles sided with the petitioners and found that SB 9 did not apply to charter cities.[287] Undertaking the *Cal Fed Savings* test,[288] the Superior Court quickly found the first and second steps of the inquiry met. At step three, petitioners argued that the applicable statewide concern was ensuring affordable housing, while respondents argued that the applicable statewide concern was addressing the shortage of housing in California. The Court sided with petitioners, finding that the text unambiguously stated its purpose.[289] At step four, petitioners argued that SB 9 was not reasonably related nor narrowly tailored to ensuring access to affordable housing, and the Court agreed. The court found that respondents did not present any evidence to support the argument that SB 9 would increase affordable housing.[290]

The *City of Redondo Beach* case is on appeal before the California Second District Court of Appeal. While the Superior Court decision was celebrated by charter cities, the limited impact of *City of Redondo Beach* case should be kept in mind. Until there is an appellate court decision, the ruling is limited to the petitioners; the Second District Court of Appeal recently found that assuring an adequate supply of affordable housing is of statewide concern;[291] and the Superior Court decision hinted at a simple solution—rewrite the purpose of the statute.[292] Thus, even if a binding court decision gives clarity that SB 9 does not apply to charter cities, it is possible the Legislature may try again, leaving charter cities in a state of uncertainty.

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287 *City of Redondo Beach, et al., v. Rob Bonta* (2024) Case No. 22STCP1143, p. 1 ("this is not a case about whether our State Legislature may enact legislation to ensure access to affordable housing or whether it may act to address the different concern of a statewide shortage in housing more generally. *The courts of our State have held both to be valid statewide concerns for which our Legislature poses authority to address*. However, because the provisions of SB 9 are not reasonably related and sufficiently narrowly tailored to the explicit stated purposes of that legislation - namely, to ensure access to affordable housing - SB 9 cannot stand…") (emphasis added).

288 *State Building & Construction Trades Council of California v. City of Vista*, *supra*, 54 Cal.4th at p. 556, citing *California Fed. Savings & Loan Assn. v. City of Los Angeles*, 54 Cal.3d 1, 16, 17, 24) ("First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a 'municipal affair.' [citation] Second, the court 'must satisfy itself that the case presents an actual conflict between [local and state law].' [citation] Third, the court must decide whether the state law addresses a matter of 'statewide concern.' [citation] Finally, the court must determine whether the law is 'reasonably related to ... Resolution' of that concern [citation] and 'narrowly tailored' to avoid unnecessary interference in local governance [citation].).

289 *Id*. at pp. 10-11 ("the Legislature cannot rely on a potential, eventual decrease in prices resulting from increased housing supply to demonstrate that SB 9 would increase the supply of affordable (i.e., below market-rate) housing."

290 *Ibid.*

291 *AIDS Healthcare Foundation v. Rob Bonta* (2024) 101 Cal.App.5th 73, 84-85.

292 *City of Redondo Beach, et al., v. Rob Bonta* (2024) Case No. 22STCP1143.

4.It's About More than the Growth of "Statewide Concerns"

As hopefully has been made clear by now, being a charter city does not mean complete autonomy from the Legislature, nor does it mean that areas now considered "municipal affairs" will be considered municipal affairs forever. Being a charter city is not only about how much autonomy a city may have from state control. Being a charter city also means providing the city's voters with a vehicle and forum for proposing their vision for how the city should provide services and regulate conduct. It is an opportunity for the voters to clearly identify what is most important to the community, the types of issues that make the community different from its neighbors, and how they would like to see the city governed.

B. Compensation of Elected Officials

The California Constitution gives plenary authority for charter cities to establish the salaries of its officials and employees. By contrast, the salaries of general law cities' officials and employees are controlled by the provisions of the Government Code. For a more in-depth discussion, see the Compensation section of Chapter 3.

PRACTICE TIP: Challenging an ambiguous court decision could result in a published decision that provides more certainty; however, that certainty may not be helpful for charter cities.

1. Concerns about Excessive Compensation

The scandal in the City of Bell raised the issue of compensation of city officials in charter cities.[293] The small City of Bell, where part-time council members paid themselves salaries of $100,000 per year and their city manager at least $800,000 per year, has made many ask if part of the issue was the city being a charter city.[294] Some have used what happened in Bell to help defeat proposals for charter adoptions.

In 2012, the voters of the City of Auburn rejected a ballot measure to make the city a charter city. The second-most-often cited reason for opposing the charter amendment in the voter guide was that council members could pay themselves "thousands of dollars in extra compensation."[295] Opponents of the measure argued the charter would open the door to corruption and even possibly bankruptcy.[296]

The Legislature responded to concerns about council members in charter cities paying themselves "excessive compensation" by adopting a state law that requires a proposal to amend or adopt a charter to include whether the city council will, pursuant to the adopted charter, have the power to raise its own compensation and the compensation of other city officials without voter approval.[297]

293 St. John, *California Cities Shift to Charters, Raising Questions About Officials' Salaries*. (August 6, 2010) KPBS <http://www.kpbs.org/news/2010/aug/06/officials-salaries-charter-cities/> [as of May 26, 2026].

294 *See, e.g.*, Gang & Begley, *Inland Charter Cities Offer Similar Pay to Managers, Council* (August 1, 2010) The Press Enterprise <https://www.pressenterprise.com/2010/08/02/inland-charter-cities-offer-similar-pay-to-managers-council/> [as of May 26, 2026].

295 Placer County Ballot Guide, Special Elec. (June 5, 2012) analysis of Measure A by county counsel <http://www.placerelections.com/uploads/documents/06052012/06052012_Measure_A-City.pdf> [as of May 26, 2026].

296 *Ibid*.

297 Gov. Code, § 34458.5.

Of course, salaries only tell part of the story, and often not the largest part of the city's outlay; benefits packages can create larger liability for a city. In 2011, the *Los Angeles Times* looked at reported salary and benefits information for the councils of charter cities and general law cities, and found that salary and benefits together constituted almost 50 percent of what charter cities were paying over the salary cap set by state law. In contrast, less than a third of the general law cities were paying salary and benefits over the state law salary cap.[298] As noted above, the state law does not include benefits in the compensation cap.[299]

The *Los Angeles Times* also found that, generally, most cities, including charter cities, paid under the state cap set forth in the Government Code. But charter cities tended to pay their council members higher salaries than general law cities, and were more likely to exceed the state law cap.[300]

In response to the Bell scandal, in 2010, the State Controller required all cities, including charter cities, to disclose all salary information in their financial reports to the state, and posted the results on the state's website.[301] The program, referred to as the Government Compensation in California Program, is intended to capture the salary, compensation, and benefits information for every compensated employee in any city, county, or independent special district, who receives a W-2. The website is found at: **http://publicpay.ca.gov**.

2. Inadequate Salaries

As charters may only be amended by a vote of the electors, some cities' compensation for elected officers can be locked in at amounts that might limit who can afford to serve. For example, the City of Needles provides in its charter that council salaries are limited to $1 per month.[302] In less affluent communities, where city council compensation is nominal, the expenses associated with service, as well as the potential loss of income from the council member's regular business and occupation, may skew the composition of the council toward those who can afford it.

TIPS FOR CHARTER CITIES ABOUT CITY COUNCIL COMPENSATION

When drafting a charter proposal, consideration may be given to the following regarding city council compensation:

- Review the state law schedule for council compensation to gauge whether city council compensation will be in line with general law cities of the same size.
- Review the limitation in state law on the compensation the city council can receive for service on other city boards, commissions, and authorities, and determine whether a limitation on this amount is appropriate.
- Consider whether adjustments to city council salary should require voter approval, should be made automatically through an annual cost-of-living adjustment, or may be adopted by city council ordinance.[281]
- Consider whether council compensation should be established by another method or point of comparison. For example, section 407 of the San Jose City Charter provides for council salary-setting by the Council Salary Setting Commission. Section 24 of the San Bernardino City Charter provides that the mayor's salary shall be 50 percent of the salary of a Superior Court judge in San Bernardino County.

298 *California City Council Compensation Scorecard* (Aug. 1, 2011) LA Times <**http://spreadsheets.latimes.com/city-council-salaries/**> [as of May 26, 2026].
299 Gov. Code, § 36516, subd. (d).
300 *California City Council Compensation Scorecard*, *supra* note 36; Henry, *Berkeley City Council Paid More Than State Guideline*. (Aug. 3, 2011) Berkeley Patch <**http://berkeley.patch.com/groups/politics-andelections/p/berkeley-city-council-paid-more-than-state-guideline**> [as of May 26, 2026].
301 Cal. State Controller's Office, Press Release, Controller Requires Cities, Counties to Report Salaries of Government Officials (Aug. 2010) <**https://web.archive.org/web/20100826023912/http:/www.sco.ca.gov/eo_pressrel_controller_requires_salary_reporting.html**> [as of May 26, 2026].
302 Gang, *supra*, note 32.
303 For example, section 402 of the Newport Beach City Charter provides for an annual cost of living adjustment for council compensation.

C. Bankruptcy

Declaring bankruptcy comes at a heavy cost. The initial transaction costs, which can run into the millions, are only the start. Filing can bring stigma to the city.[304] A city's credit rating will likely be suspended or downgraded. Borrowing costs can increase for years to come. Businesses will be dissuaded from locating in the community, resulting in fewer jobs and a decline in the real estate market.[305] In the last thirty years, only forty-nine cities or counties in the nation have declared bankruptcy.[306]

Since 2008, three of those have been California cities: Vallejo (2008), Stockton (2012) and San Bernardino (2012). All three cities are charter cities.[307] Some have asked if this was more than a coincidence.[308] While being a charter city was not the sole or principal reason these cities went bankrupt, provisions in each city's charter played a role in placing the city on a fiscally unsustainable path.

More specifically, the problematic charter provisions (1) acted to limit the authority of the city councils to reduce police and fire salaries and benefits, and (2) placed restrictions on city council authority that could not have been placed on a general law city.

San Bernardino has a charter provision that ties public safety employees' salaries to an average of similar employees' salaries paid by 10 other, mostly more affluent cities. In 2014, the voters rejected a ballot proposal to amend the charter to remove this provision.[309] Additionally, San Bernardino had an unusual government structure that diffused executive authority among the council, mayor, and city manager, and arguably made it difficult to change the status quo, even when the status quo could lead to financial ruin. When the city filed for bankruptcy, the budget for public safety salaries

304 Watkins, *Note: In Defense of Chapter 9 Option: Exploring the Promise of Municipal Bankruptcy as Mechanism for Structural Political Reform* (2012-2013) 39 J. of Legis. 89, 94.

305 *Ibid.*; *see also* Knox & Levinson, *Municipal Bankruptcy: Avoiding and Using Chapter 9 in Times of Fiscal Stress* (2009) <**https://web.archive.org/web/20140823235434/http://www.orrick.com/Events-and-Publications/Documents/1736.pdf**> [as of May 26, 2026].

306 Watkins, *supra*, note 42.

307 A fourth California city, Mammoth Lakes, also filed for bankruptcy during this period of time. However, the Mammoth Lakes case was somewhat unusual, as the small town with a budget of $19 million filed bankruptcy for protection from a developer lawsuit seeking $43 million in damages. The city won a dismissal of the bankruptcy case after it settled the lawsuit. Church, *Mammoth Lakes Bankruptcy Case Ends After Accord in Suit* (November 19, 2012) Bloomberg <**http://www.bloomberg.com/news/2012-11-19/mammoth-lakes-bankruptcy-case-ends-after-accord-in-suit.html**> [as of May 26, 2026].

308 Audi, White & Traves, *California's 'Charter' Cities Are Under the Microscope* (July 18, 2012) Wall Street Journal <**http://online.wsj.com/article/SB10001424052702303612804577531181167707276.html**> [as of May 26, 2026]; see also Rozansky, *The Problem and Promise of Charter Cities* (August 22, 2012) City Journal <**https://www.city-journal.org/article/the-problem-and-promise-of-charter-cities**> [as of May 26, 2026].

309 Ballotpedia, *City of San Bernardino Public Safety Employees Salary Charter Amendment, Measure Q* (Nov. 2014) <**http://ballotpedia.org/City_of_San_Bernardino_Public_Safety_Employees_Salary_Charter_Amendment,_Measure_Q_(November_2014**)> [as of May 20, 2026].

alone was $10 million more than the city's expected revenues. Police and fire employee salaries made up 72 percent of the budget.[310]

Stockton's charter previously allowed for binding arbitration for fire fighters' compensation. This tied the city's hands when the city and employees' associations could not come to an agreement on reductions. Public safety employee salaries and benefits made up 76 percent of the city's budget.[311] In November 2010, this charter provision was repealed by the voters.[312]

Vallejo's charter mandated binding arbitration for all of its unions.[313] Employee salaries made up 85 percent of the city's budget, with the largest share going towards police and fire employees. Between 2006 and 2008 (the year Vallejo declared bankruptcy), salaries of public safety employees had scheduled increases of over 21 percent, while all other employees had scheduled increases of approximately 10 percent.[314] On June 8, 2010, this charter provision was repealed by the voters.[315]

In sum, being a charter city does not necessarily mean a city will be fiscally unsustainable, and being a general law city does not necessarily save a city from potential bankruptcy.[316]

Additionally, some argue that being a charter city can help a city to maintain stronger financial footing.[317] Historically, some charter cities have saved money by not paying prevailing wages[318] and by contracting out for municipal services.[319] However, since it is possible for charter cities to lose state funding for construction projects by opting out of

TIPS FOR AVOIDING BANKRUPTCY FOR CHARTER CITIES

Those drafting a charter may consider whether the following provisions/language should or should not be included:

- Salary formulas. If salary formulas are included, consider provisions that allow the city council flexibility to adjust during times of financial crisis.
- Requiring a balanced budget.
- Requiring a two-year budget.
- Requiring a reserve percentage of the general fund budget as a minimum, except upon a supermajority vote of the city council.
- Reserving authority to contract out for general services.

310 George Mason University, State and Local Government Leadership Center, *San Bernardino Full Case Study* (2012) <https://s3.amazonaws.com/chssweb/documents/12789/original/GMU_San_Bernardino_9.13.pdf?1379560583> [as of May 26, 2026].

311 Evans, Kosenko & Polyakov, *How Stockton Went Bust: A California City's Decade of Policies and the Financial Crisis that Follows* (May 24, 2012) <https://www.academia.edu/4212165/How_Stockton_Went_Bust_A_California_Citys_Decade_of_Policies_and_the_Financial_Crisis_that_Followed> [as of May 26, 2026].

312 Ballotpedia, *City of San Bernardino Public Safety Employees Salary Charter Amendment, Measure Q* (Nov. 2014) <http://ballotpedia.org/City_of_Stockton_Binding_Arbitration_for_Fire_Department_Employees,_Measure_H_(November_2010)> [as of May 26, 2026].

313 George Mason University, *supra*, note 48.

314 Evans, Kosenko & Polyakov, *supra*, note 49.

315 Ballotpedia, *City of Vallejo Repeal of Binding Arbitration, Measure A* (June 2010) <http://ballotpedia.org/City_of_Vallejo_Repeal_of_Binding_Arbitration,_Measure_A_(June_2010)> [as of May 26, 2026].

316 Compare Welch, *These California Cities Could Be Next in Bankruptcy* (May 15, 2013) USA Today <http://www.usatoday.com/story/news/nation/2013/05/15/ten-california-cities-in-distress/2076217/> [as of May 26, 2026] (naming five general law cities in California that may be facing bankruptcy); with Moore, *20 Cities That May Face Bankruptcy After Detroit* (August 8, 2013) Newsmax <http://www.newsmax.com/Newsfront/cities-bankruptcy-after-detroit/2013/08/06/id/519081> [as of May 26, 2026] (citing to three California cities that may be facing bankruptcy, all of them charter cities).

317 Vo, *Costa Mesa Charter Issue to be Decided by Voters* (Aug. 1, 2012) Orange County Register <https://www.ocregister.com/2012/08/01/costa-mesa-charter-issue-to-be-decided-by-voters/> [as of May 26, 2026].

318 Following the enactment of SB 7 and the upholding of SB 7 in *City of El Centro v. Lanier*, cities that formerly opted out of prevailing wage have resumed compliance with state prevailing wage law. See, supra, notes regarding Cities of Pacific Grove and Exeter.

319 Vo, *supra*, note 55.

state prevailing wages, many charter cities have decided to comply with state prevailing wage laws. On the other hand, some cities' charters restrict such authority.

Employment costs can get out of control in general law cities and charter cities alike. However, if provisions of a charter affect the financial stability of a city, then voter approval is required to amend or repeal them. Changing identical provisions in a general law city may simply require a majority vote of the city council, or renegotiation of an MOU under the Meyers-Milias-Brown Act ("MMBA").

D. Labor Relations

A common concern about becoming a charter city centers on the effect on labor relations. However, in many ways, charter cities are subject to the same or similar requirements as general law cities in the area of labor relations.

Take, for example, the major public sector labor relations statute applicable to local government, i.e., the Meyers-Milias-Brown Act ("MMBA").[320] MMBA applies to charter cities.[321] In addition, the Public Safety Officers Procedural Bill of Rights ("POBR")[322] has been found to apply to charter cities.[323] Similarly, the Firefighters Procedural Bill of Rights ("FFBOR")[324] applies to charter cities.[325]

1. Wages and Benefits

Another concern about becoming a charter city is that the charter itself may circumvent the collective bargaining process. This can include items like binding arbitration as well as limiting wages and benefits based on a survey of comparable cities.[326] These items are usually the subject of negotiations under the MMBA, but can be added to city charters, either by a city council-sponsored initiative or by a petitioned initiative. However, this process can cut both ways. For example, the City and County of San Francisco successfully defended its charter provision requiring increases or decreases in employee benefits to be approved by the voters. The court found in favor of San Francisco by determining that nothing in the MMBA prohibited the San Francisco Board of Supervisors from executing an agreement changing employee benefits and making final approval subject to approval by the voters as required by the charter.[327]

City charters can also be used as vehicles to set salaries of some (e.g., public safety) or all city employees based upon those salaries provided to employees of similarly

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320 Gov. Code, § 3500, et seq.

321 *International Association of Firefighters, Local 230 v. City of San Jose* (2011) 195 Cal.App.4th 1179, 1187; *People ex. Re. Seal Beach Police Officers Association v. City of Seal Beach* (1984) 36 Cal.3d 591, 597.

322 Gov. Code, §§ 3300-3311.

323 *Baggett*, *supra*, note 7.

324 Gov. Code, §§ 3250-62.

325 *International Association of Firefighters*, *supra*, at p. 1206.

326 City of Grover Beach, Report to City Council, Pros and Cons of Adopting a City Charter (April 16, 2012) at page 3 <https://www.groverbeach.org/DocumentCenter/View/2326/item8?bidId=> [as of May 26, 2026].

327 *United Public Employees, Local 390/400, SEIU, AFL-CIO v. City and County of San Francisco* (1987) 190 Cal.App.3d 419, 426.

sized cities (or any other criteria). Such charter provisions take salary-setting authority from the city council and place it into a formula that may or may not consider the overall financial condition of the city in the short or long term. Charter provisions might constrain the financial flexibility of the city council.[328]

The City of Fresno amended its charter to remove a provision requiring a survey of specified cities as the basis of the city's opening bargaining position. This was accomplished during the window between when all collective bargaining units had a memorandum of understanding ("MOU") and before the time the city and the bargaining units opened collective bargaining for subsequent MOUs. This allowed the city to avoid violating the MMBA's meet and confer requirements, because the provision merely set the city's initial bargaining position and not wages.[329]

Another city provided an additional management benefit (i.e., three percent of salary) to a group of management employees electing not to be in an employee association, but denied this benefit to those in the same job classifications electing to be in the employee association. The court determined that this management benefit discriminated against employees electing to exercise their rights to collectively bargain with the city; being a charter city did not prevent this outcome. The court directed the city to take one of two actions to remedy the situation—either extend the additional management benefit to those employees who otherwise qualify, but who are in the employee association, or discontinue the management benefit for those declining to join the employee association.[330]

City charters can also be utilized to adopt agreements with employee associations that conflict with provisions of the Labor Code. For example, the County of Los Angeles adopted an MOU with its probation officers' association that provided a different method to compensate employees for meal periods and working through meal periods than provided under the Labor Code. The court denied the probation officers' legal challenge, indicating that the county's charter status, coupled with an MOU provision covering the same issue, was sufficient for the county to prevail.[331]

2. Pension Benefits

A number of charter cities have explored the ability to alter the pension benefits offered to their employees, including both those vested in the system and new hires. Notably, both San Diego (Initiative Proposition B passed in June 2012 with 65 percent approval) and San Jose (Council-Submitted Measure B passed in June 2012 with 69 percent approval) have had initiatives designed to change the pension benefit allocation between the employer and employee and to reduce benefits long-term.[332] Legal challenges have been brought against both efforts, including by the Public Employment Relations Board ("PERB"). for failure to collectively bargain the changes.

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328 Audi, White & Traves, *supra*, note 46.
329 76 Ops.Cal.Atty.Gen 169 (1993); *City of Fresno v. the People ex. rel. Fresno Firefighters, IAFF Local 753* (1999) 71 Cal.App.4th 82.
330 *San Leandro Police Officers Association v. City of San Leandro* (1976) 55 Cal.App.3d 553.
331 *Dimon v. County of Los Angeles* (2008) 166 Cal.App.4th 1276, 1283.
332 See San Jose City Charter, § 1501-A; San Diego City Charter, art. IX, §§ 140-151.

San Diego won its pre-election and post-election court challenges by PERB,[333] but it faced additional charges of unfair labor practices in connection with the measure. In proceedings against San Jose, PERB also found the city failed to bargain in good faith under the MMBA before putting the measure on the ballot. The city council appealed this PERB decision, which eventually made its way to the California Supreme Court, which ruled that Proposition B was illegally placed on the ballot[334, 335]. Following the California Supreme Court's ruling, further legal proceedings took place. eventually resulting in the invalidation of Proposition B, which was struck from San Diego's charter.[336] San Diego entered a $2.2 million settlement to create pensions for workers hired after Proposition B took effect in 2012, but who were no longer working for the city when pensions were restored in July 2021.[337] San Diego may continue to face additional costs from the fallout of Proposition B from the roughly 1,000 police officers who were denied pension credits while in the police academy.[338]

In a separate lawsuit by employee unions challenging Measure B, a superior court judge invalidated parts of the measure that required higher contributions from current employees, but upheld other parts of the measure.[339] Following the Superior Court decision, San Jose and unions agreed to dismiss the Measure B litigation if a 2016 ballot measure, Measure F, passed.[340] Measure F made pension modifications that superseded the Measure B modifications.[341] Measure F passed with 61% of the vote.[342]

Similarly, in the City of Bakersfield, the local police officer association was also given authority by the California Attorney General to sue in the name of the People of the State of California to challenge a charter amendment and implementing ordinances. The amendment and ordinances resulted in a different pension benefit formula and contribution level for new police department hires, and provided that the new formula and contribution level could only be changed by voters. The legal challenge alleges that

333 Clingen, *Pension Reform: San Jose and San Diego Voters Weigh In* (Oct. 15, 2013) Ballotpedia <http://ballotpedia.org/Pension_reform:_San_Jose_and_San_Diego_voters_weigh_in> [as of May 26, 2026].
334 *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898.
335 Ballotpedia, San Diego, California, Proposition B, Changes to Retirement Plans for City Employees Initiative (June 2012) <https://ballotpedia.org/San_Diego,_California,_Proposition_B,_Changes_to_Retirement_Plans_for_City_Employees_Initiative_(June_2012)> [as of April 14, 2025].
336 *Ibid.*; City of San Diego, Proposition B Information for Separated Employees, <https://www.sandiego.gov/riskmanagement/services/propb> [as of April 14, 2025].
337 In striking a deal, San Diego nears the end of its pensions legal saga. But there's another problem to solve (Dec. 19, 2024) San Diego Union-Tribune, <https://www.sandiegouniontribune.com/2024/12/19/in-striking-a-deal-san-diego-nears-the-end-of-its-prop-b-legal-saga-but-theres-another-problem-to-solve/> [as of April 14, 2025].
338 Ibid.
339 Mendel, *San Jose Pension Reforms Ruled Violation of Rights* (Dec. 30, 2013) Calpensions <http://calpensions.com/2013/12/30/san-jose-pension-reforms-ruled-violation-of-rights/> [as of May 26, 2026].
340 Ballotpedia, San Jose, California, Pension Modification Agreement, Measure F (November 2016) <https://ballotpedia.org/San_Jose,_California,_Pension_Modification_Agreement,_Measure_F_(November_2016)> [as of April 14, 2025].
341 Ibid.
342 *Ibid.*

this charter amendment violates the meet-and-confer obligations of the MMBA.[343] The lawsuit was eventually dismissed.[344]

3. Binding Arbitration

The Legislature cannot require binding arbitration for general law cities and charter cities.[345] This limitation applies even when legislation allows a general law city, charter city, county, or city and county to bypass an arbitrator's decision by unanimous vote of the governing body.[346]

General law cities and charter cities have the authority to agree to binding arbitration as part of an MOU with labor organizations. Further, voters in a charter city have the authority to adopt binding arbitration as a part of a city charter. As reported previously, some cities' voters have repealed such provisions under threat of bankruptcy (i.e., Vallejo and Stockton[347]) and others are doing this as a proactive measure to ensure city council control over labor relations.[348]

E. Cost to Become a Charter City

In addition to weighing the policy costs and benefits of becoming a charter city, there are significant transactional costs associated with becoming a charter city that cities would be prudent to consider, as well. Although these costs will vary depending on the particular situation, general law cities considering whether to become charter cities should expect to incur the following transactional costs:

1. Becoming a Charter City

The process to become a charter city is typically a multi-year process with significant resources expended. There are costs associated with all of the following activities:

- Legal, administrative and staffing costs to draft the charter.
  - Costs can vary depending upon the charter process used.
    - For example, the use of a formal charter commission with direct authority to place a measure on the ballot can be higher based on the complexity and time such a process can take.
  - If subjects impacting wages, hours or other terms and conditions of employment are included in the proposed charter, there may be a cost to meet and confer with employee associations under the MMBA.
  - Costs may also be necessary under the California Environmental Quality Act.

343 95 Ops.Cal.Atty.Gen. 31 (2012); see also 95 Ops.Cal.Atty.Gen. 50 (2012) (regarding challenge to City and County of San Francisco).
344 Gilroy, Reforming Defied-Benefit Pension Systems in Bakersfield and Kern County (April 27, 2014) Reason Foundation <https://reason.org/commentary/pension-reform-bakersfield-kern/> [as of April 14, 2025].
345 *County of Riverside v. Superior Court (Riverside County Sheriff's Association, R.P.I.)* (2003) 30 Cal.4th 278.
346 *County of Sonoma v. Superior Court* (2009) 173 Cal.App.4th 322.
347 Audi, *supra*, note 46.
348 In 2011, San Luis Obispo and Palo Alto voters removed binding arbitration from their charters.

- Participating in public education/outreach.
- Holding an election.
  - The costs can vary greatly depending on whether the city holds a stand-alone election or consolidates it with a statewide election.[349] Consolidation can save a substantial amount of money.
  - Election cost estimates by cities have started at $5,000.
  - Associated costs can include hiring election consultants, purchasing election supplies, labor costs for election workers, and paying the county registrar or elections official to hold the election.

2. After Becoming a Charter City

After charter adoption, a general law city would incur many additional costs. These include costs associated with the following:

- Training staff on new processes and procedures and what it means to be a charter city.
- Implementing required procedural changes, including ordinance adoption and municipal code amendment to take advantage of new charter authority. If the charter is drafted with flexibility in mind, these changes can be made over the course of years to defray the cost and staff retraining, so that it is manageable given other city priorities.
  - If public contracting is addressed in the charter and new bid thresholds are established, contract documents and bid packets will also need to be updated.
  - Any financial or accountability procedures included in the charter will require implementation procedures by the city's finance department, including a review to ensure that proper internal and external controls are in place.
  - Any personnel, civil service, or labor relations changes will require changes to existing processes, procedures, and rules and may require a meet-and-confer process with recognized employee associations.
- Lawsuits arising from exercising charter powers.
  - Gray areas in the law invite lawsuits. As charters can be different and may vary in their provisions, there is no broad case law on how to interpret specific charter provisions. However, a charter city is typically aware of these gray areas and can legislate based upon an analysis of risks and benefits.
- All charter amendments and repeal of charters, including those mandated by changes in the law, require an election.[350] Often, consolidation with regularly scheduled elections will reduce the cost.

349 Gov. Code, §§ 33457-33458.
350 Elec. Code, § 1415

Chapter 6:

CONCLUDING THOUGHTS

Each city has its unique culture and set of issues. This makes it difficult to generalize whether any particular general law city should or should not become a charter city. With this in mind, the following is offered for consideration:

1. **Each city's unique culture and set of issues.** A review of different charter provisions reiterates the variety of issues facing cities statewide and the unique culture of each city. Charters include provisions varying from height limits to offshore drilling to red-light camera enforcement to pension reform. A charter is a vehicle for expressing the voters' views on issues they wish to reserve for themselves (by limiting city council discretion).

2. **Times change.** The extent of a charter city's authority is directly related to whether an area that is otherwise a municipal affair is deemed a matter of statewide concern. The Legislature cannot simply declare something to be a matter of statewide concern—the declaration must be supported with findings. Although the Legislature may declare something a matter of statewide concern, courts ultimately determine whether an area is a matter of statewide concern. While a charter is intended to provide some certainty for a city, it is possible that a declared a municipal affair, which is subject to local control today, may change in the future and become a matter of statewide concern.

3. **More or less?** As discussed in Chapter 2, the provisions of a charter are a limitation on the authority of a charter city, not a grant of authority. This has led some cities to adopt a "short-form" charter that includes very few limitations. Other cities have decided to adopt more comprehensive charters that provide detailed provisions with respect to the city's exercise of its municipal affairs. Ultimately, the decision of how much limitation to include in a charter is a policy question that will be answered based on input and recommendations received during the public drafting and review process.

4. **Words don't mean what they say: municipal affairs.** Section 5, subdivision (a), of article XI of the Constitution grants a charter city authority over "municipal affairs." Section 5, subdivision (b) grants "plenary" authority over four specific municipal affairs, sometimes called "core" municipal affairs. The courts' decisions do not necessarily seem to be influenced by whether a charter city is relying upon section 5, subdivision (a), or section 5, subdivision (b); and, historically, courts' decisions have not been influenced by whether a charter city was acting with "plenary" authority under section 5, subdivision (b).

5. **Some things seem pretty certain.** A few areas seem to consistently withstand a challenge.

Longstanding Charter City Areas of Influence:

- Municipal organization: The form of government and sub-government;
- Spending local funds: How a charter city decides to use its own tax dollars;
- Elections: Timing, qualifications, balloting, etc.;
- Salary and benefits (including retirement): City council, other officers and employees.

There are currently 126 charter cities in California. Understanding the benefits and drawbacks to becoming a charter city, the ever-evolving meaning of a "municipal affair," and the goals of the city, are crucial to making the decision. If the decision to adopt a charter is made, the city should be prepared to go through the adoption process, listen to public input, and train staff to implement new procedures following the successful adoption of a charter. Finally, the city should remember that, while a charter is intended to provide some certainty for a city, it is possible that a municipal affair today may change in the future and become a matter of statewide concern.

1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200 | Fax: (916) 658-8240
www.calcities.org | www.westerncity.com