



## CITY OF BEVERLY HILLS STAFF REPORT

**Meeting Date:** July 8, 2008  
**To:** Honorable Mayor and Members of the City Council  
**From:** Laurence S. Wiener, City Attorney  
Geoff Ward, Assistant City Attorney  
**Subject:** Overview of Process for Becoming a Charter City  
**Attachments:** Exhibits

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### INTRODUCTION

The Mayor has asked the City Attorney's office to provide the City Council with general information about charter cities, the advantages and disadvantages of becoming a charter city and the process for becoming a charter city.

### DISCUSSION

#### I. OVERVIEW OF CHARTER CITIES

In California, there are two types of cities – general law cities and charter cities. The authority of a general law city is derived from the powers granted to it by the general laws adopted by the state Legislature and from the police power granted to it by the state Constitution. On the other hand, a charter city's power is not defined or limited by the state's general laws. Instead, with respect to municipal affairs, a charter city's powers are defined by the city's own charter subject only to the limitations of the state Constitution. This is the primary advantage of becoming a charter city – as a charter city, a city would have the ability to adopt charter provisions or ordinances concerning its own municipal affairs without constraint by general law on the specific subject.

Meeting Date: July 8, 2008

Article XI, section 5(a) of the California Constitution, provides:

“It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.”

This is known as the “home rule” doctrine which reserves to charter cities the right to adopt and enforce its own laws, subject only to the conflicting provisions in the state or federal constitutions or preemptive state law on matters of statewide concern. Harman v. City and County of San Francisco, 7 Cal. 3d 150, 161 (1972).

The California Constitution does not define the term “municipal affair.” For this reason, whether a particular subject is a “municipal affair,” over which a charter city has authority, or is a matter of “statewide concern,” over which the state legislature has authority, is a matter for the courts to decide on a case-by-case basis. Although the legislature is neither empowered to determine what is a municipal affair nor to transform a municipal affair into one of statewide concern, the state legislature's intention is given great weight by the court. Bishop v. City of San Jose, 1 Cal.3d 56, 64 (1969). In fact, the legislature will occasionally adopt laws that are accompanied by a statement that the legislature believes the subject matter is of statewide concern and the law should apply to charter cities.

The traditional approach by courts in defining a municipal affair is to categorize certain subjects as municipal affairs. The more recent trend, however, is to avoid “compartmentalization, that is, of cordoning off an entire area of governmental activity as either a municipal affair or one of statewide concern.” California Fed. Savings & Loan Assn. v. City of Los Angeles, 54 Cal.3d 1, 17-18 (1991). Accordingly, the concept of what is a municipal affair is fluid and changes over time, as issues of local concern may become statewide concerns. The task of determining whether a given activity is a municipal affair or one of statewide concern is an ad hoc inquiry in light of the facts and circumstances surrounding each case. Cal Fed, 54 Cal.3d at 16.

In California Fed. Savings & Loan Assn. v. City of Los Angeles, the California Supreme Court developed a four step analysis to determine what is a municipal affair. First, the court must determine whether an actual conflict exists between the local law and the state statute. If an actual conflict between the local and state legislation is found, then the court takes the second step of determining whether the local law implicates a municipal affair. If the local law implicates a municipal affair, then the court takes the third step of examining whether the state statute involves statewide concerns that require paramount state control. Finally, in evaluating the statewide concern, the court must determine whether the state statute is reasonably related and narrowly tailored to resolve the statewide concern.

Meeting Date: July 8, 2008

The adoption of a charter by the City of Beverly Hills would generally not affect matters of statewide concern, over which the state legislature has full authority. These include, for example: the school system; regulation of traffic; franchises for telephone or telegraph lines; licensing of members of a trade or profession; a municipality's responsibility for injury to the person and property of others; the Ralph M. Brown Act; and the exercise of the power of eminent domain.

## II. ADVANTAGES TO A CHARTER

As discussed above, the main advantage to a becoming a charter city is that a charter allows a city more local control over its municipal affairs. As also discussed above, a charter city is still subject to the general laws governing matters of statewide concern, such as traffic regulation and other areas.

Typically, a city will reserve for itself the maximum amount of local control when it adopts a charter. To do so, the charter must include a declaration that the city intends to avail itself of the full power provided to charter cities by the State Constitution. If a city does not want to extend its power to the fullest extent granted by the State Constitution, that city may determine the breadth of its power according to its wishes.

Although this memorandum does not discuss every area in which a charter city could legislate, some areas in which a charter city may vary from the general laws include: adopting procedures for municipal elections, including municipal initiative, referendum and recall elections; setting procedures for adopting ordinances; setting the compensation for city officers and employees; and setting rules for public contracting and public financing. Attached to this memorandum is Exhibit 1, a copy of a six-page chart from the League of Cities entitled "General Law City v. Charter City." It includes a summary of the various areas in which charter cities can legislate. A few of those areas are discussed below.

*Form of Government.* As a charter city, the City of Beverly Hills would be able to establish any form of government, including the current city manager form of government or a strong mayor form of government. The charter may also provide that appointed city officers convert to elected city officers. City charters may set forth unique criteria for city office so long as the criteria is not discriminatory. City charters may also establish election dates, rules and procedures. A charter city is not bound by state election laws, but may adopt the general election law by reference. A city charter may also establish the process for selecting officers and the method for enacting local ordinances and the requirements for a quorum.

*Compensation.* The city charter may also set salaries, expense reimbursements and benefits for its council members. Please note, however, that Government Code Section 53208.5 provides that the health and welfare benefits of any member of a legislative body of any city, *including a charter city*, shall be no greater than that received by non-safety employees of that public agency. The

Meeting Date: July 8, 2008

state legislature determined that “problems,” such as “uneven, conflicting, and inconsistent health and welfare benefits for legislative bodies,” distorted the statewide system of intergovernmental finance and were “not merely municipal affairs or matters of local interest and that they are truly matters of statewide concern that require the direct attention of the state government.”

*Public Contracts and Prevailing Wages.* Charter cities are subject to the Public Contracts Code unless the charter city expressly provides that it does not apply. As for prevailing wages, charter cities are likely not currently subject to the prevailing wage laws unless they elect to be subject to the law or if the project involves work out of the city limits or the project is otherwise of significant state interest. However, in December 2004, the California Supreme Court issued its decision in City of Long Beach v. Department of Industrial Relations, 34 Cal.4th 942 (2004), a case in which it had the opportunity to reaffirm the long-standing rule that charter cities are substantially free from the requirement of paying prevailing wages on “public works” projects. In that case, the Court of Appeal had held that the state’s prevailing wage laws addressed matters of “statewide concern” and therefore applied to projects funded or subsidized by all public agencies, including charter cities. The Supreme Court reversed the decision of the Court of Appeal but decided the case on an alternative ground. Unfortunately, the Court avoided the issue of whether the prevailing wage law is a matter of such “statewide concern” that it would override a charter city’s interests in conducting its municipal affairs.

*Property Transfer Tax.* The courts have held that the subject of property transfer taxes is not one of statewide concern and is a municipal affair. Fielder v. City of Los Angeles, 14 Cal.App.4th 137 (1993). Thus, although Proposition 62, passed by the California voters in 1986, prohibits general law cities from adopting a general property transfer tax, a charter city may adopt a general property transfer tax.

*School Funding.* Charter cities may render financial assistance to schools. Berkeley Sch. Dist. v. City of Berkeley, 141 Cal.App.2d 841, 846-847 (1956). The amount or form of the financial assistance may be spelled out in the city charter, or the charter may simply grant the city council the discretion to provide the amount of assistance it sees fit. Madsen v. Oakland Unified Sch. Dist., 45 Cal.App.3d 574, 579-81 (1975). The City currently provides funds to the Beverly Hills School District for the use of District facilities through the Joint Powers Agreement.

### III. DISADVANTAGES TO A CHARTER

Along with the advantages, there are also perceived disadvantages to converting from a general law city or a charter city. Possible disadvantages of adopting a city charter include:

Meeting Date: July 8, 2008

- (1) The fact that the city would not have the benefit of any new state legislation on matters of municipal concern unless action were taken by the city council to adopt that legislation;
- (2) The on-going costs associated with charter amendments that must be adopted by a vote of city residents. Thus, even "clean-up" of a charter provision requires a vote of the people.
- (3) The uncertainty that may arise whether a specific matter is one of municipal concern governed by the charter, or one of statewide concern governed by statute. This could result in exposure to legal challenges if an issue should arise in a "gray" area where the charter and general law may differ. There is also limited case law from which to evaluate legal exposure when applying charter language;
- (4) The expenditure of time and effort required to formulate a charter;
- (5) The time and expense of conducting an election to consider the adoption of a charter;
- (6) The transition from many years of municipal operation under the general law.

Often, a charter is supported if there is a particular problem that can be solved by adopting the charter city form of government. The adoption of a charter, however, can be divisive in a community. Charter elections can be used to limit the role of the City, to change the organization of the City government, or to pursue a particular viewpoint that may be divisive in the community. Also, as the courts review the powers of a charter city (as demonstrated by the Long Beach decision) there is the possibility of the "erosion" of municipal powers. Some of the differences or perceived advantages of a charter city may ultimately disappear.

#### **IV. PROCEDURE FOR BECOMING A CHARTER CITY**

There are two means by which a city charter may be adopted. The first involves a charter commission. The commission is elected by a vote of residents and has the responsibility of drafting the charter. As an alternative, the city council, on its own motion, may draft the charter. In either case, the charter is not adopted until it is ratified by a majority vote of the city's voters.

##### ***A. Charter Drafted by Elected Charter Commission***

Government Code Sections 34450 through 34457 specify the procedures to be followed where a charter is to be proposed by a charter commission. Under the charter commission option, the first step is to elect the charter commission. An election to choose charter commissioners may be called either by a majority vote

Meeting Date: July 8, 2008

of the city council or by a petition signed by not less than fifteen percent (15%) of the registered voters within the City. See Cal. Gov't Code § 34452. If the formation of a charter commission is requested by a petition, the authority in charge of the City's registration records must verify the signatures on the petition. See Cal. Gov't Code § 34452. The expense of this verification must be borne by the city. See Cal. Gov't Code § 34452. If the petition is verified, the city council must call an election pursuant to sections 1000 and 10403 of the California Elections Code. See Cal. Gov't Code section 34452.

Once it has been decided that a charter commission election will take place, candidates for commissioners must be nominated. Candidates for the office of charter commissioner are nominated in the same manner as candidates for other elected offices. See Cal. Gov't Code § 34454. A candidate for charter commissioner must be a registered voter of the city. See Cal. Gov't Code § 34451. If any vacancy arises in a charter commission, any vacancy on the commission will be filled by a mayoral appointment. See Cal. Gov't Code § 34452.

At an election for charter commission members, the voters will vote first on the following question: "Shall a charter commission be elected to propose a new charter?" See Cal. Gov't Code § 34453. After voting on this question, the voters will then vote for the charter commission candidates. See Cal. Gov't Code § 34453. If a majority of the voters vote for the formation of a charter commission, then the top fifteen (15) candidates for the office of charter commissioner will be organized as the city's charter commission. See Cal. Gov't Code § 34453. No commission will be formed if a majority of voters votes against the election of a charter commission. See Cal. Gov't Code § 34453.

Once formed, the charter commission will have the responsibility of developing the city's charter. After a simple majority of commissioners has decided that the proposed charter is appropriate, they must file the charter with the city clerk's office in preparation for a vote by the City's electorate. See Cal. Gov't Code § 34455. The charter commission does, however, have the option of submitting portions of the charter to the city's voters periodically, instead of sending the whole charter at once. See Cal. Gov't Code § 34462.

After the charter (or portions of it) has been filed, it must be copied in type greater than 10-point font and either mailed to all the voters of the city or made available to those citizens who wish to review it before the election. See Cal. Gov't Code § 34456. The city may show the difference between existing provisions of law and the new charter through the use of distinguished type styles, but this is not required. See Cal. Gov't Code § 34456.

After the charter has been filed with the city clerk, the city council must decide whether to call a special election or to wait until the next established municipal election to submit the charter to the voters. See Cal. Gov't Code § 34457. If the city council determines that a special election should be held, then the Council

Meeting Date: July 8, 2008

must call for that special election within 14 days of the charter being filed. See Cal. Gov't Code § 34457. The special election must be set at least 95 days after the date from which the special election was called. See Cal. Gov't Code § 34457. In any case, the charter commission must send the charter to the voters within two years of the vote that formed the commission. Upon the expiration of that two-year period, the commission will be abolished. See Cal. Gov't Code § 34462.

### ***B. Charter Drafted by City Council***

On its own motion, the city council may propose a charter and submit it to the voters for adoption. See Cal. Gov't Code § 34458. Under this approach, it becomes the responsibility of the city council to develop and draft the charter. However, the city council may appoint a committee to develop the charter. After the committee's drafted charter is approved by the city council, the charter will be sent to the voters for ratification. See Cal. Gov't Code § 34458.

### ***C. Election Procedures***

In either case (*i.e.*, the charter is drafted by a charter commission or the city council), the majority of voters must vote in favor of the proposed charter for the charter to be ratified. Once an election date is set, the charter must be prepared for the ballot according to Elections Code Sections 13103 and 13116. The city council must then direct the city attorney's office to prepare an impartial analysis of the charter according to Elections Code Section 9280.<sup>1</sup> Arguments for and against the charter may also be filed.

Once the voters vote in favor of the charter proposal, it will be deemed ratified. The charter will not go into effect, however, until it has been filed and accepted by the Secretary of State. See Cal. Gov't Code § 34459. After a charter is approved by a majority vote of the voters, the mayor and City Clerk shall certify that the charter was submitted to the voters of the city and that it was approved by a majority vote. See Cal. Gov't Code § 34460.

Three copies of the ratified charter must be certified by the mayor and the city clerk. One copy of the approved charter shall be filed with the County Recorder's office and one shall be kept in the City's archive. See Cal. Gov't Code § 34460. A third copy of the charter must be submitted to the Secretary of State with (1) copies of all publications and notices in connection with the calling of the election; (2) certified copies of any arguments for or against the charter proposal which were mailed to the voters; (3) a certified abstract of the vote at the election on the charter. See Cal. Gov't Code § 34460.

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<sup>1</sup> If the charter affects the organization or salaries of the City Attorney's office, then the City Council may direct the City's elections official to prepare the analysis instead.  
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Meeting Date: July 8, 2008

## V. CONCLUSION

To further assist the City Council in understanding the differences between charter cities and general law cities, attached are several documents that provide additional information regarding charter cities. Exhibit 1 is a copy of a six-page chart from the League of Cities entitled "General Law City v. Charter City."

Exhibit 2 is a copy of the California Government Code provisions that relate to the enactment of a city charter. As you will note, Sections 34450 through 34457 specify the procedures to be followed where a charter is proposed by a charter commission. Section 34458 sets forth an alternative process by which the city council, on its own motion, may propose a charter and submit the proposal for charter adoption to the voters at either a special election, or at any established municipal election date, or at any established election date pursuant to Section 1000 of the Elections Code. Section 9255 of the Elections Code sets forth additional provisions that apply to charter proposals that are to be submitted to the voters.

Exhibit 3 identifies charter cities in the State of California.

## FISCAL IMPACT

Potential fiscal impacts are discussed above. These include costs from drafting a charter, holding an election on adoption of the charter, transitioning to operation under a charter, as well as on-going costs associated with voter approval of future charter amendments.

## RECOMMENDATION

This report is provided for City Council discussion. I will be available at the meeting to answer any questions you might have about this subject.



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Approved By  
Laurence S. Wiener  
City Attorney

# **EXHIBIT 1**

## General Law City v. Charter City

Characteristic	General Law City	Charter City
<b>Ability to Govern Municipal Affairs</b>	Bound by the state's general law, regardless of whether the subject concerns a municipal affair.	Has supreme authority over "municipal affairs." Cal. Const. art. XI, § 5(b).
<b>Form of Government</b>	State law describes the city's form of government. For example, Government Code section 36501 authorizes general law cities be governed by a city council of five members, a city clerk, a city treasurer, a police chief, a fire chief and any subordinate officers or employees as required by law. City electors may adopt ordinance which provides for a different number of council members. Cal. Gov't section 34871. The Government Code also authorizes the "city manager" form of government. Cal. Gov't Code § 34851.	Charter can provide for any form of government including the "strong mayor," and "city manager" forms. See Cal. Const. art. XI, § 5(b); Cal. Gov't Code § 34450 <i>et seq.</i>
<b>Elections Generally</b>	Municipal elections conducted in accordance with the California Elections Code. Cal. Elec. Code §§ 10101 <i>et seq.</i>	Not bound by the California Elections Code. May establish own election dates, rules, and procedures. See Cal. Const. art. XI, § 5(b); Cal. Elec. Code §§ 10101 <i>et seq.</i>
<b>Methods of Elections</b>	Generally holds at-large elections whereby voters vote for any candidate on the ballot. Cities may also choose to elect the city council "by" or "from" districts, so long as the election system has been established by ordinance and approved by the voters. Cal. Gov't Code § 34871. Mayor may be elected by the city council or by vote of the people. Cal. Gov't Code §§ 34902.	May establish procedures for selecting officers. May hold at-large or district elections. See Cal. Const. art. XI, § 5(b).

Characteristic	General Law City	Charter City
<p><b>City Council Member Qualifications</b></p>	<p>Minimum qualifications are:</p> <ol style="list-style-type: none"> <li>1. United States citizen</li> <li>2. At least 18 years old</li> <li>3. Registered voter</li> <li>4. Resident of the city at least 15 days prior to the election and throughout his or her term</li> <li>5. If elected by or from a district, be a resident of the geographical area comprising the district from which he or she is elected.</li> </ol> <p>Cal. Elec. Code § 321; Cal. Gov't Code §§ 34882, 36502; 87 Cal. Op. Att'y Gen. 30 (2004).</p>	<p>Can establish own criteria for city office provided it does not violate the U.S. Constitution. Cal. Const. art. XI, § 5(b), 82 Cal. Op. Att'y Gen. 6, 8 (1999).</p>
<p><b>Public Funds for Candidate in Municipal Elections</b></p>	<p>No public officer shall expend and no candidate shall accept public money for the purpose of seeking elected office. Cal. Gov't Code § 85300.</p>	<p>Public financing of election campaigns is lawful. <i>Johnson v. Bradley</i>, 4 Cal. 4th 389 (1992).</p>
<p><b>Term Limits</b></p>	<p>May provide for term limits. Cal. Gov't Code § 36502(b).</p>	<p>May provide for term limits. Cal. Const. art. XI, § 5(b); Cal Gov't Code Section 36502 (b).</p>
<p><b>Vacancies and Termination of Office</b></p>	<p>An office becomes vacant in several instances including death, resignation, removal for failure to perform official duties, electorate irregularities, absence from meetings without permission, and upon non-residency. Cal. Gov't Code §§ 1770, 36502, 36513.</p>	<p>May establish criteria for vacating and terminating city offices so long as it does not violate the state and federal constitutions. Cal. Const. art. XI, § 5(b).</p>
<p><b>Council Member Compensation and Expense Reimbursement</b></p>	<p>Salary-ceiling is set by city population and salary increases set by state law except for compensation established by city electors. See Cal. Gov't Code § 36516. If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235.</p>	<p>May establish council members' salaries. See Cal. Const. art. XI, § 5(b). If a city provides any type of compensation or payment of expenses to council members, then all council members are required to have two hours of ethics training. See Cal. Gov't Code §§ 53234 - 53235.</p>

Characteristic	General Law City	Charter City
<p><b>Legislative Authority</b></p>	<p>Ordinances may not be passed within five days of introduction unless they are urgency ordinances. Cal. Gov't Code § 36934.</p> <p>Ordinances may only be passed at a regular meeting, and must be read in full at time of introduction and passage except when, after reading the title, further reading is waived. Cal. Gov't Code § 36934.</p>	<p>May establish procedures for enacting local ordinances. <i>Brougher v. Bd. of Public Works</i>, 205 Cal. 426 (1928).</p>
<p><b>Resolutions</b></p>	<p>May establish rules regarding the procedures for adopting, amending or repealing resolutions.</p>	<p>May establish procedures for adopting, amending or repealing resolutions. <i>Brougher v. Bd. of Public Works</i>, 205 Cal. 426 (1928).</p>
<p><b>Quorum and Voting Requirements</b></p>	<p>A majority of the city council constitutes a quorum for transaction of business. Cal. Gov't Code § 36810.</p> <p>All ordinances, resolutions, and orders for the payment of money require a recorded majority vote of the total membership of the city council. Cal. Gov't Code § 36936. Specific legislation requires supermajority votes for certain actions.</p>	<p>May establish own procedures and quorum requirements. However, certain legislation requiring supermajority votes is applicable to charter cities. For example, see California Code of Civil Procedure section 1245.240 requiring a vote of two-thirds of all the members of the governing body unless a greater vote is required by charter.</p>
<p><b>Rules Governing Procedure and Decorum</b></p>	<p>Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).</p> <p>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i>.</p>	<p>Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).</p> <p>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i>.</p> <p>May provide provisions related to ethics, conflicts, campaign financing and incompatibility of office.</p>

Characteristic	General Law City	Charter City
<p><b>Personnel Matters</b></p>	<p>May establish standards, requirements and procedures for hiring personnel consistent with Government Code requirements.</p> <p>May have "civil service" system, which includes comprehensive procedures for recruitment, hiring, testing and promotion. See Cal. Gov't Code § 45000 et seq.</p> <p>Meyers-Milias-Brown Act applies. Cal. Gov't Code § 3500.</p> <p>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, § 10(b).</p>	<p>May establish standards, requirements, and procedures, including compensation, terms and conditions of employment for personnel. See Cal. Const. art. XI, § 5(b).</p> <p>Meyers-Milias-Brown Act applies. Cal. Gov't Code § 3500.</p> <p>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, section 10(b).</p>
<p><b>Contracting Services</b></p>	<p>Authority to enter into contracts to carry out necessary functions, including those expressly granted and those implied by necessity. See Cal. Gov't Code § 37103; <i>Carruth v. City of Madera</i>, 233 Cal. App. 2d 688 (1965).</p>	<p>Full authority to contract consistent with charter.</p> <p>May transfer some of its functions to the county including tax collection, assessment collection and sale of property for non-payment of taxes and assessments. Cal. Gov't Code §§ 51330, 51334, 51335.</p>
<p><b>Public Contracts</b></p>	<p>Competitive bidding required for public works contracts over \$5,000. Cal. Pub. Cont. Code § 20162. Such contracts must be awarded to the lowest responsible bidder. Pub. Cont. Code § 20162. If city elects subject itself to uniform construction accounting procedures, less formal procedures may be available for contracts less than \$100,000. See Cal. Pub. Cont. Code §§ 22000, 22032.</p> <p>Contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms need not be competitively bid, but must be awarded on basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of services. Cal. Gov't Code § 4526.</p>	<p>Not required to comply with bidding statutes provided the city charter or a city ordinance exempts the city from such statutes, and the subject matter of the bid constitutes a municipal affair. Pub. Cont. Code § 1100.7; see <i>R &amp; A Vending Services, Inc. v. City of Los Angeles</i>, 172 Cal. App. 3d 1188 (1985); <i>Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.</i>, 71 Cal. App. 4th 38 (1998).</p>

Characteristic	General Law City	Charter City
<p><b>Payment of Prevailing Wages</b></p>	<p>In general, prevailing wages must be paid on public works projects over \$1,000. Cal. Lab. Code § 1771. Higher thresholds apply (\$15,000 or \$25,000) if the public entity has adopted a special labor compliance program. See Cal. Labor Code § 1771.5(a)-(c).</p>	<p>Historically, charter cities have not been bound by state law prevailing-wage requirements so long as the project is a municipal affair, and not one funded by state or federal grants. <i>Vial v. City of San Diego</i>, 122 Cal. App. 3d 346, 348 (1981). However, there is a growing trend on the part of the courts and the Legislature to expand the applicability of prevailing wages to charter cities under an analysis that argues that the payment of prevailing wages is a matter of statewide concern. The California Supreme Court declined an opportunity to resolve the issue. See <i>City of Long Beach v. Dept. of Indus. Relations</i>, 34 Cal. 4th 942 (2004).</p>
<p><b>Finance and Taxing Power</b></p>	<p>May impose the same kinds of taxes and assessment as charter cities. See Cal. Gov't Code § 37100.5.</p> <p>Imposition of taxes and assessments subject to Proposition 218. Cal. Const. art. XIII C.</p> <p>Examples of common forms used in assessment district financing include:</p> <ul style="list-style-type: none"> <li>• Improvement Act of 1911. Cal. Sts. &amp; High. Code § 22500 <i>et seq.</i></li> <li>• Municipal Improvement Act of 1913. See Cal. Sts. &amp; High. Code §§ 10000 <i>et seq.</i></li> <li>• Improvement Bond Act of 1915. Cal. Sts. &amp; High. Code §§ 8500 <i>et seq.</i></li> <li>• Landscaping and Lighting Act of 1972. Cal. Sts. &amp; High. Code §§ 22500 <i>et seq.</i></li> <li>• Benefit Assessment Act of 1982. Cal. Gov't Code §§ 54703 <i>et seq.</i></li> </ul> <p>May impose business license taxes for regulatory purposes, revenue purposes, or both. See Cal. Gov't Code § 37101.</p> <p>May not impose real property transfer tax. See Cal. Const. art. XIII A, § 4; Cal. Gov't Code § 53725; <i>but see</i> authority to impose documentary transfer taxes under certain circumstances. Cal. Rev. &amp; Tax. Code § 11911(a), (c).</p>	<p>Have the power to tax.</p> <p>Have broader assessment powers than a general law city, as well as taxation power as determined on a case-by case basis.</p> <p>Imposition of taxes and assessments subject to Proposition 218, Cal. Const. art. XIII C, § 2, and own charter limitations</p> <p>May proceed under a general assessment law, or enact local assessment laws and then elect to proceed under the local law. See <i>J.W. Jones Companies v. City of San Diego</i>, 157 Cal. App. 3d 745 (1984).</p> <p>May impose business license taxes for any purpose unless limited by state or federal constitutions, or city charter. See Cal. Const. art. XI, § 5.</p> <p>May impose real property transfer tax; does not violate either Cal. Const art. XIII A or California Government Code section 53725. See <i>Cohn v. City of Oakland</i>, 223 Cal. App. 3d 261 (1990); <i>Fielder v. City of Los Angeles</i>, 14 Cal. App. 4th 137 (1993).</p>

Characteristic	General Law City	Charter City
<b>Streets &amp; Sidewalks</b>	State has preempted entire field of traffic control. Cal. Veh. Code § 21.	State has preempted entire field of traffic control. Cal. Veh. Code § 21.
<b>Penalties &amp; Cost Recovery</b>	May impose fines, penalties and forfeitures, with a fine not exceeding \$1,000. Cal. Gov't Code § 36901.	May enact ordinances providing for various penalties so long as such penalties do not exceed any maximum limits set by the charter. <i>County of Los Angeles v. City of Los Angeles</i> , 219 Cal. App. 2d 838, 844 (1963).
<b>Public Utilities/Franchises</b>	<p>May establish, purchase, and operate public works to furnish its inhabitants with electric power. See Cal. Const. art. XI, § 9(a); Cal. Gov't Code § 39732; Cal. Pub. Util. Code § 10002.</p> <p>May grant franchises to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city to allow use of city streets for such purposes. The grant of franchises can be done through a bidding process, under the Broughton Act, Cal. Pub. Util. Code §§ 6001-6092, or without a bidding process under the Franchise Act of 1937, Cal. Pub. Util. Code §§ 6201-6302.</p>	<p>May establish, purchase, and operate public works to furnish its inhabitants with electric power. See Cal. Const. art. XI, § 9(a); <i>Cal. Apartment Ass'n v. City of Stockton</i>, 80 Cal. App. 4th 699 (2000).</p> <p>May establish conditions and regulations on the granting of franchises to use city streets to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city.</p> <p>Franchise Act of 1937 is not applicable if charter provides. Cal. Pub. Util. Code § 6205.</p>
<b>Zoning</b>	Zoning ordinances must be consistent with general plan. Cal. Gov't Code § 65860.	Zoning ordinances are not required to be consistent with general plan unless the city has adopted a consistency requirement by charter or ordinance. Cal. Gov't. Code § 65803.

# **EXHIBIT 2**

CALIFORNIA CODES  
GOVERNMENT CODE  
SECTION 34450-34462

34450. Any city or city and county may enact, amend, or repeal a charter for its own government according to this article or Article 3 (commencing with Section 9255) of Chapter 3 of Division 9 of the Elections Code.

34451. The charter may be proposed by a charter commission chosen by the voters of the city or city and county, at any general or special election, but no person shall be eligible as a candidate for the commission unless he or she is a registered voter of the city or city and county.

34452. (a) An election for choosing charter commissioners may be called by a majority vote of the governing body of a city or city and county, or on presentation of a petition signed by not less than 15 percent of the registered voters of the city or city and county. The petition shall be verified by the authority having charge of the registration records of the city or city and county and the expenses of the verification shall be provided by the governing body thereof. The governing body shall call an election pursuant to Sections 1000 and 10403 of the Elections Code.

(b) If any vacancy arises in a charter commission established for a city or city and county pursuant to this chapter, the vacancy shall be filled by an appointment by the mayor of the city or city and county.

34453. At an election the voters shall vote first on the question "Shall a charter commission be elected to propose a new charter?" and, secondly, for the candidates of the office of charter commissioner. If the first question receives a majority of the votes of the qualified voters voting thereon at the election, the 15 candidates for the office of charter commissioner receiving the highest number of votes shall forthwith organize as a charter commission. However, if the first question receives less than a majority of the votes of the qualified voters voting thereon at the election no charter commission shall be deemed to have been elected.

34454. Candidates for the office of charter commissioner shall be nominated either in the same manner provided for the nomination of officers of the municipal or city and county government, or by petition substantially in the same manner provided by general laws for the nomination by petition of candidates for public offices to be voted for at general elections.

34455. The charter commissioners shall propose a charter and may propose amendments to a charter, for the government of the city or city and county. The charter so prepared shall be signed by a majority of the charter commissioners and shall be filed in the office of the clerk of the governing body of the city or city and county.

34456. In any city or city and county, the governing body shall cause copies of the charter to be printed in type of not less than 10-point. If the governing body causes copies of the proposed charter to be mailed to the voters, the text of the proposed charter may show the difference from existing provisions of law by the use of distinguishing type styles.

34457. After the charter prepared by the charter commission has been filed in the office of the clerk of the governing body of the city or city and county pursuant to Section 34455, the proposed charter shall be submitted to the voters of the city or city and

county at either a special election called within 14 days by the governing body for that purpose to be conducted at least 95 days after the date the special election is called, or at the next established municipal election date or at the next established election date pursuant to Section 1000 of the Elections Code, provided there are at least 95 days before the election.

34458. As an alternative to the procedure provided for in Sections 34450 to 34457, inclusive, the governing body of any city or city and county, on its own motion may propose or cause to be proposed, amend or cause to be amended, or repeal or cause to be repealed, a charter and may submit the proposal for the adoption, or the amendments or repeal thereof, to the voters at either a special election called for that purpose or at any established municipal election date or at any established election date pursuant to Section 1000 of the Elections Code, provided there are at least 88 days before the election.

34459. If the voters vote in favor of the charter proposal, amendment, or repeal, it shall be deemed to be ratified, but shall not take effect until accepted and filed by the Secretary of State pursuant to Section 34460.

34460. Three copies of the complete text of a charter proposal or of any amended or repealed section ratified by the voters of a city or city and county shall be certified and authenticated by the chairperson and the clerk of the governing body and attested by the city clerk, setting forth the submission of the charter to the voters of the city, and its ratification by them. One copy shall be filed with the recorder of the county in which the city is located, and one in the archives of the city. In the case of a city and county, one copy shall be filed with the recorder thereof, and one in the archives of the city and county. The third copy shall be filed with the Secretary of State. Each copy filed with the recorder of the county or city and county and in the archives of the city or city and county shall be filed with the following:

(a) Certified copies of all publications and notices required of the city by this chapter or by the laws of this state in connection with the calling of an election to propose, amend, or repeal a city charter.

(b) Certified copies of any arguments for or against the charter proposal, amendment, or repeal which were mailed to voters pursuant to Sections 9281 and 13303 of the Elections Code.

(c) A certified abstract of the vote at the election at which the charter proposal, amendment, or repeal was approved by the voters.

34461. A charter proposal, amendment, or repeal by the voters of a city or city and county and submitted to the Secretary of State in compliance with this chapter shall be accepted and filed by the Secretary of State. The charter proposal, amendment, or repeal shall be published in the statutes in a charter chapter series under the designation "Statutes of \_\_\_\_ (year), Charter Chapter \_\_\_\_." Under the chapter number, the date of the ratification election and the date of filing with the Secretary of State shall be indicated.

After a charter proposal, amendment, or repeal is accepted and filed by the Secretary of State, the courts shall take judicial notice thereof.

34462. (a) A charter commission established for a city and county pursuant to this chapter shall complete a proposed or amended charter and submit the charter to the voters of the city and county within two years of the date of the election of the charter commissioners, and at the expiration of that period is abolished.

(b) A charter commission may submit portions of the proposed or amended charter to the voters periodically.

# **EXHIBIT 3**

2008-06-10

Charter Cities

Adelanto	Grass Valley	Pacific Grove	San Rafael
Alameda	Hayward	Palm Desert	San Ramon
Albany	Huntington Beach	Palm Springs	Sand City
Alhambra	Indian Wells	Palo Alto	Santa Ana
Anaheim	Industry	Pasadena	Santa Barbara
Arcadia	Inglewood	Petaluma	Santa Clara
Bakersfield	Irvine	Piedmont	Santa Cruz
Berkeley	Irwindale	Placentia	Santa Maria
Big Bear Lake	Kingsburg	Pomona	Santa Monica
Burbank			
Carlsbad	La Quinta	Port Hueneme	Santa Rosa
Cerritos	Lemoore	Porterville	Seal Beach
Chico	Lindsay	Rancho Mirage	Shafter
			Signal Hill
Chula Vista	Loma Linda	Redondo Beach	Solvang
Compton	Long Beach	Redwood City	Stockton
Culver City	Los Alamitos	Richmond	Sunnyvale
Cypress	Los Angeles	Riverside	Temple City
Del Mar	Marina	Roseville	Torrance
Desert Hot Springs	Marysville	Sacramento	Truckee
Dinuba	Merced	Salinas	Tulare
Downey	Modesto	San Bernardino	Vallejo
Eureka	Monterey	San Diego	Ventura
			Vernon
Exeter	Mountain View	San Francisco	Victorville
			Visalia
Folsom	Napa	San Jose	Vista
Fortuna	Needles	San Leandro	Watsonville
	Newport Beach		
Fresno	Norco	San Luis Obispo	Whittier
Gilroy	Oakland	San Marcos	Woodlake
Glendale	Oroville	San Mateo	

Total Cities: 112

last updated : 6/4/2008