

City Charter for the City of Oceanside

February 2010

Board Recommendation:

**SUPPORT**

**Rationale:**

Historically, SDCTA has supported municipalities going from General Law to Charter status. However, we would prefer to see cities address this issue for governance purposes rather than purely for economic reasons. Furthermore, when transitioning to Charter status, governance matters ought to be thoughtfully addressed within the Charter.

The rationale in support for the most recent Charter we weighed in on (Carlsbad, 2008) is as follows:

*“the ability to gain Charter status will allow the City of Carlsbad to hold greater control and flexibility in their decision-making while holding officials accountable for those decisions. This includes negotiating contracts for goods and infrastructure in a manner that reduces both time and cost, allowing for savings that may be used for other essential services and reduce the burden on taxpayers.”*

SDCTA supports the City of Oceanside’s proposed Charter for the following reasons:

- It ensures that there will be fair and open competition on publicly funded projects, which will likely ensure the City is able to get the best price for taxpayer dollars.
- It exempts itself from State public contracting and prevailing wage requirements, which will give the City greater autonomy in choosing its contractors as well as the potential to save money on projects.
- It requires public employees to opt in before union dues are spent for political purposes.

**Background**

In the State of California there are two *types* of cities: General Law and Charter. By default, cities are General Law cities; however, the California Constitution offers these municipalities the opportunity to become Charter cities—the home-rule provision.<sup>1</sup> General Law cities are bound by the State’s General Law, which limits cities in regard to their municipal affairs. Charter cities, however, have “supreme” authority over their municipal affairs, i.e. a Charter city’s laws would hold greater authority over state laws governing the same topic.<sup>2</sup> **Table 1** outlines some of the key differences between General Law cities and Charter cities.

In the state of California, there are 116 Charter cities.<sup>3</sup> In the San Diego region, seven out of the eighteen cities have become Charter cities: Carlsbad, Chula Vista, Del Mar, San Diego, San Marcos, Santee, and Vista.<sup>4</sup>

In theory, “home-rule” is recommended as cities are in a better position than the State to know what they need and how they should operate.<sup>5</sup>

The California Constitution outlines four areas of which local governments can determine their own affairs:

*“(1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms*

<sup>1</sup> California Constitution, Article XI, section 3 (a).

<sup>2</sup> *Johnson v. Bradley* (1992).

<sup>3</sup> League of California Cities. “Charter Cities”

<sup>4</sup> League of California Cities.

<sup>5</sup> League of California Cities. “Charter Cities: a Quick Summary for the Press and Researchers.”

*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 that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.”*

All other matters deemed “municipal affairs” have been established through case law. The League of California Cities warns in its backgrounder on Charter cities that these are fluid matters that have the potential to change during any case. However, the following have been consistently determined as municipal affairs:

- Land use and zoning issues (some exceptions)<sup>6</sup>
- Ordinance adoption procedures<sup>8</sup>
- Municipal elections<sup>10</sup>
- Initiative, referendum, and recall procedures<sup>12</sup>
- Allocation of tax dollars<sup>7</sup>
- Compensation of officers and employees<sup>9</sup>
- Municipal contracts<sup>11</sup>
- Term limits for council members<sup>13</sup>

Measures determined to be “statewide concerns” include the following:

- School systems<sup>14</sup>
- Traffic and vehicle regulation<sup>15</sup>
- Licensing of members of a trade or profession<sup>16</sup>
- Open and public meetings<sup>17</sup>
- Exercise of the power of eminent domain (not the practice of)<sup>18</sup>
- Tort claims against a governmental entity<sup>19</sup>

---

<sup>6</sup> *Brougher v. Board of Public Works (1928)*

<sup>7</sup> *City of Santa Monica v. Grubb (1996)* and *Tevis v. City and County of San Francisco (1954)*

<sup>8</sup> *Brougher v. Board of Public Works (1928)*

<sup>9</sup> *Sonoma County Organization of Public Employees v. County of Sonoma (1979)*

<sup>10</sup> *Mackey v. Thiel (1968)*

<sup>11</sup> *First Street Plaza Partners v. City of Los Angeles (1998)* & *Domar Electric, Inc. V. City of Los Angeles (1995)*

<sup>12</sup> *Lawing v. Faul (1964)*

<sup>13</sup> *Cawdrey v. City of Redondo Beach (1993)*

<sup>14</sup> *Whisman v. San Francisco Unified School District (1978)*

<sup>15</sup> California Vehicle Code, section 21.

<sup>16</sup> *City and County of San Francisco v. Boss (1948)*

<sup>17</sup> Subject to Brown Act.

<sup>18</sup> *Wilson v. Beville (1957)*

<sup>19</sup> *Helbach v. City of Long Beach (1942)*

Table 1: Differences Between General Law Cities & Charter Cities<sup>20</sup>

	General Law City	Charter City
Governance of municipal affairs	Bound and subject to the state’s General Law.	In matters where state law exists on a topic, the Charter city’s law holds supreme.
Government structure	State law requires the following: <ul style="list-style-type: none"> <li>• City manager form of government</li> <li>• Five city council members (unless amended through a local ordinance)</li> <li>• Any other officers specified through state law</li> </ul>	Able to provide any form of government, including strong mayor.
Elections	Held in conformance with the California Elections Code. Generally holds at-large elections.	Able to establish own rules and procedures, including the selection of public officials.
Council member qualifications	Must abide by the following qualifications: <ul style="list-style-type: none"> <li>• U.S. citizen</li> <li>• 18 years old</li> <li>• Registered voter</li> <li>• Resident of the city for at least 15 days prior to the election and throughout term</li> <li>• Resident of the geographical area that will be represented</li> </ul>	Able to establish own criteria.
Council member compensation	Set by State law through city population and salary increases. Requires at least two hours of ethics training.	Able to establish Council salaries. Ethics training still required.
Voting of Council members	A majority constitutes a quorum. Sometimes legislation requires supermajority.	Able to establish own procedures for quorum. Some legislation still requires a super majority.
Personnel	All standards, procedures, and requirements for hiring personnel must remain consistent with the Government Code. A civil service system is allowed.	Able to establish own standards, procedures, and requirements.
Public Contracts	Requires competitive bidding for public works projects exceeding \$5,000 that awards contracts to the lowest bidder. Other types of professional services do not need to be competitively bid (such as construction management firms and environmental services).	The contract and its bid are municipal affairs. City is not required to comply with bidding statutes so long as the City Charter exempts it.
Prevailing Wage	Generally, prevailing wage rates must be paid on projects exceeding \$1,000. If a special labor program exists, a higher threshold can be established.	So long as the project is not funded through state or federal dollars, City is not bound by prevailing wage laws.
Financing and Taxing Ability	Able to impose taxes and assessments as Charter cities, subject to Proposition 218. Unable to impose real property transfer tax.	Ability and power to tax. Broader assessment and taxation abilities than General Law cities. Able to impose real property transfer taxes.
Penalties and Cost Recovery	Able to impose penalties, fines, and forfeitures so long as they do not exceed \$1,000.	Limited only by City Charter.

<sup>20</sup> League of California Cities.

## Proposal

The City of Oceanside City Council placed a ballot measure on the June 8, 2010 primary that will ask voters whether the City of Oceanside should become a Charter city. The language proposed is as follows:

Shall the proposed City Charter of the City of Oceanside be adopted?

The Charter for the City of Oceanside is divided according to sections. Noted below are the key sections.

### **Form of Government**

The City of Oceanside will retain its Council-Manager form of government.

### **Revenue Retention**

Prohibits revenue reduction by any other level of government.

### **Fiscal Matters**

The City of Oceanside is taking the following actions:<sup>21</sup>

#### ***“Section 301. Public Works Contracts***

*The City is exempt from the provisions of all California statutes regulating public contracting and purchasing except as provided by ordinance or by agreement approved by the City Council. The City shall establish all standards, procedures, rules or regulations to regulate all aspects of public contracting.*

#### ***“Section 302. Prevailing Wage***

*No City contract shall require payment of the prevailing wage schedule unless: the prevailing wage is legally required, and constitutionally permitted to be imposed, by federal or state grants pursuant to federal or state law; or the project is considered by the City Council not to be a municipal affair of the City; or payment of the prevailing wage schedule is authorized by resolution of the City Council. Payment of the prevailing wage schedule, if authorized hereunder, shall use the pertinent rates published by the State of California.*

#### ***“Section 303. Fair and Open Competition***

*The City shall not, in any contract for the construction, maintenance, repair, or improvement of public works, require that a contractor, subcontractor, material supplier, or carrier engaged in the construction, maintenance, repair or improvement of public works, execute or otherwise become party to any project labor agreement, collective bargaining agreement, prehire agreement, or other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work on a public works contract. Nothing in this section shall be construed as prohibiting private parties from entering into individual collective bargaining relationships, or otherwise as regulating or interfering with activity protected by applicable law, including but not limited to the National Labor Relations Act.”*

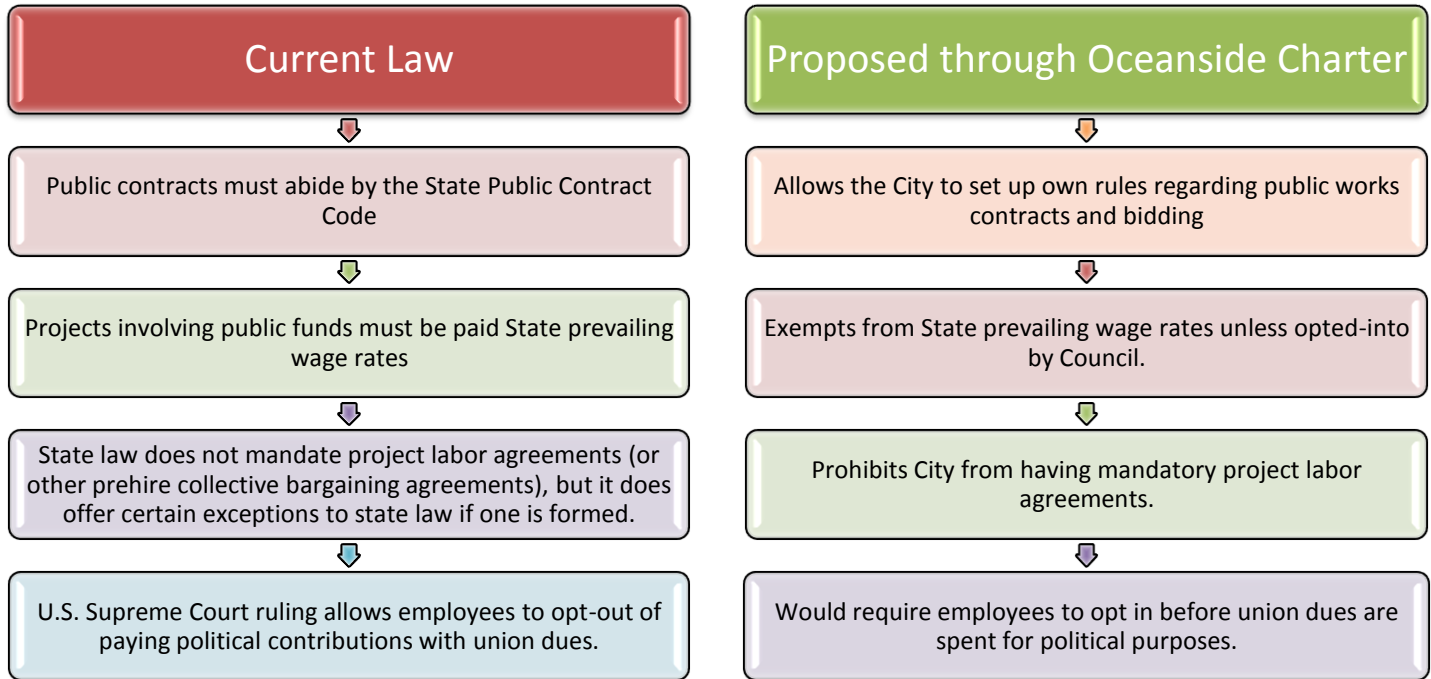
#### ***“Section 305. Voluntary Employee Political Contributions***

*Unless otherwise required by law, neither the City, nor its agents, shall deduct from the wages, earnings or compensation of any City employee any political contributions unless the employee has first presented, and the City has received, a signed written authorization of such deductions, which authorization must be renewed annually and may be revoked by the employee at any time by giving written notice of such revocation to the City.”*

---

<sup>21</sup> City of Oceanside Proposed Charter.

Figure 1: Current Law vs. Oceanside Charter Proposals (Brief)



**Additional Information on Specific Provisions**

***Public Works Contracts***

The City of Oceanside proposes to exempt itself from the public works contracts provision applied to General Law cities, allowing the City to set up its own rules regarding public works contracts and bidding. Currently, the State’s Public Contract Code governs public works contracts and bidding for the City of Oceanside (as it is a General Law city). Under the Public Contract Code, Charter cities are able to exempt themselves from these requirements.<sup>22</sup>

An example of a component of this code is the requirement that in projects exceeding \$5,000, the bid shall go to the “lowest responsible bidder”.<sup>23</sup>

***Prevailing Wage***

The City of Oceanside proposes to exempt itself from payment of prevailing wage rates. Exceptions to this include when legally required, when project is not considered a municipal affair by the City Council, or the Council determines that prevailing wage rates shall be authorized. If prevailing wage rates are used, they are to be used in accordance with those of the State. Projects involving public funds require compliance with State prevailing wage rates. An example of this is a carpenter hired on a public project; state law prevailing wage is determined at a total \$48.22/hour, which is comprised of a standard \$37.35/hour with an additional \$10.87/hour for benefits (health and welfare, vacation time, training, etc.). Any overtime work has a daily, Saturday, Sunday, and holiday rate.<sup>24</sup>

<sup>22</sup> The Public Contract Code “is the basis of contracts between most public entities in this state and their contractors and subcontractors. With regard to charter cities, this code applies in the absence of an express exemption or a city charter provision or ordinance that conflicts with the relevant provision of this code.” California Public Contract Code, Section 1100.7

<sup>23</sup> California Public Contract Code, Section 20162.

<sup>24</sup> Department of Industrial Relations. "GENERAL PREVAILING WAGE DETERMINATION MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS PURSUANT TO CALIFORNIA LABOR CODE PART 7, CHAPTER 1, ARTICLE 2, SECTIONS 1770, 1773 AND 1773.1 FOR COMMERCIAL BUILDING, HIGHWAY, HEAVY CONSTRUCTION AND DREDGING PROJECTS." Available from

There is a recent and ongoing case regarding whether prevailing wage is municipal affair or a statewide concern (*State Building and Construction Trades Council of California, AFL-CIO v. City of Vista*). The labor council sued the City of Vista regarding the use of prevailing wage on several large capital projects, including a civic center and two fire stations.<sup>25</sup>

Proponents argue that paying at least the prevailing wage rate ensures that workers hired are being paid a fair, working wage. Opponents of prevailing wage rates typically argue that they are set nearly identical to union wage rates.

### ***Project Labor Agreements***

If the proposed Charter is approved, the City of Oceanside will not require a “contractor, subcontractor, material supplier, or carrier engaged in the construction, maintenance, repair or improvement of public works” to become party to a project labor agreement or other form of prehire agreement. Currently, State law does not mandate prehire collective bargaining agreements; however, certain exemptions are awarded if one is entered into, such as a required labor compliance program on projects exceeding \$2.5 million.<sup>26</sup>

Project labor agreements (sometimes referred to as project stabilization agreements) are a pre-hire form of collective bargaining agreements that set the stage for labor relations on projects. These agreements typically occur between construction sponsors—in many cases, a public entity—and labor unions. Project labor agreements (PLAs) set forth the terms of work for the construction project, such as striking rules, hiring procedures, wages, and benefits. Through these agreements, it is also typically arranged that the construction project will hire a specified percent or number of contractors through union halls as well as a specified number or percent of location-based contractors. Even if they are not members of the specified union or construction firm awarded the bid, if hired on, all contractors must abide by the PLA, which may include paying union dues and altering usual employment procedures. The purpose of a PLA or PSA is to establish a harmonious working environment that will deliver the project on-time and on-budget without labor disputes, e.g. striking.

Proponents of PLAs argue that these agreements do the following:

- Mitigate labor disputes (including strikes and lockouts)
- Prevent schedule conflicts and variances
- Assist in the completion of projects in a timely manner
- Provide skilled craftsmen in sufficient quantity
- Ensure less likelihood of safety issues to arise
- Ensures local workers would receive the work
- Ensure at least the prevailing wage is being paid
- Ensure high quality work through union certifications and apprenticeships

Opponents of PLAs argue against PLAs for the following reasons:

- Inhibits competition by reducing the numbers of bidders
- Increases construction costs through union rules and regulations
- Imposing union dues and union rules on nonunion contractors is unfair and disadvantageous
- Union work rules can be arduous and archaic

---

<http://www.dir.ca.gov/dlsr/PWD/Determinations%5CSouthern%5CSC-023-31-2.pdf>. Last updated August 2009. Accessed January 26, 2010.

<sup>25</sup> Meyers Nave. “Court of Appeals Holds Prevailing Wage Law Does Not Apply to Locally Funded Projects of Charter Cities.” Available from

[http://www.meyersnave.com/mn.pl?p=resource\\_summary&s=resources&t=app&rn=1242752641crv&rc=Publications&y=resourcebase.html](http://www.meyersnave.com/mn.pl?p=resource_summary&s=resources&t=app&rn=1242752641crv&rc=Publications&y=resourcebase.html). Accessed January 31, 2010.

<sup>26</sup> California Public Contract Code, Section 20193.



**Employee Authorization of Voluntary Political Contributions**

The City of Oceanside proposes to prohibit the City and its “agents” from deducting wages, earnings, and/or compensation for payment of political contributions. Exceptions for this include when individual employees sign a written authorization. This written authorization can be revoked by the employee at any time. In response to The U.S. Supreme Court ruling in *Communications Workers of America v. Beck* (1988), public employees that are members of public unions are able to opt out of paying political contributions. A 2007 U.S. Supreme Court ruling further declared that states are able to “require” unions to gain employee authorization before spending money on political purposes (*Davenport v. Washington Education Association*).

There are a handful of states that employ full paycheck protection for public sector workers: Idaho, Michigan, Utah, Washington and Wyoming. In 1998 (Prop 226) and 2005 (Prop 75), California voters failed to pass two previous “paycheck protection” measures.

**Other Charter Cities in the San Diego Region:**

Revenue retention, exemption from state contracting requirements, and exemption from State prevailing wage rates are not unique to the City of Oceanside’s proposed Charter. However, two of the components (prohibiting the use of project labor agreements and requiring authorization of employee dues to be spent for political purposes) are “unique” proposals to the region. See Table 3. This may change in June 2010 when voters in the City of Chula Vista will be responding to a ballot measure prohibiting the use of project labor agreements on projects wholly or in part funded by the city. (See SDCTA review on Chula Vista’s measure for more information regarding project labor agreements.)

**Table 3: Comparison of Key Components to Other Charter Cities in Region**

Trait	Oceanside (proposed)	Carlsbad	Chula Vista	Del Mar	San Diego	San Marcos	Santee	Vista
Exemption from State Contracting Requirements	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Exemption from State Prevailing Wage	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <sup>27</sup>			<input checked="" type="checkbox"/> <sup>28</sup>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <sup>29</sup>	<input checked="" type="checkbox"/> <sup>30</sup>
Prohibition of Project Labor Agreements	<input checked="" type="checkbox"/>							
Voluntary Employee Political Contributions	<input checked="" type="checkbox"/>							
Revenue Retention	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

<sup>27</sup> Implied through provision stating that “the City shall have the power and authority to adopt, make, exercise and enforce all legislation, laws, and regulations and to take all actions and to exercise any and all rights, powers and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority.” – Carlsbad Charter

<sup>28</sup> Repeal approved by voters in 1963.

<sup>29</sup> Provision allows the City Council to increase or decrease minimum threshold through 4/5 vote.

<sup>30</sup> Implied through provision stating that “each of the responsibilities of governance set forth and described in this Charter, and as established by the Constitutional, statutory and judicially defined law of the State of California, is hereby declared to be a municipal affair or concern, the performance of which is unique to the benefit of the citizens of the City of Vista.” – Vista Charter

### Policy Implications & Analysis

The City of Oceanside's proposal to exempt itself from State contracting agreements could save the City money in the future. The Public Contract Code is a complicated, onerous document that limits the City in managing its own affairs. The City, however, does not currently have an ordinance that will set up these contracting requirements.

Allowing a city to set its own wage rates for public projects has the potential to yield significant cost savings on projects. These cost savings could be achieved through both the standard hourly rate and the overall hourly rate (that takes into account benefits).

The City also has the potential to reach additional savings through the prohibition of mandatory project labor agreements as it will ensure that as many bidders as possible enter the process and compete on public projects—thus increasing the likelihood that the City will achieve the best project for the least cost. The use of PLAs may inhibit non-union bidders from entering the process, which may lead to inflated costs due to the lack of adequate competition; at the same time, however, the use of PLAs may encourage the use of union labor. Many of the benefits of PLAs can be accomplished through bid specifications and the exemption of the City from public contracting requirements of the State. The City may also save on pass-through costs, such as additional worker benefits.

The Legislative Analyst Office (LAO) estimated that Prop 226 (1998 measure) would have a net zero (or near to zero) fiscal impact. While the measure would add additional administrative costs, it was predicted that these costs would be offset with fines and other savings. The LAO estimated that Prop 75 (2005) would have a minimal fiscal impact. A ballot measure is circulating for the November 2010 election that plans to limit paycheck protection as well. The LAO estimated fiscal impact is noted as minimal.

It is also important to note that Opponents of this measure argue that it will allow unfettered self-ability to raise Council salaries.<sup>31</sup>

The cost to place the measure on the ballot is twofold: \$60,000 for the placement with an additional \$45,000 (from the City's dwindling General Fund reserve) for an education campaign regarding the measure.

---

<sup>31</sup> Government Code Section 36516 already allows pay increases of 5% per year if enacted through ordinance or amendment.