

Proposition X: City of El Cajon Charter City Measure Brief Summary

SDCTA **SUPPORTS** the City of El Cajon's proposed Charter measure. Historically, SDCTA has supported municipalities going from General Law to Charter status gives cities greater control and flexibility in their decision making while holding officials accountable for those decisions. SDCTA has also supported Charters and amendments that have eliminated the requirement of use of prevailing wages on locally funded construction projects.

- In the San Diego region, eight out of the eighteen cities have become Charter cities: Carlsbad, Chula Vista, Del Mar, Oceanside, San Diego, San Marcos, Santee, and Vista.
- The El Cajon City Council approved placing a measure on the June 5, 2012 ballot that will ask voters whether the City of El Cajon should become a Charter city.
- The Charter would exempt the City 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.
- The Charter would exempt the City from payment of prevailing wage rates.
- During the 2010 election cycle, SDCTA supported Proposition K, which established the City of Oceanside as a Charter city. Table 2 outlines the aspects of Oceanside's Charter, as well as those of other charter cities in the San Diego region.
- Prior to 2010, SDCTA also supported cities moving to Charter status and amendments similar to those included in El Cajon's Charter, including the Cities of Carlsbad, Chula Vista and Vista and the County of San Diego.
- Following passage of Proposition K in 2010, the City of Oceanside announced savings of approximately \$970,000 for two construction projects due to the ability to eliminate prevailing wage requirements.

Proposition X: City of El Cajon Charter City Measure

Board Action:

SUPPORT

Rationale:

Municipalities going from General Law to Charter status give cities 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 reduces the burden on taxpayers. The proposed Charter will also allow the City of El Cajon to achieve savings on locally funded projects due to the provision that exempts itself from State public contracting and prevailing wage requirements. This will give the City greater autonomy in choosing its contractors thereby allowing the potential to save money on projects.

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.¹ 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.² **Table 1** outlines some of the key differences between General Law cities and Charter cities.

In the state of California, there are 120 Charter cities.³ In the San Diego region, eight out of the eighteen cities have become Charter cities: Carlsbad, Chula Vista, Del Mar, Oceanside, San Diego, San Marcos, Santee, and Vista.⁴

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.⁵

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 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.”

¹ California Constitution, Article XI, section 3 (a).

² *Johnson v. Bradley* (1992).

³ League of California Cities. “Charter Cities”. As of November 5, 2010.

⁴ League of California Cities.

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

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)⁶
- Ordinance adoption procedures⁸
- Municipal elections¹⁰
- Initiative, referendum, and recall procedures¹²
- Allocation of tax dollars⁷
- Compensation of officers and employees⁹
- Municipal contracts¹¹
- Term limits for council members¹³

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

- School systems¹⁴
- Traffic and vehicle regulation¹⁵
- Licensing of members of a trade or profession¹⁶
- Open and public meetings¹⁷
- Exercise of the power of eminent domain (not the practice of)¹⁸
- Tort claims against a governmental entity¹⁹

⁶ *Brougher v. Board of Public Works (1928)*

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

⁸ *Brougher v. Board of Public Works (1928)*

⁹ *Sonoma County Organization of Public Employees v. County of Sonoma (1979)*

¹⁰ *Mackey v. Thiel (1968)*

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

¹² *Lawing v. Faul (1964)*

¹³ *Cawdrey v. City of Redondo Beach (1993)*

¹⁴ *Whisman v. San Francisco Unified School District (1978)*

¹⁵ California Vehicle Code, section 21.

¹⁶ *City and County of San Francisco v. Boss (1948)*

¹⁷ Subject to Brown Act.

¹⁸ *Wilson v. Beville (1957)*

¹⁹ *Helbach v. City of Long Beach (1942)*

Table 1: Differences Between General Law Cities & Charter Cities²⁰

	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"> • City manager form of government • Five city council members (unless amended through a local ordinance) • Any other officers specified through state law 	Able to provide any form of government, including strong mayor. <ul style="list-style-type: none"> • City clerk • City treasurer • Police chief • Fire chief
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"> • U.S. citizen • 18 years old • Registered voter • Resident of the city for at least 15 days prior to the election and throughout term • Resident of the geographical area that will be represented 	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.

²⁰ League of California Cities.

Proposal

The El Cajon City Council approved placing a measure on the June 5, 2012 ballot that will ask voters whether the City of El Cajon should become a Charter city. The question that will be put before voters will read:

“Shall the City of El Cajon be changed from a general law city to a charter city through the adoption of the charter proposed by Resolution of the El Cajon City Council?”

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

Form of Government

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

Revenue Retention

Section prohibits revenue raised and collected by the City to be subject to involuntary reduction by any other level of government.

Fiscal Matters

The City of El Cajon is taking the following actions:²¹

Section 400. Purchasing and Contracts

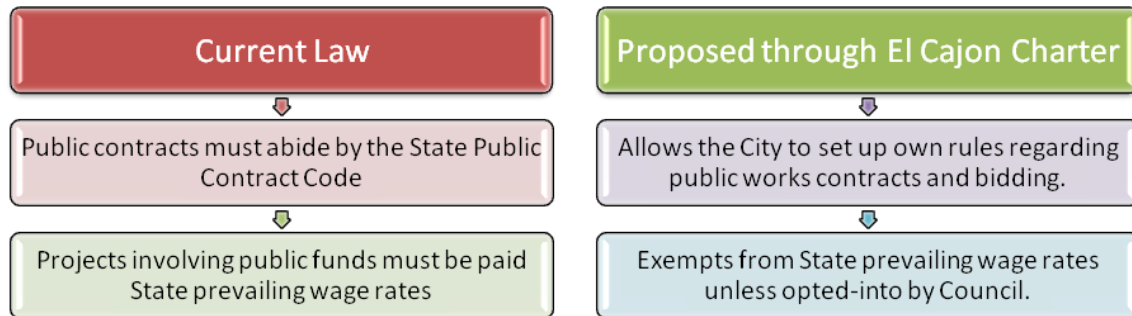
“The City is exempt from the provisions of all California statutes regulating public contracting and purchasing, except as provided by the Charter, City ordinance or by agreement approved by the City Council.”

“Public Works Contracts having a value less than or equal to \$50,000 shall be exempt from public bidding and shall follow such procedures for open market sale or purchase as set by the City Council.”

“No City Public Works Contract or Other Public Contract shall require payment of the prevailing wage schedule unless: the prevailing wage is legally required and constitutionally permitted to be imposed by the requirements of federal grants, state grants, redevelopment law, or other 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.”

²¹ City of El Cajon Proposed Charter.

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



Additional Information on Specific Provisions

Public Works Contracts

The City of El Cajon 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 El Cajon (as it is a General Law city). Under the Public Contract Code, Charter cities are able to exempt themselves from these requirements.²²

Prevailing Wage

The City of El Cajon proposes to exempt itself from payment of prevailing wage rates. Exceptions to this include: when legally required; when the 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.

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.

The issue of whether a charter city is exempt from state prevailing-wage law is currently in the California Supreme Court in a lawsuit filed against the city of Vista. The suit was filed by the State Building and Construction Trades Council of California on behalf of the state’s construction unions. Lower courts have previously held that Charter cities can determine whether or not local projects funded by local monies should provide a prevailing wage.

²² 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.

Fair & Open Competition

The proposed Charter includes a section that states:

“The City will promote fair and open competition for all City construction projects so that all contractors and workers, whether union or non-union, are treated equally in the bidding and awarding of City construction contracts.”

This provision of the Charter is meant to serve as a guiding principle for the City, and does not strictly prohibit elected officials from approving a PLA for construction projects. The original language within the proposed Charter included provisions similar to that of the City of Oceanside and Chula Vista that prohibited mandating use of a PLA on publicly funded projects except as required by state or federal law or as a condition of the receipt of state or federal funds.

Other Charter Cities in the San Diego Region:

Revenue retention, exemption from state contracting requirements, and exemption from State prevailing wage rates and prohibiting governing boards from requiring the use of project labor agreements are not unique to the City of El Cajon’s proposed Charter.

Table 2: Comparison of Key Components to Other Charters of Cities in Region

Trait	El Cajon (Proposed)	Oceanside	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"/>		<input checked="" type="checkbox"/>
Exemption from State Prevailing Wage	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> ²³			<input checked="" type="checkbox"/> ²⁴	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> ²⁵	<input checked="" type="checkbox"/> ²⁶
Prohibition of Mandatory 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"/>	<input checked="" type="checkbox"/>

Past SDCTA Positions

During the 2010 election cycle, SDCTA supported Proposition K, which established the City of Oceanside as a Charter city. Table 2 outlines the aspects of Oceanside’s Charter, as well as those of other charter cities in the San Diego region. Prior to 2010, SDCTA also supported cities moving to Charter status and amendments similar to those included in El Cajon’s Charter, including the Cities of Carlsbad, Chula Vista and Vista and the County of San Diego.

The amendments under the City of Chula Vista and the County of San Diego amendments prohibit their respective governing boards from requiring the use of a PLA on publicly funded construction projects.

²³ 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
²⁴ Repeal approved by voters in 1963.
²⁵ Provision allows the City Council to increase or decrease minimum threshold through 4/5 vote.
²⁶ 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 El Cajon's proposal to exempt itself from the State's Public Contract Code 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.

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). Following passage of Proposition K in 2010, the City of Oceanside announced savings of approximately \$970,000 for two construction projects due to the ability to eliminate prevailing wage requirements.