

Proposition G: City of Escondido Charter City Measure

SDCTA **SUPPORTS** the City of Escondido’s proposed Charter measure. Historically, SDCTA has supported municipalities going from General Law to Charter status as it gives cities greater control and flexibility in their decision making while holding officials accountable for those decisions. Under the proposed Charter, the City will promote fair and open competition for all city construction projects, and city employees will have the ability to make their own decisions about contributing to their union’s political causes should they believe they represent their best interests.

- In the San Diego region, nine out of the eighteen cities have become Charter cities: Carlsbad, Chula Vista, Del Mar, El Cajon, Oceanside, San Diego, San Marcos, Santee, and Vista.
- The Escondido City Council approved placing a measure on the November 4, 2014 ballot that will ask voters whether the City of Escondido should become a Charter city.
- The City of Escondido proposes to prohibit the City and its “agents” from deducting wages, earnings, and/or compensation for payment of political contributions unless given written authorization by the employee.
- The proposed Charter includes language stating the intent by the City to promote fair and open competition for all City construction projects.
- To address the issue raised at the first public hearing regarding whether a charter city must comply with State law on land use, planning and zoning matters, an additional provision has been added to the charter to expressly state that the City is governed by State law with regards to these matters.
- The proposed Charter mirrors the 2012 proposed Charter (supported by SDCTA) with four exceptions.
 - Reference to district elections has been omitted due to the recent adoption of districts pursuant to consent decree.
 - Reference to prevailing wages has also been omitted due to the continuing uncertainty of the law.
 - The timeframe to fill City Council vacancies by appointment was changed from 30 days to 60 days.
 - Lastly, the City shall follow State law in matters of land use, planning and zoning matters.

Proposition G: City of Escondido Charter Measure

August 2014

SDCTA Position:

Support

Rationale for Position:

Historically, SDCTA has supported municipalities going from General Law to Charter status as it gives cities greater control and flexibility in their decision making while holding officials accountable for those decisions. Under the proposed Charter, the City will promote fair and open competition for all city construction projects, and city employees will have the ability to make their own decisions about contributing to their union's political causes should they believe they represent their best interests.

Title: City of Escondido Charter Measure

Election: November 2014 General

Description: The Escondido City Council approved placing a measure on the November ballot that will ask voters whether the City of Escondido should become a Charter city. The proposed Charter would prohibit the City and its “agents” from deducting wages, earnings, and/or compensation for payment of political contributions unless given written authorization by the employee. The proposed Charter will also promote fair and open competition for all City construction projects.

Jurisdiction: City of Escondido

Vote: Majority

Fiscal Impact: The cost of the election is estimated to be between \$20,000 and \$30,000 in addition to \$4,000 for an informational community mailer.

Status: Appearing on November Ballot

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 121 Charter cities.³ In the San Diego region, nine out of the eighteen cities have become Charter cities: Carlsbad, Chula Vista, Del Mar, El Cajon, Oceanside, San Diego, San Marcos, Santee, and Vista.⁴

The League of California Cities has stated “home-rule” is preferred as cities are in a better position than the State to know what they need and how they should operate.⁵

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.”

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.”

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)*

Assembly Bill 1344

On October 9, 2011, Governor Brown signed into law Assembly Bill (AB) 1344. AB 1344 requires, among other things, that a city, prior to submitting the adoption of a charter to voters, a city hold at least two public hearings on the proposal and contents of the charter, and specify that the hearings shall be at least 30-days apart. As well, the bill prohibits the governing body of a city from conducting a vote to approve submission to the voters of a proposal to adopt a charter until 21 days after the second public hearing.

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.
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.

2012 Charter Measure

In November 2012, the City of Escondido placed Proposition P on the ballot asking voters to approve a City Charter. The measure failed having only received 47.03 percent of the vote. The proposed Charter included provisions requiring the City to be divided in the four districts, eliminate the requirement to pay prevailing wages on City projects and prohibiting the City and its “agents” from deducting wages, earnings, and/or compensation for payment of political contributions.

SDCTA supported Proposition P stating:

“The proposed Charter will allow the City of Escondido 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. Additionally, city employees will have the ability to make their own decisions about contributing to their union’s political causes should they believe they represent their best interests.”

Public Outreach

Assembly Bill 1344 outlines the public outreach process for cities seeking voter approval to adopt a Charter or approve a Charter amendment. Following the failure of Proposition P, the City Council adopted a work program on November 6, 2013 with the goal of resubmitting a charter proposal to the electorate. The City Council held a public discussion of the topic at its January 15, 2014 meeting and directed staff to begin holding public hearings. On March 19, 2014, the City Council held a workshop to receive input from the public on a draft Charter. Two required public hearings on the draft Charter were held on April 9 and May 21, 2014 and public comments were considered.

Proposal:

The Escondido City Council approved placing a measure on the November 4, 2014 ballot that will ask voters whether the City of Escondido should become a Charter city. The question that will be put before voters will read:

“Shall the City of Escondido be changed from a general law city to a charter city through the adoption of the charter proposed by Resolution 2014-70 of the Escondido City Council?”

Fiscal Matters:

The City of Escondido is taking the following actions:²¹

²¹ City of Escondido Proposed Charter.

Article 4. Fiscal Matters

Section 400. Economic and Community Development

“The City shall encourage, support, and promote economic development and community development in the City.”

Section 401. Fair and Open Competition

“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.”

Section 402. 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.”

Article 6. General Laws

Section 602. Land Use, Planning & Zoning Matters

“Notwithstanding its Charter city status, the City shall be governed by State law as it applies to general law cities with respect to the application, interpretation and enforcement of land use, planning and zoning matters, including, but not limited to, the requirement of consistency between the General Plan of the City and the terms of its zoning ordinances.”

Other Charter Cities in the San Diego Region:

Revenue retention, exemption from state contracting requirements, and exemption from State prevailing wage rates and the paycheck protection provision are not unique to the City of Escondido’s proposed Charter. Table 2 outlines the traits of provisions within the Charters of cities within the county.

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

Trait	Escondido (Proposed)	El Cajon	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"/> ²²			<input checked="" type="checkbox"/> ²³	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> ²⁴	<input checked="" type="checkbox"/> ²⁵
Prohibition of Mandatory Project Labor Agreements			<input checked="" type="checkbox"/>							
Voluntary Employee Political Contributions	<input checked="" type="checkbox"/>		<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"/>	<input checked="" type="checkbox"/>

Policy Implications & Analysis:

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.

Employee Authorization of Voluntary Political Contributions

The City of Escondido 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

²² 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

²³ Repeal approved by voters in 1963.

²⁴ Provision allows the City Council to increase or decrease minimum threshold through 4/5 vote.

²⁵ 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

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. Proposition 32, which will appear on the November 6, 2012 ballot, includes a provision that requires affirmative consent of government employees for the deduction of dues for political purposes.

Changes from 2012 Proposed Charter

The proposed Charter mirrors the 2012 proposed Charter with four exceptions. Reference to district elections has been omitted due to the recent adoption of districts pursuant to consent decree. Reference to prevailing wages has also been omitted due to the continuing uncertainty of the law. The timeframe to fill City Council vacancies by appointment was changed from 30 days to 60 days. Lastly, the City shall follow State law in matters of land use, planning and zoning matters.

Fiscal Impact:

The cost of the election is estimated to be between \$20,000 and \$30,000 in addition to \$4,000 for an informational community mailer.

List of Proponents:

- Mayor Sam Abed, Councilmember Ed Gallo, Councilmember Mike Morasco, Councilmember John Masson

Proponent Arguments:

- The state government imposes mandates and constraints on our local citizens and has dictated how to spend OUR tax dollars.
- The Charter means Escondido citizens maintain more control over the city’s future.
- Charter will provide maximum constitutional authority over municipal affairs.

List of Opponents:

- Councilmember Olga Diaz, Jerry Harmon (former mayor), Sid Hollins (former mayor)

Opponent Arguments:

- A citizen’s charter commission was not established to draft a charter for voters.

- The proposed charter is a rehash of the previous version (defeated in 2012), with a few changes.
- Charter status grants many powers automatically, whether they are mentioned in the document or not. What is not mentioned may be most important.