

Becoming a Charter City

Advantages and Disadvantages

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SHOULD WE OR SHOULDN'T WE?

If the City Council approves, the voters will decide at the next general election.

General Law City - Authority

- The City of Hawthorne is a general law city.
- The authority of a general law city is derived from the powers granted to it by the police power granted to it by the California Constitution and subject to the general laws adopted by the California Legislature.

Charter City - Authority

- A charter city's powers are not defined or limited by the state's general laws. Instead, the "home rule" doctrine applies over the city's municipal affairs.
- The "home rule" doctrine reserves to a charter city 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."
- 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 and federal constitutions).

Charter City – Authority (cont.)

- Although a city's charter generally defines its power over "municipal affairs," the State can encroach on that local authority when a matter rises to the level of a statewide concern.
 - For example, recent housing bills have been made applicable to charter and general law cities because they address matters the State has declared are matters of statewide concern.

What is a "Municipal Affair"?

- The California Constitution does not define "municipal affair" but does set out a nonexclusive list of four "core" categories:
 - Regulation of the city police force
 - Establishment of subordinate commissions and boards
 - Conduct of city elections
 - The manner in which municipal officers are elected
- The task of determining whether a given activity is a municipal affair or one of statewide concern is a case-by-case inquiry in light of the facts and circumstances surrounding each case.

Four Step Analysis to Determine What is a Municipal Affair

- **The California Supreme Court has developed a four-step analysis to determining what is a municipal affair:**
 - Step One: Does an actual conflict exist between the local law and the state law? (If the answer is no, there is no need to go further and determine if the matter is municipal affair or statewide concern.)
 - Step Two: If yes, does the local law implicate a municipal affair?
 - Step Three: If yes, does the state law involve extramural concerns that require paramount state control?
 - Step Four: If yes, is the state statute reasonably related and narrowly tailored to the resolution of the statewide concern?

Examples of Municipal Affairs

- Municipal Election Matters
- Procedures for Initiative, Referendum and Recall
- Procedures for Adopting Ordinances
- Compensation of City Officers and Employees
- Processes Associated with City Contracts
- Financing Public Improvements
- Making Charitable Gifts of Public Funds for Public Purposes
- Term Limits for Council Members
- Land Use and Zoning Decisions (with exceptions)

“Statewide Concern”

- Whether a particular subject is a “municipal affair” over which a charter city has authority or a matter of “statewide concern” over which the Legislature has authority is a matter for the courts to decide on a case-by-case basis.
- Accordingly, the concept of what is a municipal affair is fluid and changes over time, as issues of local concern may become statewide concerns.
- Although the courts give the Legislature’s intentions in this regard great weight, the Legislature is neither empowered to determine what a municipal affair is nor to transform a municipal affair into one of statewide concern.

Examples of Statewide Concerns

- School Systems
- Traffic and Vehicle Regulation
- Licensing of Members of a Trade or Profession
- Tort Claims Against a Governmental Entity
- Brown Act
- Exercise of the Power of Eminent Domain
- Affordable Housing and Other Laws

Advantages

Form of Government

General Law City

- State law describes the city's form of government.

Charter City

- Charter can provide for any form of government including the "strong mayor," and "city manager" forms.

City Elections

General Law City

- Municipal elections conducted in accordance with the California Elections Code.

Charter City

- Not bound by the California Elections Code. May establish its own election dates, rules, and procedures.

Public Contracts

General Law City

- Competitive bidding required for public works contracts over \$5,000.
- Such contracts must be awarded to the lowest responsible bidder.

Charter City

- 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.

Zoning

General Law City

- Zoning ordinances must be consistent with a city's general plan.

Charter Law City

- Zoning ordinances are not required to be consistent with a city's general plan, unless the city has adopted a consistency requirement by charter or ordinance.

Prevailing Wages

General Law City

- In general, prevailing wages must be paid on public works projects over \$1,000. Higher thresholds apply (\$15,000 or \$25,000) if the public entity has adopted a special labor compliance program.

This is an example of where the State can encroach on a charter city's authority in spite of an area found to be a "municipal affair."

Charter City

- In 2012, the California Supreme Court held that payment of prevailing wages by a charter city is a municipal affair, regardless of the language in the statute
- However, in 2013, the Legislature enacted SB 7, which restricted the use of state funding for any project that didn't pay prevailing wages.

Compensation

General Law City

- City Council salary-ceiling is set by city population and salary increases set by state law, except for compensation established by city electors.
- 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.

Charter City

- May establish council members' salaries.
- 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.

Disadvantages

Possible Disadvantages

- The expenditure of time and effort required to formulate a charter by staff, consultants, and the City Council.
- The expenditure of time and effort required to formulate a charter that covers a variety of complex subjects.
- The cost of professional services in drafting a charter.

Possible Disadvantages (cont.)

- The time and expense of conducting an election to consider the adoption of a charter.
- The costs associated with charter amendments since a charter can only be adopted or changed by a vote of city residents.
- The transition from many years of municipal operation under the general law.

Possible Disadvantages (cont.)

- **As noted earlier, there is uncertainty that may arise for whether a specific matter is one of municipal concern governed by the charter, or one of statewide concern governed by statute.**
 - Although the California Supreme Court has developed a four-step analysis, the concept of what is a municipal affair is fluid and changes over time as issues of local concern may become statewide concerns.
 - As such, 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.

Possible Disadvantages (cont.)

- **The fact that the city would not have the benefit of any new state legislation on matters of municipal concern unless action was taken by the city council to adopt that legislation.**
 - Additionally, a city charter need not cover everything. For example, a narrow charter could be adopted to alter elections and compensation, but could also state that a city will be subject to planning and zoning laws in the same way as a general law city.
 - However, if the charter is narrow in only one area but defers everything else to the general laws, it may be difficult to draw voter support.

Other Potential Concerns

- The adoption of a charter can be divisive in a community, depending on the scope of the charter.
- Also, as the courts review the powers of a charter city there is the possibility of the “erosion” of those powers.
- Additionally, the Legislature still has some tools at its disposal to limit the benefits of a charter.
 - For example, as explained earlier, the state funding limitations related to prevailing wages.

Questions?

Thank you!

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