

Proposition P: City of Escondido Charter City Measure Brief Summary

SDCTA **SUPPORTS** the City of Escondido'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 and the inclusion of paycheck protection provisions. While SDCTA has historically opposed jurisdictions from moving to district elections, the City of Escondido has included district elections within the proposed Charter as a remedy to a lawsuit alleging the City is in violation of the California Voting Rights Act.

- 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 6, 2012 ballot that will ask voters whether the City of Escondido 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.
- 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.
- Under the proposed Charter, the City will be divided into four districts for the purpose of electing the members of the Council.
- During the 2012 election cycle, SDCTA supported Proposition D, which established the City of El Cajon as a Charter city. Table 2 outlines the aspects of El Cajon's Charter, as well as those of other charter cities in the San Diego region.
- Prior to 2012, SDCTA also supported cities moving to Charter status and amendments similar to those included in Escondido's Charter, including the City of Oceanside which included a similar paycheck protection provision.
- 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 P: City of Escondido 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. 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. While SDCTA has historically opposed jurisdictions from moving to district elections, the City of Escondido has included district elections within the proposed Charter as a remedy to a lawsuit alleging the City is in violation of the California Voting Rights Act.

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, 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

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

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.”

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

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.

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.
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 Escondido City Council approved placing a measure on the November 6, 2012 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 2012-99(R) of the Escondido 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.

Districts

Section establishes City divided into four districts which councilmembers will represent.

Fiscal Matters:

The City of Escondido is taking the following actions:²¹

Article 4. Fiscal Matters

Section 401. Public Works 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.”

Section 402. 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 the requirements of federal or state grants pursuant to 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 403. Fair and Open Competition

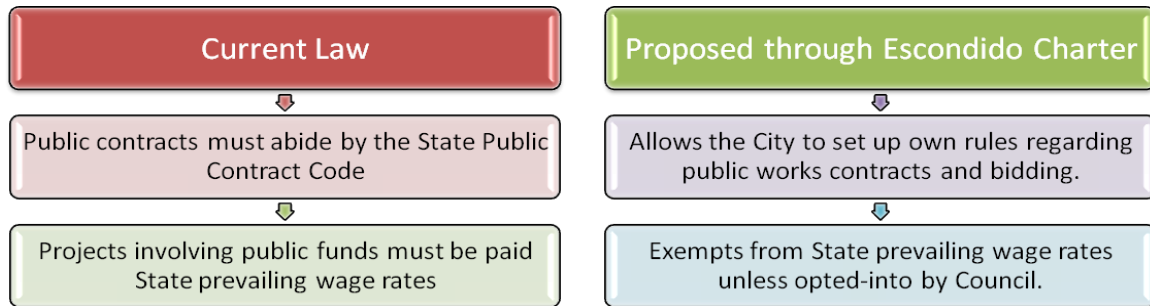
“The City will promote fair and open competition for all City construction projects so that all contractors and workers, whether union or non-union, are treated equally in the bidding and awarding of City construction contracts.”

Section 405. Voluntary Employee Political Contributions

²¹ City of Escondido Proposed Charter.

“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.”

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



Additional Information on Specific Provisions:

Public Works Contracts

The City of Escondido 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 Escondido (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 Escondido 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 was recently decided upon 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. The California Supreme Court ruling stated, “We

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.

conclude that no statewide concern has been presented justifying the state's regulation of the wages that charter cities require their contractors to pay to workers hired to construct locally funded public works projects.”

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 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.

District Elections

Under Section 301 of the proposed Charter, the City will be divided into four districts for the purpose of electing the members of the Council. The Charter specifically states, “Said Districts shall be in compliance with applicable laws,” and the boundaries be adopted prior to December 31, 2013.

The determination to include the City moving to district elections follows the filing of a lawsuit by the Building and Construction Trades Council alleging the City’s current at-large election process violates state and federal voting rights laws by making it extremely difficult for Latinos to win.²³ The attorney on behalf of the Building and Construction Trades Council indicated his willingness to place on hold the lawsuit if the City included language within the proposed Charter that would have the City move toward district elections.²⁴

²³ “Latinos, labor union sue city over elections.” David Garrick. *North County Times*. December 20, 2011.

²⁴ “City to explore district elections in face of lawsuit.” David Garrick. *North County Times*. May 14, 2012.

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	☑	☑	☑	☑	☑		☑	☑		☑
Exemption from State Prevailing Wage	☑	☑	☑	☑ ²⁵			☑ ²⁶	☑	X ²⁷	☑ ²⁸
Prohibition of Mandatory Project Labor Agreements			☑							
Voluntary Employee Political Contributions	☑		☑							
Revenue Retention	☑	☑	☑	☑				☑	☑	☑

Past SDCTA Positions

During the 2010 election cycle, SDCTA supported Proposition K, which established the City of Oceanside as a Charter city, and is most similar to that of Escondido’s proposed Charter. Table 2 outlines the aspects of Oceanside’s Charter, as well as those of other charter cities in the San Diego region. In June 2012, SDCTA also supported Proposition D, which established the City of El Cajon’s Charter. Proposition D included a provision outlining the city’s intent to promote fair and open competition, which is similar to the section within Escondido’s proposed Charter.

Policy Implications & Analysis:

The City of Escondido’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.

²⁵ 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
²⁶ Repeal approved by voters in 1963.
²⁷ Provision allows the City Council to increase or decrease minimum threshold through 4/5 vote.
²⁸ 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

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.

Based on a presentation by the City on May 23, 2012, the City is budgeting \$163 million in construction projects over the next five years. If the Charter is approved by voters, a savings of between five to ten percent could generate as much as \$16 million in total savings.

SDCTA has historically opposed jurisdictions moving to district elections. The concern is governing will be focused on the benefits of each elected official's individual district as opposed to governing for the betterment of the entire jurisdiction. As opposed to five elected officials viewing the City of nearly 144,000 residents as a single entity, the possibility exists each councilmember will instead be focused on parochial decisions to benefit their 36,000 constituents, potentially at the expense of the entire city. The City though has included this provision within the proposed Charter as a remedy to a lawsuit alleging the City is in violation of the California Voting Rights Act.

The cost of public education in regards to the proposed Charter is estimated at \$13,200, including the cost of a community mailer. The cost of the election is estimated to be between \$35,000 and \$40,000.