

# CHARTER OF CITY OF LANCASTER

## PREAMBLE

We the people of the City of Lancaster, State of California, declare our intent to restore to our community the historic principles of self governance inherent in the doctrine of home-rule. Sincerely committed to the belief that local government has the closest affinity to the people governed, and firm in the conviction that the economic and fiscal independence of our local government will promote the health, safety and welfare of all the citizens of this City, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the City of Lancaster.

## CHARTER

### Article I - Municipal Affairs

Section 100. Powers. The City shall have all powers possible for a City to have under the Constitution and laws of the State of California as fully and completely as though they were specifically enumerated in this Charter. Specifically, but not by way of limitation, the City shall have the power to make and enforce all laws and regulations with respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California. It shall also have the power to exercise any and all rights, powers and privileges heretofore or hereafter established, granted, or prescribed by any law of the State, by this Charter, or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution of the State of California. Without limiting in any manner the foregoing power and authority, each of the powers, rights, and responsibilities described in this Charter is hereby declared to be a municipal affair, the performance of which is unique to the benefit and welfare of the citizens of the City of Lancaster. The enumeration in this Charter of any particular power, duty or procedure shall not be held to be exclusive of, or any limitation or restriction upon, this general grant of power.

Section 101. General Law Powers. In addition to the power and authority granted by the terms of this Charter and the Constitution of the State of California, 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. In the event of any conflict between the provisions of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control

Section 102. Elections. The City of Lancaster shall have the power to adopt ordinances establishing procedures, rules or regulations concerning City of Lancaster elections and public officials, including but not limited to, the qualifications and compensation of elected officials, the method, time and requirements to hold elections, to fill vacant offices and for voting by mail. Unless in conflict with ordinances adopted by the City, state law regarding elections shall apply.

Section 103. Fines and Penalties. The City of Lancaster shall have the power to adopt ordinances establishing penalties, fines and forfeitures for violations of the provisions of the Lancaster Municipal Code.

Section 104. Incorporation and Succession. The City shall continue to be a municipal corporation known as the City of Lancaster. The boundaries of the City of Lancaster shall continue as now established until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, possess, control and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled or enjoyed by it at the time this Charter takes effect, and is hereby declared to be the successor of same. It shall be subject to all debts, obligations and liabilities, which exist against the City at the time this Charter takes effect. All lawful ordinances, resolutions, rules and regulations, or portions thereof, in force at the time this Charter takes effect and not in conflict with or inconsistent herewith, are hereby continued in force until the same have been duly repealed, amended, changed or superseded by proper authority.

## Article II – Form of Government

Section 200. Council-Manager Form of Government. The municipal government established by this Charter shall be the “Council-Manager” form of government, under which the Mayor and City Council set policy and the City Manager carries out that policy. The City Manager shall meet and confer with the Mayor prior to conducting a final interview or making the appointment of a department head or the deputy or assistant City Manager.

Section 201. Mayor and City Council. The City shall be governed by, and all powers of the City shall be vested in, the Mayor and City Council. The City Council consists of four Council members each elected to office from the City at large in the manner provided by the laws of the State or procedures adopted by ordinance. The Mayor shall be elected to office from the City at large. The Mayor and each City Council member shall have equal votes on all matters coming before the City Council. The Mayor and each City Council member in office at the time this Charter takes effect shall continue in office until the end of the term for which he or she was elected or appointed subject to the right of the people to recall the Mayor or a City Council member from office as provided in the laws of the State.

Section 202. The Mayor. In addition to any other authority granted to the Mayor by this Charter, the ordinances and regulations of the City or laws of the State, but not by way of limitation, the Mayor shall have the authority to make all appointments to, or removals from all boards, commissions and committees with the consent of the City Council.

Section 203. Compensation. Compensation for the Mayor and each City Council member may be set, and from time to time may be changed by ordinance, which ordinance shall be adopted by a four-fifth vote of the Mayor and City Council.

### Article III - Revenue Savings and Generation

Section 300. Public Works Contracts. The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work.

Section 301. Public Financing. The City shall have the power to establish standards, procedures, rules or regulations related to any public financing.

Section 302. Utility Franchises. The City shall have the power to adopt any ordinance providing for the acquisition, development, or operation by the City of any public utility, or any ordinance providing for the granting of a franchise to any public utility not owned by the City which proposes to use or is using City streets, highways or other rights-of-way.

Section 303. Enterprises. The City shall have the power to engage in any enterprise deemed necessary to produce revenues for the general fund or any other fund established by the City Council to promote a public purpose.

### Article IV - Revenue Retention

Section 400. Reductions Prohibited. Any revenues raised and collected by the City shall not be subject to subtraction, retention, attachment, withdrawal or any other form of involuntary reduction by any other level of government.

Section 401. Mandates Limited. No person, whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of government, unless and until funds sufficient for the performance of such function are provided by said mandating authority.

### Article V – Amendment

Section 500. Amendment to Charter, Revision or Repeal. This Charter and any of its provisions may be amended by a majority vote of the electors voting on the question. Amendment, revision or repeal may be proposed by initiative or by the governing body.

### Article VI – Interpretation

Section 600. Construction and Interpretation. The language contained in this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter which is a municipal affair.

Section 601. Severability. If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

# STRADLING YOCCA CARLSON & RAUTH

## MEMORANDUM

**TO:** Honorable Mayor Parris and Members of the City Council **FILE NUMBER:** 022283.0050  
**FROM:** David R. McEwen, City Attorney  
**DATE:** October 13, 2009  
**SUBJECT:** Benefits of Becoming a Charter Law City

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### **I. INTRODUCTION**

The purpose of this memorandum is to provide a review of the benefits of converting the City of Lancaster (the “City”) from a general law city to a charter city pursuant to the authority to adopt a charter contained in Section 3 of Article XI of the California Constitution. This memorandum sets forth the primary distinctions between a general law city and a charter city and provides an analysis of the advantages of adopting the charter form of local government. In addition, this memorandum summarizes the steps required under the California Government Code for a city to adopt a charter and analyzes some of the considerations involved with drafting a charter.

### **II. CHARTER VERSES GENERAL LAW CITY**

There are approximately four hundred and eighty (480) cities in California, approximately one hundred twelve (112) of which are charter cities. The primary distinction between the two forms of local government (general law cities and charter cities) lies with the fact that a general law city draws its authority from (and is restricted by) the laws adopted by the State legislature and the grant of police power under Article XI, Section 7 of the California Constitution. However, with respect to municipal affairs, charter cities are not subject to the limitations of enactments of the State legislature and have broad constitutional authority to regulate in the realm of “municipal affairs” subject only to constitutional limitations and restrictions set forth in the charter itself. A summary of the differences between general law cities and charter cities (which was prepared by the League of California Cities) is attached hereto as Appendix A.

#### **A. Authority To Regulate Under The Police Power**

All general law cities and charter cities are granted “police power” under Article XI, Section 7 of the California Constitution, which provides, in part, that a “city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

Pursuant to this constitutional grant of authority, the police power of a city is as broad as that of the state unless the local legislation “conflicts with state law.” Local legislation conflicts with state law and is preempted thereby if the local legislation duplicates, contradicts or enters an area fully occupied by general law either expressly or by legislative implication. *Sherwin-Williams*

*Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993). Attached hereto as Appendix B is a summary of case law interpreting the extent of a city's police power.

It is commonly understood that a general law city has no power to act in its "corporate capacity" unless it can point to a specific constitutional or statutory grant of authority. This seemingly narrow set of powers is expanded, however, by the application of "Dillon's Rule." Pursuant to Dillon's Rule a general law city has the power to exercise the powers which are necessary or fairly implied or incident to the powers which are expressly granted as well as those powers which are indispensable to the accomplishment of the declared objectives of the city. It is this limitation of authority which distinguishes a general law city from a charter city which has a broad constitutional grant of authority to regulate in the area of "municipal affairs" subject only to constitutional and charter limitations and free from state legislative enactments unless the state statute implicates a matter of "statewide concern" and is narrowly tailored to address that concern.

### **B. Charter City's Authority Over Municipal Affairs**

The powers of a charter city are set out in Section 5 of Article XI of the California Constitution which provides that:

(a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution ... with respect to municipal affairs shall supersede all laws inconsistent therewith.

(b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (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.

Thus, under Section 5 of Article XI of the California Constitution, ordinances enacted by a charter city relating to matters which are purely "municipal affairs" prevail over state laws covering the same subject. As to powers which are of "statewide concern," however, home rule charter cities remain subject to and controlled by the applicable general law of the state regardless of the provisions of the charter.

The key difference between charter and general law cities lies with the greater authority and local control granted to a charter city in the realm of “municipal affairs.” While the powers of a general law city are subject to statutory enactments by the state legislature, the municipal affairs doctrine cannot be so limited.

Whether a matter is a municipal affair or one of statewide concern is a question for the courts and is largely decided on a case by case basis. In making this determination a court will undertake the following analysis:

- Is there an actual conflict between a state statute and a local regulation of a charter city. If no conflict exists between the two, there is no need for further analysis.

- If an actual conflict exists between a state statute and a local regulation, the court will determine if the ordinance deals with a “municipal affair” or a matter of statewide concern. If the ordinance does not deal with a “municipal affair” the state statute will control. If the ordinance appears to deal with a municipal affair, the court must determine if the subject matter is one of statewide concern. If so, the state statute will control if it is both reasonably related to resolution of the statewide concern and narrowly tailored so as to avoid unnecessary incursion into municipal authority. If either or both conditions are not satisfied, the matter remains a municipal affair and the local ordinance will prevail over the state statute.

*California Fed. Savings & Loan Assn. v. City of Los Angeles*, 54 Cal. 3d 1, 16-17 (1991); *Fielder v. City of Los Angeles*, 14 Cal. App. 4th 137, 142-43 (1993); *State Building & Construction Trades Council of California v. City of Vista*, 173 Cal. App. 4th 567, 578-582 (2009); *Cawdrey v. Redondo Beach*, 15 Cal. App. 4th 1212, 1222-23 (1993). A matter is one of statewide concern if it is more than a “purely local concern” and includes matters which are primarily regional rather than truly statewide. *Committee of Seven Thousand v. Superior Court*, 45 Cal. 3d 491 (1988). Attached hereto as Appendix C is a summary of court decisions regarding “municipal affairs.” Attached hereto is Appendix D is a summary of case law concerning areas of “statewide concern.”

The decision in *Fielder v. City of Los Angeles*, serves as a useful example to illustrate the greater power granted to charter cities under Article XI, Section 5 and the application of the analysis utilized to determine if a matter is a municipal affair or one of statewide concern. In *Fielder*, the City of Los Angeles, a charter city, adopted an ordinance imposing a tax upon “each deed or instrument in writing that transfers or conveys real property.” *Fielder*, 14 Cal. App. 4th 137, 140 (1993). The tax was challenged as being preempted by Government Code Section 53725 which at that time provided that “[e]xcept as permitted in Section 1 of Article XIII A of the California Constitution, no local government ... may impose any transaction tax on real property. No local government ... may impose any transaction tax or sales tax on the sale of real property within the city, county or district.” *Id.* at 143. In holding that the City’s ordinance providing for a transfer tax on the sale of real property was not preempted by Government Code Section 53725 the Court stated the general rule regarding enactments by a charter city as follows:

Since charter cities such as defendant have sovereign power over municipal affairs ... subdivision (a) of Government Code section 53725 does not necessarily restrict the power of a charter city to impose a transaction tax such as that enacted by ordinance No. 166976. The Legislature may preempt such conflicting charter city

legislation only where the matter addressed is one of such statewide concern as to warrant the Legislature's action. [Citations omitted.] `In the event of a true conflict between a state statute reasonably tailored to the resolution of a subject of statewide concern and a charter city tax measure, the latter ceases to be a `municipal affair' to the extent of the conflict and must yield.' [Citations omitted.]

*Id.* at 143. The Court found that the transfer tax was purely local in its effects and that the provisions of Government Code Section 53725 made a substantial incursion on the City's taxing ability and far exceeded the state's interest in regulating ad valorem property taxes. *Id.* at 146. Thus, subject to the requirements of provisions of the California Constitution, the imposition of the property transfer tax was a municipal affair and was not subject to the limitations of Government Code Section 53725.

It should be emphasized that the California Constitution, and, in particular, the provisions added by Proposition 218, significantly restrict the ability of a city to levy new taxes. Further, the Legislation has specifically authorized general law cities to levy any taxes or assessments that can be levied by a Charter City. (See Government Code § 37100.5). So, while the area of local taxation may be a municipal affair, charter cities do not enjoy significantly greater power to levy taxes and assessments than general law cities.

### **III. PROCEDURE TO ADOPT A CHARTER**

The adoption, amendment, and repeal of a charter is governed by Article XI, Section 3 of the California Constitution which provides that a charter may be adopted by a majority vote of the electors and that a charter so adopted may be amended, revised, or repealed in the same manner. Article XI, Section 3 also provides that the adoption of a charter may be proposed either by the City Council or by the voters. The actual procedures which must be followed in order to adopt a charter are set forth in Government Code Sections 34450, et seq., and Elections Code Sections 9255, et seq. The following discussion presents a summary of these procedures, but it is not, however, intended to be exhaustive. In the event that the City desires to undertake the adoption of a charter, a more detailed analysis of the required steps should be prepared and analyzed.

Pursuant to Government Code Section 34458, if the adoption of a charter is being proposed by the City Council, the proposed charter may be placed directly on the ballot at either a general or special election held for that purpose. If, however, the voters desire to place a proposed charter on the ballot, some additional steps, which include the creation of a "charter commission," must be followed. First, a petition signed by not less than fifteen percent (15%) of the registered voters of the City must be presented to the City Council calling for the election of a charter commission. Cal. Gov't Code § 34452. Upon presentation of a valid petition, the City Council must call an election. *Id.* At such an election, the voters are asked whether a charter commission shall be elected to propose a new charter (and are also asked to vote for the members of the charter commission). Cal. Gov't Code § 34453. In the event a majority of the voters answer the first question (*i.e.*, whether a charter commission shall be elected to propose a new charter) in the affirmative, the fifteen (15) candidates for the office of charter commissioner receiving the highest number of votes form a charter commission. *Id.* Thereafter, the charter commission shall file a proposed charter with the City Clerk which has been signed by the majority of the

charter commissioners. Cal. Gov't Code § 34455. The City Council must then cause the proposed charter to be copied in type of not less than 10-point. Cal. Gov't Code § 34456.

The charter (proposed by either the City Council or the charter commission) must be submitted to the voters of the city at either a special election called for that purpose or at any established municipal election, provided that there are at least ninety-five (95) days before the election. Cal. Gov't Code § 34457. If a majority of the voters vote in favor of the proposed charter, the charter is deemed ratified but does not take effect until it has been filed with the Secretary of State. It should be noted that amendments to an existing charter or repeal of a charter must also be submitted to the voters and must be approved by a majority vote.

#### **IV. CHARTER DRAFTING CONSIDERATIONS**

In the event that the City decides to undertake the charter adoption process, considerable focus and care should be given to the actual drafting of the charter itself. Since 1914, Section 5 of Article XI of the California Constitution, as quoted above at page \_\_, has provided that the provisions of a city's charter serve as a limitation on the ability of a city to govern municipal affairs, not as an actual grant of power. Therefore, it is not necessary that the charter be a lengthy and cumbersome document which sets out all of the City's authority. However, as the charter is a limitation on the city's authority it is important that its provisions be carefully drafted so as not to needlessly restrict the ability of the city to undertake some desired action. This point is emphasized by some of the court decisions regarding charter cities.

In *Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212 (1993), the Court provided a useful summary of the general nature of a charter form of government stating:

... a city charter is not a grant of powers, but rather an instrument which accepts the privilege granted by the Constitution of complete autonomous rule with respect to municipal affairs and which otherwise serves merely to specify the limitations and restrictions upon the exercise of the powers so granted and accepted. Therefore any such power not expressly forbidden may be exercised by the municipality, and any limitations upon its exercise are those only which have been specified in the charter.

... a city charter provision which is not within the matter enumerated in the Constitution is nevertheless within a charter city's authority to act, provided the provision concerns a "municipal affair."

*Id.* at 1221-22 (internal citations and quotations omitted).

The draft charter presented with this memorandum embodies this concept and contains only the broad authority with respect to municipal affairs together with provisions to clarify and incorporate the current structure of city government.



**APPENDIX A**

**SUMMARY PREPARED BY THE LEAGUE OF CALIFORNIA CITIES**

| <b>Characteristic</b>                      | <b>General Law City</b>  | <b>Charter City</b>  |
|--|--|--|
| <b>Ability to Govern Municipal Affairs</b> | Bound by the state’s general law, regardless of whether the subject concerns a municipal affair.   | Has supreme authority over “municipal affairs.” Cal. Const. art. XI, § 5(b).   |
| <b>Form of Government</b>                  | State law describes the city’s form of government For example, Government Code section 36501 authorizes general law cities be governed by a city council of five members, a city clerk, a city treasurer, a police chief, a fire chief and any subordinate officers or employees as required by law. City electors may adopt ordinance which provides for a different number of council members. Cal. Gov’t section 34871. The Government Code also authorizes the “city manager” form of government. Cal. Gov’t Code § 34851. | Charter can provide for any form of government including the “strong mayor,” and “city manager” forms. <i>See</i> Cal. Const. art. XI, § 5(b); Cal. Gov’t Code § 34450 <i>et seq.</i>  |
| <b>Elections Generally</b>                 | Municipal elections conducted in accordance with the California Elections Code. Cal. Elec. Code §§ 10101 <i>et seq.</i> .  | Not bound by the California Elections Code. May establish own election dates, rules, and procedures. <i>See</i> Cal. Const. art. XI, § 5(b); Cal. Elec. Code §§ 10101 <i>et seq.</i> . |
| <b>Methods of Elections</b>                | Generally holds at-large elections whereby voters vote for any candidate on the ballot. Cities may also choose to elect the city council “by” or “from” districts, so long as the election system has been established by ordinance and approved by the voters. Cal. Gov’t Code § 34871. Mayor may be elected by the city council or by vote of the people. Cal. Gov’t Code §§ 34902.  | May establish procedures for selecting officers. May hold at-large or district elections. <i>See</i> Cal. Const. art. XI, § 5(b).  |

| Characteristic   | General Law City   | Charter City  |
|--|--|---|
| <b>City Council Member Qualifications</b>                    | <p>Minimum qualifications are:</p> <ol style="list-style-type: none"> <li>1. United States citizen</li> <li>2. At least 18 years old</li> <li>3. Registered voter</li> <li>4. Resident of the city at least 15 days prior to the election and throughout his or her term</li> <li>5. If elected by or from a district, be a resident of the geographical area comprising the district from which he or she is elected.</li> </ol> <p>Cal. Elec. Code § 321; Cal. Gov't Code §§ 34882, 36502; 87 Cal. Op. Att'y Gen. 30 (2004).</p> | <p>Can establish own criteria for city office provided it does not violate the U.S. Constitution. Cal. Const. art. XI, § 5(b), 82 Cal. Op. Att'y Gen. 6, 8 (1999).</p>  |
| <b>Public Funds for Candidate in Municipal Elections</b>     | <p>No public officer shall expend and no candidate shall accept public money for the purpose of seeking elected office. Cal. Gov't Code § 85300.</p>   | <p>Public financing of election campaigns is lawful. <i>Johnson v. Bradley</i>, 4 Cal. 4th 389 (1992).</p>  |
| <b>Term Limits</b>   | <p>May provide for term limits. Cal. Gov't Code § 36502(b).</p>  | <p>May provide for term limits. Cal. Const. art. XI, § 5(b); Cal Gov't Code Section 36502 (b).</p>  |
| <b>Vacancies and Termination of Office</b>                   | <p>An office becomes vacant in several instances including death, resignation, removal for failure to perform official duties, electorate irregularities, absence from meetings without permission, and upon non-residency. Cal. Gov't Code §§ 1770, 36502, 36513.</p>   | <p>May establish criteria for vacating and terminating city offices so long as it does not violate the state and federal constitutions. Cal. Const. art. XI, § 5(b).</p>  |
| <b>Council Member Compensation and Expense Reimbursement</b> | <p>Salary-ceiling is set by city population and salary increases set by state law except for compensation established by city electors. <i>See</i> Cal. Gov't Code § 36516. 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. <i>See</i> Cal. Gov't Code §§ 53234 - 53235.</p>  | <p>May establish council members' salaries. <i>See</i> Cal. Const. art. XI, § 5(b). 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. <i>See</i> Cal. Gov't Code §§ 53234 - 53235.</p> |

| Characteristic                               | General Law City   | Charter City  |
|--|--|---|
| <b>Legislative Authority</b>                 | <p>Ordinances may not be passed within five days of introduction unless they are urgency ordinances. Cal. Gov't Code § 36934.</p> <p>Ordinances may only be passed at a regular meeting, and must be read in full at time of introduction and passage except when, after reading the title, further reading is waived. Cal. Gov't Code § 36934.</p>                    | <p>May establish procedures for enacting local ordinances. <i>Brougher v. Bd. of Public Works</i>, 205 Cal. 426 (1928).</p>   |
| <b>Resolutions</b>                           | <p>May establish rules regarding the procedures for adopting, amending or repealing resolutions.</p>   | <p>May establish procedures for adopting, amending or repealing resolutions. <i>Brougher v. Bd. of Public Works</i>, 205 Cal. 426 (1928).</p>   |
| <b>Quorum and Voting Requirements</b>        | <p>A majority of the city council constitutes a quorum for transaction of business. Cal. Gov't Code § 36810.</p> <p>All ordinances, resolutions, and orders for the payment of money require a recorded majority vote of the total membership of the city council. Cal. Gov't Code § 36936. Specific legislation requires supermajority votes for certain actions.</p> | <p>May establish own procedures and quorum requirements. However, certain legislation requiring supermajority votes is applicable to charter cities. For example, see California Code of Civil Procedure section 1245.240 requiring a vote of two-thirds of all the members of the governing body unless a greater vote is required by charter.</p> |
| <b>Rules Governing Procedure and Decorum</b> | <p>Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).</p> <p>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i></p>  | <p>Ralph Brown Act is applicable. Cal. Gov't Code §§ 54951, 54953(a).</p> <p>Conflict of interest laws are applicable. See Cal. Gov't Code § 87300 <i>et seq.</i></p> <p>May provide provisions related to ethics, conflicts, campaign financing and incompatibility of office.</p>   |

| Characteristic                     | General Law City  | Charter City  |
|------------------------------------|---|---|
| <p><b>Personnel Matters</b></p>    | <p>May establish standards, requirements and procedures for hiring personnel consistent with Government Code requirements.</p> <p>May have “civil service” system, which includes comprehensive procedures for recruitment, hiring, testing and promotion. See Cal. Gov’t Code § 45000 et seq.</p> <p>Meyers-Milias-Brown Act applies. Cal. Gov’t Code § 3500.</p> <p>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, § 10(b).</p>   | <p>May establish standards, requirements, and procedures, including compensation, terms and conditions of employment for personnel. See Cal. Const. art. XI, § 5(b).</p> <p>Meyers-Milias-Brown Act applies. Cal. Gov’t Code § 3500.</p> <p>Cannot require employees be residents of the city, but can require them to reside within a reasonable and specific distance of their place of employment. Cal. Const. art. XI, section 10(b).</p> |
| <p><b>Contracting Services</b></p> | <p>Authority to enter into contracts to carry out necessary functions, including those expressly granted and those implied by necessity. See Cal. Gov’t Code § 37103; <i>Carruth v. City of Madera</i>, 233 Cal. App. 2d 688 (1965).</p>  | <p>Full authority to contract consistent with charter.</p> <p>May transfer some of its functions to the county including tax collection, assessment collection and sale of property for non-payment of taxes and assessments. Cal. Gov’t Code §§ 51330, 51334, 51335.</p>   |
| <p><b>Public Contracts</b></p>     | <p>Competitive bidding required for public works contracts over \$5,000. Cal. Pub. Cont. Code § 20162. Such contracts must be awarded to the lowest responsible bidder. Pub. Cont. Code § 20162. If city elects subject itself to uniform construction accounting procedures, less formal procedures may be available for contracts less than \$100,000. See Cal. Pub. Cont. Code §§ 22000, 22032.</p> <p>Contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms need not be competitively bid, but must be awarded on basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of services. Cal. Gov’t Code § 4526.</p> | <p>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. Pub. Cont. Code § 1100.7; see <i>R &amp; A Vending Services, Inc. v. City of Los Angeles</i>, 172 Cal. App. 3d 1188 (1985); <i>Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.</i>, 71 Cal. App. 4th 38 (1998).</p>               |

| Characteristic                            | General Law City   | Charter City   |
|---|--|--|
| <p><b>Payment of Prevailing Wages</b></p> | <p>In general, prevailing wages must be paid on public works projects over \$1,000. Cal. Lab. Code § 1771. Higher thresholds apply (\$15,000 or \$25,000) if the public entity has adopted a special labor compliance program. <i>See</i> Cal. Labor Code § 1771.5(a)-(c).</p> | <p>Historically, charter cities have not been bound by state law prevailing-wage requirements so long as the project is a municipal affair, and not one funded by state or federal grants. <i>Vial v. City of San Diego</i>, 122 Cal. App. 3d 346, 348 (1981). However, there is a growing trend on the part of the courts and the Legislature to expand the applicability of prevailing wages to charter cities under an analysis that argues that the payment of prevailing wages is a matter of statewide concern. The California Supreme Court declined an opportunity to resolve the issue. <i>See City of Long Beach v. Dept. of Indus. Relations</i>, 34 Cal. 4th 942 (2004).</p> |

| Characteristic                              | General Law City  | Charter City   |
|---|---|--|
| <p><b>Finance and Taxing Power</b></p>      | <p>May impose the same kinds of taxes and assessment as charter cities. <i>See</i> Cal. Gov't Code § 37100.5.</p> <p>Imposition of taxes and assessments subject to Proposition 218. Cal. Const. art.XIIIC.</p> <p>Examples of common forms used in assessment district financing include:</p> <ul style="list-style-type: none"> <li>• Improvement Act of 1911. Cal. Sts. &amp; High. Code § 22500 <i>et seq.</i>.</li> <li>• Municipal Improvement Act of 1913. <i>See</i> Cal. Sts. &amp; High. Code §§ 10000 <i>et seq.</i>.</li> <li>• Improvement Bond Act of 1915. Cal. Sts. &amp; High. Code §§ 8500 <i>et seq.</i>.</li> <li>• Landscaping and Lighting Act of 1972. Cal. Sts. &amp; High. Code §§ 22500 <i>et seq.</i>.</li> <li>• Benefit Assessment Act of 1982. Cal. Gov't Code §§ 54703 <i>et seq.</i>.</li> </ul> <p>May impose business license taxes for regulatory purposes, revenue purposes, or both. <i>See</i> Cal. Gov't Code § 37101.</p> <p>May not impose real property transfer tax. <i>See</i> Cal. Const. art. XIII A, § 4; Cal. Gov't Code § 53725; <i>but see</i> authority to impose documentary transfer taxes under certain circumstances. Cal. Rev. &amp; Tax. Code § 11911(a), (c).</p> | <p>Have the power to tax, subject to limits of State Constitution.</p> <p>Have broader assessment powers than a general law city, as well as taxation power as determined on a case-by case basis.</p> <p>Imposition of taxes and assessments subject to Proposition 218, Cal. Const. art. XIIIC, § 2, and own charter limitations</p> <p>May proceed under a general assessment law, or enact local assessment laws and then elect to proceed under the local law. <i>See J.W. Jones Companies v. City of San Diego</i>, 157 Cal. App. 3d 745 (1984).</p> <p>May impose business license taxes for any purpose unless limited by state or federal constitutions, or city charter. <i>See</i> Cal. Const. art. XI, § 5.</p> <p>May impose real property transfer tax; does not violate either Cal. Const art. XIII A or California Government Code section 53725. <i>See Cohn v. City of Oakland</i>, 223 Cal. App. 3d 261 (1990); <i>Fielder v. City of Los Angeles</i>, 14 Cal. App. 4th 137 (1993).</p> |
| <p><b>Streets &amp; Sidewalks</b></p>       | <p>State has preempted entire field of traffic control. Cal. Veh. Code § 21.</p>  | <p>State has preempted entire field of traffic control. Cal. Veh. Code § 21.</p>   |
| <p><b>Penalties &amp; Cost Recovery</b></p> | <p>May impose fines, penalties and forfeitures, with a fine not exceeding \$1,000. Cal. Gov't Code § 36901.</p>   | <p>May enact ordinances providing for various penalties so long as such penalties do not exceed any maximum limits set by the charter. <i>County of Los Angeles v. City of Los Angeles</i>, 219 Cal. App. 2d 838, 844 (1963).</p>  |

| Characteristic                     | General Law City  | Charter City   |
|------------------------------------|---|--|
| <b>Public Utilities/Franchises</b> | <p>May establish, purchase, and operate public works to furnish its inhabitants with electric power. <i>See</i> Cal. Const. art. XI, § 9(a); Cal. Gov't Code § 39732; Cal. Pub. Util. Code § 10002.</p> <p>May grant franchises to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city to allow use of city streets for such purposes. The grant of franchises can be done through a bidding process, under the Broughton Act, Cal. Pub. Util. Code §§ 6001-6092, or without a bidding process under the Franchise Act of 1937, Cal. Pub. Util. Code §§ 6201-6302.</p> | <p>May establish, purchase, and operate public works to furnish its inhabitants with electric power. <i>See</i> Cal. Const. art. XI, § 9(a); <i>Cal. Apartment Ass'n v. City of Stockton</i>, 80 Cal. App. 4th 699 (2000).</p> <p>May establish conditions and regulations on the granting of franchises to use city streets to persons or corporations seeking to furnish light, water, power, heat, transportation or communication services in the city.</p> <p>Franchise Act of 1937 is not applicable if charter provides. Cal. Pub. Util. Code § 6205.</p> |
| <b>Zoning</b>                      | <p>Zoning ordinances must be consistent with general plan. Cal. Gov't Code § 65860.</p>   | <p>Zoning ordinances are not required to be consistent with general plan unless the city has adopted a consistency requirement by charter or ordinance. Cal. Gov't. Code § 65803.</p>  |

**APPENDIX B**  
**"POLICE POWERS"**

1. Preemption. *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993). Sets forth the test to determine if a local ordinance or regulation "conflicts with general laws" under Article XI, Section 7 of the California Constitution. Local legislation conflicts with state law and is preempted if it duplicates, contradicts or enters an area fully occupied by general law either expressly or by legislative implication.
2. Graffiti Control. *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893 (1993). City was not preempted by state statutes from regulating the display of aerosol paint and broad-tipped marker pens as the local ordinance did not duplicate, contradict or enter an area fully occupied by general law either expressly or impliedly.
3. Public Nuisance. *City of Costa Mesa v. Soffer*, 11 Cal. App 4th 378 (1992) (review denied). The State of California has not preempted the field of public nuisance law, therefore a city, in this case a general law city, may within its police power declare that abandoned, wrecked, dismantled or inoperative vehicles on private property constitute a public nuisance and a city may in certain circumstances declare certain uses nuisances per se.
4. Aesthetic Concerns. *Crown Motors v. City of Redding*, 232 Cal. App. 3d 176 (1991). In adopting an urgency ordinance banning electronic reader boards, the City Council could properly consider aesthetics as a public health matter. Therefore, the City Council's determination that the public health would be detrimentally affected by electronic reader boards was within its legislative domain.
5. Rent Control. *City of Santa Monica v. Yarmack*, 203 Cal. App. 3d 153 (1988). A city's power to enact local rent control ordinances derives from the police power and is not a municipal affair as to which a charter provision would prevail over a general state law. Therefore, local legislation regarding rent control was preempted by the Ellis Act, California Government Code Sections 7060 et seq, regulating the rights of landlords to withdraw controlled units from residential rental markets.



## APPENDIX C

### "MUNICIPAL AFFAIRS"

1. Public Safety Officers. *Binkley v. City of Long Beach*, 16 Cal. App. 4th 1795 (1993) (review denied). Police Chief of charter city served at the pleasure of the City Manager and was fired on the basis of misconduct, mismanagement and misjudgment in office. The Public Safety Officers Procedural Bill of Rights which sets forth that the maintenance of stable employment relations between peace officers and their employers is a matter of statewide concern was not intended to abrogate the powers of a charter city. Trial court order prohibiting the City Manager from retaining final decision making authority over firing of the police chief violated city charter provision granting city manager power to appoint, suspend and remove without cause department heads.

2. Zoning. *Garat v. City of Riverside*, 2 Cal. App. 4th 259 (1991). The provisions of Government Code Section 65860 requiring that a city's zoning ordinances be consistent with the general plan does not apply to charter cities unless that city specifically adopts such a consistency requirement by way of charter or ordinance. But See, *City of Los Angeles v. Department of Health*, 63 Cal. App. 3d 473, 479 (1976) (provisions of Welfare and Institutions Code providing that a family care home, foster home, or group home with 6 or fewer patients is considered a permitted use in all residential zones related to a matter of statewide concern and thus applied to charter cities).

3. Taxes.

(a) Ad Valorem Taxes on Real Property. *Fielder v. City of Los Angeles*, 14 Cal. App. 4th 137 (1993). City of Los Angeles imposed a tax on each deed or instrument in writing that transfers or conveys real property. Charter city's ordinance was not preempted by Government Code Section 53725 which provides that no local government may impose any transaction tax or sales tax on the sale of real property except as permitted by Section 1 of Article XIII of the California Constitution as the ordinance did not interfere with the statewide objective of prohibiting taxation based upon increased valuation of real estate leaving taxpayers with debt and no assets to pay it. Rather as the ordinance was only applicable upon the sale of the property proceeds would be available for payment. *See also, Fisher v. County of Alameda*, 20 Cal. App. 4th 120 (1993).

(b) Excise Tax. *Centex Real Estate Corp. v. City of Vallejo*, 19 Cal. App. 4th 1358 (1993). The City of Vallejo imposed a property development excise tax on developers as a condition of the issuance of a building permit. The tax was not a development fee under Government Code Section 66001 therefore the City was not required to follow the procedures outlined therein, in addition, the purpose of the fee was to raise money for the general fund and not to fund public facilities or services related to new development. The City's charter specifically authorized the enactment of a tax.

(c) Taxes for General Municipal Purposes. *See, City of Redondo Beach v. Taxpayers, Property Owners, etc. City of Redondo Beach*, 54 Cal. 2d 126 (1960) (municipal harbor improvements). *Ex Parte Braun*, 141 Cal. 204 (1903) (license tax on local businesses and occupations).

(d) Constitutional Limitations on Taxes. Charter Cities are subject to and must comply with the requirements of Proposition 218 relating to levy of taxes, fees and assessments.

7. Referendum. *Browne v. Russell*, 27 Cal. App. 4th 1116 (1994): Charter city may provide for the exercise of the power of referendum in any manner that does not impinge on the basic right of referendum expressed in the Constitution. City of Los Angeles Election Code requirement that referendum circulators be City residents and voters was upheld as the requirement did not unduly burden the right of political expression and the Court found that by the requirement, the City was seeking to preserve the integrity of the referendum process.

8. Additional Cases re: Municipal Affairs:

(a) Municipal Elections. *Mackey v. Thiel*, 262 Cal. App. 2d 362 (1968). *Scheafer v. Herman*, 172 Cal. 338, 340 (1928) (recall).

(b) Local Initiatives. *Lawing v. Faull*, 227 Cal. App. 2d 23, 28 (1964).

(c) Enactment of Local Ordinances. *Brougher v. Board of Public Works*, 205 Cal. 426 (1928).

(d) Municipal Contracting. *Loop Lumber Co. v. Van Loben Sels*, 173 Cal. 228 (1916).

(e) Issuance of Municipal Bonds. *City of Santa Monica v. Grubb*, 245 Cal. App. 2d 718 (1960) (procedure). *Law v. San Francisco*, 144 Cal. 384 (1904) (issuance of bonds for school house repair and construction).

(f) Prevailing Wages. *Vial v. City of San Diego*, 122 Cal. App. 3d 346 (1981).

(g) Provision of Financial Assistance to Public Schools. *Berkeley School District v. City of Berkeley*, 141 Cal. App. 2d 841, 846-47 (1956) *Madsen v. Oakland Unified School District*, 45 Cal. App. 3d 574, 579 (1975).

(h) Issuance of Building Permits. *Lindell Company v. Board of Permit Appeals*, 23 Cal. 2d 303 (1943).

(i) Municipal Parks. *Reagan v. Sausalito*, 210 Cal. App. 2d 618 (1962) *Wiley v. Berkeley*, 136 Cal. App. 2d 10 (1955).

(j) Establishment of a Public Market. *Bank v. Bell*, 62 Cal. App. 320 (1923).

(k) Miscellaneous. *Weaver v. Reddy*, 135 Cal. 430 (1902) (management of city alms-house).

(l) Municipal Improvements. *City of San Jose v. Lynch*, 4 Cal. 2d 760 (1935) (improvement of municipal streets). *Cramer v. San Diego*, 164 Cal. App. 2d 168 (1958) (the establishment and maintenance of sewers and drains).

(m) Operation of Municipal Utility. *Blum v. San Francisco*, 200 Cal. App. 2d 639 (1962).

- (n) Granting of Franchise to Use City Streets. *Oro Electric Corporation v. Railroad Commission*, 169 Cal. 466 (1915).
- (o) Creation of Municipal Board of Health. *Butterworth v. Boyd*, 12 Cal. 2d 140 (1938).
- (p) Public Funding of Election Campaign. *Johnson v. Bradley*, 4 Cal. 4th 389 (1992).
- (q) Term Limits. *Cawdrey v. Redondo Beach*, 15 Cal. App. 4th 1212 (1993). Compare: *Polis v. City of La Palma*, 10 Cal. App. 4th 28 (1992) and *Steinkamp v. Teglia*, 210 Cal. App. 3d 402 (1989). General law city ordinance limiting council members to two terms was preempted by state law provisions setting forth the circumstances which would render a person ineligible for office.

## APPENDIX D

### "MATTERS OF STATEWIDE CONCERN"

1. Oil Franchise. California Public Utilities Code Section 6205.1 specifically sets forth that in granting of franchises to construct facilities which are part of a pipeline system transmitting oil or products thereof a charter city is governed by Public Utilities Sections 6001 et seq. This legislation expressly overruled the decision in *Southern Pacific Pile Lines Inc. v. City of Long Beach*, 204 Cal. App. 3d 660 (1988) where the Court of Appeals held that a charter city could impose its own oil pipeline franchise fee schedule.
2. Highway Projects. *Committee of Seven Thousand v. Superior Court*, 45 Cal. 3d 491 (1988). Defines statewide to refer to all matters of more than local concern and thus includes matters the impact of which is primarily regional rather than truly statewide. Government Code Section 66484.3 which establishes a procedure for enacting an ordinance imposing fees against the new development in designated areas in order to fund major highway projects is a matter of statewide concern due to its relation to highway construction and the development of regional transportation systems. Therefore, a proposed initiative prohibiting the City Council of the City of Irvine from imposing a fee or tax to finance certain highways was invalid.
3. Additional Cases re: Matters of Statewide Concern:
  - (a) School System. *Atherton v. Superior Court*, 159 Cal. App. 2d 417, 421 (1958).
  - (b) Franchises for Telephone and Telegraph. *Pac. Tel. & Tel. Co. v. Los Angeles*, 44 Cal 2d 272, 279 (1955).
  - (c) Licensing for Trade or Profession. *San Francisco v. Boss*, 83 Cal. App. 2d 445 (1948) (painting contractors) *Baron v. Los Angeles*, 2 Cal. 3d 535, 540 (1970) (attorneys).
  - (d) Municipalities Tort Liability. *Eastlick v. City of Los Angeles*, 29 Cal. 2d 661 (1947).
  - (e) Brown Act. *San Diego Union v. City Council of the City of San Diego*, 146 Cal. App. 3d 947 (1983)
  - (f) Eminent Domain. *Wilson v. Beville*, 47 Cal. 2d 852, 859 (1957)
  - (g) Labor Relations. *San Leandro Police Officers Association v. City of San Leandro*, 55 Cal App 3d 553 (1976)