Said bonds shall be designated "Revenue Bonds" and such bond shall state on its face that it does not constitute an indebtedness of the City of Pasadena but is an obligation payable, principal and interest, only from the Revenue Fund of the utility for which the proceeds of the bonds will be used.

(C) Said bonds shall be sold only at public sale following such notice as the City Council by resolution or order may prescribe; provided, however, that if no satisfactory bid is received pursuant to such notice the City Council may reject all bids received, if any, and thereafter sell said bonds at public or private sale: provided, further, that the provisions of this subsection shall not apply to the exchange of any refunding bonds. Any such revenue bonds may be sold at a fixed rate of interest or the bidders may be invited to state the rate or rates of interest at which they will purchase said bonds, but no rate on any of the bonds shall exceed the maximum rate stated in the ordinance authorizing the issuance of such bonds. If the bidders are invited to state the interest rate or rates, then upon the acceptance of a bid the City Council shall by resolution or order, which shall not be subject to referendum, fix such interest rate or rates as have been bid by the successful bidder as the rate or rates of interest on the bonds.

(D) Said bonds shall be sold for not less than par and accrued interest to date of delivery. The proceeds from the sale (except premium and accrued interest which shall be paid into the Bond Service or other fund designated or established for the payment of principal and interest of the bonds) shall be paid into the construction fund designated by the ordinance authorizing the issuance of such bonds, and not into the "Water Fund" or the "Light and Power Fund," and shall be applied exclusively to the objects and purposes set forth in such ordinance; provided, however, (1) that the Revenue Fund from which the bonds are payable may be reimbursed from such proceeds for expenditures for purposes for which the bonds were issued made from such Revenue Fund after the ordinance authorizing the issuance of such bonds became effective, (2) that said proceeds may be used for the payment of interest on said bonds during the period of acquisition and construction and for the first six months thereafter, and (3) that when the objects and purposes for which the bonds were issued have been accomplished any remaining unexpended funds derived from the sale of said bonds shall be used for the payment of the principal and interest of said bonds.

(Sec. 1414 amended by vote of the people 3-9-1993.)

Section 1415. - REFUNDING BONDS.

Refunding bonds may be issued for the purpose of refunding any revenue bonds issued pursuant to this Article, and such refunding bonds may be issued in principal amount sufficient to refund the outstanding bonds proposed to be refunded thereby, including payments of accrued interest and of any premiums

thereon. Refunding bonds shall be authorized, issued, and sold in the manner provided for the sale of other revenue bonds hereunder, or may be exchanged for the outstanding bonds to be refunded upon such terms and conditions as may be stated in the ordinance authorizing such refunding bonds.

Section 1416. - REVENUE BOND PROCEEDINGS: EFFECT OF.

To the extent that any provision of an ordinance authorizing the issuance of bonds pursuant to this Article or any provision of any ordinance, resolution or order pertaining to such bonds adopted pursuant to the authority of this Article is inconsistent with any of the provisions of any other Article of this Charter, the provisions of such ordinance, resolution, or order shall control so long as any of the bonds and interest coupons to which the same pertain are outstanding and unpaid. No bond shall be deemed to be outstanding and unpaid within the meaning of this Article if moneys for the purpose of paying the same or redeeming the same prior to maturity and sufficient therefor have been irrevocably set aside in a Bond Service Fund, sinking fund, redemption fund, or other trust fund created to insure the payment or redemption thereof.

ARTICLE XV - THE FIRE AND POLICE RETIREMENT SYSTEM

Section 1501. - RETIREMENT SYSTEM.

In order to continue in force, with such modifications as are set forth in this Article, provisions already existing for retirement and death benefits for members of the Fire and Police Departments of the City, the Pasadena Fire and Police Retirement System, hereinafter referred to as the Retirement System or the System, is hereby established. The legislative body of the city may exclude from membership in the Retirement System persons employed on a temporary or part-time basis, but for the purpose of Retirement System, persons serving a probationary period requisite to appointment to a regular position shall not be considered as on a temporary basis. The legislative body by a vote of not less than six of its members, is hereby empowered to enact any and all ordinances necessary to carry into effect the provisions of this Article provided that the said legislative body, through the Retirement Board, shall secure an actuarial report of the cost and effect of any proposed change in the benefits under the Retirement System, before the adoption of an ordinance to submit any proposed Charter amendment providing for such change.

(Sec. 1501 amended by vote of the people 11-3-1998.)

Section 1502. - RETIREMENT BOARD.

The Retirement System shall be managed by a Retirement Board hereby created, which shall be the successor to and have the powers and duties of the Fire and Police Pension Board of the City of Pasadena, heretofore created and effective and now by this Article superseded by the Retirement Board. The

Retirement Board shall consist of one member of the legislative body of the city to be selected by and to serve at the pleasure of the said legislative body, two qualified electors of the City of Pasadena not connected with the government thereof, to be appointed by the legislative body, and two members elected under the supervision of the Retirement Board from the active or retired members of the Retirement System. One of such two members shall be a member or retiree of the Fire Department and one a member or retiree of the Police Department, and the election of each of such two members shall be confined to the group from which the member must be chosen. The term of office of the four members, other than the member appointed from the legislative body of the City, shall be four years, one term expiring each year, provided that immediately after the election of the two members from the Fire and Police Departments, they shall draw lots for terms of one, two, three and four years respectively. The members of the Retirement Board shall serve without compensation. The Retirement Board shall appoint a secretary to hold office at its pleasure, and when necessary employ a consulting actuary.

The Retirement Board shall have the sole power and authority under such general ordinances as may be adopted by the legislative body to hear and determine all facts pertaining to applications for and awards of any benefits under the Retirement System, or any matters pertaining to the administration thereof. Said Retirement Board shall have exclusive control of the administration and investment of such fund or funds as may be established and all investments shall be subject to the same terms, limitations and restrictions as are imposed by the Constitution and laws of the State upon the investment of the Public Employees' Retirement System Funds, as now enacted or hereafter amended.

Disbursement of retirement funds shall be made upon demands duly audited in the manner prescribed in this Charter for disbursement of public funds. The City Treasurer shall be the custodian of any such retirement funds, subject to the control of the Retirement Board as to the administration and investment of said funds.

(Sec. 1502 amended by vote of the people 11-7-2000.)

Section 1503. - ACTUARIAL TABLES, RATES AND VALUATIONS.

The mortality, service and other tables and rates of contributions for members as recommended from time to time by the actuary and the valuations determined by him from time to time and approved by the Retirement Board shall be final and conclusive and the contributions of the City and members to the Retirement System shall be based thereon. The same actuarial tables, rates, valuations and assumptions, including but not limited to assumptions concerning future investment return and salary inflation, shall be used in calculating member contributions pursuant to Section 1509.9 hereof as are used in calculating city contributions pursuant to Section 1509.92 hereof.

The actuary shall, in valuing the system for any purpose hereunder, reflect as an asset all moneys in the unallocated interest earnings in excess of 2 percent of total assets excluding unallocated interest earnings.

(Amended by vote of the people 11-4-1980, effective January 1, 1981; Sec. 1503 amended by vote of the people 4-17-73, effective July 1, 1973.)

Section 1504. - DEFINITIONS.

(a) "Compensation", as distinguished from benefits under the Workmen's Compensation laws of the State of California, shall mean the remuneration prescribed by the City in cash, without deduction except for absence from duty, for time during which the member, as herein defined, receiving such remuneration is in the employ of the City. Compensation based on overtime put in by a member shall be excluded from all computations in which compensation is a factor.

(b) "Service" shall mean time during which a member is employed by City for compensation excluding compensated time prior to becoming a member. Absence from duty without compensation due to any cause other than disability retirement as hereinafter provided, shall not be deemed service for the City. The legislative body, however, may fix the number of months per year to be required for a year of service and proportionate parts thereof, but not more than one year shall be credited for all service in any year.

(c) "Compensation earnable" shall mean the compensation as determined by the Retirement Board, which would have been earned had the member received compensation without interruption throughout the period under consideration and at the rates attached to the ranks or position held by a member during such period. The computation for any absence of a member shall be based on the compensation earnable in the rank or position held by the member at the beginning of the absence and that for the time prior to becoming a member of the Fire or Police Department, shall be based on the compensation earnable by the member in the rank or position first held by the member in such Department.

(d) "Retirement allowance", "death allowance", or "allowance" shall mean equal monthly payments for life unless a different term of payment is provided by the context, provided that any person to whom or on whose account benefits are payable, may elect to have the actuarial equivalent of the portion of such benefits which is not continued automatically to the member's surviving spouse or children, paid in different form, all subject to such restrictions, regulations and conditions as may be prescribed by the legislative body, but the action of the legislative body shall not prevent such benefits when elected by a member, from taking the form of cash refund annuities, as applied to the member's accumulated contributions only, or reversionary annuities, these terms to have the meaning commonly accepted in standard life insurance practice.

(e) "Annuity" shall mean equal monthly payments for life, unless a different term of payment is provided by the context, derived from contributions made by the member.

(f) "Final compensation" shall mean the highest average monthly compensation earnable by a member during any period of 12 consecutive months. In the calculation of "final compensation", periods of service separated by breaks in service may be aggregated to constitute a period of 12

consecutive months, if the periods of service are consecutive except for such breaks. If a break in service did not exceed 6 months in duration, time included in the break and compensation earnable during such time shall be included in the computation of final compensation. If a break in service exceeded 6 months in duration, only the first 6 months thereof and the compensation earnable during those 6 months shall be included in the computation of final compensation. For the purposes of this paragraph, absence from duty without compensation, because of disability retirement, is not a break in service.

(g) "Employee" shall mean "officer or employee".

(h) "Member" shall mean a member of the Retirement System unless clearly indicated otherwise.

(i) "Interest" shall mean interest at the rate adopted by the Retirement Board.

(j) The disability referred to herein as a basis for retirement shall mean disability of permanent duration, except disabilities determined by the Retirement Board, predicated upon best medical opinion, to be of an extended and indefinite duration.

(k) For the purposes of the Retirement System, ages of members used in the calculation of allowances shall be taken to the next lower completed quarter year.

(l) Any fire or police service performed outside the limits of the City by a member of the Retirement System under the orders of a superior officer of any such member, shall be considered as performed within the scope of a member's employment, and any disability or death incurred therein shall be covered under the provisions of the Retirement System.

(m) For the purposes of the Retirement System, "member of the Fire Department" or "member of the Police Department", shall include any officer or employee of either of such departments whose principal duties are to prevent and extinguish fire or to preserve the peace, prevent injury to life and property, or to suppress crime or disorder, and shall exclude persons whose principal duties are those of civilian personnel such as, but not limited to, administrative analyst, training coordinator, technical specialist, housing inspector, telephone operator, clerk or stenographer, machinist or mechanic, or other similar duties clearly not falling within the foregoing regular fire or police duties, even though such persons may be called upon occasionally to perform such regular fire or police duties; provided that the foregoing exclusions shall not apply to members of the System who are reassigned to perform any of the excluded duties or transferred to another City department. After the effective date hereof, the maximum age at which any person, except a person employed as Chief of the Fire Department or Chief of the Police Department may become or reenter as a member of either the Fire or Police Department, shall be thirty-four years notwithstanding any of the other provisions of this Charter.

(n) "Spouse" shall mean a male or female person legally married to a member and otherwise entitled to benefits as further provided herein.

(o)

"Handicapped dependent child" shall mean an unmarried natural child or an unmarried legally adopted child of a member who is physically or mentally handicapped as determined by standards established by ordinance, and who prior to reaching 21 years of age was so handicapped. Provided, that in order to be eligible for any benefits herein, an adopted handicapped dependent child must have been legally adopted by the member not less than 12 months preceding the retirement of the member or be legally adopted by the member at the time of his or her death occurring prior to retirement.

(Sec. 1504 amended by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1505. - AGE EXCEPTION FOR TEMPORARY OR PART-TIME EMPLOYEES.

As an exception to the maximum age requirement of the preceding section, if the City Manager finds that persons under thirty-five years of age are not available for membership in either of said departments because of conditions brought about by war, he may employ a person over thirty-four years of age in either of said departments on a temporary or part-time basis and such person shall not be entitled to membership in the Retirement System. Authority given to the City Manager under this Section shall terminate after the expiration of one year after the end of the war on a date to be determined by the legislative body of the City.

Section 1506. - POST RETIREMENT SERVICE WITHOUT LOSS OF BENEFITS OR REINSTATEMENT.

A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system as follows:

(A) As a member of the Fire and Police Retirement Board; or

(B) Upon employment by the City to a position of a limited duration and requiring specialized skills or during an emergency to prevent stoppage of public business. Such an appointment shall not exceed a total of 960 hours in any calendar year; or

(C) Upon appointment to a volunteer position as a member of a City commission, board or committee, or election to a City office.

(Sec. 1506 amended by vote of the people 11-7-2000.)

Section 1507. - REDUCTION OF BENEFITS.

That portion of any allowance or other benefit which is provided by contributions of the City, payable by the Retirement System because of the death or retirement of any member shall be reduced, in the manner fixed by the legislative body, by the amount of any pension, except social security payments or pensions paid on account of service in the military or naval forces of the United States, paid to or on account of the death of such member from funds of the United States, State of California or any political subdivision thereof, on account of, or on the basis of service credited under the Retirement System.

(Sec. 1507 amended by vote of the people 4-17-73, effective July 1, 1973.)

Section 1507.1. - CONFORMITY WITH THE UNITED STATES INTERNAL REVENUE CODE.

Notwithstanding any other provision of law, the benefits payable to any person who became a member prior to January 1, 1990 shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:

(a) The limitations set forth in Section 415 of the Internal Revenue Code.

(b) The accrued benefit of a member under this system, determined without regard to any amendment to the system made after October 14, 1987.

(c) Notwithstanding any other provision of this Article, the benefits payable to any person who for the first time becomes a member on or after January 1, 1990 shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(Sec. 1507.1 approved by vote of the people 3-5-91, effective June 5, 1991.)

Section 1508. - EXISTING ALLOWANCES.

(a) Retirement or death allowances existing in favor of or on account of members of the Fire or Police Departments at the time of the effective date of this Article, shall be continued in force, including a remarried widow during any period of time when she is unmarried by reason of the death of, annulment or divorce from a succeeding husband, and shall be paid by the Retirement System. Allowances which were effective, because of a member's retirement or death before retirement, after November 5, 1968, and prior to the effective date hereof, shall be adjusted to the new basis of all benefits provided in this Article XV upon the election by the member or surviving wife to accept the modifications provided in this amendment.

(b) Every retirement or death allowance presently payable pursuant to the 1935 System as heretofore modified for time, to or on account of a person who died as a member or retired on or after July 1, 1935, and prior to the effective date of this section, shall from and after the effective date hereof and upon the election by the member or his surviving wife within 180 days of the effective date of this amendment, be adjusted annually in accordance with Section 1509.8 hereof. Such annual adjustments shall not be retroactive but shall only be from and after the effective date hereof.

(c) The provisions of these subparagraphs (a) and (b) do not apply to persons receiving benefits pursuant to Charter provisions in effect prior to July 1, 1935, nor to any widow of a member who had remarried on or before November 5, 1968, and whom the member's contributions had been paid.

Section 1509. - BENEFIT AND CONTRIBUTION REQUIREMENTS.

Persons who shall be members of the Fire and Police Retirement System on the effective date hereof shall remain members of the System upon such date and shall retain all rights under the System theretofore in effect. All persons who shall become members of the Fire or Police Departments after the effective date hereof, shall become members of the Retirement System forthwith and all members of the System who elect to take the new benefits and pay the contributions required from the effective date of the amendment shall be subject to the provisions of this Article XV, as modified by this amendment.

Section 1509.1. - SERVICE RETIREMENT; 15 YEARS SERVICE; AGE 50.

Members may retire upon or after attaining age 50 provided that a member shall at the effective date of election to retire have rendered at least 15 years of service.

Section 1509.12. - SERVICE RETIREMENT; 25 YEARS SERVICE.

Notwithstanding any other provision of this Charter, members may exercise their option to retire provided they shall at the effective date of election to retire have rendered at least 25 years of service.

Section 1509.13. - SERVICE RETIREMENT; COMPULSORY AT AGE 60.

(Repealed by vote of the people on 11-7-2000.)

Section 1509.14. - SERVICE RETIREMENT; DISMISSAL.

Dismissal of a member from service for any cause after the member has qualified as to age and service for service retirement shall not deprive such member of the right to retire for service.

Section 1509.15. - SERVICE RETIREMENT: RETIREMENT ALLOWANCE.

(A) Members have the optional right to retire for service as set forth herein upon electing the right to so retire and upon retirement for service shall receive a service retirement allowance equal to 1/50 of the member's final compensation, times the member's number of years of service, times an actuarial equivalent at his or her actual retirement age as set forth in the following table, provided that in no event shall the initial service retirement allowance exceed seventy-five percent (75%) of the member's final compensation:

Age At Retirement	Actuarial Equivalent
46	.8226
47	.8678

48	.9085
49	.9522
50	1.0000
51 and over	1.0516

(B) The following table of age at retirement and actuarial equivalents shall be operative in whole or in part to the calculations set forth in subsection (A) of this Section when the cost to the City as contributions for current and past service, including benefits added by modification of the System from time to time, excluding contributions of City concerning charter provisions in effect prior to July 1, 1935, does not exceed 15.50 percent of members' compensation paid during the said year the following table becomes operative. If, as the result of a periodical actuarial valuation and investigation taking into consideration reductions in prior service obligations of City and the earnings of the Fund, the foregoing conditions are met, the City Council shall, by ordinance or resolution, establish the effective date of the new retirement rates, which date shall be within 90 days of the filing of the said actuarial report.

Said equivalents shall be applicable only to those members retiring after said valuation, investigation and determination by the said City Council and subject to the formula and limitations of subsection (A) of this Section:

Age At Retirement	Actuarial Equivalent
52	1.1078
53	1.1692
54	1.2336
55 and over	1.3099

(Sec. 1509.15 amended by vote of the people 3-9-1993: Sec. 1509.15 amended by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1509.3. - SERVICE CONNECTED DISABILITY RETIREMENT.

Members shall be retired for disability, regardless of age or amount of service, if incapacitated for the performance of duty as the result of injury or illness incurred in the performance of duty. A member may accept a transfer or reassignment to another City department. Such transfer or reassignment shall not prejudice the member's right to such disability retirement upon his subsequent separation from service with the City. In event of reassignment, the member shall retain the classification held at time of reassignment and shall receive the salary attached to that classification.

(Sec. 1509.3 amended by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1509.31. - SERVICE CONNECTED DISABILITY RETIREMENT; ALLOWANCE.

Upon retirement for disability resulting from injury or illness incurred in performance of duty, members shall receive a disability retirement allowance of 50 percentum of the member's final compensation. Provided, if such member might otherwise elect to retire for service at a greater retirement allowance pursuant to the provisions hereof, and should said member elect to receive a disability allowance, then the disability retirement allowance payable to the member shall be in an amount not less than that sum the member would have received had an election been made to receive a retirement for service allowance. Such election shall be irrevocable by the member thereafter.

(Sec. 1509.31 amended by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1509.32. - NON-SERVICE CONNECTED DISABILITY RETIREMENT.

Members shall be retired regardless of age but only after ten years of service to the city in either or both the Fire and Police Departments if incapacitated for the performance of duty as the result of an injury or illness not incurred in the performance of duty. A member may accept a transfer or reassignment to another City department. Such transfer or reassignment shall not prejudice the member's right to such disability retirement upon his subsequent separation from service with the City. In event of reassignment, the member shall retain the classification held at time of reassignment and shall receive the salary attached to that classification.

(Sec. 1509.32 amended by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1509.33. - NON-SERVICE CONNECTED DISABILITY RETIREMENT; ALLOWANCE.

Upon retirement for disability resulting from injury or illness not incurred in the performance of duty, a member shall receive a disability retirement allowance of 1-½ percentum of the member's final compensation, multiplied by the number of years of service credited to the member if such allowance exceeds ¼ of the member's final compensation; otherwise, 1-½ percentum of the member's final

compensation, multiplied by the number of years which would be creditable to the member were the member's service to continue until the member's attainment of the age of 55 years, but such allowance shall not exceed ¼ of the member's final compensation. If such member might otherwise elect to retire for service at a greater retirement allowance pursuant to the provisions hereof, he shall elect either the higher service retirement allowance or the disability retirement. Such election shall be irrevocable by the member thereafter.

(Sec. 1509.33 amended by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1509.34. - DISABILITY; REINSTATEMENT.

If the disability for which a member was retired shall cease to the extent necessary to enable him to perform the duties of the rank or position he held at the time of retirement, the member's allowance shall cease at the option of the Retirement Board, and the member shall be reinstated at the rank and in a position of the same grade as the member occupied at the time of retirement. The member's individual account shall be credited with an amount which is the actuarial equivalent of the member's annuity at the time as based on a disabled life, but not exceed the amount of the member's accumulated contributions at the time of the member's retirement for disability. The amount so credited to the member's individual account shall be administered as contributions deducted from the member's compensation. Upon retirement at any time thereafter, the member shall receive service credit for the time during which the member was retired for disability, but the member shall not be required to make contributions for such time. If, following reinstatement, the member does not enter upon the duties of the member's position, and is not qualified for service retirement, the member shall be subject to the provisions of Section 1509.4 hereof. This Section shall not apply to any member who shall have been qualified for and who shall have elected previously service retirement rather than disability retirement.

Section 1509.4. - DEFERRED RETIREMENT.

Should any member be separated from service of the City through any cause other than death or retirement, then all of the member's contributions, with interest, shall be refunded to the member, provided that if such member is entitled to be credited with at least ten years of service, the member shall have the right to elect within ninety days after said termination of service, whether to allow the member's accumulated contributions to remain in the Retirement Fund. Such election shall become void upon such person's employment in a position requisite for membership in this System, and may be revoked by such person at any time prior thereto. Upon such revocation, the member's accumulated contributions shall be refunded to the member. Failure to make an election during the said 90-day period shall be deemed an irrevocable election to withdraw the member's accumulated contributions.

A member whose membership continues under this section is subject to the same age requirement as applies to other members for service retirement, but is not subject to a minimum service requirement. After the qualification of such member for retirement by reason of age for service retirement and only then, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members.

Section 1509.41. - REENTRY; ADJUSTMENT OF CONTRIBUTION RATE.

If a member who has separated from service and who has elected to continue his membership pursuant to Section 1509.4 shall again become an employee of either the Fire Department or the Police Department, on reentry the member's rate of contributions for the future shall be adjusted by the actuary as necessary, by adding to his original age for contribution purposes the number of years said member was out of service in either the Fire Department or the Police Department.

Section 1509.5. - REFUND OF CONTRIBUTIONS.

Member's contributions made under Sections 1509.81 and 1509.9 hereof, shall be credited to the individual account of the member from whose compensation they were deducted, and no amendment to this Charter or repeal thereof shall prevent the payment to the member or member's beneficiary, of such contributions made prior to the effective date of such amendment or repeal, with interest, upon separation from service of the City, for reason by other than retirement, as provided herein, or the application of such contributions, with interest, toward providing the member's retirement or death allowance, as the case may be.

Section 1509.6. - RETIREMENT ALLOWANCE; DEPENDENT CONTINUATION OF AT DEATH OF MEMBER.

(a) Upon the death of any member receiving a retirement allowance pursuant to the provisions of Sections 1509.1, 1509.12, 1509.15, 1509.33 or 1509.4 hereof, 60% of the member's retirement allowance shall, if not modified in accordance with one of the optional settlements now or hereafter specified by ordinance, be continued throughout the life of the surviving spouse.

(b) Upon the death of any member receiving a service connected disability retirement allowance pursuant to the provisions of Sections 1509.3 and 1509.31 hereof, 100% of the member's retirement allowance shall be continued throughout the life of the surviving spouse.

(c) If there be no surviving spouse, then the allowance which would otherwise be paid to the surviving spouse had he or she qualified and lived and not remarried, shall be paid to such child or children under said age of 21 years, collectively, to continue until every such child dies or attains age 21 or marries provided that no child shall receive any allowance after marrying or

attaining the age of 21 years. No allowance shall be paid under this Section to a surviving spouse unless the surviving spouse was married to the member at least one year prior to said member's date of retirement.

(Sec. 1509.6 amended by vote of the people 3-4-03)

Section 1509.61. - REFUND OF DEPENDENT CONTRIBUTIONS; TO DEPENDENT.

If the payment of the allowance for surviving spouse or child or children of a member as set forth in Section 1509.6 hereof terminates by death of the spouse and because of the death, attainment of age 21 by or marriage of every child or children before the sum of the monthly payments made shall equal the sum of the member's dependent contributions, with interest thereon, as it was at the member's retirement, then an amount equal to the difference between said sums shall be paid in one amount to the surviving children of the deceased member, share and share alike.

(Sec. 1509.6 amended by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1509.62. - REFUND OF DEPENDENT CONTRIBUTIONS; TO MEMBER.

If at the date of retirement for service or disability, service connected or non-service connected, a member has no spouse or child or children qualifying under this Article XV for dependent continuation allowance, the dependent contributions made by the member, with accumulated interest thereon, shall be paid to the member upon said date.

(Sec. 1509.62 amended by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1509.7. - DEATH OF MEMBER PRIOR TO RETIREMENT; DEATH BENEFIT.

Upon the death of a member, before retirement, the Retirement System shall be liable for and shall pay a death benefit consisting of either or both of the following:

(a) The member's accumulated contributions, with interest thereon, to be paid to the member's estate or to such person having an insurable interest in the life of the member if the member shall nominate by written designation duly executed and filed with the Retirement Board.

(b) An amount of money equal to the member's compensation earnable during the 6 months immediately preceding the death of the member to be paid only to the member's surviving spouse, child or children or dependent father or mother.

The foregoing death benefits shall be paid in monthly installments in accordance with Sections 1509.71 and 1509.72 hereof, except where a lump sum is specified.

Section 1509.71. - SERVICE CONNECTED DEATH; PRIOR TO RETIREMENT.

If, in the opinion of the Retirement Board, the death of a member, prior to retirement be the result of injury or illness, incurred in the performance of duty, the Retirement System shall be liable for and shall pay as follows:

(a) An amount sufficient, when added to the amounts provided in Section 1509.7 (a) and (b), but excluding the member's accumulated additional contributions, to provide when applied according to the tables and rates recommended by the actuary and approved by the Retirement Board, a monthly death benefit allowance equal to 1/2 of the member's final compensation, to be paid to the surviving spouse to whom said member was married at the time of sustaining the said injury or illness, to continue throughout his or her life or until he or she remarries; or if there be no surviving spouse, or if he or she dies or remarries before every unmarried child of such deceased member shall have attained the age of 21 years, then to such child or children under said age collectively, to continue until every such child dies, attains said age, or marries, or unless the subsequent marriage of the spouse is terminated by the death of, annulment or divorce from the succeeding husband or wife; provided that no child shall receive any allowance after attaining the age of 21 years or marriage. If payment of the allowance be stopped because of the death of the surviving spouse and attainment of the age of 21 years by or marriage of a child before the sum of the monthly payments shall equal the sum of the amounts provided in Section 1509.7 (a) and (b), then an amount equal to the difference between said sum shall be paid in one amount to the surviving children of the deceased member share and share alike.

The remarried spouse shall have the right to receive a continuation of his or her monthly allowance during any period of time in the future when he or she is unmarried by reason of the death of, annulment or divorce from a succeeding husband or wife. The spouse shall have no right to withdraw the said remaining balance, if any, of Section 1509.7 (a) and (b).

(Sec. 1509.71 amended by vote of the people 4-17-73, effective July 1, 1973.)

Section 1509.72. - NON-SERVICE CONNECTED DEATH; PRIOR TO RETIREMENT.

(a) If, in the opinion of the Retirement Board, the death of a member, prior to retirement hereunder, be not the result of injury or illness incurred in the performance of duty, and if said member be qualified at the date of death for retirement for service, pursuant to this Article XV, then, the Retirement System shall be liable for and shall pay an amount sufficient, when added to the amounts provided in Section 1509.7 (a) and (b) hereof, to provide an allowance to be paid to the surviving spouse to whom said member was married at least one (1) year prior to his or her death, to be equal in amount to the allowance which would have been payable to the spouse if the said member had retired for service at the time of said member's death and had died

instantly thereafter, and to continue throughout the spouse's life or until remarriage, or if there be no surviving spouse, or if he or she dies or remarries before every unmarried child of such deceased member shall have attained the age of 21 years, then to such child or children under said age collectively, to continue until every child dies, attains said age, or marries, or unless the subsequent marriage of the spouse is terminated by the death of, annulment or divorce from a succeeding husband or wife; provided that no child shall receive any allowance after attaining the age of 21 years or by marriage. If payment of the allowance be stopped because of death of the spouse and attainment of the age of 21 years or by marriage of every child before the sum of the monthly payments shall equal the sum of the amounts provided in Section 1509.7 (a) and (b), then an amount equal to the difference between said sum shall be paid in one amount to the surviving children of the deceased member, share and share alike.

The remarried spouse shall have the right to receive a continuation of his or her monthly allowance during any period of time in the future when he or she is unmarried by reason of the death of, annulment or divorce from a succeeding husband or wife. The spouse shall have no right to withdraw the said remaining balance, if any, of Section 1509.7 (a) and (b).

(b) If, in the opinion of the Retirement Board, the death of a member prior to retirement hereunder be not the result of injury or illness incurred in the performance of duty, and if said member has prior to death made an unrevoked election to continue membership in the System in accordance with Section 1509.4 hereof, the Retirement System shall be liable for and shall pay in a lump sum a death benefit according to and equal to Section 1509.7 (a).

(c) If, in the opinion of the Retirement Board, the death of a member prior to retirement hereunder be not the result of injury or illness incurred in the performance of duty and said member was an employee at the date of death and if Sections 1509.71 and 1509.72 (a) or (b) hereof do not apply, the Retirement System shall be liable for and shall pay in a lump sum a death benefit consisting of the benefits referred to in Section 1509.7 (a) and (b).

(Sec. 1509.72 amended by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1509.73. - CONTINUATION OR EXTENSION OF BENEFITS TO HANDICAPPED DEPENDENT CHILDREN.

Notwithstanding anything to the contrary herein, benefits payable herein to an unmarried child under the age of 21 years shall not terminate or otherwise be withheld or denied regardless of age, if such person shall be a handicapped dependent child as defined in Section 1504. Should said child be determined to be a handicapped dependent child then benefits otherwise payable to an unmarried child under the age of 21 years shall continue or be initiated regardless of age, for so long as said child remains an unmarried handicapped dependent child. The City Council shall establish, by ordinance, standards and procedures for the determination and termination of eligibility for benefits payable herein to handicapped dependent children. The Retirement Board shall determine eligibility for benefits payable to a handicapped dependent child in accordance with the aforesaid ordinance standards and procedures.

(Sec. 1509.73 amended by vote of the people 3-9-1993; Sec. 1509.73 approved by vote of the people 4-17-1973, effective July 1, 1973.)

Section 1509.8. - COST OF LIVING INDEX.

The Retirement Board shall, before April 1970, and before April of each year thereafter, determine whether there has been an increase or decrease in the cost of living as provided by this Section. Every retirement allowance, death allowance or allowance payable monthly to or on account of any member who has elected to take the modified system, and who retires or dies or who has retired or died shall be increased or decreased as of July 1 of each year, commencing July 1, 1970, by a percentage of the total allowance then being received found by the Board to approximate the nearest one per cent of the percentage of annual increase or decrease in the cost of living as of January 1 of that year as shown by the then current Bureau of Labor Statistics Consumers Price Index for the Los Angeles-Long Beach Metropolitan Area.

Section 1509.81. - COST OF LIVING BENEFITS; FUNDING OF.

For the purpose of paying increased benefits according to Section 1509.8 hereof, the City and members shall, for the 10 consecutive years ending June 30, 1987, each contribute to the Retirement Fund an amount equal to 2.5% of the member's compensation and thereafter, the City and members shall each contribute to said Retirement Fund either an amount equal to 2.5% of the member's compensation or an amount equal to that percentage of the member's compensation as determined by and based upon an actuarial reserve basis pursuant to the then current actuarial studies at the discretion of the City Council for such period of time as the said City Council shall determine. The required contributions of members shall be required as a deduction from the compensation of each member.

(Sec. 1509.81 amended by vote of the people 3-9-1993; Sec. 1509.81 amended by vote of the people 4-19-1977, effective July 1, 1977.)

Section 1509.9. - NORMAL EMPLOYEE CONTRIBUTIONS.

The normal rates of contributions by members to the Retirement System shall be such as will provide an average annuity at age 50 equal to 1/100 of the final compensation of members according to the tables adopted by the Retirement Board and modified from time to time pursuant to this Article, for each year of service rendered after entering the System, and shall be required as a deduction from the compensation of each member throughout the member's membership.

Section 1509.91. - COSTS OF SYSTEM.

All costs of administering the System shall be charged to the System and not to the City, including

administration, investment costs, and actuarial reports.

Section 1509.92. - CITY CONTRIBUTIONS.

City contributions for service retirement benefits, including those for members retiring for disability at age 50 and over, shall be determined on the basis of a normal contribution rate which shall be computed as a level percentage of compensation which, when applied to the future compensation of the average new member entering the system, together with the required member contributions, will be sufficient to provide for the payment of all prospective benefits of such member. The portion of liability not provided by the normal contributions shall be amortized over a 30-year period ending June 30, 2007. This method is commonly referred to as the Entry Age Normal Cost Funding Method.

City contributions for death and disability, excluding retirement for disability age 50 and over, shall be equal to the amounts actually disbursed for such deaths or disabilities during the year not provided by member contributions.

(Sec. 1509.92 amended by vote of the people 4-19-1977, effective July 1, 1977.)

Section 1509.93. - PERIODIC ACTUARIAL INVESTIGATION.

Periodically, at periods fixed by the legislative body, the Retirement Board shall make an actuarial investigation into the mortality, service and other experience under the System, and, further, shall make an actuarial valuation of the assets and liabilities of the System, and upon the basis of such investigation and valuation as interpreted by the actuary, any necessary revision of the tables and rates being used under the System shall be made by the Retirement Board. No adjustment will be included in members' new rates of contribution resulting from said periodical investigation, Charter or ordinance amendments, or other cause, for time prior to the effective date of such new rates.

Section 1510. - MILITARY LEAVE OF ABSENCE, CONTRIBUTIONS AND CREDITS.

Any member on or who has been on military leave of absence from duty may make payments to the Retirement Fund of all or any part of the normal contributions which would have been deducted from the member's compensation had the member been on duty. The legislative body by ordinance shall determine how and when such payment shall be made. All such payments shall be matched by contributions of the City to the Retirement Fund, and such member shall receive credit for such payments and matching contributions of the City, and for the time during which a member is or has been on military leave of absence from duty.

Section 1511. - ELECTION TO JOIN PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

The legislative body of the City shall have the power to authorize any member of the Retirement System to join the Public Employees' Retirement System, provided the membership of the Retirement System has first complied with any election requirements or other conditions prescribed by the Public Employees' Retirement System Act, as now enacted or hereafter amended.

Effective July 1, 1977, all new members of the Fire Department or Police Department shall become members of the said Public Employees' Retirement System as established by contract between the City and State. Every active member of the Fire and Police Retirement System shall become a member of said State System unless the member waives the said State System. A member waiving said State System shall remain a member of the Fire and Police Retirement System. City may withdraw from the System employer and employee contributions determined by the State actuary to be required to fund prior service benefits for those members transferring into the State System.

(Sec. 1511 amended by vote of the people 419-1977, effective July 1, 1977.)

Section 1512. - EFFECTIVE DATE.

This amended Article XV shall become effective and operative on the first day of July, 1969.

ARTICLE XVI - PARK PRESERVATION

Section 1601. - USE AND DISPOSITION OF PARK PROPERTY.

All dedicated park land owned by the City shall be used only for park and recreational purposes, and shall not be sold, transferred or used for other purposes, except upon the approval of a majority of the voters at an election held for such purpose. The city Council shall adopt by ordinance regulations to preserve and protect such dedicated park land. For purposes of this Charter, "dedicated park land" means property now owned or hereafter acquired which has been dedicated by ordinance and used for park and recreation use.

Nothing in this Article shall supercede the provisions of Article XIV of this Charter, nor shall it prohibit or preclude the transfer between the funds or the general fund of real property paid for out of the Water or Light and Power Funds of City without a vote of the people, so long as the use is compatible with park and recreation use in the discretion of the City Council.

As used in this Article, "park and recreation use" means and includes active recreation uses such as organized and leisure athletic and sports activity and unorganized play; cultural activities such as plays, concerts, festivals, exhibitions and shows; passive recreational activities such as picnics and public gatherings; the use of existing structures by community organizations; commercial activities incidental to park and recreational activities such as the sale of food and beverages; and parking.

(Sec. 1601 amended by vote of the people 3-9-1993: Sec. 1601 approved by vote of the people 11-4-1980, effective January 1, 1981.)

Section 1602. - STREETS—OPENING AND WIDENING.

The City Council may, without a vote of the people, authorize by resolution the opening and widening of streets or the installation of public utilities or sanitary sewers through dedicated park land by the City. After notice and hearing and upon a finding that the public interest requires such action, said resolution shall be adopted by vote of not less than 2/3rds of the members of the City Council. The City Council may impose terms and conditions upon the authorization consistent with this Article.

(Sec. 1602 amended by vote of the people 3-9-1993: Sec. 1602 approved by vote of the people 11-4-1980, effective January 1, 1981.)

Section 1603. - PRESERVATION OF PARK PROPERTY.

When dedicated park land is sold or its use changed pursuant to the provisions of Section 1601, land of comparable area or value in the same region of the City shall be acquired or dedicated for park purposes, unless otherwise approved by the voters at said election. If replacement is impractical, the market value of such land shall be placed in a "Park Acquisition Fund" for park acquisition or development as the City Council may determine.

(Sec. 1603 amended by vote of the people 3-9-1993; Sec. 1603 approved by vote of the people 11-4-1980, effective January 1, 1981.)

ARTICLE XVII - TAXPAYER PROTECTION

Section 1701. - TITLE.

This Article shall be known as the City of Pasadena Taxpayer Protection Act.

(Sec. 1701 amended by the vote of the people 11-7-2006)

Section 1702. - FINDINGS AND DECLARATIONS.

(a) The people of the City of Pasadena ("City") find that the use or disposition of public assets are often tainted by conflicts of interest among local public officials entrusted with their management and control. Such assets, including publicly owned real property, land use decisions conferring substantial private benefits, conferral of a franchise without competition, public purchases, taxation, and financing, should be arranged strictly on the merits for the benefit of the public, and irrespective of the separate personal or financial interests of involved public officials.

(b) The people find that public decisions to sell or lease property, to confer cable, trash hauling and other franchises, to award public construction or service contracts, or to utilize or dispose of other public assets, and to grant special land use or taxation exceptions have often been made with the expectation of, and subsequent receipt of, private benefits from those so assisted to involved public "decision makers." The people further find that the sources of such corruptive influence include gifts and honoraria, future employment offers, and anticipated campaign contributions for public officials who are either elected or who later seek elective office. The trading of special favors or advantage in the management or disposal of public assets and in the making of major public purchases compromises the political process, undermines confidence in democratic institutions, deprives meritorious prospective private buyers, lessees, and sellers of fair opportunity, and deprives the public of its rightful enjoyment and effective use of public assets.

(c) Accordingly, the people declare that there is a compelling state interest in reducing the corruptive influence of emoluments, gifts, and prospective campaign contributions on the decisions of public officials in the management of public assets and franchises, and in the disposition of public funds. The people, who compensate public officials, expect and declare that as a condition of such public office, no gifts, promised employment, or campaign contributions shall be received from any substantial beneficiary of such a public decision for a reasonable period, as provided herein.

Section 1703. - DEFINITIONS.

(a) As used herein, the term public benefit does not include public employment in the normal course of business for services rendered, but includes a contract, benefit, or arrangement between the City and any individual, corporation, firm, partnership, association, or other person or entity to:

(1) provide personal services of a value in excess of $25,000 over any 12 month period,

(2) sell or furnish any material, supplies or equipment to the City of a value in excess of $25,000 over any 12 month period,

(3) buy or sell any real property to or from the City with a value in excess of $25,000, or lease any real property to or from the City with a value in excess of $25,000 over any 12 month period,

(4) receive an award of a franchise from the City to conduct any business activity in a territory in which no other competitor potentially is available to provide similar and competitive services, and for which gross revenue from the business activity exceeds $50,000 in any 12 month period,

(5) confer a land use variance, special use permit, or other exception to a pre-existing master plan or land use ordinance pertaining to real property where such decision has a value in excess of $25,000,

(6) confer a tax abatement, exception, or benefit not applicable to the public generally, of a value in excess of $5,000 in any 12 month period,

(7) receive cash or specie of a net value to the recipient in excess of $25,000 in any 12 month period.

(8) For purposes of this section, other than subdivision 6, no person need track public benefits of less than $5,000 unless it is reasonably foreseeable that the amounts under $5,000 will cumulate in excess of the thresholds set forth in Section 1703 (a)(1)-(5) and (7), in any 12 month period.

(9) The City shall adjust the amounts in this Section 1703(a) on July 1 every five years starting in 2010 to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one thousand dollars ($1,000).

(b) Those persons or entities receiving public benefits as defined in Section 1703(a)(1)-(7) shall include the individual, corporation, firm, partnership, association, or other person or entity so benefiting, and any individual or person who, during a period where such benefit is received or accrues,

(1) has more than a ten percent (10%) equity, participation, or revenue interest in that entity, or

(2) who is a trustee, director, partner, or officer of that entity except for such persons from an organization that is exempt from income taxes under Section 501(c)(3), (4), or (6) of the Internal Revenue Code. However, this exception shall not apply to trustees, directors, partners, or officers of such organizations that are political committees or control political committees as defined by California Government Code Section 82013 or 2 U.S.C. 431(4). Any person who is exempted by this subdivision shall still be considered a public benefit recipient for the purposes of disclosure under Section 1705(b) and (c).

(c) As used herein, the term personal or campaign advantage shall include:

(1) any gift, honoraria, emolument, or personal pecuniary benefit of a value in excess of $50;

(2) any employment for compensation;

(3) any campaign contributions for any Pasadena City elective office said official may pursue or for any City ballot measure committee controlled by the official. Any Pasadena City official who receives contributions for a campaign outside of the City from a person or entity who has obtained public benefits shall not subsequently use or transfer such contributions to any election for a Pasadena City race.

(d) As used herein, the term public official includes any elected or appointed public official acting in an official capacity.

(Sec. 1703 amended by the vote of the people 11-7-2006)

Section 1704. - CITY PUBLIC OFFICIAL SHALL NOT RECEIVE PERSONAL OR CAMPAIGN ADVANTAGE FROM THOSE TO WHOM THEY ALLOCATE PUBLIC BENEFITS.

(a) No City public official who has exercised discretion to approve and who has approved or voted to approve a public benefit as defined in Section 1703(a) may receive a personal or campaign advantage as defined in Section 1703(c) from a person as defined in Section 1703(b) for a period beginning on the date the official approves or votes to approve the public benefit, and ending no later than:

(1) one year after the expiration of the term of office that the official is serving at the time the official approves or votes to approve the public benefit;

(2) one year after the official's departure from his or her office whether or not there is a pre-established term of office; or

(3) five years from the date the official approves or votes to approve the public benefit; whichever is first.

(b) Section 1704(a) shall also apply to the exercise of discretion of any such public official serving in his or her official capacity through a redevelopment agency, or other public agency, whether within or without the territorial jurisdiction of the City either as a representative or appointee of the City. Section 1704(a) shall apply to agencies outside the City on which a City public official serves only if the outside agency voluntarily provides to the City the information in Section 1703 for those public benefits granted by the outside agency.

(c) When the public official, other than a member of the City Council or a person appointed to a City Commission, acts in his or her capacity as an employee of the City, the time restrictions in Section 1704(a) shall apply for one year after the City employee departs from his or her office or for two years from the date the City employee approves the public benefit, whichever comes first.

(d) No person or entity who bids on a contract with the City, or enters into a lease agreement or land sales agreement with the City, with a value in excess of $25,000, which requires approval by the City Council, shall make any campaign contribution to any member of or candidate for the City Council, or committee controlled by the member or candidate, from the time the Request for Proposal or other bid process has been issued or from the time negotiations commence, whichever is earlier, until the negotiations have terminated. The prohibition on campaign contributions set forth in the preceding sentence shall also apply to trustees, directors, partners, officers, and 10% equity, participation, or revenue interest holders of the entity bidding on a contract with the City, but shall not apply to employees of the entity who are not trustees, directors, partners, officers, and 10% equity, participation, or revenue interest holders of the entity. When negotiations have terminated, this Article continues to apply to the public benefit recipient. This section does not apply to low bid contracts as defined by the City Charter.

(Sec. 1704 amended by the vote of the people 11-7-2006)

Section 1705. - APPLICABLE PUBLIC BENEFICIARIES SECTION. RESPONSIBILITIES OF CITY PUBLIC OFFICIALS AND ADVANTAGE RECIPIENTS.

(a) City public officials shall practice due diligence to ascertain whether or not a benefit defined under Section 1703(a) has been conferred, and to monitor personal or campaign advantages enumerated under Section 1703(c) so that any such qualifying advantage received is returned forthwith, and no later than ten days after its receipt.

(b) City public officials shall provide, upon inquiry by any person, the names of all entities and persons known to them who respectively qualify as public benefit recipients under the terms of Sections 1703 and 1704.

(c) All information compiled by city offices in compliance with Section 1705(a) and (b) shall be posted on the City of Pasadena website for public access.

(Sec. 1705 amended by the vote of the people 11-7-2006)

Section 1706. - DISCLOSURE OF THE LAW.

The City shall provide any person, corporation, firm, partnership, association, or other person or entity applying or competing for any benefit enumerated in Section 1703(a) with written notice of the provisions of this Article and the future limitations it imposes. Said notice shall be incorporated into requests for "proposal," bid invitations, or other existing informational disclosure documents to persons engaged in prospective business with, from, or through the City.

Section 1707. - PENALTIES AND ENFORCEMENT.

(a) In addition to all other penalties which might apply, any knowing and willful violation of this Article by a public official constitutes a criminal misdemeanor offense. The City Attorney is responsible for enforcing violations of this Article except as to violations by members of the City Council, which shall be referred to the Los Angeles County District Attorney's office for investigation and prosecution.

(b) A civil action may be brought under this Article against a public official who receives a personal or campaign advantage in violation of Section 1704. A finding of liability shall subject the public official to the following civil remedies:

   (1) restitution of the personal or campaign advantage received, which shall accrue to the general fund of the City;

   (2) a civil penalty of up to five times the value of the personal or campaign advantage received;

   (3) injunctive relief necessary to prevent present and future violations of this Article;

(4) disqualification from future public office or position within the jurisdiction, if violations are willful, egregious, or repeated.

(c) A civil action under subdivision (b) of this section may be brought by any resident of the City. In the event that such an action is brought by a resident of the City and the petitioner prevails, the respondent public official shall pay reasonable attorney's fees and costs to the prevailing petitioner. Civil penalties collected in such a prosecution shall accrue 10% to the petitioner and 90% to the City's general fund.

(d) The City Attorney and the Los Angeles County District Attorney may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of his or her duties or exercise of his or her powers.

(e) The City may adopt guidelines for implementation of this Article that are consistent with the findings and declarations set forth in Section 1702.

(Sec. 1707 amended by the vote of the people 11-7-2006)

Section 1708. - SEVERABILITY.

If any provision of this Article is held invalid, such invalidity or unconstitutionality shall not affect other provisions or applications which can be given effect without the invalidated provision, and to this end the provisions of this Article are severable.

Council Meeting of
December 20, 2022

MATERIALS AVAILABLE FOR ITEM 9M

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

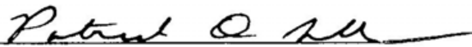
SUBJECT: City Clerk, City Manager, and City Attorney – MATERIALS AVAILABLE FOR ITEM 9M

Please see the Charter City Toolkit (2016) from the League of California Cities that is labeled as Attachment C that was not available at the time of publication of the agenda. The Charter City Toolkit is a good overview of the history of municipal home rule and charter cities, how to amend a charter, charter city organization and elections, and common concerns about charter cities. Please note that the Charter City Toolkit has not been updated by the League of California Cities since 2016, so any references to case law or legislation would need to be researched and updated.

Respectfully submitted,

Rebecca Poirier
City Clerk

Aram Chaparyan
City Manager

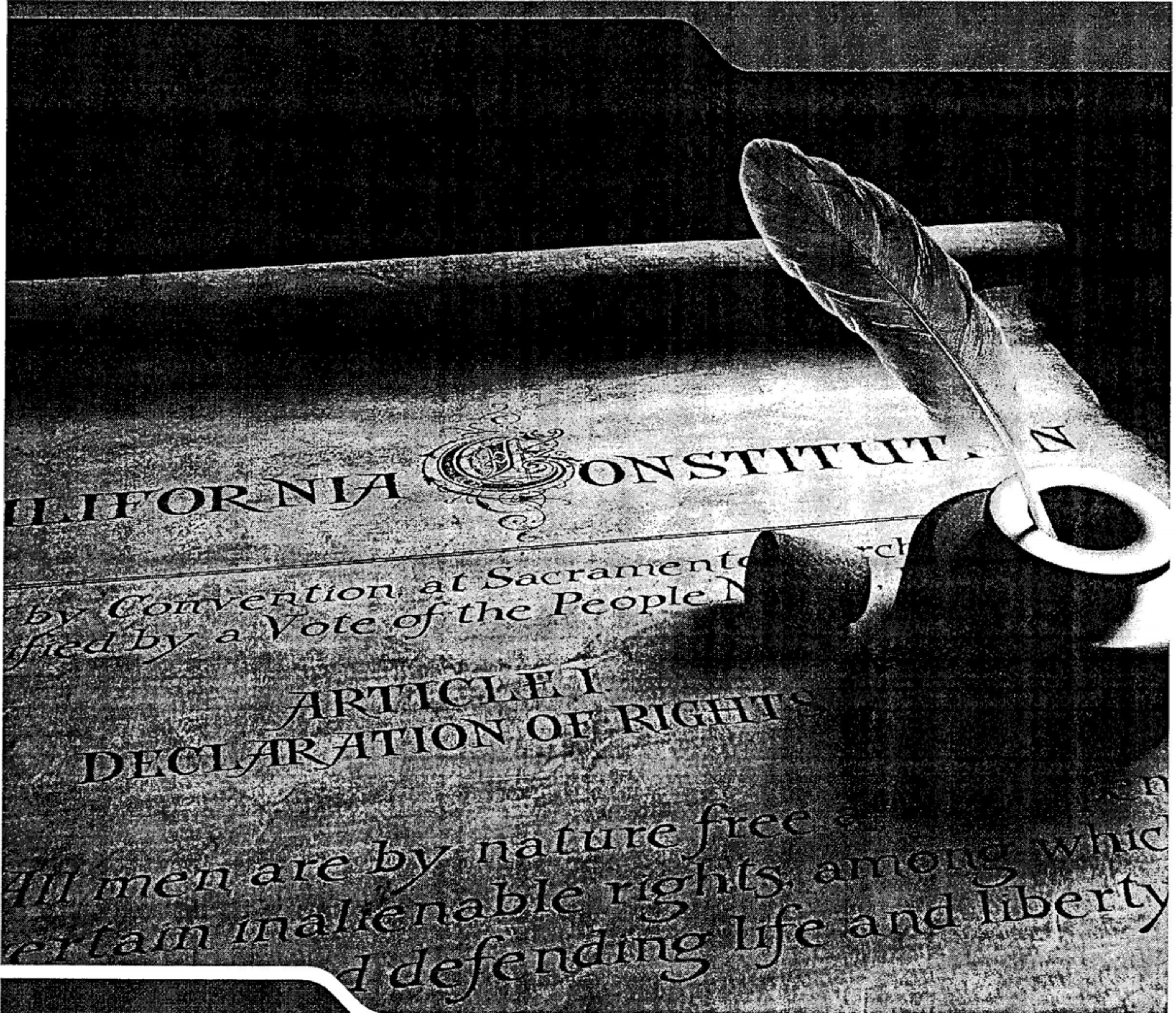


Patrick Q. Sullivan
City Attorney

Attachment (Limited Distribution): C. Charter City Toolkit – League of California Cities

Charter City Toolkit

THE LEAGUE OF CALIFORNIA CITIES



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Charter City Toolkit

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Chapter 1

HISTORY OF MUNICIPAL HOME RULE

The desire for home rule is an important part of the history of California. There is a common misconception among even some California city officials that only charter cities possess home rule powers. Both general law and charter cities possess home rule. This chapter describes the historical evolution of the constitutional municipal home rule doctrine in California in three separate stages before embarking in later chapters on explaining in more detail the additional home rule powers of charter cities. The tension between cities and the state has been with us since the dawn of statehood, and it has manifested itself in various state constitutional amendments over time that reiterate how home rule is really the birthright of every California city.

A. Before Home Rule — 1850–1879

City governments already existed when California became a state in 1850. In some areas they took the form of the Mexican alcades (who embodied the role of mayor, judge, and sheriff) or local legislative bodies like the 15-member assembly created in San Francisco before it was declared illegal by a military governor in June 1849 when he called the first Constitutional Convention.[1] The 1849 California Constitution gave the Legislature the exclusive power to establish cities and to enlarge or restrict city powers.[2] This naturally led to extensive state involvement in city affairs, including the appointment of special commissions to actually manage the property and funds of Sacramento, San Jose, and San Francisco, as well as other legislation directing cities to pay special claims of parties that provided political inducements to the Legislature.[3]

The desire for home rule is an important part of the history of California.

B. All Cities Granted Inherent Home Rule Powers to Legislate Without Legislative Grant of Authority — 1879

State meddling in city affairs in those first 30 years caused the deep resentment throughout the state that ultimately led to the 1879 Constitutional Convention. During that convention, delegates borrowed heavily from the home rule provisions of the constitution of Missouri, the first state to grant home rule powers to its cities. Incorporating that constitution's provisions almost verbatim, the California Constitution of 1879 banned special legislation, banned special act incorporations, and granted the power to frame freeholder charters to communities with at least 100,000 people[4] The 1879 Constitution also took the power to impose local taxes away from the Legislature with the intention "to bring matters of a local concern home to the people."[5]

In addition to these changes, the most significant home rule provision in the 1879 amendments was article XI, section 11 (now art. XI, § 7), which provides a general grant of inherent home rule power to *every* city — general and charter cities alike — to "make or enforce within its limits all local, police, sanitary, and other ordinances or regulations not in conflict with the general laws." Sometimes this provision of the California Constitution is called the police power. The California Supreme Court declared later that the drafters' intent was " ... to emancipate municipal governments from the authority and control formerly exercised over them by the Legislature."[6]

The 1879 home rule amendment finally freed cities from the need to seek specific state legislation to authorize their legislative acts on traditional municipal matters. Since the constitution empowered them to act without prior permission of the Legislature, cities instead simply had to inquire whether a proposed ordinance conflicted with a general state law. Years later the California Court of Appeal described the effect of this amendment: "[t]he constitution has, by direct grant, vested in them [cities] plenary power to provide and enforce such … regulations as they determine shall be necessary for the health, peace, comfort and happiness of their inhabitants, provided such regulations do not conflict with the general law. And the Legislature has no authority to limit the exercise of the power thus directly conferred upon cities, counties and towns by the organic law."[7]

Former California Supreme Court Associate Justice and Hastings College of the Law Professor Joseph Grodin, in his authoritative study of the California Constitution, explains how section 7 changed everything for cities and counties:

> Section 7 presents the most widely used of the home rule provisions of the California Constitution. In contrast to sections 4 and 5, it applies equally to all cities and counties, regardless of their charter status. Section 7 empowers cities and counties to use their general authority, called their police power, to control and regulate any matter or activity that is otherwise an appropriate subject for governmental concern.
>
> The drafters intended that local authorities "ought to be left to do all those things that in their judgment are necessary to be done, and that are not in conflict with the general laws of the state." The decision was made then not to restrict local governments narrowly to those specified powers that are overtly granted to them by the legislature *but to allow them to exercise whatever powers appeared necessary, without the need to request legislative authorization before taking action*."[8] *(Emphasis added.)*

The 1879 home rule amendment finally freed cities from the need to seek specific state legislation to authorize their legislative acts on traditional municipal matters.

In summary, under article XI, section 7, all cities are free to legislate on a matter unless it conflicts with a general law of the state and is, therefore, said to be preempted by the state law. What constitutes a conflict? The California Supreme Court articulated the basic analysis in upholding the validity of a city ordinance banning medical marijuana dispensaries and cultivation. In summary, it said:

- Cities have constitutionally granted powers to regulate land use and other traditional local matters. Absent a clear indication of preemptive intent from the Legislature, local regulations are not preempted.
- A local law conflicts with a general state law if the local legislation (1) duplicates the state law, (2) contradicts the state law (i.e., requires what state law forbids or prohibits what state law requires), or (3) enters an area that is fully occupied by general state law. A local ordinance does not conflict with state law if it is reasonably possible to comply with both the state and local laws.
- The courts are reluctant to infer legislative intent to preempt local regulations, and there is a presumption of validity of the local ordinance against an attack of state preemption when there is a significant local interest to be served that may differ from one locality to another.[9]

C. Voter Approved Charters Allowed to Trump State Law Over Municipal Affairs — 1896–1914

While the 1879 Constitution gave all cities basic home rule powers subject to conflicting state laws, over the following decade it became clear that cities needed the ability to engage in certain core municipal functions despite the conflicting general laws of the state. The 1896 Constitution introduced the concept of municipal affairs. The authority to adopt a charter is found in section 3 of article XI, which also contains this provision in subparagraph (a) explaining the status of the charter vis-à-vis state law: "The provisions of a charter are the law of the State and have the force and effect of legislative enactments." In 1899, the California Supreme Court explained that provisions relating to charter cities "were enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs."[10]

The 75 years of constitutional history leading to the authorization for voters to approve city charters that could, depending on the subject, supersede the general laws of the state, was explained by the California Supreme Court in 1992:

- [I]n 1896 article XI was amended in two significant respects. Former section 6 was revised to read as follows: "Cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of the constitution, *except in municipal affairs,* shall be subject to and controlled by general laws." (emphasis added.) In addition, former section 8 was adopted, allowing consolidated charter city and county governments to regulate "the manner in which, the times at which, and the terms for which the several county officers shall be elected ... [and] for their compensation ... ."
- "What was the good to be gained by this amendment? The answer is common, every-day history. It was to prevent existing provisions of charters from being frittered away by general laws. It was to enable municipalities to conduct their own business and control their own affairs to the fullest possible extent in their own way. *It was enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs.* ... This amendment, then, was intended to give municipalities the *sole* right to regulate, control, and govern their internal conduct independent of general laws ... ."
- [A]rticle XI [in 1914] was revised to give charter cities the power "to *make and enforce all laws 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 and controlled by general laws." (Former section 8 of the same article was likewise amended by the insertion of a similar provision: "It shall be competent in any charter framed under the authority of this section to provide that the municipality governed thereunder may *make and enforce all laws and regulations in respect to municipal affairs,* subject only to the restrictions and limitations provided in their several charters and in respect to all other matters they shall be subject to general laws."[11]

"The provisions of a charter are the law of the State and have the force and effect of legislative enactments." Cal. Const., art. XI, § 3(a).

In addition to the jurisdiction granted in subdivision (a) of section 5 of article XI to make and enforce all ordinances and regulations concerning municipal affairs, subdivision (b) of section 5 of article XI specifically identifies four subjects that can be included in a charter: (1) a city police force; (2) subgovernment in all or part of the city; (3) conduct of city elections; and (4) election, appointment, removal, and compensation of municipal officers and employees whose compensation is paid by the city.[12]

The California Constitution provides no definition of what is or is not a municipal affair. The California Supreme Court noted that "the constitutional concept of municipal affairs is not a fixed or static quantity ... [but one that] changes with the changing conditions upon which it is to operate ... our cases display a growing recognition that home rule is a means of adjusting the political relationship between state and local governments in discrete areas of conflict."[13] What was once a matter of local concern can later become a matter of statewide concern, controlled by the general laws of the state.[14] The Court also made it clear that this is a legal matter of state constitutional interpretation for the courts and not solely a factual one.[15] Later chapters will address the options available for adopting a charter and what are and are not municipal affairs as determined by the California Supreme Court.

D. Home Rule Authority Granted to All Cities over Public Works, Utilities and Public Property, Improvements and Funds — 1911–1970

Until 1911, it was believed that only charter cities could operate a public utility, so the Legislature proposed and the people enacted section 9 (formerly section 19) of article XI, providing broad plenary authority to any city to "establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communications."[16] The section allows cities to provide similar services in other cities with their consent.

In 1970, voters further amended this section to effectively allow cities to issue franchises to persons or corporations to provide such services " ... upon conditions and under regulations that the city may prescribe under its organic law." These franchise powers must be construed, however, in conjunction with the broad authority over such activities granted to both the Legislature and the Public Utilities Commission by article XII. On the distribution of powers between the state and cities on this subject, however, article XII, section 8 is quite clear:

> A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power of the Commission. This section does *not* affect the power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter existing on October 10, 1911, unless that power has been revoked by the city's electors, or the right *of any city* to grant franchises for public utilities or other businesses on terms, conditions, and in the manner prescribed by law. *(Emphasis added.)*

Finally, general law and charter cities alike are protected by the provisions of article XI, section 11, subdivision (a), of the California Constitution that prohibits just the types of special commissions to control local property and funds that so outraged Californians prior to the 1879 Constitutional Convention. It states: "the Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions." This provision was one of the two constitutional limitations on the power of the Legislature over cities and counties that compelled the California Supreme Court to strike down a 2000 state law that attempted to delegate final decisions in public safety labor negotiations to a private arbitration panel.[17]

E. California Home Rule Today

Today the California Constitution authorizes both general law and charter cities to: (1) make and enforce all local laws and regulations not in conflict with general state laws (art. XI, § 7); (2) to establish, purchase, and operate public works and utilities or franchise others to do so (art. XI, § 9); and to be free from state legislation delegating to a private person or body control over city property, funds, tax levies and municipal functions (art. XI, § 11).

Cities with voter-approved charters have additional home rule authority or supremacy over their municipal affairs, police, subgovernments, city elections, and their elected and appointed city officials and employees (art. XI, § 5). The provisions of a city charter and the ordinances adopted by a charter city prevail over general state law in areas that a court determines are municipal affairs, including the specific areas enumerated in section 5, subdivision (b) of article XI.[18] As to matters of statewide concern, however, charter cities remain subject to state law.[19] Therefore, whether a charter city may act independent of state general law in a particular domain, including the specific areas enumerated in section 5, subdivision (b) of article XI, depends upon a court's determination of whether it is a municipal affair or a matter of statewide concern.

ENDNOTES

1 See Detweiler, *Home Rule: An Historical Perspective* (Jan. 1997) Western City, at page 15.

2 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 394-395.

3 See Thomas, *California Cities and the Constitution of 1879: General Laws and Municipal Affairs* (1980) 7 Hastings Const. L. Q. 642.

4 See Detweiler, *supra* note 1, at p. 16.

5 *People v. Martin* (1882) 60 Cal. 153; See Cal. Const., art. XIII, § 24, subd. (b).

6 *People v. Hoge* (1880) 55 Cal. 612, 618.

7 *In re Walter Ackerman* (1907) 6 Cal.App. 5, 9–10.

8 Grodin et al., The Cal. State Constitution: A Reference Guide (1993) pp. 192 (citing remarks of Mr. Eli Blackmer during debates at the California constitutional convention).

9 *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 742-744. It is worthy of note that this case involves the regulatory legislation of a charter city, the City of Riverside, since charter cities as well as general law cities exercise home rule under the inherent police power granted to all cities by article XI, section 7. In other words, the City of Riverside did not rely on its status as a charter city under article XI, section 5, but rather on its home rule authority under article XI, section 7.

10 *Fragley v. Phelan* (1899) 126 Cal. 383, 387.

11 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 395-397. (Emphasis in original) Empty brackets [] denote omitted language from the Supreme Court opinion.

12 In some cases, the courts have narrowly construed the subject matter described in section 5, subdivision (b) of article XI. See, e.g., *Baggett v. Gates* (1982) 32 Cal.3d 128 (applying the Public Safety Officers Procedural Bill of Rights to charter cities because it was limited to providing "procedural safeguards" to police officers and did not interfere with a charter city's authority to set compensation).

13 *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 557.

14 *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61; *California Fed. Sav. & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 13 (rejecting static and compartmentalized description of "municipal affairs" in favor of a more dialectical one); *Codding Enterprises v. City of Merced* (1974) 42 Cal.App.3d 375, 377.

15 *State Building and Construction Trades Council of California v. City of Vista, supra*, 54 Cal.4th at 558.

16 *California Apartment Association v. City of Stockton* (2000) 80 Cal.App.4th 699, 707.

17 *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278.

18 Cal. Const., art. XI, § 5; *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 315.

19 *Bishop v. City of San Jose, supra*, 1 Cal.3d at p. 61.

Chapter 2

A CHARTER CITY'S ADDITIONAL HOME RULE AUTHORITY

This chapter will discuss more fully the origins of city charters, why a city may want to have a charter, how the charter home rule provision has been interpreted by the courts and ultimately, for practical purposes, what power a charter city possesses.

A. What is a Charter?

Charters have been used since medieval times in Europe and more recently in the United States and elsewhere to establish and empower cities and other institutions such as colleges and universities, companies, academies, and clubs. The British Crown has reportedly issued over 980 royal charters — the first of which was for the Town of Tain in 1066 — and continues to issue charters today.[1]

A charter is granted by a sovereign authority such as a monarch, parliament, legislature, or by direct public vote. After only a few months of difficulty with granting city charters in early 1850, the California Legislature gave the job to county courts and then in 1856 to county boards of supervisors.[2] In 1879, the California Constitution was amended to authorize voters to approve freehold charters[3] in cities with over 100,000 residents.[4] This authority was subsequently expanded through later amendments to give the voters in any city the right to approve a charter for their city.

The dictionary defines a charter as "a document issued by a government that gives rights to a person or group; a document which declares that a city, town, school, or corporation has been established; and a document that describes the basic laws, principles, etc. of a group."[5] California city charters today most closely resemble the last definition in that the municipal charter provides the highest legal framework for the purpose, governance, and operation of the city government in all its most fundamental dimensions. There is one important difference between the dictionary definition of a charter and the charter of a California city: the charter of a California city is a limitation on authority, not a grant. The grant of authority over municipal affairs is found in the Constitution itself.

Preamble of Downey City Charter: "We, the people of the City of Downey, State of California, do ordain and establish this Charter as the organic law of said City under the State Constitution."

The purpose of a city charter, as one of the authors of the National Civic League's *Model City Charter*, Luther H. Gulick, wrote: "is to present, in the form of a legal document, a general plan of municipal government which is (a) democratic — that is to say responsive to the electorate and the community — and at the same time (b) capable of doing the work of the city effectively and translating the voters' intentions into efficient administrative action as promptly and economically as possible."[6]

A city charter can have two purposes: to explain how the city will exercise its discretion over the matters affecting the city, and to limit or constrain the ways in which the city is governed and its municipal affairs are managed. It is what some charters refer to as the organic law of the city with city-council adopted ordinances containing many of the detailed laws and regulations.

B. Interpretation of a Charter: Limitation of Authority not a Grant of Authority

As noted in Chapter 1, California's charter home rule provision is contained in the California Constitution, article XI, section 5. This section reserves to a charter city the right to adopt and enforce laws (i.e. ordinances) regarding municipal affairs, subject only to the conflicting provisions in the state or federal constitutions, federal laws, or state statutes in matters of statewide concern.[7]

There is a common misconception that the authority of a charter city is derived from its charter. The home rule authority of a charter city flows directly from the California Constitution; the charter itself defines and limits how the city will use that authority. "The charter operates not as a grant of power, but as an instrument of limitation and restriction on the exercise of power over all municipal affairs which the city is assumed to possess; and the enumeration of powers does not constitute an exclusion or limitation."[8]

In plain English this means that a charter city has authority over all municipal affairs and does not need to enumerate those powers in the charter.

Rather, the charter describes how those powers are carried out and may limit how those powers are exercised. A charter often addresses some but not all municipal affairs. For example, a charter might provide for a strong mayor form of government, but a council-adopted ordinance might provide for elections by district. As the California Supreme Court said: "accordingly, the city is empowered to exercise full control over its municipal affairs unaffected by general [state] laws on the same subject matters and subject only to the limitations found in the Constitution and the City Charter."[10]

Example: The Napa City Charter includes a typical city charter provision to explicitly implement this constitutional authority. It provides: The City of Napa shall have and may exercise all powers which now are or may hereafter be conferred upon municipalities by the Constitution and laws of the State of California, and which it would be lawful for this Charter specifically to enumerate, as fully and completely as though such powers were specifically enumerated herein, and no enumeration of particular powers in and by this Charter shall be held to be exclusive.[9]

A city charter is sometimes described as the city's constitution. However, it is important to dig a little deeper into this comparison. A city charter is similar to the California Constitution and not to the federal Constitution. Unlike the U.S. Constitution, which operates as a grant of power to Congress, the California Constitution is a limitation or restriction on the power of the Legislature.[11] Congress may not legislate in an area unless it finds authority in the federal Constitution. On the other hand, the California Legislature may legislate in any area unless it finds a restriction or limitation on its authority in the California Constitution. A city charter is comparable to the California Constitution, is governed by the same principles, and operates as a limitation or restriction on the inherent power of the city council of a charter city to legislate on municipal affairs.[12]

Limitations and restrictions in a city charter are interpreted in favor of the city council's exercise of power over municipal affairs and against any limitation or restriction that is not expressly stated in the charter.[13] This means that a city council or its voters looking to limit a city council's authority to act should draft the restrictions as explicitly as possible. The courts will not imply a restriction on the exercise of a charter city's power over municipal affairs.[14] The restrictions placed by the voters in a charter are an expression of the singularly local character of the community. Here are a few examples:

- The Porterville City Charter limits the purposes for which special taxes may be imposed to the support and maintenance of the fire department, acquisition of public improvements, public libraries, parks, and music and entertainment.[15]
- The voters of the City of Napa amended the city charter to prohibit a city-owned park from being used or developed for any purpose other than passive recreation and open space.[16]

- The voters of the City of Newport Beach prohibited the city council from authorizing any red light camera or other automated traffic enforcement system.[17]
- The Santa Barbara City Charter prohibits the city council from approving development that exceeds established building height limits in various parts of the city.[18]
- The Watsonville City Charter includes a limitation on the total dollar amount of bonded debt that may be issued.[19]

In addition to being contrary to the legal underpinnings of a charter, using a charter as a grant of authority will not necessarily prevail over a limitation otherwise imposed on the authority of the city council. For example, the provision of the Los Angeles City Charter that vested authority to manage the fiscal affairs of the city in the city council did not trump the binding arbitration provision of an MOU agreed to by the city council.[20]

C. Municipal Affairs

The California Constitution gives charter cities the power to "make and enforce all ordinances and regulations in respect to municipal affairs;" however, it does not define the term municipal affair. And although the Constitution enumerates four (sometimes called core) municipal affairs, what is a municipal affair is not limited to this enumeration and these four subjects are not unassailable municipal affairs.[21] The phrase municipal affairs has defeated efforts at a defining formulation since it was added to the Constitution in 1896. The courts continue to discern whether a particular subject is a municipal affair, over which a charter city has authority, or is a matter of statewide concern, over which the Legislature has authority, on a case-by-case basis. 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.[22]

Until 1991, the approach employed by courts in defining a municipal affair was to categorize certain subjects as municipal affairs. More recently, however, the courts have treated what is a municipal affair as fluid and changing over time as local issues may become statewide concerns, and vice versa. The constitutional concept of municipal affairs is not a fixed quantity, but one that changes with the changing conditions upon which it is to operate. The California Supreme Court has said the task of determining whether a given activity is a municipal affair or one of statewide concern is an ad hoc inquiry in light of the facts and circumstances surrounding each case and entails a four-step analysis to determine what is a municipal affair, which can be summarized as follows:[23]

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?

If the answer to all of the questions is yes, then it is a matter of statewide concern and the city is preempted from adopting and enforcing an ordinance or charter provision that conflicts with the state law. If the answer to either of the last two questions is *no*, then the state law does not address an area of statewide concern and the local law addresses a municipal affair that is beyond reach of the Legislature and state statutes.

1. Municipal Affairs Listed in the Constitution

California Constitution, article XI, section 5, subdivision (b), approved at the special election in June 1970, also provides a non-exclusive list of four municipal affairs: (1) regulation and government of a city police force; (2) sub-government in all or part of the city; (3) conduct of city elections; and (4) election, appointment, removal and compensation of municipal officers and employees whose compensation is paid by the city. Each of these areas is subject to the four-step test explained above.

a. Regulation and government of a city police force

In a general law city, the police department is under the control of the chief of police.[24] In contrast, under article XI, section 5, subdivision (b), a charter city may, for example, establish a police commission that is authorized to review and make recommendations to the public, city council and city manager concerning policies, practices and procedures in relation to the city's police department.[25] The San Jose City Charter establishes the office of independent police auditor to review police department investigations of complaints against police officers, to make recommendations with regard to police department policies and procedures, and to conduct public outreach to assist the community with the process and procedures for investigation of complaints against police officers. The San Jose City Charter prohibits the city council and mayor from dictating the appointment or removal of any employee appointed by the independent police auditor.[26] The San Bernardino City Charter places the police and fire departments under the supervision of the mayor.[27] Be aware that the specific reference to this municipal affair in the Constitution has not prevented the courts from determining that the Police Officers Procedural Bill of Rights applies to a charter city because the state law interfered "only minimally on a charter city's authority to regulate and govern its police force."[28]

b. Sub-government

The Government Code prescribes the form of a general law city's government. The government of a general law city is vested in a city council of at least five members, a city clerk, a city treasurer, a police chief, a fire chief, and any subordinate officers or employees provided by law.[29] A general law city's registered voters may adopt an ordinance that provides for a different number of councilmembers.[30] Absent formal action by the city council or the voters of a general law city, the council retains authority over the management of the city. However, the city council or voters may pass an ordinance establishing a city manager form of government.[31] In a charter city, the charter can provide for any number of council members, a directly elected mayor, term limits, and any form of government that a general law city may have.[32] In addition to these options, a charter city can opt for a strong mayor form of government, which typically gives the mayor the unilateral authority to hire and fire the city manager and department heads and present a budget to the city council.

There are many examples of sub-government structures in charter cities. Here are a few:

- Santa Rosa: Section 10 of the city charter requires the city council to establish a district commission encompassing the entire city. The commission is composed of representatives of seven to 14 districts whose boundaries are established by the council. The representatives of each district advise the council regarding various city matters including public safety issues, capital improvement budget priorities for their district, and neighborhood planning matters.
- Chula Vista: Section 609 of the city charter establishes a civil service commission.
- Santa Clara: Section 1012 of the city charter establishes a board of library trustees.
- Riverside: Section 810 of the city charter establishes a community police review commission.

For a general law city, the Government Code states that a majority of the city council constitutes a quorum for the transaction of business.[33] Additionally, resolutions, orders for the payment of money, and all ordinances require a recorded majority vote of the total membership of the city council.[34] Certain actions require a supermajority vote.

In contrast, charter cities may establish their own voting and quorum requirements. For example, the Richmond City Charter requires five members to vote affirmatively to authorize expenditures of $1,000 or more.[35] However, there is certain legislation requiring supermajority votes that applies to charter cities as well as to general law cities. For example, a charter city may not commence an eminent domain proceeding until its city council has adopted a resolution of necessity by a vote of two-thirds of all the members of the city council, unless a greater vote is required by statute, charter, or ordinance.[36]

General law cities may establish their own rules regarding the procedures for adopting, amending, or repealing resolutions,[37] other than the rule that resolutions require a recorded majority vote of the total membership of the city council.[38] The same is not true for adopting ordinances, which procedures are governed by the Government Code for general law cities. Ordinances require two readings: one introduction and, at least five days thereafter, a second reading and vote.[39] Ordinances may be introduced at any type of meeting but must be passed only at a regular meeting, not at a special meeting.[40] There is an exception to that rule for urgency ordinances, which may be passed immediately upon introduction and either at a regular or special meeting with a four-fifths vote of the city council and an urgency finding.[41] Ordinances must be signed by the mayor and attested by the city clerk.[42] The city clerk must cause publication of each ordinance, within 15 days after passage, in a newspaper of general circulation published and circulated in the city.[43] Ordinances take effect 30 days after their final passage, with certain listed exceptions.[44]

Like general law cities, charter cities may establish their own procedures for adopting, amending or repealing resolutions.[45] Unlike general law cities, however, charter cities also have the authority to opt out of general laws for enacting local ordinances, as the mode and manner of passing ordinances have been deemed a municipal affair.[46] The Seal Beach City Charter recognizes that in periods of emergency resulting from a disaster, the city council needs the power to provide for the continuity of city operations, etc. Section 107 of the

charter requires the city council to conform to the provisions of the charter except so as to allow the council to make purchases and enter into contracts without calling for bids, to the extent the emergency so requires.

c. Elections

Conduct of city elections gives charter cities the authority to regulate the manner of electing municipal officers. It provides plenary authority over the manner in which, the method by which, the times at which, and the terms for which the several municipal officers shall be elected. Of course, this does not absolve a charter city from complying with the equal protection clauses and other parts of the state and federal Constitutions. For example, a charter city may not ban write-in voting[47] or allow incumbents on a ballot to state occupations but disallow challengers from doing the same.[48] Further, courts have held that at least some portions of the California Voting Rights Act apply to charter cities.[49] (See discussion in Chapter 4.)

A charter city, so long as it does not violate the state and federal constitutions as described above, is free to establish election rules if those rules do not actually conflict with general law. For example, the San Jose City Charter makes the city council the judge of the election and qualifications of its members with the power to subpoena witnesses, require production of evidence, etc.[50] Likewise, a number of charter cities provide for a redistricting commission to establish city council districts in accordance with the census.[51] If there is a conflict with general law, the charter city provisions prevail unless the Legislature has found a need for paramount state control over the issue and the general law is both reasonably related to the area of statewide concern and narrowly tailored to resolve the problem being addressed as a statewide concern.[52]

In the context of local elections, the balancing of those issues has led courts to uphold many charter city rules for local elections.

Example: Courts have upheld the following charter provisions:

- A comprehensive charter elections program that did not require the mailing of candidate qualification statements where a statewide Elections Code rule purported to require a city clerk to mail such statements.[53]
- A comprehensive local campaign charter provision that limited campaign expenditures for local office as a condition of receiving public funds for such campaigning where there was a statewide prohibition against public funding of election campaigns.[54]
- A charter city placing a general tax before the voters by simple majority vote of the city council as opposed to the two-thirds vote requirement for a general law city council.[55]

Likewise, the California Attorney General has opined that a charter city may provide for a partisan municipal election (where the candidates are identified by their political party affiliation) whereas a general law city may not.[56]

d. Officers and Employees

California Constitution, article XI, section 5, subdivision (b) grants extensive authority over municipal officers and employees as follows:

> It shall be competent in all city charters to provide … 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 each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

Example: An example of a municipal officer created by charter that is not identified in the general law can be found in the Stockton City Charter. Stockton has created the position of city auditor, who is responsible for the annual post audits of fiscal transactions, performance audits, special audits and investigations, and is given other duties and specified powers.[60] In addition, the Folsom City Charter and the Shafter City Charter give the authority to appoint the city attorney to the city manager and not the city council.

The California Constitution does not mandate what city offices and subordinate offices a charter city has to have, but it recognizes the right of a charter city to make this choice. That fact does not relieve charter cities from complying with preemptive state laws on matters of statewide concern. For example, the courts have recognized that, in a charter city, the charter controls the organization of the police department.[57] As the California Attorney General has opined, there is no constitutional or statutory requirement that a charter city have a chief of police.[58] Further, where a charter city does in fact establish the office of chief of police, the chief, like all subordinate officers, is subject to the Public Safety Officers Procedural Bill of Rights.[59]

A charter city is likewise able to establish rules and conditions for service by its municipal officials.[61] General law does cover how to fill a vacancy in public office and applies to charter cities in only limited respects.[62] A charter city has plenary authority to legislate in this area as well.[63] In addition, a charter may establish different rules than mandated by general law for dealing with officials holding incompatible offices,[64] for conflicts of interest,[65] and for incompatible activities, which may result in a forfeiture of public office.[66] Further, several charter cities have charter provisions that limit city council members from being paid city employees during their term of office or for some period after leaving office.[67] Several city charters include provisions for impartial arbitration for fire department employees.[68] Other charters create offices such as city auditor[69] or public information officer.[70] The Santa Cruz City Charter includes a section on the process the city council must follow for layoffs.[71]

2. More About Municipal Affairs

In addition to these four core municipal affairs listed in California Constitution, article XI, section 5, subdivision (b), from time to time, courts have determined that certain other areas are municipal affairs. These provide examples of how courts have evaluated the distinction between a municipal affair and a statewide concern, based on the four-step analysis summarized above. Occasionally, the face of a state statute identifies a conflict between the local law and the state law (step one of the four-step analysis) when the statute specifically excludes charter cities from its scope.

a. Public Contracting

The Public Contract Code requires that a general law city and any charter city that has not explicitly exempted itself from the Public Contract Code (see below) publicly bid any project that exceeds $5,000.[72] There are requirements for public notice, and then the city must award the contract for that project to the lowest responsible bidder.[73] Alternatively, a city may adopt the Uniform Public Construction Cost Accounting Act (UPCCAA).[74] Under those statutes, there are three tiers of contracts: (1) the least expensive public projects may be performed by the employees of a public agency by force account, negotiated contract, or purchase order; (2) more expensive public projects may be awarded to a contractor by following an expedited bid procedure; and (3) the most expensive public projects must be awarded to a contractor after following more timely and onerous bidding procedures.[75] Either way, a city operating under the standard public bidding statutes or the UPCCAA has to publicly bid at least some of its public works project agreements, and must follow strict procedures for all of its public works contracts.

Charter cities, however, may opt out of the Public Contract Code's public bidding requirements.[76] To opt out, the city's charter or an ordinance must expressly exempt the city from the Public Contract Code or include a provision that conflicts with a provision in the Public Contract Code.[77] This allows charter cities to have different noticing requirements, use different claims resolution procedures,[78] and generally structure their public works bidding process as they see fit, if they even require public bidding. This can be time-saving and cost-cutting. For examples of charter cities that have opted out of the Public Contract Code's public bidding requirements, see section 608 of the Placentia City Charter and section 1217 of the San Jose City Charter.

Additionally, while contracts for professional services such as private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms do not need to be competitively bid, general law cities must award such contracts "on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required."[79] There is no clear court opinion on whether charter cities may opt out of this statute, but a San Diego City Attorney's opinion suggests that charter cities may establish their own rules for awarding professional services contracts that are locally funded and local in nature.[80]

b. Prevailing Wage

Prevailing wage law requires contractors and subcontractors on public works projects over $1,000 to pay their workers' wages as set by the Director of Industrial Relations.[81] In this context, the term public works refers to construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, with particular exceptions.[82] General law cities must require that their contractors and subcontractors pay prevailing wages on public works projects.

It is unclear how much higher prevailing wages are from standard industry wages. In a case between the State Building and Construction Trades Council of California and the City of Vista, city staff estimated up to a 20 percent increase in the cost of public works projects due to the payment of prevailing wages.[83] The California Institute for County Government has conducted research and determined that "prevailing wages are substantially higher than market wages. In fact, California's published prevailing wage rates are about one-third to one-half higher than comparable market wages."[84] The executive summary of that study explains:

> We found that the prevailing wage requirements increased overall project costs by about 11 percent, even while controlling for other factors known to influence costs such as regional variations in construction costs and characteristics of the structures themselves. We further found that the impact from these expanded prevailing wage requirements varies across the state, with some areas expected to experience cost increases of as little as six percent while others will likely experience increases of more than 15 percent.

Thus, requiring prevailing wages may affect the cost of a public works project significantly. Additionally, prevailing wage law includes many other regulations, such as the requirement that contractors on public works projects hire apprentices from state-approved apprenticeship programs.