



MEMORANDUM

TO: CITY COUNCIL

FROM: STEVEN ADAMS, CITY MANAGER *SA*

SUBJECT: CONSIDERATION OF PROPOSED CITY CHARTER

DATE: APRIL 8, 2014

RECOMMENDATION:

It is recommended the City Council: 1) hold a public hearing on the proposed City Charter ("Charter"); 2) review the draft City Charter recommended by the City Charter Advisory Committee and amended by the City Council; 3) receive community comments and suggestions on the proposed Charter and provide direction on any changes to the proposed Charter; 4) direct staff to continue proceeding with the process of placing a City Charter measure on the ballot at the General Municipal Election to be held on November 4, 2014; and 5) direct staff to schedule an additional public hearing for June 24, 2014 to formally vote on the submission of the proposed Charter ballot measure to the voters.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

The cost of placing the measure on the November ballot is estimated to be approximately \$5,000. If successful and if the recently adopted statute known as SB7, which is now codified as Labor Code Section 1782 (Chapter 794, Statutes of 2013) is ultimately invalidated, it is estimated that the measure could result in savings of \$50,000 to \$200,000 annually. Placing a measure on the ballot will require a substantial amount of staff time. However, it was identified in the City's major citywide goals for FY 2013-14.

BACKGROUND:

In California, there are two types of cities – general law cities and charter cities. The authority of a general law city is derived from the powers granted to it by the general laws adopted by the State Legislature and from the police power granted to it by the State Constitution. A charter city derives its powers directly from the State Constitution, subject to enactments of the legislature on matters of statewide concern. Charter cities maintain authority over matters determined to be municipal affairs.

**CITY COUNCIL
CONSIDERATION OF PROPOSED CITY CHARTER
APRIL 8, 2014
PAGE 2**

A charter is a set of bylaws, which acts as a local constitution for the city. Pursuant to State Law, a charter may only be adopted, amended or repealed by a majority vote of the City's residents (reference Government Code Sections 34450 et seq.). The City of Arroyo Grande is currently a general law city. There are over 120 charter cities in California, which amounts to more than 25%.

At the January 24, 2012 meeting, staff presented recommendations to address the projected budget shortfall at that time. One of the strategies was to place on the November 6, 2012 ballot a measure that would establish a city charter. The City Council directed staff to prepare a draft charter for City Council review and consideration.

The first draft was presented to the City Council at an initial public hearing at the April 24, 2012 meeting. At Council's direction, changes were incorporated and presented at a second public hearing on June 12, 2012. At that time, the City Council decided to postpone placing the measure on the ballot and directed staff to present recommendations for a more thorough public participation process. At the July 10, 2012 meeting, the City Council approved the public participation process, which included establishing a City Charter Advisory Committee.

The purpose of the makeup of the committee was to provide a broad range of community representation. As a result, the City Charter Advisory Committee included the following individuals and representation:

Judith Bean	Chamber of Commerce Representative
Tom Goss	Arroyo Grande in Bloom Representative
Patricia Hardy	Rotary/Kiwanis Representative
Vard Ikeda	Agriculture Representative
Kirk Scott	South County Historical Society Representative
Randy Steiger	Village Improvement Association Representative
Bob Lund	Mayor Ferrara Appointee
Zachary Hall	Council Member Guthrie Appointee
Andrea Montes	Council Member Costello Appointee
Duke Sterling	Council Member Brown Appointee
John Keen	Council Member Ray Appointee

Judith Bean was elected Chair and John Keen was elected Vice Chair.

The purpose of the City Charter Advisory Committee was to develop recommendations on the draft City Charter and whether or not to proceed to place a measure on the ballot. The Committee began meeting in March 2013. Seven meetings were held. All meetings were open to the public, publicly noticed, and a number of individuals attended the meetings and provided input.

**CITY COUNCIL
CONSIDERATION OF PROPOSED CITY CHARTER
APRIL 8, 2014
PAGE 3**

The City Charter Advisory Committee utilized the draft City Charter prepared by staff and modified by the City Council as a base document for development of their recommendations. They reviewed and discussed each section. Recommended changes were made where they determined to be desirable, which were voted upon. They then considered overall strategies of how and whether to proceed. The City Charter Advisory Committee recommended the City Council proceed to place a measure on the November 4, 2014 ballot to consider the proposed City Charter as drafted.

The recommendations were presented to the Council at the January 14, 2014 meeting. The Council made minor modifications and directed staff to proceed with the process by scheduling the second public hearing. The primary changes made from the last draft included: 1) eliminating language in Section 100 that precluded the Council from establishing by Ordinance any powers, rights, and responsibilities that are not either expressly described in the Charter or allowed by State law applicable to general law cities"; 2) eliminating language in Section 301(i) beginning with "including, but not limited to, the compensation rates to be paid for the performance of such work"; 3) adding Section 700 stating "Any proposal for the amendment, revision, or repeal of this Charter or any portion thereof may be proposed by majority vote of the City Council or by initiative by the People of the City of Arroyo Grande. No such proposal shall be effective until approved by a majority vote of the voters voting at an election on the question and until filed with the Secretary of State of the State of California. In the event of any conflict between this section and Article XI, § 3 of the California Constitution, as may be amended, the latter shall govern;" and 4) eliminating the two references to Section 301 in Section 307 so it only refers to Section 302.

ANALYSIS OF ISSUES:

Purpose

The California Constitution vests charter cities with authority over municipal affairs, significantly strengthening their home rule. There is no precise definition of the term "municipal affair." Whether a given activity is a municipal affair over which a charter city has sovereignty or a statewide concern over which the legislature has authority is a question of law.

A charter city has many options when considering how to handle municipal affairs. Activities which the courts have determined are municipal affairs include, but are not limited to, the following:

1. Construction and maintenance contracting;
2. Land use;
3. City finances; and
4. City government structure.

**CITY COUNCIL
CONSIDERATION OF PROPOSED CITY CHARTER
APRIL 8, 2014
PAGE 4**

By adopting a charter, the City will have far greater flexibility in the operations of its municipal government, which, if properly utilized, can translate to greater efficiency, effectiveness and innovation.

Process

Government Code Section 34458(b) requires that two public hearings be held prior to placing a city charter measure on the ballot. Two required public hearings were held during the original effort. However, given the change in the process, changes to the recommended City Charter, and the time that has lapsed since it was last discussed, staff recommended the process start again. Therefore, this meeting will be the second required public hearing. SB 311 (Chapter 184, Statutes of 2013), which was recently approved by the State Legislature and signed by the Governor, amended Government Code Sections 34457 and 34458 and now requires any proposed city charter to be placed on the ballot of a statewide general election. It is recommended an additional public hearing be scheduled on June 10, 2014 to make a final decision on whether to place the item on the ballot.

If the Council provides direction to proceed, a number of actions would be prepared for Council consideration. These would include adopting a Resolution placing the measure on the ballot, a Resolution setting priorities for filing written arguments regarding the measure and directing the City Attorney to prepare an impartial analysis, and approving the argument in favor of the measure.

Prevailing Wage

The most significant item involving the charter is the issue of prevailing wage requirements. A number of representatives from various labor union organizations spoke at City Charter Advisory Committee meetings in opposition to any provisions modifying State prevailing wage requirements. The revised draft City Charter would not prohibit or preclude requirements to pay prevailing wage on public works projects. It would simply provide the City Council the authority to make that determination rather than the State Legislature.

The purpose of providing increased flexibility to the City on prevailing wage requirements is to ensure projects are constructed in the most cost effective manner. The proposed language would enable the City Council to establish guidelines whereby prevailing wage requirements could be applied when determined to be in the best interest of the City and also waived when determined to be more cost efficient for other projects.

Staff's research indicates that State prevailing wage requirements increase costs of public works projects by 5% to 30% on the average. The most conclusive information was provided by the City of Dinuba, which established a charter in 1994. They bid a water tower project as non-prevailing wage and the cost increased by over 14% after they received grant funding and had to modify the contract to meet prevailing wage requirements. A consultant hired by Dinuba to survey other cities

**CITY COUNCIL
CONSIDERATION OF PROPOSED CITY CHARTER
APRIL 8, 2014
PAGE 5**

that had incorporated non-prevailing wage provisions into their charter “found most cities saw a savings of between 20% and 30% on public works projects.” The City of Santa Maria recently rebid their street sweeping contract in order to comply with provisions of SB 7 and experienced a 33% increase in the cost from the low bidder.

SB 7

One of the concerns identified by the City Council when the draft City Charter was originally considered was an ongoing State Supreme Court case involving prevailing wage requirements. On July 2, 2012, the California Supreme Court issued its decision in State Building and Construction Trades Councils of California, AFL – CIO v. City of Vista. The court held that locally funded public works projects performed by chartered cities are municipal affairs under the California Constitution and, as a result, the wages paid to workers on charter city projects are not subject to California's prevailing wage law.

Shortly following the ruling, the State legislature proposed and later approved SB 7, which prohibits a charter city from receiving or using State funding or financial assistance for a construction project if the city has a voter-approved charter provision or ordinance that authorizes a contractor to not comply with State prevailing wage requirements on local construction projects funded by (non-State) city funds. The Governor signed the bill in October 2013. The bill is now expected to be contested in court. Due to its inconsistency with the City of Vista ruling, the City Attorney's Office review concluded that it is likely to be invalidated. However, it could take several years before the constitutionality of SB7 is finally decided by the courts.

If the City Council determines it is in the best interest of the City to proceed with a city charter measure, one of the primary issues for consideration then becomes whether to place the measure on the ballot at the next general election or to wait until the validity of SB 7 is determined by the courts. The City Attorney's Office has prepared a recommended section added to the draft City Charter that sets forth that provisions regarding prevailing wage will only be operational if SB 7 is upheld in court. It also includes language that enables the section to be deleted at that time. This provision enables the City Council to proceed with the charter measure at this time if it prefers not to wait until the issue is finally decided.

Public Works Contracts

The City Charter Advisory Committee determined there are benefits of utilizing the State Public Works Contract Code to avoid the need by the City to entirely establish its own policies and procedures. As a result, rather than exempting the City from the entire State Public Works Contract Code, they instead recommended language that would authorize the City to establish its own standards, procedures, rules or regulations for those areas where staff identified it could result in significant improvements. These areas include the ability to establish the City's own criteria for determining award of public works contract bids, to accept gifts and donations of material or labor, and to use in-house staff or coordinate with other public agencies to

**CITY COUNCIL
CONSIDERATION OF PROPOSED CITY CHARTER
APRIL 8, 2014
PAGE 6**

construct public works projects. These changes would better enable the City to reject bids from contractors with a history of low quality work, more easily accept work provided by local contractors at reduced rates as part of community project efforts, and to construct small scale projects more efficiently.

City Council Salaries

A common concern of city charter measures and a claim made in a mailer to Arroyo Grande residents by opponents to the draft City Charter is that it would enable council members to raise their own pay. This is due partly to the fact that the City of Bell used their city charter to help carry out their salary increase abuses. The draft City Charter addresses this through Section 204, which states that the salary of the Mayor and Council Members shall continue to be set pursuant to the State law applicable to general law cities. Therefore, there will be no change. It should also be noted to the public that the City Council could already increase their compensation because it is well below what is allowed for general law cities. However, no adjustments to Council compensation have been made since 2000.

Tax Increases

Another concern stemming from abuses in the City of Bell is the ability of charter cities to increase taxes. This is also addressed in the draft City Charter in Section 102, which specifies that the City Charter does not provide any authority for new or increased taxes beyond that provided to general law cities.

City Powers and Rights Granted by the City Charter

A concern discussed by the City Charter Advisory Committee was language previously added to the draft City Charter by the City Council, which specifies that the City Council may not establish by ordinance any powers, rights, and responsibilities that are not expressly described in the City Charter. The purpose of the language was to address any potential public concern that the City Charter provides the City Council authority that could be abused in the future. A concern with this language is that it reduces the benefits of being a charter city because it will eliminate any authority the City may have in the future to avoid new requirements the State may impose that are considered municipal affairs if they are not already spelled out in the City Charter. While the City Charter Advisory Committee did not make any recommendation to delete the language, the City Council directed staff to eliminate the language at the January 14, 2014 meeting.

Public Education

It is proposed a professional public relations firm be contracted to prepare a mailer to provide basic education on key issues related to the draft City Charter and to clarify any claims made by the recent mailer distributed to City residents. As a result, it is proposed to communicate a simple message on only key points. Information proposed would include the following points:

**CITY COUNCIL
CONSIDERATION OF PROPOSED CITY CHARTER
APRIL 8, 2014
PAGE 7**

- The purpose of proposing a city charter is to increase local control from the State of California.
- The City has undertaken extensive efforts to involve the public in an open and transparent process.
- The City Charter would only provide the City Council the additional authority specifically outlined in the City Charter and cannot be modified without a vote of the public.
- The City Charter specifically prevents any additional authority to raise Council compensation.
- The City Charter specifically prevents any additional authority to increase taxes.
- The City Charter does not require elimination of prevailing wage requirements – it only transfers the authority to make that determination from the State Legislature to the City Council, and will duly be operative if SB 7 is found to be unconstitutional.

ALTERNATIVES:

The following alternatives are provided for City Council consideration:

1. Approve staff's recommendations;
2. Delay placing the Charter on the ballot until court rulings involving SB 7 are completed;
3. Remove the prevailing wage section from the proposed City Charter;
4. Propose the draft City Charter without the prevailing wage section and place the prevailing wage clause as a separate measure on the ballot or on the ballot at a subsequent election;
5. Make other changes to the draft City Charter and direct staff to proceed;
6. Direct staff to take no further action on the charter measure; or
7. Provide staff other direction.

ADVANTAGES:

Adopting the draft City Charter would increase the City's autonomy from the State; may enable the City to reduce the costs of capital improvements in the future; would increase the City's ability to award bids only to competent contractors; and would increase the ability to utilize in-house staff, volunteers and contractors donating work on capital projects. Proceeding at this time would enable the City Council to adopt its own guidelines on when to require prevailing wage rates, subject to a final ruling that SB 7 is invalid.

DISADVANTAGES:

There will be costs and staff time associated with placing a city charter measure on the ballot and educating the public. There will likely be strong organized opposition from labor union organizations. Since SB 7 is unresolved, it may add some confusion in educating the public regarding its impact on the provisions of the proposed City Charter.

**CITY COUNCIL
CONSIDERATION OF PROPOSED CITY CHARTER
APRIL 8, 2014
PAGE 8**

ENVIRONMENTAL REVIEW:

No environmental review is required for this item.

PUBLIC NOTIFICATION AND COMMENTS:

Pursuant to Government Code Section 34458, a notice of public hearing was published in The Tribune on March 16, 2014 and March 28, 2014 and posted in three public places at City Hall, Five Cities Fire Authority, and Elm Street Community Center/Recreation Services Office. In addition, the notice of public hearing was posted on the City's website.

Attachment:

1. Draft City Charter

CHARTER OF THE CITY OF ARROYO GRANDE

ARTICLE I. MUNICIPAL AFFAIRS

ARTICLE II. FORM OF GOVERNMENT

ARTICLE III. CONTRACTS, PUBLIC FINANCING AND FRANCHISES

ARTICLE IV. REVENUE RETENTION

ARTICLE V. GENERAL LAWS

ARTICLE VI. INTERPRETATION

PREAMBLE

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

ARTICLE I. MUNICIPAL AFFAIRS

Section 100. Municipal Affairs. The City shall have full power and authority to adopt, make, exercise and enforce all legislation, laws, and regulations and to take all actions relating to municipal affairs, without limitation, which may be lawfully adopted, made, exercised, taken or enforced under the Constitution of the State of California. Without limiting in any manner the foregoing power and authority, each of the powers, rights, and responsibilities described in this Charter is hereby declared to be a municipal affair, the performance of which is unique to the benefit and welfare of the citizens of the City of Arroyo Grande.

Section 101. Incorporation and Succession. The City of Arroyo Grande, in the County of San Luis Obispo, State of California, shall continue to be a municipal corporation under its present name City of Arroyo Grande. The boundaries of the City of Arroyo Grande shall continue as now established until changed in the manner authorized by law. The City of Arroyo Grande shall remain vested with and shall continue to own, have, possess, control and enjoy all property, rights of property and rights of action of every nature and description owned, had, possessed, controlled or enjoyed by it at the time this Charter takes effect, and is hereby declared to be the successor of same. It shall be subject to all debts, obligations and liabilities, which exist against the municipality at the time this Charter takes effect. All lawful ordinances,

resolutions, rules and regulations, or portions thereof, in force at the time this Charter takes effect and not in conflict with or inconsistent herewith, are hereby continued in force until the same have been duly repealed, amended, changed or superseded by proper authority.

Section 102. No Increased Power to Tax. This Charter shall not be interpreted as giving the City greater authority to raise the level of taxes or to create new taxes beyond the powers granted to general law cities nor to exempt the City from any procedures for raising the level of taxes or for creating new taxes required by the law applicable to general law cities.

Section 103. Zoning and General Plan Consistency. Zoning shall continue to be to be consistent with the City's General Plan, pursuant to requirements of the State law applicable to general law cities.

ARTICLE II. FORM OF GOVERNMENT

Section 200. Form of Government. The City shall continue to be governed under this Charter by a "Council-Manager" form of government. The City Council will establish the policy of the City and the City Manager will carry out that policy.

Section 201. Elected Officials. The elective officers of the City of Arroyo Grande shall be a Mayor and four Council members each of whom, including the Mayor, shall have the right to vote on all questions coming before the Council. The minimum qualifications for these offices shall be as provided by law for general law cities and any vacancy in office shall be filled in the manner provided by that law. The Mayor shall be elected at the general municipal election from the City at large. The Council members shall be elected at the general municipal election from the City at large, two being selected biennially. The term of the Mayor shall be two years and the terms of the Council members shall be four years.

Section 203. Mayor. Powers and Duties. The Mayor shall preside at all meetings of the City Council. As presiding officer of the Council the Mayor will faithfully communicate the will of the Council majority to the administrative officers in matters of policy. The Mayor shall be recognized as the official head of the City for all ceremonial purposes.

Section 204. Council Member Compensation. The salary of the Mayor and Council Members shall continue to be set pursuant to the State law applicable to general law cities.

Section 205. Elections. The City Council may approve by ordinance use of a mail-in ballot or other electronic voting systems for special elections, except that mail-in ballot or other electronic voting system elections shall not be used for elections to amend this Charter. All elections shall be held in accordance with all other provisions of the law applicable to general law cities.

ARTICLE III. CONTRACTS, PUBLIC FINANCING AND FRANCHISES

Section 300. Economic and Community Development. The City shall encourage, support, and promote economic and community development and preserve and enhance the small-town and historic character of Arroyo Grande.

Section 301. Public Works Contracts. The City shall follow the provisions of the California Public Contract Code and its standards, procedures, rules or regulations relating to the bidding, award and performance of any public works contract, except that the City shall have the power to establish by ordinance alternative standards, procedures, rules or regulations for public projects in the following areas:

- (i) The City Council may, by ordinance, establish criteria for determining the award of public works contracts to the lowest responsible and most reliable bidder on any project, as well as other aspects of bidding, award and performance of any public works contract that it deems to be in the best interests of the City.
- (ii) The City shall have the power to accept gifts and donations, including donations of material and labor, in the construction of any public works project.
- (iii) The City shall have the power to perform any work of improvement by use of its own forces and is not required to contract for the construction of works of public improvement.
- (iv) The City may also contract with other public agencies for the construction of works of public improvement

Section 302. Prevailing Wage. The City Council shall establish criteria and guidelines for determining when payment of prevailing wages will apply to any contract. Prevailing wages shall also apply if:

- (i) the prevailing wage is legally required, and constitutionally permitted, to be imposed;
- (ii) required by Federal or State grants pursuant to Federal or State law;
- (iii) the City Council does not consider the project to be a municipal affair.

Section 303. Purchasing. The City shall have the power to establish standards, procedures, rules or regulations related to the purchasing of goods, property, or services, including, but not limited to, the establishment of local preferences.

Section 304. Public Financing. The City shall have the power to establish standards, procedures, rules or regulations related to any public financing.

Section 305. Utility Franchises. The City shall have the power to adopt any ordinance providing for the acquisition, development, or operation by the City of any utility, or to adopt any ordinance providing for the granting of a franchise to any utility not owned by the City which proposes to use or is using City streets, highways or other rights-of-way.

Section 306. Supporting Volunteers in Arroyo Grande

The City seeks to support volunteers in creating a higher quality of life for Arroyo Grande citizens and declares itself exempt from any State laws or regulations that would make it more difficult or expensive for volunteers in any community project, whether funded with City revenues or not.

Section 307. Section 302 and Labor Code Section 1782

Neither Section 302, nor any subsequently adopted ordinance, shall be interpreted or applied in any manner that would authorize any contractor to avoid compliance with the requirements of Article 2 of Chapter 1 of Part 7 of the California Labor Code, commencing with Section 1770, relating to the payment of prevailing wages on public works projects. Section 302 shall only be operative during such time that a court of competent jurisdiction enjoins the operation of Labor Code Section 1782 (Chapter 794, Statutes of 2013, also referred to as SB7), or a final decision has been rendered by a court of competent jurisdiction that Labor Code Section 1782 is invalid and unenforceable. After such a final decision has been rendered invalidating Labor Code 1782, this Section 307 shall no longer be operative and may be deleted from this Charter.

ARTICLE IV. REVENUE RETENTION

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

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

ARTICLE V. GENERAL LAWS

Section 500. General Law Powers. In addition to the power and authority granted by the terms of this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise and enforce all legislation, laws and regulations and to take all actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between the provisions of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control.

ARTICLE VI. INTERPRETATION

Section 600. Construction and Interpretation. The language contained in this Charter is intended to be permissive rather than conclusive or limiting and shall be liberally and

broadly construed in favor of the exercise by the City of its power to govern with respect to any matter which is a municipal affair.

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

ARTICLE VII. AMENDMENTS

Section 700. Amendments. Any proposal for the amendment, revision, or repeal of this Charter or any portion thereof may be proposed by majority vote of the City Council or by initiative by the People of the City of Arroyo Grande. No such proposal shall be effective until approved by a majority vote of the voters voting at an election on the question and until filed with the Secretary of State of the State of California. In the event of any conflict between this section and Article XI, § 3 of the California Constitution, as may be amended, the latter shall govern.

Authentication
And
Certification

Authenticated and certified to be a true copy by Mayor _____ and City Clerk _____.

Date of Municipal Election:

ATTEST:

Mayor

City Clerk

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