



AGENDA

MEETING OF THE CHARTER COMMITTEE

Saturday, March 10, 2018, 9:00 a.m.

El Cerrito City Hall

Hillside Room

10890 San Pablo Avenue

El Cerrito, CA 94530

This Meeting Place Is Wheelchair Accessible

Roll Call

1. Oral Communications from the Public for Items Not on the Agenda

(Each speaker is limited to a maximum of 3 minutes.)

2. Approval of the Minutes

Approval of the Minutes from the meetings of February 26, 2018.

3. Overview of City Charter Process

Summary of Initial Presentation to Charter Committee

4. Review and possible Direction on Draft City Charter and preamble

- a. The City Attorney will review the draft charter, receive comments and possible direction/recommendation toward its completion for City Council consideration.
- b. Discussion and comments for City Council consideration related to items in the Charter including but not limited to the Real Property Transfer Tax.
- c. Comments from the Public

5. Items for next meeting (if necessary)

6. Adjournment

Any writings or documents provided to a majority of the Charter Committee regarding any item on this agenda will be made available for public inspection in the City Manager's Office located at 10890 San Pablo Avenue during normal business hours.

COMMUNICATION ACCESS INFORMATION

To request a meeting agenda in large print, Braille, or on cassette, or to request a sign language interpreter for the meeting, call Cheryl Morse, City Clerk at 215-4305 at least FIVE (5) WORKING DAYS NOTICE PRIOR TO THE MEETING to ensure availability.

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MINUTES

MEETING OF THE CHARTER COMMITTEE

Monday, February 26, 2018, 7:00 p.m.

El Cerrito City Hall
Hillside Conference Room
10890 San Pablo Avenue
El Cerrito, CA 94530

This Meeting Place Is Wheelchair Accessible

Roll Call

Committee Members Eizenberg, Fadelli, Keller, Lyman, Moore and Chair Patterson all present. City Manager Hanin and City Attorney Woodruff also present.

Chairperson Patterson convened the regular Charter Committee meeting at 7:00 p.m.

1. Oral Communications from the Public

Elizabeth Thorsnes, El Cerrito, stated that question of El Cerrito becoming a Charter City a big deal and that everyone in the city should be informed about what this entails. Ms. Thorsnes said that she hopes to see the public educated about becoming a charter city and hopes that the issue to the voters for a decision. Ms. Thorsnes also expressed concerns about having a real property transfer tax in the city and noted that it is already expensive to own property.

Patricia Wilson, El Cerrito, stated that no one knew about the Charter Committee meetings and said she is retired and is struggling to stay in the city, noted that taxes are already a high proportion of mortgage, insurance and taxes and that she and others are concerned that more taxes will negatively affect the community.

Anne Quinosky, El Cerrito, asked for information regarding procedures for public input and whether there will be an opportunity for additional comment after the committee.

City Manager Hanin and City Attorney Woodruff described the noticing and publication that had occurred regarding Charter City Committee Meetings. Mr. Woodruff also reported on the history of the Council's discussions regarding a city charter and outlined upcoming procedural steps and timelines regarding additional Charter City Committee and City Council discussions. Mr. Woodruff also provided individuals present with background information regarding City Charters, municipal affairs and the real property transfer tax.

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2. Approval of the Minutes

Approve the February 5 and 12, 2018 Committee meeting minutes.

Action: Moved, seconded (Lyman/Keller?) and carried unanimously to approve the minutes.

3. Review and possible Direction on Draft City Charter

The City Attorney will introduce the draft charter for the Committee's review. The Committee will provide comments and possible direction toward its completion.

Presenter: Sky Woodruff, City Attorney.

Chairperson Patterson invited additional questions, comments and requests for clarification from individuals who were present. Public present asked for clarification regarding establishment of a real property transfer tax, public financing of elections, the Council-Manager form of government and whether to omit certain text from the draft charter regarding compensation.

Action: The Charter Committee reviewed the draft City Charter and provided direction to the City Attorney including the following recommendations:

- The City Attorney will prepare a memo explaining how certain sections within the draft charter work with each other or inter-relate and will include changes in language recommended by the Committee along with a justification for the changes.
- Section 101 – The City Attorney will examine the need or reworking of the word “peculiarly” in final sentence of the section, “The exercise of home rule over each matter set forth in this Charter uniquely benefits the citizens of the City and addresses peculiarly local concerns within the City.”
- Section 203 – Add language stating that the City Council shall appoint the City Manager.
- Section 600 – explain inclusion of language regarding elections in the report that is transmitted to the City Council.

4. Items for next meeting

- a. Discuss draft preamble
- b. Information about potential Real Property Transfer Tax rate and characteristics
- c. Next Steps

Action: The Committee added review of a revised draft Charter. This will include a draft preamble. Information regarding the real property transfer tax rate and characteristics would be in the form of a presentation which would not require action. An overview regarding Charter Cities vs. General Law Cities should also be provided with background information included in the packet for public review. Allow public comment for each agenda item.

5. Adjourned at 8:49 p.m.

Supplemental Communications

Written Comments submitted by Howdy Goudey, El Cerrito.

EL CERRITO CHARTER COMMITTEE OVERVIEW

FEBRUARY 5, 2018



OVERVIEW

- Authority in General Law City vs. Charter City
- Understanding Home Rule
- Municipal Affairs
- Statewide Concerns
- Benefits and Detriments of Becoming a Charter City
- Real Property Transfer Tax
- City Council Direction
- Questions and Discussion
- Direction

AUTHORITY IN GENERAL LAW VS. CHARTER CITY

- A **General Law City** has the authority to act locally but its acts must be consistent with: the California Constitution, state statutes, state administrative regulations
- A **Charter City** has the additional authority to adopt laws regarding "municipal affairs" that are inconsistent with state statutes. Must still be consistent with US and California Constitutions and with the charter

UNDERSTANDING HOME RULE

- The home rule provision in the California Constitution allows cities to adopt a charter and ordinances that replace state laws in areas related to **municipal affairs**, subject only to the limitations within the charter
- At all times, the City is subject to the U.S. Constitution, federal laws, the California Constitution, and state laws regarding matters of statewide concern
- The decision to become a charter city relates to what legislative body makes decisions regarding municipal affairs: the State Legislature or the City Council

WHAT IS A “MUNICIPAL AFFAIR”?

- Term is undefined
- Legislature may not determine what is a municipal affair nor transform a municipal affair into a matter of statewide concern
- Courts decide on a case-by-case basis
- This concept is fluid and changes over time

TYPES OF MUNICIPAL AFFAIRS

- Elections
- Finance
- Planning and Land Use
- Public Contracts and Prevailing Wages
- Employment and Compensation

HOW LONG IS A CHARTER?

- Historically, a charter granted authority (the details of which needed to be listed in the charter) whereas now, a charter grants all authority unless it limits the city's powers (thus, there is a recent trend towards brevity)
- Similar to the U.S. Constitution, a charter is not a document that is designed to address every issue
- Allows the Council and residents to focus on each particular issue at a time
- Municipal Code would be maintained

ADVANTAGES TO CHARTERING

- Could allow additional revenue measure for operations or capital projects (e.g., emergency reserves, public safety, affordable housing, library, public safety building, senior center, CalPERS)
 - Neighboring charter cities all maintain a Real Property Transfer Tax (RPTT)
 - EC had an RPTT until recently – repealed as a general law city
 - RPTT would generate ~ \$2-3 million annually
 - Traditionally split between buyer and seller
 - A portion could be rebated for seismic and conservation upgrades
- More flexibility in elections
- May provide more local control

DISADVANTAGES TO CHARTERING

- Transition period
- Legal challenges
- Limited case law
- Charter amendments require vote
- May be divisive in community
- Municipal affairs may erode over time due to state legislation and subsequent judicial review
- Charter cities have not been spared State revenue takeaways

CALIFORNIA CHARTER CITIES

Currently 121 Charter Cities

361 General Law Cities

Local Charter cities include Albany, Emeryville, Berkeley, Richmond, Oakland, Alameda, Piedmont, San Francisco, San Leandro and San Rafael

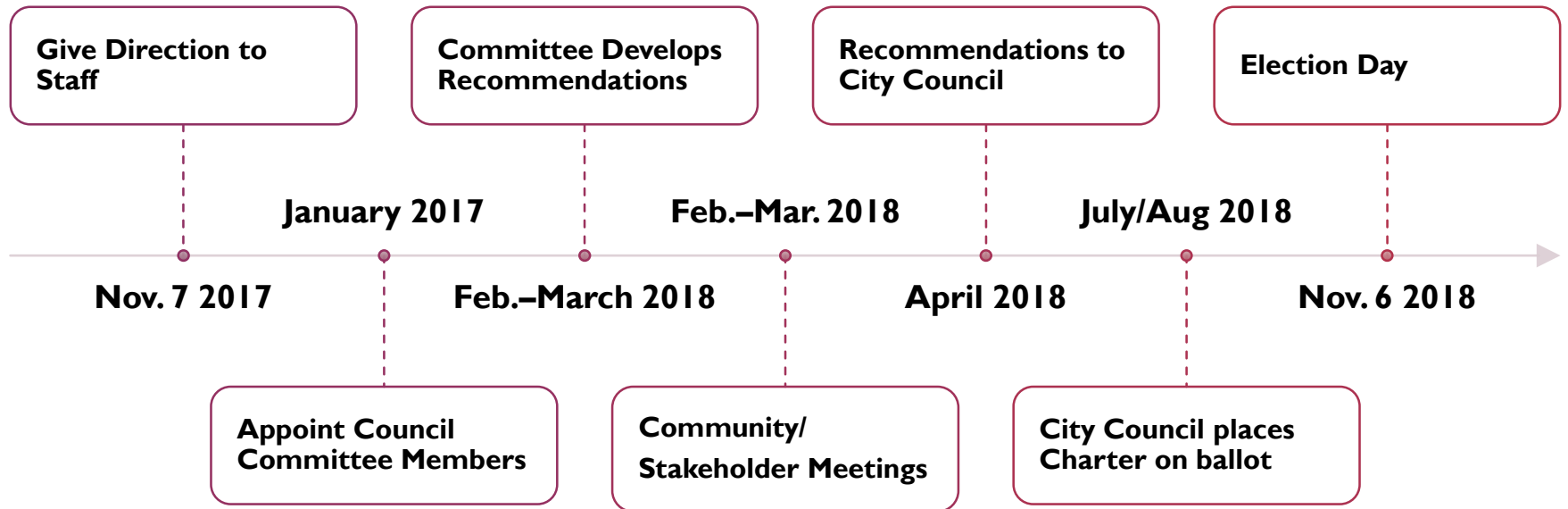
REAL PROPERTY TRANSFER TAXES

- El Cerrito had a RPTT until 2003 when repealed
- Rate was set at \$7.00 per \$1,000
- In FY2003, RPPT generated \$1.2m in revenue
- In FY 2016, would have brought in ~\$1.7m
- \$12.00 per \$1,000 brings in ~\$2.7m
- General Tax that could be used for operations, reserves or debt service
- No noticeable impact on home prices
- City Council will set rate

Neighboring RPTT Rates:

	<u>Per \$1,000</u>
Alameda	\$ 12.00
Richmond	\$ 7.00
Oakland	\$ 15.00
Emeryville	\$ 12.00
Berkeley	\$ 15.00
Albany	\$ 11.50
Piedmont	\$ 13.00
AVG	\$ 12.21
Median	\$ 12.00

CURRENT TIMELINE



CITY COUNCIL/STATUTORY PROCESS

- Committee must complete draft charter by April 2018
- Before putting charter on ballot Council must hold two public hearings
- Hearings must be at least 30 days apart
- 21 days' notice of hearings required
- Can't put charter on ballot until at least 21 days after second public hearing

ROLE OF CHARTER REVIEW COMMITTEE

- Review and understand options
- Evaluate alternatives within City Council Direction
- Develop Draft Charter for City Council Consideration

CITY COUNCIL DIRECTION

- The Charter Committee shall prepare a draft charter for the City of El Cerrito to be submitted to the City Council for consideration and potential proposal to the City's voters.
- The draft charter shall contain at least the following elements:
 - It shall reserve to the City Council the power to adopt local rules in all matters of municipal affairs.
 - It shall require the City to follow California law regarding the payment of prevailing wages for public works projects and collective bargaining with represented employee groups.
 - It shall authorize the City Council to consider the use of all available tools for generating revenue, including but not limited to a real property transfer tax.
 - The El Cerrito Municipal Code shall not be altered by the proposed charter.

NEXT STEPS

1

Review other
city charters

2

Agree on
framework

3

Define revenue
alternatives

4

Draft New
Charter

5

Present
Recommendation
to City Council

CHARTER OF THE CITY OF EL CERRITO

STATEMENT OF PURPOSE (PREAMBLE)

The City of El Cerrito was incorporated as a general law city in 1917 by residents seeking the right to manage local affairs. Contrary to that desire, the authority of general law cities has diminished over time as the State has continually added mandates and increased involvement in local matters, while at the same time redirecting much needed local revenue elsewhere. Compounding those trends, special interests outside El Cerrito have limited the ability of El Cerritans to decide how to use local dollars for local needs. The power of home rule, granted by the California Constitution, makes available to charter cities a variety of tools to use to construct local policy and address local concerns. The voters of each charter city get to decide which tools to put in their tool box. To reclaim more local autonomy and to expand the economic and fiscal independence of our local government, a City Charter will better serve to promote the health, safety and welfare of all the citizens of this City. Therefore, 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 El Cerrito.

ARTICLE I. ESTABLISHMENT OF HOME RULE, POWER OVER MUNICIPAL AFFAIRS, GENERAL LAW POWERS

Section 100. Powers of the City. The City of El Cerrito (the "City") shall have full power and authority to adopt, make, exercise, and enforce all legislation, laws, ordinance, resolutions, and regulations with respect to municipal affairs, subject only to the limitations and restrictions imposed on that power by this Charter, the Constitution of the State of California, and the laws of the United States.

Section 101. Municipal Affairs. Municipal affairs encompass all matters of local concern as determined by the City Council consistent with the meaning of "municipal affairs" under the constitutional, statutory, and judicially defined law of the State of California. Each of the matters set forth in this Charter are declared to be municipal affairs, consistent with the laws of the State of California. The municipal affairs set forth in this Charter are not intended to be an exclusive list of municipal affairs over which the City Council may govern. The exercise of home rule over each matter set forth in this Charter uniquely benefits the citizens of the City and addresses ~~peculiarly~~ local concerns within the City about the matters addressed in this Charter.

Section 102. Powers under State Law.

- (a) In addition to the power and authority granted by 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, ordinances,

resolutions, 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 this Charter and the general laws of the State of California related to a municipal affair, this Charter shall control.

- (b) Nothing in this Charter is intended to restrict the City in exercising any right, power or authority granted under the general laws of the State of California. However, the provisions of this Charter shall prevail in the event of any conflict with the general laws of the State of California, unless preempted by state law on matters of statewide concern.

ARTICLE II. CONTINUATION OF BOUNDARIES, FORM OF GOVERNMENT, AND EXISTING LAW

Section 201. Incorporation and Succession. The City shall continue to be a municipal corporation known as the City of El Cerrito. The boundaries of the City shall continue as established prior to this Charter taking effect until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, possess, control, and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled, or enjoyed by it at the time this Charter takes effect. The City shall be subject to all debts, obligations, and liabilities of the City at the time this Charter takes effect. All lawful ordinances, resolutions, rules, and regulations, or portions thereof, enforced 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 lawful action.

Section 202. Form of Government. The government of the City shall continue to be the Council-Manager form of government as established by the El Cerrito Municipal Code at the time that this Charter takes effect and by the laws of the State of California. The Council-Manager form of government of the City may be changed in the same ways and using the same procedures as a general law city.

Section 203. City Council, City Manager, and City Attorney.

- (a) The City Council shall establish the policy of the City. The City Manager shall carry out that policy.

(b) The City Council shall appoint the City Manager.

- (b) The City Manager, as the chief administrative officer of the City, shall appoint all department heads other than the City Attorney. Involvement in administrative matters by the City Council or by any individual Councilmember shall occur only by direction of through the City Manager or pursuant to direction by the City Manager to members of the administrative staff.

- (c) The City Council shall appoint the City Attorney. The City Attorney may be an employee of the City or an independent contractor providing legal services pursuant to a contract.

Section 204. Continuation of Existing Local Laws. All ordinances, codes, resolutions, regulations, rules, and portions thereof, in force at the time this Charter takes effect, and not in conflict or inconsistent herewith, shall continue in force until repealed, amended, changed, or superseded in the manner provided by this Charter and any other applicable laws.

Section 205. General State Laws. Except as provided in this Charter and in any ordinance, code, resolution, or other law adopted by the City Council regarding a matter that is a municipal affair, the City shall be governed by the general laws of the State of California.

ARTICLE III. MUNICIPAL REVENUE

Section 300. Revenue Raising Power. The City may exercise all powers of a charter city to generate revenue, including but not limited to taxes, fees, assessments, and other charges.

Section 301. Real Property Transfer Tax. Without limiting the general power of the City, as expressed in Section 300 above, to generate revenue, the City may impose a tax on the conveyance of real property, based upon the price paid for the real property ("real property transfer tax"). Any real property transfer tax imposed by the City shall be in addition to any similar tax authorized by the general laws of the State of California.

ARTICLE IV. PREVAILING WAGES FOR PUBLIC WORKS AND PUBLIC CONTRACTING

Section 400. State Prevailing Wage Law. The City shall comply with the laws of the State of California applicable to general law cities regarding the payment of prevailing wages for public works projects.

Section 401. Contracting for Public Works. The City shall comply with the laws of the State of California applicable to general law cities regarding contracting for public works. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding contracting for public works shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICE V. LABOR RELATIONS

Section 500. State Labor Relations Law. The City shall comply with the laws of the State of California applicable to general law cities regarding labor relations. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding labor relations shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICLE VI. ELECTIONS

Section 600. State Elections Law. The City shall comply with the laws of the State of California applicable to general law cities regarding elections. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding elections shall continue to apply when this Charter takes effect and may be amended thereafter.

Section 601. Initiative, Referendum, and Recall. Without limiting the general applicability of Section 600 of this Charter, the City shall comply with the laws of the State of California applicable to general law cities regarding initiative, referendum, and recall.

ARTICLE VII. INTERPRETATION, SEVERABILITY, AND AMENDMENT

Section 700. Construction and Interpretation. The language of this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter that is a municipal affair. Every reference in this Charter to state or federal law shall mean that law as it exists when this Charter takes effect or as it may thereafter be amended.

Section 701. 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.

Section 702. Amendment of Charter. As provided by state law, this Charter, and any of its provisions, may be amended by a majority vote of the electors voting on the question. Amendment or repeal may be proposed by initiative or by the City Council.
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