

**CHARTER REVIEW COMMITTEE MEETING
MUNICIPAL LIBRARY, COMMUNITY ROOM, 2nd FLOOR
41 WEST THURMAN AVENUE
OCTOBER 23, 2013, 5:30 P.M.**

Call to Order
Roll Call

ORAL COMMUNICATIONS

This is the opportunity to address the Charter Review Committee. Unless additional time is authorized by the Committee, all commentary shall be limited to three minutes.

SCHEDULED MATTERS

1. **Minutes of October 9, 2013**
Re: Approving draft Minutes of the Charter Review Committee Meeting of October 9, 2013.
2. **Consideration of New City Charter Section 67.1, Pertaining to Political Activities**
Re: Consideration of the addition of Section 67.1 pertaining to political activities.
3. **Consideration of New City Charter Section 74 – General Penalty**
Re: Review and consideration of draft language adding a General Penalty Section to the Charter.
4. **Consideration of Modifications to Charter Section 9**
Re: Review and consideration of Charter Section 9, including a) Separately Elected Mayor; b) Timing of Municipal Elections; and c) Council Compensation.
5. **Consideration of Modifications to Charter Section 13**
Re: Consideration of adding a Charter provision regarding term limits for commission/committee appointments.
6. **Consideration of Modifications to Charter Section 19, Pertaining to Duties of the Mayor**
Re: Review and consideration of Charter provisions pertaining to duties of the mayor, to include the addition of mayoral proclamations.
7. **Consideration of New City Charter Section Establishing a Citizens Watch Dog Committee**
Re: Consideration of adding a Charter provision establishing a Citizens Watch Dog Committee.

- 8. Staff Report Regarding SB7 (New Legislation Affecting Charter Cities Regarding Prevailing Wages)**
Re: Informational report about new litigation pertaining to prevailing wages.
- 9. Consideration of Committee Member Items of Interest**
- 10. Scheduling of Future Meetings**

OTHER MATTERS

ADJOURNMENT

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the Committee after distribution of the Agenda packets are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at www.ci.porterville.ca.us.

**CHARTER REVIEW COMMITTEE MEETING
MUNICIPAL LIBRARY, COMMUNITY ROOM, 2ND FLOOR
41 WEST THURMAN AVENUE
OCTOBER 9, 2013, 5:30 P.M.**

Called to Order at 5:32 p.m.

Roll Call: Member Bush, Member Cortez, Member Green, Member Irish, Member Salazar, Vice Chair Giraudi, Chair Bailey
Absent: Member Hardin, Member Stowe

ORAL COMMUNICATIONS

None

SCHEDULED MATTERS

1. Minutes of October 2, 2013

Chair Bailey introduced the item and welcomed a motion or any amendments. Committee Members Irish and Green indicated that they had questions. Member Irish's questions would be raised during consideration of Item No. 2; and in response to Member Green's inquiry, City Attorney Lew stated that the Council could move forward on pension reform without recommendation from the committee.

COMMITTEE ACTION: MOVED by Vice Chair Giraudi, SECONDED by Member Irish that the Charter Review Committee approve the minutes of October 2, 2013, as presented.

AYES: Irish, Green, Salazar, Bush, Giraudi, Bailey, Cortez
NOES: None
ABSTAIN: None
ABSENT: Hardin, Stowe

Documentation: M.O. 01-100913
Disposition: Approved, as presented.

2. Consideration of Modifications to Charter Section 12, Pertaining to Publication Requirements

Chair Bailey introduced the item. In response to comments made at the last meeting, City Attorney Lew advised that the City could adopt its own procedures with regard to adopting ordinances, including publication requirements. A discussion followed regarding the use of the internet, cost savings, indirect costs, and legal/judicial noticing requirements.

Without objection, Chair Bailey welcomed comments from Mr. Rick Elkins from the Porterville Recorder.

- Mr. Elkins, spoke of benefits of the printed word, and recommended publishing a summary versus the ordinance in its entirety.
- John Duran, agreed with comments made by Mr. Elkins, and added that he often has difficulty finding information on the City’s website.

Committee Member Irish identified the publication of a summary as an acceptable recommendation, and City Attorney Lew cited language from the City of Riverside as an example. Chair Bailey suggested including wording to allow publication of the entire ordinance or a summary, which various members of the committee supported. City Attorney Lew pointed out that the City of Riverside language spoke of noticing after final adoption, where as the City currently notices prior to final adoption. The committee agreed that the current noticing of 3 days prior to final adoption by the Council was preferred.

Staff addressed concerns raised by Chair Bailey regarding changing of ordinance language subsequent to Council approval.

COMMITTEE ACTION: MOVED by Member Salazar, SECONDED by Member Irish that the Charter Review Committee authorize the City Attorney to draft language requiring the publishing of ordinance or summary at least 3 days prior to second reading, to include notification to the public that the ordinance in its entirety is available for viewing on the City’s website and at the Clerk’s office.

AYES: Irish, Green, Salazar, Bush, Giraudi, Bailey, Cortez
 NOES: None
 ABSTAIN: None
 ABSENT: Hardin, Stowe

Documentation: M.O. 02-100913
 Disposition: Approved drafting of language.

3. Consideration of Modifications to Charter Section 68, Pertaining to Leases

Chair Bailey introduced the item, and welcomed questions or comments from the committee regarding the draft language provided by the City Attorney.

City Attorney Lew addressed questions regarding month-to-month leases, and the proposed noticing periods. She then advised the committee to consider a minimum 30-day noticing period for short-term leases. Vice Chair Giraudi spoke of the importance of flexibility and warned against the imposition of too many rules and regulations. Ms. Lew recommended the addition of language to read, “...either 30 days or a maximum of 5% of the total lease term period.” She also noted that she would research language in the Charter pertaining to the empowerment of a Tulare County superior court judge to appoint

a third appraiser, and would notify the committee should said language require modifications.

Member Irish expressed an interest in obtaining information regarding the City's current leases, to include: the number of total leases, parties, location of properties, terms, and extension options; which prompted discussion regarding the total period of the lease in instances where options are available.

The committee directed City Attorney Lew to draft language as discussed, and bring back to the committee for consideration.

Disposition: Direction given.

4. Consideration of Modifications to Charter Section 9, Pertaining to Council Reorganization

Chair Bailey introduced the item, and welcomed questions or comments from the committee.

Member Irish noted that the committee had yet to consider the timing of municipal elections, which would affect Charter Section 9. City Attorney Lew noted that the proposed changes pertained to reorganization as directed by the committee. It was noted that additional modifications could be considered at a later time.

Member Irish requested, as a housekeeping item, that use of the word "their" be changed to "its" in paragraph 6.

COMMITTEE ACTION: MOVED by Member Bush, SECONDED by Member Salazar that the Charter Review Committee authorize the City Attorney incorporate the additional changes, and bring back final language as a Consent Calendar item for committee consideration.

AYES: Irish, Green, Salazar, Bush, Giraudi, Bailey, Cortez
NOES: None
ABSTAIN: None
ABSENT: Hardin, Stowe

Documentation: M.O. 03-100913

Disposition: Approved incorporation of additional changes.

The committee took a ten minute break at 6:52 p.m.

5. Consideration of Modifications to Charter Section 67, Pertaining to Council Manic Interference

Chair Bailey introduced the item, and welcomed questions or comments from the committee.

City Attorney Lew indicated that the proposed language mirrored that from Santa Clara as directed by the committee, with the addition of “and powers” to account for the powers granted to the City Manager.

Member Irish requested clarification with regard to Section 67.1. City Attorney Lew agreed that the language was vague and requested additional time to remedy.

COMMITTEE ACTION: MOVED by Member Salazar, SECONDED by Member Irish that the Charter Review Committee approve the proposed modifications to Charter Section 67, as presented; and direct that Charter Section 67.1 be brought back.

AYES: Irish, Green, Salazar, Bush, Giraudi, Bailey, Cortez
NOES: None
ABSTAIN: None
ABSENT: Hardin, Stowe

Documentation: M.O. 04-100913
Disposition: Approved proposed Section 67.

6. Consideration of New City Charter Section 74 – General Penalty

Chair Bailey introduced the item, and welcomed questions or comments from the committee regarding the draft language.

Member Irish suggested that language be added pertaining to recovery of expenditures including attorney’s fees for bringing civil or other actions. Chair Bailey spoke of the likelihood of a demur, which is an assertion by the defendant that the plaintiff is not entitled to legal relief. Attorney Lew advised that inclusion of the language could increase the chances of prevailing on a demur. In response to discussion between Chair Bailey and Attorney Lew, Vice Chair Giraudi requested that they be mindful of others in the room that may not be familiar with legal terminology. Both Mr. Bailey and Ms. Lew provided clarification as requested.

Member Cortez inquired about the absence of language pertaining to specific penalties. City Attorney Lew advised that she refrained from including specific language to avoid having to amend due to changes in State law. In response to concerns raised by Member Green with regard to procedures, Ms. Lew indicated that language could be added which would allow for the Council to address via ordinances.

The committee directed that the City Attorney bring back draft language for consideration, to include: additional language granting authority to adopt ordinances to effect the section; language to account for the City's ability to recover costs, including attorney's fees to the full extent of the law; and clarification with regard to potential penalties for misdemeanors if possible.

Disposition: Direction given.

7. Consideration of Committee Member Items of Interest

Chair Bailey introduced the item, and noted that Vice Chair Giraudi had an item of interest. Vice Chair Giraudi spoke of concern in the community regarding the recent Council reorganization, and expressed an interest in considering a directly elected mayor.

A discussion followed regarding the role of mayor, during which various members of the committee indicated that they too had heard the same concerns raised by members of the community. The committee agreed that the item be scheduled on the next agenda.

Member Irish requested that Section 67.1, council compensation (Section 9), and mayoral proclamations be considered.

Chair Bailey indicated that he had been approached by staff with regard to term limits for commission/committee appointments.

Member Green expressed an interest in the formation of a sanctioned citizens watch dog committee.

The committee supported the addition of the above named items for future consideration.

Member Salazar spoke of time restraints, and suggested that the committee act to approve the previously discussed modifications to Item Nos. 2, 3, and 4, which were minor language changes. A discussion then ensued regarding the committee's consideration of the same items week after week, and their desire to move forward.

COMMITTEE ACTION: MOVED by Member Salazar, SECONDED by Member Green that the Charter Review Committee approve modifications to Item Nos. 2, 3, and 4, as discussed.

AYES: Irish, Green, Salazar, Bush, Giraudi, Bailey, Cortez
NOES: None
ABSTAIN: None
ABSENT: Hardin, Stowe

Documentation: M.O. 05-100913

Disposition: Approved Item Nos. 2, 3, and 4, as amended.

8. Scheduling of Future Meetings

Chair Bailey introduced the item and asked if there was any interested to change the day, time and/or frequency of the meetings. Vice Chair Giraudi spoke in favor of the established Wednesdays at 5:30 p.m. meeting time.

The committee considered whether they wished to change facilities to allow for longer meetings, but decided against it when waning productivity was raised as a concern.

The timeline provided by staff was reviewed, and discussion ensued regarding the frequency of meetings and the number of items on the agenda. A discussion ensued regarding the importance of meeting preparation and of the availability of staff for questions.

There was consensus reached that the next meeting would take place on October 23, 2013.

OTHER MATTERS

None

ADJOURNMENT

The committee adjourned at 8:13 p.m. to the meeting of October 23, 2013.

Luisa M. Zavala, Deputy City Clerk

Allan Bailey, Chair

**MCCORMICK KABOT JENNER & LEW
MEMORANDUM**

TO: Porterville Charter Review Committee
Cc: John Lollis, City Manager

FROM: Julia M. Lew, City Attorney

DATE: October 18, 2013

SUBJ: City Charter Section 67.1

Per the direction of the Committee, the language below for a proposed new Section 67.1 is provided for the Committee's consideration. This language has not changed but has previously been a part of Section 67 of the Charter, which also contained the restrictions on council member interference of administrative functions of the City Manager. The Committee directed that this newly proposed section be brought back for consideration at the October 23, 2013 Committee meeting.

Section 67.1 Political Activities by Legislative and Administrative Officers, Employees

Political activities of and campaign contributions by the city's legislative officers, administrative officers, and employees shall be governed in accordance with applicable state and federal law. All legislative and administrative officers and all city employees are prohibited from engaging in political activities during working hours. City officers and employees are prohibited from engaging in political activities at their work place.

Furthermore, city officers and employees are prohibited from engaging in political activities on city properties, provided this prohibition does not pertain to property that is otherwise open to the public for the purpose of engaging in political activities.

**MCCORMICK KABOT JENNER & LEW
MEMORANDUM**

TO: Porterville Charter Review Committee
Cc: John Lollis, City Manager

FROM: Julia M. Lew, City Attorney

DATE: October 4, 2013

SUBJ: New City Charter Section 74 – General Penalty

Per the direction of the Committee, below is the proposed new Section 74 of the Charter, with revisions as directed at last Committee meeting.

Sec. 74 Violations.

This section shall apply only if a penalty/violation is not otherwise explicitly provided for in the Charter. A violation of any provision of this Charter shall be a misdemeanor *with maximum fines and imprisonment as allowed by law*, except that such violation may be prosecuted as an infraction, at the discretion of the City Council.

Any violation of this Charter may be prosecuted in the name of the People of the State of California or may be redressed by the City through any legal or equitable remedies; including but not limited to civil action and/or injunction, or administrative citation in accordance with adopted City ordinances. To *the fullest* extent allowed by law, civil remedies may be utilized in addition to or as an alternative to criminal enforcement.

The City shall, to the fullest extent allowed by law, be authorized to recover its full costs, including reasonable attorneys' fees, for the enforcement of any violation of this Charter or Municipal Code. The City Council is authorized to adopt any necessary or appropriate ordinances to implement this section of the Charter.

Senate Bill No. 7

CHAPTER 794

An act to add Section 1782 to the Labor Code, relating to public works.

[Approved by Governor October 13, 2013. Filed with
Secretary of State October 13, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 7, Steinberg. Public works: charter cities.

Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, be paid to workers employed on public works projects. Existing law defines "public works" to include, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds, and street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

This bill would prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with prevailing wage provisions on any public works contract. The bill would, except as specified, prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has awarded, within the prior 2 years, a public works contract without requiring the contractor to comply with prevailing wage provisions. This bill would authorize charter cities to receive or use state funding or financial assistance if the city has a local prevailing wage ordinance, applicable to all of its public works contracts, that includes requirements that are equal to or greater than the state's prevailing wage requirements, as specified. This bill would exclude contracts for projects of \$25,000 or less for construction work, or projects of \$15,000 or less for alteration, demolition, repair, or maintenance work. This bill would require the Director of Industrial Relations to maintain a list of charter cities that may receive and use state funding or financial assistance for their construction projects.

This bill would provide that it does not restrict a charter city from receiving or using state funding or financial assistance that was awarded to the city prior to January 1, 2015, or from receiving or using state funding or financial assistance to complete a contract that was awarded prior to January 1, 2015, and that a charter city would not be disqualified from receiving or using state funding or financial assistance for its construction projects based on the city's failure to require a contractor to comply with

prevailing wage provisions in performing a contract the city advertised for bid or awarded prior to January 1, 2015.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is a matter of statewide concern that California has an available workforce of skilled construction workers to efficiently complete both public and private infrastructure projects, and maintaining that workforce requires the continual training of new workers to replace the aging workforce. An in-state workforce of skilled construction workers who can complete projects in a streamlined manner benefits the state's economy.

(b) The state's prevailing wage law promotes the creation of a skilled construction workforce. The requirement that contractors on public work pay prevailing wages to their employees encourages contractors to hire the most skilled workers and to invest in their training. The incentives provided in the prevailing wage law for formal apprenticeship training in state-approved programs provide the financial support and on-the-job training opportunities necessary to train the next generation of skilled construction workers.

(c) The majority of California workers do not have four-year college degrees, and maintaining construction work as an occupation that can provide good jobs to California workers is important to the future of the state.

(d) The state's prevailing wage law helps to maintain construction work as an occupation that provides middle-class jobs to hundreds of thousands of California workers, enabling the workers to support families and contribute to their communities. The prevailing wage law also provides necessary on-the-job training opportunities for the more than 50,000 apprentices enrolled in state-approved apprenticeship programs in the building and construction trades, enabling the apprentices to graduate from the programs and pursue careers as journey-level workers.

(e) The state's prevailing wage law applies to construction projects paid for in whole or in part out of public funds, including projects awarded by any county, city, district, public housing authority, public agency of the state, and assessment or improvement districts.

(f) The California Supreme Court has held that charter cities need not require contractors to comply with the state's prevailing wage law on purely municipal projects. Many charter cities require contractors to comply with the state's prevailing wage law on their municipal projects, but some charter cities do not.

(g) Charter cities that require compliance with the prevailing wage law on their municipal projects are furthering a state policy that has substantial benefits that go beyond the limits of the city. Many of the workers employed on a municipal project will not live in the city where the project is located, and many apprentices receiving training on municipal projects will pursue careers outside the city.

(h) The state has limited financial resources to support local construction projects, and it would further state policy to provide financial assistance only to those charter cities that require compliance with the prevailing wage law on all their municipal construction projects. To the extent that requiring compliance with the state's prevailing wage law may raise the cost of municipal projects for these cities, these cities also would be more in need of state financial support for their other construction projects.

(i) Part of the state's purpose in subsidizing public works projects is to create and maintain good jobs and training opportunities in the construction industry in order to preserve the middle class. Cities that require compliance with the prevailing wage law on all their public works projects have construction programs that are furthering rather than undermining that goal.

(j) The intent of Section 1782 of the Labor Code is to provide a financial incentive for charter cities to require contractors on their municipal construction projects to comply with the state's prevailing wage law by making these charter cities eligible to receive and use state funding or financial assistance for their construction projects. State funding or financial assistance for charter city construction projects makes up only a small portion of charter city budgets, and charter cities have the power to raise other revenues if they do not wish to require the payment of prevailing wages on all their municipal construction projects.

SEC. 2. Section 1782 is added to the Labor Code, to read:

1782. (a) A charter city shall not receive or use state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with the provisions of this article on any public works contract.

(b) A charter city shall not receive or use state funding or financial assistance for a construction project if the city has awarded, within the prior two years, a public works contract without requiring the contractor to comply with all of the provisions of this article. This subdivision shall not apply if the charter city's failure to include the prevailing wage or apprenticeship requirement in a particular contract was inadvertent and contrary to a city charter provision or ordinance that otherwise requires compliance with this article.

(c) A charter city is not disqualified by subdivision (a) from receiving or using state funding or financial assistance for its construction projects if the charter city has a local prevailing wage ordinance for all its public works contracts that includes requirements that in all respects are equal to or greater than the requirements imposed by the provisions of this article and that do not authorize a contractor to not comply with this article.

(d) For purposes of this section, the following shall apply:

(1) A public works contract does not include contracts for projects of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or projects of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work.

(2) A charter city includes any agency of a charter city and any entity controlled by a charter city whose contracts would be subject to this article.

(3) A “construction project” means a project that involves the award of a public works contract.

(4) State funding or financial assistance includes direct state funding, state loans and loan guarantees, state tax credits, and any other type of state financial support for a construction project. State funding or financial assistance does not include revenues that charter cities are entitled to receive without conditions under the California Constitution.

(e) The Director of Industrial Relations shall maintain a list of charter cities that may receive and use state funding or financial assistance for their construction projects.

(f) (1) This section does not restrict a charter city from receiving or using state funding or financial assistance that was awarded to the city prior to January 1, 2015, or from receiving or using state funding or financial assistance to complete a contract that was awarded prior to January 1, 2015.

(2) A charter city is not disqualified by subdivision (b) from receiving or using state funding or financial assistance for its construction projects based on the city’s failure to require a contractor to comply with this article in performing a contract the city advertised for bid or awarded prior to January 1, 2015.

SEC. 3. The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.