



# City of San José Charter Review Commission

City Charters 101 & Intro to San José's Charter

*Prepared January 25th, 2021 by CivicMakers, LLC*

# Outline

## **Part I - City Charters 101**

- History of City Charters
- Local Governance Models
- Evolution of City Charters
- Establishing and Revising a Charter in CA

## **Part II - San José City Charter Intro**

- Process of Establishing the 1965 City Charter
- Specifics of Governance
- Charter Provisions

# Part I - City Charters 101

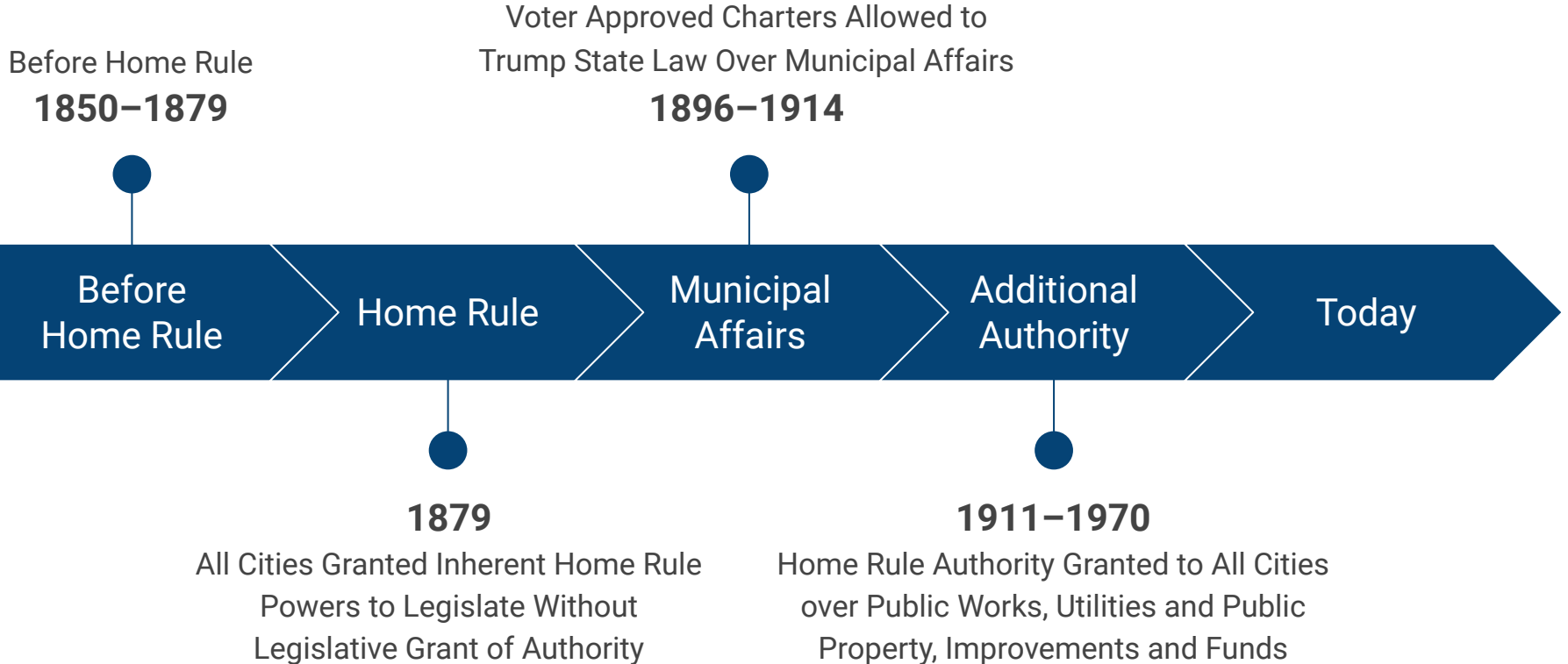
- **History of City Charters**
  - Local Governance Models
  - Evolution of City Charters
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# What is a City Charter?

A city charter or town charter (generically, municipal charter) is a legal document (charter) establishing a municipality such as a city or town.

In the United States, such charters are established either directly by a state legislature by means of local legislation, or indirectly under a general municipal corporation law, usually after the proposed charter has passed a referendum vote of the affected population.

# California's Constitution City Charter Provisions



# Before Home Rule – 1850–1879

City governments already existed when California became a state in 1850

The 1849 California Constitution gave the Legislature the exclusive power to establish cities and to enlarge or restrict city powers. This naturally led to extensive state involvement in city affairs.

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.

# All Cities Granted Home Rule Powers – 1879

1879 Constitutional 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.

California Constitution of 1879 home rule amendment (Article XI) granted inherent home rule power to every city – general and charter – to “make or enforce within its limits all local, police, sanitary, and other ordinances or regulations not in conflict with the general laws.” Also known as “police power.”

*“...allow [local governments] to exercise whatever powers appeared necessary, without the need to request legislative authorization before taking action.”*

- **Professor Joséph Grodin**  
*Hastings College of the Law*

# Voter Approved Charters Allowed to Trump State Law Over Municipal Affairs – 1896–1914

The 1896 Constitution Article XI, Section 5a (art. XI, § 5a) introduced the concept of “**municipal affairs**”:

- A. 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.**
- B. As to matters of statewide concern, however, charter cities remain subject to state law.

**Specifically identifies four subjects that can be included in a charter:**

- C. (1) a city police force;**
- D. (2) subgovernment in all or part of the city;**
- E. (3) conduct of city elections; and**
- F. (4) election, appointment, removal, and compensation of municipal officers and employees whose compensation is paid by the city.**



# 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.

Article 11, Section 9 (art. XI, § 9) provides 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.”

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.” in conjunction with the broad authority over such activities granted to both the Legislature and the Public Utilities.

# California Home Rule Today

Today the California Constitution authorizes both general law and charter cities:

- I. Purview over all local, police, sanitary, and other policy not in conflict with general laws. (art. XI, § 7);
- II. to establish, purchase, and operate public works and utilities or franchise others to do so (art. XI, § 9); and,
- III. to be free from state legislation delegating private control over city property, funds, functions, etc. (art. XI, § 11).

**Cities with voter-approved charters:**

- IV. **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).**
- V. **City charter provisions prevail over general state law in municipal affairs areas, specifically (art. XI, § 5):**
  - A. **a city police force;**
  - B. **subgovernment in all or part of the city;**
  - C. **conduct of city elections; and**
  - D. **election, appointment, removal, and compensation of officers/employees paid by the city.**

As to matters of statewide concern, however, charter cities remain subject to state law.

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# Local Governance Models

## Mayor-Council

Elected council or board serves as the legislative body. The chief elected official (e.g., mayor) is the head of government, with significant administrative authority, and generally elected separately from the council.

## Council-Manager

Elected council and chief elected official are responsible for making policy. A professional administrator appointed by the board or council has full responsibility for the day-to-day operations of the government.

## Others

- Commission,
- Town meeting
- Representative town meeting

# Mayor-Council Form

## “Strong” Mayor (Mayor-Council)

- Mayor may appoint and remove departmental heads.
- Mayor drafts/proposes budget to Council.
- Mayor possesses veto or line-item veto power.
- Mayor officially represents the City on the state, national and international levels.
- Mayor exercises oversight of the City’s day-to-day operations.
- Mayor enforces city laws and ordinances.
- Mayor is not a member of City Council.
- **Variations: With or without City Manager**

## “Weak” Mayor (Mayor-Council)

- Council appoints/approves departmental heads.
- Council (usually in consultation with Mayor or City Manager) drafts budget.
- Mayor possesses limited or no veto power.
- Mayor officially represents the City on the state, national and international levels.
- Mayor shares oversight of day-to-day operations with Council, City Manager or both.
- Mayor works together with Council, City Manager or both to enforce laws and ordinances.
- Mayor may be Council member or presiding officer.
- **Variations: With or without City Manager**

# Council-Manager Form

## City Manager

- Appointed/dismissed by Council.
- Responsible for drafting and proposing budget.
- Responsible for amending budget as dictated by Council.
- Responsible for appointing departmental heads/directors (sometimes with Council approval).
- Responsible for implementing and enforcing Council policies and legislative initiatives.

## City Council

- Elected to two or four year terms either by district or at-large.
- Responsible for appointing a city-manager.
- Responsible for drafting and passing legislation and city ordinances.
- Responsible for approving budget proposed by the City Manager.

## Mayor

- Generally elected at-large to two or four year terms.
- Votes at Council meetings.
- Does not possess veto powers.
- Officially represents the City on the state, national, and international levels.

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# Shift from Mayor-Council to Council Manager

In the late nineteenth and early twentieth centuries most cities utilized a weak mayor-council form of municipal government.

In the late nineteenth century, cities began experimenting with other types of municipal government. A political movement began that criticized inefficiencies in weak mayor-council governments and their failure to break the power of the political bosses and machines that influenced American politics.

The Strong mayor-council form emerged out of this movement , which executive and administrative power was removed from city council and placed in the hands of an at-large elected mayor.

Another development, however, was the council-manager government in which city councils were required to hire a professional administrator who would be responsible for municipal finances, the implementation and enforcement of law, and basic city administration.



# Different Forms For Different Stages

Smaller cities – usually under 50,000 residents – often consider shifting the governance model as they grow. The increase complexity of administration for a growing city often will prompt cities to move away mayor-council forms to council-manager arrangements for more efficiency and accountability.

Political scientists and policy analysts have stated that the prevalence of the council-manager form of government was indicative of a trend toward professionalization in municipal administration, and that state laws and transparency and accountability organizations were the catalysts of this trend.

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# Establishing or Revising a Charter in California

The California State Constitution, Article 11, Section 3 (art. XI, § 3) lays out two methods for establishing or revising a City Charter:

- (b) The **governing body** or **charter commission** of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body.
- (c) An election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body.
- (d) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

# Part II - San José City Charter Intro

- **Process of Establishing the 1965 City Charter**
  - Specifics of Governance
  - Charter Provisions

# Process of Establishing the 1965 City Charter

Multiple Charters have existed in San José.

Charter Revision Commission has existed since 1917.

Not much background on the 1965 Charter Commission process, other than:

*“15 local landowners gathered to write the blueprint  
for how the city would operate”*

- **Charles Davidson**  
*Member of 1965 Charter Commission*

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# San José Form of Governance

Council-manager government with City Manager nominated by the Mayor and elected by Council.

## Mayor & Council

- 10 council members elected by district
- Mayor elected by the entire City; no veto powers
- Four-year terms; even-numbered districts beginning in 1994; Mayor and odd-numbered districts in 1996
- Mayor and Council limited to two successive terms; council member that has reached the term limit can be elected mayor, and vice versa

## City Manager

- City Manager is the chief administrative officer of the City, and must present an annual budget for approval by the city council.
- When vacant, Mayor proposes candidate for City Manager, subject to Council approval. Council appoints City Manager for indefinite term, and may at any time remove the manager, or the electorate may remove the manager through a recall election.
- Council directly appoints: City Attorney, City Auditor, City Clerk, Independent Police Auditor

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# Relevant San José City Charter Provisions

- I. Incorporation and Succession
- II. Powers of the City
- III. Form of Government**
- IV. The Council**
  - A. SECTION 400. Powers Vested in Council.
  - B. SECTION 402. Mayor and Council Member Term Limits.
  - C. SECTION 411. - The Council; Interference With Administrative Matters.
  - D. SECTION 411.1 Department Heads; Policy Objectives; Consent to Hire.
- V. The Mayor**
  - A. SECTION 501. Political Position.
  - B. SECTION 502. The Mayor; Powers and Duties.
- VI. VI - Legislation**
  - A. SECTION 607. Code of Ethics.

# Relevant San José City Charter Provisions

## **VII. City Manager**

- A. SECTION 700. Appointment, Term and Compensation.
- B. SECTION 701. City Manager; Powers and Duties

## **VIII. Administrative Organization**

- A. SECTION 800. Administrative Organization; General Provisions.
- B. SECTION 801. Direction by City Manager.
- C. SECTION 802. Organization, Conduct and Operation of Departments.

## **IX. Officers and Employees**

- A. SECTION 901. Officers and Employees; Appointment and Removal.

X. Boards and Commissions

XI. Civil Service System

XII. Fiscal Administration

# Relevant San José City Charter Provisions

XIII. Franchises

XIV. School System

XV. XV - Retirement

XV-A - Retirement

**XVI. XVI - Elections**

A. SECTION 1600. Municipal Elections.

B. SECTION 1601. Special Municipal Elections

C. SECTION 1603. Initiative, Referendum and Recall.

D. SECTION 1604. Removal of City Manager.

XVII. General Provisions

XVIII. Transitional Provisions

XIX. An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas.

# References

## **History of Home Rule, California League of California Cities.**

<https://www.cacities.org/Resources/Charter-Cities>

<https://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/History-of-Municipal-Home-Rule-2>

## **Ballotpedia**

[https://ballotpedia.org/Council-manager\\_government](https://ballotpedia.org/Council-manager_government)

[https://ballotpedia.org/Mayor-council\\_government](https://ballotpedia.org/Mayor-council_government)

## **National League of Cities**

<https://www.nlc.org/resource/forms-of-municipal-government/>