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## The Evolution of the Municipal Corporation and the Innovations of Local Governance in California to Preserve Home Rule and Local Control

Frank Vram Zerunyan

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# THE EVOLUTION OF THE MUNICIPAL CORPORATION AND THE INNOVATIONS OF LOCAL GOVERNANCE IN CALIFORNIA TO PRESERVE HOME RULE AND LOCAL CONTROL

*Frank Vram Zerunyan, J.D.\**

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## INTRODUCTION

The U.S. Constitution is the fundamental law of the United States of America. Drafted at the Constitutional Convention in Philadelphia, Pennsylvania, in 1787, it is the world’s oldest and still valid written constitution.<sup>1</sup> While it is common knowledge that the words “local government” and “home rule” do not appear in the text of the Constitution, it is incorrect to conclude that the drafters of the Constitution did not value decentralization or local governance. To this day, real American daily life at the local level is alive and well. After all, we live, work and die in cities or towns across these United States. Cities are the most networked and interconnected of our political organizations. They govern through

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\* Professor of the Practice of Governance at the University of Southern California Sol Price School of Public Policy and three-term Mayor and Council Member in the City of Rolling Hills Estates, California.

1. See Johnny H. Killian, *Constitution of the United States*, U.S. S. (1994), [http://www.senate.gov/civics/constitution\\_item/constitution.htm](http://www.senate.gov/civics/constitution_item/constitution.htm) [https://perma.cc/74UL-TLWK].

collaboration and pragmatism to solve real public-administration problems at the local level.<sup>2</sup> This article reviews the evolution of municipal corporations and the innovations that make them special in the art and science of local governance.

The concept of decentralized governance finds its roots in the Articles of Confederation, which, of course, predates the U.S. Constitution and the Bill of Rights.<sup>3</sup> Article II of the Articles of Confederation declares that “each state retains its sovereignty, freedom and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.”<sup>4</sup> Similarly, the Tenth Amendment of the Constitution states that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”<sup>5</sup> Because the Tenth Amendment was a natural progression of that for which the Federalists had argued and advocated during the adoption of the Constitution,<sup>6</sup> James Madison faced no opposition in proposing it. Reading this Amendment in the context of the Age of Enlightenment provides the strongest evidence that the drafters very much intended to bring government closest to the people and away from a central form of authority. French, English, and American political philosophers, such as Montesquieu, Voltaire, John Locke, and Thomas Paine, authored many writings during this period against authoritarian government and for representative government.<sup>7</sup> In fact, these concerns about centralized versus decentralized powers came about mainly because of colonial America’s experience in which most people interacted with their local officials.<sup>8</sup> This special experience was observed by Alexis De Tocqueville, who coined the term “American Exceptionalism.”<sup>9</sup> In 2017, not much has changed. The level of government that interacts the most with

2. See BENJAMIN R. BARBER, *IF MAYORS RULED THE WORLD* 4 (2013).

3. See *Founding Documents and Resources*, B. OF RTS. INST., <https://www.billofrightsinstitute.org/founding-documents> [https://perma.cc/36MY-D88S]. See generally *MILESTONES: 1776–1783: Articles of Confederation, 1777–1781*, OFFICE OF THE HISTORIAN, U.S. DEP’T OF STATE, <https://history.state.gov/milestones/1776-1783/articles> [https://perma.cc/7THX-4Z8Z].

4. ARTICLES OF CONFEDERATION of 1781, art. II.

5. U.S. CONST. amend. X.

6. See THE FEDERALIST NO. 45 (James Madison) (“The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”).

7. See THOMAS PAINE, *COMMON SENSE* (1776). See generally Eiichi Shimomissé, *The Philosophies of Enlightenment*, CTR. FOR PHILOSOPHY & PHENOMENOLOGICAL STUDIES (1997), [http://www.csudh.edu/phenom\\_studies/western/lect\\_8.html](http://www.csudh.edu/phenom_studies/western/lect_8.html) [https://perma.cc/DNQ7-TL2W].

8. See generally EARNEST S. GRIFFITH, *HISTORY OF AMERICAN CITY GOVERNMENT: THE COLONIAL PERIOD* (1972).

9. See 2 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 36 (1840).

citizens through municipal departments, public schools, and various special districts is still exceptional and is very much local.<sup>10</sup>

The drafters of the Constitution understood that a broader national authority would destroy local interests. They worked to create a functional republican structure strong enough to enforce national interests but limited enough to assure individual self-determination where citizens lived and worked.<sup>11</sup> Madison summarized this concept as “the necessity of providing more effectually for the security of private rights, and the steady dispensation of Justice.”<sup>12</sup> At the Constitutional Convention, Madison unsuccessfully argued that the U.S. Congress should have power to veto state laws. Alexander Hamilton, on the other hand, concerned with the mighty power of the national government, wrote that state legislatures in such instances should “sound the alarm to the people” and serve as the “jealous guardians of the rights of citizens.”<sup>13</sup> The controversy about the appropriate division of power between the federal government and the states still rages today, but there is no question that the drafters of the Constitution agreed on the wisdom of dividing power both among branches of government and within those branches of government.<sup>14</sup> That division is reflected today in the constitutions of all fifty states, where local governments find their voice in home rule, or what has generically become the concept of local control, one state constitution at a time.<sup>15</sup> Simply stated, home rule refers to the power of a local municipality to set up its own system or charter of self-government as opposed to receiving that charter from the state.<sup>16</sup>

This eight-part Article discusses the historical evolution of the municipal corporation, the nuances of self-governance, California law on municipal

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10. *See Speak Out*, ANNENBERG CLASSROOM, <http://www.annenbergclassroom.org/speakout/how-does-local-government-affect-you> [<https://perma.cc/EE4L-C5LA>].

11. The U.S. Constitution grants very limited powers to the federal government. Instead, the Tenth Amendment reserves authority-giving powers to states. To describe local governments today is to speak of fifty different legal and political organizations.

12. *See Madison Debates—June 6*, THE AVALON PROJECT (June 6, 1787), [http://avalon.law.yale.edu/18th\\_century/debates\\_606.asp](http://avalon.law.yale.edu/18th_century/debates_606.asp) [<https://perma.cc/4B2J-X9CE>].

13. *See* THE FEDERALIST NO. 26 (Alexander Hamilton).

14. *Nat’l Fed’n of Indep. Bus. et al. v. Sebelius*, 132 S. Ct. 2566, 2573 (2012) (“The Framers knew the difference between doing something and doing nothing. They gave Congress the power to regulate commerce, not to compel it. Ignoring that distinction would undermine the principle that the Federal Government is a government of limited and enumerated powers.”).

15. *See Local Government Authority*, NAT’L LEAGUE OF CITIES, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-powers/local-government-authority> [<https://perma.cc/52JW-ELXT>].

16. *Home Rule Law & Legal Definition*, USLEGAL, <http://definitions.uslegal.com/home-rule/> [<https://perma.cc/44FE-ENZC>].

affairs, and California-centric innovations in governance.<sup>17</sup> Part I describes the historical context for local governance, which has led to home rule not only in California but also across the nation. In Part II, the Article dives right into the discussion of home rule in the context of the legal entity known in California as charter law cities. Part III distinguishes charter law cities from the overwhelming majority of city structures in California, known as general law cities, which also enjoy home rule through what is commonly referred to as police power. In Part IV, the Article defines and draws distinctions between governance models known in California as independent or contract cities. Part V focuses on the innovation in governance known in California as the Lakewood Plan, which facilitates the governance model of contract cities. Parts VI and VII provide a general discussion of guiding principles in management and uniform laws applicable to municipalities, and the Article winds down in Part VIII by examining tax matters and infrastructure finance tools unique to California.

### I. HISTORY OF THE MUNICIPAL CORPORATION

Until about the mid to late nineteenth century, the powers given to local governments through state constitutions remained untested. The general interpretation of a local government's authority in early 1800s was unchallenged in the courts and was, therefore, under a state government's discretion. State's interpretations became the subject matter of litigation in the late 1800s. Two separate rulings, one from Iowa and the other from Michigan, framed two diametrically opposed viewpoints. In 1868, Judge John F. Dillon of Iowa affirmed a narrow interpretation of a local government's authority,<sup>18</sup> holding that municipalities maintain a subordinate status within the state because, as a rule, they get their specific powers from the state. Therefore, in the absence of specific provisions increasing their power, municipalities are subject to state legislative control. This view became known as Dillon's Rule. In contrast, in 1871, Judge Thomas Cooley of the Michigan Supreme Court challenged Dillon's Rule,<sup>19</sup> holding that municipalities possess inherent rights to local self-governance. Taking a more populist view, Judge Cooley reasoned that "local governments . . . are either simultaneous with, or precede, the more central authority" and that, if Dillon's Rule were publicly asserted, it "would be somewhat startling to our people."<sup>20</sup> However, the Cooley view of local government power as an absolute right never gained much acceptance and was, in fact, discredited by

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17. The selection of California law is purely the personal choice of the author, a California lawyer and a California public servant.

18. *City of Clinton v. Cedar Rapids & Mo. R.R.*, 24 Iowa 455, 475 (1868).

19. *People ex rel. Leroy v. Hurlbut*, 24 Mich. 44, 109 (1871).

20. *See id.* at 100.

the United States Supreme Court. In 1903 and again in 1923, the Court upheld Dillon's Rule.<sup>21</sup> In the years following those decisions, with few exceptions, state law restricted municipal powers to those "explicitly granted," "necessarily or fairly implied," or "essential" to accomplish the purposes of the municipality.<sup>22</sup>

The evolution of Dillon's Rule restricted home rule, requiring states to explicitly grant power to cities through state constitutions or subsequent legislation. In practice, today Dillon's Rule is fully implemented in the overwhelming majority of states, which create through their constitutions the power for local self-governance by a local charter.<sup>23</sup> State provisions for home rule are specifically defined by each state's constitution or, in states like California, by additional statutes enacted by that state's legislature. In California, home rule applies to what California labels as charter law cities.<sup>24</sup>

All states grant cities and counties the ability to administer their municipalities at the local level through either the state constitution or government code. These provisions set forth the powers of cities and counties to organize under the laws of the state as a municipal corporation. For example, California provides for two types of municipal corporations: charter cities and general law cities.<sup>25</sup> The California Constitution prescribes a uniform procedure for the formation of charter cities, while statutes in the California Government Code provide the procedure for the formation of general law cities.<sup>26</sup> The basic difference between general law and charter law cities is the degree of control that the state government may exercise over them. Because charter cities are granted the authority of home rule and the right to craft their own charters, they enjoy more freedom than general law cities to innovate and to pass ordinances according to local need.

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21. Dillon's Rule is within the mainstream of American judicial and academic sentiment. *See, e.g.*, 2 MCQUILLIN MUN. CORP., THE LAW OF MUNICIPAL CORPORATIONS § 4:3 (3d ed.); Gerald E. Drug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1082 (1980).

22. *Atkin v. Kansas*, 191 U.S. 207, 221 (1903); Attorney Gen. *ex rel. Lennane v. City of Detroit*, 196 N.W. 391, 392 (Mich. 1923). These cases uphold Dillon's Rule and its purpose to restrict municipal powers to those explicitly granted.

23. NAT'L LEAGUE OF CITIES, *supra* note 15.

24. CAL. CONST. art. XI, § 3(a) (West 2016) ("For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.").

25. *See generally* CAL. CONST. art. XI (West 2016).

26. General law cities operate under California Government Code Title 4 (commencing with § 34000) and other applicable California laws. *See generally* CAL. GOV'T CODE § 23000 et seq. (West 1947); CAL. GOV'T CODE § 34000 et seq. (West 1949).

Nevertheless, in practice general law cities also have considerable choice in the management of their local affairs. Article XI, Section 7 of the current California Constitution provides a general grant of inherent local powers to every city without regard to its status as a charter or general law city.<sup>27</sup> Some refer to this as the police power or even home rule.<sup>28</sup> In fact, absent a clear indication of preemptive intent from the California Legislature, cities are granted clear powers to regulate land use and other matters linked to this police power.<sup>29</sup> Because the state Constitution and Legislature have tended to give general law cities similar management control over local matters as they have to charter cities, the original distinction between the two forms of city authority has been somewhat blurred in California.

In light of the advancement of general law in Government Code sections, developing jurisprudence, and legislative power granted to municipalities to manage local affairs, most cities, in practice, are general law cities. They opt out of home rule under a charter to save on the administrative cost of establishing and maintaining the charter. This ratio is supported by the data in California, where 121 cities out of 482 total California cities operate under chartered home rule.<sup>30</sup> With a handful of exceptions, charter law cities in California were either incorporated before 1960 or are larger cities with average population sizes over 100,000 residents. However, a disproportionate amount of Californians live in charter cities, including Los Angeles, San Diego, San Jose, Santa Clara, Sacramento, and San Francisco.<sup>31</sup>

The first California Constitution was adopted in November of 1849 in advance of California attaining statehood in the United States.<sup>32</sup> The first incorporated charter city in California was the city of San Francisco, incorporated February 18, 1850, followed by Sacramento on February 27,

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27. See generally CAL. CONST. art. XI § 7 (West 2016).

28. See generally CAL. CONST. art. XI (West 2016); Kourtney Burdick et al., *The Origins of California City Powers*, WESTERN CITY, Jan. 2008, <http://www.westerncity.com/Western-City/January-2008/The-Origins-of-California-City-Powers/> [<https://perma.cc/5JGL-T2F4>].

29. *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal. 4th 729, 742-43 (2013). It is worthy of note that this case involves the regulatory legislation of a charter city, since charter cities as well as general law cities exercise home rule under the inherent police power granted to all cities by Article XI, § 7. In other words, the City of Riverside did not rely on its status as a charter city under Article XI, § 5, but, rather, on its home rule authority under Article XI, § 7.

30. CAL. CONST. art. XI, § 3(a) (West 2016); *Charter Cities List*, LEAGUE OF CAL. CITIES, [http://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Charter\\_Cities-List](http://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Charter_Cities-List) [<https://perma.cc/C32C-ZRW8>] (Nov. 13, 2016).

31. LEAGUE OF CAL. CITIES, *supra* note 30.

32. *Constitutions*, CAL. SEC'Y OF ST., <http://www.sos.ca.gov/archives/collections/constitutions> [<https://perma.cc/3SN7-L3UN>]; *California Admission Day September 9, 1850*, CAL. DEP'T OF PARKS & RECREATION, [https://www.parks.ca.gov/?page\\_id=23856](https://www.parks.ca.gov/?page_id=23856) [<https://perma.cc/3EEM-HWN2>].

both San Diego and San Jose on March 27, 1850, and Los Angeles on April 4, 1850.<sup>33</sup> Among the last few incorporated resort or tourist-driven charter cities in California are Big Bear Lake and Solvang, incorporated in 1980 and 1985, respectively.<sup>34</sup> They are atypical as charter cities for their size and population. The last city incorporated in the state of California, on July 1, 2011, was the city of Jurupa Valley in Riverside County.<sup>35</sup> Wildomar is a general law city, joining the ranks of a substantial majority of cities in California.

California general law cities can always seek to transform themselves into charter law cities, embracing more control through the adoption of a charter in municipal elections. However, these instances are rare. Recent ballot initiative attempts to transform general law cities to charter law cities have seen mixed results in California. Some, like the city of Vista, have succeeded, while others, like Rancho Palos Verdes and Costa Mesa, have failed miserably in municipal elections for political reasons.<sup>36</sup> In the latter examples, cities very publicly drafted charters to bypass the public contracting code to procure public contracts or limit public pension liabilities but were opposed by public service unions. These unions' political muscle in California was not to be underestimated.<sup>37</sup>

Although political tensions over who should exercise power to govern local jurisdictions are not new, many local government officials in both charter and general law cities still subscribe to the view that they, rather than

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33. See *California Cities by Incorporation Date*, CAL. ASS'N OF LOCAL AGENCY FORMATION COMM'NS 1, 6 (Mar. 2011), <http://calafco.org/resources/incorporated-cities/california-cities-incorporation-date> [<https://perma.cc/73YA-5M72>]; LEAGUE OF CAL. CITIES, *supra* note 30.

34. See ASS'N OF LOCAL AGENCY FORMATION COMM'NS, *supra* note 33, at 1; LEAGUE OF CAL. CITIES, *supra* note 30.

35. See ASS'N OF LOCAL AGENCY FORMATION COMM'NS, *supra* note 33, at 1; LEAGUE OF CAL. CITIES, *supra* note 30.

36. Melissa Pamer, *Voters Dump Proposal to Make RPV a Charter City*, PASADENA STAR-NEWS (Mar. 9, 2011), <http://www.pasadenastarnews.com/general-news/20110309/updated-voters-dump-proposal-to-make-rpv-a-charter-city> [<https://perma.cc/PN4W-SMGT>]; Stephen Tedesco et al., *California Supreme Court Rules That State's Prevailing Wage Law Is Not Quite So Prevailing: Charter Cities Need Not Require Prevailing Wages on Publicly Funded Municipal Construction Projects*, LITTLER MENDELSON P.C. (July 12, 2012), <https://www.littler.com/california-supreme-court-rules-state%E2%80%99s-prevailing-wage-law-not-quite-so-prevailing-charter-cities> [<https://perma.cc/EU8R-UQS5>]; *Voters Reject Charter City Plan*, STATE BLDG. & CONSTR. TRADE COUNCIL OF CAL. (Mar. 16, 2011), <http://www.sbctc.org/doc.asp?id=182> [<https://perma.cc/H6BY-5H2K>]; Bradley Zint, *City Charter Measure Soundly Rejected by Costa Mesa Voters*, L.A. TIMES (Nov. 7, 2012), <http://latimesblogs.latimes.com/lanow/2012/11/city-charter-soundly-rejected-by-costa-mesa-voters.html> [<https://perma.cc/HMH6-C8HL>].

37. Kevin Dayton, *How Unions Undermined the Rights of California's Charter Cities*, UNION WATCH (Mar. 28, 2016), <http://unionwatch.org/union-backed-california-law-may-scuttle-financing-of-sacramento-infill-project> [<https://perma.cc/M9FY-EZLG>].



the state, are best equipped to learn the needs of their constituents and respond to those needs in their own municipalities. This view creates a certain degree of tension between members of various city councils in California and their state representatives, some of whom rise from the ranks of local governments. For example, in 2011 the state of California abolished more than four hundred redevelopment agencies, using local redevelopment funds to help close a budget gap that the state itself had created by failing to exercise fiscal restraint in times of diminished revenues.<sup>38</sup> The California Supreme Court sided with the state, inflicting a major blow to local redevelopment agencies authorized by law since 1945.<sup>39</sup> Cities felt betrayed by their own representatives who voted to abolish this long established policy favoring redevelopment.<sup>40</sup> The exercise of this state power at the expense of local power has damaged the relationship of local and state officials, who collectively continue to work toward reconciliation.

## II. CALIFORNIA'S CHARTER LAW CITY AND THE SIGNIFICANCE OF SOVEREIGNTY IN MUNICIPAL AFFAIRS

California's charter law is an explicit grant of power to manage municipal affairs at the very local level.<sup>41</sup> While general law cities enjoy a certain amount of home rule through the constitutional grant of police power, charter law cities enjoy more freedom because they are permitted to write their own charters to shape their styles of governance and, more importantly, cater to their local needs. In addition, charters allow cities to declare supremacy over their municipal affairs.

The issue of what constitutes a municipal affair in California remains very much in a state of flux, adding to the political tensions experienced by local and state officials. The original California Constitution does not appear to be too concerned with the appropriate management structure of a municipality and, thus, does not reference the term at all. Recognizing the absence of any guidance on the topic by the Constitution, the California Supreme Court practically described what became Dillon's Rule a few years after California adopted its Constitution. The California Supreme Court held that "local governments derive their powers from the paramount political head, which while it cedes to certain local agents certain powers, does not thereby remit its rightful and ultimate dominion."<sup>42</sup>

The California Constitution of 1879 remedied a number of shortcomings of the first state constitution, including this lack of guidance. Article XI

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38. Cal. Redevelopment Ass'n v. Matosantos, 53 Cal. 4th 231, 253 (2011).

39. *See id.* at 245.

40. *See id.* at 262.

41. *See generally* CAL. CONST. art. XI, § 7.

42. Pattison v. Bd. of Supervisors, 13 Cal. 175, 184 (1859).

clearly grants charter cities supreme authority over their municipal affairs so that their laws regarding municipal affairs trump state law:<sup>43</sup> “[c]ities and towns hereafter organized under charters framed and adopted by authority of this Constitution are hereby empowered . . . to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters.”<sup>44</sup>

In 1899 the California Supreme Court explained that charter provisions were “enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs.”<sup>45</sup>

Instead of explicitly defining municipal affair, the California Constitution provides a set of core issues that fall under this category.<sup>46</sup> For example, a city charter may establish the city’s election dates, rules, and criteria for elected office holders and procedures, including elections held at large or by district.<sup>47</sup> A charter may allow public financing of elections and establish criteria for vacating and terminating municipal offices.<sup>48</sup> A charter may establish council salaries and quorum requirements, except when particular laws require a supermajority vote. A local charter may prescribe ethics and conflicts rules, including rules on incompatible offices.<sup>49</sup> Charter cities also have broader taxation and assessment powers than general law cities, subject to the limitation of Proposition 218 (discussed later in this Article).<sup>50</sup> Charter cities may draft zoning ordinances inconsistent with the local general plan

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43. *See Johnson v. Bradley*, 4 Cal. 4th 389, 399 (1992).

44. CAL. CONST. of 1879 art. XI, § 6.

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

46. CAL. CONST. art. XI, § 5(b) (“It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.”). *See also Bradley*, 4 Cal. 4th at 398 (concluding that state law on elections did not preclude the City of Los Angeles from adopting and enforcing provisions of its campaign reform ballot (Measure H) initiative under its charter).

47. CAL. CONST. art. XI, § 5(b); CAL. ELEC. CODE § 10101 et seq. (West 2016); 82 CAL. ATT’Y GEN. OP. NO. 98-1010 (Feb. 4, 1999).

48. CAL. CONST. art. XI, § 5(b); *Bradley*, 4 Cal. 4th at 392 (1992).

49. CAL. CONST. art. XI, § 5(b); CAL. GOV’T CODE § 53234 (West 2007). *See generally* CAL. GOV’T CODE § 53235 (West 2007).

50. *See generally* CAL. CONST. art. XIII, § 2.

(unless, of course, consistency requirements are adopted by the charter or ordinance).<sup>51</sup> In other words, the local charter is the supreme authority for municipal affairs relevant to that local jurisdiction.

While the California Supreme Court has echoed the Government Code in some respects, holding that the topics above are municipal affairs, the legal construction of this term remains a challenge in California.<sup>52</sup> The definition typically revolves around a distinction between municipal affairs and statewide concerns, such as transportation or utilities.<sup>53</sup> Thus, when deciding whether a city ordinance is valid, courts consistently determine whether (1) the local regulation or ordinance is a municipal affair, upon which the municipality has the exclusive authority to regulate or (2) whether the subject is a matter of statewide concern such that state legislation preempts any municipal attempt at lawmaking.<sup>54</sup> However, because the California Constitution does not specifically define municipal affairs, the California Supreme Court views the question to be decided on the facts of each case.<sup>55</sup> According to the Court, the concept of municipal affairs is fluid and may change over time. Issues that are municipal affairs today could become areas of statewide concern in the future. Therefore, it remains to be seen if the California Supreme Court will change course from a case-by-case review of municipal affairs and give direct meaning to the Municipal Affairs Clause of 1896.

A fairly recent and well-reasoned Pepperdine Law Review article encourages the California Supreme Court to bring clarity to the Municipal Affairs Clause and interpret the clause:

[B]ased upon the people's intent . . . Guided by the text, purpose, and political theory of the Municipal Affairs Clause, the court has the obligation to preserve California's system of divided sovereignty and ensure that the people's right to local self-government is preserved by the constitution they have framed for its preservation.<sup>56</sup>

This legal indecision about the Municipal Affairs Clause also creates political tensions, most notably over cities' treatment of public contracts and the payment of prevailing wages. Some courts have exempted charter cities

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51. CAL. GOV'T CODE § 65803 (West 2016).

52. See, e.g., *State Bldg. & Constr. Trades Council of Cal. v. City of Vista*, 54 Cal. 4th 547, 552 (2012); *Cal. Fed. Sav. & Loan Ass'n v. City of L.A.*, 54 Cal. 3d 1, 6-7 (1991); *Bishop v. City of San Jose*, 1 Cal. 3d 56, 61-62 (1969).

53. See, e.g., *City of Vista*, 54 Cal. 4th at 552; *City of L.A.*, 54 Cal. 3d at 6-7; *City of San Jose*, 1 Cal. 3d. at 61-62 .

54. *City of San Jose*, 1 Cal. 3d at 61-62; Brett A. Stroud, *Preserving Home Rule: The Text, Purpose, and Political Theory of California's Municipal Affairs Clause*, 41 PEPP. L. REV. 587, 604 (2014).

55. CAL. CONST. art. XI, § 5(a); *City of San Jose*, 1 Cal. 3d at 61-62.

56. Stroud, *supra* note 54, at 631.

from complying with the Public Contracting Code provisions for bidding procedures, reasoning that a city charter may exempt the city from such statutes if the subject matter of the bid is deemed to be a municipal affair.<sup>57</sup> Perhaps even more importantly, courts have held that charter cities are not bound by prevailing wage or living wage laws unless they adapt them voluntarily in their charters or laws, as some cities like Los Angeles and San Jose have done.<sup>58</sup> So long as a project is both a municipal affair and not funded by state or federal grants, a charter city may choose to not pay prevailing wages to complete a municipal project.<sup>59</sup> However, there is a growing argument among state elected officials that the payment of prevailing wages is a matter of statewide concern, as are traffic and vehicle regulations, tort claims against governments, and school regulations.<sup>60</sup>

In July of 2012 the California Supreme Court dealt a significant blow to this argument in its long-awaited decision of *State Building and Construction Trades Council of California, AFL – CIO v. City of Vista*.<sup>61</sup> The Court held that locally funded public works projects performed by chartered cities are municipal affairs under the California Constitution. As a result, the wages paid to workers on charter city projects are not subject to California’s prevailing wage laws. In response, because it was not possible to overturn the *Vista* court’s ruling with a constitutional amendment, labor activists in California convinced the legislature to make it more difficult for charter law cities to obtain state funding for public works projects. Senate Bill 7 (“SB 7”) prohibits the receipt or use of state funding or financial assistance for construction projects by charter cities that allow contractors to not comply with the state’s prevailing wage laws on a public works contract.<sup>62</sup> While there are minor exceptions for contracts under \$25,000, the proposed law is a reminder of the labor sector’s palpable influence on California politics, despite a robust opposition by the League of California Cities on behalf of local jurisdictions. In its letter opposing the legislation, the League wrote:

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57. CAL. PUB. CONT. CODE § 1100.7 (West 2016); *Howard Contracting, Inc. v. G.A. MacDonald Constr. Co.*, 71 Cal. App. 4th 38, 51 (1998); *R & A Vending Servs. v. City of L.A.*, 172 Cal. App. 3d 1188, 1191 (1985).

58. L.A. ADMIN. CODE, art. 11 (noting that it is the policy of the City of Los Angeles to comply with the Living Wage Ordinance, including contractors and subcontractors who have agreements with the City). *See also* San Jose City Council Res. 68554 (2013) (revised in Resolution 68900) (“It is beneficial to the health and welfare of citizens of San Jose that all workers are paid a wage which enables them to not live in poverty.”). The policy includes “employers who are awarded service contracts for services that are provided directly to the City.” *Id.*

59. *Vial v. City of San Diego*, 122 Cal. App. 3d 346, 348 (Ct. App. 1981).

60. LEAGUE OF CAL. CITIES, *supra* note 30.

61. 54 Cal. 4th 547 (2012).

62. S.B. 7, 2013 Leg. (Cal. 2013).

[SB 7] will retroactively punish the voters and residents of 51 charter cities [without prevailing wage provisions in their charters] for exercising their right to vote on how city funds are spent by denying them access to any state funding for public works . . . . By seeking to impose punitive measures for decisions made by the voters of charter cities . . . [t]he public's faith in government will be shattered . . . .<sup>63</sup>

The League, and a majority of citizens in California, view legislation similar to SB 7 as both an intrusion by the state into the affairs of municipalities and an affront to their local control.<sup>64</sup> Many local mayors and council members argue that, while the state may decide to pay prevailing wage rates for its contracts, the state should not impose this same burden on local governments for local projects without providing funding for the difference between market wages and prevailing wages. After all, the provision for any municipal infrastructure is not a constitutionally protected area and is the concern of the municipality and its taxpayers, who voted on the specific charter to exclude prevailing wages. A clear definition of municipal affairs from the California Supreme Court, by interpreting the Municipal Affairs Clause of the California Constitution, would go a long way in calming the two sides.<sup>65</sup>

### III. CALIFORNIA'S GENERAL LAW CITIES AND STATE LAW

The California Government Code authorizes general law cities to use the general laws of the state to govern themselves.<sup>66</sup> Given the voluntary adherence to these general laws by local governments and their constituents when deciding to incorporate as a municipality, the dominance of state power is less of a concern in this context but never ignored. Every California city possesses the general power to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”<sup>67</sup> For example, state law authorizes every city to be governed by a city council of five members. Voters may choose a different number of council members to serve the city, but five remains the norm throughout the state.<sup>68</sup> State law also establishes the positions of a city clerk, a city treasurer,

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63. SB 7, LEAGUE OF CAL. CITIES, <http://www.cacities.org/SB7> [<https://perma.cc/H3C3-ZTY4>].

64. See *Protecting Local Control through the Ballot Box*, LEAGUE OF CAL. CITIES, <https://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Legislative-Resources/Presentations-Publications-Papers/Protecting-Local-Control-through-the-Ballot-Box-Fa> [<https://perma.cc/PU29-GH2Q>] (citing Proposition 1A, approved by 83.7% of California voters to protect local taxpayers and prevent the California Legislature from taking and using local funds).

65. See generally CAL. CONST. art. XI, §5.

66. CAL. GOV'T CODE § 34102 (West 1955).

67. CAL. CONST. art. XI, §7.

68. CAL. GOV'T CODE § 36501 (West 2001).

a police chief, a fire chief, and any subordinate employees as necessary and required by law.<sup>69</sup> City elections, methods of elections, rules and procedures, and qualifications of council members are all provided for by the state law.<sup>70</sup>

In stark contrast to charters, public funds may not be accepted or expended by any candidate to run for public office.<sup>71</sup> Relevant provisions of the California Government Code address public office vacancies, council member compensation, specific legislative authority, and quorum requirements.<sup>72</sup> State laws permit city voters to impose term limits for council members.<sup>73</sup> The charter city controversy regarding the payment of prevailing wages on public works contracts is not an issue for general law cities, as they must adhere to the requirements of the California Public Contracting Code for all public contracts and must pay prevailing wages for such contracts pursuant to the provisions of the California Labor Code.<sup>74</sup> Finally, all land use and zoning ordinances in general law cities must be consistent with the general plan for the city, as required by state statute.<sup>75</sup> A general plan is typically prepared locally but is subject to the approval of the state, especially for housing. This is one area, for example, in which a general law city cedes real control to the state.

However, local government officials, on behalf of their constituents, always expect local control, even under general laws. These officials are specifically elected to deliver a local quality of life to their constituents. The expectations for local character is not one-size-fits-all in California, and, therefore, the demands on each local government differ from city to city. For example, a local equestrian concern with bridal trail safety and access in Rolling Hills Estates, a semi-rural equestrian community, may not be a concern at all in Torrance, a more urban suburb of Los Angeles, and a local transportation concern in Torrance may not be a priority in Rolling Hills Estates. For these very important constituency concerns and priorities, local control remains extremely important for city sovereignty in its own municipal governance structures. Because California courts have been reluctant to infer legislative intent to preempt local laws, there is a strong

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69. *Id.*

70. *See, e.g.*, CAL. ELEC. CODE § 321 (West 2013); CAL. ELEC. CODE § 10101 (West 1994); CAL. GOV'T CODE § 34871 (West 1994).

71. CAL. GOV'T CODE § 85300 (West 2001).

72. *See, e.g.*, CAL. GOV'T CODE § 1770 (West 2015); CAL. GOV'T CODE § 36502 (West 1995); CAL. GOV'T CODE § 36513 (West 1990); CAL. GOV'T CODE § 36516 (West 2010); CAL. GOV'T CODE § 36810 (West 1949); CAL. GOV'T CODE § 36934 (West 1993).

73. CAL. GOV'T CODE § 36502(b) (West 1995).

74. *See, e.g.*, CAL. LAB. CODE § 1771 (West 1981); CAL. PUB. CONT. CODE § 20162 (West 1982).

75. CAL. GOV'T CODE § 65860 (West 1998).

presumption that local ordinances are valid when there is a significant unique city interest that may be different from another city.<sup>76</sup>

#### IV. INDEPENDENT, FULL SERVICE, AND CONTRACT CITIES

In addition to differing in the basis for their authority, California cities also differ in their style of governance. While some cities are full-service or independent cities, others are known as contract cities. As their name suggests, full-service or independent cities provide, themselves, a broad base of municipal services to their citizens. On the other hand, contract cities deliver these municipal services through various contracts with other governments and private and not-for-profit contractors.<sup>77</sup> However, both independent and contract cities are known to use strong mayor or council manager forms of internal governance to manage their communities.

Although only a small minority of cities have strong mayors, most well-known large cities in California, like Los Angeles, San Jose, San Francisco and San Diego, are strong mayor cities. According to the Strong Mayor Council Institute, sixty-eight percent of the largest United States cities with over 600,000 people are strong mayor cities, and thirty-two percent use the council manager form of governance. The percentages slightly change to almost sixty percent and forty percent, respectively, when including cities over 370,000 people.<sup>78</sup> Most cities, whether independent or contract cities and whether charter or general law-based, use the council-manager system. According to the International City/County Management Association (“ICMA”) the council-manager form is the most common form of city government in the United States.<sup>79</sup> The National League of Cities reports that usage for this form of government has grown substantially, especially in the Southeast and on the West Coast.<sup>80</sup> The council-manager form encourages engagement and dilutes the power of any single political special interest group. Each council member possesses equal power. In the case of a strong mayor, there is a consolidation of at least political power into the mayor, who could, on behalf of a special interest group, attempt to dilute the

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76. *See* *City of Riverside v. Inland Empire Patients Health & Wellness Ctr.*, 56 Cal 4th 729, 742-44 (2013).

77. Frank V. Zerunyan & Peter Pirnejad, *From Contract Cities to Mass Collaborative Governance*, AM. CITY & CTY. (Apr. 2, 2014), <http://americacityandcounty.com/blog/contract-cities-mass-collaborative-governance-0> [https://perma.cc/S3M7-AV6K].

78. *50 Largest Cities*, STRONG MAYOR-COUNCIL INST., <http://strongmayorcouncil.org/50largestcities.html> [https://perma.cc/JAF7-C3ZM].

79. *Council-Manager Form of Government: Frequently Asked Questions*, INT’L CITY/CTY. MGMT. ASS’N, <http://www.icma.org/documents/document/document/2705> [https://perma.cc/P86H-TU9L].

80. *Forms of Municipal Government*, NAT’L LEAGUE OF CITIES, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-structures/forms-of-municipal-government> [https://perma.cc/5WZW-R9Z9].

voices of the individual council members. In the council-manager form of government, the chief executive in charge of the day-to-day activities of the city is the professional city manager. This individual, like a chief executive in the private sector, is responsible for implementing her council's policies. City managers are talented people with the education (typically a Masters of Public Administration) and skills to manage the daily activities of the city and, perhaps more importantly and unlike the private sector, to engage citizens for the purpose of proposing responsive local policies to the city council.<sup>81</sup>

In practice, whether a city delivers services through a contract or provides those services in-house depends on the size of the city and the goals of its constituency. For example, the city of Glendale, California, a full-service and charter city of 200,000 inhabitants, delivers all police, fire, transportation, public works, planning, and even some utility services with its more than 1800 full time employees. The benefits of full-service delivery for local governments include local and internal control over the way in which services are delivered and provided. This delivery method can also include greater flexibility in the distribution of staffing solutions during a specific need or emergency. More importantly, cost-benefit analyses show that, for Glendale's size, full service may be more efficient and cheaper than contracting for those services.<sup>82</sup> The total cost of providing a service in-house (the independent city or full-service city model) is the sum of its direct costs plus a proportional share of organizational overhead, or indirect costs. Pension, facility, and capital equipment costs are typically the largest direct costs of an independent city. When direct and indirect costs in an independent city are less than the sum of potential contract costs plus contract administration costs, then the independent city model may make financial sense over the contracting model, as experts determined in Glendale.<sup>83</sup>

On the other hand, La Cañada Flintridge is a general law contract city of approximately 20,000 inhabitants managed by twenty-five full-time employees. La Cañada Flintridge contracts for most municipal services. It obtains police, fire, public works, and animal control services from the county of Los Angeles, utilities from semi-private organizations like Southern California Edison, and trash-hauling services from the private

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81. *What Degree Do You Need to Become a City Manager?*, LEARN.ORG, [http://learn.org/articles/What\\_Degree\\_Do\\_You\\_Need\\_to\\_Become\\_a\\_City\\_Manager.html](http://learn.org/articles/What_Degree_Do_You_Need_to_Become_a_City_Manager.html) [https://perma.cc/HX5V-PWPX].

82. *This Is My Glendale*, CITY OF GLENDALE, CAL., <http://www.glendaleca.gov/government/this-is-my-glendale> [https://perma.cc/U3WZ-6YJP].

83. Lawrence Martin, *How to Compare Costs Between In-House and Contract Services*, REASON FOUND. (Mar. 1993), <http://reason.org/files/ba9b149031669883385db8c2ff63b9ef.pdf> [https://perma.cc/7VQN-QXPH].



sector.<sup>84</sup> Instead of being responsible for providing these services, the city manager and employees of La Cañada Flintridge supervise and manage them. The advantages of this model of delivery include efficiency and price, reduction of pension liabilities by employing fewer full-time public employees, limited liability in the delivery of products and services, and access to a greater volume of resources and innovations.

Whether a city chooses the independent or contract model, pension liabilities remain the biggest obstacle for local governments in this new era of Governmental Accounting Standards Board (“GASB”) rules. These rules became binding on states and local governments for fiscal years starting after July 2014. GASB rules require the full disclosure of pension liabilities and expenses to represent more transparently the full impact of these obligations.<sup>85</sup> These future obligations typically remain unfunded in California, and, according to the state Controller’s office, California’s Comprehensive Annual Financial Report (“CAFR”) puts the net pension liability at \$63.7 billion as of June 2015.<sup>86</sup> Therefore, municipal policy bodies in California are more apprehensive than ever about pension liabilities and adding to those liabilities.

#### V. THE LAKEWOOD PLAN FOR A SUCCESSFUL CONTRACT CITY <sup>87</sup>

Although contract cities have historically collaborated horizontally with other municipal governments, today’s contracting model expands the scope of collaboration vertically, involving service providers outside of government in the private or not-for-profit sector.

This collaboration delivers statutorily defined special municipal services in finance, economy, accounting, engineering, administration, and law, creating an efficient system for public administration. In this context of the California contracting model according to the Government Code, two relevant statutes facilitate extra- and intra-sector collaboration. California Government Code Section 37103 explicitly provides special services in stating that a city “may contract with any specially trained and experienced person, firm or corporation for special services and advice in financial,

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84. See generally CITY OF LA CAÑADA FLINTRIDGE, <http://www.lcf.ca.gov/> [<https://perma.cc/W3S6-KGTU>].

85. William G. Gale & Aaron Krupkin, *Financing State and Local Pension Obligations: Issues and Options*, THE BROOKINGS INST. (July 2016), <https://www.brookings.edu/wp-content/uploads/2016/07/Financing-State-and-Local-Pension-Obligations-Gale-Krupkin-1.pdf> [[perma.cc/E9KA-KERE](https://perma.cc/E9KA-KERE)]; *Pension Standards for State and Local Governments*, GOVERNMENTAL ACCT. STANDARDS BD., <http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1176163528472> [<https://perma.cc/V94N-9DW6>].

86. Press Release, Cal. State Controller’s Office, CA Controller Publishes Comprehensive Annual Fin. Report (Mar. 18, 2016), [http://www.sco.ca.gov/eo\\_pressrel\\_17124.html](http://www.sco.ca.gov/eo_pressrel_17124.html) [<https://perma.cc/H4HY-X4PD>].

87. Zerunyan & Pirnejad, *supra* note 77.

economic, accounting, engineering, legal, or administrative matters.”<sup>88</sup> California Government Code Section 53060 allows the legislative body of any public or municipal corporation or district to “contract with and employ any persons for the furnishing to the corporation or district special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required.”<sup>89</sup>

Although, arguably, all cities engage in contracting, the designation as contract cities has a special and historical meaning in California. The post-World War II era ushered in a new style of public administration led by men and women, labeled the Greatest Generation by journalist Tom Brokaw.<sup>90</sup> The Servicemen’s Readjustment Act of 1944 – commonly referred to as the GI Bill – is still one of the most significant pieces of United States federal government legislation of all time.<sup>91</sup> The GI Bill impacted the nation socially, economically, and politically. Helping veterans assimilate into civil society was a brilliant move by the federal government, a move that sparked community-building, education, innovation, and the development of giant industries. Western regions, particularly Southern California, immensely benefit to this day from this federal policy, which, through educated WWII veterans, is responsible for the development and advancement of the defense and aerospace industries in Los Angeles County. These two industries employ high-wage earners facilitating the economic development of many cities surrounding the Los Angeles Air Force Base. Some communities, including the Palos Verdes Peninsula, have thrived since the early fifties because of the job opportunities with companies like Raytheon and Northrop Grumman, which are industry leaders in space, missile-development, and military technologies.<sup>92</sup>

Using the benefits of the GI Bill, the Greatest Generation purchased homes in various communities throughout the nation and attended local colleges and universities where they excelled in disciplines like engineering, entrepreneurship, medicine, business, and law. This level of education substantially improved the earning capacity of each participating service member, uplifting the middle class and establishing a sustainable upper middle class.<sup>93</sup>

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88. CAL. GOV’T CODE § 37013 (West 1941).

89. CAL. GOV’T CODE § 53060 (West 1941).

90. TOM BROKAW, *THE GREATEST GENERATION* 11 (1998).

91. *History and Timeline*, U.S. VA, <http://www.benefits.va.gov/gibill/history.asp> [<https://perma.cc/Z3L7-CDEV>].

92. *The U.S. Defense Industry and Arms Sales*, STAN. UNIV., <https://web.stanford.edu/class/e297a/U.S.%20Defense%20Industry%20and%20Arms%20Sales.htm> [<https://perma.cc/K8SZ-V87U>].

93. Zerunyan & Pirnejad, *supra* note 77.

This economic base was the recipe for city and community building in Southern California. After a long hiatus of city incorporation in Los Angeles County going back to 1939, the unincorporated area immediately adjacent to the established city of Long Beach, California, was one community ready to make history. This area ten miles southeast of Los Angeles blazed new trails literally and figuratively when, based on demand, the Lakewood Park Company developed one of the first post-World War II era planned communities, which consisted of 17,500 homes on over 3500 acres of land, including landscapes, streets with lights, and underground sewers and wires. Reminiscent of the success of Levittown in Nassau County, New York, unincorporated Lakewood grew to 70,000 residents in the first few years of the 1950s, using slogans such as “Lakewood – My Home Town” and “Lakewood, Tomorrow’s City Today.”<sup>94</sup>

In April of 1954, the Lakewood communities, under threat of annexation from the City of Long Beach, incorporated as the state’s 16th-largest city and the largest community in the United States ever to incorporate as a sovereign city.<sup>95</sup> What was remarkable about this incorporation was not the necessity or the actual decision to become a city but, rather, the decision made by city founders on the financially sound and efficient method to administer the city.<sup>96</sup> A poster child of the GI Bill, as a graduate of USC Law School, John Sanford Todd advised the city founders to use an existing statute of the California Government Code and a section of the county charter to collaborate with the county government and contract for the delivery of municipal services in young Lakewood.<sup>97</sup>

Although the original motive behind Lakewood’s incorporation was to retain local control over local services, the purpose of what became known as the Lakewood Plan was to eliminate duplication of services and rely on government service providers to deliver public administration in a cost effective manner.<sup>98</sup> This innovative and transformational plan not only earned the City of Lakewood prominence in the history of American municipalities, it also became the model for forty-one additional communities in Los Angeles County and more than 130 communities across

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94. *Lakewood Community History*, CTY. OF L.A. PUB. LIBRARY, <http://www.colapublib.org/history/lakewood/> [https://perma.cc/RL97-Q3JE].

95. *Birth of a City*, CITY OF LAKEWOOD, CAL. (Oct. 10, 2015), <http://lakewoodcity.org/about/history/history/ch4.asp> [https://perma.cc/R945-WEKV].

96. Zerunyan & Pirnejad, *supra* note 77.

97. CAL. GOV’T CODE § 51301 (West); L.A. CTY. CHARTER § 56 ½–¾.

98. *John S. Todd - The Father of the Lakewood Plan*, CITY OF LAKEWOOD, CAL., <http://www.lakewoodcity.org/about/history/johnstodd.asp> [https://perma.cc/HUQ8-XBX5] (last updated July 7, 2014).

the state in the 1950s, 1960s and 1970s.<sup>99</sup> Like Lakewood, these communities selected the model to retain a level of sovereignty or local control within their borders, through collaboration with the county, the private sector, and the not-for-profit sector.

This engaged governance model of the Lakewood Plan, or contract cities, encourages the public and private sectors to jointly study experience and solve policy and public administration challenges. This network of intersectoral actors provides the best setting for professionals to work together for the public interest. While the motivation of each sector may be different, the collective end result benefits the public. The Plan emerged from a “perfect storm of conditions.”<sup>100</sup> These conditions included the demographic changes in the county (especially in the number of residents and socioeconomic status), the necessity to grow communities like Lakewood, and the incentives to participate in collaborations by both the county and newly developed cities to share revenue and provide more efficient non-duplicative services. The social and human capital, as well as the facilitative leadership skills of people like John Sanford Todd, may not be underestimated for the success of the collaboration and the Lakewood Plan.<sup>101</sup>

To preserve the innovation in the Lakewood Plan and the usefulness of the model for like-minded jurisdictions, eight cities gathered on November 20, 1957 to form the California Contract Cities Association (“CCCA”).<sup>102</sup> The like-minded cities were: Lakewood, Bellflower, Duarte, La Puente, Norwalk, Paramount, Rolling Hills, and Santa Fe Springs.<sup>103</sup> The first by-laws of the CCCA were drafted in 1958.<sup>104</sup> By the early 1960s, the CCCA had drawn twenty-five members across the county to help organize new cities preserving the contracting model. Half a century later, CCCA, with just under seventy member cities, still nurtures this network of cities through educational seminars and information designed to build and improve human capacity among its constituency in order to help them better serve their

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99. Zerunyan & Pirnejad, *supra* note 77. See generally *Frequent Questions*, CAL. ASS’N OF LOCAL AGENCY FORMATION COMM’NS, <http://www.calafco.org/index.php/lafco-law/what-is-lafco/faq-calafco> [https://perma.cc/9LE7-TWT7].

100. Zerunyan & Pirnejad, *supra* note 77. See generally *The Lakewood Plan*, CITY OF LAKEWOOD, CAL., <http://lakewoodcity.org/about/history/lakewoodplan/> [https://perma.cc/VT6D-2FRH] (last updated Oct. 20, 2014).

101. CAL. GOV’T CODE § 51301 (West); L.A. CTY. CHARTER § 56 ½–¾.

102. *History*, CAL. CONTRACT CITIES ASS’N, <http://www.contractcities.org/about/history/> [https://perma.cc/CN8V-F6VD].

103. *Id.*

104. *Id.*

communities.<sup>105</sup> The network efficiently, and in large numbers, advocates for interests common to member cities. Finally, the network provides access to service providers, building social capital along the way to create value for member cities.

The Lakewood Plan was controversial, as it did not fit the mold of best practices of state centered bureaucracy in public administration, which had become popular in the early 1900s.<sup>106</sup> Even today some argue that the contracting model prevents larger forms of government, such as county governments, from providing services to all.<sup>107</sup> However, neither the practice nor the data supports this argument.

In practice the County of Los Angeles still receives the lion's share of local taxes and is reimbursed fully for all services it provides to cities.<sup>108</sup> Most, if not all, cities in Los Angeles County provide more direct and certainly better quality municipal services to their constituents than to unincorporated areas of the county.<sup>109</sup> All public safety infrastructure built by the county in the early 1950s is used by cities that contract for public safety services. Instead of duplicative police services, for example, the Los Angeles County Sheriff Department provides public safety services to forty-two out of eighty-eight total incorporated cities in the county.<sup>110</sup> The Sheriff department's annual revenue from these contracting cities and other contract law enforcement programs surpasses \$850 million.<sup>111</sup>

Established contracting law in the state allows the County Sheriff Department to recover the costs associated with each jurisdiction it serves,

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105. *Member Cities*, CAL. CONTRACT CITIES ASS'N, <http://www.contractcities.org/about/member-cities/> [https://perma.cc/8R9W-9EP2].

106. Zerunyan & Pirnejad, *supra* note 77.

107. Question and Answer Session at the *Fordham Urban Law Journal* Symposium (Apr. 7, 2016).

108. CAL. GOV'T CODE § 51350 (West 1983); Therese A. McCarty et al., *Allocating Property Tax Revenue in California: Living with Proposition 13*, 94th Nat'l Tax Ass'n, at 76 (2001).

109. *Unincorporated Los Angeles County*, L.A. CTY. DEP'T OF REG'L PLAN., [http://planning.lacounty.gov/view/unincorporated\\_los\\_angeles\\_county/](http://planning.lacounty.gov/view/unincorporated_los_angeles_county/) [https://perma.cc/CNB2-4AWA] (last updated Oct. 22, 2015); see also Howard Beckman, *Delivery of Municipal Services in Unincorporated Communities: White Paper for the Eden Area Livability Initiative* (Sept. 21, 2014), <http://www.acgov.org/board/district4/eali/documents/EALIwhitepaperonmunicipalservices.pdf> [https://perma.cc/4BTU-4NFJ].

110. Los Angeles Cty. Sheriff's Dep't, City of Sierra Madre Municipal Law Enforcement Services Proposal (2015); Los Angeles Cty. Sheriff's Dep't, City of Vernon Municipal Law Enforcement Services Proposal (2012).

111. *About Us*, L.A. CTY. SHERIFF'S DEP'T, <http://shq.lasdnews.net/pages/PageDetail.aspx?id=2181> [https://perma.cc/BU4G-QURS]; *Budget Information*, CTY. OF L.A., CAL., <http://ceo.lacounty.gov/budget.htm> [https://perma.cc/RDJ7-ADDR]; *Municipal Police Services*, L.A. CTY. SHERIFF'S DEP'T, <http://shq.lasdnews.net/pages/PageDetail.aspx?id=2180> [https://perma.cc/YWJ2-TK9X].

and most California Counties receive the largest tranche of a city's revenue. Specifically, in the case of Rolling Hills Estates, property tax is apportioned 24.3% to the County of Los Angeles, 41.1% to state and local education, including 20.1% to the local Palos Verdes School District, 18% to the Los Angeles County Fire District, 10.1% to various special districts like the library and community colleges, and 6.7% to the city of Rolling Hills Estates.<sup>112</sup> Admittedly, some cities in California receive a better share in a larger range of the total property tax collected in their city.<sup>113</sup> Sales tax, the second largest source of city revenues, is also apportioned to substantially benefit the state rather than cities. While some cities receive up to thirteen percent of sales tax dollars in their city, most cities see less than this amount as their share of sales tax revenue.<sup>114</sup> The City of Rolling Hills Estates receives less than seven percent.<sup>115</sup> Last but not least, the County of Los Angeles is the largest recipient of contract city expenditures in fire, police, and public works. These expenditures are typically the largest for any city using the contracting model. Despite the conflict perceived by some that contract cities act at odds with counties, the county enjoys a very collaborative working relationship with each contract city through each supervisorial district. Contract cities are, therefore, not a liability to the County of Los Angeles in terms of revenues and expenditures but solid partners in delivering accountable public administration throughout the county. This partnership is further solidified by each supervisor in Los Angeles County who represents several contract cities in her supervisorial district.<sup>116</sup>

The contracting model, set out in the Lakewood Plan, maximizes local control to create fully sovereign cities, sometimes with as little as a few

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112. *Finance*, CITY OF ROLLING HILLS EST., <http://www.ci.rolling-hills-estates.ca.us/index.aspx?page=96> [https://perma.cc/8F7Z-FAYS].

113. See generally *Understanding the Basics of Municipal Revenues in California: Cities, Counties, and Special Districts*, INST. FOR LOCAL GOV'T, [www.ca-ilg.org/document/understanding-basics-county-and-city-revenues](http://www.ca-ilg.org/document/understanding-basics-county-and-city-revenues) [https://perma.cc/G6TN-FMJJ] (last updated 2013); *Understanding California's Property Taxes*, LEGIS. ANALYST'S OFF. (Nov. 29, 2012), <http://www.lao.ca.gov/reports/2012/tax/property-tax-primer-112912.aspx> [https://perma.cc/Z8YS-CX5J].

114. See generally *Budgetary/Legal Basis Annual Report*, CAL. ST. CONTROLLER'S OFFICE (Mar. 30, 2016), <http://www.sco.ca.gov/Files-ARD/BudLeg/blbar1415.pdf> [https://perma.cc/T85C-FMP8]; *Local Revenue Fund 2011 Reconciliation, 2016-17 Fiscal Year*, CAL. STATE CONTROLLER'S OFF., [http://www.sco.ca.gov/Files-ARD-Payments/Local\\_Revenue\\_2011\\_Recon\\_1617fy.pdf](http://www.sco.ca.gov/Files-ARD-Payments/Local_Revenue_2011_Recon_1617fy.pdf) [https://perma.cc/EQR3-N64M].

115. See generally *Comprehensive Annual Financial Report*, ADMIN. SERVS. DEP'T, CITY OF ROLLING HILLS EST. (Dec. 23, 2015), <http://www.ci.rolling-hills-estates.ca.us/Modules/ShowDocument.aspx?documentid=14626> [https://perma.cc/6K6Y-5W7V].

116. See *Fourth Supervisorial District Map*, CTY. OF L.A., CAL. <http://ceo.lacounty.gov/forms/4th%20Map.pdf> [https://perma.cc/E2EK-M3XM]; SUPERVISOR DON KNABE, <http://knabe.com> [https://perma.cc/B6M9-CND2].

hundred residents.<sup>117</sup> It increases efficiency and addresses local demographic problems, allowing cities to scale contracted services to their particular needs, rather than staffing a large municipal bureaucracy, and with the support of the California Contract Cities Association. This network provides the framework for future collaborations in public administration and public policy. Cultivating different motivations of actors in various sectors for the delivery of a common mission is the hallmark of this successful collaboration model.<sup>118</sup>

## VI. CITY MANAGEMENT STRUCTURE

The contracting model and any municipal public administration contemplate the provision of municipal services under the responsibility and supervision of an elected city council, the policymaking body of the city. The city council retains and exercises all legislative and executive powers under California law.<sup>119</sup> The city council sets the limits and parameters of services to be provided and approves the contracts to support those services. While the actual delivery of the service may be contracted to a more efficient and effective provider of the service, the policy and the responsibility that comes with it is never outsourced.<sup>120</sup>

City councils are transparently accountable to their citizens for the delivery of all municipal services, contracted or not.<sup>121</sup> To assist in these responsibilities, the city council appoints a city clerk, a city treasurer, and a city manager (though in some cities these functions are performed by elected officials as well).<sup>122</sup> The supporting cast of department heads and staff, like a director of planning or director of parks and activities, to mention a few,

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117. See CITY OF BRADBURY, <http://www.cityofbradbury.org> [https://perma.cc/45BX-UK67]; CITY OF INDUSTRY, <http://www.cityofindustry.org> [https://perma.cc/VQ6H-29QE].

118. For centuries, certainly since the founding of the United States, governance at the most local level experienced varying traditions of service delivery. The contract city model has been a rewarding innovation for California. However, as with any governance innovation, it is not a “one size fits all,” even in California. Whether a public organization should pursue this style of governance depends greatly on the local culture, available human capital, and possible cost benefits to govern. Further, today’s technology is becoming more and more complex, requiring public managers to bring a new level sophistication in assessment and management. Innovations in information and global positioning technologies, drones, driverless cars, robots, and social media will undoubtedly change the governance landscape of tomorrow’s municipal corporation.

119. See *Council-Manager Form Resource Package*, INT’L CITY/CTY. MGMT. ASS’N, [http://icma.org/en/Page/100086/CouncilManager\\_Form\\_Resource\\_Package](http://icma.org/en/Page/100086/CouncilManager_Form_Resource_Package) [https://perma.cc/7RKB-5S6M]; NAT’L LEAGUE OF CITIES, *supra* note 80.

120. See *Types and Responsibilities of Local Agencies*, INST. FOR LOCAL GOV’T (Aug. 8, 2012), [http://www.ca-ilg.org/sites/main/files/file-attachments/who\\_does\\_what.pdf](http://www.ca-ilg.org/sites/main/files/file-attachments/who_does_what.pdf) [https://perma.cc/72DV-WBUY].

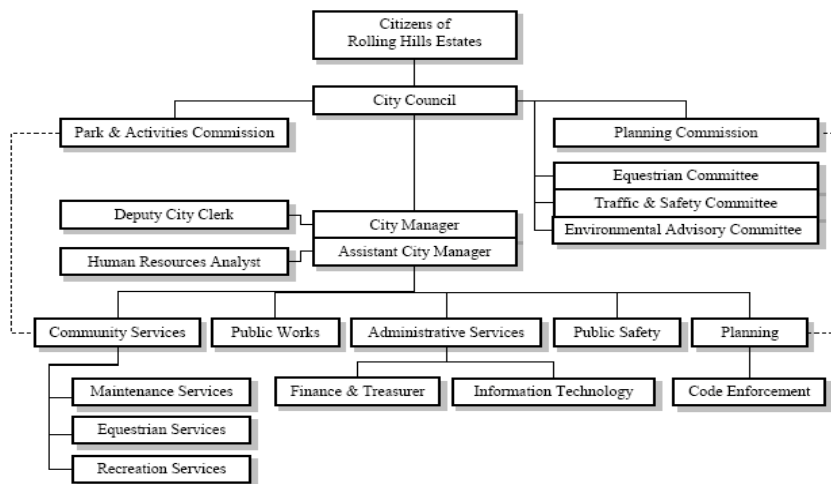
121. See generally *id.*

122. See generally *What is a City Clerk?*, CITY CLERKS ASS’N OF CAL., <http://www.californiacityclerks.org/what-is-a-city-clerk> [https://perma.cc/E79C-TBBN].

are hired by the city manager, who is directly and solely responsible for their performance. Most contract cities are council-manager and general law cities, which deliver efficient and effective municipal services to their constituents.<sup>123</sup>

By way of example, the City of Rolling Hills Estates, California is organized like any other typical general law and contract city.<sup>124</sup> This city of semi-rural equestrian character with a little more than 8000 residents provides a wide range of municipal services, including administrative, building, public safety, public works, and other related and necessary services just like any other city, but it does so, in large part, through contracting with other government agencies, private firms, nonprofit organizations, and, most importantly, individual volunteers as citizens engaged for change. In the tradition of the city since its incorporation in 1957, all elected and appointed public officials who reside in the city serve the city on a volunteer basis.<sup>125</sup>

#### Rolling Hills Estates City Government



The city manager in Rolling Hills Estates, the assistant city manager, and every department head, aside from their administrative duties as hired staff, manage a contract for the delivery of municipal services within their specific

123. See NAT'L LEAGUE OF CITIES, *supra* note 80.

124. See CITY OF ROLLING HILLS EST., <http://www.ci.rolling-hills-estates.ca.us> [https://perma.cc/5F9T-769M].

125. The graphic below provides a visual of Rolling Hills' management structure. See *Comprehensive Annual Financial Report*, ADMIN. SERVS. DEP'T, CITY OF ROLLING HILLS EST. (Dec. 23, 2015), <http://www.ci.rolling-hills-estates.ca.us/Modules/ShowDocument.aspx?documentid=14626> [https://perma.cc/NDF8-82AZ].



area of expertise and practice.<sup>126</sup> The city manager typically manages public safety contracts (police, fire, and paramedics) with the County of Los Angeles, and the city attorney contracts with a private sector lawyer. The assistant city manager is in charge of all public-works-related contracts with the county, services like animal control, and private contracts for waste management, roads (building and maintenance), traffic, and safety. The planning director reviews and manages contracts with county building and safety, as well as private sector planners, land use consultants, and engineers. The administrative services director, serving also as the treasurer, typically oversees information technologies, human resources, and accounting activities through various contracts with the private sector. The community services director oversees contracts with the private sector relating to equestrian and other recreational concerns, including the municipal stables, parks, and trails. Shareholder-owned utilities provide services for gas, electricity, and water. Most administrative services remain in the city hall, including a small planning staff to process planning applications. A few California special districts,<sup>127</sup> created by the local Palos Verdes Peninsula community to meet special needs, participate in the overall delivery of services. These services include a separate school district, a library district, and joint-powers authority to deliver transportation services in the city and the surrounding Palos Verdes Peninsula.

## VII. UNIFORM LAWS GUIDING MUNICIPALITIES

A certain amount of human capital is necessary to manage contract and full-service or independent cities. To guide this management, fairly uniform laws and rules govern procedures, conduct, and decorum in city councils and in city halls across California. These include the Ralph Brown Act (“Brown Act”), the Political Reform Act of 1974 (“Act”), and the Act’s implementing rules promulgated by the Fair Political Practices Commission (“FPPC”).<sup>128</sup> The FPPC has jurisdiction over all city governments, whether charter or general law.<sup>129</sup> These significant pieces of legislation underscore the

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126. See NAT’L LEAGUE OF CITIES, *supra* note 80.

127. See PALOS VERDES LIBRARY DIST., <http://www.pvld.org> [<https://perma.cc/MH93-ATWL>]; PALOS VERDES PENINSULA TRANSIT AUTH., <http://www.palosverdes.com/pvtransit> [<https://perma.cc/WXT7-XV7H>]; PALOS VERDES PENINSULA UNIFIED SCH. DIST., <http://www.pvpusd.net> [<https://perma.cc/L4LZ-275Q>]; *Special Districts*, CAL. SPECIAL DIST. ASS’N, <http://www.csdanet.org/special-districts/> [<https://perma.cc/4FMW-PP9M>]; *Types and Responsibilities of Local Agencies*, INST. FOR LOCAL GOV’T (Aug. 8, 2012), [http://www.ca-ilg.org/sites/main/files/file-attachments/who\\_does\\_what.pdf](http://www.ca-ilg.org/sites/main/files/file-attachments/who_does_what.pdf) [<https://perma.cc/RXH3-W59Q>].

128. See CAL. GOV’T CODE § 54950.5 et seq. (West 2016); CAL. GOV’T CODE § 81000 et seq. (West 2016). See generally CAL. GOV’T CODE § 3500 et seq. (West 2016).

129. See CAL. FAIR POL. PRACS. COMM’N, [www.fppc.ca.gov](http://www.fppc.ca.gov) [<https://perma.cc/K3S5-CHL3>].

emphasis in American law on transparency in municipal government and illustrate how progressive California is on the topic. The preamble of the Brown Act describes public service at this level as well as the people's expectations in the conduct of the people's business:

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.<sup>130</sup>

This preamble and the Brown Act itself shine a positive light on the municipal enterprise; nothing is a secret in deciding the people's business. Local public officials in trouble with the law and the rules tend to forget this golden rule. California has had painful experiences in the cities of Bell, South Gate, Maywood, and others.<sup>131</sup> New and good leaders in those cities are learning how difficult it is to recover from the violation of the golden rule by their predecessors, who are for the most part serving time in prison.

Highlighting the importance of transparency also assists public officials in avoiding conflicts of interest in the exercise of their responsibilities as public servants. Conflicts of interest for municipal office holders under California law can arise in a variety of ways and are governed by a myriad of laws, including the common law conflict of interest doctrine developed through precedential court decisions and statutory conflict of interest rules.<sup>132</sup> The common law doctrine provides that a public officer is impliedly bound to exercise the powers conferred on her with disinterested zeal and diligence and primarily for the benefit of the public. Public officers are obligated by virtue of their office to discharge their responsibilities with integrity and fidelity and are prohibited from placing themselves in a position

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130. See CAL. GOV'T CODE § 54950 (West 2016).

131. See Hector Becerra & Sam Allen, *Cudahy Arrests Add Salt to L.A. County Area's Civic Wounds*, L.A. TIMES (June 24, 2012), <http://articles.latimes.com/2012/jun/24/local/la-me-06-23-southeast-corruption-20120624> [<https://perma.cc/584J-WHB2>]; *Bell Scandal: A Times Investigation*, L.A. TIMES (Feb. 11, 2016, 8:58 AM), <http://www.latimes.com/local/bell/la-me-bell-scandal-a-times-investigation-20160211-storygallery.html> [<https://perma.cc/LM53-YE83>] (lack of transparency and engagement led to the conviction of various public officials in Bell); Ruben Vives & Kim Christensen, *Why the City of Maywood Is Facing a State Audit and a Probe by the District Attorney*, L.A. TIMES (May 13, 2016, 2:30 AM), <http://www.latimes.com/local/california/la-me-maywood-20160513-story.html> [<https://perma.cc/NG3J-GT7Z>].

132. See generally *The Political Reform Act*, CAL. FAIR POL. PRACS. COMM'N, <http://www.fppc.ca.gov/the-law/the-political-reform-act.html> [<https://perma.cc/N7GB-E5RC>].

where their private, personal interest may conflict with their official duties.<sup>133</sup>

In addition to the common law doctrine, California has codified the prohibition against public officials' self-dealing in contracts since the 1850s. This prohibition is commonly known as the Section 1090 prohibition and provides that public officials cannot be financially interested in any contract they made in their official capacity or by the body of which they are members.<sup>134</sup> The ramifications of violating this law are quite serious. A contract made in violation of Section 1090 subjects the officer to a fine or imprisonment and to a perpetual disqualification from holding office in California. Moreover, the contract is unenforceable and may be void.<sup>135</sup> In the context of the contracting model, the common law and this codified prohibition, and its intentionally harsh violation consequences, assure the fair administration of the model.

More recently, the California Legislature enacted the Political Reform Act of 1974 to ensure that public officials in charter and general law cities perform their duties in an impartial manner.<sup>136</sup> The Act provides that no public official can make, participate in making, or attempt to use her official position to influence a governmental decision if she knows or has reason to know that she has a financial interest in the decision.<sup>137</sup> The purpose of the Act is to ensure that public servants who are entrusted with the privilege of conducting the public's business do so in a manner that promotes an orderly system of public administration. The FPPC implements and promulgates rules associated with the Act.<sup>138</sup> These rules are the public's minimum expectations from its public officials tasked with managing charter or contract cities. The Commission is responsible for prosecuting violations of these rules.

### VIII. TAX MATTERS AND INFRASTRUCTURE

Tax and municipal financing matters have been infamous in California due to political battles over tax measures in the 1970s. A complete understanding of the legal authority for these matters can be complex and is outside the purview of this article. Generally speaking, however, the California Supreme Court has said “[t]he provisions on taxation in the state

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133. See *Terry v. Bender*, 143 Cal. App. 2d 198, 206 (1956); *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928).

134. CAL. GOV'T CODE § 1090 (West 2015).

135. CAL. GOV'T CODE § 1092 (West 2008).

136. See *Terry*, 143 Cal. App. 2d. at 206; *Noble*, 89 Cal. App. at 51.

137. CAL. GOV'T CODE § 87100 (West 1975); CAL. FAIR POL. PRACS. COMM'N, *supra* note 129.

138. CAL. GOV'T CODE § 83112 (West 1975); CAL. FAIR POL. PRACS. COMM'N, *supra* note 129.

Constitution are a limitation on the power of the Legislature rather than a grant to it.”<sup>139</sup> These limitations exist in Article XIII A of the California Constitution, affectionately known as Proposition 13 of 1974, which continues to be subject to support and scrutiny from differing organizations in the state.<sup>140</sup> A less known taxing initiative is Proposition 218, which was enacted in 1996 to ensure that all taxes and most charges on property owners are subject to voter approval.<sup>141</sup> Both of these tax measures may result in reduced revenues to the state and municipalities, but they achieve an important purpose for the California electorate, placing the power to tax squarely within the discretion of the taxed at the local level. Both charter law cities and general law cities enjoy these powers within the limitations of the California Constitution and Proposition 218, even though a charter city’s authority to levy taxes comes from the municipal affairs clause of the California Constitution, while a general law city’s authority is written in statute.<sup>142</sup> The limiting constitutional provisions apply to each of California’s more than 7000 cities, counties, special districts, schools, community colleges, and regional organizations.<sup>143</sup> These limitations in concept mirror the intent of the California Constitution to drive power away from the state, especially on local affairs.

Because tax revenue is typically associated with improvements in a given city, several finance laws attempt to fill the revenue gap created by Propositions 13 and 218. The Improvement Act of 1911, Municipal Improvement Act of 1913, Improvement Bond Act of 1915, Landscaping and Lighting Act of 1972, Mello-Roos Community Facilities Act of 1982, and several other related statutory schemes, such as infrastructure finance districts and enhanced infrastructure finance districts, allow cities in California to finance public infrastructure.<sup>144</sup> S.B. 628 was signed into law in 2014 to address the abolition of the Redevelopment Law, which funded public infrastructures since 1945.<sup>145</sup> The bill created enhanced infrastructure

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139. *Delaney v. Lowery*, 25 Cal.2d 561, 568 (1944).

140. Stephen Moore, *Proposition 13 Then, Now and Forever*, CATO INST. (July 30, 1998), <http://www.cato.org/publications/commentary/proposition-13-then-now-forever> [<https://perma.cc/B2KU-FGX2>].

141. *Understanding Proposition 218*, LEGIS. ANALYST’S OFF., CAL. STATE LEGIS. (Dec. 1996), [http://www.lao.ca.gov/1996/120196\\_prop\\_218/understanding\\_prop218\\_1296.html](http://www.lao.ca.gov/1996/120196_prop_218/understanding_prop218_1296.html) [<https://perma.cc/Q59M-9XGM>].

142. CAL. GOV’T CODE § 37100.5 (West 1985).

143. LEGIS. ANALYST’S OFF., CAL. STATE LEGIS., *supra* note 141.

144. CAL. STS. & HIGH. CODE §§ 8570, 10100.2, 22662 (West 1984); CAL. GOV’T CODE § 54703.1 (West 1982).

145. Frank V. Zerunyan, *The Demise of California Redevelopment Law, and the Repackaging of Tax Increments for California Municipalities*, PUBLICCEO (Mar. 24, 2015), <http://www.publicceo.com/2015/03/the-demise-of-california-redevelopment-law-and-the-repackaging-of-tax-increments-for-california-municipalities/> [<https://perma.cc/W4B4-EF2Z>].

finance districts (“EIFDs”), new governmental entities governed by a public financing authority made up of local elected officials. The purpose of the EIFDs is to develop and implement an infrastructure-financing plan using tax increments to build and finance public facilities.

In short, these special state financing acts and entities are flexible tools used by local government agencies to pay for improvements and services in public areas for both charter and general law cities. Applicable public services may include streets, water projects, sewage and drainage, electricity infrastructures, parks, and police protection to newly developing areas. As forms of benefit assessments, the acts are based on the concept of assessing only those properties that benefit from improvements financed, either directly or indirectly, through increased property values. Charter and general law cities have used these localized tools in order to build much-needed infrastructure in their cities to relieve some of the tensions created by the repeal of the redevelopment law in California.<sup>146</sup>

### CONCLUSION

Aristotle once argued that true democracy could only flourish in small political organizations. His view was that humans flourish best within a city “since it alone provides the environment within which we can realize our natural potential for practical reason, by actively engaging in public affairs.”<sup>147</sup> This concept serves to abolish physical constraints to accommodate an assembly of citizens in a direct democracy, hence Montesquieu’s claim that “it is natural for a republic to have only a small territory.”<sup>148</sup>

Influenced by these and other political philosophers, the drafters of the U.S. Constitution created American federalism, which prescribes a balance of two complimentary strands of power, one horizontal, among equal branches of government, and the other vertical, among states, counties, and cities. The purpose behind these strands of power was to protect the individual and the liberties she enjoyed under the Constitution. Madison wrote:

The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite . . . . The powers reserved to the several States will extend to all the objects, which in the ordinary course of

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146. Frank V. Zerunyan, *Building Public Spaces Two Leases at a Time*, PUBLICCEO (Feb. 25, 2016), <http://www.publicceo.com/2016/02/building-public-spaces-two-leases-at-a-time/> [https://perma.cc/QF5R-64M9].

147. RICHARD BELLAMY & ANGUS ROSS, *A TEXTUAL INTRODUCTION TO SOCIAL AND POLITICAL THEORY* 36 (Manchester Univ. Press 1996).

148. MONTESQUIEU, *ESSAYS ON THE SPIRIT OF THE LAWS* (David W. Carrithers & Toby Linden eds., 1977).

affairs concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.<sup>149</sup>

Madison was, and still is, right. This vertical system of administration divides authority among manageable units or in small political organizations. It allows problems to be solved on the level where the problem originates—in other words, it allows the government closest to the people to promptly and efficiently address the needs of the people it serves.

Much has been written on the efficiency and responsiveness of local governance. More than fifty percent of the world population already lives in cities, and that number is said to increase to seventy percent by 2030.<sup>150</sup> Cities are home to people who live and die in them. Cities are the main incubator of the most important innovations in technology, culture, policy, and administration.<sup>151</sup> With the exception of very large cities, where things are less manageable and more political, city mayors and council members are our neighbors and friends. They see each other at the local little league, the youth soccer field, the grocery store, and the local bank. They are responsive and accountable to citizens, face to face and on a regular basis. They are typically non-partisan. As such, their decisions are more pragmatic and aimed at solving problems rather than towing a party line. This reality recalls the famous words of Mayor LaGuardia of New York, reminding mayors and council members that “there is no Democratic or Republican way of fixing a sewer.”<sup>152</sup> In practice, this should remain the mantra of every local government official focused on good and responsive governance.<sup>153</sup>

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149. THE FEDERALIST NO. 45 (James Madison).

150. Frank V. Zerunyan & M. Caroline Stevens, *Social and Environmental Sustainable Urbanization: Guidelines for Meaningful Progress*, COMM. OF EXPERTS ON PUB. ADMIN. (2014).

151. BENJAMIN R. BARBER, *IF MAYORS RULED THE WORLD* 14, 166, 214 (Yale Univ. Press 2014).

152. *If Mayors Ruled the World*, BENJAMINBARBER.ORG, <http://benjaminbarber.org/books/if-mayors-ruled-the-world/> [<https://perma.cc/VB75-6S6U>].

153. This article is dedicated to all local elected officials with whom I served. I also dedicate this article to Sam Olivito, the long-time and now-retired executive director of California Contract Cities Association, the Cities of Lakewood and Rolling Hills Estates, and my colleagues at USC Price, who tirelessly advance the scholarship of local governance.