

Meeting notes from August with Michael Gates:

Michael E. Gates, City Attorney, Huntington Beach: That's Michael.gates@Surfcity-hb.org

The upside to becoming a charter city is as Article 11, and you can look this up yourself. It's pretty self explanatory. Under Article 11 of the California Constitution. A charter city has autonomy free from State interference. to govern over municipal affairs, free from State interference. So it's literally excuse me. A power granted by the people of the State of California to the Constitution that is then \ granted by the California Constitution to charter cities, to govern for themselves and completely circumvent. The State legislature essentially.

Your police department is a matter of local control. Zoning and land uses has historically been considered a local control issue. And we can. We're going to talk about that a little bit more. That's been the Charter City authority over that local control over housing and land use has been frittered away by court decisions and by State legal legislation. But I will tell you that through our fight and through hopefully, the fights of other cities.

Absolute, perfect example of how the State came out and said, Hey subdivide the State's law. allowing for single family homeowners to subdivide their lots and densify their lots in single family neighborhoods. Is a matter of state, right or statewide concern, such so that it can circumvent local authorities, local city councils, and local planning commissions that was deemed unconstitutional for charter cities. Why, that was deemed by the court to be unconstitutional for charter cities. Why? Because the State, now, because they want essentially a centralized government. They're claiming that everything is a matter of statewide concern.

The state claims the matter is of state concern, but then they must prove it to the courts. And then the State really is strained to offer proof which is what happened in Sb. 9. So the State could not prove to the court, or convince the court that Sb. 9 advanced affordable advanced affordable housing, for instance. So Sb. 9. Failed as a law that preempted local Charter City authority.

Basically, we were about to join the Sb, 9, fight or the fight against Sb, 9, and Root City, Redondo Beach was way far down the tracks, and it looked like they were doing well at the Trial Court Trial Court basically said that the State failed to prove that Sb. 9 was a matter of statewide concern, IE. It was not narrowly tailored enough to advance the affordable housing end goal.

And so it was struck down. And when when a court strikes down a law like that, for those reasons, it basically is acknowledging a Charter city's municipal control preempts or trumps the State control.

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issues or subject subject matter of of local governance, and that is your police department.

governs for itself its municipal affairs while the State governs State affairs, and they coexist in harmony, each governing their own and sort of staying in their own lane.

the need to protect your environment. That's literally what the statement of writing consideration. So if you're a council member and you adopted a housing element with a Hy arena a few months ago, or a year ago, or whatever. Go back and look at what your statement of overriding consideration says. Well, that is a written statement, that speech. That's effectively state compelled speech. And so we're challenging in Federal court. Some federal issues on that basis. There's also some due process, and so on and so forth.

Part of that lawsuit, too, is a challenge in Federal court. But we loop in some of the State laws as well. One of the problems that the State's gonna have and hear me loud and clear on this, because this applies really to everybody. One of this is well, if you're a charter city, one of the problems the State has is.

if the State is going to preempt local, municipal authority or local control over a municipal issue of a charter city, the law has to be narrowly tailored, meaning the least intrusive means, because the State can't stamp on everything that a local agency is doing. It has to thread the needle, so it has to be narrowly tailored to the least intrusive. You know the least intrusive means. In order to effectuate that goal.

Because those laws were written generally and broadly, they were never designed. They were never, really, never narrowly tailored. So now they can't meet that narrowly tailored test, and the least intrusive means test. So I think the State tos on this and we're challenging that as part of our Federal lawsuit, too. So that's our Federal lawsuit. I I could go into further detail.

And so I'm trying. I'm looking, and I'm getting on more and more interviews. On and trying to get this word out so that the communities will hear this message and city councils will hear this message, and people will have hope, and maybe some inspiration, to actually start pushing back on the State of California, because as long as cities keep rolling over and capitulating.

Julie Testa: Our Senator Glazier to do an audit that came back, said, Yeah, you know. HCD Can't even substantiate those RHNA numbers. They're wrong. So when I'm asked to approve housing element that I know is that we have been absolutely bullied into, and that I just I. I know the numbers are wrong. Based on that?

Michael E. Gates, City Attorney: Yeah. So I think, sort of to touch on both questions. One of the things that the community does have to do is they? They do have to get involved in the elections themselves. So you know, I'm out there campaigning with candidates when they're running for city Council.

You know, that's critical. I mean Huntington Beach, in 2,022 flipped. Our our council was highly, highly highly progressive. For about 2 years and the city of Huntington Beach had enough of that, and you know that was the 202,020 City Council. They had enough of that. I campaigned with some new candidates, conservative candidates and so we got them all elected in 22 and flipped the council. So basically, it does start, fortunately or unfortunately, with the community being activated and trying to get good council members elected. If you're

in a predominantly progressive city, you know the thing in my mind is it's still local control matters, and the one size fits all from the State of California doesn't work for all cities, even if you are progressive, you know there are harms being perpetrated on your environment in your city, in your progressive city, because of the Rena numbers, because the the housing laws system and the Ceqa laws that they run up against that whole system is broken like they. They don't. Those. Those laws don't do not exist in harmony. And so even what progressive cities can do is say, Hey, look! We need to push back on the State.

Julie Testa, Pleasanton: But but on that I mean specific to the whole concept of the Coastal Act was to protect access and not allow our coastlines to become Manhattanized right? And isn't that what these new laws coming through Sacramento are saying? No, we're gonna

Anita Enander, former mayor, Los Altos: Sure, and, Rob, I hope you'll stay, and that we can be in touch as well. Much of what I'm going to talk about is of most interest to those who are in the ABAG group. But even if you are not a part of our cog, I hope you'll take some lessons from this.

Some of you know that about 8 years ago, Abe, our cog abag, began an attempt to look at how to do housing on a regional basis with language to make it easier to pass this regional housing bond. That would have been a 20 billion dollars, and those of you in La Southern California. You're used to big numbers, but this would have been a 20 billion dollar bond lasting for 53 years

So 3 things happen all kind of together.

One is that a group of people from throughout the 9 Bay Area counties got together and said, We are going to work to oppose this bond. We think it's wasteful and stupid, and I won't tell you all the terrible things about why it makes why, it's the worst way in the world to get affordable housing built.

In parallel with that, a couple of other things were going on. Those of you statewide should be familiar with Proposition 5. Which is on the ballot, and which would change part of the prop. 13. Law, so that housing and certain other bonds and taxes that currently require two-thirds vote to pass would only require 55% vote to pass.

If prop 5 passed, then that measure would also pass. So the prop 5 was specifically and deliberately included with language to make it easier to pass this regional housing bond. So 3 things happen all kind of together. And at the same time a private attorney, who some of you may know name is Jason Bezis, decided to file an action. to say that the a number of of problems with what they were putting on the ballot and then separately, the Howard Jarvis organization filed against Prop. 5, claiming that the ballot statement on prop. 5 was false and misleading.

Some of you who've been around know who Tom Rubin is, a CPA. very detail oriented guy. He did the research that identified that the ballot statement for the regional measure was completely false, because it claimed that it would raise 670 million dollars a year. Average annual funds for this, and the actual number was just shy of 911 million.

So that number was used by Jason to go file against Oh.the Santa Clara County registrar voters, who was the person handling this met matter for all 9 counties. They had designated Santa Clara as the lead organization to to do all the ballot language and collect all the different, you know, language versions, and all that kind of thing. So he filed on that.

A court ruled in favor of Howard Jarvis. Bonta appealed it, but, MTC pulled the ballot issue in a closed executive meeting. Math error got a lot of bad publicity.

Julie Testa: What I felt incredible is that the 20billion dollar bond did not come close to meet the requirement for the amount of affordable housing. Wow need RHNA reform first.

Ankita Enander, former Mayor of Los Altos: I was interviewed about this and one of the points I made was nobody can afford to meet our RHNA numbers. This requires 1 million dollars a unit. We need to have a conversation between the state, federal and local government about how they can work with us to not bankrupt cities by shifting either by the direct costs or by shifting the infrastructure costs to those cities. And until we have that discussion, we're going to continue to flail around with supposedly straightforward solutions, IE. More taxes that aren't going to solve the problem.

And does anybody have? An answer? And I'll just say to this group. What a dear friend of me of mine said to me about 35 years ago, with respect to equal opportunity, employment.

But we're not even having a conversation about it, because Scott Weiner has the easy solution which is, build baby build. Put it on the cities and collect all the the donation money from the people who benefit. And now with. And I'm those of you that are in Southern California. I'm sure you all cheered as some of the rest of us did. That. Wiener's SB 610 got put in suspense. The fire zone bill.

Nils Nehrenheim, Attorney : As a general law city, you're limited by the State directly. For it to apply to a Charter City they must say it is a matter of statewide concern and it applies to Charter Cities. And that's how we won SB 9 Lawsuit, where it's only applying to Redondo, Torrance, Whittier. Del Mar. and Carson.

Because 1- it it a didn't pass the test of statewide concern, and 2 - it didn't have the word affordability throughout the entire bill, and and we were able to show in Charter City that this is not tailored narrowly enough to be applicable to a Charter City.

They are on Appeal now in state court. Once they win that, the matter will apply to all the Charter cities in the state. While it is on appeal the cities are not accepting anything. I assume he means projects.

AI summary:

1. Here are the key action items from the meeting transcript:
2. Julie to follow up with Michael Gates on having further discussions about unfunded mandates and other legal challenges.
3. Julie to organize an independent session at Cal Cities conference and invite Michael Gates to participate.
4. Rob (San Mateo) to consider joining future meetings and discussions on local control issues.
5. Anita to continue working with the group opposing regional housing bonds and focus on opposing Proposition 5.
6. Susan Kirsch and Anita to reach out to new contacts about supporting Our Neighborhood Voices initiative.
7. Margaret to gather more specific examples of charter city benefits to share with voters in her city.
8. Nils to provide additional information on charter city legal protections and ordinances to interested cities.
9. Michael Gates to share sample charter city documents with Julie for reference.
10. Julie to organize a broader discussion on becoming a charter city in the coming months.
11. Interested cities to consider adopting urgency ordinances related to SB9 (for charter cities only).
12. Michael Gates to keep the group informed on the outcome of the October 21st 9th Circuit Court hearing.
13. Attendees to visit OurNeighborhoodVoices.com for more information on the initiative.