

City of Lafayette Committee Report

For: City Council
By: Lafayette Charter City & Communication Committee
Date Written: February 2, 2010
Meeting Date: February 8, 2010
Subject: Draft Charter

Introduction

In October, the Charter City Committee presented the Council with a draft charter. Along with requesting several minor changes to the specific wording, The Council questioned the Committee and the City Attorney at length about Article IV – Mandates Limited and Article V – Revenue Retention. Specifically, the Council directed the committee and the City Attorney to research the enforceability of these two articles.

Analysis

Article IV, “Mandates Limited,” provides that “No person, whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of government, unless and until funds sufficient for the performance of such function are provided by said mandating authority.”

This Article is found in many other charters throughout the state and was likely drafted to address Article XIII B, section 6 of the California Constitution on state mandates, which provides that the State is required to pay for any new governmental programs or for higher levels of service under existing programs that it imposes upon local governmental agencies. If such programs are unfunded by the State, local governmental agencies may refuse to perform them if they follow the process set forth in the California Government Code. The City, by adopting Article IV, would make clear the City’s intention not to perform any mandates or participate in any program unfunded by the State.

Article V, “Revenue Retention,” provides that “Any revenues accrued to and/or collected by the City shall not be subject to subtraction, retention, attachment, withdrawal or any other form of involuntary reduction by any other level of government.” Similar to Article IV, Article V sets forth a clear intention by the City to protect the funds it collects to be used for the welfare of its citizens, and establishes that the City will do what is necessary to prevent other levels of government, such as the State, from taking its revenues.

It is the City Attorney's opinion that both of these articles may be likely unenforceable if the State decides that mandates and/or revenue reductions are matters of statewide concern, thus preempting these articles. However, the City Attorney also opined that both articles set forth a clear intention by the City to protect its funds and resources and therefore, the City is free to leave the articles in the Charter as a statement of policy and doing so would in no way invalidate the rest of the Charter.

Conclusion

The Committee agreed that Articles IV and V were necessary to set forth a clear policy for the City. Indeed, one of the main reasons for instituting a charter was to gain as much direct control and autonomy over local resources as possible in order to preserve the economic and fiscal independence of the City.

Recommendation

Accept the charter as drafted.

City of Lafayette Staff Report

For: City Council
By: Tracy Robinson, Administrative Services Director
Malathy Subramanian, City Attorney
Date Written: February 2, 2010
Meeting Date: February 8, 2010
Subject: Review of Draft City Charter

Background

The City of Lafayette is interested in becoming a charter city and the Charter City Committee has prepared a draft charter to begin the process. The Council requested that the City Attorney review the draft charter at its October 26, 2009 meeting.

Analysis

The City Attorney has reviewed the draft charter and met with the Charter City Committee on January 28, 2010 to discuss suggested revisions to the draft charter. The Charter City Committee considered these recommendations and made minor revisions to the draft charter. The Charter City Committee proposes the attached draft charter for Council consideration, which has been reviewed and approved by the City Attorney.

Recommendation

Review and Discuss Draft Charter

Attachment

Draft Charter

DRAFT CHARTER OF THE CITY OF LAFAYETTE

PREAMBLE

The City of Lafayette was incorporated as a general law city in 1968 by residents seeking the right to manage local affairs. The authority of general law cities has diminished as a result of increasing State mandates and involvement in local matters. In order to reclaim the local autonomy sought through incorporation and to preserve the economic and fiscal independence of our local government, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the City of Lafayette.

ARTICLE I

Acceptance of Home Rule

Except as restricted by this Charter, the City shall have all powers allowable under the Constitution of the State of California to adopt ordinances, establish rules, grant franchises, structure City government, and in every way to govern the municipal affairs of the City. Municipal affairs encompass all matters of local concern as determined by the City Council consistent with the meaning of "municipal affairs" under the constitutional, statutory, and judicially defined law of the State of California.

ARTICLE II

Interpretation

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

The provisions of this Charter shall be interpreted broadly to favor the exercise of its powers to govern with respect to any matter that is a municipal affair. If any provision is found by a court to be invalid, the remaining provisions of the Charter shall remain in full force and effect.

ARTICLE III

Continuation of Existing Law

All ordinances, resolutions, rules and regulations of the City in effect as of the effective date of this Charter shall continue in effect until repealed or amended.

ARTICLE IV

Mandates Limited

No person, whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of government, unless and until funds sufficient for the performance of such function are provided by said mandating authority.

ARTICLE V
Revenue Retention

Any revenues accrued to and/or collected by the City shall not be subject to subtraction, retention, attachment, withdrawal or any other form of involuntary reduction by any other level of government.

ARTICLE VI
Public Contracting

The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work.

ARTICLE VII
Purchasing

The City shall have the power to establish standards, procedures, rules, or regulations related to the purchasing of goods, property, or services, including, but not limited to, the establishment of local preferences.

ARTICLE VIII
Amendment, Revision or Repeal

This Charter and any of its provisions may be amended by a majority vote of its electors voting on the question. Amendment, revision or repeal may be proposed by initiative or by the City Council.

