

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.