

September 11, 2020

Ms. Veronica L. Williams
Clerk of the Council
Lafayette City Council

RE: Disposition of Ordinance No. CO-077-2020
Veto Message of Mayor-President Joshua S. Guillory

To the Clerk of the Council, Honorable Chair, and Members of the Lafayette City Council:

Please allow this letter to inform you that I have exercised the veto authority granted by Article II, Section 2-13B of the Charter, to veto Ordinance No. CO-077-2020. Enclosed is the written statement of the reasons for the veto, as required by Article II, Section 2-13B.

Sincerely,



Joshua S. Guillory
Mayor-President

Written Reasons for Veto of Ordinance No. CO-077-2020.

The Louisiana Constitution provides, “A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.”¹ The Louisiana Supreme Court has stated, “Just as the Constitution is the supreme law of the state, home rule charters are the supreme law of home rule charter jurisdictions, subordinate only to the constitution and constitutionally allowed legislation.”²

Our Home Rule Charter states that the Mayor-President shall direct and supervise all departments, offices, and agencies, and that only the Mayor may appoint and remove all City, Parish, and City-Parish employees and appointive administrative officers.³ And, “The directors of all departments created by or under this charter shall be appointed by the Mayor-President and shall serve at the pleasure of the Mayor-President[.]”⁴

Pursuant to the Charter, the Mayor-President shall appoint the City-Parish Attorney, who shall be the director of the legal department.⁵ Moreover, “**The City-Parish attorney shall serve as chief legal adviser to the Mayor-President, City Council, Parish Council, and all departments, offices and agencies;** represent the City of Lafayette, the Parish of Lafayette, and the City-Parish Government in all legal proceedings; and perform other duties prescribed by this charter or by ordinance.”⁶ All assistant attorneys serve at the pleasure of the City-Parish Attorney.⁷

The City Council has cited Section 4-03(E) as the provision enabling Ordinance No. CO-077-2020 (hereinafter sometimes referred to as “the ordinance”), which reads, “No special legal counsel shall be retained by the City of Lafayette ... except by written contract for a specific purpose approved by the favorable vote of a majority of the authorized membership of the City Council[.]”⁸ The Western District of Louisiana recently considered substantively identical Charter provisions in connection with the argument that Special Counsel are within the City Council’s sole authority of hiring and control, and found “such a vacuous reading to be untenable for a number of reasons,” explaining:⁹

[A]s the Charter is written and organized, special legal counsel are members of the City’s legal division. Subsection (D) is merely one of four subsections falling under

¹ La. Const. Art. VI, § 5(E).

² *Montgomery v. St. Tammany Par. Gov’t*, 2017-1811, --So.3d --, 2018 WL 3151290 (La. 6/27/18)

³ Charter Section 3-09(A)(2); 4-01(A).

⁴ Charter Section 4-01(A).

⁵ Charter Section 4-03(A).

⁶ Charter Section 4-03(C).

⁷ Charter Section 4-03(D).

⁸ Charter Section 4-03(E).

⁹ *City of Alexandria v. Cleco Corp.*, 735 F. Supp. 2d 465, 478 (W.D. La. 2010) (emphasis added).

Section 4-02, which is titled "Legal Division." This placement strongly indicates that special legal counsel are, at a minimum, subject to the supervisory authority of the city attorney, who is "[t]he head of the legal division." The city attorney is also obligated to "represent the city in all legal proceedings," meaning that Mr. Johnson was the City's representative in the Cleco litigation. If special legal counsel like Ms. Brown were to operate devoid of any obligation to the city attorney, and subject in no way to his authority, then these provisions making the city attorney the head of the legal department, and making special legal counsel members of the legal department, would be rendered meaningless. **We refuse to retroactively nullify this language in the Charter, and to strip the city attorney of his supervisory authority as head of the legal division.**

Indeed, to read the Charter otherwise would create an internal disjunction among its provisions. While the Charter requires the approval of the City Council for the execution of any contract, including, specifically, a contract retaining special legal counsel, it also vests the executive branch with supervisory authority over administrative divisions. The city attorney is an executive appointee, supervised by the mayor, and with supervisory powers over the entire legal division. **It cannot be denied that special legal counsel operate only as members of the legal division. By default, then, special legal counsel operate under the supervisory authority of the city attorney.** This Court is bound "to adopt a construction of the provision in question which harmonizes and reconciles it with other provisions." **The only interpretation which harmonizes the provisions vesting the city attorney with supervisory authority, and placing special legal counsel within the ambit of the legal division, is one recognizing the city attorney's authority to supervise, and terminate, special legal counsel.**

In Ordinance No. CO-077-2020, the City Council is attempting to replace its legal advisor under the Charter and usurp the authority of the City-Parish Attorney and the Mayor-President in violation of the Charter, effectively removing the City-Attorney as the Chief Legal Adviser to the Council and circumventing the Charter's express grant of a centralized legal department under the Mayor-President and his executive administration. The Charter specifically instructs, "Except as specifically provided in this charter, neither the City Council nor the Parish Council, nor any of their members, shall remove, direct or supervise any administrative officers or employees whom the Mayor-President or any subordinates of the Mayor-President are empowered to appoint."¹⁰

The provisions of the Ordinance violate the Charter in additional ways. The Ordinance authorizes the Chairman of the Lafayette City Council to execute an agreement for legal representation,¹¹ but the Chairman has no such authority in the Charter. Rather, the Charter gives only the Mayor-President authority to execute agreements.¹² And, the Ordinance provides that

¹⁰ Charter Section 2-06(B).

¹¹ Ordinance Section 3.

¹² Charter Section 3-09(A)(5-6).

the City Council is hiring the special counsel,¹³ but Charter Section 4-03(E) provides the City of Lafayette (not its Council, alone) authority to retain a special counsel. The law is clear the City Council is not a legal entity¹⁴ and therefore cannot obtain legal counsel for itself.

Finally, Charter Section 5.06(A) provides that payments shall not be made except in accordance with the approved operating and capital budgets, and unless the Mayor-President certifies sufficient funds are or will be available to meet the obligation when due and payable. The hiring and payment of a special counsel is not in accordance with the operating and capital budgets passed by the City Council, and the Council has passed no amendments or supplements to the budget that can cover the amounts to be paid to a special counsel.

In conclusion, Ordinance No. CO-077-2020 violates and attempts to circumvent/usurp the provisions of our Home Rule Charter and the fundamental structure of the Lafayette City-Parish Consolidated Government. The citizens expressly voted to have separate legislative branches for the City and Parish, but with one centralized executive and legal department under the authority of the Mayor-President. This structure of a centralized executive and legal department was enacted by the citizens precisely so the City and Parish will operate in accordance with consistent and harmonious legal representation and avoid additional needless legal expenses presented by the ordinance. As a document founded on the will of the people, a home rule charter can only be amended only "when approved by a majority of the electors voting thereon at an election held for that purpose."¹⁵ Otherwise, the "City must pass ordinances in conformity with its home rule charter."¹⁶

Last year, Louisiana's Fourth Circuit said, "Louisiana jurisprudence is replete with decisions striking municipal and parish ordinances as unlawful, and therefore being considered as null and void and/or inoperative."¹⁷ The court then provided a few instructive examples:

- "In *Tardo v. Lafourche Parish Council*, 476 So.2d 997, 999 (La.App. 1 Cir. 1985), the First Circuit upheld a trial court's finding that an ordinance (adopted by the Lafourche Parish Council after the budget without the approval of the Parish President) was invalid because it violated the Parish of Lafourche's home rule charter mandates."
- "In *Schmitt v. City of New Orleans*, 461 So.2d 574, 577-78 (La.App. 4 Cir. 1984), this Court affirmed the trial court's determination that several zoning ordinances passed by the City of New Orleans were null and void as they violated the City's home rule charter."
- **And, importantly for our City and controlling Court of Appeal, "In *Lafayette City Gov. v. Lafayette Mun. Bd.*, 01-1460 (La.App. 3 Cir. 5/8/02), 816 So.2d 977, the Third Circuit affirmed the trial court's granting of a preliminary injunction after determining that the**

¹³ Ordinance Section 2.

¹⁴ *City Council of City of Lafayette v. Bowen*, 649 So.2d 611 (1994), 94-584 (La.App. 3 Cir. 11/2/94).

¹⁵ La. Const. Art. VI, § 5(C).

¹⁶ *McMahon v. City of New Orleans*, 2018-0842 (La. App. 4 Cir. 9/4/19), 280 So. 3d 796, 800 (*Francis v. Morial*, 455 So.2d 1168, 1171 (La. 1984)).

¹⁷ *Id.*

Lafayette Municipal Fire & Police Civil Service Board's passage of a civil service rule ...
violated the Lafayette City Government's home rule charter."

The result would be the same here if Ordinance No. CO-077-2020 were allowed to be passed. For all of the foregoing reasons, I respectfully Veto Ordinance No. CO-077-2020.

Respectfully,

A handwritten signature in dark ink, appearing to read "Joshua S. Guillory", written in a cursive style.

Joshua S. Guillory
Mayor-President

CITY ORDINANCE NO. CO-077-2020

**AN ORDINANCE OF THE LAFAYETTE CITY COUNCIL AUTHORIZING THE
HIRING OF A SPECIAL COUNSEL TO REPRESENT THE CITY OF LAFAYETTE IN
ITS DISPUTE WITH THE LAFAYETTE CITY-PARISH CONSOLIDATED
GOVERNMENT ADMINISTRATION REGARDING THE PROPER
INTERPRETATION AND IMPLEMENTATION OF THE JOINT DECISION RULES IN
THE LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT HOME RULE
CHARTER**

BE IT ORDAINED by the Lafayette City Council, that:

WHEREAS, the voters of Lafayette Parish approved amendments to the Lafayette City-Parish Consolidated Government Home Rule Charter (“Charter”) that, among other things, established a Lafayette City Council to be the governing authority for the City of Lafayette and a Lafayette Parish Council to be the governing authority for the Parish of Lafayette; and

WHEREAS, the Charter contains several provisions that provide for how the two (2) councils work together to make decisions that involve budget items or issues that fall within the legislative authority of both the City of Lafayette and Parish of Lafayette; and

WHEREAS, in the first months of the new charter the Lafayette City-Parish Attorney and his assistant attorneys have issued several opinions regarding joint decision making that the Lafayette City Council believes conflict with both the intent and plain language of the Charter; and

WHEREAS, the Lafayette City Council has a fiduciary responsibility to the City of Lafayette, but the erroneous interpretations have resulted in the Lafayette City Council not being able to control how City of Lafayette revenues are appropriated and concerned that may violate the Constitution of the State of Louisiana; and

WHEREAS, while the Lafayette City Council understands that the Lafayette City-Parish Attorney represents all of Lafayette City-Parish Consolidated Government, the current dispute presents a clear conflict of interest that necessitates the hiring of special counsel; and

WHEREAS, Section 4-03(E) of the Charter provides that the Lafayette City Council may hire a special counsel to represent the interests of the City of Lafayette for a “specific purpose;” and

WHEREAS, the Lafayette City Council has identified that the proper interpretation and implementation of the joint decision rules are of paramount importance to the City of Lafayette, for the current set of budget hearings as well as future budget hearings, because of the precedent that will be set over the next few weeks and months that will have consequences to City of Lafayette taxpayers for years to come; and

WHEREAS, it is a wise expenditure of City General Fund dollars to hire legal representation in order to enable the Lafayette City Council to protect hundreds of millions of City of Lafayette tax dollars from being illegally and improperly spent for non-city purposes; and

WHEREAS, this particular issue is one that will require a specific legal expertise.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Lafayette City Council, that:

SECTION 1: All of the aforescribed "Whereas" clauses are adopted as part of this ordinance.

SECTION 2: The Lafayette City Council hereby hires Lea Anne Batson as Special Counsel, for the purposes of providing legal representation to the City of Lafayette in its current dispute with the Lafayette City-Parish Consolidated Government administration and the Parish of Lafayette regarding the proper interpretation and implementation of the joint decision rules in the Lafayette City-Parish Consolidated Government Home Rule Charter.

SECTION 3: The Chairman of the Lafayette City Council is hereby authorized to execute an agreement for legal representation between Lea Anne Batson and the City of Lafayette at such rates as are reasonable for the service provided.

SECTION 4: The compensation for the Special Counsel is hereby set at the rates as established by the Louisiana Attorney General for hourly fees.

SECTION 5: This information shall be as reflected in any pertinent documents which are attached hereto and made a part hereof and filed in the Office of the Lafayette Clerk of the Council.

SECTION 6: All ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 7: This ordinance shall become effective upon signature of the Lafayette Mayor-President, the elapse of ten (10) days after receipt by the Lafayette Mayor-President without signature or veto, or upon an override of a veto, whichever occurs first.

* * * * *

CITY COUNCIL MEETING
AGENDA ITEM SUBMITTAL FORM

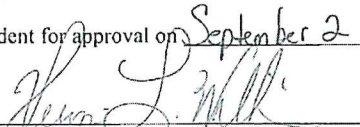

- 1) **JUSTIFICATION FOR REQUEST:** An ordinance of the Lafayette City Council authorizing the hiring of a special counsel to represent the City of Lafayette in its dispute with the Lafayette City-Parish Consolidated Government administration regarding the proper interpretation and implementation of the joint decision rules in the Lafayette City-Parish Consolidated Government Home Rule Charter.
- 2) **ACTION REQUESTED:** Adoption of ordinance
- 3) **REQUESTED ACTION OF LAFAYETTE CITY-PARISH COUNCIL:**
 - A) INTRODUCTION: 08-18-2020
 - B) FINAL ADOPTION: 09-01-2020
- 4) **DOCUMENTATION INCLUDED WITH THIS REQUEST:**
 - A) Ordinance
 - B) Submittal Form
- 5) **FISCAL IMPACT:**

 X Fiscal Impact (Explain)

 No Fiscal Impact

AUTHORED BY:
/s/ Patrick "Pat" Lewis
PATRICK LEWIS, DISTRICT 1
LAFAYETTE CITY COUNCIL

DISPOSITION OF ORDINANCE NO. CO-077-2020

1. This ordinance was introduced: August 18, 2020
YEAS: Lewis, Naquin,
Hebert, Cook, Lazard
NAYS: None
ABSENT: None
ABSTAIN: None
- Final disposition by Council:
September 1, 2020
YEAS: Lewis,
Hebert, Cook
NAYS: Naquin
ABSENT: Lazard
ABSTAIN: None
2. Notice of Public Hearing: This ordinance was published by Title and Notice of Public Hearing was published in the Advertiser on August 21, 2020.
3. This ordinance was presented to the Mayor-President for approval on September 2, 2020, at 2:30 o'clock P.m.

CLERK OF THE COUNCIL
4. Disposition by Mayor-President:
I hereby:
A. Approve this ordinance, the _____ day of _____, 2020, at _____ o'clock ____m.
B. Veto this ordinance, the 11 day of SEPTEMBER, 2020, at 1:05 o'clock P.m., veto message is attached.
C. Line item veto certain items this _____ day of _____, 2020, at _____ o'clock ____m., veto message is attached.

MAYOR-PRESIDENT
5. Returned to Council Office with/without veto message on _____, 2020, at _____ o'clock ____m.
6. Reconsideration by Council (if vetoed):
On _____, 2020, the Council did/refused to adopt this ordinance after the Mayor-President's veto.
7. Returned to the Council Office without signature of Mayor-President (*unsigned*) on _____, 2020, at _____ o'clock ____m.
If not signed or vetoed by the Mayor-President, and ten days have elapsed since this ordinance was presented to him for action, same has been automatically approved.
- CLERK OF THE COUNCIL
8. Full publication of this ordinance was made in the Advertiser on September 4, 2020.