



CONFIDENTIAL AND PRIVILEGED

M E M O R A N D U M

TO: Lafayette Consolidated Government City-Parish Council

THRU: Jared Bellard, Chairman of the Council

FROM: Paul D. Escott, City-Parish Attorney
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COPY: Joel Robideaux, Mayor-President, Lowell Duhon, Chief Administrative Officer, Lorrie Toups, Chief Financial Officer

COPY: Kevin Naquin, Jay Castille, Patrick Lewis, Kenneth Boudreaux, Bruce Conque, Nanette Cook, Liz Hebert, William Theriot, Veronica Williams, Clerk of the Council

DATE: 10 March 2019

RE: LCG Council Election District Reapportionment

The issues and solutions discussed and presented within this memorandum are necessarily based on the review, analysis, and interpretation of the Lafayette City-Parish Consolidated Government (“LCG”) Home Rule Charter (“HRC”).

I. BACKGROUND

On December 8, 2018, the electors of the Lafayette City-Parish Consolidated Government approved certain amendments to the LCG Home Rule Charter. The proposition that appeared on the ballot questioned, in pertinent part:

HOME RULE CHARTER AMENDMENT PROPOSITION

Shall the Lafayette City-Parish Consolidated Government Home Rule Charter be amended to: abolish City-Parish Council, create the Lafayette City Council and Lafayette Parish Council, as governing authority for Lafayette City-Parish

Consolidated Government; establish as governing authority, City Council for City of Lafayette and Parish Council for Parish of Lafayette...¹

Among other things, the ratification of the 2018 Proposition moved LCG from a single City-Parish Council form of government to a separate Lafayette City Council and Lafayette Parish Council form of government. It has now become apparent that the descriptions of certain newly-created Lafayette City Council and Lafayette Parish Council election districts contain discrepancies or errors and at least one complete omission of a voting precinct. Development of the appropriate solution to correct the discrepancies, errors, and omissions in the various council election district descriptions requires the review, analysis, and interpretation of several different concepts within both the current Home Rule Charter (the “Current HRC”) and the amended Home Rule Charter ratified on December 8, 2018 (the “Amended HRC”).

The resolution of this entire matter requires interpretation of the language of the HRC(s). In that regard, when interpreting a municipal charter, “all parts of the charter will be considered together to ascertain its true meaning.”² Moreover, Section 8-09 of both HRCs provide that the charter “shall be liberally construed in aid of its declared intent which is to establish for the people ... effective home rule free from legislative interference as to the structure and organization of its local government, and with the power and authority to manage its local affairs...”

In addition to the principles of interpretation outlined above, the determination of whether the Current HRC or Amended HRC should apply to this discussion must also be analyzed. Section 8-12 of the Amended HRC, titled “Schedule of Transition,” states:

If approved by the voters, the amendments to this charter shall not take effect until the date that a majority of the newly elected City Council members and a majority of the newly elected Parish Council members officially take office, except for only those amendments to this charter that are necessary to carry out the election of City Council positions and Parish Council positions created by said amendments.

Considering the ratification of the 2018 Proposition by the voters, Section 8-12 necessarily results in the application of both the Current HRC and the Amended HRC. Portions of both the Current HRC and the Amended HRC, therefore, must be considered.

For example, Section 8-01 of the Amended HRC, which contains the erroneous descriptions of the City Council and Parish Council election districts, is currently in effect in accordance with the terms of the Amended HRC’s Section 8-12. Because this provision necessarily governs qualifications for the upcoming election of City and Parish Council positions, in addition to the districts each respective Council member will represent, it is clear that Section 8-01 of the Amended HRC is in effect as of this date.³

¹ Exhibit “A” – December 2018 Ballot Proposition.

² 2A Dennis Jensen & Gail A. O’Gradney, *McQuillin Mun. Corp.* § 9.22 (3rd ed. 1996).

³ Exhibit “B” – Section 8-01 of the Amended HRC.

Against the foregoing background, the following discussion provides for the recommended solution to the discrepancies, errors, and omissions of the election district descriptions.

II. LAW AND ANALYSIS

Since the discovery of the discrepancies, errors, and omissions, there have been several suggestions from multiple sources regarding the appropriate solution for addressing these issues. Generally speaking, the Legal Department has analyzed two solutions potentially available to LCG to correct the Section 8-01 discrepancies: an election and an ordinance.

A. Election to Address Discrepancies, Errors, and Omissions in Council Election Districts

With regards to an election, this potential solution is swiftly vitiated by the explicit language of both the Current HRC and the Amended HRC. Section 7-03(E) of the Current HRC provides, “[u]pon passage or rejection of a proposal by the voters, at least one (1) year shall lapse before the same issue can again be submitted to the voters.”⁴ Because Section 8-01 of the Amended HRC was ratified by the voters on December 8, 2018, an election calling for the amendment of Section 8-01 would undeniably violate Section 7-03(E) of the Current HRC.

Importantly, any argument that this proposed election would not call for consideration of “the same issue”, as was ratified on December 8, 2018, lacks sound analysis. Although the hypothetical proposition would contain different language than that of the 2018 Proposition, the analysis must go deeper than a surface level comparison of the text and, instead, into the substance of the issue that would be placed before the voters.

Consider the potential outcomes of an election to remedy the Council districts in the Amended Charter. One of the outcomes is that the voters do not approve the remedy to the Council districts, which effectively results in a nullification of the December 8, 2018 election. If a new election could nullify the results of a prior valid and legal election, there can be little doubt that the “same issue” was presented to the voters in both elections. For this very reason, Section 7-03(E) of both the Current Charter and Amended Charter prohibits the calling of an election on this issue prior to December 8, 2019.

Nonetheless, even if the Current HRC and the Amended HRC did not ban such an election, under both the Amended HRC and applicable Louisiana law discussed below, an election is neither required nor appropriate to address the discrepancies, errors, and omissions contained in the descriptions of the council election districts of Section 8-01. Instead, the appropriate solution available to LCG to address Section 8-01 of the Amended HRC is the reapportionment of the council election districts through the introduction and adoption of an ordinance, a process which is explicitly embedded within and authorized by the written provisions of both the Current HRC and the Amended HRC.

⁴ The language of Section 7-03(E) in both the Current HRC and the Amended HRC is identical.

B. Ordinance to Reapportion Council Election Districts

Section 8-01 of the Amended HRC is the lynchpin of this analysis. This Section declares that the council election districts listed therein “shall be as follows, and shall remain as follows **until changed by reapportionment...**” Embedded within this introductory paragraph of Section 8-01 is language authorizing the reapportionment of the council election districts listed therein. The only remaining questions are, therefore, (1) whether a change in Council districts in the Amended Charter at this time qualifies as a “reapportionment;” and (2) by what method can it be accomplished.

Black’s Law Dictionary defines reapportionment as, “realignment of a legislative district’s boundaries to reflect changes in population and ensure proportionate representation by elected officials – Also termed *redistricting*.”⁵ However, reapportionment and redistricting have also been differentiated as two distinct operations in the following analysis:

Reapportionment refers to the allocation of seats in a legislative body among established districts. The number of members representing each district may change, but the district boundaries themselves do not...

Redistricting refers to the process of redrawing the geographic boundary lines for election districts. It is also referred to as “remapping,” since new geographic boundary lines will change the “map” of an election district. The redistricting process includes congressional election districts and election districts for state and local electoral offices.⁶

Regardless of how these terms have been defined, both reapportionment and redistricting are, at their most fundamental level, methods used to achieve the same purpose: to uphold “traditional districting principles,” the most significant of which is equality in voting.⁷ Because both are employed to protect voter rights through the editing of election districts, each is held to the same legal standards and available at the same times under Louisiana law.

Consistent with the well-established interchangeability of the terms in the law, coupled with the mandate of Section 8-09’s liberal construction of the HRC, one easily concludes that the Current HRC and the Amended HRC utilize the terms “redistricting” and “reapportionment” interchangeably, with both terms appearing in several places throughout the HRCs with no apparent intended difference in meaning.

For example, Section 2-01(E) of the Current HRC and Section 2-01(I) of the Amended HRC, which explain the composition, qualifications, and election of the Council(s), declare, “[s]hould the legal domicile and/or actual residence of a [City Council member or Parish] Council member change from the district from which elected, **unless changed by reapportionment**, the office

⁵ *Black’s Law Dictionary* 1379 (9th ed. 2009).

⁶ 20 La. Civ. L. Treatise, Legis. Law & Proc. § 8:4 (2018 ed.).

⁷ *Id.*

shall automatically become vacant, which vacancy shall be filled as set out hereinafter.”⁸ It is clear that these sections utilize the term “reapportionment” in contemplation of a change in a district’s boundary due to “redistricting.” Further, Section 2-13 of the Current HRC, which governs the submission of ordinances to the Mayor-President, mandates:

(D) The right of the Mayor-President to veto as provided in this section shall apply to all ordinances adopted by the Council **except ordinances for: plans for reapportionments; amendments to this charter;**⁹ establishing, altering or modifying Council procedure; appropriating funds for auditing or investigating any part of the executive branch; or as may be otherwise provided by this charter.

Not only does Section 2-13 of the Current HRC treat an ordinance for reapportionment and an ordinance to amend the HRC as two distinct types of ordinances; Section 2-13 also exempts reapportionment plans from the Mayor-President’s right to veto.¹⁰ This provision highlights the voters’ decision to place reapportionment solely within the authority of the Council to the exclusion of the Mayor-President and the voters themselves.

Also embedded within the Current HRC is the process by which redistricting or reapportionment shall take place. Specifically, Section 2-02 of the Current HRC provides:¹¹

Following official publication of the federal census by the United States Bureau of the Census, **the Council by ordinance shall, if necessary, alter, change or rearrange Council district boundaries** so as to provide for population equality among the districts as near as reasonably practicable. To the extent possible Council districts shall be compact and be composed of contiguous territory. The redistricting shall be accomplished in the manner, and within the time period, specified or prescribed by applicable law. If, at any time, the next succeeding election for members of a governing authority following the official publication of the federal census by the United States Bureau of the Census shall pertain to the election of members of the City Council of the City of Lafayette and/or of the Parish Council of the Parish of Lafayette, the procedure described above shall pertain and apply to the district boundaries for the City Council of the City of Lafayette and/or the Parish Council for the Parish of Lafayette, respectively.¹²

Notably, the language of Section 2-02 contemplates a reapportionment “following official publication of the federal census...” but is silent on whether a reapportionment can be accomplished between censuses. One may argue that this silence results in a prohibition on reapportioning council election districts between censuses. However, the language of Section 2-02 is substantially similar to state law regarding reapportionment. Specifically, Louisiana

⁸ (emphasis added).

⁹ (emphasis added).

¹⁰ This distinction is carried forward in Section 2-13(D) of the Amended HRC.

¹¹ The process by which reapportionment is accomplished in the Amended HRC is identical to the Current HRC.

¹² Exhibit “C” – Section 2-02 of the Current HRC (emphasis added).

Revised Statutes 33:1371¹³ and 33:1411¹⁴ both provide that “a [governing authority] ... shall, by ordinance adopted by a majority of the members thereof,” within a certain period of time “after the official release of every decennial census ... either declare [its] apportionment to be equitable and continue its existing apportionment plan or provide for a new apportionment plan.”¹⁵

The Louisiana Attorney General has issued an opinion that, despite the silence of Louisiana Revised Statute 33:1371 and 33:1411 on the matter, “governing authorities may reapportion their districts at any time between decennial census, so long as apportionment is equitable and no substantial variation exists in representation of the districts.”¹⁶ By that same logic, the silence of Section 2-02 of LCG’s Current HRC as to reapportionment between censuses does not result in a prohibition on LCG to reapportion in order to reach an equitable result.

With regards to the appropriate process or procedure for the reapportionment, the plain language of Section 2-02 of the Current HRC specifically provides that the alteration, change, or rearranging of Council district boundaries shall be “by ordinance.” Both state law regarding reapportionment and the Louisiana Attorney General acknowledge that redistricting or reapportionment shall be done “by ordinance”¹⁷ and “may not be determined by referendum.”¹⁸

Therefore, the City-Parish Council has the authority to reapportion the council election districts by ordinance at any time, as long as the apportionment is equitable and does not result in a substantial variation in representation of the districts. In fact, an ordinance is the only vehicle for reapportionment authorized by both the Current HRC and the Amended HRC. This conclusion mirrors applicable state law and previously issued Attorney General Opinions on the matter.

Reapportionment by ordinance is not a new concept for LCG. With only one limited exception, LCG has consistently utilized ordinances in order to reapportion its council election districts. On April 28, 1994, the still existing Lafayette Parish Council adopted Ordinance No. O-032-94.¹⁹ The ordinance stated that the Current HRC was “submitted to the United States Department of Justice for preclearance pursuant to Section 5 of the Voting Rights Act of 1965.” On October 18, 1993, the Civil Rights Division of the Department of Justice precleared the Current HRC, “with the exception that it objected to the districting plan as contained in the proposed City-Parish Charter.”²⁰ This objection by the Department of Justice triggered a specific provision of the Current HRC, necessitating the reconvention of the City-Parish Charter Commission, as mandated by Section 8-11 of the Current HRC:

¹³ Exhibit “D” – La. R.S. 33:1371.

¹⁴ Exhibit “E” – La. R.S. 33:1411.

¹⁵ La. R.S. 33:1371 applies to reapportionment by “the governing authority of any municipality” whereas La. R.S. 33:1411 applies to the reapportionment by “parish governing authorities.” Under both statutes, however, the appropriate procedure for reapportionment is the same.

¹⁶ Exhibit “F” – La. Atty. Gen. Op. No. 85-653 (September 19, 1985).

¹⁷ Exhibit “D” – La. R.S. 33:1371 and Exhibit “E” - La. R.S. 33:1411.

¹⁸ Exhibit “G” - La. Atty. Gen. Op. No. 82-386 (June 30, 1982).

¹⁹ Exhibit “H” – Ordinance No. O-032-94.

²⁰ *Id.*

In the event the Civil Rights Division of the United States Department of Justice or any court of competent jurisdiction declares any part of this charter to be in violation of the Voting Rights Act prior to the date the charter becomes effective, the Lafayette City-Parish Charter Commission shall reconvene for a period not to exceed ninety (90) days for the purpose of drafting and proposing amendments to the charter to the electors of Lafayette Parish.

Pursuant to Section 8-11, the Charter Commission recommended amendments to the charter to split three precincts in order to satisfy the objection from the Civil Rights Division of the United States Department of Justice as to the composition of the councilmanic districts. Section 8-11 was the controlling provision in that instance, and dictated that the correct procedure to address the objections of the Civil Rights Division of the United States Justice Department was amendment to the Current HRC specifically proposed by the Charter Commission for adoption by the electors of Lafayette Parish. The Current HRC did not contemplate reapportionment in that particular situation, and therefore, reapportionment would not have been proper.

Aside from the very specific and isolated instance described above, LCG has consistently utilized ordinances in order to reapportion its council election districts. As shown in the attached **Exhibit “B,”** the Council has reapportioned its election districts by ordinance year after year, all in accordance with the authority the voters have delegated to it.²¹ Despite the fluidity of these changes – catalogued in Footnote 23 of the Current HRC – the actual text of Section 8-01 of the Current HRC has remained unchanged since its effective date.

First, LCG adopted Ordinance No. O-319-2001 on January 22, 2002.²² Generally speaking, this ordinance provided for the adoption of reapportioned Lafayette City-Parish Council election districts in accordance with the 2000 Census. No election was called in conjunction with the adoption of the reapportionment plan described therein.

Second, LCG adopted Ordinance No. O-034-2002 on February 26, 2002.²³ As directed by Ordinance No. O-319-2001, Ordinance No. O-034-2002 was adopted as a revision of Ordinance No. O-319-2001. Ordinance No. O-034-2002 was *not* adopted as the result of a census, but was instead adopted in order to amend the reapportionment plan that had been approved the month prior. Notably, Ordinance No. O-034-2002 declares, “...[T]he Legal Department is authorized to make whatever technical changes are necessary in and to any legal descriptions so that those legal descriptions will adequately describe the Lafayette City-Parish Council Districts, as reapportioned...” The explicit language of this ordinance, therefore, contemplated and, in fact, expressly recognized the authority of LCG to revise and change descriptions as necessary in order to properly describe the reapportioned council election districts. Thus, although for a different underlying reason, this ordinance is analogous to the one discussed herein—it was simply an ordinance to amend and more fully describe the LCG council election districts.

²¹ LCG has added to and/or revised Footnote 23 of Section 8-01 of the Current HRC, which catalogs each and every precinct change (completed by ordinance) or redistricting/reapportionment plan after federal census (completed by ordinance) since the effective date of the Current HRC.

²² **Exhibit “I”** – Ordinance No. O-319-2001.

²³ **Exhibit “J”** – Ordinance No. O-034-2002.

Finally, most recently, LCG adopted Ordinance No. O-096-2011 on April 25, 2011.²⁴ This ordinance, like Ordinance No. O-319-2001, was prepared, introduced and adopted as a result of a census. Again, in accordance with state law and the language of the Current HRC, the reapportionment was completed only by an ordinance and no election was called.

Exhibits “I,” “J,” and “K” are provided as representative examples of how LCG, in practice, has historically interpreted its own HRC, as well as the state law on this issue. LCG has complied with such laws in order to achieve reapportionment for many years without calling elections on the question on each occasion. For this reason, just as it has been done time and time before, the City-Parish Council must now introduce an ordinance to reapportion the council election districts described in Section 8-01 of the Amended HRC.

The argument has been raised that the Amended HRC, having been approved by the electorate, may only be amended by another vote. This argument is superficial and misses the point. It is the electorate who voted twice, once when ratifying the Current HRC, and again when ratifying the Amended HRC, delegating that authority to the legislative branch to reapportion without another election to amend the HRC. Viewed from that perspective, it is not particularly useful to call the exercise of that delegated authority an “amendment” to the HRC. Whether such delegated authority is called an “amendment” to the HRC or not, the result is the same.

Further, the reapportionment power in Section 8-01 is not the only provision of the Current HRC or the Amended HRC wherein the voters have delegated authority to the legislative branch to act by ordinance, rather than by calling an election, in order to change certain aspects of the HRC. Article IV of the Current HRC and the Amended HRC, entitled “Administration,” sets forth the composition of all of LCG’s departments, offices, and agencies.

Clearly, the intent of the Current HRC and the Amended HRC in Article IV is to provide a comprehensive, detailed description of all of the departments that comprise LCG. Yet, rather than requiring a vote of the qualified electors every time LCG decided to create, change, consolidate or abolish a department in the future, Section 4-17 of the Current HRC and the Amended HRC delegates that authority to the legislative branch, in conjunction with the Mayor-President.²⁵

Thus, there are at least two instances in both the Current HRC and the Amended HRC in which the voters have delegated the authority to change certain aspects of the HRC by ordinance – administrative reorganization and reapportionment. The issue before the City-Parish Council is one of reapportionment, which, according to express language in the Current HRC, is accomplished by ordinance.²⁶

²⁴ **Exhibit “K”** – Ordinance No. O-096-2011.

²⁵ Note that Article IV of the Current HRC contains footnotes listing the various changes in Article IV since the effective date of the Current HRC, all of which were implemented through the adoption of an ordinance of the City-Parish Council pursuant to this authority.

²⁶ The process by which reapportionment is accomplished in the Amended HRC is identical to the Current HRC.

III. ADVISABILITY OF REQUESTING ATTORNEY GENERAL OPINION

In addition to the foregoing, the Chairman of the City-Parish Council has requested that the Legal Department advise as to whether a Louisiana Attorney General Opinion (“AG Opinion”) should be sought in this matter. Your request for the Legal Department’s recommendation in regards to an AG Opinion is not a legal determination. The City-Parish Council is neither obligated to seek, nor precluded from seeking, an AG Opinion. Nevertheless, the Legal Department provides the following information to aid the City-Parish Council in making its determination.

As the chief legal officer in the State of Louisiana, the Attorney General and his legal team are tasked with providing independent and unbiased legal opinions to political subdivisions upon request. Soliciting an AG Opinion to confirm the recommendations made by your Legal Department is consistent with LCG’s objectives to determine, in good faith, the appropriate course of action in addressing the issue presently before the City-Parish Council. Although the opinions are without the force and effect of law and are considered advisory only, having the chief legal officer of the State of Louisiana weigh in on this issue can only operate to ensure that LCG has fully vetted this matter in its quest to apply the appropriate solution to this problem.

Furthermore, because the Legal Department has concluded that an election to cure the election district deficiencies is not required, the timing within which a reapportionment ordinance must be adopted prior to the qualifying period in August allows sufficient opportunity for an AG Opinion to be sought. If the City-Parish Council decides to seek an AG Opinion, it is advisable that it do so as soon as possible. This would allow the City-Parish Council time to consider the comments of the Attorney General’s office prior to finalizing any concrete course of action.

Finally, the Lafayette City-Parish Council is not the only party who is permitted under Louisiana law to seek an AG Opinion on this issue. As such, an AG Opinion will likely be sought on this issue by another party with standing to do so, regardless of whether the City-Parish Council decides to move forward with its own request. It is therefore advisable that, in the event the City-Parish Council votes to request an AG Opinion, you do so expeditiously, so that the request for the AG Opinion may be presented to that office by your own Legal Department.

IV. CONCLUSION

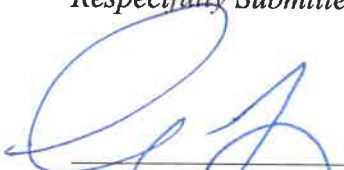
The conclusions reached herein rest entirely on the review, analysis and interpretation of the LCG Home Rule Charter(s). In December of 2018, the electors voted to amend the HRC providing for, among other things, the abolishment of a single City-Parish Council and the establishment of a separate Lafayette City Council and Lafayette Parish Council. Section 8-01 of the Amended HRC provides for the reapportionment of the newly created council election districts, which, according to Section 2-02 of the Current and Amended Charter, is accomplished via ordinance of the Council. This course of action is consistent with a reasonable interpretation of LCG’s Home Rule Charter, the applicable state law regarding reapportionment, as well as LCG’s previous actions in amending council election districts. Accordingly, reapportionment by ordinance to address any and all discrepancies, errors, and omissions in the council election districts is the only appropriate and proper solution to correct the issue at hand.

SCHEDULE OF ATTACHED EXHIBITS

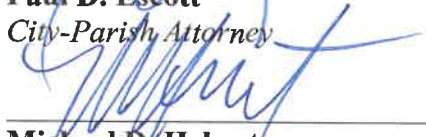
- Exhibit "A" – December 2018 Proposition
- Exhibit "B" – Section 8-01 of Amended HRC; Footnote 23
- Exhibit "C" – Section 2-02 of Current HRC
- Exhibit "D" – La. R.S. 33:1371
- Exhibit "E" – La. R.S. 33:1411
- Exhibit "F" – La. Atty. Gen. Op. No. 85-653 (September 19, 1985)
- Exhibit "G" – La. Atty. Gen. Op. No. 82-386 (June 30, 1982)
- Exhibit "H" – Ordinance No. O-032-94
- Exhibit "I" – Ordinance No. O-319-2001
- Exhibit "J" – Ordinance No. O-034-2002
- Exhibit "K" – Ordinance No. O-096-2011

{Signatures of Legal Department on Following Page}

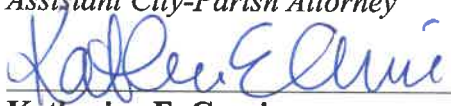
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