



City of Arts & Innovation

Charter Review Committee Memorandum

TO: CHARTER REVIEW COMMITTEE **DATE: NOVEMBER 18, 2019**

FROM: CITY ATTORNEY'S OFFICE **WARDS: ALL**

SUBJECT: CITY CHARTER SECTION 1204 AND 1204.1 REGARDING THE "GENERAL FUND TRANSFER"

ISSUE:

Receive and file a report on the City Charter sections 1204 and 1204.1, generally referred to as the "General Fund Transfer".

RECOMMENDATION:

Receive and file a report on the City Charter sections 1204 and 1204.1, generally referred to as the "General Fund Transfer".

BACKGROUND:

At the November 18, 2019, meeting of the Charter Review Committee, the committee requested that staff present a report on the General Fund Transfer. A member of the public presented a proposed revision to the City Charter regarding the General Fund Transfer, indicated that there had been a lawsuit filed over the General Fund Transfer and that the court had ruled in favor of the City on a technicality, meaning that the court did not reach the merits of the lawsuit filed. A copy of the proposed Charter amendment is attached to this report.

The General Fund Transfer has been in the City Charter since the adoption of the first City Charter in 1907

Section 172, Paragraph 4 of the 1907 Charter provided the following:

"4. After all expenditures have been made that are required in the first, second and third subdivisions of this section, the profit, if any there be, remaining in the electric fund at the end of the fiscal year, from the operation of the plant for such year, may, with the consent of both the council and the board of public utilities, be transferred, in whole or in part, in to the general fund for the use of said fund.

Section 172, Paragraphs Subdivisions 1, 2 and 3 refer to payments for operations, maintenance, improvements and debt payments of the utility department. Section 177 of the 1907 Charter provided that at the time of adoption of the 1907 charter, the City only operated an electric utility and that any utility subsequently operated by the City would fall under the utility provisions of the 1907 Charter.

Here is the current Charter provision regarding the General Fund Transfer, which is set forth in Charter sections 1204 (electric) and 1204.1 (water):

For the annual payment by each utility into the general fund in twelve equal monthly installments during each fiscal year, an amount not to exceed 11.5 percent of the gross operating revenues, exclusive of surcharges, of each specific utility for the last fiscal year ended and reported upon by independent public auditors.

In April of 2016, Alicia Webb filed a lawsuit against the City of Riverside, challenging the City's inclusion of certain utility revenue when calculating the amount of the General Fund Transfer. The appellate court ruled in favor of the City in the published decision Webb v. City of Riverside (2018) 23 Cal.App.5th 244. Here is the court's description of the utility revenue at issue:

Riverside owns several high-voltage transmission lines that carry power outside the region. In 2002, Riverside transferred the operation of these lines to the California Independent System Operator (CAISO), but retained ownership. CAISO collects transmission charges from other users of the grid using a formula rate approved by the FERC, and CAISO pays Riverside a TRR for use of the transmission lines. These TRR fees are generated from a wholesale revenue source, not Riverside ratepayers.

Both the appellate court and the trial court ruled in favor of the City, both on procedural and substantive grounds. The appellate court specifically noted the following:

Though Webb's claim is barred by the applicable statute of limitations, we separately address the theory raised by Webb's verified second amended petition to dispel any doubt as to whether a cause of action could be stated under another possible legal theory.

The appellate court specifically found that the challenged transfer did not violate the City Charter nor Propositions 218 and 26.

Staff had previously supplied research materials describing General Fund Transfers used by other cities. Staff has again attached those research materials to the report.

The committee also asked if the Riverside Board of Public Utilities had taken a formal position on the General Fund Transfer. Staff has researched this issue and determined that such Board has not taken a formal position on the voter-approved General Fund Transfer.

FISCAL IMPACT:

None.

Prepared by: Susan Wilson, Assistant City Attorney
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Approved as to form: Gary G. Geuss, City Attorney

Attachments: Webb v. City of Riverside (2018) 23 Cal.App.5th 244
Examples of Other General Fund Transfers from other California cities
Proposed new Charter section 1206 submitted during public comment at
November 18, 2019 Charter Review Committee meeting