

PAUL E. COOPER
EXECUTIVE ASSISTANT CITY ATTORNEY

MARY T. NUESCA
ASSISTANT CITY ATTORNEY

JENNIFER L. BERRY
DEPUTY CITY ATTORNEY

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

JAN I. GOLDSMITH

CITY ATTORNEY

CIVIL ADVISORY DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

MEMORANDUM OF LAW

DATE: January 12, 2016

TO: Charter Review Committee

FROM: City Attorney

SUBJECT: Legal Effect of Adding a Preamble to the Charter

INTRODUCTION

At the November 4, 2015 meeting of the Charter Review Committee (Committee), the Committee requested the City Attorney provide a legal analysis of the effects of adding a preamble to the San Diego Charter (Charter). Additionally, the Committee voted to add a list of broad categories of timeless, essential services to be provided by the City to the preamble, removing them from the operative text of the Charter.

QUESTIONS PRESENTED

1. What is the legal effect of adding a preamble to the Charter?
2. What is the legal effect of providing for public services in the preamble of the Charter, as opposed to within the text of the Charter?

SHORT ANSWERS

1. Adding a preamble to the Charter has limited legal effect. Most often, courts cite city charter preambles for the proposition that a city is a charter city, as opposed to a general law city governed by state law. Courts can also analyze charter preambles when determining legislative intent behind ambiguous charter sections. However, the terms of a preamble are not binding law.
2. If the list of services currently provided for in Charter section 26.1 is moved to the preamble, those services may no longer be legally required by the Charter. The preamble is not an operative Charter section and cannot mandate specific services.

BACKGROUND

A Blue Ribbon Charter Review Commission proposed a preamble to the Charter to voters in 1969. Prop. A, Gen. Elec. (Nov. 4, 1969). The argument in favor of Proposition A stated, “Governments usually have a ‘preamble’ to provide a statement-of-purpose before setting forth the provisions of a Constitution,” citing the United States and California constitutions as examples of constitutions having preambles, and argued that adding a preamble was “logical.” See Ballot Pamp., Gen. Elec. (Nov. 4, 1969), argument for Prop. A at 12. The argument against Proposition A stated that the preamble did nothing for the Charter and was unnecessary. *Id.*, argument against Prop. A. Proposition A ultimately failed.

Charter section 26.1 requires the City to provide certain City services, including “public works services, water services, building inspection services, public health services,¹ park and recreation services, library services, and such other services and programs as may be desired, under such terms and conditions as may be authorized by the Council by ordinance.” Voters added section 26.1 in 1963 with the concomitant repeal of Charter departments that had provided many of these City functions.² Prop. R., Prim. Elec. (Sept. 17, 1963). The intent of the Charter changes in 1963 was not to eliminate City departments or City services, but to create “administrative flexibility and economy,” by allowing the Council to decide the details of any necessary administrative departments.

ANALYSIS

I. ADDING A PREAMBLE TO THE CHARTER HAS LITTLE LEGAL EFFECT

A city charter is to a city what the state constitution is to the state. In interpreting a charter, the California Supreme Court has stated:

[W]e construe the charter in the same manner as we would a statute. (citations omitted). Our sole objective is to ascertain and effectuate legislative intent. We look first to the language of the charter, giving effect to its plain meaning. (citations omitted). Where the words of the charter are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the charter or from its legislative history.

Domar Electric, Inc., v. City of Los Angeles, 9 Cal. 4th 161, 171-172 (1994).

¹ The City contracts with the County of San Diego to provide the City’s public health services. Ballot Pamp., Prim. Elec. (Sept. 17, 1963), argument in favor of Prop. R at 36.

² The Charter Departments (and Offices) repealed at the September 17, 1963 Municipal Primary Election included the Manager’s Control Department (Charter § 33); the Budget Officer (Charter § 34); the City Engineer (Charter § 36); the Directors of Departments (Charter § 44); the Department of Public Works, Street Superintendent (Charter § 46); the Harbor Department (Charter § 54); the Department of Inspection (Charter § 59); the Department of Public Health (Charter § 60); the Social Service Department (Charter § 61); and the Library Department (Charter § 63).

A preamble is “an introductory statement in a constitution, statute, or other document explaining the document’s basis and objective.” Black’s Law Dictionary 1365 (10th ed. 2014). Because a charter is analyzed like a statute, the general rules of statutory construction apply. *DeYoung v. City of San Diego*, 147 Cal. App. 3d 11, 17 (1983). Under general rules of statutory construction, a preamble is not an operative section of a statute and “does not enlarge the scope of the operative sections” of legislation. *Colusa County v. Strain*, 215 Cal. App. 2d 472, 481 (1963). Preambles may be analyzed to determine legislative intent in resolving ambiguous provisions of the operative terms, but cannot create rights not otherwise found in a statute. 73 Am. Jur. 2d Statutes § 101. Preambles “do not confer power, determine rights, or enlarge the scope of a measure, [but] they properly may be utilized as an aid in construing a statute.” *Carter v. California Dep’t of Veterans Affairs*, 38 Cal. 4th 914, 925 (2006). Even as an aid in interpreting operative provisions, preamble language is not binding when interpreting operative sections. *Yeager v. Blue Cross of Cal.*, 175 Cal. App. 4th 1098, 1103 (2009).

Courts have rarely analyzed charter preambles when interpreting charter language. Only one published case in California cites a municipal charter preamble and the court only cites the charter preamble for the fact that the San Francisco is a charter city and county. *Schiff v. City & Cnty. of San Francisco*, 816 F. Supp. 2d 798, 812 (N.D. Cal. 2011) *aff’d*, 528 F. App’x 743 (9th Cir. 2013). In other states, courts generally cite charter preambles as evidence that a city or county is a charter city or county and intends a “home-rule” municipal government. *See Austin Police Ass’n v. City of Austin*, 71 S.W.3d 885, 887 (Tex. App. 2002); *Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls Library Capital Facility Area*, 134 Wash. 2d 825, 831 n. 11 (1998); *In re Voter Referendum Petition Filed Aug. 5, 2008*, 602 Pa. 569, 582 (2009). Thus, the addition of a preamble has little legal effect.

II. THE CHARTER PREAMBLE CANNOT MANDATE SPECIFIC SERVICES

Because a preamble is not operative law, it cannot be the source of rights under the Charter. *Carter*, 38 Cal. 4th at 925. Article XI, section 5(a) of the California Constitution establishes the broad power of charter cities. Termed the “home-rule” doctrine, this section provides:

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

Cal. Const. art. XI, § 5(a).

A city charter serves as a limitation on a city’s authority regarding municipal affairs. *West Coast Advertising Co. v. City and County of San Francisco*, 14 Cal. 2d 516, 522 (1939). The Charter limits the City’s authority by mandating the provision of several services via section 26.1. The services mandated by section 26.1 include, “public works services, water services, building inspection services, public health services, park and recreation services, library services,

and such other services and programs as may be desired, under such terms and conditions as may be authorized by the Council by ordinance.” San Diego Charter § 26.1.

If voters repeal Charter section 26.1, the City would still be able to provide for those services under its municipal authority, but they would no longer be required by the Charter.³ Because a city charter serves as a limitation on municipal authority, no specific grant of power in a charter is necessary for a charter city to exercise municipal authority. *West Coast Advertising Co.*, 14 Cal. 2d at 522. As to services that have been specifically deemed by courts to be municipal affairs, the City would still be empowered to legislate terms and conditions of those services without regard to conflicting state law, even without a specific grant in the Charter. *Id.*⁴

CONCLUSION

A preamble may be used by courts to aid in interpreting operative Charter provisions. However, preambles cannot create rights not otherwise found in operative sections of a charter. A preamble could only be used by a court to clarify ambiguous Charter language. If services currently required by the Charter were repealed from the operative provisions of the Charter and provided for only in the preamble, those services would no longer be required by the Charter. To ensure that the City is required to provide certain services, an operative Charter provision must mandate those services.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Jennifer L. Berry
Jennifer L. Berry
Deputy City Attorney

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³ Repealing Charter section 26.1

⁴ All Charter section 26.1 mandated services have been ruled to be municipal affairs when paid for with municipal funds. See *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 173-74 (1994) (public works); *Redwood City v. Moore*, 231 Cal. App. 2d 563, 577-78 (1st Dist. 1965) (water, parks and recreation); *Agnew v. City of Los Angeles*, 190 Cal. App. 2d 820, 827 (1961) (building permits); *People ex rel. Lawlor v. Williamson*, 135 Cal. 415, 417 (1902) (public health); *City of Pasadena v. Paine*, 126 Cal. App. 2d 93, 98 (1954) (libraries).