
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
ANDRE M. DAVIS, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

January 10, 2020

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 19-0381 – Charter Amendment – Removal of Elected Officials

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0381 for form and legal sufficiency. The bill proposes to amend the City Charter to provide for the removal from office of certain City elected officials. The bill provides that by a three-fourths vote the City Council may remove a council member, the Council President, the Mayor or the Comptroller for incompetency, misconduct in office, willful neglect of duty or felony or misdemeanor in office on charges brought by the Mayor, the City Council Committee on Legislative Investigations or by the Inspector General. Notice and an opportunity to be heard before the City Council are required. The City Council is charged with providing rules and regulations for conduct and procedures of the notice and hearing required by the bill.

Under the current Charter, there are removal provisions for the President of the City Council, councilmembers and the Comptroller. There is no provision for removal of the Mayor in the current Charter. The Charter allows the City Council to by two-thirds vote remove the President for incompetency, willful neglect of duty or misdemeanor in office. Councilmembers can be removed by the City Council by three fourths vote for disorderly behavior or misconduct in office. The Comptroller can be removed by majority vote for incompetency, misconduct in office, wilful neglect of duty or misdemeanor in office.

Bill 19-0381 would increase the number of votes required to remove the President, a Councilmember or the Comptroller to three-fourths vote of the members. It adds provisions for removal of the Mayor by three-fourths vote on the same grounds as the other elected officials and adds misconduct in office and felony while in office as additional grounds for removal for the President, felony or misdemeanor in office, incompetency and willful neglect of duty as grounds for councilmembers and felony while in office as an added ground for the Comptroller.

power to select the public officials of the State resides originally in the people who may provide in their Constitution how the power shall be exercised or leave to the legislature the privilege of providing for the selection of such officials. *Id.*

With respect to removal from office, in *Clark v. O'Malley*, 169 Md. App. 498 (2006), the court discussed the removal of public officials stating that “[i]n the absence of a provision in the Constitution to the contrary, the removal or suspension of a public officer, whether elected or appointed, is generally considered a subject within the control of the legislature, which can designate the grounds for and mode of suspension or removal.” However, “where the constitution of a state designates the grounds for which an officer may be removed from office, the legislature can not add to the list. Where a statute provides that an officer may be removed for certain specified cause, the order of removal must be based on some one or all of such causes, and may not be made for other causes....In general a person cannot be removed from government employment because of factors totally unconnected with the responsibilities of that employment.” 63C Am.Jur. 2d Public Off. Sec. 172. “The grounds designated for removal of municipal officers or employees must, however, be reasonable to be valid. Furthermore, if the power of removal is conferred by the charter or legislative act it can neither be extended nor restricted by ordinance or contract.” 4 McQuillin Mun. Corp. Sec. 12:311.

In Maryland, there is a Constitutional provision dealing with removal from office for elected officials. Maryland Constitution, Art. XV, Sec. 2 states

“any elected official of the State, or of a county or of a municipal corporation who during his term of office is convicted of or enters a plea of nolo contendere to any crime which is a felony, or which is a misdemeanor related to his public duties and responsibilities and involves moral turpitude for which the penalty may be incarceration in any penal institution, shall be suspended by operation of law without pay or benefits of elective office... . If the conviction becomes final, after judicial review or otherwise, such elected official shall be removed from elective office by operation of law....”

Under this provision, grounds for removal are conviction of or pleading nolo contendere to any crime which is a felony, or which is a misdemeanor related to the public official’s public duties and responsibilities and involves moral turpitude for which the penalty may be incarceration in any penal institution.

This provision has been interpreted to mean that if the conditions for suspension or removal in Sec. 2 are present, the General Assembly would have no further discretion in the matter as Sec. 2 operates as a matter of law to suspend or remove. 1984 WL241383 (Md.A.G.). The Attorney General further concluded that Sec. 2 would not preclude expulsion under other provisions for circumstances that are not covered under Sec.2. This same reasoning is applicable to local governments with Charter provisions regarding removal of elected officials from office. In *Leopold v. State*, 216 Md. App. 586 (2014), the Court considered the connection between Art. XV, Sec. 2 and local removal provisions. The Court stated that “based upon the statutory

scheme currently in place, Leopold may be removed from office “by operation of law” if “found guilty of any crime ... which is a misdemeanor related to the elected official's public duties and responsibilities and involves moral turpitude for which the penalty may be incarceration in any penal institution.” Md. Const. art. XV, § 2; see *Hall v. Prince George's Cnty. Democratic Cent. Comm.*, 431 Md. 108(2013)(Speaker of the House of Delegates, acting on the advice of Assistant Attorney General, declared a delegate removed from her House seat by operation of law “after she had been convicted and sentenced for the common law offense of misconduct in office”). This is consistent with the provisions of the Anne Arundel County Charter, which states that “[t]he office of the County Executive may be declared vacant by ordinance of the County Council with an affirmative vote of not less than five (5) members if, during his elected term, the County Executive ... is found guilty of ... a crime involving moral turpitude or misfeasance or malfeasance in office[.]” Anne Arundel County Charter, art. IV, § 404.” This interpretation is also consistent with the provisions in the Montgomery County Charter that provides that “a member of the County Council may be removed from office by the affirmative vote of not less than six members of the Council after a public hearing and upon a finding that the councilmember is unable by reason of physical or mental disability to perform the duties of the office. A member of the County Council also may be suspended and removed from office in the manner provided in Section 2 of Article XV of the Constitution of Maryland.” Mont. Co. Charter, Art. 1, 118. The provision for removal of the County Executive is similarly worded. *Id.* at Sec. 206.

City Council Bill 19-0381 must therefore be consistent with and cannot be in conflict with Art. XV, Sec. 2. Since “misconduct in office” is considered a “misdemeanor related to Public duties and responsibilities it cannot be one of the grounds for which the City Council may remove an elected official. See *Leopold* (Maryland, misconduct in office is a common law misdemeanor. It has been defined as corrupt behavior by a public officer in the exercise of the duties of his office or while acting under the color—the color of his office.) Similarly, a felony or misdemeanor in office would also not be grounds for removal by the City Council as Sec. 2 provides for removal by operation of law under these circumstances. In order to solve this problem with the bill, the Law Department proposes the following amendment. This language would be inserted for each elected official in the appropriate section of the Charter under “Removal” and appropriate changes to the text made for that elected official. Any existing text or new language inserted by the original bill should be stricken.

- (1) To the extent Article XV, Sec. 2 of the Maryland Constitution is inapplicable to the removal of a member of the City Council, a member of the City Council may be removed from office for corrupt behavior in the exercise of the duties of office or while acting under the color of the office.
- (2) “Corrupt behavior” means:
 - (a) the doing of an act which is unlawful in itself or unlawful in the manner in which it is performed;
 - (b) the doing of an act which is lawful but performed in a grossly wrongful manner; or
 - (c) omitting to do an act which is required by the duties of office.

- (3) A member of the City Council may be removed:
 - (a) by a three-fourths vote of the City Council; and
 - (b) after the member has been granted an opportunity to be heard at a public hearing before the City Council.
- (4) A resolution to remove a member of the City Council may be introduced by the President of the City Council after charges have been filed with the City Council by:
 - (a) the Mayor;
 - (b) the Committee of Legislative Investigations or a committee succeeding to its duties; or
 - (c) the Inspector General.

Provided that the bill is amendment as suggested above, the Law Department can approve the bill for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Chief Solicitor

cc: Andre Davis, City Solicitor
Nicholas Blendy, MOGR
Matthew Stegman, Legislative Liaison
Caylin Young, President's Legislative Director
Hilary Ruley, Chief Solicitor
Victor Terval, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Avery Aisenstark

