

---

CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW  
EBONY M. THOMPSON, ACTING SOLICITOR  
100 N. HOLLIDAY STREET  
SUITE 101, CITY HALL  
BALTIMORE, MD 21202

---

December 20, 2023

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

Re: Mayor and City Council Resolution 23-0456 – Charter Amendment – Sustainability Fund  
– Acceptance of Fees

Dear President and City Council Members:

The Law Department has reviewed Mayor and City Council Resolution 23-0456 for form and legal sufficiency. Under Article XI-A, Section 5 of the Maryland Constitution, a resolution, such as Mayor and City Council Resolution 23-0456, is an appropriate method of initiating an amendment to the Baltimore City Charter.

However, this Resolution would allow an ordinance to dedicate money from a revenue source to the existing Sustainability Fund. Such an ordinance would effectively mandate that the City's yearly budget contain an annual appropriation from a particular revenue source (such as fines or fees) to the Sustainability Fund. This impermissibly constrains the City's annual legislative process of formulating its budget, which is contained in the Ordinance of Estimates.

This annual budgeting process is a legislative act that the Maryland Constitution requires elected legislators perform yearly: "it is to the law-making body, and only to that body, which the charter commits the power, in that body's representative capacity, to determine the amounts essential to support and maintain the county government." *Bd. Of Supervisors of Elections of Anne Arundel County v. Smallwood*, 327 Md. 220, 237, 250 (1992) (dissent). Establishing the annual budget requires knowledge that is "specific" and "technical" in nature, making it a matter reserved to the legislature and not the voters. *Mayor and City Council of Ocean City v. Bunting*, 168 Md. App. 134, 148 (2006).

The type and amount of funding to appropriate annually to the Sustainability Fund, like other charter amendments struck down by Maryland courts, "requires a detailed and comprehensive knowledge of the structure and inner-workings" of the fiscal matters of the City each year "as well as an understanding of its present needs and future demands. Consequently, it does not lend itself to resolution by referendum, but to the type of thorough and on-going review that the legislative process promises." *Id.* at 148 148-149.

Thus, the Maryland Constitution forbids legislative acts, such as annual budgeting, from being done by the voters via change to a local government's charter. Md. Const., Art. XI-A, § 3 (legislation for the City may only be made by City Council); § 5 (Power of people to initiate Charter amendments does not include power of legislative initiative). The "council alone, and not the voters of the county, has the power to initiate local legislation" and "such legislative power cannot be exercised by means of an amendment to the charter." *Save our Streets v. Mitchell*, 357 Md. 237, 249 (2000) (citations omitted).

Rather, Charter changes are "limited in substance to amending the form or structure of government initially established by adoption of the charter." *Cheeks v. Cedlair Corp.*, 287 Md. 595, 607 (1980). If a Charter amendment would leave a local government "without the means to ever change [a] policy should it prove in the interests of the [City] to do so" and "would leave only another charter amendment" to change that policy, Maryland Courts have deemed the amendment improper Charter material. *Bunting*, 168 Md. App. at 148. If enacted, this Resolution would tie the hands of future City governments to fund other initiatives that it deems important by diverting a specific revenue source every year in perpetuity to the Sustainability Fund regardless of how large the fund grows or other future circumstances.

In short, creating a non-lapsing fund that can accept money appropriated into it during the yearly budget process is proper Charter material. *See, e.g.*, Charter, Art. I, §§ 10 – 12. Requiring a particular revenue source to always be placed in such a fund each year amounts to "constructing the 'technical' specifics of the policy," which must be done legislatively through the annual Ordinance of Estimates. *Atkinson v. Anne Arundel County*, 236 Md. App. 139, 179 (2018).

As it has done in the past with similar Charter amendments seeking to mandate annual appropriations, the Law Department cannot approve this Resolution for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Chief Solicitor

cc: Ebony M. Thompson, Acting City Solicitor  
Nina Themelis, Mayor's Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Ashlea Brown, Chief Solicitor  
Jeffery Hochstetler, Chief Solicitor  
Teresa Cummings, Assistant Solicitor  
Michelle Toth, Assistant Solicitor