
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
JAMES L. SHEA, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

March 28, 2022

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 21-0047–Charter Amendment – Dante
Barksdale Career Technology Apprenticeship Fund

Dear President and City Council Members:

The Law Department has reviewed Mayor and City Council Resolution 21-0047 for form and legal sufficiency. Under Article XI-A, Section 5 of the Maryland Constitution, a resolution, such as City Council Resolution 21-0047, is an appropriate method of initiating an amendment to the Baltimore City Charter. If enacted, the Resolution would be placed on the ballot at the City’s next election and would take effect thirty days after being approved by the voters. Md. Const., Art. XI-A, § 5.

This resolution would add Section 17 to Article I of the City Charter to allow the Mayor and City Council to create by ordinance a special, non-lapsing fund to promote apprenticeship programs and other workforce development programs in the City’s public secondary schools and colleges. The fund would consist of several possible funding sources, including gifts and future appropriations.

Section 17(c)(1) contains a funding source that is unable to be created by Charter amendment. 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). A Charter amendment may not “serve or function as a vehicle through which to adopt local legislation.” *Cheeks v. Cedlair Corp.*, 287 Md. 595, 607 (1980) (Charter is “limited in substance to amending the form or structure of government initially established by adoption of the charter.”). 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). This “distinction between the fundamental, general nature of a charter and the specificity characteristic of county council legislative enactments authorized by a charter framework, is essential to the system of representative democracy provided for in Article XI-A of the Maryland Constitution.” *Save our Streets*, 357 Md. at 252; *accord Atkinson v. Anne Arundel County*, 236 Md. App. 139, 177 (2018)(“the proper focus when deciding whether a charter amendment is impermissibly

legislative is ‘the degree to which the county council retains discretion and control regarding an area under its authority pursuant to Article XI-A of the Maryland Constitution.’”); *accord Mayor and City Council of Ocean City v. Bunting*, 168 Md. App. 134, 148 (2006); *but see Save our Streets*, 357 Md. at 251 (tax caps have been upheld as proper Charter material and “fundamental in nature because they ‘directly involved the relationship between the people and the government by limiting the power of the government to tax.’”) (citation omitted). Thus, page 2 of this Resolution must be amended to remove lines 21 through 28.

Additionally, the language in lines 21 through 28 may pose other legal issues, including how the contractor payment program would work considering state and federal laws like the Davis-Bacon Act. Md. Code, State Fin & Proc., § 17-601, et. seq.; 40 U.S.C. 3141 *et seq.* This report does not analyze these legal issues in depth because the conflict with the Maryland Constitution is determinative.

Assuming the bill is amended, the Law Department can approve the Resolution for form and legal sufficiency.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Hilary Ruley".

Hilary Ruley
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Ashlea Brown, Chief Solicitor

AMENDMENTS TO COUNCIL BILL 21-0047
(1st Reader Copy)

Proposed by: Law Dep't

On page 2, delete lines 21 through 28.