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CITY OF BALTIMORE

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Mayor



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June 18, 2018

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 18-0222 – Charter Amendment –  
Equity Assistance Fund

Dear President and City Council Members:

The Law Department has reviewed Mayor and City Council Resolution 18-0222 for form and legal sufficiency. Under Article XI-A, Section 5 of the Maryland Constitution, a resolution, such as City Council Resolution 18-0222, is an appropriate method of initiating an amendment to the Baltimore City Charter. If passed by the Mayor and City Council, the Resolution would be placed on the ballot and would take effect thirty days after being approved by the voters. Md. Const., Art. XI-A, §5

This resolution would add section 15 to Article I of the City Charter to allow for the creation of a special, non-lapsing fund for Equity Assistance. The fund could be used to support or augment programs that address equity in housing, access to education, and to redress past inequities in City capital budget spending, among other things. As amended, the Charter would permit the Mayor and City Council by ordinance to establish the fund, which “may consist of” two sources of money: “(1) a mandatory annual appropriation in the Ordinance of Estimates of an amount equal to at least 3% of the amount appropriated for the Police Department of Baltimore City; and (2) grants or donations made to the fund.”

Two related concerns make themselves apparent on the face of the resolution: (1) the revenue sources provision and (2) the mandated appropriation.

The revenue sources provision is ambiguous because it states that the fund “may consist of” a “mandatory annual appropriation.” These two phrases are seemingly incompatible and internally inconsistent. The use of “may” suggests the existence of legislative discretion and that there really is no mandatory appropriation requirement. More concerning, however, is the concern presented if the intent is (as it seems to be) to mandate that the fund contain an annual appropriation of at least a certain amount (derived by taking a percentage of some other appropriation). This interpretation will impermissibly constrain the City’s annual legislative process of formulating its budget in the Ordinance of Estimates and run afoul of the state constitution.

The Court of Appeals has invariably insisted in several notable cases that a valid charter amendment must be “limited in substance to amending the form or structure of government initially established by adoption of the charter.” *Cheeks v. Cedclair Corp.*, 287 Md. 595, 607 (1980). A charter amendment may not “serve or function as a vehicle through which to adopt local legislation.” *Id.* This conclusion is required by the Maryland Constitution, which (the Court says forcefully) forbids a contrary interpretation. Md. Const., Art. XI-A, §3 (legislation for Baltimore City may only be effected by City Council); *id.* at §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 [such as appropriating funds for the operation of the local government]” 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; brackets added).

We predict that forcing a minimum amount of funding into the annual Ordinance of Estimates as this proposed charter amendment seeks to accomplish will be deemed by the Court a legislative act that can only be accomplished by the City’s legislative body exercising its legislative power pursuant to the Maryland Constitution. *See Atkinson v. Anne Arundel County*, 236 Md. App. 139, 177 (2018). As the Baltimore City Council has no power to add amounts to, and can only reduce, spending contemplated in a proposed Ordinance of Estimates, a charter amendment that creates a floor below which no cut can go, leaves little to the Council’s discretion. City Charter, Art. VI, §7. It would leave the City Council “without the means to ever change this policy should it prove in the interests of the [City] to do so” and that “would leave only another charter amendment.” *Mayor and City Council of Ocean City v. Bunting*, 168 Md. App. 134, 148 (2006).

In sum, *creating* the equity fund is proper Charter material. Funding it each year, however, amounts to “constructing the ‘technical’ specifics of the policy,” which must be done legislatively through the annual Ordinance of Estimates. *Atkinson*, 236 Md. App. at 179.

Sincerely yours,



Andre M. Davis  
City Solicitor

cc: Karen Stokes, Director, Mayor’s Office of Government Relations  
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