

Charter Amendment Fact Sheet

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Introduction:

The City is a municipal corporation chartered by the State. A Charter provides the structure of a municipal government. With a few exceptions, the State allows a municipality to decide how it will govern itself and how it will adopt its laws. The City of College Park's Charter provides that the *government* of the City is vested in the Mayor and Council. The Mayor and Council are also called the "elected officials". The Charter has for many years been read to specifically allow the Mayor to vote on some matters, such as on the appointment or removal of the City Manager and on filling vacancies in office, regardless of whether there is a tie, and on General Motions, Resolutions, Ordinances, and Charter Amendments, if there is a tie (§§C6-1 and C6-2). A voting chart is attached to illustrate the voting requirements.

In two cases that are covered in the Charter, the State does place restrictions on how a municipality can take action. These are:

1. Charter Amendments must be adopted by a majority of all the individuals elected to the legislative body. In the City, this means 5 votes.
2. Spending money for a purpose different from the purpose for which the money was appropriated, or spending money not appropriated at the time of the annual levy, must be approved by a two-thirds vote of all the individuals elected to the legislative body. In the City, this means 6 votes. The Mayor does not vote to break a tie in this case.

The term "legislative body" is not defined for municipalities in the State code. The State leaves the definition of legislative body up to the City.

In 2017, the Charter was reviewed by Victoria Shearer as outside counsel. It was agreed that the super majority vote requirement for charter amendments that was adopted in the 2017 amendment should be removed from the Charter, because it conflicted with State law requiring a majority of all the individuals elected to the legislative body to adopt a Charter amendment. The issue that the words "legislative

body” did not appear and was not defined in the Charter was also raised. There was also nothing in the Charter specifically stating that the Mayor was a member of the “legislative body.” As a result, the Mayor’s ability to break a tie when voting on a Charter amendment was not specifically provided for in the Charter. To remedy this, an amendment to the Charter was recommended.

The amendment was drafted to clarify the voting provisions and state which elected officials are part of the legislative body. The amendment does not expand the Mayor’s powers to vote. This Charter amendment, 18-CR-02, is designed to make the voting provisions clear and to maintain the past practice of allowing the Mayor to vote to break a tie for Charter amendments and other actions. For all other voting that is not State mandated, it is up to the City to decide who can vote by whatever words it chooses, and, again, no substantive changes deviating from past practices are proposed.

Specific Questions:

Is there a conflict between State law and the proposed Charter amendment in 18-CR-02?

No. The State law says:

The legislative body of a municipality may initiate a proposed amendment to the municipal charter by a resolution that, except as otherwise provided in this subtitle, is adopted in the same manner as other resolutions in the municipality by a majority of all the individuals elected to the legislative body.

State law allows the City to determine who is in the legislative body. The issue to be remedied by the Charter amendment is not whether the Mayor can be part of the legislative body with limited voting rights. He can. The issue has been whether this was clearly stated in the Charter, since the words legislative body did not appear in the Charter but do appear in State law. Charter amendment 18-CR-02 specifically includes the definition of legislative body as the Mayor and Council and thus allows the Mayor to vote on a Charter amendment, but only in the case of a tie. This amendment does not conflict with State law.

There have already been some changes to the Charter in the last year, what are they?

In the spring of 2017, some changes were made to the Charter. Most of the changes were just a recodification of the existing Charter. A recodification does not allow

any substantive changes to be made without being identified. At that time, there was a substantive change made to require a super majority vote to amend the charter. Over the months that followed, we learned this was not in compliance with State law. After review of the Charter by outside counsel, a Charter amendment was adopted in 2018 (18-CR-01), removing this provision.

There have been some proposals to alter the mayor's voting power. Is that part of this 18-CR-02?

No. This amendment is intended only to retain the status quo by defining legislative body. It does not increase or decrease the Mayor's voting power or change prior practice.

Is the Mayor and Council statement from October 18, 2017 in conflict with your answers?

No. The statement was intended to notify the public that requiring a super majority to amend the Charter was invalid under State law and that a legal review by outside counsel was ongoing. By law, adoption of a Charter amendment required a majority of five, not a supermajority of six, votes of the legislative body of the City. The legal issue was not whether the Mayor can be part of the legislative body and authorized to vote, because, clearly, he can. Rather, the issue under review was whether the Mayor had been clearly made a part of the legislative body in the City's Charter for purposes of the State law requirement for Charter amendments. Also, the statement was not a legal document and did not go into the specifics, as it was used only to notify the public about the super majority issue and that legal review of the Charter was ongoing. To read this any other way is to take the statement out of its context.

Is there a required separation of powers for City government?

No. There is no such requirement in the State of Maryland Constitution or laws that apply to municipal government. Some municipalities have a Mayor, some do not. In some municipalities the Mayor votes, or votes only to break a tie, and in some the Mayor does not vote. Some municipalities have managers, some do not. There are no municipal courts. The City has the power to adopt the form of government that best meets its needs.