



August 30, 2016

City of College Park
240-487-3501
www.collegeparkmd.gov

The Honorable Brian E. Frosh
Attorney General for the State of Maryland
200 St. Paul Place
Baltimore, MD 21202

Office of the Mayor
and City Council
4500 Knox Road
College Park, MD 20740

Re: Request by the City of College Park for an advisory opinion

Mayor

Dear Mr. Frosh:

Patrick L. Wojahn
5015 Lackawanna Street
240-988-7763

This letter is sent on behalf of the Mayor and Council of the City of College Park to request an Attorney General opinion interpreting State law with respect to non-binding referenda under Local Government Article, §4-301 *et seq.* Specifically, the question to be answered is as follows:

Councilmembers

May the Council lawfully require, through a charter amendment, that any proposed future charter amendments be automatically subject to a non-binding, or advisory, referendum of the registered voters before such Charter resolution can be taken up for a vote by the Council.

District 1
Fazlul Kabir
9817 53rd Avenue
301-659-6295

Christine Nagle
4500 Knox Road
240-965-0214

District 2
P. J. Brennan
4500 Knox Road
202-288-5569

Monroe S. Dennis
8117 51st Avenue
301-474-6270

The opinion of the City Attorney with respect to this question is attached for your review. We have been unable to locate a court decision or other guidance specifically on point with respect to this question. The issue involves interpretation of State law and applies to all municipalities. We believe that the opinion may be of use to other local governments when considering whether to make provision for non-binding referenda.

Thank you for your consideration of our request.

District 3
Robert W. Day
7410 Baylor Avenue
301-741-1962

Very truly yours,

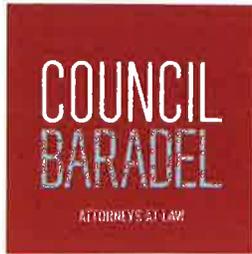
Stephanie Stullich
7400 Dartmouth Avenue
301-742-4442

Patrick L. Wojahn
Mayor

District 4
Mary C. Cook
4705 Kiernan Road
202-213-5579

Enclosure

Dustyn Kujawa
9238 Limestone Place
240-620-2105



SUELLEN M. FERGUSON
E-Mail: Ferguson@CouncilBaradel.com
Telephone Extension: 3418

MEMORANDUM

RE: REQUIREMENT OF A NON-BINDING REFERENDUM PRIOR TO ADOPTION OF A CHARTER RESOLUTION

BY: SUELLEN M. FERGUSON, CITY ATTORNEY

DATE: 8/30/16

ISSUE:

An amendment to a municipal charter is governed by §4-301 *et seq.* of the Local Government Article, Annotated Code of Maryland, and must be enacted in one of two ways. A charter amendment must be:

1. Initiated and adopted by the municipal legislative body in the same manner as other resolutions by a majority of all the individuals elected to the legislative body (§4-304), or
2. Initiated by a petition of at least 20% of qualified municipal voters and approved through a referendum election (§4-305).

The Mayor and Council of the City have requested a legal opinion with respect to whether it can require that any proposed charter amendment be sent to non-binding, or advisory, referendum of the voters before a Council generated charter resolution initiated under §4-304 can be voted on by Council.

SUMMARY:

The Court of Appeals has held that the State statutory provisions relating to the adoption of charter amendments “occupy the whole field of amendments to charters,” and as a result those provisions are mandatory. *Mayor of Hagerstown*, 236 Md. 222, 228 (1964); *Hitchins v. Mayor & City Council of Cumberland*, 208 Md. 134, 144 (1955). In addition to stating the method of adoption, the Local Government Article includes statutory requirements for how the charter resolution is worded and for notice of adoption to the public.

Interpretations of the application of §4-301 *et seq.* are contained in various court opinions. For example, the Court of Appeals has found that, because a municipal charter is designed to establish the framework or constitution for a local government, there are limits on what the charter can address. A municipality may not legislate through charter amendments on matters that do not involve the form or structure of government. *Cheeks v. Cedlair Corp.*, 287 Md. 595, 607 (1980). *Mayor and City Council of Ocean City v. Bunting*, 168 Md.App. 134 (2006).

125 West Street, 4th Floor, Annapolis Maryland 21401

Because §4-301 *et seq.* limits the manner in which a charter amendment can be adopted to only the two methods described, a municipality cannot create another method of adoption. As a result, it is clear that the municipal legislative body cannot enable a binding referendum process for charter amendments, as this would limit the authority of Council authorized in §4-304. This limitation is recognized in §C4-9 of the City Charter, which allows the Mayor and Council to elect, in their discretion, to place other items, except Charter amendment resolutions, to automatic and binding referendum by a majority vote of the Council.

On the other hand, municipalities are not prevented from adding appropriate standards or safeguards as part of the charter amendment process. For example, in *Reed v. President and Commissioners of the Town of North East*, 226 Md. 229 (1961), the Court of Appeals upheld a requirement, adopted as part of the charter amendment, for post-adoption publication in two newspapers, instead of the one newspaper of general circulation required in §4-304. The Court stated that what is allowed or not depends on whether the additional requirement was “an enlargement upon procedural regulation” or “an attempt further to restrict a precise statutory limitation”, at page 249.

The question at issue is whether the Council can require, as a pre-condition to its ability to vote on a charter amendment, that a non-binding referendum take place. Because the referendum is non-binding, it does not limit, except as to timing, the Council’s authority to adopt. However, it would limit the Council’s ability to proceed by imposing another requirement that must be met before action can be taken.

Operational aspects of requiring a non-binding referendum are considerable. The adoption and effectiveness of a charter amendment already requires approximately 80 days minimum in the City process, based on notice and hearing requirements. Depending on the wording of the resolution and the timing of proposal, a charter amendment could require two years to adopt if the referendum election is tied to the general election. Imposition of a non-binding referendum requirement will make adoption of charter amendments a more lengthy process.

The City of Laurel Charter contains the following provision:

Sec. 616. - Advisory referenda.

(a) The mayor and city council, by resolution, may direct that an advisory referendum of the city voters be undertaken on the questions set forth in such resolution. Such questions shall be placed on the ballot at the next general election. The results of such referenda shall not be binding upon the city in any way, but shall be for advisory purposes only. Any such resolution shall be adopted at least sixty (60) days prior to the next general election in order to allow time for the question to be placed on the ballot.

(b) Upon the passage of any such resolution, it shall be the duty of the board of elections supervisors to place all questions contained in such resolution on all city ballots and on any suitable place on all city voting machines, and to certify the results of the voting on all such questions in the manner provided for in this Charter relating to certifications.

As worded, this provision would allow a question, such as “Should the number of council positions be reduced from eight to four?”, to be placed on a non-binding referendum ballot. Reduction of the number of council seats would certainly require a charter amendment.

Because §4-301 *et seq.* limits the manner in which a charter amendment can be adopted to only the two methods described, a municipality cannot create another method of adoption. As a result, it is clear that the municipal legislative body cannot enable a binding referendum process for charter amendments, as this would limit the authority of Council authorized in §4-304. This limitation is recognized in §C4-9 of the City Charter, which allows the Mayor and Council to elect, in their discretion, to place other items, except Charter amendment resolutions, to automatic and binding referendum by a majority vote of the Council.

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However, this proces leaves the decision about whether to place this question to non-binding referendum to the Council and so does not automatically limit its authority.

There does not appear to be case law on point with respect to this question. I am unable to locate another municipal charter that would require a charter level question to be taken to non-binding referendum, although some allow it based on a determination by the Council or a petition of the voters.

CONCLUSION:

As a result of my review, it is a supportable argument that the Council may, by charter amendment, require a non-binding referendum to be held before the Council will formally vote on any charter amendment. However, there are no definitive cases or opinions that confirm this position. Because it has statewide significance and involves the interpretation of state law, this is the type of question that can be posed to the Attorney General's Office for an opinion.