



MEMORANDUM

TO: Gavin Buckley, Mayor

FROM: Kerry Berger, Acting City Attorney *KB*

DATE: May 30, 2019

RE: **Recommended Amendments to CA-2-19**

Mayor Buckley,

You have asked for an opinion regarding the legality of Finance Committee's recommended amendments to CA-2-19. Specifically, you have inquired as to whether the recommended amendments would be consistent with the provisions of Article VI, Section 2(B)(a) and Article IV, Section 2A of the Charter. As outlined below, there are legal concerns with the recommended amendments running afoul of these provisions of the Charter.

I. Article VI, Section. 2B(a) of the Charter.

This Charter provision states:

There shall be a city manager in the office of the mayor who shall be the chief administrative officer of the city. **The city manager shall be the direct subordinate of the mayor and shall have supervisory authority over the department directors** as provided for by the City's organizational chart that is prepared by the mayor and accepted by the City Council.

(emphasis added).

II. Article IV, Section 2A of the Charter.

This Charter provision states:

Aldermen may not direct the work of a director or employee of a department. An alderman who violates this prohibition is guilty of misconduct in office and is subject to expulsion from office. This prohibition does not preclude an alderman from submitting an inquiry or request to a department

director or employee of a department. Further, the aldermen shall have such administrative and professional staff and consulting services as may be provided for in the annual budget.

(emphasis added).

III. Charter Amendment 2-19.

CA-2-19 proposes the removal of the Office of Environmental Policy from the supervision of the City Manager, and places the supervision of the Human Resources Office under the City Manager. The City Charter provision affected by this legislation is Article VI, Section 2B.

IV. Finance Committee's Recommended Amendments.

After review of CA-2-19, the Finance Committee recommended the legislation favorably with amendments. The amendment relevant¹ to this opinion consists of two changes to Article VI, Section 2B of the Charter and states as follows: "Amendment 1: Page 2 Line 18 & 22 ADD 'AND CITY COUNCIL.'" This amendment, if passed, would make two substantial changes to the City Manager's powers and duties.

The first change would amend Article VI, Section 2B(e)(5) to require the City Manager to advise the mayor and the City Council "in the formation of policy and the implementation of plans to address demands for municipal services, enhance the quality of life, and strengthen the economic vitality of the city."

The second recommended change would amend Article VI, Section 2B(e)(6) to require the City Manager "[t]o perform such duties not inconsistent with this Charter as may be delegated by the mayor" and the City Council.

V. Legal Issues with the Finance Committee's Recommended Amendments and Subsequent Revision to Article VI, Section 2B(e) of the Charter.

With regard to the first recommended change, Article VI, Section 2B(e)(5) only describes an advisory function of the City Manager, so I do not believe that this portion of Amendment 1, if passed, would result in a violation of Article VI, Section 2B(a) or Article IV, Section 2A of the Charter.

There are legal concerns regarding the second recommendation stated in Amendment 1, however. According to Article VI, Section 2B(a), the City Manager is the chief administrative officer of the City and has "**supervisory authority over department directors** as provided for by the City's organizational chart that is prepared by the mayor and accepted by the City Council." As outlined in Article VI, Section 2B(e), and with the exception of Article VI, Section 2B(e)(5), the City Manager's powers and duties wholly deal with directing the work of department directors and employees. Accordingly, any duty delegated from the Mayor to the City Manager results in direction to a department director or employee.

¹ Amendment 2 states "[a]pprove Page 2 Line 29 strike out."

Giving the City Council the authority to designate duties to be performed by the City Manager would result in the City Council directing the work of department directors and employees through the City Manager. Thus, adding the City Council to Section 2B(e)(6) would violate Article IV, Section 2A of the Charter. Such a change would also be inconsistent with Article VI, Section 2B(a) of the Charter, which requires that the City Manager be a direct subordinate of the Mayor, not the City Council.

Further, state constitutional challenges could arise from amending CA-2-19 to require the City Manager to perform duties delegated to him/her by the City Council. Article 8 of the Maryland Declaration of Rights states: “[t]hat the Legislative, Executive, and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.” The purpose of the separation of powers doctrine is to keep each branch of government separate from the other as part of a checks and balances system. In other words, in order to prevent the abuse of power, each branch has separate and distinct powers to fulfill different tasks; one branch cannot exercise the powers of another branch and become so powerful as to control the governmental system completely.

The City Council makes up the **legislative branch** of City government, and has the authority to enact City laws and appropriate the money necessary to operate the City. The **executive branch** is responsible for implementing and administering the laws enacted and funded by the City Council. The executive branch encompasses all department directors and employees, with the Mayor serving as the chief executive officer and the City Manager as the chief administrative officer. To permit the City Manager to report to the City Council could potentially result in the City Council usurping authority belonging to the executive branch. Additionally, the City Council could prevent the Mayor from carrying out executive functions he is legally entitled to carry out as the chief executive officer of the City.

In sum, it is my opinion that permitting the City Manager to advise the City Council “in the formation of policy and the implementation of plans” would not result in a violation of law. However, allowing the City Council to designate duties to be performed by the City Manager would not only result in a violation of the aforementioned Charter provisions, but would also raise a separation of powers issue that could result in a violation of the Maryland Constitution.