



Committee: Directly to Council
Committee Review: N/A
Staff: Christine Wellons, Senior Legislative Attorney
Khandikile Sokoni, Legislative Attorney
Purpose: To receive testimony/final action - vote expected
Keywords: #CharterAmendments

AGENDA ITEM #25 and
ITEM #29
July 21, 2022
Public Hearing/Action

SUBJECT

Resolution, Proposed Amendment to the County Charter – General Provisions – Conflicting Charter Amendments

Lead Sponsor: Council President at the Request of the Charter Review Commission

EXPECTED ATTENDEES:

N/A

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION:

Vote on whether to adopt the resolution to place on the 2022 general election ballot a proposal to amend Section 507 of the Charter regarding conflicting Charter amendments.

DESCRIPTION/ISSUE

If approved, the Resolution would place on the 2022 General Election Ballot Question A.

Question A would ask voters to decide whether to amend Section 507 of the County Charter regarding what happens if, during an election, voters approve two different Charter amendments that conflict with each other and cannot both take effect. Under current law, neither amendment would take effect in that situation. Both amendments would fail. Under the proposed Charter amendment, only the amendment with the highest number of favorable votes would win and amend the County Charter. The other amendment would fail.

SUMMARY OF KEY DISCUSSION POINTS:

This amendment was proposed to the Council by the Charter Review Commission in its 2022 Report. <https://www.montgomerycountymd.gov/crc/Resources/Files/CRC2022Report.pdf>.

This report contains:

Staff memorandum	Pages 1-5
Resolution	©1
Attorney General Opinion	©3

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Agenda Item #25 and Item #29
July 26, 2022
Public Hearing / Action

MEMORANDUM

July 21, 2022

TO: County Council

FROM: Christine Wellons, Senior Legislative Attorney and
Khandikile Sokoni, Legislative Attorney

SUBJECT: Resolution to Approve a Proposed Amendment to County Charter – General
Provisions – Conflicting Charter Amendments

PURPOSE: Public Hearing and Action – vote expected

On July 12, 2022, the Council President, on behalf of the Charter Review Commission, introduced a resolution to place the following **Question A** on the 2022 general election ballot:

A

General Provisions – Conflicting Charter Amendments

The County Council proposes to amend Section 507 of the Charter of
Montgomery County as follows:

Sec. 507. Amendments.

This Charter may be amended in the manner provided in Section 5 of Article XI-A of the Constitution of Maryland. If, at a congressional or general election held after 2022, voters approve Charter amendments containing provisions so inconsistent that only one can be given effect, only the amendment that receives the highest number of favorable votes must take effect and amend the Charter.

BACKGROUND

The question of what to do in the event of conflicting proposed charter amendments being passed at an election was raised by the Charter Review Commission (CRC) in its report dated April 29, 2022, presented to the County Council at its June 21, 2022 meeting. The report pointed out the predicament that might have arisen in the 2020 election when two seemingly irreconcilable questions were on the ballot. At the time (in 2020) the Council consisted of 9 Councilmembers, 5 of whom were elected by District and 4 of whom were elected at large. The first of two irreconcilable charter amendment proposals on the ballot in 2020 was Question C, which sought

to amend the Charter to expand the Council from 9 to 11 Councilmembers, as well as increase the number of districts from 5 to 7. A contradictory proposal was concurrently presented as Question D, seeking to amend the Charter to provide that all Councilmembers be elected by district with none elected at-large. The predicament was averted because only one proposal received enough favorable votes to pass.

The 2022 CRC report recommends that the Council proactively provide for what would happen in the event that conflicting proposed charter amendments each was approved by a majority of voters. *See the CRC Report at pages 3 and 15 (available at <https://www.montgomerycountymd.gov/crc/Resources/Files/CRC2022Report.pdf>).*

ISSUES FOR THE COUNCIL'S CONSIDERATION

The Council might wish to consider the following issues in connection with the proposed Question A.

1. Approaches of Other Jurisdictions

Below is a chart outlining how six of the most populous counties in Maryland have addressed the issue of conflicting ballot proposals seeking to amend the charter:

County	Process for Charter Amendments	Does its Charter address conflicting ballot proposals?
Montgomery County	The Charter may be amended in the manner provided in Section 5 of Article XI-A of the Maryland Constitution which allows for charter amendment proposals either by a resolution of the County Council or by a petition signed by at least 10,000 registered voters of the County and filed with the President of the County Council. (See Charter § 507).	No. CRC recommends addressing this in line with the Attorney General's (AG's) opinion 87 Md Op Atty Gen. 99 (2002) and providing that if there are irreconcilable provisions then only the one with the highest number of votes shall pass (similar to Anne Arundel County).
Prince George's County	By act of Council or by a petition with more than 10,000 signatures of registered voters.	No.
Baltimore County	By act of the county council approved by a majority plus one of the total number of county council members established by the Charter ...	No.

County	Process for Charter Amendments	Does its Charter address conflicting ballot proposals?
	Amendments may also be proposed by petition filed with the county executive and signed by not less than twenty percent of the registered voters of the county, or 10,000 or more of such registered voters in case twenty percent of the number of registered voters is greater than 10,000.	
Anne Arundel County	<p>By a resolution of the County Council approved by not less than five of its members, and such action shall be exempt from executive veto.</p> <p>Amendments may also be proposed by petition filed with the Chairman of the County Council and signed by not less than twenty percent of the registered voters of the County, or 10,000 or more of such registered voters in case twenty percent of the number of registered voters is greater than 10,000. (Charter §1202(a)).</p>	<p>Yes. Charter §1202(b) provides: “If, at the election ... the voters approve Charter amendments containing provisions so inconsistent that only one can be given effect, only the amendment that receives the higher number of favorable votes shall take effect and amend the Charter.”</p>
Howard County	<p>By a resolution of the Council approved by not less than two-thirds of its members.</p> <p>Amendments may also be proposed by petition filed with the Chairperson of the County Council and signed by not less than twenty percent of the registered voters of the County, or 10,000 of such registered voters in case twenty percent</p>	<p>No.</p>

County	Process for Charter Amendments	Does its Charter address conflicting ballot proposals?
	of the number of registered voters is greater than 10,000.	
Frederick County	Refers to charter amendment procedure outlined in MD Constitution Article XI-A.	No.

2. Can Multiple conflicting charter revision proposals be placed on the ballot?

Although it is rare for two contradictory Charter amendment proposals to be placed on the ballot, it has occurred in Montgomery County and throughout Maryland.

The 2002 AG's opinion referenced above (and enclosed at ©3) concludes that a court would not interfere with the inclusion of multiple albeit contradictory charter revision proposals. The opinion agrees with the City of Baltimore City Solicitor's opinion that "It is clear the courts will not intervene prior to the election to limit the number of proposals on the ballot". *Citing Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803 (1944)). There appears to be nothing that prevents either the County Council or the electorate from adopting multiple proposals for inclusion on the ballot – regardless of whether they are completely opposed. The conventional wisdom seems to be the voters can choose from among contradictory provisions which one they like the most (or least).

3. Potential Approaches

If two or more charter amendment proposals on the ballot got enough votes to pass, which one would be valid? The Maryland AG is of the opinion that absent a charter provision addressing how to resolve such an occurrence, they would all fail. However, that is something that the Council has authority to anticipate and address in advance through a Charter amendment.

The Council has two options. It can either: 1. Retain the status quo, in which contradictory charter amendments that pass effectively all fail; or 2. Provide through Charter amendment that when contradictory charter amendments all pass, then the one with the most votes is the one that would take effect and become law. The AG noted that such a Charter amendment allows a court to resolve conflicting amendments based upon criterion selected by the voters themselves. Based on the foregoing, Council staff is inclined to propose that Council adopt Option 2; that way, the voters will decide how they want a conflicting charter amendments scenario to be resolved.

As noted in the earlier chart, it appears that among the larger counties in Maryland, most have not addressed the issue legislatively; the one that has, Anne Arundel, has taken the "Option 2" approach discussed above.

In summary, there is nothing that precludes either the Council or the electorate from adopting multiple charter amendment proposals for inclusion on the ballot, provided they are

adopted in accordance with the provisions of Article XI-A, §5 of the MD Constitution, regardless of whether they are contradictory. Once properly adopted and placed on the ballot, if more than one of the contradictory proposals passes, then they all fail unless the Charter has a pre-existing provision resolving the issue.

Given the fact that this possibility is not merely academic but from recent experience seems like a plausible outcome, Council staff agrees with the Charter Review Commission that it would be prudent to decide in advance what outcome Council would like under such a circumstance. This can be accomplished by placing on the ballot Question A, similar to the Anne Arundel provision that provides that among contradictory proposals that all pass, the one with the most votes will become law.

NEXT STEP: Vote on whether to adopt the resolution to place on the 2022 general election ballot a proposal to amend Section 507 of the Charter regarding conflicting Charter amendments.

This packet contains: Circle #

Resolution	©1
Attorney General Opinion	©3

CRC 2022 Report: available at

<https://www.montgomerycountymd.gov/crc/Resources/Files/CRC2022Report.pdf>

Resolution No.: _____
Introduced: July 12, 2022
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the Request of the Charter Review Commission

SUBJECT: Proposed Amendment to County Charter – General Provisions – Conflicting Charter Amendments

Background

- (1) Under Section 5 of Article XI-A of the Maryland Constitution, §7-102(c)(3)(i) of the Election Law Article of the Maryland Code, and §16-14 of the Montgomery County Code, amendments to the Charter of Montgomery County may be proposed by a resolution of the County Council. Section 5 of Article XI-A of the Constitution also provides that amendments to the Charter may be proposed by a petition signed by at least 10,000 registered voters of the County and filed with the President of the County Council.
- (2) Under §7-103(c)(3)(i) of the Election Law Article of the Maryland Code, ballot questions for proposed Charter amendments must be certified to the State Board of Elections not later than the 95th day before the general election. County Code §16-16 provides that a ballot title or summary, prepared by the County Council, of all proposed Charter amendments must appear in print on the voting machine or ballot.
- (3) The Council intends to submit for inclusion on the 2020 general election ballot:

Question A: General Provisions – Conflicting Charter Amendments, which would amend §507 of the Charter.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

- 1) Subject to the approval of the County Attorney as to the form of the questions, the following Charter amendment must be placed on the 2022 general election ballot:

A

General Provisions – Conflicting Charter Amendments

The County Council proposes to amend Section 507 of the Charter of Montgomery County as follows:

(1)

Sec. 507. Amendments.

This Charter may be amended in the manner provided in Section 5 of Article XI-A of the Constitution of Maryland. If, at a congressional or general election held after 2022, voters approve Charter amendments containing provisions so inconsistent that only one can be given effect, only the amendment that receives the highest number of favorable votes must take effect and amend the Charter.

The ballot for this question must be designated and read as follows:

Question A

Charter amendment by act of County Council

Charter Provisions – Conflicting Charter Amendments

Amend Section 507 of the County Charter regarding what happens if, during an election, voters approve two different Charter amendments that conflict with each other and cannot both take effect. Under current law, neither amendment would take effect in that situation. Both amendments would fail. Under the proposed Charter amendment, only the amendment with the highest number of favorable votes would win and amend the County Charter. The other amendment would fail.

FOR **AGAINST**

This is a correct copy of Council action.

Approved as to form and legality:

Judy Rupp
Clerk of the Council

John P. Markovs
Acting County Attorney

BALTIMORE CITY**MUNICIPALITIES – EFFECT OF VOTER APPROVAL OF
IRRECONCILABLE CHARTER AMENDMENTS**

July 18, 2002

*The Honorable Sheila Dixon
President, Baltimore City Council*

You have asked for our opinion concerning several proposed amendments to the Baltimore City Charter that would reduce the size of the City Council. Specifically, you ask which proposed amendment would prevail if two or more of the proposals appear on the ballot and are approved by the voters.

You forwarded an opinion of the City Solicitor that concludes that “if several charter amendments concerning the composition of the City Council were placed on the ballot and more than one received a majority of votes then all the proposals that passed must fail.” That opinion relies in part on a letter of advice by Assistant Attorney General Richard E. Israel dated October 9, 1981. Copies of the City Solicitor’s opinion and Mr. Israel’s letter are attached.

We have reviewed the City Solicitor’s opinion and Mr. Israel’s letter and agree with the City Solicitor’s conclusion. We note that, as Mr. Israel indicated, if the voters simultaneously approved multiple charter amendments a court would first attempt to reconcile the various amendments. Thus, our opinion is based on the premise that the various proposals to reduce the size of the City Council would be irreconcilable in that they would define districts differently or provide for different numbers of members from those districts.

The Baltimore City Charter itself does not provide a method for choosing among several conflicting amendments. In this regard, the Council might propose a charter amendment to resolve conflicting charter amendments.¹ See, e.g., Anne Arundel County

¹ In his advice to a State legislator, Mr. Israel observed that legislation alone could not resolve a conflict among charter amendments adopted pursuant to the State Constitution and recommended a
(continued...)

Charter, §1202(b) (if voters approve inconsistent charter amendments, only the amendment with the highest number of votes takes effect). If such an amendment were approved by the voters, we believe that the courts would look to it to resolve a conflict among approved amendments to reduce the size of the Council.² Similarly, to the extent that conflicting amendments are proposed by the Council itself, the effectiveness of each could be made contingent on receiving the highest number of votes among the competing proposals. *See Andrews v. Governor*, 294 Md. 285, 449 A.2d 1144 (1982) (upholding submission to voters of constitutional amendment subject to contingency).

J. Joseph Curran, Jr.
Attorney General

Robert N. McDonald
Chief Counsel
Opinions and Advice

¹ (...continued)

constitutional amendment for that purpose. In our view, a charter amendment approved by the City's voters in accordance with Article XI-A, §5 of the Constitution could accomplish the same end.

² Given a choice between, on the one hand, declaring void all charter amendments approved by the voters, and, on the other, giving effect to one of those amendments according to a criterion simultaneously approved by the voters, we believe the courts would select the latter course as more reflective of the will of the electorate. *Cf. Dutton v. Tawes*, 225 Md. 484, 491, 171 A.2d 688 (1961) (election laws generally construed to give effect to "the full and fair expression of the will of the voters.")

**CITY OF BALTIMORE
DEPARTMENT OF LAW**

Martin O'Malley
Mayor

Thurman W. Zollicoffer, Jr.
City Solicitor

June 25, 2002

*The Honorable Sheila Dixon
President, Baltimore City Council*

*Re: Multiple Charter Amendments on Composition of the
City Council*

You have requested the advice of the Law Department with regard to what would happen if more than one proposed amendment received a majority of favorable votes. There has been much discussion recently regarding the downsizing of the Baltimore City Council. As a result of the attention that this issue has received it appears likely that there will be multiple Charter amendments on the ballot purposing new configurations for the City Council. There are several alternatives being proposed by the Council itself and at least one that is being petitioned onto the ballot by the League of Women Voters.

The first issue that arises concerns the process to be followed should more than one charter amendment make it onto the ballot. Traditionally, Charter amendment questions are set forth individually and citizens vote yes or no on each proposed amendment. Article XI-A the Maryland Constitution, Section 5 provides that "if at the election the majority of the votes cast for and against the amendment shall be in favor thereof, the amendment shall be adopted." If there are multiple amendments on the ballot, and they are voted on individually, potentially more than one could receive a majority of favorable votes. The question then becomes how do you determine which is the successful amendment.

It is clear that the courts will not intervene prior to the election to limit the number of proposals on the ballot. In *Hillman v. Stockett*, 183 Md. 641, 39 A.2d 803 (1944), the Court of Appeals was asked to issue a writ of mandamus to prevent two contradictory constitutional amendments from being placed on the ballot. The court stated:

Petitioner also contended that Chapter 772 and Chapter 796 were both null and void because they were in conflict and that the Court should so hold both proposals. It would seem to be obvious that this question was not before the Court. Neither of the proposals had been voted on, neither might be adopted by the voter, or one might be adopted, and other might fail of adoption. The voters might conclude, as did the petitioner, that the two were contradictory, and therefore, they might determine to adopt the one they preferred, and not to adopt the other. The Court could not anticipate the action of the people. It would be assuming powers, far beyond the scope of those given to the judiciary, were it to refuse to permit the people to choose between two contradictory proposals (if they were contradictory), by declaring both proposals void, in advance of the adoption of either. If two contradictory provisions are placed in the Constitution, it might then become the duty of the Court to construe them and to determine what they mean. Until the occasion arises, the Court has here only to do with proposals. There is nothing in the Constitution to prevent the Legislature from making as many proposal as it chooses, and form making such proposals contradictory, in order to let the people choose between them. The only requirement is that the proposals shall be made in the manner prescribed by the Constitution, ...

The Courts in Maryland have not addressed the issue of which of two conflicting charter amendments would prevail if both received a majority vote in an election. In 1981, however, the Attorney General's Office was asked to respond to this issue. Although the Attorney General did not issue an opinion, a letter of advice was drafted. Richard E. Israel, Assistant Attorney General responded that, in his view, neither amendment could be given effect if they were completely irreconcilable. Applying the law applicable to constitutions, it was Mr. Israel's opinion that irreconcilable amendments to a county charter that are simultaneously enacted by the voters must both fail. Some State constitutions have expressed provisions to resolve the problem of conflicting amendments. See

16 Am. Jur.2d Constitutional Law, Section 33. The Baltimore City Charter has no provision for choosing between two conflicting Charter amendments that have been approved by the voters. In the absence of such a provision, there is no alternative but to find that both proposals fail. See 16 Am. Jur.2d Constitutional Law, Section 63.

Based on the foregoing, if several Charter amendments concerning the composition of the City Council were placed on the ballot and more than one received a majority of votes then all the proposals that passed must fail.

I hope that this responds to your question. Please contact the Law Department if you have any further questions.

Thurman W. Zollicoffer, Jr.
City Solicitor

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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

October 9, 1981

The Honorable Helen L. Koss
House of Delegates

This is in response to your request for advice of counsel on which amendment to a county charter would prevail in the event that two are adopted at the same time and both are in irreconcilable conflict. Although a court would certainly make every effort to harmonize apparently conflicting amendments adopted at the same time, if they were indeed utterly irreconcilable, it is my view that neither could be given effect.

The Charter Home Rule Amendment to the Constitution provides that amendments to a charter may be proposed by the council or by petition of the voters. Article IX-A, Sec. 5. A proposed amendment is to be submitted to the voters at the next general or congressional election, and, if a majority of the votes cast are in favor of the amendment, the amendment is adopted and becomes part of the charter after 30 days following the election. Article XI-A, Sec. 5. There is no express provision dealing with what happens when two irreconcilable amendments are adopted at the same time, nor have the reported cases of this State addressed this issue. Moreover, neither the Constitution, Article XI-E, Sec. 4, the laws, Md. Code, Art. 23A, Secs. 11-18, nor the courts, in their reported cases, have dealt with this issue in the amendment of municipal charters. However, the analogy to amending the State Constitution is instructive.

In *Ritchmont Partnership v. Board of Supervisors of Elections for Anne Arundel County*, 283 Md. 48, 58 (1978), the Court of Appeals referred to a county charter as being, "in effect, a local constitution." See also *Cheeks v. Cedlair Corp.*, 287 Md. 595, 606 (1980). Neither the State Constitution, Art. XIV, Sec. 1, nor the

reported cases of the State's courts have dealt with the issue of the simultaneous adoption of irreconcilable amendments. However, it has been said that "where a section of the constitution is amended at the same time by two different amendments, and the amendments adopted are directly in conflict, and it is impossible to determine which should stand as a part of the constitution or to reconcile the same, then they must both fail." 16 Am. Jur. 2d, "Constitutional Law," Sec. 103. The same has been said to be true with respect to simultaneously enacted, irreconcilable statutes. 1A *Sutherland Statutory Construction* Sec. 23.17 (3rd Ed.). These rules would appear to be premised on the view that in the absence of a constitutionally sanctioned way for resolving such conflicts, the courts should not attempt to bring clarity to that which is inherently confused. Thus, although some State Constitutions provide that in the event of the simultaneous adoption of conflicting constitutional amendments, the one receiving the highest vote prevails, 16 Am. Jur. 2d, "Constitutional Law," Secs. 47 and 103, clearly there must be an express provision of the Constitution to bring about this result.

In summary, in the absence of any express provision in Article XI-A, Sec. 5, for determining which amendment to a county charter prevails in the event of the adoption at the same time of utterly irreconcilable amendments, I think that the analogy to amending a Constitution might reasonably be followed with the result that neither amendment could be given effect. I might add that inasmuch as the Constitution itself declares that an amendment to a county charter is adopted when approved by a majority of the votes cast, Art. XI-A, Sec. 5, and as the Court of Appeals has said that the power to amend a county charter is derived directly from the Constitution, *Ritchmont* at 58-59, and *Cheeks* at 610, I think that providing for the resolution of conflicts between county charter amendments would have to be done by amendment of the Constitution, rather than the enactment of legislation. By way of contrast, I think that this matter could be dealt with by legislation with respect to municipal charters, inasmuch as Art. XI-E, Sec. 4, expressly deals only with the proposing of amendments to municipal charters, not their adoption, and directs the General Assembly to enact consistent legislation for the amendment of such charters.

While this letter represents my considered view of this matter, it is not an Opinion of the Attorney General

Richard E. Israel
Assistant Attorney General