

Hon. Henry R. Hergenroeder, Chairman, Judiciary Committee,
City Council (continued)

provided that a quorum would consist of two-thirds of the members (instead of a majority) and the question presented to the Court was whether or not such rule was proper in the absence of specific authority to adopt such rule. The Court held that the rule was improperly adopted and stated:

"The City Council is the creature of the Legislature, and if it can exercise no powers not expressly granted to it, neither can it deprive itself by its own action of the powers that are granted to it. We have shown before, that a majority of the Council constituted the legal body, and competent to do every act that the Council could do. It would be an anomaly indeed, if the Council itself, could deprive itself of the right that it admittedly had. No municipal corporation can either enlarge or diminish its own powers. That is more than the Legislature of the State can do for itself. The latter derives all its powers from the Constitution, and the former all its powers from the Legislature. By consent of the legal body, which is the majority, either may refrain from exercising any power it rightfully has, but that is all. * * * ."

"We are therefore of opinion that the rule adopted by the First Branch of the City Council, was not a rule of procedure, but a rule affecting the legal rights and powers of the Branch, and which was entirely unauthorized by the charter, and therefore null and void; * * * ."

In the case of Liberto v. City of Baltimore, 180 Md. 105, the Court of Appeals stated that:

"Neither a Legislature nor a City Council can by legislation divest itself of the power to protect the lives, health, morals, comfort, and general welfare of the citizens of the community. That right and that duty always remains, and no individual agreement, or right, or contract can stand in the way."

See also: Lake Roland v. Baltimore,
77 Md. 352, 366, 373-376

The source of the City's power to adopt a zoning ordinance is the State Zoning Enabling Act and the Mayor and City Council cannot affect the zoning ordinance by a charter provision, or an ordinance, in a manner not authorized by the Enabling Act.

See: Scrivner v. Baltimore,
191 Md. 165, 169