

# **CHARTER REVISION COMMISSION**

## **PHASE II – FINAL REPORT**

**APRIL 16, 2012**

Jana H. Carey, Chair  
Joshua C. Greene, Vice Chair  
Patric S. Enright\*  
Karen L. Cook\*  
Jason E. Rheinstein

Dirk D. Haire\*\*  
Linda M. Schuett\*\*

\* As of February 6, 2012

\*\* April 19, 2011 to January 23, 2012

The Charter Revision Commission began the second phase of its charge to review and make recommendations regarding the County Charter in October, 2011, meeting throughout the fall and spring of 2012 to receive information from County officials and citizens and to review the topics provided in Resolution 41-11.

The topics discussed are summarized in order of their appearance in the Charter, with dissenting comments from Commission Members in Appendix A, meeting minutes appearing in Appendix B, requests for study in Appendix C, and draft revised sections for which the Commission recommends a revision in Appendix D.

## **ARTICLE II. THE COUNTY COUNCIL**

### **COUNCIL VACANCIES – CHARTER SECTIONS 201 THROUGH 205**

The Commission examined the current process for filling vacancies on the County Council and voted against recommending any change on November 18, 2011.

Thereafter, upon hearing from the public and taking into account recent events at the County Council, the Commission reconsidered and unanimously voted to recommend changes to the procedure for filling a vacancy and to add additional language regarding vacancies.

The first recommended change is to revise the Charter to provide for special elections for council vacancies occurring within the first three years of a term. In the suggested language contained in Appendix D, the provision for a temporary appointment pending the election remains but with the additional recommendation that the County Executive be given the power of appointing a recommendation of the Central Committee in the event of a deadlock.

The second recommended change is to alter the appointment process for a council vacancy occurring in the last 12 months of the term. The Commission recommends that the Council be given the ability to appoint a replacement within 30 days and, if it fails to do so, that the vacancy be filled by an appointment of the County Executive from a recommendation of either the Central Committee, or if the vacant seat was held by a party without a central committee, from a list of three candidates provided to the County Executive by the County Council.

### **REMOVAL OF COUNTY COUNCIL MEMBERS**

As part of the discussion of County Council vacancies, and at the suggestion of citizens, the Commission unanimously recommends that a provision for removal of County Council members be adopted. The provision would require the County Council to make a decision to remove a member based on a number of triggering events, including conviction or incapacity. In drafting the suggested language, the Commission used Section 404 of the Charter and recent events as guidance. Draft language is included in Appendix D.

### **COUNCIL RECESS**

A survey of the charter counties indicates that a number of County Councils recess during the month of August, either in practice or as outlined specifically in their Charter. The Commission voted 4-0-1 (Greene absent) to recommend the addition of language to permit a recess of the County Council at a time specified in the Charter. Draft language is included in Appendix D.

### **OPEN MEETINGS**

The Commission also considered the adoption of the Open Meetings Act for purposes of providing a framework for closing meetings for specific reasons. Under the Charter, the County Council may not meet as a body in a closed meeting for any reason. In its deliberations, the Commission met with Anne MacNeille, Esq. from the Office of the Attorney General for a briefing on the operation of the Open Meetings Act at the State level as well as pertinent case law. The Commission recognizes the advantage of adopting the Open Meetings Act as a proper alternative to closed non-quorum meetings of the County Council. The adoption of some form of Open Meetings provision would allow the public to know when and for what purpose a closed meeting has occurred, the minutes of which would be available after the meeting occurs. The Commission voted unanimously to recommend that the County Council consider the adoption of a procedure by which the County Council can close a session by a supermajority vote in accordance with the provisions of the Open Meetings Act. The Commission considered, but did not take a vote on, several alternatives for language, which are included in Appendix D.

## **ARTICLE III. THE LEGISLATIVE BRANCH**

### **DURATION OF A BILL**

The Commission reviewed the timeline for expiration of bills in Anne Arundel County as well as other charter counties. Anne Arundel County's 95-day period is sufficiently long and is longer than many other counties. However, the Commission did approve alternative language by a vote of 4-0-1 (Greene absent) for Section 307 to permit the addition of a single extension period by supermajority vote.

### **RETURN OF BILLS**

The Commission revisited the issue of the timing of returned unsigned bills at the request of Commissioner Enright. The Charter is unclear on when a bill that is returned unsigned within 10 days of presentment to the County Executive becomes law. A question concerning this on the 2008 ballot did not pass. The belief of the Commission was that the language of a future question on this should more clearly explain the need to clarify the provision rather than make

significant changes regarding the presentment of bills. There was a unanimous vote by the Commission to recommend resubmitting the change to the voters.

### **LINE ITEM VETO**

The Commission heard from David Plymyer from the Office of Law regarding the use of the line item veto. The original purpose was to provide a checking mechanism for comprehensive zoning decisions. It has proven an important tool in this area; however, the Commission deliberated on the effect it has in voiding legislative action in its entirety, as it has been applied to amendments of legislation. The Commission discussed two alternatives to amending the Charter provision on line item veto. The first option preserved the line item veto for comprehensive zoning bills. The second option removed it from the Charter altogether. The Commission, voted 4-1 (Haire) to recommend removal of line item veto authority for the County Executive. This topic was later revisited with Commissioners Cook and Enright joining in the discussion. The Commission did not revote as the discussion revealed that the outcome would have been the same; however, Commissioner Cook indicated that she would not be in favor of completely removing the Line Item Veto but, rather, that it should be preserved for comprehensive zoning ordinances. Suggested language is included in Appendix D.

### **NUMBER OF COUNCILMANIC DISTRICTS**

The Commission was asked by the County Council to consider the addition of two councilmanic districts, for a total of nine council districts. The Commission heard testimony from the public during the redistricting phase of its work regarding the desire for a rural district in southern Anne Arundel County. A map was presented to the County Council that addresses this concern without a major shift of all councilmanic districts, a shift that would be required for a nine-member County Council. The Commission voted unanimously to recommend consideration of this issue by the next Charter Revision Commission after the 2020 census to coincide with the expected growth in Western Anne Arundel County.

## **ARTICLE IV. COUNTY EXECUTIVE**

### **REMOVAL FROM OFFICE – SECTION 404**

During its consideration of the removal authority for the County Council, the Commission reviewed the provisions under Section 404 for the removal of the County Executive. The Commission voted unanimously to recommend the adoption of language parallel to that recommended for the County Council, thereby adding conviction of a felony as a grounds for removing the County Executive.

### **POWER AND DUTIES OF THE OFFICE - SECTION 405(A)**

The Commission was asked to consider an addition to the Charter to require that certain executive appointments be subject to confirmation by the County Council. The Commission



received information from charters of surrounding jurisdictions on the subject as well as information from the original Charter Board report.

The Commission voted unanimously to recommend that an advice and consent model for Department Heads, similar to those in neighboring Charter counties, would be an important addition to the County charter. The suggested provision contains a default provision in the event the County Council refuses to act within 30 days. The Commission unanimously voted to forward this recommendation to the County Council.

## **ARTICLE V. THE EXECUTIVE BRANCH**

### **PLANNING COMMISSIONS**

Planning and Zoning Officer Larry Tom met with the Commission to discuss the creation of a Planning Commission, to be comprised of County citizens, for the purpose of reviewing and commenting on development plans. Mr. Tom provided an overview of the structure of his office and the development process. In addition, he commented on his own experiences with a planning commission in the City of Annapolis. While Anne Arundel County is in the minority as a County without a planning commission, Mr. Tom does not believe a Planning Commission is necessary as the current development process allows for public participation, involves professional planners at every stage and includes the review and recommendations of the Planning Advisory Board. After consideration of Mr. Tom's presentation and public comments, the Commission voted 4-0-1 (Greene absent) against recommending the creation of a Planning Commission. However, in recognition of serious public concerns, the Commission does recommend that the County Council consider the creation of a Citizens Advisory Committee for the next round of Comprehensive Rezoning, to provide independent comment on rezoning requests before the Council votes and to impose certain notice provisions such as posting for property owners requesting rezoning.

## **ARTICLE VI. SPECIAL BOARDS, COMMISSIONS AND COMMITTEES**

### **BOARD OF APPEALS – TERM LIMITS**

The Commission considered the role and term limits of the Board of Appeals over several meetings. After much discussion, the majority of the Commission concluded initially that the benefits of developing an expertise in subject matters before the Board of Appeals outweigh the need for term limits and that the self-regulation provisions and appointment authority of the County Council ensure the reappointment of qualified individuals, such that term limits are unnecessary. Upon further discussion of the need for term limits, however, the Commission reconsidered and voted unanimously to recommend that, beginning in January, 2015, a three consecutive term limit be imposed and that the terms be staggered to ensure some continuity of knowledge and accountability on the Board.

## **BOARD OF APPEALS – OVERSIGHT**

Although part of the Legislative Branch, the Board of Appeals operates independently of the Legislative and Executive Branches in its adjudicatory role. The Commission reviewed the process by which Board of Appeals members are appointed as well as the internal rules of procedure for the Board of Appeals, including the process for censuring Board members. The Commission declines to make a recommendation for changing the current oversight structure.

## **ARTICLE VII. BUDGETARY AND FISCAL PROCEDURES**

John Hammond, County Budget Officer, forwarded several recommendations for changes to the Charter. Those recommendations were reviewed by County Auditor Teresa Sutherland. Copies of their correspondence are in Appendix B. Mr. Hammond and Ms. Sutherland discussed their recommendations as well as issues requested by the County Council.

### **QUADRENNIAL AUDIT – SECTION 312**

The Commission examined the idea of eliminating the quadrennial audit required by Section 312 of the Charter. Ms. Sutherland commented that the section is superfluous because the County is audited yearly in order to preserve the County's bond rating. A possible alternative suggested is to eliminate Section 312 but incorporate language into Section 311 to ensure that the Charter reflects the current practice of conducting the annual independent audit. The Commission voted unanimously to recommend adding the language in Appendix D to reflect the current practice.

### **SECTION 606 – PENSION OVERSIGHT COMMISSION**

The Commission was also asked to consider eliminating the Pension Oversight Commission in view of the more recent establishment of a Board of Trustees of the Employee Retirement and Pension System

A careful review of the two bodies revealed that the Pension Oversight Commission, while almost dormant, nevertheless performs an important role in ensuring the continued health and stability of the Anne Arundel County retirement system. The Commission voted unanimously against a change to Section 606, with the added comment that Commission should be encouraged by the County Council to become more active in fulfilling its role under the Charter.

### **SECTION 702 - DEFINITIONS**

Mr. Hammond requested that the Commission review the definition of capital projects and consider adding replacement equipment of a suitable useful life to the items included within the definition. After discussion with Mr. Hammond and Ms. Sutherland, draft language to accomplish this was provided to the Commission that was approved by all parties. The Commission voted unanimously to suggest changes to the definition in section 702, the draft language for which is included in Appendix D.

## **SUBMISSION OF THE BUDGET – SECTIONS 708 AND 709**

The first request from Mr. Hammond was to return the deadline for submission of the Annual Budget to May 1. The deadline was changed in 2010 to April 15. Ms. Sutherland suggested that the April 15 date has served to provide valuable time for the County Council to review the budget but would not object if the additional 15 days for consideration of the budget were added in June as opposed to April. The Commission voted unanimously not to recommend a change to the date for submission of the budget.

## **ELECTRONIC COPIES - SECTIONS 707, 710, AND 714**

The request from Mr. Hammond was to amend the charter to permit the provision of electronic copies, such as email and CDs, for any document made available to the public. The Commission voted unanimously that the provision of documents by electronic means should satisfy the requirements of the Charter to make the documents available to the public.

## **BOND PREMIUMS**

Mr. Hammond offered that Section 720 should be changed to restrict the utilization of bond premiums to fund capital projects and disallow using them to pay interest costs. Ms. Sutherland disagreed with the proposal, stating that the final disbursement of premiums is dictated by IRS regulations and the County Council should have the final determination of the use of premiums within those guidelines as with all general fund revenues. The Commission voted 4-0-1 (Cook recused) to approve the restriction on the use of bond premiums for capital projects.

## **TRANSFERS BETWEEN MAJOR CATEGORIES**

A discussion of County Council approval of transfers of funds between major categories within budgets revealed the Administration's continued objection to the proposed change. Ms. Sutherland suggested that the proposal would work best if there were a threshold amount for transfers that deviate from the approved budget, either in aggregate or individually. This method would prevent micromanagement while preserving the Council's role as the final fiscal authority. The Commission voted 2-2-1 (Cook, Enright opposed; Greene absent) not to recommend approval for transfers between major categories; however, Mr. Greene noted later in the same meeting that he would have voted in favor of requiring the County Council approval of transfers. The vote was to be retaken at a future meeting but no new vote occurred.

## **ARTICLE VIII. MERIT SYSTEM**

### **BINDING ARBITRATION**

The Commission received a summary of the history of binding arbitration provisions in Anne Arundel County from David Plymyer, Deputy County Attorney, as well as a briefing on current

litigation concerning Bill 4-11 from public safety representatives and their attorney. Discussion revealed that the manner and extent of binding arbitration can be most effectively accomplished within the Anne Arundel County Code with the language in the Charter providing enabling language.

Although the Commission spent significant time reviewing the possibilities for changes to the Charter on this issue, the final vote of the Commission by a 4-1 (Carey opposed) vote was to not make a recommendation during the pendency of litigation on the subject. The commission recognizes key issues of concern such as the mandate contained in the current charter language as well the need for the County Council to have additional budgetary authority to satisfy an award that exceeds the County's final offer. The County Council should have time to consider any changes after litigation is concluded. Mrs. Carey's written dissent is attached in Appendix A.

## **ARTICLE X. MISCELLANEOUS**

### **SECTION 1001. ETHICS COMMISSION**

The Commission received a copy of a letter from Richard Hillman, current chair of the Anne Arundel County Ethics Commission, in which two issues were raised: term limits for Ethics Commission members and the need for attorneys on the Ethic Commission. The current term for a member of the Ethics Commission is 4 years.

The Commission, having discussed the benefits and drawbacks of term limits in other contexts, voted 4-1 (Cook) to recommend term limits for the Ethics Commission. The recommendation is 3 consecutive terms.

The Commission also considered a requirement of having an attorney who is a member of the Maryland Bar as a commission member. The discussion centered on the advantages of having an attorney other than the Executive Director to interpret Maryland ethics law. The Commission voted to recommend that one member of the Ethics Commission be an attorney who is a member of the Maryland Bar.

## **ARTICLE XII. TERMINATION OF THE CHARTER; AMENDMENTS TO CHARTER**

### **SEC. 1203. DECENNIAL CHARTER REVISION COMMISSION**

The Commission, upon suggestion of Commissioner Enright, took up the composition of the Charter Revision Commission. The Commission agreed unanimously to recommend that the composition be changed to have one member from each councilmanic district on the Commission.

**APPENDIX A.  
COMMISSIONER  
COMMENTS**

## **DISSENT TO VOTE ON SECTION 812 OF THE CHARTER**

**For the following reasons, the Chair dissents from the vote of the majority of the Charter Commission to make no changes to Section 812 of the Charter, which is titled “Binding Arbitration for law enforcement employees and for uniformed firefighters of the Fire Department”:**

**It is important to recognize that, if the Maryland Court of Appeals invalidates Section 812 of the Charter in the case pending before it, the County and the unions representing its firefighters and law enforcement personnel would no longer have a legal statutory framework within which they could resolve impasses over the wages and benefits addressed in the collective bargaining agreements negotiated between the unions and the Executive Branch of the Anne Arundel County government. This creates a need for the County Council to assert leadership and authorize a back-up amendment to the Charter that avoids the constitutional defects alleged to exist in Section 812 and lawfully and unambiguously confers on the County Council the power to enact legislation providing for binding arbitration over the contents of collective bargaining agreements between the County and the unions representing its firefighters and law enforcement personnel, as a means of resolving impasses in bargaining between those unions and the Executive Branch of County government, while reserving to the County Council the final decision-making authority on whether to take the budgetary or legislative actions necessary to implement an arbitrator’s award.**

**Respectfully Submitted,**

**Jana Howard Carey**

**Chair, 2012 Anne Arundel County Charter Review and Redistricting Commission**

## **STATEMENT FROM COMMISSIONER GREENE**

Several votes occurred at the February 24, 2012 meeting of the Charter Revision Commission for which I was unable to cast my vote as I arrived late due to a prior business commitment and the Charter Revision Commission did not adopt a proxy vote model for the Rules of Procedure. I ask that my votes be recorded for purposes of this report as noted below.

Planning Commission – Against the Establishment of a Planning Commission.

Transfers of Funds Between Majority Categories – For approval of Transfer Between Major Categories by the County Council

Independent Audit – For amended language approved by the County Auditor and the Commission

Recess – For amended language to permit a County Council recess to be determined by the County Council





## **APPENDIX B. MEETING MINUTES**



ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION

Minutes - Meeting #1

October 28, 2011 - 9:00 A.M.

County Council Chambers

Arundel Center, Annapolis, MD

---

The meeting convened at 9:19 A.M. with the following members present:

Jana Carey  
Linda Schuett  
Jason Rheinstein

Commissioners Joshua Greene and Dirk Haire were absent.

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel  
Lee Longo, Reporter to the Commission  
David Plymyer, Deputy County Attorney

There were approximately six persons in the audience.

BINDING ARBITRATION

David Plymyer, Deputy County Attorney, provided a memorandum on August 31, 2011 which referred to Resolution No. 41-11; a change to §812 of the County Charter. In that memorandum, he explained that earlier this year, the Anne Arundel County Council passed Bill No. 4-11, which made important changes to the manner in which binding arbitration is used to resolve impasses in collective bargaining with Uniformed Public Safety Representatives. In the course of the deliberations on Bill No. 4-11, the Office of Law recommended to the County Council that, if the County Council wishes to retain it in the form enacted by Bill No. 4-11, the current provisions of §812 of the County Charter should be replaced with provisions that comply with the requirements of Article XI-A of the Maryland Constitution. The primary change enacted by Bill No. 4-11 is that the decision of a neutral arbitrator no longer is binding upon the legislative or budgetary actions of the County Council.

The memorandum also provided a background of binding arbitration.

Mr. Plymyer stated that the matters before the Court regarding Anne Arundel County Council Bill No. 4-11 were that the plaintiffs asked that Bill No. 4-11 be declared invalid as contrary to County Charter §812 and the defendant asked that Bill No. 4-11 be declared valid or, declare Charter §812 unconstitutional. Mr. Plymyer said that the Memorandum Opinion of October 7, 2011 concluded that Anne Arundel County Charter §812 is unconstitutional and therefore invalid. He said that Judge Goetzke offered no opinion or declaration with regard to the validity of County Code §6-4-111 as originally adopted or as subsequently amended by Bill No. 4-11.

Mr. Plymyer stated that an Amended Memorandum Opinion dated October 20, 2011 declared that Section 812 of the Anne Arundel County Charter violates the provisions of Article XI-A, Section 3 of the Maryland Constitution and County Charter §812 is therefore unconstitutional, invalid, and unenforceable and Anne Arundel County Council Bill 4-11 is valid and enforceable.

Mr. Plymyer stated that his recommendation to the County Council in this particular situation is that the remedy for an unconstitutional charter provision is to replace it with one that is constitutionally appropriate. He said that he believes that if this matter comes up for appeal on this case or another case, the determination that §812 violated Article XI-A, Section 3 of the Maryland Constitution will be sustained. Mr. Plymyer said he believes that it would be less likely that the decision of Judge Goetzke regarding County Code §6-4-111 as originally adopted or as subsequently amended by Bill No. 4-11, will survive.

Ms. Schuett asked Mr. Plymyer why he came to that conclusion.

My. Plymyer said that County Code §6-4-111 contains some provisions which are not entirely consistent with the current County Charter, most specifically, the part that allows the County Council to place money in the budget over and beyond that proposed by the County Executive.

Ms. Schuett stated that the reasons don't directly relate to the binding arbitration issue, but to the County Council's power to add to the budget.

Mr. Plymyer stated that unless there are exemptions made to those other issues by another Charter Amendment, there is a problem. He said that if the situation goes to an appeal process, and Sections 812 and 6-4-111 are struck down in their entirety, the process goes back to no arbitration.

Ms. Schuett asked Mr. Plymyer if the Ordinance contains a non-severability clause.

Mr. Plymyer said that it contains a particular kind of severability provision that if the substance of modifications enacted to binding arbitrations is struck down by a competent jurisdiction, as a matter of law, the County goes back to the original impasse procedures which do not involve binding arbitration and involves action by the County Council, not including the right to add money back into the budget, which is what happened in 2002 prior to the current binding arbitration was placed into the Charter.

Mrs. Carey stated that that although there remains in place an ordinance which is really defective because it's not supported by a valid Charter Amendment.

Mr. Plymyer said that it is subject to the argument. He said that for planning purposes, he is not sure the current ordinance would survive any further challenge.

There was further discussion among the Commission members and Mr. Plymyer regarding binding arbitration and the Commission's recommendations to the County Council for updating the County Charter.

Mr. Rheinstein asked Mr. Plymyer if the 2002 Charter Amendment that was struck down in the Atkinson decision was the basis on which §6-4-111 was adopted.

Mr. Plymyer responded affirmatively.

Mr. Rheinstein asked Mr. Plymyer if the County could have adopted §6-4-111 without the 2002 Charter Amendment.

Mr. Plymyer stated that it could not have been adopted as originally presented in Bill No. 1-03.

Mr. Plymyer stated that Section 812 was adopted and binding arbitration was implemented in the County by Bill No. 1-03 which stated that the arbitrator's decision was binding both upon the County Executive in the preparation of the annual County budget and upon the County Council in the approval of the budget. He said that now Section 812 of the Charter, has been held invalid and unenforceable in a decision which may or may not be appealed. He stated that it gets back to the fact that the Charter Amendment is unconstitutional.

Mrs. Carey stated that it is the Commission's charge to decide whether or not to provide the proper wording for a Charter Amendment that will withstand judicial scrutiny.

Ms. Schuett stated that Mr. Plymyer was in agreement to the suggestion that perhaps the Charter should simply authorize the Council to adopt the law relating to binding arbitration. A discussion of possible wording for the Charter Amendment followed between the Commission members and Mr. Plymyer.

Ms. Schuett suggested that if the Commission decides to make any change to the Charter then another meeting be scheduled to discuss the possible wording.

#### LINE ITEM VETO

Mr. Plymyer referred to his October 24<sup>th</sup> memorandum regarding the line item veto. He said that the line item veto is part of the legislative process in Anne Arundel County.

Ms. Schuett asked Mr. Plymyer if he had any idea as to how or why the line item veto is different in Anne Arundel County, while in surrounding jurisdictions, including the Charter of Baltimore County, upon which our Charter was based, the veto power relates only to the budget.

Mr. Plymyer said that some of the fears in this County were the fragmentation of the budget by the dedication and earmarking of revenue sources and the concept of zoning by courtesy. The framers of the Charter were concerned that zoning by courtesy would mean that the will of a local Council person would become the will of the Council and that would overwhelm the needs of the entire County in terms of following the master plans and in terms of adopting consistent zoning. There was a pre-occupation with minimizing the County Council persons' authority over zoning.

Mr. Plymyer said that the Maryland General Assembly has also been concerned about local governments deviating from their plans, and in 2009 enacted a law stating that deviations from master plans shall be rare.

Mr. Plymyer stated that Anne Arundel County has been sued because of the number of individual alleged deviations from the County's Master Plan in the course of Comprehensive Zoning which have currently been adopted by the County Council. Mr. Plymyer stated that if it were not for the line item vetoes by the County Executive, which pared back those deviations significantly and substantially, it would have been more difficult to successfully defend that legislation. He said the line item veto has been in the Charter for many years and as used most recently, it was helpful in saving the County's ability to be successful in its defense against the lawsuits; otherwise, the Comprehensive Zoning process would have begun over again.

He stated that the Commission needs to look at the history of how the line item veto has been used because it is relevant and the considerations made by the Commission should be relevant also.

Ms. Schuett asked Mr. Plymyer if the reason Anne Arundel County has the veto power with respect to more than the budget, unlike all of the other counties, is because the reasoning behind it was primarily zoning.

Mr. Plymyer stated that was a fair conclusion.

Mrs. Carey asked Mr. Plymyer if it would be possible to redraft the executive veto to limit its application to the areas where it could be important, such as zoning, and are there other areas besides zoning where the line item veto would be a useful thing to have.

Mr. Plymyer said that the most prevalent use was that of line item veto and the other option would be to veto an entire comprehensive zoning bill. He said that he did not have enough information to comment on other uses of the line item veto.

There was some further discussion regarding the line item veto between the Commission and Mr. Plymyer.

#### FUTURE MEETINGS

The following Charter Revision Commission meetings are scheduled:

Friday, November 4 – 9:30 a.m.

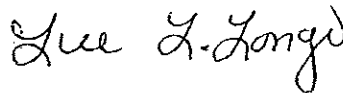
Friday, November 18 – 8:00 a.m.

Friday, December 2 – 9:00 a.m.

#### ADJOURNMENT

The meeting adjourned at approximately 10:45 A.M.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter





ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #2  
November 4, 2011 - 9:30 A.M.  
County Council Chambers  
Arundel Center, Annapolis, MD

---

The meeting convened at 9:38 A.M. with the following members present:

Jana Carey  
Linda Schuett  
Joshua Greene  
Jason Rheinstein (arrived 9:50 a.m.)

Commissioner Dirk Haire was absent.

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel  
Lee Longo, Reporter to the Commission

There were approximately six persons in the audience.

APPROVAL OF MINUTES

The minutes of October 28, 2011 were approved as presented.

MEETINGS

The following dates were scheduled for the Charter Revision Commission Public Hearings and reports.

January 23, 2012 – 1<sup>st</sup> Public Hearing – 7:00 p.m.  
February 27, 2012 – 2<sup>nd</sup> Public Hearing – 7:00 p.m.

February 6, 2012 – Interim Report  
April 16, 2012 – Final Report

BINDING ARBITRATION

Mrs. Carey asked the members if they had any further need for information regarding binding arbitration.

Ms. Schuett and Mr. Greene stated that they did not require further information.

Mrs. Carey asked Ms. Tate if the Commission wanted to recommend an amendment to Section 812, would it be necessary to propose specific changes to the existing Section 812 or would it be sufficient to phrase the proposed amendment that would authorize the County to provide by ordinance for binding arbitration with the representatives of the law enforcement unions.

Ms. Tate advised that if the Commission were to make a recommendation that the defective Charter Amendment be corrected, that it may not be necessary to rework the language of Section 812. She stated that the Commission could just strike the word "shall" and substitute "may", and then the Council would make the decision on how to proceed. Ms. Tate said that given the Commission's charge to address several other issues, it would be advisable for the Commission to make recommendations on concepts and changes as the Commission deems appropriate, not specific language. She said that a resolution would be drafted by the Office of Law and become legislation.

Ms. Schuett stated that she believes there are several issues based on both the opinions and what the Commission heard from the Deputy County Attorney. They are: (1) should "shall" be changed to "may"; (2) should the word "binding" be eliminated; (3) should the Charter give enabling authority to the County Council to adopt, by ordinance, a measure relating to arbitration with respect to specific County groups, or should it be silent on that leaving that power to the Council; and, (4) should the County Council be allowed to increase an expenditure in the budget to fund an arbitrator's award.

Ms. Schuett said she is concerned about deciding such an important issue as this without all five the Commission members present.

Mr. Greene stated that he has read through all of the materials, and it appears that there is a constitutional defect that needs to be remedied. He suggested that in the interim, between this meeting and the next scheduled meeting, that recommendation language be drafted and that a vote be called for at the next meeting.

Mr. Greene asked if Ms. Schuett would draft the recommended language and send it electronically to all members of the Commission within the next five business days, so the Commission would be able to vote on the recommendations at the next meeting.

Mr. Rheinstein stated that he was in agreement with Ms. Schuett's statement regarding the issues she believes are at hand.

Mrs. Carey stated that removing the word "binding" is significant because essentially, it would allow the County Executive and the County to avoid the result of the arbitrator. She said that the present law states that it is binding on both parties.

Ms. Tate responded by saying that it is not binding on the County Council, it is binding on the County Executive.

There was some discussion among the Commission and Ms. Tate regarding the lawsuit over the binding arbitration issue.

Ms. Schuett stated that there is a possibility that whatever the Commission recommends to the Council may not come to be because the unions who started the lawsuit are opposed to any changes to the Charter until the litigation is over, as reported by *The Capital*.

Mrs. Carey asked Ms. Schuett if she would draft a proposed resolution relating to binding arbitration.

Ms. Schuett responded affirmatively.

#### EXECUTIVE LINE ITEM VETO POWER

Ms. Tate summarized that Anne Arundel County has a general line item veto on all legislation except for the budget, which is opposite from other counties. She said that this matter was brought to the Commission's attention, because in the last year there have been significant incidents involving the line item veto. She stated that first there was Bill No. 4-11, the binding arbitration bill, and second, the on-going comprehensive rezoning of the county. Ms. Tate said that before these two significant events, the line item veto has been used sparingly. She said that the Commission has been asked to review and possibly suggest if the line item veto is something that should be limited to certain types of ordinances, such as comprehensive rezoning.

Mrs. Carey stated that one of the issues that were discussed at the last meeting was whether a line item veto could be limited to certain areas or whether it should exist at all.

Mr. Rheinstein asked Ms. Tate for a background of the line item veto. He asked why such a broad line item veto power was given to the County Executive.

Ms. Tate referred to an email which she had sent to the members of the Commission that included Section 307 from the original charter. She read from (j) of Section 307: "A provision was added to the tentative draft of the Charter which would allow the Executive modern prerogative of the "item veto". For a similar provision affecting appropriation bills at the State level, see Article II, Section 17 of the Maryland Constitution. A vetoed item may be overridden by an affirmative vote of five members of the Council. The item veto will permit the County Executive to veto a "bad" part of a "good" bill."

Mr. Rheinstein said that his personal belief is that a line item veto is bad as he views it as an encroachment of the Executive on the legislature's function of government.

Ms. Tate said that the other side of the issue is that there is still the override power of the Council.

Ms. Schuett stated that she is concerned that when the County Executive decides to strike out particular language within a bill, the effect of that scratch out is that it leaves what was originally in the bill introduced by the executive branch. It makes the County Council's amendments to the bill meaningless unless there are five votes to override the veto. She said that to allow a County Executive the power to put into law the very bill that he or she recommended without changes by the Council and to only allow that to be overridden by a majority of five does take away too much of the power of the County Council. She said she believes it would be a good idea to keep the line item veto with respect to comprehensive zoning bills, and limiting it to that.

Mr. Greene stated that the Commission is asked to keep the status quo or limit what the County Executive can use the line item veto for.

Ms. Schuett said that the Commission can also recommend eliminating the veto power.

Ms. Tate stated that the line item provision is within the legislative process section of the Charter. She said that there are other areas where there are exemptions from line item veto. She stated that unless the Commission were to eliminate the veto power completely, it would not be necessary to strike out or amend other parts of the Charter where the line item veto power is already exempt.

Mr. Greene said that zoning is a very controversial issue and what he has observed and hasn't liked is that if there is a process of small area plans and a process by which communities can speak their views, that at the end of day that can be tossed aside either by the Council or the County Executive. This seems to undermine the entire process and gives a lot of executive power to the County Executive. He said that he does not understand why the County Executive should have veto authority over anything related to zoning, unless, the question at issue rests in the executive branch.

Ms. Tate said that the power to institute comprehensive plans and to institute small area plans sits within the executive branch.

Mr. Greene said that he believes the whole line item veto should be eliminated.

Ms. Schuett stated that the use of the executive line item veto power in connection with comprehensive zoning bills has been to veto those amendments done by the Council that are not in compliance with the Small Area Plan or General Development Plan. She said that she believes the use of the line item veto in this situation is supportive of the concept of the original framers of the Charter that zoning ought to be to the extent possible in accordance with professional determinations as to compliance with the plans that are in place.

Mrs. Carey said that an important point that Mr. Plymyer made at the last meeting was that the whole idea of the line item veto centered on doing away with courtesy zoning.

Mr. Rheinstein stated that he is in agreement with Commissioner Greene and believes that the line item veto should be eliminated with regards to comprehensive zoning.

Ms. Schuett said that she hears two alternatives to this issue. One is to recommend the deletion of the line item veto and the other is to limit it to comprehensive zoning bills. She said that she would be willing to draft the two alternative resolutions and to submit them electronically to the Commission members so they could vote on it at the next meeting.

Mrs. Carey stated that based on what she has heard regarding this issue, she is leaning towards limiting the line item veto to the zoning process.

Mr. Greene asked if there were not a line item veto for the zoning process and the County Executive sees a zoning bill in which the Council has made changes to it, and he vetoes the bill, can the County Council or can the County Executive substitute a new bill.

Ms. Tate responded by saying that the County Council can not substitute a new zoning bill, but the County Executive can.

Ms. Schuett asked Ms. Tate if the Charter provided that the comprehensive zoning process takes place every ten years.

Ms. Tate responded affirmatively. She said that some Council members would like to see it made shorter.

There was further discussion among the Commission members regarding the line item veto power.

#### BOARD OF APPEALS TERM LIMITS

Mrs. Carey asked Ms. Tate to describe the issue of term limits for the Board of Appeals.

Ms. Tate said that there are no term limits for the Board of Appeals and most other counties have a two-term limit. She said that the issues to consider are whether or not to limit the terms for the members of the Board of Appeals or does the Commission want someone who has a lot of experience in the various issues that arise in the Board of Appeals that have a lot to do with the County Code as well as how it interacts with the State Code.

Mr. Rheinstein said that he is opposed to term limits and would trust the appointing authority to make a decision as to the individual.

Ms. Schuett asked if the ability to set term limits for the Board of Appeals requires a Charter Amendment.

Ms. Tate said that the Charter is the appropriate place to put term limits.

After further discussion among the Charter Commission members regarding term limits, it was decided to vote on whether or not to set term limits for the Board of Appeals at the next Charter Revision meeting.

#### FUTURE MEETINGS

The following Charter Revision Commission meetings are scheduled:

Friday, November 18 – 8:30 a.m.

Friday, December 2 – 9:00 a.m.

Friday, December 9 – 9:00 a.m.

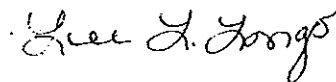
Friday, December 16 – 9:00 a.m.

Friday, January 6, 2012 – 9:00 a.m.

#### ADJOURNMENT

The meeting adjourned at approximately 11:26 A.M.

Respectfully submitted,



Lee L. Longo  
Reporter

ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION

Minutes - Meeting #3

November 18, 2011 - 8:30 A.M.

County Council Chambers

Arundel Center, Annapolis, MD

---

The meeting convened at 8:35 A.M. with the following members present:

Jana Carey  
Linda Schuett  
Jason Rheinstein  
Dirk Haire

Commissioner Joshua Greene was absent.

Also present were:

Beth Jones, Administrative Officer

There were approximately 4 persons in the audience.

APPROVAL OF MINUTES

Mrs. Carey said that there should be a correction to the minutes of November 4, 2011. She stated that the approval of minutes should read October 28, 2011 instead of October 8, 2011.

BINDING ARBITRATION & EXECUTIVE LINE ITEM VETO POWER

Mr. Rheinstein said that he and Ms. Schuett had a phone conversation regarding the issue of binding arbitration. He said that one of the problems he sees with binding arbitration is that the County Council does not have any power to add money to the budget except with regard to the school system. He stated that if the teachers' union wants their raise approved and the County Executive decides not to propose it in the budget, then the teachers' union can lobby the County Council, and if they are successful, the County Council can put more money into the school budget to fund their salary increase. He said that the fire firefighter's union, non-union employees or any other group, does not have the same ability. He said that he believes the original binding arbitration was written in the County Charter to mandate the County Executive to accept the arbitrator final decision. With respect to the budget issue, he thinks that the Commission should look at whether or not the County Council should have the power to increase the budget in other areas, take money out of a category that the Executive proposes and not add it anywhere, or be able to make a cut.

Ms. Schuett said Anne Arundel County does not allow the line item veto with respect to the budget, but does allow it in other legislation which other chartered counties do not do.

She said that before the Commission votes on a line item veto proposal, they should look at whether or not there is any merit to conform the County Charter to the way other county charters are written in terms of the budget and the veto power with respect to the budget.

Mrs. Carey asked Ms. Schuett if she was considering the binding arbitration issue as a lead-in to looking at revising the line item veto and county budget process with the idea of no binding arbitration if the authority is moved around differently.

Ms. Schuett stated that she believes that while binding arbitration is somewhat related to the line item veto issue, it is independent of what is being discussed.

Mr. Rheinstein stated that when the Commission was asked to review binding arbitration and line item veto issues, it was because they were related to a particular bill that had to do with funding and line item vetoes.

Mrs. Carey said that it sounds like Ms. Schuett and Mr. Rheinstein are asking to hold any vote on binding arbitration and line item veto recommendations and take a broader look at the budget process with regards to these two issues.

Mr. Haire stated that he would also like there to be further discussions before voting on binding arbitration and line item vetoes. He said that he would like to see the line item veto expanded to budget and non-budget items. He stated that he believes the County Executive is someone who can keep control of the costs in the County rather than the County Council.

Mr. Rheinstein said that while the line item veto might make sense in the budget context and the comprehensive zoning process, it does not make sense in the budget process the way it is written at this time. He said that right now the County Council cannot add or make additions to the budget.

Mr. Haire said fiscal responsibility should be with the County Executive. He said that he believes that expanding the County Council's authority to move money around would not be a move towards better fiscal responsibility.

Ms. Schuett said that no matter what, the budget has to be balanced. She said that the question is how the money gets used and who the final policy decision maker is in the process. Ms. Schuett said she would like to know why Anne Arundel County is different in the way they do the budget as opposed to other counties.



Mrs. Carey said that based on these discussion, there will not be any decisions made as to the proposed recommendation for binding arbitration and executive line item veto until further discussion take place.

Mrs. Carey said that based on her experience, labor groups, representatives of employees, like binding arbitration because they will get some kind of deal. Mrs. Carey stated that it would be helpful to know how much binding arbitration has been used in Anne Arundel County.

Ms. Schuett suggested that the Commission should first compare the charter revisions of other counties to Anne Arundel County regarding the budget and line item veto.

Ms. Jones stated that Mr. Hammond is scheduled to attend the next Commission meeting on December 2, 2011. He would be an informative person to answer the questions that the commission has regarding these issues.

Mrs. Carey stated that the Commission does have information regarding the line item veto from Baltimore, Montgomery, Howard, Harford, Prince George's, Wicomico, Dorchester Counties and Baltimore City. She said that what is needed is information regarding the budget process in those counties.

Ms. Schuett said that the information it is included in their line item veto ordinances. She stated that there would be other information regarding their budget process in their charters.

Ms. Schuett voiced her concerns regarding the fact that the interim report is due February 6, 2012. She said that it would be a good idea to schedule a meeting which would last approximately four hours in order to come to some finalization regarding these different issues.

After further discussion regarding meetings, it was decided that the Commission would meet on Friday, December 2, 2011 from 8:30 a.m. to 12:30 p.m.

#### TERM LIMITS FOR BOARD OF APPEALS MEMBERS

Mr. Rheinstein stated that he did not believe that term limits were necessary for the members of Board of Appeals.

Mrs. Carey stated that she would like to see term limits for Board of Appeals members because of the amount of influence that the individuals have.

Ms. Schuett said that if the members were wielding power, the Council has the ability to replace that individual. She said that there should not be term limits set for the members of the Board of Appeals.

On motion of Ms. Schuett, seconded by Mr. Rheinstein, it was decided not to propose an amendment to the Charter to recommend adopting term limits for the Board of Appeals members.

#### COUNCIL VACANCIES – CHARTER SECTION 205

Ms. Haire asked if there were some concerns regarding council vacancies.

Ms. Jones stated that at the last term there were two vacancies that had to be filled and there appeared to be a lot of concern from the public regarding the fact that the Council appointed individuals to those vacancies.

After further discussion among the Commission regarding council vacancies, Mr. Rheinstein made a motion, seconded by Ms. Schuett not to recommend changes to this section of the County Charter regarding council vacancies.

#### COUNCIL RECESS

Ms. Jones said that the issue of the County Council taking a month off during the summer has been brought up many times.

Mrs. Carey said that the Charter states that the County Council will convene on the first and third Monday of each month, except November of a councilmanic election.

Mr. Rheinstein said that his approach to this issue would be for the Council to determine what month they would like to have off.

After further discussion regarding the issue of a council recess, Mrs. Carey asked Ms. Jones to have Amy Tate, Legislative Counsel, to look at Section 208 (c) and suggest some language to accomplish the purpose of allowing the County Council to have a month in which they do not meet for legislative purposes.

#### OTHER BUSINESS

Ms. Schuett stated that the Commission does have information regarding Planning Commissions and said that she would like to know why there should be another layer added to the planning process.

Mrs. Carey said that they needed to know where the proposal for a Planning Commission originated and what the Commission should be looking at as an alternative.

Mrs. Schuett stated that she believes the planning professional should be making decisions and those decisions should be free of political influence and community voting. She said that she believes the power is where it should be.

MEETINGS

Mrs. Carey said that the next meeting is scheduled for December 2, 2011 from 8:30 a.m. to 12:30 p.m.

Mr. Rheinstein asked if anyone should come in to discuss the budget process with the Commission.

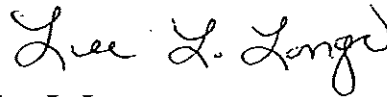
Ms. Schuett stated that Mr. Hammond and Ms. Sutherland would be excellent sources on this issue.

Ms. Jones said that she will discuss the agenda with Mr. Hammond for December 2, 2011.

ADJOURNMENT

The meeting adjourned at 9:32 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter



ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION

Minutes - Meeting #4

December 2, 2011 - 8:30 A.M.

County Council Chambers

Arundel Center, Annapolis, MD

---

The meeting convened at 8:38 A.M. with the following members present:

Jana Carey  
Joshua Greene  
Dirk Haire  
Jason Rheinstein (arrived at 8:53 a.m.)  
Linda Schuett (arrived at 8:59 a.m.)

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel  
John Hammond, Budget Officer  
Teresa Sutherland, County Auditor

There were approximately 3 persons in the audience.

APPROVAL OF MINUTES

The minutes of November 18, 2011 were approved as presented.

BUDGET PRESENTATION

John Hammond, Budget Officer, explained that the Budget Office is in the beginning stages of the budget process for the county. The Chief Administrative Officer will be sending out a memo within a week to the department heads which will tell them what their instructions are for the 2013 budget and the department heads are to return their budgets to the budget office by the middle of January. The budget office will then analyze each departmental request. He said that the budget office is responsible for putting together revenue estimates from which they can fund the requests. Mr. Hammond said that once the estimates are complete, there is a meeting with the Budget Office, the Chief Administrative Officer, and the County Executive during the month of March to review the budget office suggested departmental budgets, with the individual department heads in attendance to defend their requests. He said that decisions are then made as to final departmental budgets. Mr. Hammond stated that the budget is due to the County Council by April 15 and the County Council is then required to complete their work on the budget by June 1.

Mr. Hammond stated that the date of April 15 came about as a result of a charter amendment passed a few years ago. He said that from the budget office perspective, this

date causes them to lose two weeks of time putting the budget together. He stated that the State legislature isn't finished with its work until the first week of April and the county budget is somewhat dependent on what the State has done and is doing, not only from a revenue standpoint, but also for mandates that may have been enacted in the latest session of the General Assembly. He stated that the budget office used to have until the end of April to digest what the State legislature had done and then incorporate that into the proposed county budget, which was previously due on May 1. He said that April is also a very busy month for labor negotiations. There are 13 individual bargaining units which create an extra time crunch in trying to formulate the budget. He asked the Charter Revision Commission to consider an extra two weeks in April for the budget process, which would mean the budget would be due to the County Council by May 1 and the County Council would complete their deliberations by June 15. Mr. Hammond mentioned that he spoke with Rick Drain, Controller about the date change and Mr. Drain did not have any opposition to extending the date.

Mr. Hammond also asked the Commission to consider a technical word change in the Charter regarding printed copies and substitute with the word *electronic* copies in order to save the County money.

Mr. Hammond referred to another suggestion that he made for the Charter Revision Commission to consider and that was regarding bond premiums. He said that this issue has arisen because of low interest rates in the last four to five years. He said that when the County sells the bonds, they receive more money than the face value of the bonds and the cost of that is a higher interest rate on the bonds. He said that the market will pay a better price for bonds that have a five percent coupon on them. Mr. Hammond said this means that the County will receive more principal than the par value of the bonds. He said that the higher principal is known as a bond premium and it is one-time money. He said that given the rigidity of the county revenues the last few years, the County has been taking the bond premium and using it to pay interest on that bond issue. He said that the problem that arises is when that bond premium is expended, and there are still five percent bond coupons for succeeding years that still need to be paid. He stated that from a budgetary perspective using one-time money to pay for on-going expenditures is a bad practice. Mr. Hammond said that he believes the bond premium should be used for the purposes for selling the bonds, which is to fund the costs of capital projects. He said that he has had discussions with David Plymyer and the Office of Law regarding whether or not this issue is something that should be in the charter or enacted into the County Code. He stated that the framers of the charter were extremely concerned with the county finances and were one of the catalysts to get the charter approved and to bring some controls on the county budget. Mr. Hammond said that some provision should be formulated in the charter that restricts the utilization of bond premium to strictly be used to fund capital projects and not to pay interest costs.

Mrs. Carey asked Mr. Hammond if he was suggesting a charter amendment to restrict the use of the bond premium income solely to fund the project for which the bond was originally issued.

Mr. Hammond responded affirmatively. He said that the County sells about one hundred million dollars worth of bonds yearly, by project classes. He said it would not be an issue to allocate the premium across the classes so that it is done equitably.

Mrs. Carey asked what present provision of the charter would be amended or added to.

Mr. Hammond referred to Article VII, Section 720 of the charter.

Mrs. Carey said Mr. Hammond to draft an amendment for the Charter Revision Commission members to consider.

Mr. Hammond responded affirmatively.

Mr. Greene asked Mr. Hammond what projects currently or historically has been funded by the bond issues in terms of capital projects. He asked what capital expenditures are being talked about.

Mr. Hammond said that any major construction project, bricks and mortar and roads. He said that schools are a significant part of the capital budget, which consume between 50 and 60 percent of the capital budget. He said that there are also various public works projects such as roads, road resurfacing, and other county brick and mortar projects such as police stations, fire stations, the community college building and library facilities. Mr. Hammond stated that the charter clearly defines a capital project, although there is a small wording change that needs to be considered to the charter.

Mr. Greene asked Mr. Hammond what type of project he is referring to in the charter that would change the definition.

Mr. Hammond said that projects that do not have a tangible asset, but are long-term investments, should be considered a capital project. These projects are not something that could be done in a fiscal year, and the purpose of a capital program is to allow the County to make expenditure commitments that cover more than one fiscal year.

Mr. Greene referred to the bond premium issue and asked Mr. Hammond if there were a charter amendment adopted that was restrictive in nature, would the issuance of the bond authorization still be done by the County Council.

Mr. Hammond responded affirmatively.

Mr. Greene asked Mr. Hammond if there have been any discussions on potentially offsetting the issuance of bonds by an alternative project finance model such as energy performance contracting or public private partnerships.

Mr. Hammond said that it has been discussed in a context of a guideline used as a budgeting tool, which is the Debt Affordability study. He stated that the Charter as presently written would allow the county to borrow substantial amounts of money given the restriction that it is tied to the assessable base of county property. He said that given the growth that the county has experienced in its accessible base it is an unrealistic number. There is no way that the county could sell that many bonds and have the funds available to pay the debt service that would be required. He said that the Debt Affordability Study guides the County in the amount of bonds that are reasonable to issue in any year to support any capital program.

There was further discussion between the members of the Charter Revision Commission and Mr. Hammond regarding bond premiums.

Teresa Sutherland, County Auditor, stated that she agreed with Mr. Hammond regarding using the bond premium for capital improvements. She said that she disagrees that the charter should be amended to require that provision. She said she believes it is a public policy decision that should be made by the County Council.

Mr. Hammond responded by saying that the voters of Anne Arundel County should not be left out in a public policy decision. He suggested that a referendum could be written for the voters to make the decision.

There was further discussion between the members of the Charter Revision Commission and Mr. Hammond and Ms. Sutherland regarding bond premiums, how the monies could possibly be used and alternative financing, and possibly giving more power to the County Council regarding the budget process.

Mr. Greene stated that if there is a change in the charter regarding binding arbitration, the bargaining units would still have the right to bargain collectively and come to a labor agreement. He asked that if the County Council is not required to issue an ordinance to address the issue of an agreement, would there be any impact on the budget.

Ms. Sutherland responded by saying that if the Administration and the Union negotiated a new pay scale, that pay scale would have to be approved by the County Council, and they wouldn't have to approve the pay scale if they didn't want to give the increases. She said that when the County did not have binding arbitration, the union went to impasse, and the County Council ruled in the union's favor. The County Council had a budget cut that would fund the raises but the County Executive said that she would not fund the raises by issuing a supplemental budget. Since she still had to honor the raises, so rather than take the funding source the Council identified, she laid people off instead.

Ms. Sutherland said that is how the County ended up with binding arbitration.

Mr. Greene asked Ms. Sutherland that if binding arbitration is taken out of the charter by way of an amendment, could the County possibly find itself in a similar situation unless the Council issued an ordinance to fully comply with the bargained rights and pay



scales. He said that the Charter Review Commission is being asked to address the issue of binding arbitration and amending the Charter to give the County Council discretion to alter the way the arbitration awards at the present time by a neutral binding arbitration process.

Ms. Sutherland said that she believes the County Council should be the final fiscal authority and that an arbitrator should not be able to bind the County Council. She said that if an arbitrator issued a decision and the Council decided to fund it, and the County Council came up with cuts or instructed the County Executive to come up with cuts to make that happen, the Council would have to have the authority to add back to the budget. If they don't have the authority to add back to the budget, the issue would end up in impasse.

Mr. Hammond stated that he is in favor of removing binding arbitration as he does not believe a third party, who does not live in the County, dictate to the County how to spend money. That should be a decision that should be left up to the County Council.

Mr. Greene stated that if the amount of the award is known, then it gives some budget certainty.

Mr. Hammond affirmed Mr. Greene's statement by saying that if the County Council agrees with the award they need to figure out a way to pay for it.

Mrs. Carey asked Mr. Hammond that if the arbitrator decides on an award, is it binding on the County.

Mr. Hammond said that before the recent court decision, that was true.

Ms. Schuett said that the Charter Review Commission started out by looking at the executive line item veto process and how the use of the line item veto appears to be different from the way in which it is used in other counties where it is primarily used with respect to the budget. She said that in Anne Arundel County it is only used for legislative purposes and the Commission wanted to know why. This brought up the budget process and how things were done in other counties and also the binding arbitration issue. She said that from what she is hearing the view from the Administration is that the budget process works in the county.

Ms. Schuett asked Mr. Hammond and Ms. Sutherland if they had any opinions on the use of the line item veto with respect to the budget and other issues in comparison to other counties.

Mr. Hammond said that the budget system works because of the way the framers of the Charter set it up by giving the County Executive the power to propose the budget and not allowing the County Council to add to it, so there is not a need for a line item veto.

He said that regarding the issue of line item veto in the legislative process, he does not see a problem. If the County Executive does veto a particular item, it comes back to the Council and they can vote to override the veto.

Ms. Sutherland said that she agrees with Mr. Hammond regarding the budget process. She said that she does not approve of the line item veto on other legislative matters.

Mr. Rheinstein said that with regard to the binding arbitration issue, he believes the County Council should not be able to add back to the budget, but they should be allowed to make adjustments in the proposed budget. The budget would then be sent back to the County Executive for his review and he would be able to use the line item veto if he wanted to. The Council would then have to have a majority of votes in order to override the veto.

Ms. Sutherland stated that she believes that the County Council should be the final decision maker in binding arbitration and the only way for that to effectively work is for them to be able to restore funding for that purpose.

Ms. Schuett said that the discussion the Commission is having is revolving around how the binding arbitration process itself should work. She stated that she believes that the charter does not need to go that far. All the charter needs to say is that the County Council may adopt legislation relating to arbitration and perhaps having the Council being able to add to the budget. How it actually happens is up to the Council and the Administration in terms of adopting any law they want to have.

Ms. Sutherland asked Ms. Schuett if she agreed that something should be in the charter if the Council were allowed to have the power to enforce the arbitrator's decision by increasing appropriations.

Ms. Schuett responded affirmatively.

There was further discussion between the Administration and the Charter Revision Commission regarding the binding arbitration issue and the effects it could have on the budget.

Mr. Haire stated that he has heard there are going to be new accounting standards applied to governments for pension obligations. He asked Ms. Sutherland if she knew what the status of that was and what kind of impact would that have on the County.

Ms. Sutherland said that she did not think it would impact the County at all. She said that right now, an actuary determines a required contribution, which the County can fund or not fund. If the County chose not to fund it, it would have to book a liability for the piece that was not funded during that year. For instance, if an actuary determined that the County needed to put fifty million dollars in the fund and it only put it forty five million, then the County would have to book a liability for the five million dollars that they did

not put in. She stated that the new standards might require the County to say if your pension fund is short more than just that particular year the County would have to book that as a liability also.

There was further discussion between the Administration and the Charter Revision Commission regarding the pension fund.

Ms. Schuett referred to Mr. Hammond's letter regarding some issues he thought the Charter Revision Commission should review. She asked him about the Pension Oversight Committee.

Mr. Hammond said that he believes there is not a need for the Pension Oversight Committee any longer. The Board of Trustees is in place and is working well. The Board of Trustees consists of thirteen members, three are public members, five administration (Chief Administrative Officer, Budget Officer, Controller, Personnel Officer and a fifth member chosen by the County Executive), five members of the employee groups (fire fighter pension member, police pension member, sheriff & detention pension, represented classified employee member, and a member of non-classified employees). He said that the employee representatives are elected from their group for a three-year term.

Ms. Schuett asked Mr. Hammond if he could think of a reason anyone would object to substituting in the charter, the Board of Trustees for the Pension Oversight Commission.

Mr. Hammond said that he could not think of anyone objecting because the Board of Trustees does everything that the Pension Oversight Commission is supposed to do.

Ms. Schuett referred once again to Mr. Hammond's letter regarding the Spending Affordability Committee. She asked Mr. Hammond if he could provide some wording that seemed to be removed in the Charter.

Mr. Hammond said that he would provide that information to the Commission members.

Mrs. Carey asked if Mr. Hammond if he would provide a draft of possible changes to the Charter that they he is recommending.

Mr. Hammond responded affirmatively.

Ms. Sutherland said that the Commission might want to look at Section 312 of the charter to see if it is even necessary. She said that Section 312 states: "Each County Council and County Executive upon assuming office shall cause a financial audit of the County for the last four years." Ms. Sutherland said that Section 311 of the Charter requires an annual audit and there has never been a four year audit ordered by the County

Executive or the County Council. She said that while it doesn't hurt to leave this in the Charter, it doesn't add anything to it either.

Mrs. Carey asked Mr. Hammond and Ms. Sutherland if there was anything further they would like the Commission to consider.

Mr. Hammond thanked the Charter Revision Commission members for considering the issues put before them.

There was a short recess at 10:34 a.m.

The Charter Revision Commission reconvened at 10:45 a.m.

#### BOARD OF APPEALS TERM LIMITS

Mrs. Carey said that while there was a vote on the Board of Appeals Term Limits at the last meeting not to present an amendment to the Council, she has since received some letters from various individuals regarding this issue. She asked the Commission members if they would like to reconsider this matter based on the information they have received.

Ms. Schuett said that she does not believe the charter is the correct place to put term limits on the Board of Appeals because the County Council has the full power over the term limits of the Board of Appeals anyway. She said that she read the letters from the Critical Area Commission and was well aware of the controversy between them and the Board of Appeals. She said that she believes there has been and probably will always be controversial members of the Board of Appeals. She said that if the public is concerned about one or more members of the Board of Appeals, they should get involved. She said that in this case, they did that.

Mr. Greene stated that if he were at the last meeting he would have voted for term limits. He said that there are many legislative bodies and commissions in Anne Arundel County that do have term limits. He said that term limits is a triggering mechanism to get more county residents to be more involved so there is new thinking, and a more innovative process moving forward.

Mr. Haire asked Ms. Tate that besides the Board of Education if there are other boards or commission with term limits in the county.

Ms. Tate said that she would have to do some research.

Mr. Rheinstein asked what the ability is to remove a Board of Appeals member.

Ms. Tate said that Section 3-1-103 of the County Code deals with complaints against members of the Board of Appeals. Copies were made of that section and distributed to the members of the Commission.

Mrs. Carey said that the problem of a board of five members self-policing themselves there is generally some reluctance to address a member that may be out of order for fear of others not agreeing with you and then bad feelings occur among the board. She said that she does support term limits because of this.

Mr. Rheinstein said that considering there is a process to remove a Board of Appeals member and a process for the public to come before the Council to voice their opinions regarding an applicant for appointment, he does not support term limits.

### PLANNING COMMISSIONS

Ms. Tate said that she has arranged for Larry Tom to come to the meeting of January 6, 2012 to discuss this issue.

On motion of Mr. Haire, seconded by Ms. Schuett, it was decided to table the discussion of Planning Commissions until January 6, 2012.

Ms. Schuett said that she would like to know how planning commissions are used elsewhere and to have them compared to Anne Arundel County. She asked Ms. Tate to inform Mr. Tom to gather that information.

### BINDING ARBITRATION

Mrs. Carey referred to a draft proposal from Ms. Schuett regarding binding arbitration.

Ms. Schuett explained the changes in the proposal: the word "binding" is removed because this arbitration would not be binding in the traditional sense as the County Council would retain the power not to fund any particular award; the word "shall" was changed to "may", giving the County Council the authority, but not mandating that the Council adopt an ordinance; it eliminates the specificity with which the current charter provision says who the arbitration can apply to, giving the County Council the power to choose anyone or no one to be covered by the arbitration provision of an ordinance; and it also adds the right for the County Council to increase the budget in order to fund a written award.

After much discussion regarding binding arbitration among the Commission members, it was decided to hold off voting on the proposal regarding the changes to the charter until after the public hearing which will be held on January 23, 2012.

### EXECUTIVE LINE ITEM VETO

Mrs. Carey referred to Ms. Schuett's two proposals regarding the line item veto, one of which allows the line item veto with respect to the comprehensive zoning bills only and the other alternative eliminates the line item veto.

Mr. Haire stated that he is not in favor of anything that eliminates the line item veto.

On motion of Ms. Schuett, seconded by Mr. Greene the Commission members voted for proposal number two, which eliminates the line item veto in its entirety by the following roll call vote:

Aye – Mr. Greene, Mrs. Carey, Ms. Schuett, Mr. Rheinstein  
Nay – Mr. Haire

#### COUNCIL RECESS

Ms. Tate is to draft wording to be included in the County Charter Section 208 which will allow the County Council to take a recess if and when they want to.

#### OTHER BUSINESS

Mr. Greene asked what the agenda is going to be for the next meeting.

Ms. Schuett said that some of the issues that have not been discussed yet are as follows:

1. Review the efficacy and timing of the comprehensive rezoning process and examine the value of enabling the County Council to initiate proceeding in certain instances.
2. Evaluate adding County Council approval of transfers of funds between major categories in the County Budget.

Ms. Tate said that she will ask Mr. Hammond and Ms. Sutherland to attend the December 9 meeting to discuss transfers between categories.

Ms. Tate said the Commission might also want to discuss the life cycle of a bill by evaluating extending the time in which action must be taken on a bill to permit additional time for public hearings on amendments.

Mrs. Carey asked Ms. Tate to gather information from other counties regarding the life cycle of a bill.

Mrs. Carey asked the Commission members if they were keeping Friday mornings at 9:00 open for their meetings. She asked the members to email her with the dates of the Fridays they would not be able to attend.

#### MEETINGS

Friday, December 9 (9:00 a.m.)  
Friday, December 16 (9:00 a.m.)

PUBLIC HEARINGS

Monday, January 23, 2012 (7:00 p.m.)  
Monday, February 27, 2012 (7:00 p.m.)

INTERIM REPORT DUE TO THE COUNTY COUNCIL

Monday, February 6, 2012 (7:00 p.m.)

Ms. Schuett asked if Ms. Tate would compile a list of the subjects that have not been discussed and those that have.

Ms. Tate said that she would do that and she would also speak to the Administration to see if there was anything else they would like the Commission members to consider.

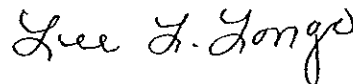
Ms. Schuett said that she would suggest the following items be discussed at the meeting on December 9:

1. Evaluate adding County Council approval of transfers of funds between major categories in the County budget.
2. Consider the elimination or modification of the provision requiring an independent audit every four years with the incoming County Council and County Executive since an independent audit now occurs every year.
3. The life cycle of a bill.

ADJOURNMENT

The meeting adjourned at approximately 11:55 a.m.

Respectfully submitted,



Lee L. Longo  
Reporter





ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #5  
December 9, 2011 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:12 A.M. with the following members present:

Jana Carey  
Joshua Greene  
Linda Schuett  
Jason Rheinstein (arrived at 9:24 a.m.)

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel  
John Hammond, Budget Officer  
Teresa Sutherland, County Auditor  
JoAnne Gray, Assistant Administrative Officer

There were approximately 3 persons in the audience.

APPROVAL OF MINUTES

Ms. Schuett said that there should be a correction to the minutes of December 2, 2011. She stated that on page 4, line 5 of the minutes the word accessible should read *assessable*. The minutes of December 2, 2011 were approved with the suggested change.

TRANSFERS BETWEEN MAJOR CATEGORIES OF THE BUDGET

John Hammond, Budget Officer, explained that each department gets its appropriation from the County Council during the budget process and it is appropriated across seven object categories. Each department head is responsible for appropriation control which means they are allowed to move money from one category to another (e.g. from personal services to contract services) as long as they stay within their departmental appropriation.

Ms. Schuett asked Mr. Hammond for clarification that the subject that is being discussed deals only with transfers within a departmental budget, not transfers between departments.

Mr. Hammond responded affirmatively. He said that money transfers between departments can only occur during the fourth quarter with Council approval. He said that if a department needs more money during the year, the CAO contingency fund can be used as a source of funding for any emergency that develops during the year.

Ms. Schuett asked Mr. Hammond if the department heads are responsible for their departmental budgets, why do they have to appear before the Council to explain their appropriations during the budget review.

Mr. Hammond said that they appear before the Council for accountability purposes. If a department head explains what the appropriations are going to be used for to the Council and then he/she decides later to use the appropriations for something else, they will need to give the Council an adequate explanation at the next budget review as to why they didn't follow their original plan. If the Council doesn't approve of what the department head did, they could cut their budget.

Ms. Schuett asked Mr. Hammond if he saw any validity in the idea that there could be some monetary cutoff, such as transfers within the categories in each department over \$100,000 or some other number that might require Council approval.

Mr. Hammond said that he believes the fundamental principal that underlies the charter was to get away from micro-management decisions on how the County is run.

Ms. Schuett asked if the concept of requiring approval from the Council under certain circumstances for transfers among categories has already been to the voters. She referred to a Resolution dated May 5, 2008 which was defeated July 7, 2008.

Amy Tate, Legislative Counsel, said that there was a 4-3 vote, and the Resolution required 5 votes in order to be placed on the ballot, so it never went to the voters.

Mrs. Carey stated that the County Council is given a budget from the department that puts these funds into various categories and asked Mr. Hammond if that was a correct statement.

Mr. Hammond responded affirmatively.

Mrs. Carey said that at that point in time the County Council has the right and the authority to question the allocation among those categories. She asked that if the allocation is important enough for the County Council to have a right to address the appropriateness of it at the time the allocation is made, then why is it any less important for them to have a right to address it if there is a proposal to deviate from the allocation that they previously approved.

Mr. Hammond said that the budget review process is to give the Council the ability to thoroughly examine how the appropriations are made and the departments have to justify their allocations. He said that it is the department head's responsibility to take the approved budget and manage their department within those constraints. He said that it comes back to the budget being a plan and for the government to run efficiently.

Ms. Schuett asked Mr. Hammond if the Charter requires the budget to come down with the categories.

Mr. Hammond referred to Ms Sutherland.

Teresa Sutherland, County Auditor, said that the Charter says the County must budget by agency, character and object. For instance, the Police Department would be the "agency", Administrative Bureau would be the character, and the object would be personal services, etc.

Mr. Greene stated that the Resolution that the Council passed for the Charter Revision Commission asks the Commission to evaluate adding County Council approval of transfers of funds between major categories in the County budget. He asked what the major categories of the budget were.

Mr. Hammond said that he would interpret that to mean down to the object level.

Ms. Sutherland said that she agreed with Mr. Hammond. She said that the Charter now says "transfers of appropriations between general classifications of expenditures in the budget within the same office or department and within the same fund". She stated that she has a legal opinion from the Office of Law stating that general classification(s) of expenditure mean "object".

Mr. Greene said the issue is allowing budget heads to keep their authority to transfer funds within their departments and to manage said departments appropriately without the County Council micro-managing what the department heads can do within their allotted budget amounts. He asked Mr. Hammond if this was a fair characterization.

Mr. Hammond responded affirmatively.

Ms. Schuett said that she would like to hear from the County Council as to why they think this is an important issue. She said that she does agree that unexpected things come up on a day-to-day basis that require changes that were not anticipated at the time the budget was approved and to require each department head to come before the County Council with respect to each of those changes, seems like a time-consuming and difficult hurdle to put before each department head.

Mr. Rheinstein stated that he did agree that the Council should not micro-manage department heads regarding day-to-day issues; however, because the objects are in the budget it would be a good idea to come before the Council to get approval to make a transfer that is above a certain threshold.

Mrs. Carey stated that Mr. Hammond's objection to making any changes in the transfers of funds in the budget is along the lines of balance of time and power between the two branches of government. The County Council should make the allocations but should not get involved in how the County Executive and the various department heads are moving money between objects. She said that Ms. Sutherland's position seems to be that if there is room for manipulation of funds, there could be a problem. She asked Mr. Hammond and Ms. Sutherland if this was a fair assumption as to their positions on this issue.

Mr. Hammond responded affirmatively, as did Ms. Sutherland.

Mrs. Carey asked Mr. Hammond and Ms. Sutherland what would be the threshold amount over which there should be County Council approval and how would it be described.

Ms. Sutherland said that she would recommend \$100,000 either individually or cumulatively.

Mr. Hammond said that he thinks it becomes further complicated by the fact that one agency could have a budget of eight million dollars versus an agency that has one hundred million dollars.

Mr. Rheinstein said that perhaps a way to address that issue is to ask for a percentage of whatever the approved budget is with respect to an individual department or agency.

Ms. Sutherland said that at some point, if what would be considered a large transfer has to take place, it is because something has happened that the County Council should know about, either there has been reorganization and the department is going to be run differently, or there has been some type of emergency purchase.

Ms. Schuett said that she is leaning toward the direction of believing that the Council does have control if a department has done something that is way off base in terms of what the Council believes should or should not be done with money. They have control over that department's budget the next year. She stated that she does not understand what particular transfers within the objects of a department head's budget have most bothered the Council and why. She said that she thinks this is more of a communication issue than of a Charter issue. She said she thinks the Council may be saying that you voluntarily gave us the information upfront, maybe you should voluntarily give us the information as you go along as those objects are changed.

Mr. Hammond said that is how things have happened regarding the Board of Education. Because Anne Arundel County was concerned about how the Board of Education was spending their money, they are required by State law to give reports to the Council every six months about how things have moved within categories.

Mrs. Carey stated that one of her concerns is what happens in case of major emergencies, if major transfers need to be made from any department.

Mr. Hammond said that this happens all of the time with snow removal. When it snows, the Department of Public Works budget could have serious problems within their categories, but the good news from a departmental level is that it usually snows in February where there is still five months left in the fiscal year so they haven't used their entire appropriation. He said that the snow gets removed and there is no waiting for budget transfers. They would come before the Council and explain that they had to remove the snow and that is why they had to move the money from the CAO contingency account or they would wait until May and come down with a fourth quarter transfer and say they had to move money from one department to the Department of Public Works.

Ms. Sutherland said that she agrees that requiring each department head for transfer approval to appear before the Council would not be efficient. She stated that she also agrees that if it is important for the Council to know which categories and objects and why that is a justified budget doesn't make it less important after the budget is struck. She said that perhaps the answer to that is to put a dollar amount limit on it.

There was further discussion between the Charter Review Commission and Mr. Hammond and Ms. Sutherland concerning the issue of adding County Council approval of transfers of funds between major categories in the County budget.

#### ELIMINATION OR MODIFICATION OF INDEPENDENT AUDIT

Ms. Sutherland stated that Section 311 of the Charter requires the County Auditor to make sure the County is audited on a yearly basis by an outside firm. She said that bonds will never sell unless the County has an independent audit. She said that Section 312 of the Charter requires the County Council and the County Executive to do a four-year audit every time the County Executive leaves office. She stated that this has never been done because the County is audited annually. She asked the Commission to recommend to the Council that Section 312 of the Charter be eliminated. She said that while it doesn't hurt to leave that section in the Charter, there really is not a need for it.

Mr. Rheinstein asked Ms. Sutherland to read Section 311 of the Charter for the record.

"The County Auditor shall no later than six months after the close of the fiscal year submit to the Council and the County Executive a complete financial audit of the preceding year for all offices, departments, or its commissions, etc. The audit shall be performed by the County Auditor or, subject to the availability of funds in the budget, by an independent firm of certified public accounts whose members are licensed for the practice of their profession under the laws of this State."

Mr. Rheinstein proposed mandating the independent audit language in Section 311, by eliminating the wording "subject to the availability of funds in the budget" and eliminating Section 312. He said this way when this Charter Amendment goes to the voters, no one will think that the independent audit is being eliminated.

Ms. Sutherland said that she did not have a problem with that, because it would mean that she would not have to do an audit. She said that she does not have the staffing or the expertise to do a thorough audit and even more importantly, bond rating agencies look for an independent firm name on an audit.

Ms. Sutherland said she will draft the wording for an amendment to present to the Commission members.

#### LIFE CYCLE OF A BILL

Ms. Tate stated that this issue has been raised by some members of the current Council to extend the life cycle of a bill to build in extra time for a change in the Council rules that would permit a public hearing on amendments. She said that when the staff was approached by some individual members of the Council to ask for an opinion on how this could be handled, the staff said the only practical way to have amendment hearings was either to add extra non-legislative public hearings where the Council would meet, but not vote so they could hear public testimony on the amendments or add time to the life cycle of a bill. What this would mean is that if a Council person introduced an amendment at a meeting, the Council would not vote on it. There would be a public hearing on that amendment.

Ms. Tate referred to a handout that she had provided to the Commission members which showed the life cycle of a bill in other counties.

There was further discussion between the Commission members and Ms. Tate regarding the life cycle of a bill.

#### ETHICS COMMISSION

Ms. Tate gave copies of a letter from Richard Hillman, member of the Ethics Commission to the Commission members. She said that the letter is in regards to term limits for the Ethics Commission.

Mrs. Carey stated that the next Charter Revision Commission meeting will be Friday, December 16 at 9:00 a.m.

ADJOURNMENT

The meeting adjourned at approximately 10:56 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter





ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #6  
December 16, 2011 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:11 A.M. with the following members present:

Jana Carey  
Joshua Greene  
Linda Schuett  
Jason Rheinstein (arrived at 9:50 a.m.)

Commissioner Dirk Haire was absent.

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel

There were approximately 2 persons in the audience.

APPROVAL OF MINUTES

The minutes of December 9, 2011 were approved as presented.

BOARD OF APPEALS TERM LIMITS

Ms. Schuett made a motion to reconsider the vote on the Board of Appeals Term Limits, which was seconded by Mrs. Carey.

Ms. Schuett referred to a letter that was received at the last Charter Revision Commission meeting from Mr. Richard Hillman who currently serves on the Ethics Commission. He has served two terms on the Ethics Commission and believes that there should be a two term limit and has asked the Charter Revision Commission to consider bringing this to the attention of the County Council.

Ms. Schuett said that she believes the issue of term limits is an important issue to some people and she did not take that into consideration when she voted.

Mr. Greene stated that he is fine with reconsidering the vote, but does not know if the outcome will change. He believes the Board of Appeals should be term limited. He asked that the vote be taken at the next meeting when all Charter Revision Commissioners are present.

Ms. Schuett asked if there were materials available on what the term limits are for other Commissions.

Ms. Tate said that she does not know of any other Commissions that have term limits.

Ms. Tate advised the Commission to consider the difference between a Commission and the Board of Appeals. She said that Commissions are set up for advice or oversight whereas the Board of Appeals renders opinions that can affect an outcome both in the judicial framework as well as the operative framework of the County government.

ADDING A PROVISION TO PERMIT CLOSED SESSION MEETINGS OF THE COUNTY COUNCIL FOR VARIOUS REASONS WHERE PERMITTED UNDER THE OPEN MEETINGS ACT

Mr. Greene asked Ms. Tate if the current process and procedure for the County Council is one that does not follow the State Open Meetings Act.

Ms. Tate said the County Council meets in public at all times and there is not a provision for allowing closed meetings. She stated that if there are four councilmembers together anywhere, it counts as a public meeting and the press must be notified.

Mr. Greene asked Ms. Tate whether the Council wanted to meet in a closed session for any purpose, would that require an amendment to the Charter or could the Council adopt a closed session provision in its rules.

Ms. Tate said if the Council were to adopt a closed session provision in their rules and procedures, that would be inconsistent with the County CHARTER which states Council meetings must be in public. She stated that other counties refer to the State law in their rules and procedures.

There was further discussion on how the proposed language should read for a proposed charter amendment.

Mrs. Carey asked Ms. Tate to draft a proposed amendment on the subject of closed meetings to present to the Commission on January 6, 2012.

INTERIM REPORT

Ms. Tate stated that the Interim Report from the Commission to the County Council is due on February 6, 2012. There was further discussion among the Commission relative to the structure of the report.

LIFE CYCLE OF A BILL

Ms. Schuett said that she feels that the current 95 days are long enough and it is longer than other jurisdictions. She said that if there were enough interest in extending the 95 days, she would agree to a two-week extension by a vote of five councilmembers for the extension of a bill.

Mr. Greene made a motion to extend the current 95 day life of a bill to the next legislative day following the expiration of the 95<sup>th</sup> date by a super majority vote of the Council. It was seconded by Mr. Rheinstein.

Ms. Schuett stated that while she voted no, as long as it is just a two-week extension, she would concur.

Mr. Greene made a motion to reconsider the vote of the life cycle of a bill being extended for two weeks, if necessary, seconded by Ms. Schuett.

Mr. Rheinstein stated that there has not yet been a public hearing on any of the issues that have been discussed by the Commission and he thinks that any voting should be held until after public comments.

Mrs. Carey asked Ms. Tate to draft some language for the extension of a bill.

#### DISCUSSION OF UNDECIDED ISSUES

Mrs. Carey said that the issues involving the Planning Commission will be discussed on January 6, 2012.

Mr. Greene observed that on Resolution No. 41-11, it asks for the Commission to look into the possible oversight of the Board of Appeals decisions.

Ms. Tate said that the Board of Appeals is a legislative branch which functions independently with the general oversight by the County Council.

Mrs. Carey asked Ms. Tate if there was anything other subject on the County Council's list that the Commission has not addressed.

Ms. Schuett stated that she feels it is very important that the independence of the Board of Appeals be maintained and she would not be in favor of any supervisory power.

Ms. Tate stated that going from seven to nine Councilmanic districts has not been discussed in any detail, but she recommended to the Commission that they wait until the public hearing to see if there is any feedback on this issue.

Ms. Schuett brought up Mr. Enright's letter that had been sent to Commission members, regarding the choices of action that the County Executive must take on any ordinance passed by the County Council.

Ms. Tate said that that issue could be put on an agenda in January.

Mrs. Carey asked Ms. Tate to make sure there was proposed language for any proposed charter amendment that has been discussed by the Commission so far and that it be available for the meeting on January 6, 2012.

There was some discussion among the Commission on the wording for the Council recess and the need for selecting a particular month for the recess.

Ms. Tate stated that for the purpose of consistency and for legislative scheduling it would be easier if the recess was scheduled at a particular time especially in calculating the life of bills, introducing bills, and setting a legislative agenda.

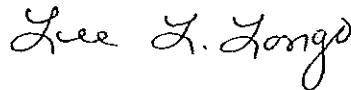
There was further discussion on the issue of a Council recess.

The next meeting of the Charter Revision Commission will be on Friday, January 6, 2012 at 9:00 a.m.

#### ADJOURNMENT

The meeting adjourned at approximately 10:35 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter

ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #7  
January 6, 2012 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:26 A.M. with the following members present:

Jana Carey  
Joshua Greene  
Jason Rheinstein

Commissioners Linda Schuett and Dirk Haire were absent.

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel

There were approximately 8 persons in the audience.

APPROVAL OF MINUTES

The minutes of December 16, 2011 were approved as presented.

COMPREHENSIVE REZONING & PLANNING COMMISSION

Larry Tom, Planning & Zoning Officer, explained that the governing authority for Planning and Zoning comes specifically from the Charter, beginning at Section 530. He said that Section 531 of the Charter describes the duties of the Office of Planning and Zoning AND that Sections 532 and 533 describe the role of the Planning Advisory Board.

Mr. Tom stated that the Office of Planning and Zoning has three primary responsibilities. The first one is comprehensive planning, it is charged with planning and managing the growth and development in the County, which includes the Capital Improvement Program, infrastructure needs, and issues relating to the quality of life. He said that in addition, the Office of Planning and Zoning is in charge of the review of all subdivisions and development in the County under authority granted through Article 17 of the County Code, Subdivision and Site Development Plan Regulations. The third major task is the administration of the Zoning Code which is Article 18 of the County Code. Mr. Tom said that there are also some cross responsibilities with the Department of Inspections and Permits such as Article 16, Stormwater Management. He stated that the Office of Planning and Zoning also works closely with the Department of Public Works.

Mr. Tom said that with regards to the Office of Planning and Zoning's primary duties, the office is divided into equal halves. The planning and zoning side includes five divisions, (1) the long-range planning division, (2) the long-range transportation planning division, (3) the zoning administration division, and (4) the cultural resource division, and (5) the research/graphics information systems (GIS) division. He stated that the development side is responsible for administering Article 17 and the Subdivision and Site Development Plan Regulations. He said that the development side is divided into four teams based on geographical areas as well as a critical areas team.

Mr. Tom stated that he has the overall management responsibilities and sets the procedures and policies on how to implement the Offices's mission. The day-to-day operations of each of the distinct halves of planning and zoning are administered through an Assistant Planning and Zoning Officer.

Mrs. Carey asked Ms. Tate to state the issues that the County Council asked the Charter Review Commission to address with regard to Planning and Zoning.

Ms. Tate said that Item No. 4 on Resolution No. 41-11 asked that the Commission review the efficacy and timing of the comprehensive rezoning process and examine the value of enabling the County Council to initiate proceeding in certain instances and Item No. 5 was to examine the merits of establishing a County Planning Commission. She said that the timing of the comprehensive rezoning process is within the Code not within the Charter. She said that the ability to initiate the process is in the Charter and rests with Mr. Tom and his department,

Mr. Tom stated that he has had some experience working with a citizen planning commission. He said that he served on the planning staff at the City of Annapolis during the 1980's. He said that the planning and zoning commission in the City was a citizen body that was appointed and had the responsibility of reviewing development proposals and any kind of rezoning activity. The Commission took action on those requests and forwarded their recommendations to the City Council where the final decision was made. He stated that the staff was responsible for providing their professional recommendations to both the planning and zoning commission and the City Council. Mr. Tom said that Anne Arundel County is unique among the jurisdictions in Maryland, in that it does not currently have a citizen's planning and zoning commission. He said that what the County has instead is the Planning and Advisory Board. He stated that the Board is strictly advisory to him and via him to the Administration. Its duties are established in the Charter beginning at Section 532. He said that most, if not all of the planning and zoning activity that occurs in Anne Arundel County is left to the professional staff, which he believes is the ideal situation. Mr. Tom stated it takes the decision making and the review of policies and specific development proposals, as well as their approach to comprehensive planning, out of the political arena and leaves it with the professional staff. He said that if a planning and zoning commission is established in Anne Arundel County there has to be a decision as to whether or not it is the final authority for development review projects or zoning matters and would the County Council be excluded in those kinds of reviews.

Mr. Tom stated that in the five years that he has been the planning director, there have been numerous new mandates from the State that the Planning and Zoning Office has had to include in the County regulations such as the stormwater management regulations that recently came from the State. He said that it would be difficult to educate the Councilmembers or commission on the specific technical aspects of those kinds of regulations. He stated that the safeguard in the current system is that any decision that comes out of the Planning and Zoning Office can be appealed through the Board of Appeals and ultimately the court system.

Mrs. Carey asked Mr. Tom what percent of the decisions of Planning and Zoning are appealed.

Mr. Tom said that on a percentage basis, it would be very low.

Mr. Tom said some people would say that the process of getting a development approved in Anne Arundel County is burdensome. He stated that if you add in another body to review development proposals, and then take it to the County Council for additional review and approval, it lengthens the process even more. He stated that he did not believe a planning and zoning commission would be beneficial as the current system in place works quite well.

Mrs. Carey asked Ms. Tate why this issue of whether or not to change the Charter to provide for a planning commission has come up.

Ms. Tate said that it has to do with the fact that the County Council has just completed the comprehensive rezoning process. She said that it was a long process for the Council, but it was probably much longer for the Planning and Zoning Office. The requested Charter change to enable the County Council to initiate proceedings in certain instances stemmed from the fact that the Council wanted to re-introduce a rezoning bill that failed, but was unable to do so because it needed to be done by the Administration.

Mrs. Carey asked Mr. Tom what should be the balance of involvement between the County Council and the County Executive as one goes through the planning and zoning process.

Mr. Tom stated that when you are dealing with long-range planning and zoning, you are dealing with the obligations with the executive branch of government rather than the legislative branch of government. He said that is not to say that the County Council doesn't have a say in how the planning is done in Anne Arundel County, because anything that requires a change in the law has to be done through the legislative branch, and that is where you will get the Council's influence and impact.

Mr. Greene asked Mr. Tom what other counties and jurisdictions in Maryland have such a citizen's commission with authority over the planning and zoning authority.

Mr. Tom said that a majority of the local jurisdictions have the process of a citizen planning and zoning commission.

Mr. Greene stated that since it is not advisory, even in those counties where there is a citizen's commission, the County Council makes the final decisions and those decisions are appealable.

Mr. Tom affirmed Mr. Greene's statement.

Mr. Greene said that the Code states that there has to be a General Development Plan compiled every ten years, and asked Mr. Tom if this was something that was done more frequently by Planning and Zoning or is it followed that it is done every ten years.

Mr. Tom stated that there is a provision in the State Code under Article 66(b) that requires some kind of update of the comprehensive development plan every six years.

Mr. Greene asked Mr. Tom what the relationship is between the Small Area Plans and the General Development Plan.

Mr. Tom said that the Zoning Code, Title 18, 2-103, *Planning for Future Development*, lists the General Development Plan, the Small Area Plans, Water and Sewer Master Plans, and all of the functional and individual sector plans. They are given co-equal status in terms of their impact on decision-making relative to growth and development in Anne Arundel County. Mr. Tom said that all of these planning documents form the framework for his office to follow in terms of how they do their planning.

There was further discussion regarding the comprehensive rezoning and planning process and small area plans.

Mr. Rheinstein asked Mr. Tom if he has statistics concerning or has noticed differences in decisions that have a citizen planning and zoning commission versus jurisdictions that have advisory boards under the purview of the County Executive.

Mr. Tom said that he does not have those kinds of statistics.

Mr. Rheinstein said that the Charter Review Commission has been looking at the line item veto with respect to the comprehensive rezoning bill and the fact that the County Council overrode the County Executive's vetoes on particular amendments. He asked Mr. Tom if there was a common theme as to why the amendments differed from professional recommendations and whether he thinks there would have been a different outcome if the County had a County Planning Commission.



Mr. Tom said that he could not speak for the councilmen as each of them would have to render his own decision as to whether or not to support or override a veto. He said that he does not believe there would have been a different outcome regarding the amendments if there were a planning commission, because once it reaches the Council level, the Commission activity would cease.

Mr. Tom said that the County's Planning Advisory Board also reviewed each of the Comprehensive Zoning Bills and made recommendations to the Council as to what to support and what not to support in the bills. The Planning Advisory Board also reviewed all of the amendments and held a public hearing so the public could speak on them. The Board also formulated recommendations on the amendments.

Mr. Rheinstein stated that there seems to be a consensus that the line item veto is not a great provision the way it is written in the Arundel County Charter. He said that there was some discussion as to whether or not the line item veto should be eliminated or apply only to comprehensive zoning. He asked Mr. Tom how the comprehensive zoning process would change if there was not a line item veto and the County Executive either signed the zoning bill as passed by the Council or not signed the zoning bill.

Mr. Tom stated that if the line item veto provision had not been in place during the recent comprehensive zoning process all of the amendments would have become part of the bill, assuming the County Executive signed the bill.

Mr. Rheinstein asked what would have happened if the County Executive did not sign the bill and the Council did not override him.

Mr. Tom said that if a bill is defeated, then the bill dies and the sponsor has the opportunity to reintroduce it.

Ms. Tate said that if there is a veto and there is not an override, the bill does not exist.

Mr. Tom said that if the County Executive vetoed one of the comprehensive zoning bills, and it was not overridden, the County Executive could come back with a new bill and the process would start over again for that particular area in the County.

Mrs. Carey asked how Anne Arundel County can justify not allowing the same level of citizen input in the zoning process as is allowed in most of the other chartered counties where there is either a citizen's board or commission with more significant input.

Mr. Tom replied that just because a planning commission has some kind of approval authority as it relates to zoning matters, does not make it any more effective in terms of its relationship to the legislative function of the Council. He said that granting a citizen board binding authority or approval authority on subdivisions and development would just add more time to a process and is not warranted in this county.

Mr. Rheinstein asked Mr. Tom if the County Councils in those counties still have the ultimate authority to reject a recommendation of the Commission.

Mr. Tom answered affirmatively.

There was further discussion about Planning Commissions having binding or approval authority on subdivisions and development between the Commission members and Mr. Tom.

Mrs. Carey thanked Mr. Tom for his time and explanations.

#### OTHER BUSINESS

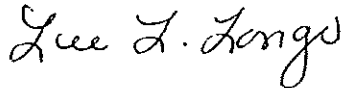
Ms. Tate handed out information that was requested at the last meeting regarding wording for certain items that had been discussed. They will be discussed at the next meeting.

The next Charter Review Commission meeting will be held on Friday, January 13, 2012 at 9:00 a.m.

#### ADJOURNMENT

The meeting adjourned at approximately 10:55 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter

ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION

Minutes

Public Hearing

January 23, 2012 - 7:00 P.M.

Council Chambers, Arundel Center, Annapolis, MD

---

Mrs. Carey, Chairman, called the meeting to order at 7:20 P.M. There were approximately 12 persons in the audience. The following Commission members were present:

Jana Carey  
Joshua Greene  
Jason Rheinstein (arrived at 7:15 p.m.)

Also present were:

Elizabeth Jones, Administrative Officer  
JoAnne Gray, Assistant Administrative Officer  
Amy Tate, Legislative Counsel  
Lee Longo, Reporter to the Commission

Mrs. Carey explained that the second purpose of the Commission is to review the County Charter and recommend to the County Council any suggestions for advisable changes to the Charter. She referred to issues that the Commission was asked to consider from the County Council (Resolution No. 41-11 hereby attached to official copy of these minutes), John Hammond, Budget Officer (letter hereby attached to official copy of these minutes) and Patric Enright, citizen of Anne Arundel County (letter hereby attached to official copy of these minutes). She stated that the purpose of this public hearing is to seek public input on any of these issues or other changes that should be considered.

Public Hearing

Patric Enright, Gambrills (District 7), recommended that the Anne Arundel County Charter reflect a concept that all Commissions, Panels and Boards, whose composition and mission is approved by the County Council, should reflect representation from each Councilmanic District. He also recommended a technical change to Charter Section 1203, concerning the Decennial Charter Revision Commission (testimony hereby attached to official copy of these minutes).

Millard Snowden, Glen Burnie (District 3), referred to Charter Section 404, Conviction or failure to perform duties, and asked that this section be revised to include any elected County Official convicted of any crime (attachment hereby attached to official minutes in the County Council Office). This change might also affect Article X of the Charter as well as Charter Section 402 which refers to County Council vacancies. Mr. Snowden said that he is also in favor of a County planning commission. He said that he would also like to see notification of any zoning change to communities in the beginning of the comprehensive rezoning process (testimony hereby attached to official copy of these minutes).

Susan Cochran, Edgewater (District 7), recommended a change in the way vacancies (Charter Section 205) are filled to further democratic representation by the residents of a District in which the office of a councilmember is vacated (testimony hereby attached to official copy of these minutes).

Karen Delimater, (District 3), stated that Charter Section 208(d), and Section 307(f) which refers to the enacting emergency of ordinances and the procedure for passing emergency ordinances, has been misused by the County Executive and the County Council. She said that she believes that Charter Section 208(g), Rules of Procedure, should require an annual update and revision every four years to coincide with the election cycle. In Charter Section 302(a) Presiding Officer, Ms. Delimater said that there should be a definition of a disqualification of the Chairmen. She said that in order to have transparency in government, Charter Section 303 should state that the County Council be required to publish on the County website the officers, members and terms of each ad hoc committee, as well as the purpose of each committee. In Charter Section 308 regarding the scope of the referendum, should be changed. She said that Maryland is only one of seven states which do not require or allow the citizens to have petitions to put resolutions or laws before the voters of the County. Ms. Delimater said that in Charter Section 522(a), regarding the emergency management director, was last updated in 1980 and should be updated to include the new terrorism threats.

Pat Lynch, Annapolis, (District 5), stated that she believes there should be procedure for the removal of a County Councilmember or any elected County official convicted of any crime. She said that she believes the comprehensive rezoning process should be repeated every five years instead of every ten years and that neighbors should be notified of every application and amendment submitted within their community if they live within 175 feet of the property.

Joseph Delimater, Glen Burnie (District 3), spoke about the need for notification to neighbors of applications and amendments submitted within their community. He said that Charter Section 201 which refers to the residence requirement for a councilmember be changed to a twelve month residency requirement. He said that the four-year term should be changed to two-year terms.

Ann Fligsten, Arnold (District 5), stated that she is in favor of term limits for the Board of Appeals and in keeping the executive line item veto.

Donna Delimater, (District 1), stated that her district is not currently represented because of the removal of her councilman and is concerned with the process of appointing a new councilmember. Ms. Delimater said that she is in favor of a planning commission for the rezoning process. She proposed that there should be representation of residents as a whole and County residents should be able to vote for all of the councilmembers.

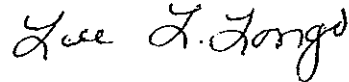
Mrs. Carey said that another public hearing will be held on Monday, February 27 at 7 p.m. in the County Council Chambers.

There was no one else present who wished to speak, and the public hearing was concluded.

Adjournment

The meeting was adjourned at approximately 8:26 P.M.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter



ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #8  
February 10, 2012 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:05 A.M. with the following members present:

Jana Carey  
Joshua Greene  
Karen Cook  
Patric Enright

Commissioner Jason Rheinsteen arrived at 9:32 a.m.

Also present were:

Amy Tate, Legislative Counsel

There were approximately 3 persons in the audience.

WELCOME NEW MEMBERS

Ms. Carey welcomed Commissioners Patric Enright and Karen Cook to the Charter Revision Commission. Ms. Carey stated that Mr. Enright has been present in the audience at each meeting and Ms. Cook served on the Charter Revision Commission ten years ago.

APPROVAL OF MINUTES

The minutes of January 6, 2012 and January 23, 2012 were approved as presented.

ELECT VICE-CHAIR

Ms. Carey stated that with the resignation of Ms. Schuett, a new Vice-Chair needed to be elected.

On motion of Mr. Enright, seconded by Ms. Cook, the Commission members unanimously elected Commissioner Joshua Greene as Vice-Chair.

FUTURE MEETINGS

The following meetings are scheduled:

Friday, February 24, 2012 – 9:00 a.m.  
Monday, February 27, 2012 – Public Hearing – 7:00 p.m.  
Friday, March 2, 2012 – 9:00 a.m.

Friday, March 9, 2012 – 9:00 a.m.  
Friday, March 16, 2012 – 9:00 a.m.  
Friday, March 23, 2012 – 9:00 a.m.  
Friday, March 30, 2012 – 9:00 a.m.

Ms. Carey asked the Commission members to inform her if they are unable to attend any of these meetings.

#### OVERVIEW AND DISCUSSION OF THE FOLLOWING ITEMS:

##### Resolution No. 41-11 – County Council Requests

###### Board of Appeals

Ms. Carey stated that the Commission members have been asked to review the role and the need of oversight for the Board of Appeals, and if so by whom. Currently the only appeal from a Board of Appeals' decision is to the Circuit Court and up to the Court of Appeals. She said that this issue has not been addressed.

Ms. Tate said that there has been a discussion regarding behavior and individual acts of the members that occur on the Board of Appeal, and the structure that they must remain independent.

Ms. Carey said that a decision has not been made as to whether or not any of that needs to be changed.

Ms. Tate said that there was a vote on the Term Limits for the Board of Appeals, but Commissioner Greene reserved on that issue.

Ms. Carey said that there is still a motion to reconsider the vote regarding term limits for the Board of Appeals.

###### Life Cycle of a Bill

Ms. Carey stated that currently a bill expires in 95 days which is longer than other councils in other counties. She said that the Commission members were considering a suggestion of a one-time extension of a bill to the next legislative session. A super majority vote of the Council would be needed in order to extend it.

###### Binding Arbitration

Ms. Carey said that the Commission has been asked to consider changing the binding arbitration provision for uniformed public safety representatives to bring it into compliance with case law. The current ordinance requires and compels binding arbitration to be done in a specific form that is set forth in the Charter section. She said that it divests the County Council the power to regulate through legislation the terms and conditions of employment for these employees and the Council cannot be divested of those powers by a Charter amendment.



Ms. Tate further explained binding arbitration.

Ms. Carey stated that there is an issue as to whether or not binding arbitration is in the best interest of the County and also whether the County Council can add to the budget the funding of an arbitration award. She said that Ms. Schuett had submitted proposed language on the basic requirement for resolving contract settlement issues by binding arbitration, but the Commission members deferred voting on that issue until after the first public hearing thinking that there would be a lot of public input on binding arbitration, however, there was no discussion of it.

#### Comprehensive Rezoning Process

Ms. Carey stated that the Commission members have been asked to review the efficacy and timing of the comprehensive rezoning process and examine the value of enabling the County Council to initiate proceeding in certain instances. She said that as part of that, they were also asked to look at the possibility of creating a planning commission with citizen members as part of the rezoning process. She stated that other charter counties have planning commissions with citizen members. She said that Larry Tom, Planning & Zoning Officer, believes that a planning commission is not necessary because the current development process allows for public participation, involves professional planners in every stage, and after their work is complete, it is reviewed and recommendations are made by a Planning Advisory Board which is composed of citizens.

Ms. Tate gave further input about the Planning Advisory Board regarding its function in the rezoning process.

#### County Executive's Line Item Veto Authority

Ms. Carey stated that currently, the County Executive has the authority to disapprove one or more parts of an ordinance, including those that deal with non-fiscal matters. The parts that are approved become law and the parts that are disapproved go back to the County Council and the Council can reinstate those parts of the bill by a super majority vote of five out of seven members of the Council. Ms. Carey stated that the Commission discussed this issue thoroughly and voted to remove the line item veto for the County Executive.

#### County Council Approval of Funds Between Major Categories in the County Budget

Ms. Carey stated that currently there is no limit on the extent to which appropriations by the County Council can be transferred by the County Executive between classifications of expenditures within the same department. The question is whether or not the County Council should have some ability to limit or approve those transfers. She said that this issue has been discussed, but not voted on.

#### Independent Audit

Ms. Carey stated that currently there is a provision in the Charter that requires an independent audit every four years with the incoming County Council and County Executive. She said that the question is whether or not that expense can be eliminated because there is an independent audit that occurs every year. This has been discussed but not voted on.

#### Vacancies

Ms. Carey stated that the Commission members have discussed alternative processes for filling vacancies on the County Council. She said that currently Section 205 provides that vacancies during the first twelve months of a term will be filled by the voters in the affected district at the same time as they vote on members of the House of Representatives. In the interim the vacancy is filled by a majority vote of the remaining members of the County Council. She said vacancies that occur after the first twelve months are permanently filled by a majority vote of the County Council within thirty days after a vacancy occurs. Ms. Carey said that although the Commission voted not to change this section of the Charter, they may want to reconsider after hearing public testimony.

Ms. Tate said that there was a suggestion from Susan Cochran that if a vacancy occurs within the first three years of the term, a special election should be held and after three years, the County Councilmembers would appoint someone of the same party as the previous office holder to fill the vacancy.

Ms. Carey said that this issue will have to be reconsidered by the Commission members. She said that the issue of what determines a vacancy on the County Council also needs to be discussed and defined.

There was further discussion among the Commission members and Ms. Tate regarding the issue of determining vacancies on the Council.

#### Expanding the Number of Districts from Seven to Nine

Ms. Carey stated that the Commission members did not address this issue during the redistricting process. She said that this would require a change in the Charter to increase the number of districts and that is what the Commission members are being asked to consider.

Ms. Tate explained how the process would work to the Commission members should they recommend changing the number of districts.

### Open and Closed Meetings

Ms. Carey stated that the Commission members are being asked to adopt the State Open Meetings Act for purposes of providing a framework for closing meetings for specific reasons. She said that currently under the Charter, the County Council cannot meet in a closed meeting for any reason. She said that the members need to look at whether or not they want to recommend the adoption of the closed meetings criteria under the State Open Meetings Act in whole or in part.

There was a lengthy discussion among the members and Ms. Tate regarding the issue of open and closed meetings.

### County Budget Officer Requests

#### Pension Oversight Commission

Ms. Carey stated that the Commission has been asked by Mr. Hammond, Budget Officer, to consider eliminating the Pension Oversight Commission which is described in Section 606-609 of the Charter. She said that its job is to oversee the management of the County's pension funds. In 1990 the County appointed The Board of Trustees of Anne Arundel County Retirement and Pension Plans as an independent body to oversee the management of the funds and since then that Board has performed most of the responsibilities assigned by the Charter to the Pension Oversight Commission.

#### Spending Affordability Committee

Ms. Carey said that Section 610, Subsection 4 of the Charter requires some editorial revision which will replace verbiage which was accidentally removed.

Ms. Carey asked Ms. Tate to follow up with Mr. Hammond regarding the necessary language for a proposed amendment to the Charter.

### Budget & Budget Calendar

Ms. Carey stated that Mr. Hammond requested that the date of the submission of the County Executive's proposed budget be changed back to May 1. She said that the most recent Charter Amendment moved the date of the submission of the proposed budget from May 1 to April 15 and that Mr. Hammond said that this revised schedule does not permit the Budget Office to address the full evaluation of the Maryland General Assembly's actions at its most recent regular session that impact the County Executive's proposed budget. She said that he suggested that if the County Council required additional time to consider the proposed budget, that time could be added to the end of the budget process by allowing for the budget to be enacted no later than June 15, rather than the current June 1 date.

Ms. Carey asked Ms. Tate why the date was changed from May 1 to April 15.

Ms. Tate said that the date of April 15 was established to give the Council more time to review the budget. She said that the Council did not receive the budget until May 1, whereas the Administration was preparing the budget months in advance, and then the Council had thirty days to consider everything in the budget. She said that the date of April 15 also gives the Auditor more time to go through the budget. She said that by getting the proposed budget to the Council and the Auditor on April 15, it gives them an extra two weeks to review it before the budget hearings begin on May 1.

There was further discussion among the Commission members and Ms. Tate regarding the budget calendar.

#### Technical Changes – Copies

Ms. Carey stated that Mr. Hammond requests that Sections 707, 710, 714 and any others with references to the word “copies” be replaced with the wording electronic copies.

#### Bond Premium

Ms. Carey said that currently the IRS permits a bond premium from the sale of municipal bonds to be used to pay for the annual debt service cost of the bonds that generated the premium. She said that as a result of recent financial market conditions, there has been a generation of significant amounts of bond premium from the County's annual bond sale. She said that the question is how to use this income. She said that the Commission members are being asked to amend the Charter so that it restricts the use of bond premium such that it could only be utilized for the funding of capital improvements incorporated in the County's capital budget.

Mr. Enright said that taking away any ability to reduce debt service could be a detriment. He said that the issue would be how much of the income would be restricted. He suggested that perhaps only a certain percentage be restricted for capital improvements.

Ms. Tate referred to the Auditor's comments regarding Mr. Hammond's recommendation regarding the use of income from bond premiums. She stated that the Council is the final fiscal authority within the County and therefore the allocation of what the premium goes to should rest with the Council and if this change is made, they would not be able to do that.

#### Section 702 - Definitions

Ms. Carey stated that Subsection (b) of Section 702 defines a capital project and is unduly restrictive. She said that it has been recommended by Mr. Hammond that the definition be expanded to include replacement equipment of a suitable useful life for a capital project.

### Council Recess

Ms. Carey stated that the Commission members are being asked to examine the number of required legislative sessions to allow for an annual recess of the County Council in August.

Ms. Tate said that as long as the Council does not exceed the number of legislative days under the Maryland Constitution and wants to allow for a recess, it must be provided in the Charter.

Ms. Tate suggested that Council meetings be changed from the first and third Monday to the first and third Tuesday. Meetings are constantly changed when there are holidays or furlough days that occur on Mondays.

Ms. Carey asked Ms. Tate what the Council's position was regarding that suggestion.

Ms. Tate said that she did not know what the Council's position was, but she would ask them.

There was further discussion regarding the issue of a Council recess and the possibility of suggesting the Monday Council meetings be moved to Tuesdays.

### Public Hearing Issues

Ms. Carey said that Mr. Enright proposed a Charter Amendment to ensure that all Commissions, Panels and Boards, whose composition and mission is approved by the County Council, should have a representative from each Councilmanic District.

She said that Mr. Enright also suggested a technical change regarding the Decennial Charter Revision Commission.

Mr. Enright explained his proposed Charter Amendment, and there was further discussion among the Commission members regarding his suggestion.

Ms. Carey stated that Millard Snowden submitted proposed language for the Commission members to consider regarding vacancies resulting from a conviction or failure to perform duties.

There was some discussion among the Commission members and Ms. Tate regarding Mr. Snowden's proposed Charter Amendment language.

Ms. Carey stated that Ms. Susan Cochran recommended a change in the way that vacancies are filled to further democratic representation by the residents of a District in which the office of a Councilmember is vacated.

There was some discussion among the Commission members and Ms. Tate regarding Ms. Cochran's suggestion.

Ms. Carey said that there was another suggestion from Ms. Delimater at the public hearing regarding Sections 208(d) and 308(f) relating to Emergency Ordinances and to provisions relating to members and terms of ad hoc committees.

Ms. Tate stated that there are no ad hoc committees. She said that the last committee was the Impact Fee Review Committee three years ago. The members were appointed by Resolution, their terms were apparent and they had a concrete deadline. She said that ad hoc committees are unusual and they can only be established for specific purposes and for a limited amount of time.

Ms. Tate stated that pertaining to Emergency Ordinances, a lot of legislation has been termed emergency legislation which means it goes into effect immediately as long as there is a majority vote. She said that Ms. Delimater's position is that the only time an ordinance should be enacted without the forty-five day waiting period is if something presents an immediate threat to the life, health, safety and welfare of the population.

Ms. Carey asked Ms. Tate what Ms. Delimater meant by procedures for a referendum of petitions brought by citizens, and if the County had referendums as a result brought by citizens.

Ms. Tate said that there are referendums as results of groups saying they are citizens. She said there was a recent referendum regarding a bill that the Council passed. In order to get a question on the ballot, there has to be 10% of the voters calculated upon the number of votes cast in the County for Governor at the last preceding gubernatorial election on petitions. She said that Ms. Delimater believes it should be in-line with the Maryland Constitution which would make it ten thousand voters or five percent, whichever is less.

Ms. Carey said that there was also a question raised about comprehensive zoning during the public hearing regarding notice to neighbors if their neighbor was filing for a zoning application or an amendment request.

Ms. Tate stated that this issue is not a Charter change and is not for the Commission members' consideration. The procedure for comprehensive rezoning is the Code. She said that comments regarding comprehensive rezoning should be directed to the Planning and Zoning Office.

Ms. Carey said that she believes all issues which have been brought before the Commission have been summarized.

## VOTING

### Independent Audit

Ms. Carey suggested that the Commission members vote on the issue of eliminating the requirement for an independent audit every four years and replacing it with a requirement that an independent audit will be required annually. She asked Ms. Tate and

Ms. Sutherland to draft proposed language for a Charter Amendment. The Commission members decided to hold voting on this issue.

#### Council Recess

Ms. Carey referred to the proposed language pertaining to a Council recess. There was also discussion among the Commission members regarding the issue of changing the meetings from Monday to Tuesday. The Commission agreed to hold further discussion and voting on this issue until after the next public hearing on February 27 and until they get a response from the County Council regarding the changing of the meeting day from Monday to Tuesday.

#### Technical Change – Returning an Ordinance Unsigned

Ms. Carey referred to Mr. Enright's suggestion of January 23, Item No. 3 regarding the resurrection of a Charter Amendment.

Ms. Tate stated that this refers to the return of an Ordinance unsigned within a certain period of time.

Ms. Carey stated that in reference to Article III, Section 307, Paragraph J of the Charter and lines 30 through 32 on page 1 of the 2008 Resolution No. 22-08, the new proposed corrective language would read as follows:

...OR RETURNS THE ORDINANCE UNSIGNED WITHOUT HIS APPROVAL, ENDORSEMENT OR WITHOUT A STATEMENT IN WRITING OF HIS REASONS FOR ANY DISAPPROVALS, THE ORDINANCE SHALL BECOME LAW AS OF THE TENTH DAY AFTER PRESENTATION, AND...

On motion of Mr. Enright, seconded by Mr. Greene, the Commission members voted unanimously to accept this change.

#### Open and Closed Meetings

Mr. Greene said that he thinks that the issue of the State Open Meetings Act should apply to the Council and asked Ms. Tate if there was another legal threshold issue of which he was unaware.

Ms. Tate said she believes that the issues are, if the Commission were to adopt the State Open Meetings Act, wholesale or only pick certain exceptions within the Open Meetings Act under which the Council would be able to close a meeting to confer with Counsel or discuss a personnel issue, rather than all of the exceptions that are in the Open Meetings Act.

There was further discussion among the Commission members and Ms. Tate regarding the proposed language for Section 307 of the Charter.

Ms. Carey asked the Commission members to send her an e-mail stating which issues they are ready to vote on.

Mr. Greene said that he would rather see a document that outlines where each issue stands and have suggested language ready to go rather than emails back and forth.

Ms. Carey said that would be acceptable; however, she wanted to know if any member needs more information on any issue or wants further discussion on any issue before voting to please let her know.

Mr. Rheinstein stated that he would prefer to defer voting on any issue until draft language is prepared for the Commission members to review.

#### OTHER BUSINESS

Mr. Rheinstein suggested that all items that the Commission has discussed or considered be put in a press release which he believes would help receive more public comments on issues.

Ms. Tate said that she would like the Interim Report to be ready for the public hearing so it could be on the Council website and a link for that information would be provided in a press release.

Ms. Tate stated that she sent the draft of the Interim Report to Ms. Carey for her review as to the format of the report. Ms. Carey asked Ms. Tate to email the report to all of the members of the Commission for their review and comments.

The next Charter Review Commission meeting will be held on Friday, February 24, 2012 at 9:00 a.m.

#### ADJOURNMENT

The meeting adjourned at approximately 11:43 a.m.

Respectfully submitted,



Lee L. Longo  
Reporter



ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #9  
February 24, 2012 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:07 A.M. with the following members present:

Jana Carey  
Joshua Greene (arrived at 10:45 a.m.)  
Karen Cook  
Patric Enright  
Jason Rheinstein (arrived at 9:32 a.m.)

Also present were:

Amy Tate, Legislative Counsel

There were approximately 4 persons in the audience.

APPROVAL OF MINUTES

The minutes of February 10, 2012 were approved as presented.

VOTING SESSION-ITEMS PROPOSED FOR STUDY BY THE COUNTY COUNCIL

Ms. Carey explained that the County Council has not suggested or required that the Commission provide language for any changes they are proposing in the Charter. She stated that the Commission must articulate the change with any particular conditions or issues that relate to the change. She suggested that rather than spending time in details of the language, the Commission members should focus more on the concepts of any proposed changes.

Ms. Cook asked that if the Commission members agreed in concept on particular changes, would they be able to see the actual language before the final report.

Ms. Tate stated that if the members agree on a concept, then language can be prepared as items are discussed. She said that Ms. Carey wondered if the Commission should vote on items first before proposed language. Ms. Tate said that it is up to the Commission members as to how they wish to proceed.

Ms. Carey suggested that the members vote on a concept and have Ms. Tate draft the language which could be included in the final report. If any member had proposed language suggestions they could confer with Ms. Tate. She asked Ms. Tate how the last Commission report was done.

Ms. Tate said that the last Commission report had a list of the sections with sections that needed to be changed. There was not a draft resolution, but it sometimes gave suggested language changes with the recommendations. She said that if wording was not provided, it was left to the drafting and legislative process.

#### RESOLUTION No. 41-11 – COUNTY COUNCIL REQUESTS

##### Board of Appeals – Term Limits

Ms. Carey stated that the first vote on this issue showed three Commission members against setting term limits for the Board of Appeals. She said that Ms. Schuett had suggested after that vote, that the issue should be re-addressed. Ms. Carey suggested that the members wait for Mr. Greene, who is expected to arrive later in the meeting, to address this issue.

##### Examine the Merits of Establishing a County Planning Commission

Ms. Carey stated that the Commission members discussed this issue in length, but it has not been voted on. She said that there is a Planning Advisory Board in several other counties.

Ms. Cook said that Anne Arundel County already has a Planning Advisory Board.

Ms. Carey referred to Ms. Tate.

Ms. Tate said that Anne Arundel County's Advisory Board is under the Executive Branch. She said that the concept being suggested is a group that is not operating by the direction of the executive branch or the legislative branch.

Ms. Cook stated that she thought this was being called a Planning Commission, not Advisory Board.

Ms. Carey said that in other jurisdictions this is called the Planning Advisory Board which is a separate advisory board composed of citizens from their perspective Counties, dealing with only planning and zoning issues. She stated that Mr. Tom, Planning and Zoning Officer, is not in favor of a Planning Commission as he felt that the current process already allows for public participation and involves professional planners in every stage. He also said that after their work is completed it is reviewed and recommendations are made by a Planning Advisory Board which is composed of citizens.

Ms. Carey asked Ms. Tate if there was a downside to having a Citizens' Advisory Board.

Ms. Tate said that from Mr. Tom's perspective, he feels like he has a whole team of professional planners who are very involved and look at the whole picture of Anne Arundel County in terms of the General Development Plan, the Small Area Plans and the

Water and Sewer Plan. She said that there is some benefit in getting a localized opinion on particular projects with a citizens' board, but it might not take into account all parts of the plan. She said that by adding a Planning Commission to the Charter, it would add another layer to the zoning process.

Ms. Tate said that a lot of objection regarding the current process with zoning is that of community notice and participation. Some of that is driven by how it is set up by Planning and Zoning and some of it is driven by what is in the Code. She said that the Commission could just change the Notice Requirements and the Comprehensive Rezoning Code Sections to mandate more notice and public participation.

Ms. Cook stated that her biggest objection to adding a Planning Commission would be adding another layer of bureaucracy and then there would be the question of who would be the final authority. She said she agrees with Ms. Tate that perhaps the issue of citizens' concerns could be addressed with more adequate notice of hearings conducted by Planning and Zoning.

Mr. Enright said that he understands Mr. Tom's concern because when you embed something in the Charter there is some sort of authoritative functionality about those groups in the Charter and it also adds another layer of bureaucracy in what already is a lengthy process. He said that he wondered if during the statutory period, the Council could establish a Citizens' Advisory Committee by a resolution or ordinance, where they would come up with concerns that may or may not be acted upon by the Planning Advisory Board. He explained that it would not be embedded in the Charter, but it would be a temporary committee appointed by the County Council.

Ms. Tate said that there is a prohibition against standing committees, but an alternative would be to create a temporary committee or board when it comes close to the next rezoning process in ten years.

Mr. Rheinstein arrived at 9:30 a.m. and Ms. Carey informed him that the Commission had been discussing the issue of a citizens' planning commission. She asked Mr. Rheinstein if he had any comments.

Mr. Rheinstein asked if the issue being discussed was the Planning Advisory Board.

Ms. Tate explained that the Planning Advisory Board is housed within the Executive Branch and they advise the County Executive and the Planning Officer. She stated that the Planning Commission would become an independent board or committee that would make recommendations in an advisory capacity from a different perspective.

There was further discussion between the Commission members and Ms. Tate regarding the concept of a Planning Commission.

Ms. Cook stated that she would be in favor of requiring more notice and outreach to citizens. She said she would also favor the County Council considering creating a Citizens' Advisory Board during the comprehensive rezoning process.

Mr. Enright said that he believes this should be kept in the statutory process, in that this advisory committee would be temporary for a specific period of time in anticipation of changes and creation in the rezoning plan, small area plans, and general development plan, etc. He said he believes it is necessary to have citizen input.

Mr. Rheinstein supported Mr. Enright's suggestion.

On motion of Ms. Cook, seconded by Mr. Rheinstein, the Commission members voted in favor of not establishing such a planning commission (Mr. Greene had not arrived yet).

Ms. Carey summarized that the consensus of the Commission is that there is significant community concern about the extent to which they are notified and given an opportunity to participate in decisions during the zoning process that affect their community.

On motion of Ms. Cook, seconded by Mr. Enright, the Commission members voted unanimously that the County Council consider looking at expanding the notice and outreach that are provided to citizens during the small area and comprehensive rezoning process; and to consider statutorily creating a Citizens' Advisory Commission during the comprehensive rezoning process which would be temporary for that period of time. (Mr. Green was absent)

#### County Council Approval of Funds Between Major Categories in the County Budget

Ms. Carey stated that currently there is no limit on the extent to which appropriations by the County Council can be transferred by the County Executive between classifications of expenditures within the same department. The question is whether or not the County Council should have some ability to limit or approve those transfers. She said that this issue has been discussed, but not voted on.

Ms. Carey stated that this subject came before the public in the General Election in 2008 and was defeated.

Ms. Tate said that in the State Code there is approval authority over transfers by the Board of Education between major categories. She said that if the County Council does not take action to disapprove the transfer within thirty days, then the transfer goes into effect. She stated that there is not a threshold amount. She said that when the Council gets the notice of the request to do the transfer, a resolution is prepared and the Council has to vote on it within thirty days.

She referred to a request in a 2008 Resolution that was to apply that sort of mechanism to all transfers within the County budget. There was a non-threshold amount listed on the Resolution which Ms. Sutherland recommended. Ms. Tate said that the Resolution failed 4-3 by the former County Council. Most of the opposition generated was because they thought it was micro-managing by the County Council. Mr. Hammond, Budget Officer was not in favor of that Resolution for the same reason.

Ms. Tate said that the issue before the Commission is to decide whether or not the County Council should have the final fiscal authority, should be able to approve transfers between categories, and if so, should it be tempered by a threshold amount.

Mr. Rheinstein stated that he believes the Council should have this authority and that Ms. Sutherland's proposal that there should be a threshold amount is a good idea. He said he believes the threshold amount should be proportional to the budget for each department.

Ms. Cook asked Ms. Tate to confirm that money transfers, between departments can only occur during the fourth quarter with Council approval. She also asked if there was a threshold amount or did all transfers have to be approved.

Ms. Tate said that if it is in a large category, it has to be approved. She said that the fourth quarter transfer is basically done in order to reconcile the budget.

Ms. Cook asked Ms. Tate if the idea currently before the Commission is whether or not a department must appear before the Council during the year if they want to transfer funds.

Ms. Tate said no, that is the purpose of the fourth quarter transfer. She said the only difference would be if a department would receive an increase in appropriation, such as grant money. They would have to get Council approval to approve a transfer between categories because of the change in appropriation.

Ms. Carey asked Ms. Tate to confirm that currently, transfers can occur between departments only during the fourth quarter and with County Council approval.

Ms. Tate responded affirmatively.

Ms. Tate said that the Council feels that if they gave a department a certain amount of money to fund a certain category, and the department decides to transfer some of that money into another category, the Council does not have any control over that and they want to be able to control transfers that have been designated to certain categories.

There was further discussion among the Commission members and Ms. Tate regarding whether or not the County Council should have final fiscal authority over transfer of funds between major categories in the County budget.

Ms. Cook made a motion, seconded by Mr. Enright, that County Council approval is not required of transfers of funds between major categories in the County budget within a department. The Commission members vote ended in a tie and they will vote again when Mr. Greene arrives.

#### Independent Audit

Ms. Carey stated that there is a provision in the Charter that requires an independent audit every four years with the incoming County Council and County Executive. She said that the question is whether or not that expense can be eliminated because there is an independent audit that occurs every year. She said that there is language proposed for this issue.

On motion of Mr. Rheinstein, seconded by Ms. Cook, the Commission members unanimously voted to eliminate the provision within Section 312 of the Charter which requires an independent audit every four years with the incoming Council and County Executive. (Mr. Greene was absent)

#### Evaluate Extending the Time in Which Action Must Be Taken On A Bill to Permit Additional Time for Public Hearings on Amendments

Ms. Tate read from the proposed language for Section 307 (j):

"ANY BILL NOT PASSED WITHIN NINETY-FIVE DAYS AFTER ITS INTRODUCTION, OR PRIOR TO NOVEMBER IN A COUNCILMANIC ELECTION YEAR, SHALL FAIL, EXCEPT THAT THE COUNTY COUNCIL MAY, BY AFFIRMATIVE VOTE OF FIVE MEMBERS, EXTEND THE EXPIRATION DATE OF A BILL TO THE NEXT LEGISLATIVE SESSION. ANY BILL NOT PASSED PRIOR TO NOVEMBER DURING AN ELECTION YEAR SHALL FAIL. "

Ms. Tate explained that it gives the opportunity by affirmative super majority vote to extend the expiration of a bill to the next Legislative Session. She said that she believes the word "ONLY" after "SESSION" should be included to show that it is for only one extension.

There was some discussion between Mr. Enright and Ms. Tate regarding the proposed language for extending the expiration date of a bill to the next legislation session.

Mr. Enright asked Ms. Tate to explain the difference between legislation session and legislation day.

Ms. Tate explained that there are two legislative sessions every month and those two sessions are also legislative days. She said that in the month of May, every day is a legislative day for purposes of voting on bills. Resolutions can be voted on at any time.

On motion of Ms. Cook, seconded by Mr. Enright, the four Commission members voted unanimously to amend Section 307 of the Charter to provide that "ANY BILL NOT PASSED WITHIN NINETY-FIVE DAYS AFTER ITS INTRODUCTION, OR PRIOR TO NOVEMBER IN A COUNCILMANIC ELECTION YEAR, SHALL FAIL, EXCEPT THAT THE COUNTY COUNCIL MAY, BY AFFIRMATIVE VOTE OF FIVE MEMBERS, EXTEND THE EXPIRATION DATE OF A BILL TO THE NEXT LEGISLATIVE SESSION ONLY. ANY BILL NOT PASSED PRIOR TO NOVEMBER DURING AN ELECTION YEAR SHALL FAIL." (Mr. Greene was absent)

Mr. Rheinstein said that since they were discussing Section 307 of the Charter, he would like to discuss the Open Meetings Act which is also in Section 307. He asked Ms. Tate to explain the distinction between meetings and legislative sessions.

Ms. Tate explained that a legislative session occurs on the first and third Monday of each month and every day in May according to the Charter. Every other quorum of the County Council is a meeting or a public hearing, but legislation can only be enacted on a legislative session day.

#### Council Recess

Ms. Carey explained that the issue before them is to consider a recess for the County Council in August. She said that currently the Council meets every first and third Monday of each month or in the event of a holiday, the following Tuesday, except November when it is a councilmanic election year and there are provisions for inclement weather or other natural disaster. She said that most of the other Charter counties do allow for a Council recess. She said that there is also a change in Section 308(d) of the Charter that provides for the Council being able to be called into session in any month.

Mr. Enright asked Ms. Tate how many of the Charter counties that have recesses have councils that are considered full-time as opposed to part-time.

Ms. Tate said that there are several of them.

Ms. Carey called for the vote on Section 208(c) of the Charter to provide in accordance with the proposed language, that the County Council be allowed to take a recess from its monthly legislative sessions in the month of August and also in November in a councilmanic election year, and to further provide that the Council may schedule a Legislative session in August if there is a Resolution approved by a majority of the Council. The four Commission members unanimously approved the language providing for a Council recess in August. (Mr. Green was absent)

Ms. Carey called for the vote on the proposed language for Section 208 (d) of the Charter which clarifies that the County Council can be called into an emergency session in any month, including the recess month of August. A motion was made by Ms. Cook, seconded by Mr. Enright. The four Commission members unanimously voted on the proposed language for a Council recess. (Mr. Greene was absent)

Ms. Cook asked Ms. Tate if there was further inquiry to the Council about whether or not they wanted to change the meeting dates from Monday evenings to Tuesday evenings.

Ms. Tate said she has not had an opportunity to speak with individual councilmembers. She said that she would email the councilmembers.

Mr. Rheinstein asked Ms. Tate if the actual meetings days are always specified by Charter in other counties or is it something that can be done by Ordinance.

Ms. Tate said that the specified days are usually in the Charter.

#### Remaining Issues

##### Binding Arbitration

Ms. Carey stated that binding arbitration is still an outstanding issue. She said that they will discuss it further after the next public hearing.

##### Expanding the Number of Districts from Seven to Nine

Ms. Carey said that the issue of changing the number of councilmanic districts has not been discussed. She stated that the last Charter Review Commission discussed this issue and decided not to make any changes in the number of districts.

Mr. Enright stated that it seems the only disparity in population that is over the threshold limits of acceptability is between District 4 and District 1. He asked Ms. Tate if she knew of any significant population increase anywhere in the County that would mandate dividing districts to create two more. He stated that he did not see any significant increase in population that results in the need for changing the councilmanic districts.

Ms. Tate stated that changing the districts at this point does not seem feasible. In order to create a South County district, everything in North County would have to be moved around. She said that it might be different ten years from now after the next census because the County is expected to experience a lot of growth in the Western part of the County.



Mr. Rheinstein stated that he believes that the Commission put forth several proposals that take care of the issues with regard to what was addressed from South County residents. One of the proposals was to take Crofton out of the South County District. He said that he believes the proposal for nine districts has come about as a result of a desire of a lot of people in more rural areas of the County that want to have their own district, but there does not seem to be a way to divide the County nine different ways and preserve natural boundaries. He stated that he is against creating nine districts.

Ms. Cook said that she does not believe the population at this time warrants an increase in nine districts. She believes this issue should be differed until the next decennial census.

Ms. Carey said that another issue regarding the creation of nine districts is one of additional expense such as two council representatives and staff. She stated that she does not believe there is a need to discuss creating nine districts at this time. Ms. Carey acknowledged Mr. Greene's arrival and informed him of the current discussion regarding the issue of nine councilmanic districts and asked for his input. (Mr. Greene stated that had he been present he would have voted in favor of eliminating the provision within Section 312 which requires an independent audit every four years.)

Mr. Greene stated that he concurs with Ms. Cook's assessment of waiting until the next census.

On motion of Mr. Rheinstein, seconded by Mr. Enright, the Commission members voted unanimously to recommend differing discussion of expansion in the number of council districts for the next Charter Review Commission.

#### Board of Appeals – Term Limits

Ms. Carey stated that at the first discussion regarding term limits for the Board of Appeals, three Commission members voted for no change, but then Ms. Schuett who had voted for no change expressed a desire for a re-vote based on the testimony of some citizens in the first public hearing who expressed a concern that some board members had entrenched views. She said that Mr. Greene was not present during the first vote.

Mr. Rheinstein said that what he heard from the testimony of citizens was a desire for term limits as a solution to a different problem with the Board of Appeals. He said that he believes the problem with the Board of Appeals is the fact that when a new Council comes in, one of the first things they must do is appoint Board of Appeals members. He suggested changing the actual starting and ending terms for the Board of Appeals or staggering their terms so they are not in the same time frame as the County Council term limits.

Mr. Enright stated that he is in favor of staggered term limits but is not in favor of setting term limits for the Board of Appeals to coincide with the County Council term limits.

Ms. Cook stated that she is also in favor of staggered term limits. She said she believes eight years is sufficient time to provide expertise and input into the Board of Appeals and also allows other qualified and experienced citizens the opportunity to participate and serve on the Board of Appeals.

Mr. Rheinstein said that he just wanted to clarify that when a new Council comes in and needs to appoint members to serve on the Board of Appeals, it isn't that they don't know enough qualified people it's that there are a lot of different things for them to do in a part-time role. They may not have much time to consider each applicant if they have to appoint someone within two weeks of taking office, so it might be easier for them just to reappoint the member who is already on the board. He stated that by changing the time the Board of Appeals members are appointed would address one of the citizen's concerns regarding the eighteen qualified applicants whom she felt did not receive enough consideration.

Mr. Greene stated that while he feels there is value in continuity on the Board of Appeals that does have adjudicatory authority; he would like the Commission members to consider staggered terms for the Board of Appeals members with no individual board member serving more than three consecutive terms, which would be twelve years in total.

There was further discussion among the Commission members and Ms. Tate regarding forms of term limits.

Ms. Tate will present draft language for term limits to the Commission members to consider at the next Commission meeting. Mr. Greene offered Ms. Tate assistance in drafting the language.

#### Open and Closed Meetings

Mr. Green asked Ms. Tate if a distinction between meetings and legislative sessions is necessary for the proposed language regarding open meetings.

Ms. Tate stated that in the Charter, a legislative session or day where the Council meets for the purpose of voting on bills, is on the first and third Monday of the month and everyday day in May, which is the annual legislative session. The Council always meets in public for purposes of complying with the Charter, if there is a quorum of County Councilmembers. She stated that a Resolution can be voted on at a meeting or a session, but they can only vote on bills as is dictated in the Charter.

Mr. Rheinstein stated that he doesn't see a need for a legislative session to ever be closed. He said that meetings could be closed as pursuant to the Open Meetings Act and the legislative sessions could always be open to the public.

Mr. Greene said that the exemptions in the Open Meetings Act are extremely specific and pointed and typically when bodies do close it is to get advice from Counsel, as well as dealing with a personnel issue where confidential information under seal needs to be addressed. He said he believes that as long as there is a transparent communication to the public saying that this is the Open Meetings Act and here are the exemptions by which a closed session can occur, they would understand the need for occasional closed sessions.

Mr. Enright stated that he would not support closing any legislative session of the County Council. He understands that there is an occasional need for the Council to meet without the public in order for the Council to generate or create legislation to obtain proprietary information, negotiations with contracts, licensing, or litigation that may be pending against the County. He said that he would be in favor of closed work sessions where the Council sitting as a whole could be briefed on sensitive issues. This would allow the Council to discuss these issues among themselves and they would be better informed to create legislation that would then go before the public hearing in the legislative session where they deliberate, vote and discuss the actual legislation.

Ms. Cook stated that she agrees with Mr. Enright. She asked Ms. Tate why the County Council wants the ability to close sessions.

Ms. Tate said that it has to do with select issues such as personnel consulting with Council. She said that this was specifically generated from one bill regarding legal settlements of a certain amount of money. There is not a mechanism where all of the councilmembers can sit and talk with the County Attorney about a pending legal matter or any matter to do with the County without having the public there. That is an unusual situation because the County Executive is free to meet privately with the County Attorney who is also his attorney to get any information, as well as members of the Self-Insurance Fund Committee; all of those individuals are able to meet in one room to discuss aspects of some matter before the County. She said that right now there are pending legal issues against the Council and they are unable to meet together with Mr. Hodgson, the County Attorney. He has to meet with them individually or in groups of three or less. She stated that the County is also at an impasse with several unions and the Council is unable to meet privately to discuss the issue with Mr. Hammond or Ms. Fulton, the Personnel Officer, without the public being there.

Ms. Cook said that she is in favor of legislation sessions being open and meetings being closed to discuss specified issues.

Mr. Rheinstein said that Section 307 of the Charter needs to be specific in that a legislative session needs to be open.

Mr. Greene said that by default, even under the proposed language for Section 307, a meeting of the County Council or Legislative Session of the County Council is open and remains such. He said the issue is if there needs to be a closed meeting with that meeting or session to discuss something that is otherwise allowed for under the Open Meetings Act. He said that for that specific purpose, the Council could do that, and once that specific purpose has concluded by the Open Meetings Act the Council has to come back into open session. He said that a legislative session even under the Open Meetings Act could not by definition be entirely closed because the operation of the Open Meetings Act provides exemptions. If you don't meet the exemptions, by default, the meeting is open. He said that if you violate the exemptions then there is an enforcement vehicle through the State Attorney General's Office for that violation. He said that this is just a mechanism for the first time that if they need to take counsel, to have confidential business or legal information divulged to them, then this would allow them to do so as a group rather than as individual members of the Council that members of the public would not see anyway.

Mr. Rheinstein asked if there was ever a need to meet privately during a legislation session. He said that there might be times the Council needs to meet as a group in private but not during a legislative session.

Ms. Tate stated that if the Council had to go into a closed session during the month of May to discuss impasse or binding arbitration, they would not be able to meet if a provision is not made for the Council to meet on a legislative session day, because every day in May is a legislative day. She referred to Section 208 of the Charter. She said that under Section 208 (e) regarding meetings, the definition says *meetings are for the purpose of performing other duties properly exercisable by the County Council under the provisions of this Charter other than enacting ordinances at such other times and at such places as the Council may determine.*

Mr. Rheinstein asked Ms. Tate why everyday in May has to be a legislation session day.

Ms. Tate said that it is for purposes of enacting the budget. She said there is a series of bills that are part of the budget. Because of the time and effort that goes into the amendment process, there cannot always be a designated day to vote on them.

Mr. Rheinstein said that he didn't have a problem with that but does not understand why every day has to be a legislative session day. He said that legislative session could be defined as a specific type of meeting in which the Council enacts legislation.

Ms. Tate responded by saying that amendments are part of the legislative process and no one knows every year what day they will be voted on. She said that the Council also votes on other things that are essential to the budget.

Mr. Enright said that if the County Council goes forth with a resolution saying that meetings requiring a quorum of the County Council are going to be closed for any reason, he doesn't believe that the public would pass that suggestion. Mr. Enright says he does not understand why, under the definition of meetings in Section 208(e), work sessions could not be sub-defined to allow closed meetings comporting with the Open Meetings Act.

Ms. Tate said that she will draft some changes under Section 208 (e) and under Section 307 meetings would be removed.

Mr. Greene said that it appears there is a fundamental misunderstanding of the State Open Meetings Act and procedurally what is allowed and what isn't allowed. He stated that you cannot engage in public policy making nor take a vote in a closed session under the Open Meetings Act, as it is a violation of law. He said that some of the things he is hearing are not applicable as a matter of law or procedurally. He said that how the public is going to view this is entirely divorced from the underlying recommendation that the Commission is making from a public policy perspective. He made a motion to table the discussion on open meetings and said that he would like someone from the Attorney General's Office to come and give a briefing to the members of the Commission on the State Open Meetings Act. Mr. Enright seconded the motion and the rest of the Commission members agreed to table the discussion.

Mr. Rheinstein said that he understands the open meetings law. He said that the problem is the Charter defining every meeting of the County Council as a legislative session.

Ms. Tate said that the next four Fridays are scheduled for the Charter Revision Commission to meet at 9:00 a.m. She said that she will call the Attorney General's Office to see which meeting someone will be able to attend. She reminded the Commission members that their final report is due on April 16 [so at least two of the scheduled meetings are needed to discuss the report].

Ms. Cook excused herself as she had to leave.

#### County Council Approval of Transfer of Funds Between Major Categories in the County Budget

Ms. Tate stated that there was a tie vote earlier on the issue of the County Council having authority to transfer funds between major categories in the County budget.

Ms. Carey stated that the vote on this issue will be reconsidered at the next meeting.

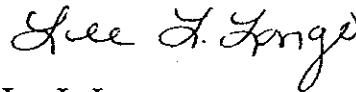
Mr. Greene asked to go on the record by saying that in the absence of the Commission fully and formally adopting Roberts Rules of Order regarding proxy voting, he said that he did correspond by email with the Commission members and, had he been present for the vote on the proposed language for adding the County Council approval of transfer of funds between major categories in the County budget, he would have voted yes.

Mr. Greene said that the minutes of this meeting will reflect and the public will understand that on this particular issue, there will be a majority of the Commission, should the vote be reconsidered, to make that recommendation.

ADJOURNMENT

The meeting adjourned at approximately 11:55 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lee L. Longo".

Lee L. Longo  
Reporter

ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION

Minutes

Public Hearing

February 27, 2012 - 7:00 P.M.

Council Chambers, Arundel Center, Annapolis, MD

---

Mrs. Carey, Chairman, called the meeting to order at 7:01 P.M. There were approximately 12 persons in the audience. The following Commission members were present:

Jana Carey  
Joshua Greene  
Patric Enright  
Karen Cook

Commissioner Rheinstein was absent

Also present were:

Elizabeth Jones, Administrative Officer  
Amy Tate, Legislative Counsel  
Lee Longo, Reporter to the Commission

Mrs. Carey explained that the second purpose of the Commission is to review the County Charter and recommend to the County Council any suggestions for advisable changes to the Charter. The request for changes to the Charter has come to the Commission members from the County Council, County Executive and department heads and citizens. She stated that the purpose of this public hearing is to seek public input on any of these issues or other changes that should be considered. Ms. Carey explained what changes have been requested.

Public Hearing

O'Brien Atkinson, President, Anne Arundel County Fraternal Order of Police and Chairman, Public Safety for Binding Arbitration Coalition, which convened in 2001 for the purpose of getting binding arbitration into the Charter. Mr. Atkinson stated that he came before the Charter Review Commission in 2002 and initially, there was not a lot of support to get binding arbitration onto the ballot. However, after much testimony it became apparent to the Commission and the Council that binding arbitration was something that was important to the public safety employees, and to the fairness of the negotiations' process. He stated that his group did not go into arbitration until 2010 and the only group that went before his was the Sergeant's Association in 2007. With every group the difference has been one of a very close margin. He stated that the seven times that employee groups have gone to arbitration with the County following the issues with the economy, no one has prevailed against the County. Mr. Atkinson stated that the important issue is the proposed change in the wording for binding arbitration in the Charter. He said that the Charter currently states that employees shall have the right to binding arbitration and the word "shall" should remain. He said that if the wording is changed to "may" have the right to binding arbitration, the County Executive could interpret that and say yes, you may, but you are not going to.

Craig Oldershaw, President, Anne Arundel County Professional Firefighters, stated that binding arbitration has been a useful tool for both parties. He said that it is a tool used by both parties to come up with a fair and equitable solution for the County and the labor organizations. Mr. Oldershaw said that the unions are currently in litigation over the County's perceived ability to eliminate what the voters have said they wanted. When binding arbitration was on the referendum, the County voters voted for binding arbitration. He said that the word "shall" in the Charter regarding binding arbitration gives the unions a chance to work with the County and the Council. He said that since currently there is ongoing litigation there should not be any changes made to the Charter until the issue is resolved in the courts.

Joel Smith, Attorney for the Coalition, spoke about the October 28, 2011 testimony of David Plymyer, Deputy County Attorney, who appeared before the Commission regarding binding arbitration. He stated that the matters of the law have changed since that testimony. He said that what was presented to the Commission at that time was a decision by the Circuit Court of Anne Arundel County about Section 812 and Bill 4-11. He said an appeal was filed on behalf of the entire Coalition on November 3, 2011 and on January 20, 2012, pursuant to that petition, the Court of Appeals is about to hear and decide on the issues that are in controversy, particularly the issue as to whether the Charter must be amended to authorize binding arbitration and the way in which the Charter must be amended to authorize and necessitate changes in the Executive budget system of the County. He explained that in 1998 there was a case regarding the Detention Center Officers and the Court of Appeals of Maryland held that this County had no Charter provision to fire or authorize binding arbitration between unions and the County. There was an amendment passed by the Charter Revision Commission in 1988 before that decision was released in which the County Council authorized collective bargaining but it did not authorize binding arbitration. There still remains the issue that there is a necessity to amend the Charter to authorize binding arbitration for there to be a change in the budget or appropriation process to make what is a result of the arbitrator's decision. Mr. Smith stated that it is premature for the Commission to recommend any changes to the Charter regarding Section 812 while these issues are before the Court of Appeals.

There was further discussion between the Commission members and Mr. Smith regarding the decision of Judge Goetzke regarding Section 812 and whether or not the Commission should proceed with recommendations to the Council regarding binding arbitration in Section 812.

Brenda Banas, Annapolis, stated that she is concerned about the possibility of allowing the Council to go into closed meetings. She asked the Commission that if they consider recommending a change to the Charter that will allow that to happen that they make sure there is wording to ensure they are in compliance with the State Open Meetings Act and also wording that specifies the reasons that the Council would be able to go into a closed meeting. She also expressed her concern regarding the possibility of the Council having more authority in the comprehensive rezoning process or the possibility of the rezoning process occurring more often. She also expressed her desire that there should be more public notice notification of any zoning change to communities in the beginning of the comprehensive rezoning process.



Millard Snowden, Glen Burnie, referred to Section 711 and 712 of the Charter regarding the transfers of funds. He said that he thought the wording in the Charter mirrored what Commission members had been discussing. Mr. Snowden said he had been approached by several people to recommend that the councilmembers only be allowed to rezone their district during the comprehensive zoning process.

Dennis Stevens, Linthicum, stated that he is opposed to the Council being able to have the ability to go into a closed meeting. He said that there should be definite deadlines for submissions of requested rezoning changes in the comprehensive zoning process, and those deadlines should extend for a period of time where maps are available to the public. He said that he believes that all requests for any changes to current zoning should be mandated to be submitted to the Office of Planning and Zoning for review. He said that no submissions for zoning changes should be submitted directly to councilmembers. (testimony hereby attached to official copy of these minutes)

Susan Cochran, Edgewater, spoke about filling vacancies on the County Council. She suggested that during the first three years of term, if a seat becomes vacant, there should be a temporary appointment made through the Central Committee of the party of the departed member until the three or four months that are required to accomplish a special election. (testimony hereby attached to official copy of these minutes)

Al Johnston, Severna Park, submitted a suggestion that wording used to remove the County Executive for cause that is in the Charter, be used for a County Council member also, since currently there is not a provision in the Charter for a termination for cause for a member of the County Council. He also recommended the Central Committee of the departed party be used to break a deadlocked vote in the Council. (testimony hereby attached to official copy of these minutes)

Joseph Delimater, Glen Burnie (District 3), spoke against the Council being able to go into a closed meeting. He said that a councilmember should not be able to submit any amendments in another district other than his own during the comprehensive rezoning process.

Karen Delimater, (District 3), outlined violations that are going to come from what the Commission members are considering to recommend against the County Charter and the US and Maryland Constitutions. She read portions of the US Constitution and the Maryland Constitution. She stated that at the January 20, 2012 public hearing of the Charter Revision Commission Chairman Carey referred to an e-mail from a person who was not named and was not provided in the documentation along with all of the other documentation, asking that the County Council closed its meetings to the public. She said that in Section 307(a) of the County Charter, it states that all meetings and legislative sessions of the County Council shall be open to the public. She said that a dubious email request that is clearly not in the peoples' best interest should not be considered by the Commission. She stated that the Commission is supposed to be representatives from the citizens. Ms. Delimater continued to address her grievances.

There was no one else present who wished to speak and the public hearing was concluded.

Ms. Carey said they invite anyone to write the Commission with their concerns or suggestions in care of the County Council.

Adjournment

The meeting was adjourned at approximately 8:10 P.M.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter

ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #10  
March 2, 2012 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:05 A.M. with the following members present:

Jana Carey  
Joshua Greene  
Karen Cook  
Patric Enright  
Jason Rheinstein

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel

There was approximately 1 person in the audience.

APPROVAL OF MINUTES

Minutes of February 24, 2012 and February 27, 2012 will be approved at the next meeting on March 2, 2012.

OUTSTANDING ISSUES

Elimination of Pension Oversight Commission (Section 606)

Ms. Carey stated that this was something that was proposed by Mr. Hammond in his letter of October 31, 2011. She said that his reason for this request was because there is a Board of Trustees that has been performing the Charter responsibilities assigned by the Charter to the Pension Oversight Commission.

Mr. Greene made a motion to recommend eliminating the Pension Oversight Commission, seconded by Ms. Cook.

Mr. Enright said that under the Pension Oversight Commission in Section 606(a) of the Charter, it states that it should be independent. He said that in the Code, they created the Board of Trustees, which assumed all of the duties of the Pension Oversight Commission. He said that he is concerned by the fact that a previous Council created the Board of Trustees, which in effect took away all of the powers of the Pension Oversight Commission, which is independent of both the legislative and executive branches of the County government. He asked if the Board of Trustees was independent or is it tied to the legislative or executive branches.

Ms. Carey said that she did not know the answer to that question.

Ms. Cook asked if the overlap between the Board of Trustees and The Pension Commission has been defined. She asked if someone could explain what the Pension Commission does versus the Board of Trustees.

Ms. Carey stated that there is no provision in the Charter that relates to the Board of Trustees. She asked Ms. Tate if there was a statutory provision relating to the Board of Trustees, and if so, could the Commission members get a copy.

Ms. Tate stated that the main function of the Pension Oversight Commission is to review legislation that pertains to the pension fund. She said that, according to the Anne Arundel County Code, Title 2 of Article 5, the membership on the Board of Trustees consists of the Chief Administrative Officer, Controller, Personnel Officer, Budget Officer, Director of Public Works, and five trustees; one of whom is a participant in the Fire Service Retirement Plan, one in the Police Service Retirement Plan and a member of FOP Lodge 70; a participant in the Detention Officers' and Deputy Sheriffs' Retirement Plan; and one of whom is a participant in the Employees' Retirement Plan and a member of either Local 582 or Local 2563 of the American Federation of State, County, and Municipal Employees AFL-CIO; and one of whom is a participant in the Employees' Retirement Plan, and is not a member of a certified employee organization. There are also three Trustees who are residents of the County, are not employees of the County or participants in any of the plans, and are knowledgeable in the administration and operation of pension systems and trust funds. She said that there can be no overlap in membership with the Pension Oversight Commission and the Board of Trustees,

Mr. Enright stated that it appears that the Board of Trustees seems to be tied to the executive branch. He said that the Charter, under 606(b) outlines the qualifications for the Pension Oversight Commission that provide for its independence. He said that he has a problem with the existence of the Board of Trustees in comparing it to the intended construction with the independence of the Pension Commission. He said that he is considering requiring the County Council to readjust the Board of Trustees since it was a County Council that created the Board to begin with, and give the strength back to the Commission.

Ms. Tate stated that the Pension Oversight Commission is appointed exclusively by the County Executive, whereas with the Board of Trustees, there is an election of the individual who serves with the Union. She said that they each have their own independent aspects to them. In terms of the list, it goes to the County Executive for the Pension Oversight Commission for selection and the County Council confirms them. She said that with the Board of Trustees, the employees do have some input as to who their representative will be. She stated that she would make copies of the Code and the Charter so the Commission members can compare the Pension Oversight Commission and the Board of Trustees.

Mr. Greene asked Ms. Tate if the Pension Oversight Commission is an advisory body.

Ms. Tate answered in the affirmative.

Mr. Greene said that since the Commission is advisory in nature and has an advisory role in reviewing legislation that would otherwise impact pensioners, there is nothing binding in terms of authority that the Commission can do, and their recommendations can be ignored. The Board of Trustees has the authority in the affairs of the pension, pension management and trusteeship. He said that is why he is in favor of eliminating the Pension Oversight Commission in that it is purely advisory.

Ms. Tate said that the Board of Trustees has an oath of office and a fiduciary responsibility to ensure the continuing health of the pension plan. She said that the Pension Oversight Commission, having been in existence beforehand was a check before any pension legislation could be passed. She said that she could provide some legislative history of what the Pension Oversight Commission said about the establishment of the Board of Trustees, if the Commission members would like to review it.

Ms. Cook said that she thinks there might be room for both the Oversight Commission and the Board of Trustees, and some thought could be given to redefining the role and scope of the Pension Oversight Commission.

Ms. Carey said that it was Mr. Hammond's proposal to eliminate the Pension Oversight Commission because they were duplicative of each other.

Ms. Tate answered that the Pension Oversight Commission doesn't perform most of the activities that they are supposed to because the Board of Trustees has been taken over those duties.

Ms. Carey said that in Section 606 of the Charter, five members of the Pension Oversight Commission are supposed to have some knowledge and experience in pension administration and funding. She asked if there was a similar requirement for the Board of Trustees.

Ms. Tate said that there are requirements in the Code for the residents of the County who are not employed by the County. She said that the Code states they must be knowledgeable in the administration and operation of pension systems and trust funds.

Mr. Greene made a motion to table the discussion of the elimination of the Pension Oversight Commission until additional information is received.

Section 610 change in verbiage for technical reasons

Ms. Carey said that this request came from Mr. Hammond requesting a change in the verbiage for this section for technical reasons. Ms. Carey asked Ms. Tate if she had the wording change from Mr. Hammond.

Ms. Tate said that she did not but would email Mr. Hammond and ask him to provide it.

Change in deadlines for submitting and enacting budgets

Ms. Carey stated that this issue was discussed in length with the Commission and Mr. Hammond and Ms. Sutherland, and she did not think either one of them were opposed to making a change of date for submitting and enacting the budget.

Ms. Tate said that Ms. Sutherland stated that when the budget submission date was changed to April 15, she was skeptical, but after only one year, she is in favor of the new submission date. She said that Ms. Sutherland believes more time is needed to determine whether April 15<sup>th</sup> permits adequate evaluation of the General Assembly actions and whether or not the Administration has to introduce an unmanageable number of amendments to correct the budget for actions by the General Assembly that impact the County's budget. She said that Ms. Sutherland also stated that she didn't have an objection to adding the fifteen days on the back end, so May 1 would be the starting date and finishing on June 15, which Mr. Hammond would prefer.

Ms. Carey asked Ms. Tate if she thought that both Mr. Hammond and Ms. Sutherland would be agreeable to starting the budget process on May 1 and finishing no later than June 15.

Ms. Tate answered affirmatively.

Ms. Cook stated that Ms. Sutherland said that she thought the new budget submission of April 15<sup>th</sup> went very well. She asked Ms. Tate her opinion of the new date.

Ms. Tate said that she thought it was helpful for the Auditor's staff to have the extra time, because the budget meetings did not start until May 1. She stated that she also thought it was helpful for the Council, as there were five new members and it gave them an extra two weeks to review the budget before the meetings began.

Ms. Cook stated that she is thinking about suggesting keeping the date of April 15<sup>th</sup>. She asked Ms. Tate if the Administration had to introduce an unmanageable amount of amendments to compensate for actions by the General Assembly in the last budget.

Ms. Tate said that the Administration's projections were relatively accurate and she thought the budget process went smoothly. She said that the problem that currently exists is that there is a new provision for binding arbitration. The budget is starting on April 15<sup>th</sup> and the final awards won't be coming until April 30<sup>th</sup>. She said the County has never been in the position of having to adjust for awards as it has always been the County's final offer. She said that in any budget year you can end up making adjustments and having a supplemental budget.

Ms. Cook asked Ms. Tate if she thought the same time-saving effect would be achieved if the fifteen days were added at the end of the budget as opposed to the beginning.

Ms. Tate answered affirmatively.

Ms. Cook said she believes the additional time is useful. She said she is considering either suggesting keeping the April 15<sup>th</sup> date, or adding the fifteen days onto the end of the budget process.

Mr. Enright stated he did not think one budget cycle with the new date is enough to consider a change.

There was further discussion regarding the issue of changing the submission date of the proposed budget.

On motion of Mr. Rheinstein, seconded by Ms. Cook, the Commission members unanimously voted to not recommend changing the submission date of the proposed budget cycle.

#### Restriction in use of Bond Premium

Ms. Carey stated that Mr. Hammond recommended that there be a Charter restriction on the utilization of bond premium so that it could only be utilized for the funding of capital improvements incorporated in the County's capital budget.

Ms. Cook referred to page two of Ms. Sutherland's memo in which she specifically talks about the impact that this issue would have on the Board of Education and Anne Arundel Community College. She recused herself from the discussion as she is an employee of Anne Arundel Community College.

Ms. Carey asked Ms. Tate to explain how Mr. Hammond wanted the bond premium to be used.

Ms. Tate said that Mr. Hammond has asked that it be restricted for capital improvements.

Ms. Tate said that Ms. Sutherland opposes that recommendation because it should be left to the Council as to where the funds are allocated.

Mr. Rheinstein asked if there was proposed language by Mr. Hammond.

Ms. Tate suggested that the Commission take a vote whether or not to consider recommending the restriction on bond premium before the proposed language.

Mr. Greene stated that he believes that this is a policy question as to which governmental body should have the control to make the determination of the use of the bond premium. He said that given the capital project backlog and infrastructure, and the fact that the school system and the community college system is where the bulk of the capital finance that is raised through bonds, the bond premium should follow towards those capital projects. He said that the County Council should not be allowed to allocate the revenue from those bonds somewhere else that is outside of capital infrastructure planning. He said that as a matter of policy, given the current fiscal restraints, he believes that there should be a restriction on the use of bond premiums and that it should stay with the capital projects.

Mr. Greene made a motion, seconded by Mr. Rheinstein, for discussion purposes only, that the Commission recommends an amendment to the Charter that bond premium be allocated solely to capital projects.

Mr. Enright asked Ms. Tate if all bonds were only for capital constructions.

Ms. Tate answered affirmatively.

Mr. Enright said that he would like the bond premiums to be restricted to supplement the bond itself for its purpose, just in case there is a bond that is not for capital construction.

Ms. Tate referred to Section 720 and 721 of the Charter that talk about bond issue authorization ordinances which are authorized under Section 709. She said that in Section 709 it states: *The County Council may, at the same time or thereafter from time to time during the ensuing fiscal year, adopt bond issue authorization ordinances providing the means of financing such capital projects as are to be financed from borrowing in the ensuing fiscal year. All of said ordinances shall be exempt from the executive veto.*

Ms. Tate said that Section 721 of the Charter explains what needs to be in a bond ordinance, describes each of the capital projects, the estimated costs for the projects, and the financing, as well as, the probable useful life of the projects to be financed. She said that she is hesitant to have restrictive language in the Charter.



Mr. Rheinstein said that he thinks both Mr. Greene and Mr. Enright are saying the same thing. He said that he agrees with Mr. Enright in that the bond premium should be restricted to capital projects, and that the bond premium should be used for the same purpose as the bond was issued. He said that he thinks Mr. Greene's definition would allow the bonds to be used for any project.

Mr. Greene stated that he wanted to clarify the issue with bond premium. He stated that the bond premium is a premium that accrues to the County on the sale of a bond, and the use of that premium can be utilized for debt service, other issuances, etc. He said that the Commission needs to be careful about micro-managing whether or not the bond premium on a specific bond, has to stay within the issuance of that particular project. He stated that he would not be in favor of any language that would micro-manage the use of bond premium from a specific sale of a specific bond to that particular capital project. He said that using the bond premium in the overall capital improvement budget of the County, given current fiscal conditions, seems to be the prudent thing to do.

Ms. Tate handed a copy of last year's bond ordinance to the Commission members to review. She said that by looking at the bond ordinance, it would be difficult to allocate that bond premium because of the number of issuances.

Mr. Rheinstein suggested that perhaps there could be less bonds issued. If bonds are issued for capital projects and the bond premium is used to reinvest in the capital projects, then in the future the County would be saving money leading to the issuance of less bonds. He said that if the bond premium is restricted to the same project, then it would be used to defray some of the cost related to that project also relating to overall reduction in total bond issue and expenditure. He said that he thinks that both of the suggested proposals are attempting to make sure that revenue that comes in from issuing bonds in the form of bond premium doesn't go elsewhere. He wanted to know if both proposals would accomplish the same end goal without having too much micro-management.

Mr. Greene addressed Mr. Rheinstein's comments. He stated that the bond ordinance and issuances that occur on an annual basis are subject to a bond cap for the County. He said that due to inflation, he didn't think there was a way in which using bond premium would bring down the level of applicability of not reaching that bond cap on an annualized basis. There are too many backlogs in the capital budget for that to happen. He said that one of the uses of bond premium is to pay down debt of other obligations. He said that could be done by any administration. He said that he did not want the motion to otherwise impact the ability for the executive branch to use that bond premium for that particular purpose. He stated that if bonds are issued for the capital project, then bond premiums should be used restricted to the capital budget. He stated that is what he proposed.

The Commission members voted 4-0 (Ms. Cook – recused) on Mr. Greene's previous motion, that the Commission recommends an amendment to the Charter that bond premium be allocated solely to capital projects.

Mr. Greene moved to reconsider the vote.

#### Definition of Capital Projects

Ms. Carey asked Ms. Tate what verbiage should be added to that definition.

Ms. Tate stated that the definitions of capital projects are in Section 702(b) of the Charter. She said that Mr. Hammond wants to be able to add something in the Charter that is not bricks and mortar, but has a useful life of an extended period of time such as a personnel management system or an emergency management system. She said that it would give him more leeway in terms of funding and how to manage it.

Ms. Carey said that she believes that Mr. Hammond referred to a computer system that would have long-term usefulness in a particular area in much the same way that some capital projects do.

Ms. Tate said that several different departments in the County have large investments in computer systems that are not working. She said if it was defined as a capital project in the Charter, and a bond was issued, then the County would be paying interest for something that doesn't work. She said that she didn't think Ms. Sutherland offered an opinion on this request.

Mr. Rheinstein said that he appreciates the recommendation, but asked if the language that is currently in Section 702 pertaining to the fiscal betterment is not going to be addressed, then how would the definition of a capital project be addressed versus a non-capital project. He suggested that he would look to Mr. Hammond to provide a definition.

Mr. Greene said that having a working definition would be a good idea for discussion and deliberation purposes. He offered to write some proposed language in time for the next meeting. He said that Mr. Hammond was talking about IT systems and enterprises. He stated that this type of improvement would have to come out of the operating budget and because of fiscal restraints this is not going to happen. He said that the County is getting further and further behind in technology and other resources. He stated that there should be a broader definition of a capital project, so that bond premium could be used for enterprise-type solution improvements such as the County's technology infrastructure that would otherwise have to be in the County's budget. He said that he would also include the public school system and the community college.

Ms. Carey said that the definition of a capital project is located in the Charter Section 702(b) which includes any physical public betterment or improvement. She said that she does not know if "physical" includes computer systems or not. She said the definition also includes the acquisition of property of a permanent nature. She said there seems to be a lot of room for defining what this definition of terms covers.

Mr. Rheinstein said that from a tax and business standpoint, capital expenditures are defined as any asset that may be used over a period of time, and different types of expenditures have different life spans.

Ms. Carey summarized what the Commission members have so far discussed. She stated that with respect to the Pension Oversight Commission, it was decided that the Commission members would compare the Board of Trustees which is located in the County Code, and compare it to the Pension Oversight Commission which is located in the Charter before making any decision on the possible elimination of the Pension Oversight Commission. She said that regarding Section 610, Ms. Tate will work on proposed language for the change in verbiage for technical reasons. Ms. Carey said that there was a decision not to recommend any change in the deadlines for submitting and enacting budgets. With respect to bond premium and the definition of capital projects, Mr. Greene will propose some language to present at the next meeting.

#### Desirability of changing County Council meeting dates from Mondays to Tuesdays

Ms. Carey said that this issue is not something that the County Council has asked the Commission members to address so this will not be discussed.

#### Draft language on staggered term limits for Board of Appeals Members

Ms. Carey stated that this was discussed at the last meeting and asked Ms. Tate if she drafted any proposed language.

Ms. Tate said that she had previously emailed a copy of Resolution 23-00 which dealt with this issue. She said that if term limits were going to be imposed at the next election in 2014, when they need to be reappointed, and there was a member already serving, you would finish out at a certain date.

Mr. Rheinstein said that he thinks it makes more sense to appoint members to terms of varying lengths beginning in 2014. He stated that beginning with the 2014 appointment, the term limits would set in and none of the time served before that would count toward the term limit. He said that he thinks that is what Mr. Greene suggested when this issue was previously discussed.

Ms. Tate said that the language in Resolution 23-00 which would have modified Section 601 of the Charter, states: *A MEMBER WHO HAS SERVED TWO FULL CONSECUTIVE TERMS AS OF OR AFTER THE TERM COMMENCING ON JANUARY 6, 1999 IS NOT ELIGIBLE FOR APPOINTMENT TO A THIRD CONSECUTIVE TERM.*

Ms. Tate said if there was a group that was in their first term as of January 1, 2014, then their term would be reappointed in 2015, but they would not be reappointed after 2015.

Mr. Rheinstein stated that if term limits are going to be adopted, then they should be adopted the way they were in the twenty-second Amendment which related to the Office of the President: *...but this article shall not apply to any person holding the Office of President and shall not prevent any person who may be holding the office or acting as President during the term within which this article becomes operative from holding the Office of President or acting as President during the remainder of such term.* He said that he would make this effective with the appointment.

Ms. Tate stated that the Resolution does go with the fact that a member is not removed once the term limits are implemented, they are eligible for a third term. She said that the Board of Appeals is supposed to be an independent and a political process. Part of how that functions well is that every member is appointed at the same time. When you get into the position where one or two Councilmembers whose Board of Appeals appointee is up for consideration and no one else is, then there is not a level playing field. She stated that there cannot be an assumption that the members of the Board of Appeals are only serving for the time period of the Council who appoints them. There are people who are appointed over time by several councilmembers. Ms. Tate said that the Commission needs to understand how these individuals are selected and either approves the concept and let the Council decide how to implement the term limits, or look at how it was done in the past. She said that Resolution 23-00 failed by one vote and that was an abstention.

Mr. Greene stated that while he is a proponent of term limits, in light of Ms. Tate's response in this particular context, the staggering may, in the interim, propose a potential logistic problem as well as a fundamental fairness problem as it relates to a level playing field. He said that he is concerned that without term limits, that person could serve, if they agree, in perpetuity. Mr. Greene said that if the Commission agrees that term limits are a good idea, then perhaps the recommendation could be that there be a prospective date in the future and at that prospective date, from that point, moving forward, that the Board of Appeals members are limited to either two or three year consecutive terms. He offered to work with Ms. Tate in drafting proposed language.

Ms. Carey asked Ms. Tate if the Commission provided a Charter amendment that stated as of the day in which the Charter amendment would become effective, any member who has served two full consecutive terms as of that date, would not be eligible for a third consecutive term, would that remove all current members of the Board of Appeals.

Ms. Tate said that she wasn't sure. She would have to check.

There was further discussion regarding staggering term limits for the Board of Appeals among the Commission members and Ms. Tate.

Ms. Carey summarized that it seems that the consensus of the Commission members is that the members of the Board of Appeals members should have term limits; and the removal of members of the Board should be staggered so that not all of them are gone at one time. She asked Ms. Tate if it was possible for the Commission members to vote on just those concepts and leave the implementation of those concepts up to the County Council.

Ms. Tate answered affirmatively.

Ms. Cook stated that she thought leaving the implementation up to the County Council in theory was good, but she said she would like to see if the members of the Commission could agree on proposed language. She offered to work with Mr. Greene on the proposed language.

There was further discussion among Commission members regarding term limits.

Ms. Carey summarized by saying this could be done in two steps, one of which was agreeing that there should be term limits, and then develop a mechanism for how those should be imposed, or leave it up to the Council to implement.

Ms. Cook, seconded by Mr. Greene made a motion, for discussion purposes, to impose term limits for the members of the Board of Appeals.

Mr. Greene suggested that he would be in support of term limits for two consecutive terms. He said that the Board of Appeals is different in that they have adjudicatory authority, they are paid, and their decisions have a fiscal impact on the County.

Ms. Cook stated that given the independent nature and adjudicatory authority of the Board of Appeals, she would support a three-year consecutive term limit.

Mr. Rheinstein said that he was thinking about two consecutive terms, but perhaps changing the length of the terms. He said that one of the issues that he has is that the Board of Appeals members are appointed by the County Council shortly after they take office. He stated that there is not a lot of time for the Council to consider applicants. He would suggest two-year terms.

Mr. Enright said that he agreed with Mr. Greene that the Board of Appeals is unique, in that it has adjudicatory authority, and that the members should have term limits. He said that when comparing the Board of Appeals' terms and their authority with the judiciary and the County Council with their terms and authority, perhaps there could be a longer term or longer term limits. He said that perhaps there could be three terms of four years each or two terms of five years each.

Ms. Carey suggested that the question be divided into three parts:

1. Limit on the number of terms.
2. Length of term
3. Term Limits

Mr. Greene asked Ms. Tate if the Charter or Code prescribe that the four-year term on the Board of Appeals member is to run concurrently with the County Council.

Ms. Tate answered affirmatively.

Mr. Greene said that if term limits are imposed then there would have to be a further amendment to the Charter regarding the length of the term limits.

Ms. Tate said that the previous Resolution that failed only imposed term limits it did not change the length of the term.

Mr. Greene suggested making a term for five years. By making it five years, the member would not be running concurrently with the County Council and then it would become a natural staggering effect. He said that this was just a suggestion and that he is still comfortable with just making a recommendation for not making any other change other than placing term limits on Board of Appeals members for two consecutive terms, or perhaps three consecutive terms.

Mr. Rheinstein said that he does not believe that term limits really address the issue that people have complained about.

Mr. Greene, seconded by Mr. Enright made an amendment on Ms. Cook's motion to impose term limits on the Board of Appeals members to no more than two consecutive four-year terms.

The Commission members voted unanimously in favor of the amendment to Ms. Cook's motion.

Mr. Greene moved for a roll call vote on Ms. Cook's amended motion that would propose term limits to no more than two consecutive four-year terms.

Mr. Enright - Aye  
Mr. Rheinstein – abstain  
Mr. Greene – Aye  
Ms. Cook – Nay  
Ms. Carey – Aye

The amended motion passed with a vote of 3 in favor, 1 opposed and 1 abstained.

Mr. Greene made a motion to reconsider the vote.

Ms. Tate said that proposed language can be given at a future meeting for another vote.

Mr. Greene made a motion to table this discussion for the next meeting. The Commission was in favor of the motion.

Oversight of Board of Appeals and, if so, how to structure the oversight

Mr. Greene stated that in the absence of a planning commission that has adjudicatory authority or just an advisory capacity, he doesn't know if there is anything that the Commission can do to establish a new commission or board to oversee the Board of Appeals. He stated that he would not support establishing either one, but might support a recommendation for an amendment to the Charter that there be at least two annual oversight sessions, that the County Council must hold, where the Board of Appeals must appear before it in the form of an oversight public hearing.

Ms. Tate stated that the Board of Appeals is not quasi-independent, they are independent. They are only dependent on the legislative branch for their finance. She said that her hesitation as to them coming before the Council seems to diminish their authority as an independent Board. She said that in the Code there is a provision that adheres to complaints against Board members. She stated that in terms of their adjudicatory body, the Circuit Court holds that check on them.

Mr. Greene said that the oversight hearings that he is referring to are not designed to relegate any decisions. He said that his reasoning was to give the public, on a semi-annual basis, more transparency than the Board of Appeals currently has.

There was further discussion among the Commission members and Ms. Tate.

Ms. Carey stated that there seems to be a consensus not to recommend any oversight of the Board of Appeals.

Line Item Veto authority of County Executive

Mr. Greene stated that this issue was addressed before Ms. Cook and Mr. Enright were on the Commission. Mr. Greene said that in absence of a motion to reconsider the vote, he suggested that he believes Ms. Cook and Mr. Enright should have their comments as part of the record.

Mr. Greene made a motion, seconded by Mr. Rheinstein, to reconsider the vote and have a discussion with the two new Commission members.

Ms. Carey asked Ms. Tate for a quick overview of the line item veto authority of the County Executive.

Ms. Tate said that the line item veto is for all of the legislation and amendments in the County, but not for the budget. She said that the County Executive can line item veto all, or a portion of legislation except for fiscal items that is presented to him or her. She said that the budget comes before the Council with all of the accompanying legislation, to implement the budget and does not go back to the Executive for signature or veto. She said that the discussion to date, and the vote, reflects the complete removal of the line item veto authority. She said there was some discussion about tempering the line item veto so that it is only available for comprehensive rezoning. Ms. Tate said that the line item veto authority is used to undo amendments to legislation from the County Council. She said that one of the reasons this issue is before the Commission members is that the County Council came to a consensus and voted unanimously for a change in the binding arbitration law, but when it was returned, the amendment portions that they adopted were taken out by line item veto and the items did not survive the override. She said the effect was that the legislation as was originally presented by the Executive became law. Ms. Tate stated that the Commission can decide to remove the line item veto authority, modify it, or leave it the same. She said that previously, four members of the Commission voted to remove it completely.

Mr. Rheinstein stated that he remains opposed to line item vetoes.

Ms. Cook asked Ms. Tate if the effect of removing the line item veto would be that the County Executive would have to veto the entire bill.

Ms. Tate answered affirmatively.

Mr. Enright stated that as a private citizen, he sat through the binding arbitration bill process, including the amendment process, and the override attempts, as well as the three major bills that encompass the comprehensive zoning process. He said that he did this to learn about the line item veto process. He said that he is opposed to the line item veto and would vote in favor of eliminating the line item veto authority. He said that in terms of vetoing the entire bill, the County Executive would be required to provide a statement that would explain his reasoning for the veto and the statement would identify the parts of the bill that he is objecting to in his veto.



Ms. Cook stated that she is opposed to the line item veto, but she would like to hear a discussion as to why it wouldn't be useful for the comprehensive zoning process. She said that in most cases, the Planning and Zoning Department has the expertise and they go through the tedious and time-consuming complex process of the comprehensive zoning process. She asked the Commission members if there was ever a proposal to eliminate the line item veto except for the comprehensive zoning process, and if so, what was the rationale for not voting in favor of it.

Mr. Greene responded to Ms. Cook's question and said that there was some discussion regarding the issue of eliminating the line item veto except for the comprehensive zoning process. He said that one of the reasons why he voted on eliminating the line item veto was that it would force the legislative branch and the executive branch to resolve their differences when it comes to the comprehensive zoning bill regarding the amendment process. He said that in addition from what he has seen in the County regarding the veto overrides and the unsuccessful overriding of certain vetoes, it seemed that there was too much subjective determination of individual Councilmembers, while at the same time giving the County Executive a lot more power in that process. He stated that if the two branches could not come to a resolution with the recommendation of the professionals at Planning and Zoning, then the County Executive can veto the entire legislation until an agreement can be reached.

Ms. Cook asked Mr. Greene if the line item veto would be helpful for those citizens that came before the Council to voice their concern that an amendment proposed by the Council was imposing or inappropriate because the Administration could then veto that amendment in the bill.

Mr. Greene said that it could, but he would rather have the County Executive say no to the legislation, as well as the requirement that the veto have an explanatory statement. He stated that the check could be done that way versus the possibility of the veto not being overridden.

Ms. Cook asked if that meant that the comprehensive zoning process would have to be done over again if the whole bill was vetoed.

Mr. Greene said that it was his understanding from the legislative procedure that the bill could come back in an amended form that takes into consideration the problems with the amendments that were presented and then be re-voted on. He asked Ms. Tate if he was correct in his summarization.

Ms. Tate said that if the legislation didn't survive the override, the bill is dead. She said that the Administration could re-introduce the bill with the changes that were agreed upon at the next legislative session.

There was further discussion among the Commission members regarding the elimination of the line item veto authority by the County Executive.

Ms. Cook stated that since she would be in the minority, she agreed to let the vote stand.

Mr. Enright stated that he would be in the majority and asked that the vote stand in the elimination of the line item veto authority of the County Executive.

Mr. Rheinstein suggested discussing the remaining issues of the County Council Vacancies and Binding Arbitration until the next meeting and discussing the Open Meetings Act.

Ms. Tate stated that Ms. Sutherland will be at the next meeting to discuss the issue that was tabled regarding the Pension Oversight Commission and also the bond premium issue that Mr. Greene reserved for reconsideration.

Ms. Tate said that she has asked when someone from the Attorney General's Office would be available to appear before the Commission to discuss the Open Meetings Act and is waiting for their response.

Mr. Rheinstein moved to table the County Council Vacancies and Binding Arbitration until the next Charter Revision Commission meeting and to table the Open Meetings Act discussion until Ms. Tate has heard from the Attorney General's Office.

Ms. Carey asked Ms. Tate if there was anything else that wasn't on the agenda that is still outstanding.

Ms. Tate said that there are still requests that came from the public during the first and second public hearings.

Ms. Tate said that the Commission members need to decide when their last meeting would be. She said that the final report has to be submitted at the April 16<sup>th</sup> Council meeting and one meeting is needed to go over the report.

The following dates are scheduled for meetings:

March 9, 2012 – Friday, @9:00 a.m.  
March 16, 2012 – Friday, @9:00 a.m.  
March 23, 2012 – Friday, @9:00 a.m.  
March 30, 2012 – Friday, @9:00 a.m.  
April 11, 2012 – Wednesday, @9:00 a.m.

ADJOURNMENT

The meeting adjourned at approximately 11:56 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter



ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #11  
March 9, 2012 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:02A.M. with the following members present:

Jana Carey  
Joshua Greene  
Karen Cook  
Patric Enright  
Jason Rheinstein

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel  
Teresa Sutherland, County Auditor

There were approximately 3 people in the audience.

APPROVAL OF MINUTES

The minutes of February 24, 2012 and February 27, 2012 were approved as presented.

ITEMS FOR DISCUSSION AND VOTING SUGGESTED BY THE COUNTY COUNCIL AND/OR COUNTY BUDGET OFFICER

Elimination of Pension Oversight Commission (Section 606)

Ms. Carey stated that the Commission members were supposed to review the Code and the Charter so they could compare the Pension Oversight Commission and the Board of Trustees.

Mr. Enright stated that he believes one of them needs to be eliminated, but he is concerned about what would happen to the existing members should their commission/board be eliminated.

Ms. Carey asked Ms. Tate what provision of the Code relates to the Board of Trustees.

Ms. Tate answered that it was located in Sections 5-2-101 thru 5-2-111 of the Code.

Ms. Carey stated that the responsibilities for the Board of Trustees are defined more broadly in the Code. She asked the Commission members if they wanted to discuss the possibility of eliminating either the Pension Oversight Commission or the Board of Trustees.

Ms. Cook said that the Pension Oversight Commission is an advisory body and the Board of Trustees has a fiduciary responsibility. She agreed that there appeared to be some duplication of duties between the two bodies, but wondered if it would be possible for them to co-exist, with one body acting in an advisory capacity to the other.

Mr. Enright asked if the two bodies were to co-exist, should there be some verbiage that mandates a synergy between the two, or could they work independently.

Ms. Carey said that the duties of the Pension Oversight Commission are to submit an annual report that accesses the appropriateness of the actuarial assessments; whether or not the statement of revenues is correct for the plan; the cost and the administration of the plan; and any proposed amendments or proposals that the Commission may wish to recommend. She stated that the Commission is an oversight body and that the Board of Trustees is responsible for the day-to-day activities.

Ms. Cook asked Ms. Sutherland if the Board of Trustees consults with the Pension Oversight Commission or looks to them as an advisory board.

Ms. Sutherland responded that she is not aware of any such action between the Board of Trustees and the Pension Oversight Commission. She said that the Pension Oversight Commission has been almost non-existent since the Board of Trustees was formed.

Ms. Cook asked Ms. Sutherland if she would be in favor of the elimination of the Pension Oversight Commission.

Ms. Sutherland responded said she is not in favor of the elimination of the Oversight Commission and said she believes the two bodies could co-exist. She said that one of them is independent of the Administration and the other one is not. She said that the Administration has the majority of the 13 members that are on the Board of Trustees.

Ms. Cook stated that three of those members are County residents and she suggested that perhaps the Commission could recommend that the Council increase the number of County residents to seven so each Council District could be represented.

Ms. Sutherland said that would be something to consider. She stated that if the Pension Oversight Commission is eliminated and the Board of Trustees is left as it is, the Administration dominates the Trustees. She said that the Board does not take a position on pension legislation that might come before the County Council, and the Pension Oversight Commission is required to give its opinion on pension bills that come before the Council. Ms. Sutherland stated that her office and the outside auditors look at the actuarial assessments and statement of revenues.

Ms. Sutherland said that she does not know if the Pension Oversight Commission has stopped performing its duties, but she has not seen an annual report from them. She said that she thinks they meet about proposed legislation.

Ms. Cook asked Ms. Sutherland why the Pension Oversight Commission does not meet on a regular basis.

Ms. Sutherland responded that she is not saying the Commission does not meet, but she has not seen an annual report for awhile.

Mr. Enright said that the Charter mandates that the Pension Oversight Commission shall review any proposal from the County Council and report its findings and recommendations to the County Executive and County Council.

Ms. Sutherland stated that there haven't been many pension bills.

Ms. Cook stated that Section 607 (2) of the Charter states that the Commission is to submit an annual report of the status of each County pension plan.

Ms. Sutherland stated that she is not sure if that has happened or not.

Ms. Carey stated that she does not hear a lot of support from the Commission members to eliminate the Pension Oversight Commission which was the request from Mr. Hammond.

Ms. Cook referred to Mr. Hammond's letter of October 31 in which he stated: *The Pension Oversight Commission has not performed most of the Charter mandated activities other than occasionally reviewing legislation that pertains to County Pension. The Board of Trustees has been performing the Charter responsibilities assigned by the Charter to the Pension Oversight Commission. Considerations should be given to either the elimination of these sections of the Charter or replacing the reference to the Pension Oversight Commission with the Board of Trustees of the Anne Arundel County Retirement and Pension System.* Ms. Cook stated that she would still like to know why the Pension Oversight Commission is not performing their duties and if someone was telling them not to perform their duties as required by the Charter.

Ms. Sutherland stated that regarding the Pension Oversight Commission's duties, the Board of Trustees is performing those duties. She said that if the Commission members want someone more independent to provide the oversight, then the Pension Oversight Commission should be left as it is.

Ms. Sutherland wanted to clarify to the Commission members that according to Mr. Hammond's previous testimony, there are thirteen members on the Board of Trustees, three are from the public, five are from the Administration and five are from the employee groups. She stated that she was incorrect in saying the Board of Trustees was the majority of the Administration.

Ms. Carey stated that since there has not been a motion regarding the elimination of the Pension Oversight Commission, the Pension Oversight Commission would remain in place.

Ms. Cook said that there should be a notation in the final report of the Charter Revision Commission stating that the Commission members are not making a recommendation to eliminate, or make any change in the verbiage requiring that the Pension Oversight Commission carry out its duties as an independent oversight body, and submit an annual report relating to Section 607(2) (ii), (iv), and (v) which should evaluate the Administration plan and propose any changes that the Commission members believe should be made.

Mr. Enright stated that he is in favor of Ms. Cook's recommendation.

On motion of Mr. Greene, seconded by Mr. Enright, the Commission unanimously voted against eliminating the Pension Oversight Commission, and voted to include in the Charter Revision Commission's final report, a recommendation that the Commission's oversight role and its duties be executed in accordance with its statutory directive.

Section 610 change in verbiage for technical reasons

Ms. Carey said that this request came from Mr. Hammond indicating that a change in the verbiage for this section is needed for technical reasons. Ms. Carey asked if Ms. Sutherland would comment on the verbiage that seems to be missing. She read from Charter Section 610(4): *The County Executive, at his discretion, or the County Council, by resolution, matter to the Committee any matter related to the Committee's functions and duties for its review and recommendations.* Ms. Carey said that she believes Mr. Hammond intended for there to be some clarifying language that was missing. She said that she suspects that it should say "by resolution, may refer to the Committee any matter..."

Ms. Sutherland stated that she thought that was correct.

Ms. Tate said that she believes that it is just a typo and if that is all Mr. Hammond is concerned about, then Ms. Gray can e-mail a codifier regarding the error. She stated that in the Resolution that was passed by the Council and approved by the voters in 1990, stated under (4) that: *The County Executive, at his discretion, or the County Council, by resolution, may refer to the Committee any matter related to the Committee's functions and duties for its review and recommendations.* She said that this shows that it is just a typo in the Charter.

Ms. Tate said that the issue that was also in Mr. Hammond's letter of October 31, 2011, referred to Charter Section 610(2)(d) (2) regarding the fact that each member can be appointed for a term of four years. She said that Mr. Hammond would like the term of four years to commence on July 1.



Ms. Carey suggested that Ms. Tate get clarification from Mr. Hammond regarding the terminology that is missing in Section 610(4) and if it is appropriate to be handled by a codifier.

Ms. Tate said that the Commission members still need to vote on the whether the terms should commence on July 1.

On motion of Mr. Rheinstein, seconded by Ms. Cook, the Commission members voted to table this discussion until receiving clarification from Mr. Hammond regarding his opinion as to how Section 610 should be amended.

#### Definition of Capital Projects

Mr. Greene stated that this is a request from Mr. Hammond, and according to his testimony, it was related to the ability to purchase other capital goods that may potentially fall outside of the current Charter definition of capital projects. He said that Ms. Tate forwarded language both within the current Charter as well as juxtaposing that with language that Howard County uses in its Charter. He said that it is a question of whether or not the Commission should consider tweaking the definition of a capital project. He said that in the current Charter definition where Mr. Hammond's concerns may arise, without a modification, is whether or not a computer system or enterprise system would qualify as something permanent in nature for public use. Mr. Greene said he thinks things these things are outside the scope of what qualifies as a capital project under the current definition.

Mr. Rheinstein stated that he is in agreement with Mr. Greene. He said that he thinks the current definition of a capital project in Section 702(b) of the Charter is somewhat narrower than that definition of what is generally taken from an accounting standpoint. Mr. Rheinstein referred to the proposed language from Mr. Hammond and said that he is in agreement that there needs to be a definitional change for long-term assets.

Ms. Sutherland stated that the referred proposed language was not Mr. Hammond's language. She said that in his letter of October 31, 2011, he stated that: "Consideration should be given to expanding the definition to include replacement equipment of a suitable useful life for a capital project." She stated that the proposed language before the Commission members is from Ms. Tate. Ms. Sutherland stated that she agrees with Mr. Hammond that the definition should be expanded to include things like software that takes 3-5 years to develop and implement and has a useful life for another 10 years. She said there is no reason for that not to be a capital project, because you don't want the appropriation to lapse at the end of the first year because it is in the operating budget. She stated that whether or not you can issue bonds for a project is dictated by the IRS. She said that bonds are issued by project class and bonds are paid off at the end of five, ten, or fifteen years. She said that you just have to make sure that the average useful life of the bonds does not exceed the average useful life of everything. She said that there is an appropriate way to tweak the language, but the proposed language before the Commission members is not it.

Mr. Rheinstein asked Ms. Sutherland, whether, if a Charter Amendment went before the voters, and they interpreted the expansion of the definition of a capital project to mean that it would enable the County to issue bonds that the County would be paying for longer than the life of an asset, would that weigh into peoples' inclination to vote against it.

Ms. Sutherland responded by saying that it would depend on how the Amendment was worded.

Mr. Enright stated that he thinks this came as an adjunct to Mr. Hammond's proposal to reinvest bond premiums into capital projects, rather than paying down the debt service. He referred to the definition in the Charter, Section 702(b) (2) & (3) that states: *the acquisition of property and the purchase of equipment for any public betterment or improvement when first constructed*. He asked Ms. Sutherland if the purchase of IT equipment was included in that definition.

Ms. Sutherland said that the bond premium is a separate issue. She said that the definition is: *the purchase of equipment for any public betterment or improvement when first constructed*. She gave an example of when a school is first built and desks are put into the school, they are part of the capital project, but when the desks are replaced, they are not part of the capital project. She said that in the Charter under Section 702(b), she would put (1) and (3) together to say that "the betterment and improvement is a physical betterment or improvement".

There was further discussion among the Commission members and Ms. Sutherland regarding Section 702 of the Charter.

Mr. Greene stated that he agrees with everything that Ms. Sutherland has stated. He said that when the definition in the Charter was first written, it obviously meant physical structures. He said that what needs to happen is that there needs to be a juxtaposed position between tangible and intangible property to take into consideration computer systems, other services that any public agency, government, etc., is otherwise procuring for the functions of government and suggested working on language for the next meeting.

Ms. Sutherland said that she would do some research in order to get a better definition.

There was some further discussion among the Commission members and Ms. Sutherland regarding the definition of a capital project.

#### Staggered Term Limits – Board of Appeals

Ms. Carey stated that the issue of staggered term limits for the Board of Appeals members has not been finalized.

Ms. Cook referred to the language for the Spending Affordability Committee in Section 610(d) of the Charter which has staggered term limits for the Committee.

Mr. Rheinstein suggested recommending language for appointments that would take effect in 2014 and using the term limits language that is in the Charter for the Spending Affordability Committee for the Board of Appeals.

Ms. Cook stated that the only difference is that the members of the Board of Appeals are appointed by the County Council, not the County Executive, so the Council would need to decide who is going to do the two year terms, three year terms and four year terms on the initial appointment.

Mr. Greene, seconded by Mr. Rheinstein, suggested tabling the discussion until the next meeting as it was not on the agenda.

Definition of a vacancy in the County Council and procedures for filling any such vacancy

Mr. Enright referred to his proposal from February 10, 2102, which defines a vacancy relating to change of residence, forfeiture of office, and removal from office in Section 202 under Qualifications. He said that he also included a proposed new paragraph in Section 205(a) of the Charter which reiterates the definitions of a vacancy that has occurred. He said that the rest of Section 205 deals with the procedures for filling a vacancy.

RECESS

The Commission members recessed at 10:00 a.m.

RECONVENE

The Charter Revision Commission reconvened at 10:07 a.m.

Definition of a vacancy in the County Council and procedures for filling any such vacancy (Continued)

Ms. Carey stated that the current Charter provides that vacancies that occur after the first twelve months are filled by a majority vote of the County Council within thirty days after the vacancy occurs. She said that there is not a provision for dealing with deadlocks if there is no majority vote. She said that there also is not a clear definition of vacancy.

Ms. Cook referred to some proposed language that she prepared that addresses when a Council vacancy occurs, how the vacancy should be filled, provides alternatives to filling vacancies such as a special election, and includes a process for the situation when the Council does not appoint a councilmember within the 30-day period. She said that she also added a new section that pertains to how a councilmember can be removed from office.

Mr. Rheinstein stated that he is in agreement with some of Ms. Cook's proposal. He stated that as the Charter is currently written, it provides that, if a vacancy occurs on the Council within the first 12 months of a member's service, a new member shall be nominated and elected by voters of the councilmanic district in which the vacancy occurs, at the same time as members of the House of Representatives of the Congress are nominated and elected. He said that the Charter also states that, until a new member is elected, the vacancy shall be temporarily filled by a majority vote of the County Council within 30 days after the vacancy occurs. He said that he does not agree that special elections should be held to fill a vacancy if the vacancy occurs after the first twelve months. He stated that such a special election would not coincide with another election, schools would need to be closed in that particular district, and the turnout is usually low. He suggested that the vacancy be filled by the County's Central Committee of the former council member's party affiliation.

Ms. Cook told Mr. Rheinstein that she agreed with some of his suggestions.

Mr. Greene stated that, for the purposes of moving forward, the Commission members first need to come to an agreement on the definition of a vacancy before discussing the procedures for filling a vacancy. Mr. Greene asked Ms. Tate what needed to be addressed in the definition of a vacancy, to address the current or future circumstance.

Ms. Tate said that the problem with the definition of a vacancy is that there is no actual definition, it is an elusive term. She said that the way one gets to what a vacancy means in Anne Arundel County is that you create the circumstances in which the Council would be able to look to the Charter and say that there is a vacancy. She said that in the current situation with the vacancy of District 1, it was unclear if there was a vacancy because the councilmember was going to be out of the district serving a period of incarceration. She said because the Charter was silent on this type of issue, the Council was advised by the County Attorney that there would be a vacancy based on the fact that the councilman would not be residing in the District 1 area, and because of that he would no longer be qualified to serve as a council person.

Mr. Greene asked Ms. Tate if, in defining whether or not there is a vacancy on the County Council, should there be some cross reference in that definition to the qualifications necessary to serve as a member of the County Council.

Ms. Tate responded by saying that Ms. Cook's proposed language takes care of the issue on becoming disqualified for membership on the Council. She said that in Section 202 of the Charter it states the qualifications for a County Council member. She said that Ms. Cook's proposed language would automatically refer to Section 202.

Mr. Enright said that in his proposal he addressed various kinds of vacating office parameters in Section 202 under qualifications. He said his proposal expanded the definition of what constitutes qualifications by including Forfeiture of Office and Removal from Office. He said that in Section 205 of the Charter under vacancies, he had a more narrow definition because everything was explained under the section for qualifications.

Mr. Rheinstein stated that he favored Ms. Cook's proposal, especially the suggestion of adding a new Section 206, Removal from Office. He said that there should be more discussion regarding the proposed wording defining the removal from office. He said that Mr. Enright's proposal offers the situation of when someone becomes incapacitated, where Ms. Cook's proposal does not address that scenario. Mr. Rheinstein stated that he does not like the current provision in the Charter, Section 205(h) which basically forces someone to give up their Council seat because they are deployed as a member of the Armed Forces and would like to see this section revised also.

Ms. Carey commented that Section 205(h) refers to absence while on active federal or State service for a period of 180 days. She said that she believes that there is a rule in Congress that is similar that permits a longer absence, and would like to research that provision. She said that another issue for consideration is that the provisions in the Charter for the County Council and the County Executive should be almost identical. She said that there is a provision in the Charter for a length of absence for the County Executive but not for the County Council.

Ms. Tate commented on Section 205(h) regarding members of a reserve component of the Armed Forces. She said that this provision is relatively new and she suggested that the Commission members think about what it means for someone to be gone for a period of time. She said that it is a matter of representation, the fact that someone might not be here to vote on legislation or participate in the budget, and that member's district would not be represented if the councilmember was gone for a six-month or 180-day period.

Ms. Carey asked Ms. Tate if there are circumstances where someone on active duty could be released to fulfill their duties as a County Councilmember.

Ms. Tate referred to Mr. Enright or Ms. Cook.

Mr. Enright said that he does not know the answer to Ms. Carey's question, but guesses that it would not be possible for someone to be released if on active duty.

Ms. Cook stated that she is in favor of keeping the provision in Section 205(h) as it is.

Mr. Greene concurred with Ms. Cook. He said that the definition of vacancy has to cross-reference another section of the Charter to give it purpose. He stated that he is trying to juxtapose what Mr. Enright has proposed, Ms. Cook's proposed 205, and then with 206. He said that when looking at Ms. Cook's proposed language for Section 206, he is wondering if there needs to be any definitional changes to qualifications.

Ms. Tate said that the Council has been instructed by the Office of Law that residence has the common sense definition of where you sleep. She said that if the Council wanted to memorialize what a residence is, they might change Section 202.

Ms. Tate referred to Mr. Enright's proposal regarding forfeiture of office and removal from office and suggested they should be in their own section under either the removal section or the vacancy section.

Mr. Greene said that he would like to divorce the residency requirement from this process.

Ms. Tate suggested that if that is his intention then Section 202 should be tabled because that is where it originated.

Mr. Greene asked Ms. Tate, to clarify whether, if language defining a vacancy in Section 205 was constructed using Ms. Cook's proposed language with the addition of Removal from Office, the next step would be how to fill the vacancy.

Ms. Tate said yes, that once the vacancy definition is established, then you would address the process.

Mr. Greene asked Ms. Tate, whether, once the definition of vacancy is established, should there be language included that states or references the qualification section.

Ms. Tate responded by saying that qualifications are a framework as to who can run for County Council and who would be qualified if they were elected. Then there is Section 205 for vacancies. She stated that it has only been recently that the Council has had a controversial vacancy. She said that in a sense, the Commission is just memorializing two circumstances that have come before, as well as our most recent one where the councilman was disqualified. She said that if you add a new Section 206, removal from office, this creates another set of circumstances where the Council can create a vacancy by virtue of one the trigger events, such as conviction of a felony, or a crime involving moral turpitude, etc.

Mr. Greene stated that what he is trying to do is construct something where the political process is eliminated.

Ms. Tate said that if you define a vacancy in Section 205 as a situation where a councilmember is convicted of a felony, or a crime involving moral turpitude, or misfeasance or malfeasance in office, then Section 206 could become a procedural tool.

Mr. Greene said it would be his preference to define vacancy, then define the process by which the vacancy is fulfilled, expressively and straightforwardly.

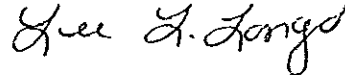
Ms. Cook said she is open to making the definition of vacancy more definitive.

There was further discussion among the Commission members and Ms. Tate regarding the definition of vacancy.

ADJOURNMENT

The meeting adjourned at approximately 11:19 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lee L. Longo".

Lee L. Longo  
Reporter

ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #12  
March 16, 2012 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:02A.M. with the following members present:

Jana Carey  
Joshua Greene  
Karen Cook  
Patric Enright  
Jason Rheinstein (arrive at 9:16 a.m.)

Also present were:

Beth Jones, Administrative Officer

There were approximately 2 people in the audience.

APPROVAL OF MINUTES

The minutes of March 2, 2012 and March 9, 2012 were approved as presented.

STATE OPEN MEETING ACT

Ms. Ann MacNeille, Assistant Attorney General, Opinions and Advice, stated that she is Counsel to the Open Meetings Compliance Board, which is a three member volunteer body, appointed by the Governor to address complaints of Open Meetings Act violations. She said that State statute was passed in the 1970's and the Act's purpose is to assure that the public has the opportunity to observe the conduct of public business, and at the same time recognize that there are instances in which a public body will need to meet behind closed doors. The Act provides a set of procedures whereby the public body votes in public to close a session for a disclosed purpose in an effort to provide balance between the need for confidentiality and the ability of the body to function in the sunshine.

Ms. MacNeille referred to a handout that she provided to the Commissioners called the Closed Session Statement. She stated that the Open Meetings Act requires the public body to complete the statement which includes checking off the exception in question. She said that the Act also requires that the presiding officer, before going into the closed meeting, states the reason and the topics that will be discussed. She said that the idea and the requirement that the Open Meetings Compliance Board has explained, is to disclose as much as possible on the written statement without comprising the confidentiality of the session. As a result, the public can watch the body move for a closed session, knows the reason for the closed session and sees which members vote to close the session.



Ms. Cook asked Ms. MacNeille if she was speaking about a situation such as the Council going into session and then choosing to close it.

Ms. MacNeille responded affirmatively.

Ms. Cook asked what would happen if something came up in between Council meetings.

Ms. MacNeille responded by saying that if something came up in between meetings and a quorum of the Council was going to meet, it still has to give public notice under the Act. The idea is to give the best notice possible under the circumstances; for example, emails to the local newspapers. She said that the Open Meetings Act applies whenever a quorum is present to fulfill one of the functions covered by the Act. She stated that it becomes complicated when a public body has functions that are quasi-judicial. She gave an example of the Animal Control Board of Baltimore City where they sometimes sit to discuss policy and rules, and sometimes they have panels that sit to judge dog fight violations. She said that if they are sitting to judge something that is appealable to Circuit Court under the judicial review rules, then that is quasi-judicial and does not have to be open to the public. The open meetings requirement is more likely to apply to legislating, policy discussions, discussion on future action of the body. There is also an Administrative exception for carrying out task such as signing documents as well as an exception for purely social events.

Ms. MacNeille said that the Open Meetings Act gives public bodies a way of doing their business in the open without have to resort to little tricks, such as the "walking quorum." She said that currently, if the County Council needs to get advice of Counsel or if it needs to meet and discuss personnel matters, they cannot do so. She said that what probably happens as a result is that some people may be briefed in one room and some in another. Perhaps there is one member in common in each room and that would be a fair way of interpreting the law, except the Maryland Open Meetings Act states no evasive devices. She stated that courts in other states have found this behavior to constitute a "walking quorum" and that it does violate that state's open meeting laws. She referred to a Baltimore City case in a handout (incorporated as part of these minutes) in which the chair closed the meeting anytime a quorum was not in the chamber to shield the public from a heated discussion. She said that there is a possibility that a County Council or other public body with what seems to be a stricter law, could actually be running afoul of the Maryland law by using the "walking quorum" to accomplish business. Ms. MacNeille said that the State Open Meetings Act provides that the State Act applies unless there is a stricter County law. She stated that it looks as though the County's law is stricter as all meetings are open; however, if the Council is doing the "walking quorum" in order to comply with its own apparently stricter law, and if the Court of Appeals interprets the State law to prohibit walking quorums, then the State law would be stricter. She said the other problem with separate meetings is that the public has no way of knowing that the public entity is meeting and what is being discussed. The Open Meetings Act provides an opportunity to disclose what is being discussed as well as one of 14 exceptions and provides a truer interaction of the body.

Mr. Enright asked Ms. MacNeille what happens to the closed session statement.

Ms. MacNeille stated that the presiding officer fills out the form at the time of the vote, records the votes and the reasons for closing a session. She said that if someone in the audience objects, then a copy is mailed to the Compliance Board which then puts it in a file. Otherwise it is kept and made available to the public if someone wants to request a copy. In addition, minutes provided at the next meeting would have a summary of the topic discussed, the action taken and enough information to disclose the result without compromising the confidentiality of the proceeding. The Court of Appeals coined it as "the flavor of what transpired".

Mr. Greene asked Ms. MacNeille if she would further explain the public notice requirements for closing a meeting. He also asked her if she agreed that the State Open Meetings Act appears to have more transparency than the absence of the Act.

Ms. MacNeille said that the Act states that the public notice must specify if all or part of the meeting will be closed, but does not address posting an agenda in advance. The requirement of an advanced agenda is not present in the act. Additionally, agendas can present problems if the members decide under the new or added business portion of the agenda to add something that requires the body to close.

Ms. MacNeille stated there is greater transparency permitted by the Open Meetings Act for items that must be discussed behind closed doors because there has to be disclosure of the topic of the discussion and the relevant statutory exception, i.e., personnel issues, procurement bids, or legal advice, as compared to a public body that meets in fewer than a quorum, in separate meetings, in order to conduct those discussions that must be discussed in closed sessions. Open Meeting requirements might be more stringent.

Mr. Greene indicated he believes the adoption of the Open Meetings Act is better because there is no inclination to disclose anything discussed outside of a quorum with the public. Application of the Act would ensure at least the topic and result would be disclosed.

Ms. Cook agreed the Open Meetings Act in theory is a good idea but believes it is a big change from the current standard of all open meetings. She suggested the possibility of limiting the purposes for which the council could close a meeting and deferring to Open Meeting Act procedures for closing the meeting.

Ms. MacNeille state that placing limits on the exceptions the Council could use to close a meeting is reasonable provided you have all the exceptions you need.

Mr. Rheinstein indicated he would prefer the existing framework of the Open Meetings as it has been tested and designed to protect public notice and open government.

Mrs. Carey stated the Commission is wrestling with a decision that ensure the advantages of adoption of the Act are known and that it is not seen a negative light. Further, she suggested it should be clear that it would be applied to all bodies of the County.

There was further discussion among the Commissioners and Ms. MacNeille regarding the State Open Meetings Act.

Mr. Rheinstein made a motion, for discussion purposes only, seconded by Mr. Greene, for the Commission to recommend to the County Council that a provision be adopted that would allow them to close for certain reasons in accordance with the State Open Meetings Act.

Mr. Greene asked to amend that motion, seconded by Mr. Rheinstein, that the Commission recommends to the County Council that it adopt a procedure by which, the County Council can have closed meetings in accordance with the State Open Meetings Act.

Ms. Cook asked Mr. Greene if he were going to add to that motion to include "by a super majority vote".

Mr. Green made a motion to amend his previously amended motion to include ... "when a closed session is to be considered by the County Council, that it take a super majority of the County Council to close said session."

Mr. Enright stated that he supports Mr. Greene's proposal, but he is concerned that a legislative session should always be open and any other meeting of a quorum be subject to the State Open Meetings Act. Mr. Enright yielded to Mr. Greene.

Mr. Greene explained that an entire meeting for legislative purposes cannot be closed. He said that when a body comes to meet, it comes to meet as a session or a meeting. He stated that during that meeting or session, the body can vote, at that meeting, to close for a purpose that is allowed for under the Open Meetings Act. He said that his amended motion was for a super majority vote of the Council, so if they don't have five votes, they would be unable to close their meeting for the purpose intended.

Ms. Cook said that she disagreed with Mr. Greene. She stated that Ms. MacNeille stated that if a body chose to close during a legislative session or later, they publicly announce it at that session. She said that she asked Ms. MacNeille what would happen if the Council wanted to have a meeting, which was not on a legislative day, in between Council sessions. She stated that Ms. MacNeille's response was that it was allowable under the Open Meetings Act as long as notice was provided to the public that there was going to be a meeting that was going to occur on a non-legislative day.

Mr. Rheinstein stated that the meeting on a non-legislative day begins as an open meeting, and then be closed at some point during that meeting, by a majority of the body, under the Open Meetings Act.

Ms. Carey suggested that all committees, commissions, councils, etc, in the County government be subject to the State Open Meetings Act.

Mr. Greene asked for a roll call vote for the previous amended motion that the Commission recommend to the County Council that it adopt a procedure by which the Council can go into a closed session, by a super majority of the Council, and that said closed session be in accordance with the State Open Meetings Act.

Aye – Mr. Enright, Mr. Rheinstein, Ms. Cook, Mr. Greene, Ms. Carey  
Nay - None

UNRESOLVED ITEMS FOR DISCUSSION AND VOTING SUGGESTED BY THE  
COUNTY COUNCIL AND/OR COUNTY BUDGET OFFICER

Section 610 change in verbiage for technical reasons – Spending Affordability Committee

Ms. Carey stated that this request came from Mr. Hammond indicating that a change in the verbiage for this section is needed for technical reasons. She said that this issue was tabled at the last meeting pending verification from Mr. Hammond.

Ms. Carey stated that it is her understanding that the technical verbiage which Mr. Hammond was concerned about is being handled by JoAnne Gray who will e-mail a codifier regarding the typo and asked Ms. Jones if this was correct.

Ms. Jones responded affirmatively. She said that she also spoke with Mr. Hammond regarding the terms of the members on the Spending Affordability Committee commencing on July 1 and he confirmed that it should go into Section 610 (d) (2).

It was by unanimous consent that the wording “commencing July1” be added to Section 610 (d) (2), after the wording of.....term of four years.

Staggered Term Limits – Board of Appeals

Ms. Carey stated that the issue of staggered term limits for the Board of Appeals members has not been finalized. She said that the discussion was tabled at the last meeting as it was not on the agenda.

She said that there was some discussion on staggering the term limits for the Board of Appeals. There was some concern that the County Council would have to appoint the Board of Appeals members and decide whose appointee is on the board for two years as opposed to three or four years.

Mr. Rheinstein suggested that language should be taken from Section 1001(e), the Ethics Commission of the County Charter that already has the both the staggering and term limits language, and make a recommendation to the County Council that such language be adopted with respect to the Board of Appeals with the initial term beginning in 2014.

Ms. Cook said that the Commission members discussed using the Spending Affordability language in 610(d) one through five at the last meeting.

Ms. Cook made a motion, seconded by Mr. Greene, that the Charter Revision Commission recommend that term limits for the Board of Appeals members be imposed effective January, 2015 to encompass two consecutive term limits, staggered terms, in accordance to the same parameters that are suggested under Section 610(d) in the County Charter. The Commission members unanimously approved the motion.

Definition of a vacancy in the County Council and procedures for filling any such vacancy

Ms. Carey stated that there is a consideration of a section or subsection concerning a vacancy established by the removal of a council person or a County Executive from office for causes that the Commission members decide should be included. She said that the Commission members have discussed the concept of whatever is done on the vacancy issue should have equal application to other appointed officials.

RECESS (10:52 a.m.)

Mr. Greene asked for a five minute recess.

RECONVENE

The Charter Revision Commission members reconvened at 11:04 a.m.

Definition of a vacancy in the County Council and procedures for filling any such vacancy (continued)

Ms. Carey stated that the meeting would end at 11:45 a.m. (At this point there must have been a flaw in the CD as it skips to 11:18 a.m.) (There was a vote during the missing time on the consideration of having 7 members, one from each Council District, for the Charter Revision Commission).

Mr. Rheinstein stated that his position on this issue is that all vacancies should be discretionary and that the Council should have the power to declare an office vacant or remove a member based on certain facts such as convictions, and that the vacancy be filled by the County's Central Committee of the former council member's party affiliation.

Ms. Carey stated that the immediate issue is the definition of a vacancy.

Mr. Greene made a motion, seconded by Ms. Cook, to adopt, subject to amendment, a recommendation on the definition of vacancies pursuant to what has been submitted to the Commission members by Commissioner Enright.

Mr. Enright said that he incorporated some of Ms. Cook's suggested language in defining vacancies and created another section for filling vacancies. He said that he moved the change of residence from the qualification section into the vacancy section. He said that he did not touch the fact that residency is a qualification for holding office. He further explained his suggested amendment for vacancies.

Ms. Cook commented on number 6 of Mr. Enright's suggested language under vacancies which refers to the fact that a member of the County Council may be removed from office by a super majority in the event that a Council member is unable to, by reason of physical or mental disability, to perform the duties of the office. She suggested adding the number of days that a person is unable to perform the duties of the office.

Mr. Rheinstein suggested that with regards to number 5 of Mr. Enright's proposed language the term Correctional Facility should be removed. He said that people who are not yet convicted are held in a Detention Facility, not a Correctional Facility. He said that a person is not in a Correctional Facility until they are a convict. He said that he thinks there needs to be a separate removal provision like Ms. Cook's proposed amendment showed.

Ms. Carey said that the proposed language by Mr. Enright is phrased as applying to the County Council. She stated that there are provisions in the Charter that relate to the removal of the County Executive, and they are contradictory of each another. She asked the Commission members whether or not the definition of vacancy, pertaining to the circumstances of removal that can occur, should be the same for the County Executive and for members of the County Council.

Ms. Cook said that she would like to take that under consideration.

Ms. Cook stated that she preferred the vacancy section that she proposed at the last meeting as it is similar to what other counties do.

There was further discussion among the Commission members regarding the possible wording for the definition of vacancies.

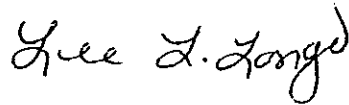
Mr. Greene withdrew his original motion.

The discussion of vacancies was tabled until the next meeting on March 23, 2012.

ADJOURNMENT

The meeting adjourned at approximately 11:41 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo". The signature is written in dark ink and is positioned above the printed name and title.

Lee L. Longo  
Reporter

**WRITTEN STATEMENT FOR CLOSING A MEETING  
UNDER THE OPEN MEETINGS ACT**

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_ Motion to close meeting made by: \_\_\_\_\_;

Seconded by \_\_\_\_\_, Members voting in favor: \_\_\_\_\_

\_\_\_\_\_ Opposed: \_\_\_\_\_ Abstaining \_\_\_\_\_ Absent \_\_\_\_\_

**STATUTORY AUTHORITY TO CLOSE SESSION, State Government Article, §10-508(a) (check all that apply):**

- \_\_\_\_\_ (1) To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals;
- \_\_\_\_\_ (2) To protect the privacy or reputation of individuals concerning a matter not related to public business;
- \_\_\_\_\_ (3) To consider the acquisition of real property for a public purpose and matters directly related thereto;
- \_\_\_\_\_ (4) To consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;
- \_\_\_\_\_ (5) To consider the investment of public funds;
- \_\_\_\_\_ (6) To consider the marketing of public securities;
- \_\_\_\_\_ (7) To consult with counsel to obtain legal advice on a legal matter;
- \_\_\_\_\_ (8) To consult with staff, consultants, or other individuals about pending or potential litigation;
- \_\_\_\_\_ (9) To conduct collective bargaining negotiations or consider matters that relate to the negotiations;
- \_\_\_\_\_ (10) To discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including: (i) the deployment of fire and police services and staff; and (ii) the development and implementation of emergency plans;
- \_\_\_\_\_ (11) To prepare, administer, or grade a scholastic, licensing, or qualifying examination;
- \_\_\_\_\_ (12) To conduct or discuss an investigative proceeding on actual or possible criminal conduct;
- \_\_\_\_\_ (13) To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter;
- \_\_\_\_\_ (14) Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

**FOR EACH CITATION CHECKED ABOVE, THE REASONS FOR CLOSING AND TOPICS TO BE DISCUSSED:**

- ( ) \_\_\_\_\_
- ( ) \_\_\_\_\_
- ( ) \_\_\_\_\_

Persons attending closed session: \_\_\_\_\_  
\_\_\_\_\_

This statement is made by \_\_\_\_\_, Presiding Officer: \_\_\_\_\_  
SIGNATURE

\*\*\*\*\* FOR USE IN MINUTES OF NEXT REGULAR MEETING: \*\*\*\*\*

TOPICS DISCUSSED AND ACTION(S) TAKEN (IF ANY):

\_\_\_\_\_  
\_\_\_\_\_

Time closed session adjourned: \_\_\_\_\_

**Appendix C**

\_\_\_\_\_





3/15/12

*Some excerpts from "walking quorum" cases*

***Mabry v. Union Parish Sch. Bd.*, 974 So. 2d 787, 789 (La.App. 2 Cir. 2008):**

Here, we have evidence of individual telephone conversations between some board members that may or may not have addressed the issue of Mabry's contract renewal. Certainly there was no "walking quorum" scenario as suggested by Mabry. **As described in Op. Atty. Gen. No. 90-349, July 26, 1990, a "walking quorum" is a meeting of a public body where different members leave the meeting and different members enter the meeting so that while an actual quorum is never physically present an actual quorum during the course of the meeting participates in the discussion.** Other than a casual pizza dinner shared by Johnson and Holley, there was no evidence of a physical gathering of any group of the board members, let alone a quorum of the School Board, where Mabry's contract renewal was discussed and/or agreed upon; thus the potential for a "walking quorum" did not exist in this case.

***Asgeirsson v. Abbott*, 773 F. Supp. 2d 684, 706-707 (W.D. Tex. 2011):**

At the bench trial, Plaintiffs Diana Asgeirsson and Henry Wilson testified that TOMA is vague because it is not clear what the Act prohibits. Plaintiffs assert they can be charged with a violation of TOMA when they meet as a quorum or when they meet one-on-one with their constituents or fellow city council members. Thus, Plaintiffs do not communicate with their fellow city council members and their constituents one-on-one outside of open meetings to avoid "walking quorums." \*\*\*

**Serial meetings, or walking quorums, occur when "members of a governmental body [. . .] gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum of that body."** Tex. Att'y Gen. Op. GA-0326, 2005 Tex. AG LEXIS 3737, 2005 WL 1190504, at \*2 (May 18, 2005) (construing Tex. Gov't Code Ann. § 551.143). Thus, TOMA is violated when "a quorum or more of a body [. . .] attempts to avoid [TOMA's] purposes by deliberately meeting in numbers physically less than a quorum in closed sessions to discuss public business and then ratifying its actions in a physical gathering of the quorum in a subsequent sham public meeting." 2005 Tex. AG LEXIS 3737, [WL] at \*3 . \*\*\* TOMA is not violated when a member of a governmental body uses the telephone to discuss an agenda for future meetings with another member, so long as a quorum is not present and the telephone conversation is not used to circumvent the Act.\*\*\*

***Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433, 471-478 (W.D. Tex. 2001)**

Plaintiffs argue that the City violated the Texas Open Meetings Act by a series of "meetings" held on the evening of September 10, 1997 (the evening prior to the next day's vote on the budget), and by Mayor Peak's telephone calls to council members the same evening. Plaintiffs contend that the meetings and phone calls led to the consensus memorandum issued by the Mayor prior to the September 11 city council meeting, and signed by all council members.

There are ten council members plus the mayor. Thus, a quorum is six. On the night of September 10, 1997, the eve of the budget vote, the Mayor, the City Manager, and several council members met in small groups in the City Manager's office to discuss the budget. While meeting in person with the various members, the Mayor also spoke on the telephone with other members. The Mayor's purpose in meeting with the members was to reach a consensus on changes to the city budget; he wanted to avoid "a whole bunch of amendments from the floor that would take up lots of time" during the next day's open meeting. There was never the possibility of a physical quorum, as only four council members in addition to the mayor were present. Webster and Guerrero were not present. n167 Bannwolf, Prado, and Marbut, however, spoke with the Mayor on the telephone, and Bannwolf recalled possibly being on a speaker phone, so the possibility exists that a quorum could have been present. Indeed, the participants were careful to avoid the physical presence of a quorum. On several occasions throughout the evening, the City Manager told the group that there were too many people together, and they were at risk of violating the Open Meetings Act. In response to the City Manager's warnings, one or more council members would leave the office and wait in the reception area outside. As individuals moved in and out of the City Manager's office, the conversation in the office continued regarding the budget.

No public notice was posted for a meeting of the city council for that evening. The closed deliberations led to unanimous agreement on a series of budget changes, including the elimination of all funding for the plaintiffs. Mayor Peak said that when he left City Hall that night, the budget problems were mostly all solved. All council members signed a final draft of the consensus memorandum prepared by Mayor Peak before the open meeting on September 11, 1997. The memorandum set forth amendments to the proposed budget, including a 15 percent across-the-board reduction in arts funding and the complete elimination of the funding designated for plaintiffs. The agreed changes were incorporated into the proposed budget by the budget office prior to the open meeting and formal vote on September 11, 1997. Most of the changes deliberated in those meetings were never publicly deliberated. No mention of the elimination of funding for plaintiffs was mentioned by any council member at any open meeting prior to the September 11 vote. No council member recalled who initially made the proposal to eliminate plaintiffs' funding or when it was made. The Mayor's September 11, 1997 memorandum contains no explanation why plaintiffs were singled out for defunding.

The council members understood the memorandum was not binding, and that any of them could have moved to change the proposed budget or the items contained in the memorandum during the council meeting. None did. There were no amendments offered at the September 11 public meeting and no debate. The budget adopted essentially reflected the agreement in the consensus memorandum.

The Texas Open Meeting Act requires that "the executive and legislative decisions of our governmental officials as well as the underlying reasoning must be discussed openly before the public rather than secretly behind closed doors." *Acker v. Texas Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990). The Act requires "openness at every stage of a governmental body's deliberations." *Id.* Because citizens are entitled to know not only what government decides but to observe how and why every decision is enacted, exact and literal compliance with the terms of the Open Meetings Act is demanded. *Id.* "The Open Meetings Act was promulgated to encourage good government by ending, to the extent possible, closed-door sessions in which deals are cut without public scrutiny." *Save Our Springs Alliance, Inc. v. Lowry*, 934 S.W.2d 161, 162 (Tex.App.- Austin 1996, orig. proceeding) (citing *Cox Enters., Inc. v. Board of Trustees of the Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 960 (Tex. 1986) ("The Act is intended to safeguard the public's interest in knowing the workings of its governmental bodies.")). Provisions of the Act should be liberally construed to effect its purpose. *Finlan v. City of Dallas*, 888 F. Supp. 779 (N.D. Tex. 1995).

This spirit is embodied in the Act's general rule that every regular, special, or called meeting of a governmental body shall be open to the public unless otherwise provided .... \*\*\*The word "meeting" is defined as: a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action . . .\*\*\*The Act defines "deliberation" as "a verbal exchange during a meeting between a quorum . . . concerning an issue within the jurisdiction of the governmental body or any public business."

The City argues that no violation occurred because no quorum was ever present in the City Manager's office on the 10th. The Texas Attorney General, relying on a San Antonio Court of Appeals case, has taken the opposite view. The Attorney General opined that a legislative body can violate the Act when it "deliberates through a series of closed meetings of members of less than a quorum." *Op. Tex. Att'y Gen. No. DM-95 (1992)*. .... \*\*\* [§ 551.143(a) n185] ... \*\*\*makes it a criminal offense for a member or group of members of a governmental body to knowingly conspire to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of the Act.

The Texas Attorney General publication, "The Texas Open Meetings Act Made Easy," addresses the question, "Can a quorum of city council members sign a group letter or other document without violating the Open Meetings Act?" The Office of the Attorney

General responds: It remains a fact issue whether the presence of signatures by council members on a group letter or within another document constitutes a violation of the open meetings laws . . . . If council members met in numbers less than a quorum regarding the document with the specific intent of circumventing the purposes of the Act, a violation of the Open Meetings Act would . . . have occurred. In considering whether a gathering of less than a quorum of city officials may be subject to the Act, the publication goes on to opine that: State law also provides that if less than a quorum of city official [sic] gather with the intent of circumventing the purposes of the Open Meetings Act, criminal penalties can be imposed against the participating officials. **In other words, if city council members are holding their discussion of public business in numbers less than a quorum in order to avoid having to meet the requirements of the Open Meetings Act, criminal prosecution can be pursued against such officials for such discussions.**

\*\*\*

Surely the facts of this case present a classic fact pattern of deliberation by a quorum that purposely attempts to avoid the technical definitions of the Act by shuffling members in and out of an office. Clearly, a quorum of council members deliberated and reached agreement concerning the budget--perhaps the most important piece of public business the council considers--behind closed doors, actions condemned by both the Hitt court and the Texas Attorney General. The transparent subterfuge of separating members physically by an office wall or a telephone line cannot avoid the strictures of the Act.

\*\*\* In Harris County Emergency Serv. Dist. No. 1 v. Harris County Emergency Corps, 999 S.W.2d 163 (Tex. App.- Houston [14th Dist.] 1999, no pet.), the court refused to enjoin board members from discussing district business over the telephone because the evidence did not show that a quorum was involved in the discussions or that the conversations were a meeting. Id. at 169. The court distinguished Hitt because the evidence in Harris County, unlike that in Hitt, did not show that a quorum of the board ever discussed policy or public business over the phone or that telephone polling occurred. Id. Therefore, unlike Hitt, there was no evidence that the members were attempting to circumvent the Act by using the telephone to avoid meeting in a quorum. Id. Obviously, the present case is a Hitt case, not a Harris County case.

Courts in other jurisdictions have reached the same conclusion as the Hitt court. In **Brown v. East Baton Rouge Parish Sch. Bd.**, 405 So. 2d 1148, 1155-56 (La. App. 1981), the court recognized the "walking quorum" concept. That is, an overlapping series of meetings or telephone conferences could establish the factual basis for a "walking quorum" even if a quorum of members was not in the same room at the same time. Based on the evidence before it--only six of the 12 board members were present one board member's office, that no other board members were in the hall or contacted by telephone or otherwise, that none of those present left the meeting, and no others arrived during the meeting--the court concluded that an illegal closed meeting had not taken place. Id. at 1156.

In *Booth Newspapers, Inc. v. University of Mich. Bd. of Regents*, 444 Mich. 211, 507 N.W.2d 422 (1993), the defendant board of regents conducted a series of closed meetings, telephone calls, and informal meetings in narrowing its choices for a new president of the university, culminating in a choice of one candidate who was recommended for the position. 444 Mich. at 216-220. At that point, the board of regents conducted a public meeting at which the single remaining candidate was formally selected. *Id.* at 220. The Michigan supreme court found that, by narrowing the list of candidates to one name, the board of regents had effectively made its decision behind closed doors, and merely announced the decision at the public meeting, which the court described as "a fait accompli." *Id.* at 229. The Court found that these actions violated the Michigan open meetings act, which requires that all "decisions" be made at a public hearing. Similarly, in *State ex. rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (Ohio 1996), the city manager on three different days called three series of back-to-back meetings with groups of council members. The meetings were held in his office in private. At no session was a quorum of members present. At these meetings the manager discussed the county's proposal for building new stadiums for the city's professional baseball and football teams. The manager testified that the reason for the small meetings was "so we wouldn't violate Ohio[']s Open Meetings Law." 668 N.E.2d at 905. The Ohio supreme court held that the open meetings act prohibits "such maneuvering to avoid its clear intent." *Id.* at 906. The court said: To find that Cincinnati's game of "legislative musical chairs" is allowable under the Sunshine Law would be to ignore the legislative intent of the statute, disregard its evident purpose, and allow an absurd result. The statute[']s . . . very purpose is to prevent just the sort of activity that went on in this case--elected officials meeting secretly to deliberate on public issues without accountability to the public. . . . To rule in Cincinnati's favor would be to endorse the behavior undertaken by city council and the city manager in this case and make it applicable to every city council meeting in Ohio. The statute that exists to shed light on deliberations of public bodies cannot be interpreted in a manner which would result in the public being left in the dark. The Ohio Sunshine Law cannot be circumvented by scheduling back-to-back meetings which, taken together, are attended by a majority of a public body. *Id.* See also *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 376, 20 Cal. Rptr. 2d 330, 853 P.2d 496 (1993) ("concerted plan to engage in collective deliberation" serially would violate the open meeting requirement (dictum)); *Stockton Newspapers, Inc. v. Redevelopment Agency*, 171 Cal. App. 3d 95, 102, 214 Cal. Rptr. 561 (1985) (series of nonpublic telephone conversations, each between a member of the governing body and its attorney, for the commonly agreed purpose of obtaining a collective commitment by a majority of that body concerning public business, constitutes a "meeting" and thus violates the open meetings act); *Del Papa v. Board of Regents of the University and Community College System of Nevada*, 114 Nev. 388, 392, 956 P.2d 770, 778 (1998) (quorum of a public body gathered by using serial electronic communication to deliberate toward a decision or to make a decision on any matter over which the body has supervision, control, jurisdiction or advisory power violates open meeting law).

It may be argued that finding an Open Meetings Act violation in this case will impair informed and efficient decisionmaking. That is, government decisionmakers must be free to consult among themselves in a candid and unrestrained manner in an attempt to persuade each other and resolve issues. Inherent in an executive position is the duty to make rational decisions and to take responsibility for the consequences. Important decisions should not be made casually, but informal information may be as important as formal procedure in reaching the correct result, whether the decision needs to be rational, representative, or efficient. *Hispanic Educ. Comm. v. Houston Indep. Sch. Dist.*, 886 F. Supp. 606, 610 (S.D. Tex. 1995). How does one square this requirement of responsible and efficient government with the dictates of the Open Meetings Act, which require "openness at every stage of a governmental body's deliberations"? *Acker*, 790 S.W.2d at 300. The answer may lie within the *Hispanic Educ. Comm.* case. There the court held that a school district board of trustees, meeting in numbers less than a quorum to discuss the hiring of a board member as superintendent, did not violate the Texas Open Meetings Act. The court observed that "limiting board members' ability to discuss school district issues with one another outside of formal meetings would seriously impede the board's ability to function." 886 F. Supp. at 610. In reaching its decision, the court reasoned that "with fewer than a quorum present, nothing can be formally decided; without a formal decision, no act is taken. Without action, there is no illegality." *Id.* The court also observed that there was no evidence of any systematic attempt to circumvent or avoid the purposes of the Act. *Id.* The clear implication from this is that if there had been, the court would have found a violation of the Act regardless [\*\*127] of whether the quorum requirement was met. See also *Harris County Emergency Serv. Dist. No. 1*, 999 S.W.2d at 169 (no evidence that the members were attempting to circumvent the Act by using telephone to avoid meeting in a quorum). Such an approach balances the Act's "quorum requirement" against the need to prevent circumvention of the Act by conducting public meetings in a piecemeal fashion without a quorum being present. **If a governmental body may circumvent the Act's requirements by "walking quorums" or serial meetings of less than a quorum, and then ratify at a public meeting the votes already taken in private, it would violate the spirit of the Act and would render an unreasonable result that was not intended by the Texas legislature. Thus, a meeting of less than a quorum is not a "meeting" within the Act when there is no intent to avoid the Act's requirements. On the other hand, the Act would apply to meetings of groups of less than a quorum where a quorum or more of the body attempted to avoid the purposes of the Act by deliberately meeting in groups of less than a quorum in closed sessions to discuss and/or deliberate public business, and then ratifying their actions as a quorum in a subsequent public meeting.**

Here, the intent is clear. **The Mayor met and spoke with groups of council members of less than a quorum to reach a "consensus,"--that is, to arrive at a majority decision on the budget--prior to the formal meeting. n190 The City Manager kept track of the number of council members present so that a formal quorum would not be together in his office. n191 The consensus reached was memorialized in the consensus**

memorandum containing the signatures of each council member, and manifested when the council adopted the budget set forth in the memorandum at the next day's public meeting--a "fiat accompli." A clearer manifestation of intent to reach a decision in private while avoiding the technical requirements of the Act can hardly be imagined. HN50" When a majority of a public decisionmaking body is considering a pending issue, there can be no 'informal' discussion. There is either formal consideration of a matter in compliance with the Open Meetings Act or an illegal meeting." Acker, 790 S.W.2d at 300. Or, as a California court put it, In this area of regulation, as well as others, a statute may push beyond debatable [\*\*129] limits in order to block evasive techniques. An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 263 Cal. App. 2d 41, 50, 69 Cal. Rptr. 480, 487 (1968).

Having found an Open Meetings Act violation, the Court must consider whether the council's adoption of the budget at a properly convened open meeting will excuse that violation. Governmental actions taken in violation of the Act are subject to judicial invalidation. \*\*\* As the council had no power to deliberate and vote on the budget at a meeting not convened in accordance with the Act, it could not later ratify the void act at a properly convened meeting. Porth, 622 S.W.2d at 476; Op. Tex. Att'y Gen. No. LO-95-055 (1995). The attempted ratification was ineffective, and the council's defunding of plaintiffs is void.

*Brown v. East Baton Rouge Parish School Bd.*, 405 So. 2d 1148, 1155-1156 (La.App. 1 Cir. 1981)

The board is composed of twelve members and a simple majority of the board would be seven members. The evidence clearly establishes that at no time were seven members of the board present at the gathering at Mr. Goodwin's office on April 9, 1980. Therefore, the trial court was correct in concluding that an actual quorum of the public body was not present at one time. A strict and technical reading of the open meetings law would require the conclusion that, where an actual quorum of the public body was not present at one time, there could in fact be no "meeting" of that body. The trial court's factual finding that no quorum of the board was present on April 9, which finding is supported by the evidence, would appear to support the conclusion that no meeting of the board took place at that time.

However, because the open meetings law is to be liberally construed, and it expressly prohibits public bodies from utilizing procedures which circumvent its intent, we have



carefully examined this record in order to determine if a "walking quorum" did exist, and whether this device had the effect of circumventing the provisions of the open meetings law.

Concerning the gathering at Mr. Goodwin's office on April 9th, the evidence is to the effect that Mr. Richard, the chairman of the committee, was out of town on this day and had asked Mr. Goodwin to fill in for him at the meeting with Mrs. Armstrong, the president of the board, and Dr. Rice, who had been selected as the new superintendent. Upon returning to Baton Rouge, Mr. Richard contacted Mr. Goodwin and arranged to [\*\*22] meet him later that day in order to be informed of what had occurred with Dr. Rice. The evidence clearly indicates that the meeting at Mr. Goodwin's office was not designed to be a Board or Committee meeting and was not intended for the purpose of making any decision or taking any action. The evidence further establishes that only six board members were present at Mr. Goodwin's office, and that no other board members were in the hall or contacted by telephone or otherwise. The evidence further indicates that none of those present left this meeting and no other board members arrived during the meeting.

The trial court allowed plaintiffs to fully explore the issue of whether an actual or "walking" quorum of the Board or Committee was present or existed on April 9, 1980. Further examination on this subject was disallowed only when it became evident that plaintiffs were unable to establish that a quorum, or its equivalent, did exist, which is necessary in order to find that a "meeting" took place. The trial court was correct in its refusal to allow The League to continue its cross examination on this subject.

We find that, while not strictly a chance meeting, this gathering of the [\*\*23] six board members at Mr. Goodwin's office on April 9, 1980, was not prearranged, and that, except for Mr. Richard and Mr. Goodwin, the members who attended did so on their own and merely because they were aware that Mr. Richard would be at Mr. Goodwin's office that night. We further find that this gathering at Mr. Goodwin's office was intended only to inform Mr. Richard and was not intended or used by the Board as a device to circumvent the open meetings law. Based on the evidence, we believe that the trial court was correct in finding that this April 9, 1980, gathering at Mr. Goodwin's office was not an illegal closed meeting of the Board or Committee.

And, in Maryland:

*Cnty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections*, 377 Md. 183, 191-195 (2003) ("C.L.U.B"): Without referring to the "walking quorum" concept, the Court (Eldridge, J., no dissent) found that the City Council violated Open Meetings Act by failing to follow Act's procedures when closing a meeting as soon as the number of members present dropped below a quorum; the Council president did not want public to see "heated discussion." Court found wilful conduct & voided the action):

One of the appellants, Sultan Shakir, and two reporters were outside the meeting room, and were in contact with the President's assistant and press secretary as they attempted to gain admission to the meeting. The trial court found that "there came a point in time during the course of the meeting when [the press secretary] informed Mr. Shakir and the two reporters that ten councilmembers were present and they could enter the meeting room." Approximately one minute after Shakir and two reporters entered the meeting room, the President determined that ten members of the Council were not present and closed the meeting. The Council did not vote to close the meeting.

\*\*\*

The trial court made the following findings of fact with respect to the Council President's knowledge:

"58. Question P, and the fact that ACORN had gathered sufficient signatures to have it placed on the ballot, was discussed at the August 8, 2002 meeting prior to the time that Mr. Shakir and the two reporters entered the meeting room.

\* \* \*

"60. The City Council President's understanding of the Open Meetings Act is that 1) it requires prior public notice be given of the Council's business meetings where a quorum is expected to be present; 2) no prior notice is necessary unless the Council knows that a quorum will be in attendance; and 3) if a quorum appears unexpectedly, opening of the meeting to the public, without notice, is compliance."

The plaintiffs assert that the Baltimore City Council violated the Open Meetings Act at the August 8 meeting, pointing to the lack of notice and closing the meeting without a vote. The defendants counter that there was no quorum expected at the August 8 meeting and that, therefore, the Open Meetings Act did not apply. The defendants are incorrect.

\*\*\*

The clear policy of the Open Meetings Act is to allow the general public to view the entire deliberative process. According to the findings of fact by the trial court, the City Council wished to debate the issue of restructuring at the August 8 meeting. At that time, the council members were aware that Question P, instituting fourteen single member districts, would be on the ballot for the November, 2002, election. **It is undisputed that the Council intended to discuss Bill 02-0654, an alternative proposal for restructuring the city council, at the August 8 meeting. The Council President's belief that this discussion would be "heated," is obviously not sufficient reason to close the meeting to the media and the general public. Such discussion is part of the "deliberations" that the "citizens must be allowed to observe," as intended by the Open Meetings Act.**

Observation by citizens is possible only when they have notice that such deliberations are planned by their elected representatives. Therefore, the Council was obligated to provide

"adequate notice of the time and location of [the] meeting[]" to the public. § 10-501 (c). We considered the issue of adequacy of notice in *New Carrollton v. Rogers*, supra, where the municipality published a notice listing the time and place of the meeting in two newspapers, and posted the notice with the same information on a bulletin board at City Hall. 287 Md. at 69, 410 A.2d at 1077. We held that this was sufficient to meet the municipality's obligation to give reasonable advance notice in writing as required by the statute then in force.

In the instant case, the City Council failed to provide notice to the public in any form. In fact, the Council President deliberately omitted to give notice to the media, contrary to the customary practice of the City Council. The President of the Council stated that she did not anticipate a quorum, and that, therefore, she believed that the meeting was not covered by the Open Meetings Act. But, as the trial court found, "the stated intention of councilmembers to be present at, or absent from, a meeting is not an accurate indicator of who will actually be present. Frequently, not all the members who indicate they will be present actually attend, but sometimes more members are present at the meeting than indicated an intention to be present." Thus, the President could not reasonably presume that there would be no quorum present. She, therefore, had an obligation to provide reasonable written notice in advance of the meeting. Her failure to do so was a violation of the Open Meetings Act. While it is true that Shakir and members of the media learned about the meeting, their knowledge does not diminish the gravity of the violation. Learning about a meeting, particularly one where the topic was as important as the restructuring of the City Council, by happenstance is contrary to the express policy and purpose of the Open Meetings Act.

Moreover, once a quorum had been established, and the meeting had been declared open, it should not have been closed without a vote. § 10-508 (d)(2). This vote is a simple majority of the members present. There is no record that any such vote was taken at the August 8 meeting. Instead, the presiding officer simply decided to close the meeting, and forced the citizens and members of the media to leave the meeting room. This too was a violation of the Open Meetings Act. \*\*\*

The Council effectively prevented members of the public from observing most of the deliberations on the issue, in direct contravention to the expressly stated policy of the Open Meetings Act. We hold that the Council willfully failed to comply with §§ 10-505 and 10-506 of the Open Meetings Act, and that the appropriate remedy was to declare the action of the Baltimore City Council void.

**Court's construction of Open Meetings Act in other contexts – *J.P. Delphrey L.P. v. Mayor of Frederick*, 396 Md. 180, 200-201 (2006):**

More recently, in *City of Baltimore Development Corp. v. Carmel Realty Assocs.*, 395 Md. 299... (2006) we held that a corporation performing many of the functions of the Mayor and City Council of Baltimore constituted a "public body," as defined by Section 10-502 (h) of

the Act, and therefore was subject to the requirements of the Act and iterated that "[o]ne purpose of the government in the [Open Meetings Act] was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance." *Id.*, \_\_\_ Md. \_\_\_ at \_\_\_, 2006 Md. LEXIS 712 at \*25 quoting *New Carrollton*, 287 Md. at 72, 410 A.2d at 1079, quoting in turn *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974). **Therefore, in furtherance of that stated purpose, we emphasized that the Act "should be construed so as to frustrate all evasive devices."** \*\*\* In the case sub judice, no such evasive devices have been exploited by the Aldermen in a very public campaign to construct a new parking deck.

**Related topic: negative quorums:** *Ajamian v. Montgomery County*, 99 Md. App. 665, 680 (1994) distinguished from the facts in that case those in *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis.2d 77, 398 N.W.2d 154, 156 (1987), where Wisconsin Open Meeting Law applied to "a meeting of four members of sewerage commission, following a public meeting of the commission, to 'discuss the operating budget and the capital budget' when the four, voting together, had 'the power' to 'block the adoption of any proposed budget'[and] had as its purpose 'engag[ing] in public business' ...."

*Plourde v. Habegger*, 2006 WI App 147, P10 (Wis. Ct. App. 2006):

"The number of members is important, in part, because a gathering of one-half or more of the body's membership is rebuttably presumed to be a meeting for the purpose of exercising the body's authority. But sometimes, the meeting can be less than one-half of the membership and still trigger the open meetings law. This occurs when the meeting consists of a "negative quorum." See *Newspapers, Inc.*, 135 Wis. 2d at 103-04. In *Newspapers, Inc.*, a meeting of four of a committee's eleven members triggered the open meetings law relative to a budget discussion because the budget had to be passed by a two-thirds vote. As a result, the four members constituted a negative quorum with the potential to block any budget proposal."



ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #13  
March 23, 2012 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:07A.M. with the following members present:

Jana Carey  
Joshua Greene  
Karen Cook  
Patric Enright  
Jason Rheinstein (arrived at 9:16 a.m.)

Also present were:

Amy Tate, Legislative Counsel  
Teresa Sutherland, County Auditor

There were approximately 3 people in the audience.

Ms. Carey stated that there are a few outstanding issues from the public that still need to be addressed by the Commission members. One is a letter from Mr. Hillman who is a current member of the Ethics Commission who will be retiring at the end of his term on April 3, 2012. He has asked the Charter Revision Commission members to consider a two term limit for all boards and commission appointees. He also expressed his view that there should be some lawyers on the Ethics Commission and after he resigns, there will be no attorneys remaining on the Commission.

Ms. Carey said that there is also a request from the public for a provision allowing for an emergency legislative session of the County Council to be called either by the County Executive or the Chair of the County Council at the request of any three members of the County Council for the purpose of enacting certain emergency ordinances, the passage of which would require the affirmative vote of five members of the County Council.

Ms. Carey asked Ms. Tate if there were any other outstanding issues.

Ms. Tate responded by saying that she didn't think so. She said that most of the public input was on Council vacancies. She said that there is already a provision in the Charter that provides for emergency legislative sessions of the County Council. She said that some members of the public believe that the procedure for passing emergency ordinances needs to be changed.

UNRESOLVED ITEMS FOR DISCUSSION AND VOTING SUGGESTED BY THE  
COUNTY COUNCIL AND/OR COUNTY BUDGET OFFICER

Definition of a Capital Project – Ms. Sutherland

Ms. Sutherland stated that after looking at the general accepted accounting principles, the definition of a capital asset, and the generally accepted accounting principles for governments, which is more specific. She found that the generally accepted accounting principle definition for "capital asset" is *tangible and intangible assets acquired for use in operations that will benefit more than a single year*. She suggested that the definition of a capital project could broadly state that "The term "capital project" shall mean tangible and intangible assets acquired for use in operations that will benefit more than a single year, including any preliminary studies and surveys relative thereto."

She said that she doesn't believe there is a bond issue such as useful life of the assets versus bonds, as that is dictated by Federal law. She said that Mr. Hammond agreed to the language defining a capital project.

Mr. Greene asked for unanimous consent to take the language as amended by Ms. Sutherland as the recommendation to the County Council. There was unanimous consent of the Commission members.

Vacancies

Ms. Carey said that the Commission members will resume their discussion of the definition of a vacancy in the County Council or County Executive positions and the procedures for filling any such vacancy. She said that Ms. Cook has submitted proposed language for the definition of a vacancy. Ms. Carey asked if any member of the Commission thinks that there needs to be any changes to, or a need to establish a specific provision in Section 202 which deals with the qualifications for membership on the County Council. She said that if there were additional qualifications to this section, that would create the ability to relate back to the qualifications requirement when one is considering grounds for removal from the office for cause.

Ms. Cook asked Ms. Carey if she was suggesting adding a qualification that the person has an affirmative duty to disclose a pending criminal matter on an existing record or a past conviction.

Mr. Greene stated that his concern is that the issue has constitutional concerns. He said that the qualifications section is meant to be qualifying for office. He said that the vacancy issue is being addressed as a problem that arises during the councilperson's term in office rather than as a threshold qualification.

Mr. Rheinstein stated that the issues the Commission members have been asked to address are better handled in a vacancy and removal section.

Ms. Carey said that since she does not hear any support for changing the section on qualifications of a councilperson the Commission can move on to discuss the definition of a vacancy, who decides there is a vacancy and how a vacancy is filled.

Ms. Cook said that she took Mr. Enright's previous suggestion which was discussed at the last meeting, which incorporated her suggestions and suggestions that were made previously and just consolidated it a little more. She said that Section 202 would be left as is and Section 205 would be amended to include additional categories. She further explained her proposed language for Section 205.

Mr. Rheinstein said that the only thing he would suggest for Ms. Cook's proposed language for Section 205 is, that it state that the vacancy occurs upon declaration of the County Council that one of the definitions is met.

Ms. Cook stated that the verbiage is: the office shall become vacant, so it becomes vacant by operation of law. She said that if verbiage is added or another section is added that states that the County Council has to vote on it, what happens if they don't vote on it.

Mr. Rheinstein said then the vacancy doesn't exist. While it happens by operation of law, there has to be some determination that one of the conditions has actually occurred and the question remains as to who is making that determination.

Mr. Enright said that he believes what Mr. Rheinstein is saying is that the County Council would be the one to sanctify the occurrence of one of the conditions that create a vacancy.

Mr. Greene asked Ms. Tate if there should be a separate provision in the County Charter that codifies the County Council's ability to remove one of its members.

Ms. Tate said that based on the opinions from the Office of Law, one of the powers that has been given to the County Council is to determine the qualifications of its members and to police its members. She said that the distinction is, if there needs to be a finding of fact of the particular triggering mechanisms to state that there is a vacancy.

Mr. Greene said that it is his understanding that there is not a mechanism in the County Charter for Council members to remove a member and asked Ms. Tate if there were true.



Ms. Tate said that there is not anything in the text of the Charter that says the Council can remove a councilman. She said that the Council recognized the fact that the Charter does not have a provision for removing a councilmember for a crime, but they passed an Ordinance with Bill No. 85-11 which removed a councilmember for the fact that he was no longer qualified.

There was a lengthy discussion among the Commission members and Ms. Tate regarding the wording of the definition of vacancies that Ms. Cook submitted.

Mr. Rheinstein made a motion, seconded by Mr. Greene that the Commission proposes that there be a separate section for establishing grounds by which a County Councilman can be removed from office.

Ms. Cook stated that her problem with that motion is that there is still not a definition for vacancy. She said that if someone resigns or dies, it creates a vacancy and they are not being removed from office.

Mr. Rheinstein said that his proposal would be that if someone resigns or dies that could be covered in a section for filling vacancies.

The Commission members unanimously voted on Mr. Rheinstein's motion that there be a separate section for establishing grounds by which a County Councilman can be removed from office.

There was a lengthy discussion on what the definition for grounds for removal should be.

Mr. Rheinstein made a motion, seconded by Ms. Cook, that there be four definitions in the grounds for removal section which would include b, c, and d of Ms. Cook's proposal and the last would be one that covers an extended absence that takes place for more than 180 consecutive days. The motion passed by a unanimous vote of the Commission members.

Ms. Carey asked Ms. Tate to draft proposed language regarding the definitions for grounds for removal.

#### RECESS

Mr. Rheinstein called for a recess at 10:51 a.m.

#### RECONVENE

The Charter Revision Commission members reconvened at 10:57 a.m.

Vacancies (continued)

Ms. Carey stated that Ms. Tate is going to draft some language regarding the definition of vacancies that has so far been discussed, for the next meeting.

Ms. Carey stated that Ms. Cook proposed some language for the definition of the filling of vacancies, which would be a separate section in the Charter. She said that the provision states that if a vacancy occurs within the first three years, the Councilmembers would order a special election to fill the vacancy to be held within 120 days from the date of the vacancy. She said that if the vacancy occurs within the last year of a Councilmember's term, the vacancy shall be filled by a majority vote of the Council within thirty days after the vacancy occurs. If the Council has not filled the vacancy within thirty days, the County Executive shall appoint a person who will be the nominee of the Anne Arundel County Central Committee for the party of the departed Councilmember.

Ms. Carey said that Ms. Cook's proposal calls for the County Council to fill the vacancy. She said that other County Charter provisions call for the Central Committee of the party to which the departing councilmember belonged.

Ms. Cook stated that she wanted to point out that her proposal calls for the County Council to fill the vacancy only for the last year of the term. She said that the reason she recommended that the County Council fill the vacancy as opposed to the County Central Committee was because the Council holds well-publicized application and interview processes for those interested in filling the vacancy and she felt that was more transparent than the County Central Committee process.

Mr. Rheinstein stated that he is the Counsel for the Republican Central Committee and the Committee is charged for filling legislative vacancies and nominees for public office. He said that the Committee does have a bylaw provision requiring public interviews and to hold a hearing anytime they are filling vacancies. He offered to invite both the Republican and Democrat Chairs to appear before the Charter Revision Commission to address the party views would be on weighing the issues before the Commission.

Ms. Cook stated that in the past, when there have been legislative vacancies, she doesn't believe there has been adequate notice from the Central Committee to citizens regarding the interview process.

Mr. Rheinstein said that is why he advocates inviting the party Chairs to come and speak on this issue as to how their committees would handle this and to address the kinds of questions that would come up as part of a contemplated change.

Ms. Cook stated that there should be written policies and procedures on the interviewing process for the Central Committees and that it would be helpful if the Commission members could review them.

Ms. Carey asked Mr. Rheinstein if there were written procedures.

Mr. Rheinstein responded that there are written procedures for the Republican Committee but he did not know about the Democrat Committee.

Ms. Carey asked Mr. Rheinstein if he would provide the procedures for the Republican Committee and asked Ms. Tate if she would contact the Democratic Committee and see if they have written procedures that could be provided to the Commission members.

Mr. Greene asked Ms. Tate if the Charter can be amended to direct the Central Committees in the respect of political parties, to take on the function of filling a vacancy, or does the County Council or County Executive have to be part of the process.

Ms. Tate said that the County Executive is in charge of appointments in County government.

Mr. Greene stated that his suggestion is going to be that the County Council be taken out of the process of filling a vacancy and leave it up to the Central Committees and the County Executive in making that appointment.

Ms. Cook stated that she would probably be comfortable with the County Executive having the ultimate appointment power of a Central Committee recommendation. She said that perhaps after reviewing the policies and procedures of the Central Committees she might feel more comfortable that there will be better transparency.

Mr. Rheinstein said that he does not agree that special elections should be held to fill a vacancy if the vacancy occurs after the first twelve months. He stated that such a special election would not coincide with another election, schools would need to be closed in that particular district, and the turnout is usually low. He suggested that the vacancy be filled by the County's Central Committee of the former council member's party affiliation.

There was further discussion among the Commission members and Ms. Tate regarding the process of filling vacancies by special election.

Ms. Tate advised the Commission members to focus on the part of the Charter and decide whether or not to recommend special elections and not to be concerned as to the cost or what it means for setting up a polling place.

There was further discussion among the Commission members and Ms. Tate regarding the subject of special elections.

Ms. Carey asked the Commission members if anyone wanted to make a motion to vote on Ms. Cook's proposed amendment regarding vacancies.

Mr. Greene stated that he did not think the Commission members were ready to vote on the issue of filling vacancies. He said that there needs to be an alternative proposal for filling vacancies which will take into consideration everything that has been discussed at this meeting. He said that he would prepare the alternative proposal that addresses his concerns to present at the next meeting.

Mr. Enright said that he would like to see some language from Mr. Greene that addresses some of his issues that he discussed during this meeting.

Mr. Greene said that he would prepare an alternative proposal that addresses his concerns to present at the next meeting.

#### OTHER BUSINESS

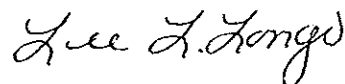
Ms. Carey stated that the issues of filling vacancies will be discussed and voted on at the next meeting. She said that there are still outstanding issues that the Commission needs to consider, one of which is binding arbitration. The other issues are whether or not the Commission wants to consider Mr. Hillman's letter regarding term limits for the Ethics Commission and whether or not it would be appropriate for the Charter to specify that there be lawyers on the Ethics Commission. She said the last issue for the Commission to consider is the request for a provision that addresses the procedure for passing emergency ordinances.

Mr. Rheinstein proposed that there should be parallel provisions for all of the Boards and Commissions in the Charter. He agreed to look at the Charter and propose some language for the next meeting.

#### ADJOURNMENT

The meeting adjourned at approximately 11:35 a.m.

Respectfully submitted,



Lee L. Longo  
Reporter



ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #14  
March 30, 2012 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:02A.M. with the following members present:

Jana Carey  
Joshua Greene  
Karen Cook  
Patric Enright  
Jason Rheinstein (arrived at 9:07 a.m.)

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel

There were approximately 3 people in the audience.

APPROVAL OF MINUTES

The minutes of March 16, 2012 and March 23, 2012 were approved as presented.

Ms. Carey stated that the Commission is in receipt of two letters asking for certain issues to be considered. Councilman Walker's letter related to appointments that are made by the County Executive; and a letter from Susan Cochran related to the line item veto, an issue that has already been discussed and voted on. She said that if any Commissioner wanted to revisit the line item veto issue to please let her know.

UNRESOLVED ITEMS FOR DISCUSSION AND VOTING SUGGESTED BY THE  
COUNTY COUNCIL AND/OR COUNTY BUDGET OFFICER

Definition of Vacancies and Procedure for Filling Vacancies

Ms. Carey referred to correspondence that has taken place by email among the Commissioners regarding the definitions of vacancies and the procedure for filling vacancies. She said that the most recent correspondence was her question as to whether the wording, "not meeting the requirements" from the draft that had been proposed by Ms. Cook and Mr. Enright, could be substituted with "failure to meet" or "as a result of his failure to meet."

Ms. Cook said that Mr. Greene prepared a revision of her proposed language for council vacancies which incorporated some of the language that Ms. Carey was suggesting.

Mr. Greene explained that in the left column of his side-by-side document, is his suggestion for the vacancy section, addressing a new section for removal from office, as well as how vacancies would be filled. The column on the right addresses Ms. Carey's comments to Ms. Cook's draft language as proposed and discussed at the last Commission meeting. He said that he incorporated some of Ms. Carey's suggested language changes to the relative section and subsection on the side-by-side document.

There was a lengthy discussion regarding Mr. Greene's proposed language changes for council vacancies and the following were suggestions from Ms. Tate and Mr. Rheinstein.

Ms. Tate

"If any member of the County Council, before the expiration of the term for which he was elected, dies, resigns from office, or otherwise becomes disqualified for office for failing to meet any of the requirements under Section 202 herein."

Mr. Rheinstein:

"If any member of the County Council dies, resigns, is removed from office pursuant to Section 207, or is otherwise disqualified from office for failing to meet any of the requirements under Section 202 herein, before the expiration of the term for which he or she was elected."

Ms. Carey asked if "failing" should be "failure".

Ms. Cook said that it should be "failure" and suggested that Ms. Tate draft the proposed language.

Ms. Tate referred to the introductory language of Section 205 and suggested that after the word vacant, insert "if the County Council determines." She said that the County Council is the body that makes the declaration that the seat is vacant and seeks to replace the member who is gone.

Ms. Carey agreed with Ms. Tate's suggestion.

There was further discussion regarding the suggested the proposed language for Section 205.

Ms. Tate suggested that she draft some language for Section 205 to present at the next meeting for the Commissioners to vote on, that incorporates some of the suggestions that have been made at this meeting.

Ms. Cook suggested that the Commissioners vote on the specific parameters for when a vacancy occurs, how a vacancy is filled, and whether or not there should be a section for removal from office.

Ms. Carey said there still needs to be some discussion regarding Mr. Greene's proposal. She stated that her concern in Section 205(b) is that any felony would be grounds for removal, but only certain misdemeanors, such as a misdemeanor that is related to public duties and responsibilities and involves moral turpitude or misfeasance or malfeasance. She said her concern is what if it does not pertain to public duties and responsibilities, but does involve moral turpitude or misfeasance or malfeasance.

Ms. Carey asked the Commissioners if any misdemeanors for which one could be incarcerated should be included.

Mr. Greene referred to his proposal of Section 205(b) in which he proposed that it be moved to the removal from office section. He stated that in his proposal for Section 207, he suggested that if a "Council member is convicted of a felony, or a crime involving moral turpitude, or misfeasance or malfeasance in office." He said that the penalty phase is irrelevant and then it is up to the County Council by an affirmative vote of a super majority to remove that member. Mr. Greene stated that this is his position and the penalty phase has nothing to do with it in his determination. There is a political decision that needs to be made by the County Council adjudicating one of its members.

Mr. Greene said that he did "delete related to his or her public duties."

Mr. Rheinstein agreed with Mr. Greene's proposed language for removal from office and that it should be up to the County Council to make that determination.

Mr. Rheinstein, made a motion, seconded by Mr. Greene, to adopt the proposed language as written in Section 207(a) as the standard by which a councilperson could be removed which would be moved to Section 205(b).

There was further discussion regarding the wording of Section 207(a).

Ms. Carey said that what needs to be accomplished in Section 207(a) is that a councilperson can be removed if they are convicted of a felony while they are in office irrespective of whether the felony occurred before they entered the office or while they were serving the office. She said that if they are convicted while holding office of any crime involving moral turpitude, irrespective of whether the crime occurred before they took office or while they were in office. She asked the Commissioners if anyone disagreed with either of these statements.

There was further discussion between Mr. Greene and Ms. Carey regarding the wording.



Mr. Rheinstein amended his motion to include changing the wording in Section 207(a) to say "or misfeasance of malfeasance of the office."

Ms. Tate suggested tabling the discussion and she will put a draft together for the Commissioners to review.

Mr. Rheinstein withdrew his motions.

On motion of Mr. Rheinstein, seconded by Mr. Enright, the Commissioners unanimously voted to table the discussion on the vacancy issues pending a draft proposal from Ms. Tate.

#### Procedures for Filling Council Vacancies

Mr. Rheinstein stated that he favors Mr. Greene's proposed Section 207 regarding filling vacancies. He said that he believes that the Council should be removed from filling any vacancy and that the Central Committee for the political party of the former councilperson be the one to name a successor with the County Executive making the appointment. Mr. Rheinstein asked what happens if the vacancy is not filled within the forty-five day period and what if the member who vacated the Council seat was not a member of the two major political parties which have Central Committees.

On Mr. Rheinstein's motion, seconded by Mr. Greene, the Commissioners agreed to adopt Commissioner Greene's proposal in Section 206(b) with the caveat that language be added pertaining to if the relevant political party not act within the required period, or if the former councilperson who has vacated was unaffiliated at the time of election, that the County Executive make the appointment.

Ms. Cook's concern is that if the Central Committee does not act and it is left up to the County Executive to be able to appoint someone, then there will not be any public scrutiny.

Mr. Rheinstein responded that it would be well publicized during the forty-five day period when the Central Committee is going through the interview process and the public hearing process.

Mr. Greene asked Ms. Tate, under the proposed construct, if the political parties do not act within the time period, would the appointment authority still rest with the County Executive by operation of law.

Ms. Tate responded by saying that it would rest the County Executive. She said that there is some concern about leaving it with the County Executive as the position of a councilperson is a lawmaker and the County Executive is handpicking his own lawmaker.

On motion of Ms. Cook, joined by Mr. Greene, seconded by Mr. Enright, the Commissioners unanimously agreed to amend Mr. Rheinstein's motion that in the instance where the Central Committee fails to act, the County Council will provide a list of three names to the County Executive and the County Executive will fill the vacancy from that list provided by the County Council.

Mr. Rheinstein asked Ms. Cook if, in the case where there is not a Central Committee, or if the person was not affiliated with any party at the time of the election, if she would want to reconsider her amendment to include that the County Council would provide a list of names for the County Executive to choose from as opposed to the County Executive making that decision.

On motion of Mr. Rheinstein, seconded by Mr. Enright, the Commissioners unanimously voted to amend Ms. Cook's motion to include that if there was not a Central Committee, or if the person was unaffiliated at the time of the election, the County Council would provide a list of three names to the County Executive and the County Executive will fill the vacancy from that list provided by the County Council.

REVOTE ON CONSIDERATION OF HAVING SEVEN MEMBERS, ONE FROM EACH COUNCIL DISTRICT, FOR THE CHARTER REVISION COMMISSION

On motion of Mr. Enright, seconded by Ms. Cook, the Commissioners unanimously voted to have the Charter Revision Commission consist of a qualified representative from each Council district, not to exceed the number of districts at that time.

TERM LIMITS FOR ETHICS COMMISSION

Ms. Tate stated that Richard Hillman, Chair of the Ethics Commission, made a suggestion that there be term limits for the Ethics Commission members. She said that there are members who have been on the Commission for twelve or more years.

Mr. Rheinstein made a motion that the Charter Revision Commission make a recommendation to the County Council for them to consider making all Boards and Commissions enumerated in the Charter of Anne Arundel County be limited to two consecutive terms. The motion failed due to the lack of a second.

On motion of Mr. Greene, seconded by Mr. Enright, the Commissioners voted 4-1, that the members of the Ethics Commission be limited to three consecutive terms of the existing four-year terms.

Ms. Cook asked Ms. Tate why she feels that the requirement of being an attorney for the Ethics Commission is not a good idea.

Ms. Tate said that she is reluctant to draft a Charter question that states there has to be a lawyer on the Ethics Commission because the Council is under public scrutiny. She said that there was a lot of criticism from the public about the Charter Revision Commission having all lawyers as members.

Ms. Cook said that since there are seven members on the Ethics Commission, language could be drafted to state that one of those members had to be an attorney.

Mr. Rheinstein, seconded by Ms. Cook, moved for discussion purposes that one or more of the members of the Ethics Commission should be an attorney or a member of the Bar of the State of Maryland.

On motion of Ms. Cook, seconded by Mr. Greene, the Commissioners unanimously voted to include in the potential Charter Amendment requiring term limits for the Ethics Commission, that there also be one member of the Ethics Commission who shall be an attorney and a member of the Maryland Bar.

#### BINDING ARBITRATION

Ms. Carey referred to prior language that was drafted by Ms. Schuett which would amend Section 812 of the current Charter to state that: "In addition to the right granted to County employees in Section 811 of this Article to organize and bargain collectively, the County Council may provide by ordinance for arbitration with authorized representatives of employee bargaining units. Any ordinance that is enacted shall prohibit strikes or work stoppages. If the County Council adopts an ordinance and decides to fund a final written award of an arbitrator, the County Council may increase expenditure in the budget submitted by the County Executive to the County Council as may be necessary to fund the written award without the requirement for an amendment to the budget proposed by the County Executive."

On motion of Ms. Cook, seconded by Mr. Greene, the Commissioners voted that the current language in the Charter be retained in light of the fact that the law will be settled in approximately thirty days, at which time the Court of Appeals may uphold the current Charter provision wherein there would not be a need for further modifications. If the law is overturned at that time, the County Council can draft a Charter amendment.

Roll call vote:

Aye – Ms. Cook, Mr. Greene, Mr. Enright, Mr. Rheinstein  
Nay – Ms. Carey

#### RECESS (10:42 a.m.)

Mr. Rheinstein asked for a five minute recess.

## RECONVENE

The Commission reconvened at 10:49 a.m.

## EMERGENCY ORDINANCES

Ms. Tate said that in Section 307(i) it states: "If an ordinance is an emergency ordinance as defined in Section 208(d) or if an ordinance passed at an annual legislative session or a monthly legislative session day be declared by the County Council to be an emergency ordinance necessary for the immediate preservation of the public peace, health, safety and welfare, it shall take effect from the date it becomes law."

Ms. Tate said that there have been some members of the public that have attended the Council meetings and stated that the tool of passing a bill that is effective immediately is being abused and does not rise to the criteria of being necessary for health, safety and welfare. She said that sometimes this has been used because something has to be passed for fiscal reasons and it needs an immediate effective date. She said that there is concern from the public that there is no waiting period before the law is operational. She said that if the public has a problem with a bill being passed, they have the time to gather signatures to stop the implementation of the ordinance within the forty-five day effective day of the bills. She said when that window of forty-five days is removed in an emergency ordinance, the public does not lose the right to contest the bill, but the bill is in effect during the referendum procedure.

On motion of Mr. Rheinstein, seconded by Mr. Greene, the Commissioners unanimously voted not to make a recommendation to the Charter to revise the provisions of emergency ordinances.

## CONSIDERATION TO GIVE THE COUNTY COUNCIL THE POWER TO APPOINT THE COUNTY ATTORNEY AND THE CHIEF OF POLICE

Ms. Carey stated that this request came from Councilman Grasso and Councilman Walker. She referred to some background material that Ms. Tate provided to the Commission members on how other counties handle similar situations.

Mr. Rheinstein stated that the County Attorney serves at the pleasure of the County Executive but the position is also charged with providing Counsel to the County Council.

Mr. Rheinstein stated that he doesn't think it would be good policy to distinguish the Chief of Police from any other department head.

Ms. Cook stated that she is in favor of following the pattern of other counties in how the County Executive can appoint but subject to confirmation by the County Council and she would also include all department heads.

Ms. Carey stated that the information Ms. Tate provided from other counties seemed to deal mostly with the appointment process as opposed to the removal process.

Ms. Tate stated that in her email to the Commission members, she said that she had to go back and look at the removal process.

There was further discussion about the appointment process and also the removal process that was listed in the Harford County example.

Ms. Tate stated that the suggestion to the Commission members was not that the County Council could remove a Department Head, the Chief of Police, or the County Attorney on their own initiative, but that if the County Executive moved to remove one of his appointees, the Council would have the same authority to agree or disagree on the removal.

Mr. Rheinstein said that he believes the County Executive should have the power to fire a department head; however, the County Council should also have the power if there is a question of wrong doing. He said to have the County Council ratify the decision of the County Executive to fire a department head would be an encroachment on separation of powers in the current form of government.

Mr. Greene stated that he would be supportive of an advise and consent confirmation process for the County Council for the Executive Branch of department heads. He said that he would not be in support of the County Council removing an executive branch department head. He said that should be left to the County Executive.

Ms. Carey asked Ms. Tate if there were separate County attorneys assigned to work with the County Council and the County Executive on issues where they may have differences of opinion.

Ms. Tate stated that they do not. She said that any request from the County Council that goes to the Office of Law is not privileged under the current County Attorney.

Mr. Rheinstein asked if there was an organizational chart for the executive branch.

Ms. Tate said there is one available on the website.

Mr. Rheinstein asked if the County Attorney was considered a department head.

Ms. Tate responded affirmatively.

Mr. Rheinstein asked Ms. Tate if it would be possible for the County Council to have a separate attorney.

Ms. Tate said that issue is not a new concept, but it has failed before.

Mr. Rheinstein asked Ms. Tate why it has failed.

Ms. Tate stated that there is an operational benefit in having the Office of Law advise the County Council on drafting legislation.

Ms. Cook said that the issue has been proposed numerous times. She said the reason it has failed is because the Assistant County Attorneys have a lot of experience in a lot of different areas, and specific expertise that one attorney assigned to the County Council certainly may not possess.

Ms. Carey asked if the County Council disagrees with the advice that the County Attorney is giving to it on an issue where the County Attorney is also advising the County Executive, would it be possible for the County Council to have the authority and funds to get an outside opinion.

Ms. Tate responded by stating that the County Council has that ability under Section 314 of the Charter which states: "The Council may at its discretion, and subject to the provisions in its budget or supplementary appropriation, by resolution engage the services of experts, consultants or attorneys to aid it in its inquiries, investigations or the drafting or codification of legislation." She stated that when the Council is represented in a Court of Law and challenged on its legislation, the County Attorney represents the County Council.

There was further discussion among the Commissioners and Ms. Tate regarding the issue of separate legal counsel for the County Council.

Ms. Cook asked Ms. Tate if she would investigate what other counties do regarding separate counsel.

Mr. Rheinstein, seconded by Mr. Greene (he would make an amendment to this motion), made a motion to make a recommendation to the County Council that thirteen Executive Department Heads be subject to advise and consent confirmation process of the County Council.

Mr. Greene asked Ms. Tate if there was an executive calendar for the County Council in the legislative session, so that the proceeding for that day solely could address nominees and that the action has to occur on that day.

Ms. Tate said no. There is one calendar and one agenda, and the Council considers items in the order that are outlined in the County Council Rules of Procedure. She said that there is no distinction between the Executive and Council ordinances when the Council goes to consideration of ordinances. They are numbered sequentially and they are taken in the order they are numbered.

Mr. Greene recommended an amendment to Mr. Rheinstein's motion to include that in requiring department heads to be subject to an advise and consent confirmation process, that there be a requisite time period prescribed by statute, that the County Council must act on the confirmation. He referred to the Prince George's County statute.

Mr. Rheinstein stated that he accepted Mr. Greene's amendment.

Ms. Carey clarified that this recommendation has nothing to do with the dismissal of department heads, only an advise and consent role over the appointment.

The Commissioners voted unanimously to accept Mr. Rheinstein's motion with Mr. Greene's amendment to his motion.

#### OTHER BUSINESS

Ms. Carey stated that the only issues left for the Commissioners to finalize are the vacancy issues.

Ms. Carey asked Ms. Tate if there were any other issues that needed to be discussed, other than the report that will be presented to the County Council at the next meeting.

Ms. Tate said that she would have a draft ready for the Commissioners to vote on at the next meeting on April 11. She said that the report has to be ready to be submitted to the County Council on April 16.

#### ADJOURNMENT

The meeting adjourned at approximately 11:39 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter

ANNE ARUNDEL COUNTY CHARTER REVISION COMMISSION  
Minutes - Meeting #15  
April 11, 2012 - 9:00 A.M.  
Council Chambers, Arundel Center, Annapolis, MD

---

The meeting convened at 9:02A.M. with the following members present:

Jana Carey  
Joshua Greene  
Karen Cook  
Patric Enright

Commissioner Jason Rheinstein was absent.

Also present were:

Beth Jones, Administrative Officer  
Amy Tate, Legislative Counsel

There was one person in the audience.

APPROVAL OF MINUTES

The minutes of March 23, 2012 and March 30, 2012 were approved with one correction made by Ms. Cook on Page 7, last paragraph, changing County Council to County Executive in the minutes of March 30, 2012.

UNRESOLVED ITEMS FOR DISCUSSION AND VOTING SUGGESTED BY THE  
COUNTY COUNCIL AND/OR COUNTY BUDGET OFFICER

Definition of Vacancies and Procedure for Filling Vacancies

Ms. Carey stated that although the residency issue was not something the Commission had discussed, she had some concerns regarding the definition of a residence. She referred to Ms. Tate's email which included a list of revisions and the residence requirement was on that list. She said that she had some concerns regarding the definition of a residence and that based on different case laws residence does not mean "abode." She stated that she is reluctant to add to the Charter, a definition of residence that runs contrary to case law. She asked Ms. Tate to explain the reason why the term "abode" was used as a definition of "residence."



Ms. Tate stated that the County Council was given legal advice by the Office of Law that whatever case law there is concerning a domicile versus a place of abode, the case laws all relate to the members of the General Assembly and not to County Council members. She said that the Charter County and the legislature within the Charter County, has the ability to determine the qualifications of its members. She stated that this is one of the powers given to a Charter County under Article 25 of the State Code. She said that as a result, Bill No. 85-11 was passed in which it was determined that Mr. Jones, on the date of his incarceration, would no longer be qualified to serve as a member of the County Council because he would not be complying with the Council's residency requirement. Ms. Tate said that the County argued that the County Council was in the position to judge the qualifications of its members, including the interpretation of residence as the actual abode. She said that Mr. Jones is arguing that residence means "domicile" and not "abode." She said that the legal arguments of residency will be brought before the Court of Appeals in the future but the added language she provided for the Commission regarding residency, reflects the legal advice received and the decision of the Circuit Court.

Ms. Tate said that the question is whether the Commission wants to recognize what has happened already or not put anything in the Charter. She said that after the Court of Appeals decides on Mr. Jones' appeal, the County Council can memorialize it in the Charter.

Ms. Carey stated that the consensus of the Commission members is not to recommend to the County Council to add the definition of residence to the Charter at this time.

#### Vacancies

Ms. Carey stated that the Commission members have previously discussed whether or not to add a section or subsection concerning a vacancy established by the removal of a Councilmember for cause.

Ms. Cook referred to Ms. Tate's proposed language regarding vacancies that she emailed the Commissioners on April 2.

Ms. Carey referred to her email of April 9 which included proposed changes to vacancies and removal to Ms. Tate's proposed language. She said that she added to the provision in Section 205(a). She said that her provision gives the County Executive the right to fill the temporary vacancy if the Council doesn't act within the 30 day period.

There was further discussion regarding Ms. Carey's proposed additional language to Section 205(a) regarding the temporary appointment.

On motion of Ms. Cook, seconded by Mr. Enright, the Commission members voted unanimously to add Ms. Carey's proposed language from Section 205(b) to Section 205(a) regarding the fact that if the County Council fails to fill a temporary vacancy within the thirty-day time frame, then the County Executive has the right within ten days to appoint someone selected by the State Central Committee.

Ms. Carey referred to Section 205(h) which relates to a member of the County Council who is a member of the reserves. She said that at the present time, this applies to anyone in the reserves who is called to active service. She said that she thinks there could be a possibility where a Councilman is called to active duty but who is stationed locally, and whose duties would not necessarily deter him from carrying out his duties as a County Councilman. She said that she doesn't think that reservists should be restricted or removed from their position as a Councilperson if they are on active duty locally.

Ms. Tate said that she has sent Councilman Smith, who is a reservist, an email asking if a reservist is permitted to perform any outside functions, such as serving as a Council member, during the term of active duty. She is waiting for his response.

There was some further discussion regarding possible language changes to Section 205(h).

Ms. Carey said that she would put this issue aside until Ms. Tate receives Councilman Smith's comments.

Ms. Carey referred to the proposed language from Ms. Tate regarding Section 209, removal from office.

There was further discussion among the Commission members regarding Ms. Carey's proposed language for Section 209, removal from office.

On motion of Ms. Cook, seconded by Mr. Enright, the Commission members voted unanimously to adopt Ms. Tate's proposed language for Section 209, removal from office.

Ms. Carey said that she is concerned about allowing a councilperson who isn't performing or is incapable of performing to stay in office for 180 days before any action is taken to remove them and under Section 206(a) [209], an extra 150 days can ensue before an election is held. There was no further discussion on this issue as the Commission members did not seem to support Ms. Carey's concern.

Section 404

Ms. Carey said that Section 404 refers to the conviction or failure to perform duties for the County Executive. She asked if felony convictions should be added and what "fails actively" means.

Ms. Cook suggested that the Commission apply the same language that the Commission members just adopted for the County Council members and apply it to the County Executive.

Ms. Cook, made a motion, seconded by Mr. Enright, to adopt the same language from Section 209 and apply it to Section 404 as it relates to the County Executive.

Mr. Greene stated that the major material change is that the felony threshold is being brought forward to the County Executive and asked Ms. Tate for clarification.

Ms. Tate responded affirmatively.

Ms. Cook stated that if the parallel language is adopted, then Section 202 would not apply to Section 404 because it relates to County Council members and asked Ms. Tate if this was a correct statement.

Ms. Tate said that Section 401 would be substituted to apply to the County Executive.

The Commission members voted unanimously to adopt Ms. Cook's motion to apply the same language from Section 209 and apply it to Section 404 as it relates to the County Executive.

DRAFT OF FINAL REPORT OF CHARTER REVISION COMMISSION

Ms. Carey referred to Ms. Tate's draft report. She stated that she responded to Ms. Tate with some corrections.

Ms. Cook stated that she also sent Ms. Tate some corrections.

Ms. Cook asked Ms. Carey about her written dissent regarding binding arbitration. She said that all Commission members should have the option to provide a written dissent to any vote in which they dissented as well.

Ms. Carey agreed with Ms. Cook.

Ms. Carey stated that she is calling it a minority report.

Ms. Cook stated that a minority report would be a larger document detailing different items that were discussed in general. Ms. Cook asked Ms. Carey if she was just discussing binding arbitration or were there other issues.

Ms. Carey stated that she would refer to her report as a dissent report and the only issue that it applies to is her vote on binding arbitration. She read her report to the Commission members.

Mr. Greene stated for the record that the Commission did act on binding arbitration. He suggested that if other Commissioners wanted to file written reports that there should be some type of preamble in their statement explaining why they voted the way they did. He asked Ms. Tate what the deadline would be for other written reports.

Ms. Tate said that she would need any other written reports by Thursday, April 12 so the report can be finalized by Friday, April 13.

There was further discussion among the Commissioners regarding whether or not "dissent" or "minority" should be used to title the report.

Mr. Greene suggested to Ms. Tate that a separate section called "Dissenting Views" should be included in the final report.

There was further discussion between the Commission members and Ms. Tate regarding the suggested editorial changes to the draft report.

Mr. Greene asked Ms. Tate if there would be other changes or revisions that she needed to or would be making to the report that the Commission members have not received.

Ms. Tate said there would be some changes and she would also be adding Section 404 that the Commission members voted on today. She said that she would send the report to everyone once she has made the edits.

On motion of Ms. Cook, seconded by Mr. Greene, the Commission members voted unanimously to approve the Charter Revision Phase II Final Report with the comments and suggestions that were made today plus the additions that Ms. Tate will propose subject to email review and confirmation by Commission members.

#### OTHER BUSINESS

Ms. Carey thanked the Commission members for their time and cooperation. She thanked the Council staff for all of their hard work.

Mr. Enright asked if all of the Commission members should appear at the Council meeting on April 16 to present the final report.

Ms. Tate answered affirmatively.

Mr. Greene expressed his appreciation to the Council staff for their hard work and thanked Ms. Carey for chairing the Commission.

Ms. Cook and Mr. Enright also expressed how much they enjoyed working with everyone on the Commission and the Council staff.

ADJOURNMENT

The meeting adjourned at approximately 10:32 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lee L. Longo".

Lee L. Longo  
Reporter

## **APPENDIX C. REQUESTS FOR STUDY**



COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2011, Legislative Day No. 30

Resolution No. 41-11

Introduced by The Entire Council

By the County Council, August 1, 2011

1 RESOLUTION requesting the Charter Revision Commission to consider certain issues

2  
3 WHEREAS, the County Council, under the provisions of Section 1203 of the  
4 Charter, has adopted a resolution appointing a Charter Revision Commission for the  
5 purpose of making a comprehensive study of County Government and updating the  
6 Charter, including revision of the councilmanic districts; and

7  
8 WHEREAS, the demographic changes that have taken place in the County since the  
9 last decennial census indicate that several key issues need particular study; and

10  
11 WHEREAS, the County Council wishes to ensure that these points are carefully  
12 considered by the Charter Revision Commission; now, therefore, be it

13  
14 *Resolved by the County Council of Anne Arundel County, Maryland, That it hereby*  
15 *requests the Charter Revision Commission to include the following issues on their agenda for*  
16 *in-depth study and to make recommendations:*

- 17  
18 1. Examine the need for term limits for Board of Appeals members.  
19  
20 2. Review the role of the Board of Appeals as the final adjudicatory authority in the  
21 County administrative proceedings and the need for oversight, and if so, by whom.  
22  
23 3. Examine changing the binding arbitration provision for Uniformed Public Safety  
24 Representatives to comply with case law.  
25  
26 4. Review the efficacy and timing of the comprehensive rezoning process and examine  
27 the value of enabling the County Council to initiate proceeding in certain instances.  
28  
29 5. Examine the merits of establishing of a County planning commission.  
30  
31 6. Evaluate the removal of line item veto authority for the County Executive;  
32  
33 7. Evaluate adding County Council approval of transfers of funds between major  
34 categories in the County budget.  
35  
36 8. Consider the elimination or modification of the provision requiring an independent



1        audit every four years with the incoming County Council and County Executive since  
2        an independent audit now occurs every year.

3  
4        9. Evaluate alternative processes for filling vacancies on the County Council.

5  
6        10. Examine the number of required legislative sessions to allow for an annual recess of  
7        the County Council in August.

8  
9        11. Evaluate extending the time in which action must be taken on a bill to permit  
10       additional time for public hearings on amendments.

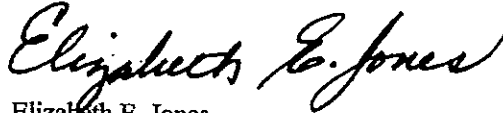
11  
12       12. Examine benefits of expanding the number of Councilmanic districts from seven to  
13       nine.

14  
15      and, be it further

16  
17      *Resolved*, that copies of this Resolution be sent to the Charter Revision Commission.

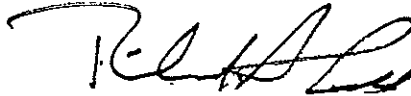
READ AND PASSED this 15<sup>th</sup> day of August, 2011

By Order:

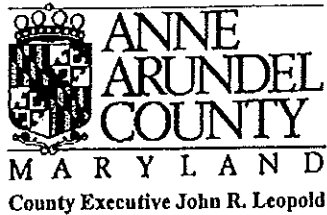


Elizabeth E. Jones  
Administrative Officer

I HEREBY CERTIFY THAT RESOLUTION NO. 41-11 IS TRUE AND CORRECT AND DULY ADOPTED  
BY THE COUNTY COUNCIL OF ANNE ARUNDEL COUNTY:



Richard B. Ladd  
Chairman



Arundel Center  
44 Calvert Street  
Annapolis, MD 21401

John R. Hammond  
Budget Officer  
Chairman, Board of Trustees of the Anne  
Arundel County Retirement & Pension System  
Chairman, Pension Investment Committee  
410-222-1222  
410-222-1108 FAX  
jhammond@aacounty.org

October 31, 2011

Jana H. Carey, Esquire  
Chair  
Anne Arundel County Charter Review Commission  
Arundel Center  
44 Calvert Street  
Annapolis, Maryland 21401

Dear Ms. Carey:

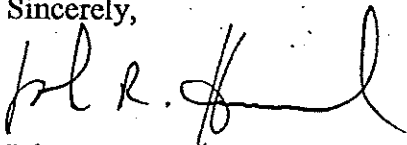
Thank you for your recent invitation to provide input to the Charter Review Commission. Several items from my perspective are worthy of the Commission's consideration as it undertakes its decadal review of the County's Charter. These include the following:

1. Section 606-609 Pension Oversight Commission. Since the late 1990s the County has utilized a Board of Trustees as an independent body to oversee the management of the County's pension funds (Title 2 of Article 5 of the Anne Arundel County Code). The Pension Oversight Commission has not performed most of the Charter mandated activities other than occasionally reviewing legislation that pertains to County pensions. The Board of Trustees has been performing the Charter responsibilities assigned by the Charter to the Pension Oversight Commission. Consideration should be given to either the elimination of these sections of the Charter or replacing the reference to the Pension Oversight Commission with the Board of Trustees of the Anne Arundel County Retirement and Pension System.
2. Section 610 Spending Affordability Committee. Subsection 4 requires some editorial attention. It appears that during some revision some verbiage was removed. Additionally it would be appropriate and helpful to specify that terms shall commence on July 1.
3. Section 706 and Section 708 Submission of the Budget & Budget Calendar. The most recent Charter Amendment moved the date of the submission of the County Executive's proposed budget from May 1 to April 15. This revised schedule does not permit full evaluation of the Maryland General Assembly's actions at its most recent regular session that impact the County Executive's proposed budget. The May 1 submission date worked well from the outset of Charter government and allows time for better budgeting decisions. If additional time is required for County Council consideration of the proposed budget, that time could be added to the end of the budget process by allowing for the budget to be enacted no later than June 15, rather than the current June 1 date (Section 709).

4. Sections 707, 710, 714, et al References to "copies". Several sections of the Charter make reference to copies of the budget being made available to the public. Consideration by the Commission for the utilization of "electronic" copies (internet and CDs) would be appropriate.
5. Bond Premium. Bond premium is proceeds received from the sale of bonds in excess of the face value of the bonds issued. Recent financial market conditions have resulted in the generation of significant amounts of bond premium from the County's annual bond sale. While the Internal Revenue Service does place some limitations on the use of bond premium from the sale of municipal bonds (due to their tax free nature), bond premium can be utilized to pay for the annual debt service cost of the bonds that generated the premium. This opportunity presents an unforeseen situation by the framers of the Charter where operating costs (debt service) can be financed with long term borrowing. A more financially prudent result would be for there to be a Charter restriction on the utilization of bond premium such that it could only be utilized for the funding of capital improvements incorporated in the County's capital budget.
6. Section 702 Definitions. Subsection b defines a capital project and is perhaps unduly restrictive. Consideration should be given to expanding the definition to include replacement equipment of a suitable useful life for a capital project. For instance the acquisition of a replacement financial management system is an expensive proposition and should have a useful life of at least ten years, and generally will require multiple years to scope out and implement. These parameters should allow for the categorization of this kind of a project as a capital project and thereby avail itself of the non-lapsing funding and alternative funding sources that befits a capital project.

Again thank you for the opportunity to make suggestions, and I would be pleased to address the Commission concerning these items, or any other item that the Commission believes my input would be of some value.

Sincerely,



John R. Hammond

cc: John Leopold  
Dennis Callahan  
Jonathan Hodgson  
Alan Friedman



**ANNE ARUNDEL COUNTY  
OFFICE OF THE COUNTY AUDITOR**

November 25, 2011

Ms. Jana H. Carey, Esquire  
Chair, Anne Arundel County Charter Review Commission  
44 Calvert Street  
Annapolis, MD 21401

Dear Ms. Carey:

I am writing to comment on two changes to the Charter suggested by Budget Officer John Hammond in his letter to the Commission dated October 31, 2011.

My first comments relate to item #3 in Mr. Hammond's letter. Mr. Hammond asserts that the Charter requirement for the County Executive to submit his proposed budget to the County Council on April 15 does not permit full evaluation of the Maryland General Assembly's actions at its most-recent session. He writes that the May 1 submission date worked well from the outset of County government and allows time for better budgeting decisions, and that if additional time is needed, the time could be added to the end of the budget by allowing the budget to be enacted no later than June 15.

My perspective is different from Mr. Hammond's. While May 1 may have worked well for the Administration, I believe it hindered the County Council's deliberations. Previously the County Executive presented his budget message, the Council was provided with the proposed current expense and capital budget books, and the department presentations began on May 1. Because the Council members had no opportunity to read and review the budget books before the department presentations began, their ability to ask insightful questions was hindered. In order to give reasonable public notice of the amendments, strike the budget, and set the tax rate by June 1, the Council had little more than three weeks to read the budget books (over 1,200 pages), allow the departments to present their budgets, hold public hearings, hear the auditor's recommendations and the Administration's rebuttal, engage in meaningful debate, and pass amendments.

When the budget submission date was changed to April 15, I was skeptical, surmising that the earlier introduction would only "prolong the misery" and fail to result in a better understanding, more meaningful debate, or better budget decisions. However, after only one year, I am a great proponent. By receiving the budget on April 15, but not holding any

hearings or presentations until the next legislative day on May 1, the County Council had time to read the budget books and formulate questions prior to its budget deliberations. In my opinion, this resulted in a greater understanding of the budget by the Council, more meaningful debate, and more deliberate budget decisions.

I believe more time is needed to determine whether the April 15 introduction date permits adequate evaluation of the General Assembly's actions. If the Council finds that the Administration has to introduce an unmanageable number of amendments to correct the budget for actions by the General Assembly that were not known in time for the April 15 introduction, the Council could pass a resolution to amend the Charter in two years.

Mr. Hammond suggests that if additional time is needed for the Council's consideration of the budget, that time could be added to the end of the process, allowing the budget to be enacted no later than June 15. Before the Commission recommends such a change, I encourage you to ask the County Controller how a June 15 ending date would affect the Office of Finance's ability to generate tax bills by July 1. Additionally, if the Commission does recommend changing the introduction date to May 1, I recommend changing the County Executive's presentation of his budget message to May 15 and changing the Charter to allow legislative days every day from June 1 – 15.

The second issue on which I wish to comment is #5 in Mr. Hammond's letter. Mr. Hammond asserts that IRS law allows the County to use bond premiums to pay the annual debt service costs on the bonds that generated the premium, and that this results in the County using long-term borrowing to pay for operating (debt service) costs. He recommends amending the Charter to require the County to use bond premiums only to fund capital improvements.

I strongly disagree with this recommendation. Bond premiums are generated when the County sells bonds that pay a higher interest rate than the prevailing market rate. Bond buyers are willing to pay a "premium" because they will receive a greater investment return than if they bought bonds paying interest at the market rate. Whether the County's bonds are sold for a premium is determined by the Administration, based on the advice of the County's financial advisors and market conditions. The Administration can structure the bond sale to pay a higher interest rate and generate a cash premium, or they can choose not to, which may make our bonds less attractive to a buyer. Regardless, it is always the Administration's choice.

The County's bond counsel advised me last May that IRS law allows that cash premium to be used in three ways: (1) the premium may be applied against the interest expense and cost of issuance on the bond issue that generated the premium for three years; (2) the premium may be applied to interest expense on any other open project; and (3) the premium may be used for capital improvements. Prior to fiscal year 2010, bond premiums were always used for interest expense and cost of issuance, but beginning in fiscal year 2010, the Administration proposed and the County Council approved using bond premiums for both interest expense and capital improvements.

Bond premiums from general obligation bonds for fiscal years 2009 through 2011 totaled almost \$26 million, a significant sum. Of this amount, \$13.7 million was used for interest expense and costs of issuance; \$4.3 million was used to purchase vehicles; \$700,000 was used for information technology enhancements; \$300,000 was used for school bus purchases; \$6.3 million was used for school construction costs; and the remainder is currently unspent.

I strongly discourage the Commission from acting on Mr. Hammond's recommendation to require the premiums to be used only for capital improvements for the following reasons:

- The County generates a cash premium by structuring the bond sale to pay more than the market rate of interest. Arguably, if the County is going to pay higher interest costs and get cash to do so, that cash should, in fact, be applied against those higher interest costs.
- Premiums are generated on the entire bond issue, including bonds sold for Board of Education (BOE) and Anne Arundel Community College (AACC) capital projects. Both of these entities pay their share of the debt service on the bonds issued for their projects. Consequently, if the County Administration structures the bond sale to generate a premium, both the BOE and AACC will pay a greater amount of interest. Arguably, each should get the benefit of a prorated amount of the premium, and this is most easily and transparently accomplished by applying the premium to the interest expense on the issue on a prorated basis.
- Requiring the premium to be used for capital improvements could be manipulated to shift resources from the BOE or AACC to the County. The County could apply the premium only to a County capital project, and the BOE and AACC would pay higher interest costs for the life of the bonds while the County benefited by reducing its borrowing costs.

In my opinion, the decision of how to use a premium should not be dictated by the Charter. Rather, the County Council, as the policy makers for the County, should make the decision of how to use the premium within the legal parameters dictated by the IRS.

I am available to discuss my comments with you at your convenience, and I plan to attend your December 2 meeting. Please call if you have any questions.

Sincerely,

Teresa Sutherland, CPA  
County Auditor

THAM

4 Randall Court  
Annapolis MD 21401-1614

RECEIVED December 6, 2011

DEC 08 2011

COUNTY COUNCIL

The Honorable John R. Leopold  
County Executive  
P. O. Box 2700  
Annapolis MD 21404

Dear John:

My second term on the Anne Arundel County Ethics Commission expires April 30, 2012. I do not desire to be re-appointed to a third term. Following the example for our elected county leaders, I believe that two terms also are sufficient for board and commission appointees, particularly in a county with more than a half-million residents.


When I initially was appointed in 2004, attorneys comprised the majority of the commission. Unless you appoint an attorney to replace me, after April 30 there will no longer be any attorney on the commission! Though I have the utmost respect for the dedication and commitment of my fellow commissioners, I deeply believe that the duties of the commission are more appropriately fulfilled when at least some of the commissioners are lawyers.

Note that Charter Section 1001(e)(2) contemplates staggered terms for commissioners. That currently is *not* the case. Three terms expire in 2012, one in 2013, and three in 2015, but none in 2014. While I do not think it necessary to research how the appointment process went awry, I do think it incumbent upon you and the County Council to correct it. One easy correction would be to appoint my successor to a 2-year term expiring April 30, 2014. Another correction could be undertaken by the County Council by resolution. I'm relatively certain that Commissioner Carol S. Lewnes would not be averse to having her term re-defined so that it would terminate in 2014 rather than 2015. She then will have served 13½ years by April 30, 2014. With these two adjustments, the four-year terms will be staggered as required by the Charter, two terms expiring in each of three years and one term expiring in the fourth year.

By copy of this letter to the County Council, I am alerting the Councilmen regarding these two issues.

It has been a privilege serving the citizens of Anne Arundel County as a member of the Ethics Commission.

Very truly yours,

  
Richard L. Hillman

→ CC: County Council

24 January 2012

Dennis Stevens  
205 School Lane  
Linthicum, Maryland 21090  
410-859-3509  
E-mail: london@broadstripe.net

Jana Howard Carey  
Chair  
Anne Arundel County Charter Revision Commission  
2021 Homewood Road  
Annapolis, Maryland 21409

**Re: Suggested Charter Change Regarding Removal of a County Council Member.**

Dear Ms. Carey,

Because there is no specific procedure described in the Anne Arundel County Charter for removal of a council member for misconduct while serving on the council, I will suggest one. This issue of course has been brought to the public's attention by the tax evasion conviction of Councilmanic District One representative Daryl Jones.

The procedure for removing a member of the Baltimore City Council is described in the City Charter, Article III, paragraph 10 (d): The City Council shall be judge of the election and qualifications of its members, subject to appeal by petition of the party aggrieved as provided by law. With the concurrence of three-fourths of its members, the City Council may expel any member for disorderly behavior or misconduct in office, but not a second time for the same offense.

The Baltimore County Charter reads as follows in Article II, Sec. 205. Vacancies:

A vacancy occurring in the office of council member prior to the expiration of his term shall be filled within thirty days after the vacancy occurs by appointment by the county executive of the person whose name shall be submitted to him in writing by the state central committee members representing the political party to which the previous member belonged, and whose legislative district is wholly or partially included in the councilmanic district in which the vacancy has occurred. Each of these members is entitled to one vote for each precinct in which his or her name was on the ballot. If the previous incumbent was not a member of a political party, then the county executive shall appoint the person selected by the remaining members of the county council. The member so appointed shall reside in the same councilmanic district as his predecessor and until his successor shall qualify.

The Anne Arundel County Charter as follows in Article 2, Sec. 205. Vacancies:

(a) A vacancy occurring in the office of member of the County Council prior to the expiration of the term shall be filled as provided in this section.

(b) If a vacancy occurs during the first 12 months of a term, a new member shall be nominated and elected by the qualified voters of the councilmanic district in which the vacancy occurs, at the same time as members of the House of Representatives of the Congress of the United States are nominated and elected and in the manner provided by law. In the interim until a new member is elected, the vacancy shall be temporarily filled by a majority vote of the remaining members of the County Council, within 30 days after the vacancy occurs.

(c) If a vacancy occurs after the first 12 months of a term, the vacancy shall be permanently filled by a majority vote of the remaining members of the County Council, within 30 days after the vacancy



occurs.

(d) A new member elected by the County Council, either temporarily or permanently, or by the voters shall be a resident of the councilmanic district in which the vacancy occurs.

(e) If the former member whose position is being filled was a member of a political party, a new member elected by the County Council, either temporarily or permanently, shall be registered in the same political party as the former member for the 12-month period immediately prior to the election by the County Council.

(f) The County Council shall hold public interviews of candidates to fill the vacancy, whether temporary or permanent, and the Council shall elect the new member from among those persons interviewed.

(g) A new member elected permanently by the County Council or by the voters shall serve the unexpired term of the former member and until a successor is duly elected and qualified.

(h) For a member of the County Council who is a member of a reserve component of the United States Armed Forces a vacancy shall be deemed to occur, for purposes of this section, on the date that begins active federal or State service based on an order calling the member of the County Council to active service for a period of time exceeding 180 consecutive days.

(Bill No. 69-72; Res. No. 67-86; Res. 28-10)

Editor's note – The 2010 amendment provided that any member of the County Council ordered to active federal or State service in a reserve component of the United States Armed Forces for a period of time longer than 180 days shall vacate office.

Of the three jurisdictions sighted only the Baltimore City Charter references "disorderly behavior or misconduct in office" for grounds of removal of a council person from the City Council.

Governor Marvin Mandel was re-elected in 1974 and was indicted for mail fraud and racketeering in 1975. These activities were alleged to have begun in 1972. Mandel and his co-defendants went on trial in September 1975, which later was declared a mistrial. The second trial began June 1, 1977. In a letter from Governor Mandel to Lieutenant Governor Blair Lee III, dated June 4, 1977, per Article 2, Section 6b of the Maryland Constitution, he notified Lee that he was to serve as Acting Governor until further notice. On August 21, 1977, a jury found Mandel guilty of accepting more than \$350,000 related to the indictments. He was sentenced to four years in prison. An appeal initially overturned the conviction, only to later be upheld. Eventually he went to a federal prison for 19 months before being pardoned by President Ronald Reagan. On November 12, 1987, Judge Frederick N. Smalkin of the U.S. District Court for the District of Maryland, overturned Mandel's conviction. Smalkin did not dispute the evidence, but did indicate that the prosecutors had stretched their interpretation of mail fraud and racketeering laws beyond "...the breaking point to bring Mandel to trial for what were really state crimes,". Per Article III, Section 26 of the Maryland Constitution, the House of Delegates can impeach the Governor and Lieutenant Governor, and the Senate can convict these officials by two-thirds vote of all elected Senators.

The point of sighting this episode is that to allow an elected official to remain in office after being indicted and found guilty casts doubts in the minds of many voters about the authority of the elected official to govern and the integrity of the government in power.

It is my opinion that if an elected council person is indicted or convicted of a misdemeanor or felony offense, or has committed some misconduct while in office, the County Council should determine that a vacancy in the office of the council person so accused by a majority vote of all elected council persons.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Stevens".

Dennis Stevens

cc: Joshua C. Greene, Esq.  
Dirk D. Haire, Esq. ✓  
Jason E. Rheinstein, Esq.  
Linda M. Schuett, Esq.



Date: 23 January 2012  
From: Patric S. Enright  
To: Anne Arundel County Charter Revision Commission  
Subject: Proposed County Charter Amendment

I believe it is necessary to correct a “procedural loophole” in the procedures that the Anne Arundel County Executive must take under the County Charter, Article III, Sec. 307, Paragraph (j).

Paragraph (j) sets forth the choices of action that the County Executive must take on any Ordinance passed by the County Council as follows:

1. Return the passed Ordinance to the Council with 10 days of receipt with his approval endorsed there on, and the Ordinance becomes law.
2. Return the passed Ordinance to the Council within 10 days of receipt with a statement in writing of his reasons for not approving the Ordinance (i.e. veto).
3. Return the passed Ordinance to the Council within 10 days of receipt disapproving of one or more parts while approving others in the manner set forth above (i.e. line-item-veto).
4. Failure to return the passed Ordinance with 10 days of receipt causes the said Ordinance to become law (i.e. pocket veto)

Now, what if the County Executive chooses to return the passed Ordinance to the Council, within 10 days of receipt, without taking any of the actions concerning approval or disapproval of the Ordinance in the whole or in parts. There is no provision in Article III, Sec. 307, paragraph (j) of the Charter that addresses this situation. I believe there must be such a provision. It is unacceptable, in my opinion, for an Ordinance to not become law after being passed by the Council simply because the only action the County Executive takes is to return it to the council, within the prescribed time frame, but without taking the required approval or disapproval actions. This is a variation of the pocket veto, which has been invalidated at all levels of our government, as a method for preventing a passed Ordinance from becoming law. Inaction or partial inaction by the Executive must not be a basis for negating the wishes of the Legislature.

In 2008 this situation was to be corrected by a Charter Amendment proposal from Councilman Benoit. He introduced Resolution No. 22-08 (attached) in the Council on 5 May 2008 and it passed unanimously on 16 June 2008. A Question was drafted and placed on the Ballot for the 2008 November General Election (attached as p.2 of Resolution No. 22-08). On

Election Day, 4 November 2008, the voters of Anne Arundel County overwhelmingly rejected the Question and thus the proposed Amendment.

On the day after the 2008 General Election The Capital published an article titled "Voters reject 1 of 2 County Charter changes" (attached). The article indicated some surprise that such a benign issue would fail and this was essentially echoed by Councilman Benoit and County Executive Leopold.

I propose that this Charter Amendment be resurrected in time for the 2012 General Election. I am also proposing that it be "advertised" to the voters as a technical correction to the Charter, which it would be. Furthermore, I propose an adjustment to the language Councilman Benoit proposed in 2008 which I feel will reduce any ambiguity as to the action to be taken.

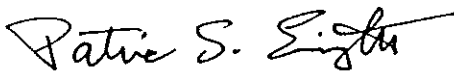
In reference to lines 30 through 32 on page 1 of the 2008 Resolution No. 22-08, the new proposed corrective language would read as follows (my changes underlined):

... OR RETURNS THE ORDINANCE UNSIGNED WITHOUT HIS APPROVAL  
ENDORSEMENT OR WITHOUT A STATEMENT IN WRITING OF HIS  
REASONS FOR ANY DISAPPROVALS, THE ORDINANCE SHALL BECOME  
LAW AS OF THE TENTH DAY AFTER PRESENTATION, AND ...

In addition, I also propose that the Question for the 2012 General Election Ballot reflect a change in the one proposed for the 2008 Ballot in Resolution No. 22-08 p.2, to read in part (on line8) as follows:

"To amend the Anne Arundel County Charter by a technical correction to clarify that any ordinance ...

Respectfully submitted,



Patric S. Enright  
2052 Huntwood Drive  
Gambrills, Maryland 21054  
Phone: (410) 721-2285  
Email: [nokplz@aol.com](mailto:nokplz@aol.com)

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2008, Legislative Day No. 11

Resolution No. 22-08

Introduced by Mr. Benoit

By the County Council, May 5, 2008

A RESOLUTION ENTITLED  
Charter Amendment – Failure of Bills

RESOLUTION proposing an amendment to the Charter of Anne Arundel County to clarify that any ordinance passed by the County Council and returned unsigned by the County Executive after the ten day presentation period will become law on the tenth day.

*Be it resolved by the County Council of Anne Arundel County, Maryland, That the following amendment to the Anne Arundel County Charter is proposed for submission to the qualified voters of the County at the General Election in November 2008:*

**Article III. The Legislative Branch**

**Sec. 307. Legislative Procedure.**

(j) **Executive Veto and Failure of Bills.** Upon the passage of any ordinance by the County Council, with the exception only of such measures as may in this Charter be made expressly exempt from the executive veto, the same shall be presented within five (5) days (exclusive of Saturdays, Sundays and legal holidays of the State or Nation) to the County Executive for his approval or disapproval, and within ten (10) days after such presentation he shall return any such ordinance to the County Council with his approval endorsed thereon or with a statement in writing of his reasons for not approving the same. Upon approval by the County Executive any such ordinance shall become law. Any such ordinance presented to the County Executive and returned with his veto may be reconsidered by the County Council. His objections shall be entered upon the Journal of the Council, and not later than at its next legislative session-day, the County Council may reconsider the enactment thereof notwithstanding the executive veto, and if five (5) members of the Council vote in the affirmative, the ordinance shall become law. Whenever the County Executive shall fail to return any such ordinance within ten (10) days after the date of its presentation to him OR RETURNS THE ORDINANCE UNSIGNED, THE ORDINANCE SHALL BECOME LAW AS OF THE TENTH DAY AFTER PRESENTATION, AND the Administrative Officer to the County Council shall forthwith record [the] SUCH fact [of such failure] in the Journal [, and such ordinance shall thereupon become law]. The County Executive may disapprove of one or more parts of an ordinance while approving others and the part or parts approved shall become law and the parts disapproved shall be returned to the Council as prescribed and shall not take effect unless

1 passed over his veto as set forth herein. Any bill not passed within ninety-five days after  
2 its introduction, or prior to November in a councilmanic election year, shall fail.

3  
4 *And be it further resolved,* That the following question is adopted for submittal to the  
5 qualified voters of the County at the General Election in November 2008 for their  
6 adoption or rejection:

7  
8 "To amend the Anne Arundel County Charter to clarify that any ordinance passed by  
9 the County Council and returned without either being approved or vetoed by the County  
10 Executive shall become law on the tenth day after the presentation of the ordinance to the  
11 County Executive."

12  
13 *And be it further resolved,* That this question shall be designated as Question " \_\_\_\_"  
14 on the ballot at the General Election in November 2008.

15  
16 *And be it further resolved,* That if the majority of qualified votes cast in the election  
17 are for the Charter Amendment, this amendment shall stand adopted from and after the  
18 30th day following the election.

country is in better hands. The sky is the limit now," said Alderman Sheila Finlayson, D-Ward 4, who watched the returns roll in at Obama headquarters.

"I think he's going to bring our country back," she said. "He's going to improve our relationships with the world."

Phillip L. Brown, 99 and former head of the county Colored Teachers Association, worked with a young attorney named Thurgood Marshall to win equal pay for county black school teachers said this morning he can't believe yesterday's election results.

"I have witnessed almost 100 years," Mr. Brown said. "I didn't think it was going to happen because, for as long as I have lived, I have witnessed the hoses and the dogs and the hangings. I said, frankly, there would not be enough white people who would want to make that change at this time."

Sixty years after its founding, the Peerless Rens Social Club on Chester Street was the setting for a small group of local African-Americans residents to watch the country elect its first black president.

The club, a local landmark, was founded by African-American Annapolitans in 1948, in the midst of Jim Crow segregation and on the heels of World War II and the Great Depression. Yesterday, about 20 African-Americans watched from the club's lounge as

(See REGION, Page C2)

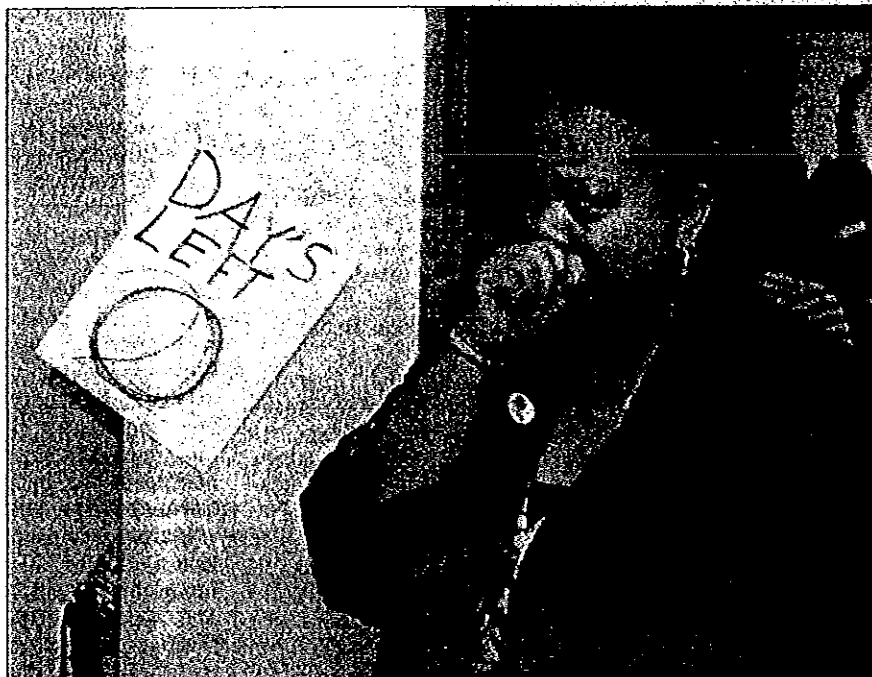
## ONLINE EXTRA

View a slideshow of voters reacting to election results and see videos including Democrats discussing Barack Obama's victory and Severn River Middle School band members serenading voters with patriotic music at [HometownAnnapolis.com](http://HometownAnnapolis.com)



ABOVE: The crowd at the Obama Annapolis office erupts as MSNBC makes the call that Sen. Barack Obama won the presidency.

BELOW: Renee Rochester of Harwood gets emotional at the Obama Annapolis office when she sees that Sen. Barack Obama has been declared winner of the presidential election.



# office judge app

By ELISA  
St

Anne Arundel day retained 1 bers and three positions, while chose their first

About 79 pe voters opted 1 in her at-large Birge in the school board.

Both were a O'Malley earlier were vetted b Nominating countywide he ther "yes" or "

With 98.4 pe reporting early t son won the e of voters. Ms.

Anne Arund also approved Judge J. Michael Appeals J Court of Spec A. Zarnoch.

Judge Wa from 99.03 per Judge Eyler r Judge Zarnoch

A Circuit ( year term and peals judge se

To serve on board, Queen chose Faye L nelli III, Edwar Ms. Lister

62.38 percent won the Distr cent and Ms. 4 seat with 63

Mr. Tinelli, the District 2 of the vote. opponent, Ch the race but won the Dis percent.

None of th running — J Cork and c Mark Cascia Lister was a to 2004.

ehulette

## Voters reject 1 of 2 County Charter changes

By ELISABETH HULETTE  
Staff Writer

Over half of voters rejected a relatively benign measure that an Anne Arundel councilman proposed to clarify a vague passage in the County Charter.

The proposal would have given the county executive 10 days to sign or veto a council bill, but 51.53 percent of voters opposed it.

On rare occasions, bills are returned to the council unsigned, and while they still become law, it is unclear when exactly they become effective.

"At the end of the day, I don't know why something like this would fail," said Councilman Jamie Benoit, D-

Crownsville. "My guess is voters didn't understand it and voted against it."

But they did approve the other county ballot question, a measure that tilts away some control over the Anne Arundel County Ethics Commission, from the county executive and toward the County Council.

Currently, County Executive John R. Leopold appoints all seven commission members; now the council will appoint three of them. That measure was approved by 66.88 percent of voters.

At its Dec. 15 meeting, the council will nominate the three current commission members, whose terms expire on April 30, as its three initial appointees. They will serve staggered terms.

The county executive can still reject the council's nominees "for cause," a legal term that sets a high bar to reject nominees.

County Executive John R. Leopold said prior to the election that neither county ballot question was controversial.

This morning, he seemed amused that the time limit proposal failed.

"With the wording, I think some of the voters may have thought that it took power from the executive, and they rejected that," he said.

Dan Nataf, a political scientist at Anne Arundel Community College and director of the Center for the Study of Local Issues, said it's rare for a county

(See CHANGES, Page C2)



ping the residents.

## burglary

...more man was  
...ith burglary after  
... broke through the  
... Glen Burnie phar-  
...ay evening, county

p.m., employees at  
grocery, 7300 block  
Highway, heard an  
g off at the store's  
A man had appar-  
n through the cell-  
the pharmacy and  
ed in from above,

to run but police  
arrested him. Mark  
ow, 20, of 5th Av-  
charged with second-  
ary and destruction

y

rested a Linthicum  
arged him with rob-  
1-degree assault and  
\$500, after they said  
olved in an incident  
ning on Babet Way  
n.

aid they arrested  
ad, 18, of Applegate  
r the incident. He  
ed with robbery,  
ee assault and theft  
olice said.

m, a man, 18, who  
walking in the 100  
bet Way, told police  
at 12:50 a.m., a man  
o him, punched him  
es on the face and  
county police said.  
ck on his eyes, nose

cash and a cell phone then ran  
toward the shopping center.

The masked man is described  
as black, about 18 years old,  
about 5 feet 8 inches tall, and  
140 pounds with a dark com-  
plexion. He was wearing a ski  
mask, a black long-sleeve ther-  
mal shirt, baggy blue jeans and  
black cotton gloves.

## Theft thwarted

Two men and two women  
were charged with theft Thurs-  
day after allegedly snatching  
a catalytic converter from a  
parked vehicle in Glen Burnie,  
county police said.

Officers were called to the 500  
block of McCormick Drive at  
about 3:30 p.m. An employee at  
a nearby business told police he  
saw four people looking under-  
neath a vehicle in the parking  
lot. The business had reported  
catalytic converter thefts in the  
past, police said.

The two men and two women  
got into a purple Geo Metro  
and were driving on Dorsey  
Road when police caught up  
with them and stopped the car.  
While searching the Geo, offi-  
cers found a catalytic converter  
and electric saw. The auto part  
had been cut from a vehicle  
parked at the business on Mc-  
Cormick Drive, police said.

Maria Davidson, 19, Chris-  
tina Langrehr, 31, Christopher  
Langrehr, 33, all of Baltimore,  
and Charles Redman, 37, of  
Hanover, were each charged  
with theft over \$500, theft under  
\$500 and malicious destruction  
to property.

Beautiful" by Ray Charles and  
the "Star-Spangled Banner" by  
Marvin Gaye added a patriotic  
theme to the party.

"I remember when people  
said it wasn't his time," said  
Ernest "Smitty" Smith, 65,  
a lifelong Eastport resident.  
"When something is destined  
for you, it's destined for you  
regardless of time."

Across town at the Double-  
tree Hotel, where hundreds of  
the Democratic Party's faithful  
gathered, the mood was just as  
jubilant. The crowd of at least  
400 supporters counted down  
until 11 p.m. when West Coast  
polls closed and then exploded  
with cheers when Mr. Obama's  
photo flashed on the three gi-  
ant TV screens as the likely  
winner.

doors and attending rallies in  
Virginia.

Months of campaigning and  
a night of cheering left her al-  
most hoarse.

"I've voted since I was 18 and  
now I'm 45 and this is the first  
time I've been involved," she  
said.

"It felt like the weight of the  
world was lifted off my shoul-  
ders," said 30-year-old Kim  
Hoang of Silver Spring, as she  
celebrated at the Doubletree  
party. "It means anything and  
everything can happen in this  
world."

Staff Writers Earl Kelly and  
Pamela Wood contributed to this  
story.

[rfax@capitalgazette.com](mailto:rfax@capitalgazette.com)

## CHANGES

(Continued from Page C1)

ballot question to fail. The last  
major instance he remembers  
was the tax cap proposal, which  
failed in 1990 after encountering  
vicious opposition from unions  
and other groups, he said.

"My sense is, as a rule, these  
things are usually given the  
benefit of the doubt," he said.  
Maryland voters don't receive  
much information on ballot ques-  
tions, and that sometimes creates  
confusion, he added.

Mr. Benoit said he was sur-  
prised that it failed. He specu-  
lated the question's wording may  
have made voters think it was a

*"The lesson learned  
is we're going to  
have to draft the  
question better."*

— Councilman Jamie Benoit,  
D-Crownsville.

new law, when in fact it was just  
clarification of an ambiguity.

He said the question will likely  
end up on the ballot again in the  
future.

"The lesson learned is we're  
going to have to draft the ques-  
tion better," he said.

[ehulette@capitalgazette.com](mailto:ehulette@capitalgazette.com)

**SEVERNA PARK**  
GOLF CENTER  
410-847-8618  
1257 Ritchie Highway  
Arnold, MD 21012

**Medium  
Scket of Balls**

2/08

**ATTENTION BUSINESS OWNERS**

**deal OF THE DAY!**  
**Brings You More Business**

- Increase Foot Traffic.
- Gain New Customers.
- Market Your Business.
- Create Name Recognition.
- Introduce New Products.

**You provide the free stuff & we'll provide the free ads!**  
**For more information, please contact:**

<b>Jennifer Johnson</b> 410-268-5000 x3326 <a href="mailto:jjohnson@capitalgazette.com">jjohnson@capitalgazette.com</a>	<b>Steve Berry</b> 410-268-5000 x3303 <a href="mailto:sberry@capitalgazette.com">sberry@capitalgazette.com</a>
---	--

Date: 23 January 2012

From: Patric S. Enright

To: Anne Arundel County Charter Revision Commission

Subject: Proposed County Charter Amendment

I am proposing a change to the Anne Arundel County Charter to reflect a concept that all Commissions, Panels and Boards, whose composition and mission is approved by the County Council, should reflect, at a minimum, representation from each Councilmanic District, and a simple technical change.

As a start, I propose the following changes to: Charter Section 1203. Decennial Charter Revision Commission.

Change from a one paragraph Section to the following arrangement:

Lines one through five shall remain as is except as noted below:

Line 5 change to read:


- (a) The Commission shall be composed of [five] representative citizens of the County such that each Councilmanic District has one resident representative on the Commission. The number of Commission Members shall not exceed the number of Councilmanic Districts existing at the time of the Commission's appointment.
- (b) The Commission shall report to the Council ...
- (c) The Charter Revision Commission shall receive from the County ...

My reasons for proposing this change are as follows:

- (1) Per the Charter, the Commission has only five representative citizen members. There is no charge to appoint any from particular Councilmanic Districts.
- (2) The Commission is charged with redistricting the County based on the decennial Census population results. There are currently seven Councilmanic Districts in the County and each should have representation on the Commission.

- (3) The current County Council charged the Commission to examine whether or not to expand the number of Councilmanic Districts. Again the seven Districts should be represented on the Commission.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Patric S. Enright". The signature is fluid and cursive, with a long horizontal stroke at the end.

Patric S. Enright  
2052 Huntwood Drive  
Gambrills, Maryland 21054  
Phone: (410) 721-2285  
Email: [nokplz@aol.com](mailto:nokplz@aol.com)

*Ann Fligsten*

**Testimony Before the Charter Review Commission**  
January 23, 2012

I am Ann Fligsten, 1337 Kinloch Circle, Arnold, MD 21012. I am an attorney and in the past have had cases before the Board of Appeals.

Until I had cases before the BOA, I had little idea of how important this board is to land use decisions for AA County, particularly on decisions on requests for variances to Critical Area Law.

I no longer have any pending cases before the BOA, but have watched their process for some time.

When the new County Council was sworn in over a year ago, new members of the BOA were selected by the new Council after a brief hearing before the Council for all applicants who had submitted resumes.

I attended the hearing in early 2011 and was extremely impressed by the breadth of interest and talent of the pool seeking appointment to the board. Of the 23 applicants their backgrounds ranged from an architect, engineer, to a PhDs, lawyers, a leading environmentalist and an economist along with majority of the prior Board of Appeals, including the Chair and Vice Chair.

Even though we had 5 new members on the County Council, all of those seeking a return to service on the Board, with one exception, were returned.

To answer the argument that the loss of experience would not be worth the periodic renewal of the Board membership, I point to the County Council that does have term limits. Certainly they take on even more important tasks than those on the BOA and adapt to their new responsibilities.

Some of those returning, I would have liked to see not returned and some, I was happy to see returned; however, with the importance of the BOA decisions and the large number of qualified applicants, I think term limits would guarantee the broadest possible representation of citizens on this body, giving a diversity of views and experience and allowing for more citizens to become aware of the many issues of importance to the County.

On the issue of the line item veto that can be used by the County Executive, I am very much in favor of seeing that stay as is in the Charter.

I think the recent Comprehensive Rezoning gave true insight into the importance of this power of the County Executive. In a number of cases, the County Executive used the line item veto to change a rezoning that the County Council

had made. In on case, a member who had voted for the rezoning, without full information, asked for such a veto by the County Executive.

In other cases, some of the vetoes were overturned by the County Council by at least 5 votes. I think that the line item veto allowed a chance for members of the County Council to reconsider their decisions and either confirm them or allow them to be changed.

In the first section of the County that was rezoned, there were 5 vetoes by the CE and 4 were sustained or re passed by Council. In the second section of the County, there were 14 vetoes by the CE, with 4 of these vetoes sustained. A citizens lawsuit was filed challenging the 10 items that were overridden by the Council and is pending. In the third and final section of the County, there were no vetoes by the CE.

Just in the important area of rezoning land, I think the line item veto served as important check on the decisions of the County Council and should remain with the CE.

**APPLICANTS TO BOARD OF**  
**APPEALS**

**Albion Bacon (R)**  
**623 Maple Hill Lane**  
**Crownsville, MD 21032**

**Patsy Baker Blackshear (I)**  
**2705 Riva Road**  
**Annapolis, MD 21401**

**John W. Boring (R)**  
**452 Cedar Haven Road**  
**Arnold, MD 21012**

**Wm. Jay Breitenbach (R)**  
**105 Amesbury Court**  
**Severna Park, MD 21146**

**Maureen J. Carr (R)**  
**105 Sandgate Court**  
**Millersville, MD 21108**

**Robert Ray Costa III (I)**  
**7906 Outing Avenue**  
**Pasadena, MD 21122**

**Maria DeNardo (R)**  
**112 Amesbury Court**  
**Severna Park, MD 21146**

**William F. Donaldson, Jr. (D)**  
**3742 Thomas Point Road**  
**Annapolis, MD 21403**

**Gerald Gerecitano (R)**  
**596 Donaldson Avenue**  
**Severn, MD 21144**

**Carroll P. Hicks (D)**  
**358 Jennings Road**  
**Severna Park, Md. 21146**

**William C. Knight, III (D)**  
**893 Timber Ridge Dr.**  
**Hanover, Md. 21076**

**Michael Linynsky (R)**  
**1969 Valley Road**  
**Annapolis, Md. 21401**

**Arnold W. McKechnie (R)**  
**1201 West Central Avenue**  
**Davidsonville, Md. 21035**

**James C. McNealy (R)**  
**134 St. Andrews Road**  
**Severna Park, MD 21146**

**William Moulden (D)**  
**290 Nottingham Hill**  
**Annapolis, Md. 21405**

**Judy A. Schwaratz (R)**  
**2797 Topmast Court**  
**Annapolis, Md. 21401**

**Demetria Sugar Stallings (D)**  
**851 Cork Elm Court**  
**Severn, MD 21144**

**Doreen A. Strothman (R)**  
**8522 Pine Meadows Drive**  
**Odenton, MD 21113**

**JoAnna Bache Tobin, Ph.D (D)**  
**609 Saint Mulberry Court**  
**Annapolis, MD 21401**

**Lina Vlavianos (I)**  
**478 Old Orchard Circle**  
**Millersville, MD 21108**

**G. Thomas Woodward (R)**  
**933 Forest Drive**  
**Arnold, MD 21012**

**Jerry J. Wyble (R)**  
**8600 Roaming Ridge Way,**  
**Unit 307**  
**Odenton, Md. 21113**

**Grant Zeigenfuse (D)**  
**966 Breakwater Drive**  
**Annapolis, MD 21403**

Revised 12/17/10  
TLC

To the Anne Arundel County Charter Revision Committee

Susan W. Cochran  
332 Hamlet Circle  
Edgewater, MD  
January 23, 2012

Re: AA Charter  
County Council Section 205 Vacancies

I recommend a change in the way vacancies are filled to further democratic representation by the residents of a District in which the office of Councilman is vacated.

Presently, there is the potential for a District to be represented by a non-elected Councilman for three years of a four-year term. The term begins Dec. 1, and the following Dec. 1 is the deadline in the Charter for the new Councilman to be elected by the people he or she represents. After that year, the remaining County Councilmen choose the Councilman who will represent the District for the remainder of the term, which could be as long as three years.

This is not representative democracy.

I recommend a provision similar to the one in the Charter of our neighboring county, Prince George County.

That charter provision states that in the first three years of the term, if a vacancy occurs, it will be filled by special election. This election would not have to be concurrent with the Congressional election unless the timing coincided. After three years, the County Councilmen would appoint someone of the same party as the previous office holder to fill the vacancy.

How often would this have to be done? Since the 1980s only four vacancies have occurred, according to information from a veteran former Councilman. In the last thirteen years only three vacancies have occurred.

Cathy Vitale was appointed in Feb. 2000, Trisha Johnson filled Ed Reilly's seat in July 2009, and Chuck Ferrar filled Josh Cohen's seat in December



2009. Of these, only two would have been in the three-year period where an election would be mandated. The July vacancy was not urgent and could have been timed differently to be outside of the three years. I asked Cathy Vitale for her knowledge of the history of the Council. She said the only previous appointment for a vacancy was David Boschert to fill Councilman Child's seat in the 1980s. So in twenty-five years or so there have been two occasions that would have necessitated a special election under the three-year provision, possibly three if we knew the details of the Childs' vacancy.

Whether three years is the time you would want to designate, slightly less, like two and one-half years, would be a vast improvement for allowing democratic representation on the Council.

A special election would be a small price to pay for significantly greater degree of elected representation.

## **Prince George's County Charter**

### **Section 309. Vacancies.**

A vacancy in the Council shall exist upon the death or resignation of a Council member, or upon forfeiture of, or removal from office. The Council shall provide by law for the conduct of special elections to fill any vacancy on the Council that occurs during the first three years of a term. When a vacancy occurs during the last year of a term, a majority of the remaining members of the Council shall appoint a qualified person to fill the vacancy.

(Amended, CB-78-1990, ratified Nov. 9, 1990; Amended, CB-79-1996, ratified Nov. 5, 1996; Amended, CB-69-2002, ratified Nov. 5, 2002)

Millard Snowden  
1/23/12  
Chapter Revision Commission  
Hearing

Sec. 404. Conviction or failure to perform duties.

TO BE REWORDED AS SUCH:

IF ANY electd county official shall be convicted of any crime involving moral turpitude, of mifeasance or malfeasance in or out of office, or fails actively to perform the daily duties and responsibilities of his/her office as set forth in sections 405 and 304 for a continuous period of six months, his/her office may be declared vacant by the affirmative vote of not less than five members of the County Council by ordinance. AND such vacancy shall thereupon be filled in the manner above provided in Section 402 AND 205 of this Article.

P.S. ALL UNDERLINED WORDS ARE to be added to Article, also this Section 404 may be better placed AND demonstrated in Article X Miscellaneous

Date: 10 February 2012

From: Patric S. Enright

To: Anne Arundel County Charter Revision Commission

Subject: Proposed County Charter Amendment

I am proposing a change to the Anne Arundel County Charter. This initial draft proposal includes and expands the parameters for Councilmember qualifications and the criteria, circumstances and mechanisms for vacating an office by several processes. Also included is an expansion of what constitutes a vacancy. Charter Sections 202 and 205 are the affected Charter elements.

Sec. 202. Qualifications.

(a) In General. -----

(b) Other Offices. -----

(c) Change of Residence.

(1) If any Member of the County Council -----

(2) If any Member of the County Council is incarcerated in any Corrections Facility by order of any Court as a result of the enactment of any of the Provisions of Sec. 202 (d ) for a misdemeanor or felony for a period in excess of 120 days, a change of residence shall have occurred and the Councilmember's office vacated.

(d) Forfeiture of Office.

A Councilmember shall immediately forfeit and vacate the Councilmember's office upon being granted probation before judgment for, upon the acceptance of a plea of *nolo contendere* by a court to, or upon being convicted of a felony or a crime of moral turpitude.

(e) Removal from Office.

A Councilmember may be removed from office by the affirmative vote of not less than five Members of the full Council after a public hearing and upon a finding of a Court that the Councilmember is unable by reason of physical or mental disability to perform the duties of the office. A decision to remove the Councilmember shall result in a vacated office.

Sec. 205. Vacancies.

- (a) A vacancy in the Council shall exist upon the resignation, change of residence outside of the represented district, death, incarceration in excess of 120 days of a Councilmember, or upon forfeiture or removal from office of a Councilmember.

(a)  $\implies$  (b)

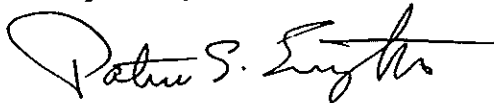
(b)  $\implies$  (c)

(c)  $\implies$  (d)

•  
•  
•  
•  
•

(g)  $\implies$  (h)

Respectfully submitted:

A handwritten signature in cursive script, reading "Patric S. Enright". The signature is written in dark ink and is positioned above the printed name.

Patric S. Enright

**KSC** KAHN  
SMITH &  
COLLINS, P.A.

Joel A. Smith  
Andrew H. Kahn  
Francis J. Collins  
David V. Diggs  
Keith J. Zimmerman  
David Gray Wright  
Christopher R. Ryon  
Todd L. Schuler

Attorneys At Law

201 North Charles Street • 10th Floor  
Baltimore, MD 21201

410-244-1010 phone  
410-244-8001 fax  
877-244-1212 toll free  
www.kahnsmith.com

E-Mail:  
smith@kahnsmith.com

February 29, 2012

Amy Tate, Esquire  
Anne Arundel County  
Charter Review Commission  
P.O. Box 2700  
Annapolis, MD 21401

Re: *Anne Arundel County Public Safety Unions*  
*(Position Statement on Binding Arbitration)*

Dear Ms. Tate:

The Coalition thanks you and the Council for the courtesy that was extended to us on Monday. Consistent with my request to the Council, I enclose sufficient copies of the position statement for each member of the Council. I also enclose, as you requested, copies of the Coalition's Brief to the Court of Appeals in Annapolis. Thank you for your help throughout this process. Should you need any information, please contact me.

Very truly yours,

KAHN, SMITH & COLLINS, P.A.

By:

  
Joel A. Smith

JAS/lf

Enclosures

cc: O'Brien Atkinson  
Craig Oldershaw  
Rich Mullins



Attorneys At Law

201 North Charles Street • 10th Floor  
Baltimore, MD 21201

410-244-1010 phone  
410-244-8001 fax  
877-244-1212 toll free  
www.kahnsmith.com

E-Mail:  
smith@kahnsmith.com

February 29, 2012

Jana H. Carey, Chair  
Charter Review Commission  
44 Calvert Street  
Annapolis, MD 21401

Re: *Anne Arundel County Public Safety Unions*  
*(Position Statement on Binding Arbitration)*

Dear Ms. Carey:

### STATEMENT OF PURPOSE

This office represents the Coalition of Anne Arundel County Public Safety Unions ("the Coalition"). The Coalition consists of the following organizations certified to serve as exclusive representatives of County employee groups: Fraternal Order of Police, Lodge 70, Anne Arundel County Professional Fire Fighters, IAFF Local 1563, Anne Arundel County Battalion Chiefs Association, Anne Arundel County Police Lieutenants Association, International Brotherhood of Police Officers, Local 802, Truck Drivers, Helpers, Taxicab Drivers, Garage Employees and Airport Employees Local Union No. 355 affiliated with International Brotherhood of Teamsters, Anne Arundel County Detention Sergeants Association affiliated with International Union of Police Associations Local 141, AFL-CIO, Fraternal Order of Anne Arundel Detention Center Officers and Personnel, Inc., Communications Workers of America, Local 2911, Anne Arundel County Police Supervisors' Association, International Brotherhood of Anne Arundel County Sheriff's Sergeants Association, and National Union of Law Enforcement Associations, Local 777.

Representatives of the Coalition appeared before the Charter Review Commission at the public hearing that the Commission conducted Monday, February 27, 2012. We thank the members of the Commission for their considered attention to the Coalition's statements.



To expand on the points that we discussed Monday, February 27, 2012, the member unions of the Coalition have asked that I write to you regarding the Commission's debate and deliberations on Charter Article VIII, § 812. At our request, you granted permission to the Coalition to file this position statement. We invite further discussion of the issues with the Commission's members should the Commission want to schedule another hearing on issues related to binding arbitration.

### SUMMARY OF POSITION

As adopted in 2002 as ballot Questions D and E, §§ 812(a) and 812(b) of the County Charter provide that "the County Council shall provide by ordinance for binding arbitration" in order to resolve labor disputes with the County's law enforcement employees and firefighters, and that the arbitration shall result in "a binding decision to be implemented as part of the following year's budget process." Consistent with §§ 812(a) and 812(b), a County Ordinance was adopted in 2003 and codified as Article 6, Title 4 § 6-4-111 of the Code to provide that a final arbitration award "shall be final and binding on the County ... and shall be implemented as part of the budget process for the appropriate fiscal years."

The meaning and effect of §§ 812(a) and 812(b), and of Code § 6-4-111 as amended by Bill 04-11 are currently on appeal before the Maryland Court of Appeals. Oral argument on the appeal is scheduled for May 2012. Just last week, the Coalition filed its appellate brief on the appeal with the Court. For that reason, and for other reasons as set out below, the member unions of the Coalition urge the Commission to take no action on § 812 as that action would be premature under the present circumstances.

### ARGUMENT

1. The County Council's Charge to the Charter Review Commission (in Item No. 3 of Resolution No. 41-11) Has Been Eclipsed by the Subsequent Action of the Maryland Court of Appeals.

Item No. 3 of County Council Resolution No. 41-11 directed the Charter Revision Commission to review §§ 812(a) and 812(b) of the Charter for a specific reason, that is, to "examine changing the binding arbitration provision for Uniformed Public Safety Representatives to comply with case law." When Resolution No. 41-11 was adopted, the status of the case law was in a different posture than it is at the present date.

Sections 812(a) and 812(b) of the Charter should not be recommended for change because the "case law" on the subject matter is not settled. The case law is currently subject to review by Maryland's highest appellate court in an appeal docketed as *O'Brien Atkinson, IV*,

*et al. v. Anne Arundel County, Md.* - Case No. 111, September Term, 2011. <http://www.courts.state.md.us/coappeals/grants/012012grants.html>. The Court of Appeals granted certiorari for direct review in that case on January 20, 2012. Thus, the Court revealed its interest in the case by skipping over prior review by the Court of Special Appeals.

The decision of the Court of Appeals in *Atkinson* should settle whether § 812 is a proper exercise of Home Rule powers under Art. XI-A, § 1 of the Maryland Constitution. The decision in *Atkinson* also should settle whether or not the recent opinion of Maryland's lower appellate court in *Wicomico County FOP v. Wicomico County*, 190 Md. App. 291 (2010) was correctly decided, or should apply to Anne Arundel County. It also should determine whether or not the contents of a charter provision on binding arbitration may or should be mandatory; especially to harmonize charter material on a county's budget and appropriation processes with "binding" arbitration.

Until the Court of Appeals renders its decision on the questions presented in the *Atkinson* case, the Coalition submits, there is no point to further amendment of the County Charter, and, indeed, any step taken to amend the Charter may further confuse the state of the law as it will occur without benefit of the last word issued by the Court of Appeals. The Court of Appeals may well decide, for example, that §§ 812(a) and 812(b) were an entirely appropriate exercise of Home Rule power under Art. XI-A, § 1 of the State Constitution. The Court may well conclude that Questions D and E were necessary to amend the budget and appropriation structures of County government to make binding arbitration possible.

## **2. Binding Arbitration Is a Widely Accepted and Proven Means to Resolve Collective Bargaining Disputes.**

Binding arbitration of negotiation impasses is a well-established means of providing effective government. In the form authorized in 2003, the process of binding arbitration adopted for the County was "final offer" arbitration, meaning that the arbitrator could only choose between the final offer of one party or the other. This served to place a limit on the arbitrator's authority, placing a ceiling on the choices available to the arbitrator to avoid completely unexpected results. It has encouraged the County and the Unions to bargain toward one another. It is a system that is risk adverse. That it is risk adverse is demonstrated by the infrequent election of arbitration in the past ten years, and by the fact that the County has prevailed in all arbitrated cases.

The key to the process is that it must produce a final result, one that is binding on both sides of the bargaining table, meaning both on the County and the Unions. Without finality, if an arbitrator's decision is not actually "binding," the incentives placed upon the parties to bargain toward one another to reach a settlement disappear. If someone else has the last word, and if that authority can add to, modify, change or subtract from the final package, then the incentive to settle, and to compromise, all but disappears. A change to that degree will compromise arbitration, making it something other than it is at the present.

### **3. Binding Arbitration for Labor Disputes Has The Support of Strong Legal Sources.**

In 1988, the Court of Appeals ruled that labor arbitration over wages and benefits must be a specific subject matter of charter. *Anne Arundel County v. Fraternal Order of Anne Arundel Detention Officers and Personnel*, 313 Md. 98, 111 (1988). A change in the very structure of Anne Arundel county government was necessary to permit binding arbitration over wages and benefits in Anne Arundel County. That much was decided in *Detention Officers*, 313 Md. at 111:

[A]n arbitrator's decision regarding employee compensation could not bind the County Executive and County Council in the submission and enactment of the budget under the executive budget system prescribed by the Anne Arundel County Charter.

Article XI-A, §1 of the State Constitution permits the City of Baltimore and any county to adopt a charter which "shall become the law of [the] City or County." A charter is effectively a "local constitution." *Ritchmount P'ship v. Bd. of Sup'rs of Elections for Anne Arundel County*, 283 Md. 48, 59 (1978). Article XI-A confers two distinct categories of home rule powers: (1) the power to establish and organize a local government through a charter measure (Md. Const. Art. XI-A, § 1); and (2) the power to enact a local law as ordinance or code (Art. XI-A, § 3). A charter-based authorization of binding arbitration falls under the former category rather than the latter. Questions D and E were constitutional on that basis, as an exercise of § 1, not § 3, Home Rule powers.

Binding arbitration is a lawful and necessary modification of the budget system set out in the Charter. Anne Arundel County voters modified the form and structure of Anne Arundel County government in 2002 such that an arbitration award binds the County Executive and the County Council. That is what § 812 did. Section 812 is lawful.

A long-established vein of Court of Appeals decisions strongly suggest that binding arbitration may be integrated into a county budget system through a charter amendment. See *Maryland Classified Employees' Association v. Anderson*, 281 Md. 496 (1977), *Anne Arundel*

*County v. Fraternal Order of Anne Arundel Detention Officers and Personnel*, 313 Md. 98, 111 (1988), *Freeman v. Local 1802, American Federation of State, County and Municipal Employees Council 67, AFL-CIO*, 318 Md. 684, 691 (1990) ("absent authorization from the county charter or State public general law, [a] local ordinance could not validly provide for delegation to others 'of certain duties involving the exercise of discretion specifically assigned by a county charter to the county executive and council.'"), *Board of Supervisors of Elections of Anne Arundel County v. Smallwood*, 327 Md. 220 (1992) (finding that proposed amendments were lawful because they "directly involved the relationship between the people and the government by limiting the power of the government to tax").

Indeed, the necessity of a charter amendment to direct and implement that kind of change was pointed out by one member of the Court of Appeals in *Griffith v. Wakefield*, 298 Md. 381 (1984) (Rodowsky, J., dissenting) ("It is acknowledged by the majority that the people of a charter county may, by charter amendment initiative, partially scrap the executive budget system by opting for the principle of compulsory arbitration of labor disputes with county employees.").

As we discussed with you, Monday, February 27, 2012, the *Wicomico* case did call into question certain binding arbitration provisions. See *Wicomico County Fraternal Order of Police, Lodge 111 v. Wicomico County*, 190 Md. App. 291, 301 (2010). But, as we also pointed out Monday, February 27, 2012, in response to the panel's questions to us, *Wicomico* did not discuss whether a county council could by ordinance adopt measures to change the form and structure of the county's budget and appropriation system.

Given other case law decided by the Court of Appeals, the answer to that question is that a county council cannot nullify or disregard charter level material. "[U]nder Article XI-A, § 1, it is appropriate for a county home rule charter to contain a 'system for budgeting and appropriating revenues.'" *Haub v. Montgomery County*, 353 Md. 448, 450 (1999). The authority to enact budgets, including expenditures to cover personnel costs, derives directly from Article XI-A, § 1, which "authorizes charter provisions concerning the organization and structure of county government including the method or system for making governmental decisions." *City of Annapolis v. Anne Arundel County*, 347 Md. 1, 15 (1997). It is exclusively a matter of charter – not ordinance.

Charter provisions, Questions D and E from 2002 used the word "shall" instead of "may" for a reason. The word "shall" was used to effect a change in the Charter's "organization and structure" of County government (e.g., to eliminate conflict with Art. VII, § 709 of the Charter). Shall was used rather than may, as "may" would leave it to the Council to make changes by ordinance in what should be Charter material. The form and

structure of local government are charter matters over which a county council lacks authority to legislate by virtue of the Home Rule amendment.

**4. The Present Controversy Was Triggered by A Change In an Ordinance and Not By a Change in the Charter.**

On March 21, 2011, the County Council adopted Council Bill No. 4-11, to amend § 6-4-111. Bill 4-11 modified § 6-4-111 so that an arbitrator's award was no longer binding on the County. The Coalition filed suit against the County to challenge Bill 4-11. The County, principally relying on *Wicomico County Fraternal Order of Police, Lodge 111 v. Wicomico County*, 190 Md. App. 291, 301 (2010), countered that § 812 was unconstitutional. Each side moved for summary judgment.

On October 20, 2011, the Circuit Court for Anne Arundel County issued its decision. The court concluded that "County Charter § 812 requires the Anne Arundel County Council to adopt an ordinance mandating binding arbitration." (Emphasis in original). Next, the court also concluded, "It is sufficient to say here that Bill 4-11 amended § 6-4-111 such that it no longer provides for *binding* arbitration as mandated by the 2002 Charter amendment." (Emphasis in original).

The Court of Appeals granted certiorari on *Atkinson* prior to review by the Court of Special Appeals, on January 20, 2012. Moving swiftly, on February 21, 2012, the Coalition filed its opening brief to the Court. The County's principal brief is due on March 19, 2012. Oral argument is to occur in the first two weeks of May 2012.

On Monday, February 27, 2012, counsel to the Commission, Amy Tate, asked that we also furnish to you copies of our main brief in the Court of Appeals case. A copy of the Brief filed by the Coalition on February 21, 2012 is enclosed with this letter.

**5. The Opportunity to Amend The Charter Will Not be Lost if the Commission Decides to Defer or Postpone Action on Issue No. 3 Because of the Appeal That is Pending Before the Court of Appeals in Atkinson.**

The Coalition is confident that the Court of Appeals will find § 812 constitutional. Because of the likely outcome of that case, no change to § 812 is necessary. If the Court finds otherwise, then its opinion will determine whether and in what manner § 812 must be modified.

The opportunity to correctly amend the Charter will not be lost if the Commission decides to defer action on the issue because of the pending appeal before the Court of

Appeals. Amendment is not limited to the Decennial Charter Review. Rather, under Art. XII, § 1202, the members of the County Council may initiate proposed charter amendments whenever they deem it appropriate.

### THE COALITION'S RECOMMENDATION

The system of binding arbitration in place from 2003 through 2010 functioned properly for those years. In 2011, the County Executive, asked the Council, through Bill 4-11, to modify the system so that he would no longer be bound. The result was law that is violative of § 812. The Administration, in turn, contended that § 812 is unconstitutional.

The Commission has been asked to consider how to reconcile these directly conflicting positions, currently under review by the Court of Appeals. In light of the ongoing litigation over the scope of Charter authority for measures like § 812 and the splintered case law surrounding binding arbitration in charter counties, the prudent course is to refrain from action until the Court of Appeals renders its decision. To do otherwise would invite legal uncertainty and litigation.

Interest arbitration under Charter § 812 has not harmed the County. At no time since 2003 has the County been compelled to accept a final budget package of which it did not approve.

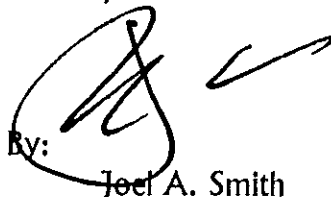
The Court of Appeals granted certiorari in *Atkinson* after the County Council adopted Item No. 3. For that reason, the "case law" on the charter question is not settled, although it likely will be settled by the Court of Appeals when it files a final decision in *Atkinson*.

For these reasons, the Coalition unions submit that the Commission defer any action on Item No. 3 until after a final decision is received from the Court of Appeals. Anything else would be premature.

Thank you for your patient attention to this most important question.

Very truly yours,

KAHN, SMITH & COLLINS, P.A.

By:   
Joel A. Smith

Charter Review Commission  
February 29, 2012  
Page 8

JAS/lf

Enclosures

cc: Amy Tate, Esquire  
Coalition Organizations

3/27/2012

Ms Tate:

Since I am unable to attend the upcoming Friday meeting of the Charter Revision Commission, I am requesting that you raise the topic of appointments by the Executive. Particularly I am interested in feedback from the Commission related to the appointment of both the Chief of Police and the County Attorney however if they chose to expand the discussion to additional departments I would not find that objectionable.


During the sixteen months of our term, the Council has faced a myriad of issues that have required us to request opinions from the Office of Law. While I have no doubt in Mr. Hodgson's ability as County Attorney to serve in his capacity, it has crossed my mind that he serves both the Executive and the Council, which at times are at differences over issues. While I believe there is an argument to be made for the Council to have its own attorney I am also aware of the financial impact to our budget and therefore I believe my suggestions below may offer a compromise that we can submit to the voters. While I would trust that Mr. Hodgson has offered us an opinion uninfluenced by the Executive branch I believe the appointment process should be reviewed and potential suggestions made as part of the Commissions final report.

In light of allegations that have implicated the Chief of Police, I was approached by citizens with a variety of suggestions related to changing the appointment process. I believe that the Council should ask the voters to consider a change in our HR process as it relates to these appointed positions. I have not had the opportunity to do extensive research on how other jurisdictions perform these tasks, but one suggestion would be to have the Executive make a recommendation and give the Council final approval over the appointment. In turn if the individual needs to be removed from their position it would take a super majority of the council to agree with the Executive.

I believe there is an argument to be made that by making a change of this kind that "politics" would be inserted into an HR matter, but I also believe that it would help to prevent department heads from operating under force of threat if the Executive makes demands that are outside of the law. I believe this approach would force the Executive branch to choose their appointment wisely, allow the Council to weigh in, and give the employee the protection to perform their job honestly, ethically, and to the best of their ability without undue influence from any one branch of government.

I thank you in advance for raising my thoughts to the members of the Commission.

Kind Regards,



Jerry Walker





## **Lee Longo - MESSAGE TO THE CODE REVISION COMMITTEE**

---

**From:** John Grasso  
**To:** Beth Jones  
**Date:** 3/27/2012 4:11 PM  
**Subject:** MESSAGE TO THE CODE REVISION COMMITTEE

---

### **MEMBERS OF THE CODE REVISION COMMITTEE**

AFTER RECEIVING SOME ALARMING INFORMATION REGARDING THE SITUATION WITH THE COUNTY EXECUTIVE/CHIEF TEARE AND THE OFFICE OF OUR COUNTY ATTORNEY - I FEEL THAT THE CODE REVISION COMMITTEE SHOULD CONSIDER GIVING THE RESPONSIBILITY OF APPOINTING THE COUNTY ATTORNEY AS WELL AS THE CHIEF OF POLICE TO THE MEMBERS OF THE COUNTY COUNCIL.

EACH OF THESE INDIVIDUALS SERVE AT THE PLEASURE OF THE COUNTY EXECUTIVE. HE CAN REMOVE THEM AT ANY TIME HE CHOOSES. ANY TIME THEY DISAGREE WITH HIM/HER THEY CAN LOSE THEIR JOBS. IT DOESN'T SIT WELL TO WATCH WHAT IS GOING ON AND JUST LET IT CONTINUE.

WE CANNOT HAVE THIS TYPE OF PROBLEM OCCUR AGAIN IN ANNE ARUNDEL COUNTY. THIS INCIDENT HAS MADE US ALL LOOK LIKE FOOLS.

SOMETHING HAS TO BE DONE.

THANK YOU,

JOHN GRASSO





Harwood Civic Association  
P.O. Box 162  
Harwood, MD 20776  
www.harwoodcivic.org

RECEIVED  
APR 04 2012  
COUNTY COUNCIL

March 30, 2012

Jana H. Carey, Chair  
Joshua C. Green  
Patric S. Enright  
Karen L. Cook  
Jason E. Rheinstein  
Anne Arundel County Charter Review Commission  
44 Calvert Street  
Annapolis, MD 21401

Dear Commissioners:

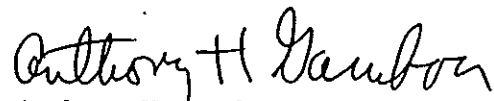
I write on behalf of the Harwood Civic Association to state our views on certain topics under your consideration for revisions to the County Charter.

The Harwood Civic Association opposes a change to the Charter to remove the line item veto authority of the County Executive. We believe that this authority is a valuable check on the County Council. We saw this during Comprehensive Zoning when the County Executive's veto prevented various egregious zoning changes approved by the County Council. The County Council can override the veto as it did with regard to most of the County Executive's vetoes during Comprehensive Zoning. The County Council's override is a check on the County Executive's authority. We therefore recommend that you not recommend an elimination of the County Executive's line item veto authority.

The Harwood Civic Association recommends term limits for the Board of Appeals. This is consistent with most other Maryland Counties and prevents entrenchment by members of the Board of Appeals.

Finally, the Harwood Civic Association opposes any change that would authorize the County Council to meet in closed session for any reason. We believe that the County Council should be required to conduct its meetings in the sunshine. Given the history of the current County Council, we are apprehensive of them conducting closed meetings.

Thank you for the opportunity to present our views.

A handwritten signature in black ink, reading "Anthony H. Gamboa". The signature is written in a cursive style with a large, stylized "A" and "G".

Anthony H. Gamboa  
President, Harwood Civic Association

## **APPENDIX D. DRAFT CHARTER CHANGES**

## **QUALIFICATION, VACANCIES AND REMOVAL OF COUNTY COUNCIL MEMBERS**

### **Sec. 205. Vacancies.**

(a) A vacancy occurring in the office of member of the County Council prior to the expiration of the term shall be filled as provided in this section.

(b) If a vacancy occurs during the first [12 months] THREE YEARS of a term, a new member shall be [nominated and] elected by the qualified voters of the councilmanic district in which the vacancy occurs WITHIN 120 DAYS [, at the same time as members of the House of Representatives of the Congress of the United States are nominated and elected and] in the manner provided by law. In the interim until a new member is elected, the vacancy shall be temporarily filled by a majority vote of the remaining members of the County Council, within 30 days after the vacancy occurs. IF THE COUNTY COUNCIL FAILS TO APPOINT A TEMPORARY MEMBER WITHIN 30 DAYS, THE COUNTY EXECUTIVE SHALL, WITHIN TEN DAYS, APPOINT A PERSON SELECTED BY THE STATE CENTRAL COMMITTEE OF ANNE ARUNDEL COUNTY REPRESENTING THE POLITICAL PARTY TO WHICH THE PREVIOUS MEMBER BELONGED AT THE TIME OF THE MEMBER'S MOST RECENT ELECTION. IF THE PREVIOUS MEMBER BELONGED TO A POLITICAL PARTY WITHOUT A CENTRAL COMMITTEE, THE COUNTY COUNCIL SHALL PROVIDE A LIST OF THREE INDIVIDUALS WHO ARE MEMBERS OF THE FORMER MEMBER'S PARTY, ONE OF WHOM SHALL BE APPOINTED BY THE COUNTY EXECUTIVE.

(c) If a vacancy occurs [after the first] DURING THE LAST 12 months of a term, the vacancy shall be permanently filled WITHIN 30 DAYS OF THE VACANCY by a majority vote of the remaining members of the County Council. IF THE COUNTY COUNCIL FAILS TO FILL THE VACANCY WITHIN 30 DAYS, THE COUNTY EXECUTIVE SHALL, WITHIN TEN DAYS, APPOINT A PERSON SELECTED BY THE STATE CENTRAL COMMITTEE OF ANNE ARUNDEL COUNTY REPRESENTING THE POLITICAL PARTY TO WHICH THE PREVIOUS MEMBER BELONGED AT THE TIME OF THE MEMBER'S MOST RECENT ELECTION. IF THE PREVIOUS MEMBER BELONGED TO A POLITICAL PARTY WITHOUT A CENTRAL COMMITTEE, THE COUNTY COUNCIL SHALL PROVIDE A LIST OF THREE INDIVIDUALS WHO ARE MEMBERS OF THE FORMER MEMBER'S PARTY, ONE OF WHOM SHALL BE APPOINTED BY THE COUNTY EXECUTIVE.

(d) A new member [elected] APPOINTED by the County Council, either temporarily or permanently, or ELECTED by the voters shall be a resident of the councilmanic district in which the vacancy occurs.

(e) If the former member whose position is being filled was a member of a political party, a new member [elected] APPOINTED by the County Council, either temporarily or permanently, shall be registered in the same political party as the former member for the 12-month period immediately prior to the election by the County Council.

(f) The County Council shall hold public interviews of candidates to fill the vacancy, whether temporary or permanent, and the Council shall elect the new member from among those persons interviewed.

(g) A new member [elected] APPOINTED permanently by the County Council or ELECTED by the voters shall serve the unexpired term of the former member and until a successor is duly elected and qualified.

(h) For a member of the County Council who is a member of a reserve component of the United States Armed Forces a vacancy shall be deemed to occur, for purposes of this section, on the date that begins active federal or State service based on an order calling the member of the County Council to active service for a period of time exceeding 180 consecutive days.

#### **Sec. 209. Removal from Office**

IF, DURING HIS ELECTED TERM, A MEMBER OF THE COUNTY COUNCIL:

- (1) FAILS TO MEET THE REQUIREMENTS OF SECTION 202;
- (2) IS FOUND GUILTY OF, OR PLEADS NOLO CONTENDERE TO, AND A FINAL CONVICTION IS ENTERED, A FELONY OR A CRIME INVOLVING MORAL TURPITUDE OR MISFEASANCE OR MALFEASANCE IN OFFICE; OR,
- (3) FAILS TO PERFORM OR IS INCAPABLE OF PERFORMING THE DUTIES OF HIS OFFICE FOR A CONTINUOUS PERIOD OF 180 DAYS

HIS OFFICE MAY BE DECLARED VACANT BY ORDINANCE WITH AN AFFIRMATIVE VOTE OF NOT LESS THAN FIVE MEMBERS OF THE COUNTY COUNCIL AND SUCH VACANCY SHALL BE FILLED IN THE MANNER PROVIDED IN SECTION 205. BEFORE REMOVING A MEMBER FROM OFFICE FOR BEING INCAPABLE OF PERFORMING THE DUTIES OF OFFICE FOR MEDICAL REASONS, THE COUNTY COUNCIL SHALL VERIFY INCAPACITY THROUGH APPROPRIATE MEDICAL DOCUMENTATION OR A COURT ORDER.



**OPEN MEETINGS – COMMISSION DID NOT DESIGNATE A VERSION**

**Sec. 307. Legislative procedure.**

(a) **Public Meetings.** All meetings and legislative sessions of the County Council shall be open to the public EXCEPT THAT A MEETING OR LEGISLATIVE SESSION MAY BE CLOSED BY A VOTE OF 5 MEMBERS OF THE COUNCIL FOR ANY REASON PERMITTED UNDER THE STATE OPEN MEETINGS ACT.

All meetings and legislative sessions of the County Council shall be open to the public EXCEPT THAT A MEETING OR LEGISLATIVE SESSION MAY BE CLOSED PURSUANT TO THE STATE OPEN MEETINGS ACT BY A VOTE OF 5 MEMBERS OF THE COUNCIL.

All meetings and legislative sessions of the County Council shall be open to the public EXCEPT THAT A MEETING OR LEGISLATIVE SESSION MAY BE CLOSED BY A VOTE OF 5 MEMBERS OF THE COUNCIL IN ORDER TO CONSULT WITH COUNSEL OR TO DISCUSS PERSONNEL MATTERS.

## **COUNTY EXECUTIVE**

### **Sec. 404. Conviction or failure to perform duties. – DRAFT NEW LANGUAGE**

IF, DURING HIS ELECTED TERM, A COUNTY EXECUTIVE:

- (1) FAILS TO MEET THE REQUIREMENTS OF SECTION 401;
- (2) IS FOUND GUILTY OF, OR PLEADS NOLO CONTENDERE TO, AND A FINAL CONVICTION IS ENTERED, A FELONY OR A CRIME INVOLVING MORAL TURPITUDE OR MISFEASANCE OR MALFEASANCE IN OFFICE; OR,
- (3) FAILS TO PERFORM OR IS INCAPABLE OF PERFORMING THE DUTIES OF HIS OFFICE FOR A CONTINUOUS PERIOD OF 180 DAYS

HIS OFFICE MAY BE DECLARED VACANT BY ORDINANCE WITH AN AFFIRMATIVE VOTE OF NOT LESS THAN FIVE MEMBERS OF THE COUNTY COUNCIL AND SUCH VACANCY SHALL BE FILLED IN THE MANNER PROVIDED IN SECTION 402. BEFORE REMOVING A MEMBER FROM OFFICE FOR BEING INCAPABLE OF PERFORMING THE DUTIES OF OFFICE FOR MEDICAL REASONS, THE COUNTY COUNCIL SHALL VERIFY INCAPACITY THROUGH APPROPRIATE MEDICAL DOCUMENTATION OR A COURT ORDER.

If a County Executive shall be convicted of a crime involving moral turpitude, of misfeasance or malfeasance in office, or fails actively to perform the daily duties and responsibilities of his office as set forth in Section 405 for a continuous period of six months, his office may be declared vacant by the affirmative vote of not less than five members of the County Council by ordinance and such vacancy shall thereupon be filled in the manner above provided in Section 402 of this Article.

### **Sec. 407. Confirmation of Executive Appointments – DRAFT LANGUAGE**

APPOINTMENTS BY THE COUNTY EXECUTIVE TO THE POSITION OF COUNTY ATTORNEY AND ANY HEAD OF A DEPARTMENT OR COUNTY OFFICE SHALL BE SUBJECT TO CONFIRMATION BY THE COUNTY COUNCIL. THE COUNCIL SHALL HOLD PUBLIC HEARINGS ON ALL SUCH APPOINTMENTS NOT LESS THAN THIRTY DAYS AFTER THEIR SUBMISSION TO THE COUNCIL BY THE COUNTY EXECUTIVE. IF THE COUNCIL FAILS TO ACT TO CONFIRM OR REJECT SUCH APPOINTMENTS, EXCEPT FOR THE COUNTY ATTORNEY, WITHIN FORTY-FIVE DAYS OF THEIR SUBMISSION TO THE COUNCIL BY THE COUNTY EXECUTIVE, THE APPOINTMENT SHALL STAND APPROVED. IN THE CASE OF APPOINTMENTS OF DEPARTMENT OR OFFICE HEADS BY THE COUNTY EXECUTIVE, A VOTE OF TWO-THIRDS OF THE MEMBERS OF THE FULL COUNCIL SHALL BE REQUIRED TO REJECT SUCH APPOINTMENT.

## **LIFE OF BILLS**

**307 (j) Executive Veto and Failure of Bills.** Upon the passage of any ordinance by the County Council, with the exception only of such measures as may in this Charter be made expressly exempt from the executive veto, the same shall be presented within five (5) days (exclusive of Saturdays, Sundays and legal holidays of the State or Nation) to the County Executive for his approval or disapproval, and within ten (10) days after such presentation he shall return any such ordinance to the County Council with his approval endorsed thereon or with a statement in writing of his reasons for not approving the same. Upon approval by the County Executive any such ordinance shall become law. Any such ordinance presented to the County Executive and returned with his veto may be reconsidered by the County Council. His objections shall be entered upon the Journal of the Council, and not later than at its next legislative session-day, the County Council may reconsider the enactment thereof notwithstanding the executive veto, and if five (5) members of the Council vote in the affirmative, the ordinance shall become law. Whenever the County Executive shall fail to return any such ordinance within ten (10) days after the date of its presentation to him, the Administrative Officer to the County Council shall forthwith record the fact of such failure in the Journal, and such ordinance shall thereupon become law. The County Executive may disapprove of one or more parts of an ordinance while approving others and the part or parts approved shall become law and the parts disapproved shall be returned to the Council as prescribed and shall not take effect unless passed over his veto as set forth herein. Any bill not passed within ninety-five days after its introduction, ~~or prior to November in a councilmanic election year,~~ shall fail, EXCEPT THAT THE COUNTY COUNCIL MAY, BY AN AFFIRMATIVE VOTE OF FIVE MEMBERS, EXTEND THE EXPIRATION DATE OF THE BILL TO THE NEXT LEGISLATIVE SESSION. ANY BILL NOT PASSED PRIOR TO NOVEMBER DURING AN ELECTION YEAR SHALL FAIL.

## EXECUTIVE VETO

**307 (j) Executive Veto and Failure of Bills.** Upon the passage of any ordinance by the County Council, with the exception only of such measures as may in this Charter be made expressly exempt from the executive veto, the same shall be presented within five (5) days (exclusive of Saturdays, Sundays and legal holidays of the State or Nation) to the County Executive for his approval or disapproval, and within ten (10) days after such presentation he shall return any such ordinance to the County Council with his approval endorsed thereon or with a statement in writing of his reasons for not approving the same. Upon approval by the County Executive any such ordinance shall become law. Any such ordinance presented to the County Executive and returned with his veto may be reconsidered by the County Council. His objections shall be entered upon the Journal of the Council, and not later than at its next legislative session-day, the County Council may reconsider the enactment thereof notwithstanding the executive veto, and if five (5) members of the Council vote in the affirmative, the ordinance shall become law. Whenever the County Executive shall fail to return any such ordinance within ten (10) days after the date of its presentation to him, the Administrative Officer to the County Council shall forthwith record the fact of such failure in the Journal, and such ordinance shall thereupon become law. ~~The County Executive may disapprove of one or more parts of an ordinance while approving others and the part or parts approved shall become law and the parts disapproved shall be returned to the Council as prescribed and shall not take effect unless passed over his veto as set forth herein.~~ Any bill not passed within ninety-five days after its introduction, or prior to November in a councilmanic election year, shall fail.

### **AUGUST RECESS COUNCIL LANGUAGE**

(c) **Monthly Legislative Session – Day.** The County Council shall also convene on the first and third Mondays of each month except AUGUST, AND IN A COUNCILMANIC ELECTION YEAR, November [in a councilmanic election year] for the purpose of enacting legislation, but if said session days shall be holidays, the said session days shall be held on the next succeeding day which is not a holiday. THE COUNCIL MAY SCHEDULE A LEGISLATIVE SESSION IN AUGUST BY A RESOLUTION APPROVED BY A MAJORITY OF THE COUNCIL. In the event of inclement weather or other natural disaster, the Chairman of the County Council at the request of any three members may cancel any scheduled meeting, and may reschedule same as soon as practicable. If in advance of a scheduled meeting the Chairman determines that a quorum will not be present, the Chairman may cancel and reschedule the meeting as soon as practicable.

(d) **Emergency Legislative Session.** The County Council may be called into emergency session IN ANY MONTH either by the County Executive or by the Chairman at the request of any three members of the Council for the purpose of enacting emergency ordinances. As used in this subsection (d) the term "emergency ordinance" shall mean one which deals with an actual acute emergency necessary for the immediate preservation of the public peace, health, safety and welfare; provided, however, that before any bill shall be passed at such emergency session, it shall require the affirmative vote of five members of the County Council.

## **CAPITAL PROJECTS**

### **Section 702 - Definitions**

9b) The term "capital project" shall mean: (1) any physical public betterment or improvement and any preliminary studies and surveys relative thereto; (2) the acquisition of property of a permanent nature for public use; (3) the purchase of equipment for any public betterment or improvement when first constructed; AND (4) TANGIBLE AND INTANGIBLE ASSETS ACQUIRED FOR USE IN OPERATIONS THAT WILL BENEFIT MORE THAN A SINGLE PERIOD, INCLUDING ANY PRELIMINARY STUDIES AND SURVEYS RELATIVE THERETO.

## ANNUAL AUDIT PROVISIONS

### **Sec. 311. Duties of County Auditor.**

The County Auditor shall, not later than six months after the close of each fiscal year, submit to the County Council and to the County Executive, a complete financial audit for the preceding fiscal year, of all offices, departments, institutions, boards, commissions, corporations, courts and other agencies of the County government. The audit shall be performed ~~{by the County Auditor or, subject to the availability of funds in the budget,}~~ by an independent firm of certified public accountants whose members are licensed for the practice of their profession under the laws of this State. ~~{The County Council may in its discretion except those agencies whose entire records, accounts and affairs are completely audited each year by the State government, and those special taxing districts which are required by State law or County law to have independent audits performed on a periodic basis.}~~ Such audit shall include a report thereon, together with such explanatory comments as the Auditor may deem appropriate. Copies of the complete audit shall be open for the inspection of the public and the press in the County Auditor's office and a reasonable number of copies shall be available for public distribution. All records and files pertaining to the receipt and expenditure of County funds by all agents and employees of the County and all offices, departments, institutions, boards, commissions, courts, corporations and other agencies thereof, shall at all times be open to the inspection of the County Auditor. The County Auditor shall devote full time to the duties of the office. He or she shall make a current post audit of all County agencies as heretofore specified and may, with the approval by resolution of the Council, examine and audit all accounts, books and records reflecting transactions involving the financial activities and affairs of the County including those for which the County has a responsibility as an agent, custodian or trustee. The County Auditor shall promptly call to the attention of the County Council and the County Executive any irregularity or improper procedure which he or she may, from time to time, discover and to take exception to such practices, and it shall be the duty of the County Executive to cause corrective action to be taken promptly, such action to include, as appropriate, the withholding of funds. Any special examination or audit shall be available for public inspection and shall be reported promptly to the County Executive, the County Council and the department or office covered thereby. The County Council shall have the power to implement the provisions of this section and to assign additional functions, duties and personnel to the County Auditor not inconsistent with those provided herein. The County Council to the extent permitted by law may by resolution authorize the County Auditor to examine and audit the books and records of persons or firms contracting with the County when in its judgment such action is needed to protect the interests of the County. All actions of the County Council pursuant to this section shall be exempt from the executive veto.

## **ETHICS COMMISSION**

### **Sec. 1001. County Ethics Commission.**

(b) (1) The Commission consists of seven members, appointed by the County Executive with the approval of the County Council. The County Council shall hold at least one public hearing prior to approving an appointment to the Commission.

(2) Three of the seven members of the Commission appointed by the County Executive shall be nominated by the County Council.

(3) The County Executive may reject a nominee of the County Council only for cause. If a nominee is rejected, the Council shall submit another individual for appointment to the Commission within 30 days.

(4) No more than four members of the Commission shall be members of the same political party.

(5) The County Council shall hold at least one public hearing prior to approving an appointment to the Commission.

(6) AT LEAST ONE MEMBER OF THE COMMISSION SHALL BE A MEMBER IN GOOD STANDING OF THE MARYLAND BAR.

### **Sec. 1001. County Ethics Commission.**

(d) Other than by voting or making a monetary contribution, no member of the Commission, may:

(1) participate in the campaign of a candidate for elective public office; or

(2) support or oppose a ballot question at any general or special election, except a question directly affecting the Commission.

(e) (1) The term of each Commission member, except the initial appointees, is four years. NO MEMBER MAY SERVE MORE THAN THREE CONSECUTIVE TERMS.



## **CHARTER REVISION COMMISSION**

### **Sec. 1203. Decennial Charter Revision Commission**

At or before the first annual legislative session of the County Council after the publication of each decennial census of the population of the United States, the County Council shall appoint by resolution a Charter Revision Commission for the purpose of making a comprehensive study of the County government and the updating of its Charter where necessary, including the matter of the revision of the councilmanic districts of the County. The Commission shall be composed of [five] SEVEN representative citizens of the County, EACH FROM ONE COUNCILMANIC DISTRICT, who shall report to the Council their findings and recommendations, together with drafts of any recommended revisions of the Charter, within twelve months after their appointment. The Charter Revision Commission shall receive from the County an appropriation sufficient to carry out its duties and responsibilities.