



CHARTER REVIEW COMMISSION

May 1, 2002

Montgomery County Council
Stella Werner Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Dear Councilmembers:

As Chair of the Charter Review Commission, it is my pleasure to submit the 2002 report for the Council's consideration. Throughout the past two years, the Commission has analyzed the Charter's applicability for the 21st century. The Commission's study revealed that the Charter provides an effective framework for governance that supports the dynamic needs of the County.

In addition to ensuring that the Charter was the proper form of government for the County, the Commission also evaluated proposed Charter amendments recommended by Councilmembers, the County Executive, and the public. This report outlines these issues and recommends three Charter amendments for inclusion on the General Election Ballot in November. The Commission knows that you will give these recommendations thoughtful consideration.

The Commission appreciates the input it received from citizens, business groups, and county leaders on a variety of issues. Without citizen participation, the Commission could not function effectively.

On behalf of the Charter Review Commission, thank you for the opportunity to serve Montgomery County as members of this Commission.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kenneth E. Clark".

Kenneth E. Clark, Chair
Charter Review Commission

CHARTER REVIEW COMMISSION

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**Charter Review Commission
Report
May 2002**

Montgomery County, Maryland

Year 2002 Report of the Charter Review Commission

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I. INTRODUCTION

The Constitution of Maryland, Article XI-A, enables counties to adopt charters to establish local governments. County charters are, in effect, constitutions for county governments because they establish the duties and responsibilities for the different branches of government. “The ‘basic function’ of a charter is to distribute power among the various agencies of government, and between the government and the people who have delegated that power to their government.” *Save Our Streets v. Mitchell*, 357 Md. 237, 743 A.2d 748 (2000).

The voters of Montgomery County adopted a charter form of government in 1948. In subsequent general elections, voters adopted several amendments to the original County Charter. The current Charter was adopted in 1968, with subsequent amendments.

Charter Section 509, adopted by amendment in 1976, requires the quadrennial appointment of an eleven-member, bipartisan Commission to study the Charter and make recommendations on potential Charter amendments. Commission members serve four-year terms, and no more than six of the eleven members may be from the same political party.

The Commission researches and evaluates Charter issues raised by the County Executive, County Councilmembers, other government officials, and the public. A report on the Commission’s activities must be submitted to the County Council no later than May 1 of every even-numbered year. The biennial report outlines the issues that the Commission considered and recommends Charter amendments to include on the General Election Ballot. The Commission may also comment on any

Charter ballot questions that have been raised by citizen petition. By mid-August, the County Council determines which Charter questions will be placed on the ballot.

II. ACTIVITIES OF THE CHARTER REVIEW COMMISSION

During 2001, the Commission conducted a series of public forums with County residents about the demographic, economic, and technological changes that have occurred since the adoption of the Charter. The discussions were held to determine if Charter amendments were warranted, in light of these changes, to improve governmental performance and accountability.

One of the issues that emerged from these public forums was the need to evaluate the current structure of the County Council. Citizens, business representatives, political groups, and government officials all expressed views on this issue. During these forums, a variety of ideas were proposed; however, two alternatives dominated the discussions: maintain the current Council structure with four at-large seats and five single-member district seats or enlarge the Council by two single-member district seats.

In addition to the public forums, the Commission held several meetings with academic, business, and minority leaders. These individuals were asked to evaluate public policy issues related to improving the efficiency and representativeness of County government.

The Commission also reviewed several other potential Charter amendments, including the appointment of special legal counsel for specified offices, issues related to Maryland's Public Information Act and Open Meetings Act, the number of

signatures required to petition Charter amendments, and agricultural land preservation issues.

III. SUMMARY OF RECOMMENDATIONS AND CONCLUSIONS

A. Recommendations for Charter Amendments

1. Amend Section 108, Officers of the Council

A majority of the Commission recommends amending Charter Section 108 to provide special legal counsel for Legislative Branch offices subject to appropriation. The fundamental purpose of this amendment is to maintain the independence of these offices and to avoid potential conflicts of interest. (Refer to discussion beginning on page 5.) The minority opinion on this issue is contained in the appendix.

2. Amend Sections 109 and 505, Sessions and Right to Information

The Commission recommends amending Charter Section 109 to ensure that this provision is interpreted in concert with the state's Open Meetings Act. The Commission also recommends amending Charter Section 505 to clearly align this provision with the state's Public Information Act. (Refer to discussion beginning on page 8.)

B. Recommendations Requiring No Charter Changes

1. Election of the County Council

The Commission recommends that issues related to the structure of the Council should remain on the Commission's agenda for evaluation at least two years prior to decennial redistricting. At that time, further changes in County population can be examined in relation to changes

in Council membership, public policies, and participation in County government by ethnic, racial, and socioeconomic groups. (Refer to discussion on page 11.)

2. Number of Signatures Required to Petition a Charter Amendment

The Commission recommends that the Council and the County's State Delegation work with representatives from other Maryland jurisdictions to reintroduce state legislation to amend the Maryland Constitution to increase the number of signatures required to petition a Charter amendment. (Refer to discussion beginning on page 18.)

3. Public Policy Recommendations

Several recommendations emerged from the Commission's meetings with academic, business, and minority leaders. These suggestions include increasing public education efforts related to County government and the Charter, using technology to improve the public hearing process, and enhancing community representation. These suggestions should be considered by the Council, but do not require Charter amendments. (Refer to discussion beginning on page 20.)

C. Other Charter Issue Considered – No Changes Recommended

1. Agricultural Land Preservation

The Commission considered a proposed Charter amendment that would recognize the permanent nature of agricultural land preservation programs in the County. The proposal restricted the Executive's and Council's ability to change the use or perpetuity of specifically

identified agricultural land. This proposal is not considered “charter material” as defined by applicable case law; therefore, the Commission recommends no action on this issue. (Refer to discussion beginning on page 22.)

IV. ISSUE AREAS

A. Recommendations for Charter Amendments

1. Amend Section 108, Officers of the Council, to provide for Special Legal Counsel

Background

At the request of several Councilmembers, the Commission studied the issue of providing Legislative Branch offices and quasi-judicial bodies, which review Executive Branch decisions, with the authority to retain special legal counsel. Legislative Branch offices include the County Council Office, the Office of Legislative Oversight, the People’s Counsel, the Office of the Inspector General, and the Office of Zoning and Administrative Hearings. Quasi-judicial bodies that review Executive Branch decisions include the Board of Appeals, the Merit System Protection Board, and the Human Rights Commission. Other than the County Council, the Ethics Commission is currently the only entity in County government with the ability to retain special legal counsel.

Discussion

The Commission recognizes the need for checks and balances among each branch of government. In an effort to maintain this balance, the Commission evaluated several options, before deciding to recommend a special legal counsel provision for Legislative Branch offices.

The Commission discussed maintaining the present system for legal review of Executive Branch action. Some Commission members believed that since the Council has the authority to appropriate funds for outside legal counsel, there was no need to amend the Charter. The minority opinion on this issue is contained in the appendix.

The next option the Commission considered was adding specific language to the Charter that would provide funding for special legal counsel for the Office of Inspector General (OIG). There was general support for this option; however, the Commission did not adopt this approach, since the Charter does not specifically identify the OIG in a separate Charter provision.

The third option the Commission evaluated was providing special legal counsel for all quasi-judicial bodies in the Charter. Commission members had concerns about infringing on the authority of the Office of County Attorney as provided in Charter Section 213. Several members believed that the theory behind this recommendation was sound, but that this alternative may lead to acrimony among the branches of government.

The final alternative discussed was recommending that the OIG have its own specific Charter provision that would identify the office's duties and responsibilities and include the ability to hire special legal counsel. This type of provision would facilitate independence for the OIG, but would limit special legal counsel to this particular office.

The Commission recognizes that the County Attorney generally represents the County in most cases dealing with municipal law. In addition, the Commission

understands the fiscal burden that would be created if each office or department could challenge the advice received from the County Attorney. However, as the Inspector General points out in his memorandum, which is contained in the appendix, there are three areas that may require the use of special legal counsel, including accessing information, revealing confidential information, and contract review.

Recommendation

The Commission majority recommends a Charter amendment that would provide Legislative Branch offices with the ability to obtain special legal counsel, subject to appropriation and the approval of the Council. At this juncture, the Commission majority does not believe that this power should be applied to quasi-judicial bodies. This is an effort to balance the need for special legal counsel for Legislative Branch offices with the authority granted to the County Attorney in Charter Section 213. The Commission majority believes that the scope of this amendment is narrow enough to accomplish both of these goals.

SECTION 108

Officers of the Council

The Council shall elect, from among its members, a President of the Council, who shall preside over meetings of the Council. The Council may provide for the selection of such other officers or employees as it may deem desirable for the exercise of its powers. The Council may temporarily employ or retain special legal counsel to assist it in the exercise of its powers, and may provide by law for special legal counsel to assist, advise, or represent any office of the legislative branch in the exercise of its duties. Special legal counsel shall be subject to appropriation and shall be exempt from Section 213.

Brackets indicate matter stricken from existing Charter provisions; underlined material has been added.

2. Amend Sections 109 and 505, Sessions and Right to Information

Background

Charter Section 109, Sessions, and Charter Section 505, Right to Information, were enacted prior to Maryland's Public Information Act and Open Meetings Act. These Charter provisions have remained unchanged since 1968. The General Assembly adopted the Public Information Act and the Open Meetings Act in the early 1970s.

Recent litigation and proposals from the County Attorney prompted the Commission to reexamine these Charter provisions to clarify their relationship to Maryland law. This is not the first time that recommendations have been made to alter these provisions. In July 2000, the County Attorney recommended amendments to Charter Sections 109 and 505. The Council voted to put these amendments before the citizens of the County; however, since the Commission did not have the opportunity to consider these proposals, the Council removed these proposals from the ballot before the election.

Discussion – Section 109, Sessions

Charter Section 109 explains the procedures associated with Council sessions. This section provides, "No business shall be transacted or any appointments made, or nominations confirmed, except in public sessions." If the judicial branch strictly construes this provision, it would limit the Council's ability to conduct closed sessions as allowed by the Maryland Open Meetings Act.

The Open Meetings Act provides that closed sessions can be used for the following purposes: "discussion of personnel matters; consultation with legal counsel;

consultation with staff and counsel regarding pending or potential litigation; acquisition of property; proposals of a business to locate, expand or remain in the state; consideration of matters related to collective bargaining negotiations, etc.” In addition, the Open Meetings Act, Section 10-504, provides, “Whenever this subtitle and another law that relates to meeting of public bodies conflict, this subtitle applies unless the other law is more stringent.”

In the *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987), the Court of Appeals reviewed a provision of the College Park Charter that required, “All meetings of the mayor and council herein provided for, shall be opened to the citizens of the city.” The court concluded that this Charter provision prohibited the city council from utilizing the provisions of Section 10-508 of the Open Meetings Act to conduct closed sessions.

In an effort to avoid this type of situation, the Commission recommends amending Charter Section 109 to affirmatively adopt the provisions of the Open Meetings Act.

Discussion – Section 505, Right to Information

Charter Section 505 relates to the County’s documents and the public’s right to inspect or obtain these records. This section provides, “Any person shall have the right to inspect any document except police records, personnel records, or records of a confidential private nature as defined by law.” If the judicial branch narrowly construes this provision, the authority of County officials to utilize “permissible denials” under Maryland’s Public Information Act could be limited.

According to the County Attorney, “the phrase ‘confidential private’ in Section 505 is curious. Unless one construes the phrase as a redundant couplet, it may lead a court to conclude that the term ‘private’ limits the confidential information exception to information about an individual.” The County Attorney has also advised the Commission, “An argument can be made that the phrase ‘confidential private’ is broad enough to include intra-agency memoranda, attorney-client communications, and records of an investigation,” [all permissible denials under the state Public Information Act]. . . but “a court could conclude that Charter Section 505 prevents county custodians from utilizing the permissible denials under the Public Information Act, including the attorney-client privilege.”

Recommendation

The County has always construed Charter Sections 109 and 505 in a manner consistent with Maryland law. The Commission’s intent is to refine the language of Charter Sections 109 and 505 to reflect this practice and to ensure that these Charter sections are interpreted properly by Maryland courts. Individuals may claim that altering the language of the Charter based on what a court might construe is unnecessary; however, the Commission believes that both proposed changes are necessary to make the state’s Public Information and Open Meetings Acts controlling.

The Commission recommends the following changes to Charter Sections 109 and 505 to achieve these goals.

SECTION 109

Sessions

The first and third Tuesdays of each month, and such additional days as the Council may determine, are designated as days for the enactment of legislation, but [in no event shall] the Council shall not sit for more than forty-five days in each year for the purpose of enacting legislation. When a first or

third Tuesday is an official holiday, the next succeeding Tuesday business day shall be a day for the enactment of legislation. The Council may sit in nonlegislative sessions at such other times as it may determine. In [such] nonlegislative sessions, the Council may adopt rules and regulations which implement or provide for the administration or execution of legislation under [such] procedures and provisions for notice and hearing [as may be] prescribed by law. No business shall be transacted, or any appointments made, or nominations confirmed, except in public session or in a closed session expressly allowed by the state Open Meetings Act.

SECTION 505

Right to Information

Any person shall have the right to inspect any document held by County government, except confidential police records, personnel records, [or] records of a confidential [private] nature as defined by law, or records that may be exempted from disclosure under the state Public Information Act or other applicable state or federal law. The Council may adopt reasonable regulations for such inspection. A certified copy of any such document shall be furnished upon payment of a reasonable fee established by such regulations. This section shall not apply to a document or other material obtained or prepared in anticipation of litigation or for use in legal proceedings to which the County is a party.

Brackets indicate matter stricken from existing Charter provisions; underlined material is added.

B. Recommendations Requiring No Charter Changes

1. Election of the County Council

Background

The Commission conducted a series of public forums with County residents about the changes in demographics, economics, and technology that have occurred since the adoption of the current Charter in 1968. The purpose of these discussions was to determine if these changes warranted amendments to the Charter to improve the performance, representativeness, or accountability of County government.

While a number of measures could be taken to improve public participation, the accessibility of information, and the design of service delivery systems, it is the

judgment of the Commission that these issues are not appropriate for Charter amendments, but should take the form of legislative or administrative action. Charter amendments should be restricted to systemic changes rather than policy matters.

The one issue arising from these public forums that implicated the Charter was whether the current system of Council representation adequately addresses the increased demographic and economic diversity of the County. The representativeness of the Council is critically important for the legitimacy of policy decisions, the assimilation of new groups into the political mainstream of County affairs, and the maintenance of citizen participation in civic life.

Discussion

The following alternatives for Council representation emerged from the public forums: retain the current system; increase the number of single-member Council districts; increase the number of Councilmembers elected from each district; and change the way that Councilmembers are elected.

a) Retain the existing system without change.

Four members of the Council would continue to be elected at-large and five members would continue to be elected from single-member districts of equal population.

Advantages

The current system ensures that each major area of the County has at least one member representing its geographic interests. This system also provides four Councilmembers with countywide constituencies, and the opportunity for alliances among at-large and district members. These alliances represent a diverse cross-

section of County constituencies. The combination of district and at-large election theoretically gives every citizen up to five points of access to the Council. Even if a district representative is not in favor of a group's position, there are four at-large members who can be approached and influenced. In addition, the relatively small size of the Council facilitates consensus and decision making on major County issues.

Disadvantages

The first-past-the-post election system (where the candidate who gets the most votes wins) in single-member districts reduces the ability of partisan, ethnic, and geographic minorities to influence County government. The notion that a district minority has access through at-large members is often illusory because of the traditional practice of candidates running as slates. Moreover, gerrymandering of districts to secure partisan advantages and to protect incumbents reduces the number of competitive contests and creates barriers for new groups and candidates. At-large seats have not produced a wide dispersion in the geographic bases of successful candidates, leaving some sections of the County underrepresented or excluded from the political process.

b) Increase the number of single-member Council districts.

The at-large positions would continue, but the number of districts would increase, reducing their size and potentially increasing their respective economic and ethnic homogeneity.

Advantages

A larger number of districts may contribute to greater diversity in the ethnic, economic, and political makeup of the Council because of the distribution of

population and partisan voters. Doubling the number of districts would produce a Council of 14 members, which is a manageable size to promote negotiations and consensus building. Smaller districts may also reduce the cost of election campaigns, make it easier for candidates to become familiar with their districts, and encourage a wide range of individuals to enter politics.

Disadvantages

More districts may provide greater geographic and partisan diversity, but unless the numbers are substantially increased, more districts would not necessarily produce much greater ethnic diversity on the Council because the County does not contain large geographic concentrations of ethnic voters. Single-member districts, especially small homogeneous ones, tend to produce elected officials with limited agendas and parochial viewpoints. Often these smaller districts reduce voter participation because incumbents discourage opposition. Officials representing small districts also have fewer incentives to compromise with their colleagues because their re-election does not depend upon appealing to a broad cross section of the electorate. Therefore, a large number of single-member districts could operate to retard the assimilation of minorities into the political and economic mainstream of the County. In addition, a Council with 14 members would still be a relatively small number of representatives for a legislative body that may soon represent nearly a million people.

c) Increase the number of Councilmembers elected from each district.

This approach would retain the five districts and elect three or more Councilmembers from each district, just as state delegates are now elected.

Advantages

Increasing the number of members elected from each district could encourage candidates to organize slates that appeal to different geographic areas and ethnic groups. This diversity encourages successful candidates to develop coalition-building skills.

Disadvantages

Multiple-member districts have not increased diversity among state representatives. Slates tend to retain incumbents or add new candidates from similar backgrounds and neighborhoods, making it difficult for minority candidates to enter the political process. These tendencies are reinforced by straight ticket voting in large multi-member districts.

d) Change the way Councilmembers are elected.

Several systems could be used to ensure that every group of reasonable size is represented, whether based on partisanship, ethnicity, geography, or economics. Cumulative voting and proportional representation are two ways to change the current system. Cumulative voting provides individuals with votes based on the number of offices, and individuals distribute their votes among the candidates. Some examples of proportional representation include party lists and preferential ballots.

Advantages

These methods operate to ensure that each substantial, cohesive voting block will be represented in a legislative body. While these alternative voting methods may seem strange to Maryland voters, they are common in other democratic countries, and are used in various communities in the United States. Some voting methods, such as

at-large party lists, can render periodic redistricting unnecessary and eliminate partisan gerrymandering. Other alternatives, such as cumulative voting in multi-member districts, provide members of cohesive and disciplined minority groups with the ability to cast all their votes for a single candidate to guarantee his or her election. Candidates have strong incentives to organize inclusive slates with wide appeal to avoid strategic voting. Implementing these types of voting methods would require voter education, but these methods are successful in many places with less political sophistication than Montgomery County.

Disadvantages

Various proportional representation schemes have been repeatedly rejected in the United States. These voting methods tend to produce governments run by unstable coalitions of minority groups. The first-past-the-post system of election used in the County and in almost all other state and local governments forces candidates to appeal to a wide constituency and tends to produce clear party majorities that are capable of governing without having to appease the most intractable member of a coalition. Election systems have a tendency to influence voter behavior and the effectiveness of government. Proportional representation induces and even rewards intransigence and places emphasis on grievances and separateness. While proportional electoral systems may provide more exact reflections of voter preferences, they complicate building stable majority coalitions that can pursue practical as opposed to ideological agendas.

Recommendation

Table A in the appendix summarizes the views expressed by participants in the Commission's public forums. It is immediately apparent that there is no consensus for any specific alternative to the present system. While some would favor increasing the number of single-member districts by two, the Commission does not recommend this change at this time, particularly since the current system of Council representation has been in place only since 1990.

The current system tends to provide greater electoral influence by the majority political party and down-county voters because of straight ticket voting for at-large members. In addition, some significant demographic and geographic segments of the population do not believe that they have adequate representation.

The Commission recommends that issues related to Council representation should be revisited two years prior to the next decennial redistricting. At that time, the Commission can examine further changes in County population as it relates to changes in Council membership, public policies, and participation in County government by ethnic, racial, and socioeconomic groups. Proponents of the current system maintain that political parties will become more responsive to the County's diverse population by attracting new voters and engaging new citizens to produce candidate slates that more accurately reflect the population of the County. However, it is also conceivable that further population growth will raise new concerns about the size of districts, campaign costs, and the difficulties associated with representing and serving diverse communities. These possible outcomes should be measured over time

to ensure that County government is keeping pace with the dynamic needs of its residents.

The Commission also urges the County's political parties to make a concerted effort to attract candidates that better reflect the overall ethnic, geographic, and socio-economic composition of the County. Political parties can help mobilize campaign resources and can generate the political strategies necessary for minority candidates to run successful campaigns.

2. Number of Signatures Required to Petition a Charter Amendment

Background

The Maryland Constitution, Article XI-A, Section 5, provides that amendments to County charters can be proposed, "by a petition signed by not less than 20 percent of registered voters of the . . . county, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition." This provision has been in effect since 1915. At that time, virtually every county in the state consisted of fewer than 10,000 registered voters. Today, 10,000 signatures represent two percent of the County's registered voters, and this percentage will continue to decrease, as the County's population grows.

Charter Section 114, Referendum, requires signatures of five percent of registered voters to petition to referendum legislation enacted by the Council. As of January 31, 2002, there were 457,963 registered voters in the County.¹ Therefore, legislative petitions would require 22,898 signatures, while Charter petitions would

¹ Board of Elections statistics as of January 31, 2002.

require only 10,000 signatures. As a result, it is significantly easier to petition to change the Charter than to alter legislation.

Discussion

The Commission has considered the disparity in the number of signatures required for these two petitions for more than ten years. The Commission has recommended that, “the County Council petition the Montgomery County Delegation in Annapolis to introduce and work for the passage of a Constitutional amendment to effect the desired change.”² This recommendation has been repeated in subsequent Charter Review Commission Reports.

The Commission continues to believe that the number of signatures needed to petition a Charter amendment should be increased. Since the Charter serves as the County’s constitution, there should be a higher burden to amend this document.

Recommendation

The Commission believes that the disparity between Charter Section 114 and Article XI-A, Section 5, of the Maryland Constitution should be resolved through a constitutional amendment. The Commission does not recommend altering Charter Section 114 to effect a reduction in the number of signatures required to petition a legislative referendum. Instead, the Commission recommends that the Council and the County’s State Delegation continue to work together to reintroduce legislation at the state level to amend the Maryland Constitution. Article XI-A, Section 5, should be changed to read, “by a petition signed by not less than 20 percent of registered

² Report of the Charter Review Commission, Montgomery County, Maryland, May 1996.

voters of the . . . county.” This change would make petitioning Charter amendments at least as burdensome as petitioning to change legislation.

The Commission understands that amendments to the Maryland Constitution must be passed by a three-fifths majority of both houses of the General Assembly and ratified by the voters. Ensuring the success of this amendment will require significant political effort by the Council and the County Delegation. Recognizing the political obstacles that have surrounded this issue for a number of years, the Commission recommends that the Council and the County Delegation work with representatives from other jurisdictions to negotiate an appropriate compromise on this issue that will make amending the County Charter more burdensome than challenging legislation.

3. Public Policy Recommendations

Background

As part of the Commission's study of the Charter's appropriateness for County government, several meetings were held with academic, business, and minority leaders. The suggestions that emerged from these meetings include issues associated with increasing public education efforts, utilizing technology to improve the public hearing process, and enhancing community representation.

Discussion

During these meetings, representatives were asked to evaluate the following issues: how the structure of County government shapes community, neighborhood, or business group participation; if the County's system of representation fairly reflects and adequately serves the interests of these groups; if there are ways to improve the County's system of representation to better serve diverse communities; if the Charter

creates any barriers to representation; and what may be done to increase the opportunity for increased citizen participation in County government.

Business leaders focused their discussion on the desire to have a more proactive government that focuses on the will of the majority. Minority leaders expressed concern about the limited number of minorities involved in political activities, and emphasized the importance of government outreach activities and multilingual communications. Academic leaders focused on how technology has shaped government activities and identified concerns associated with access and technology training.

Recommendation

These meetings produced recommendations dealing with public education, public hearings, and government representation. These suggestions should be considered by the Council, but do not require Charter amendments.

The Commission recommends that the Council consider developing a public education campaign, so citizens can expand their understanding of County government; including the purpose of the Charter and the Charter amendment process. A multilingual publication containing a simplified executive summary of the Charter should be part of this public education campaign. Additional information about the Charter, the Charter Review Commission, and the Charter amendment processes should be placed on the County's web site and become part of the public school curriculum.

The Commission also recommends that the Council consider utilizing technology to enhance the public hearing process. The Internet and cable television should be used to facilitate interactive discussions with elected officials.

Finally, the Commission recommends that the Council consider decentralizing County government in order to provide better access and communication. For example, the existing County Regional Services Centers (Bethesda-Chevy Chase, Eastern Montgomery, Mid-County, Silver Spring, and UpCounty) are instrumentalities for geographic community interaction and communication. The Commission recommends that the Council consider creating additional Regional Services Centers and giving these centers enhanced governmental authority. In addition, efforts should be made to educate residents about the purpose, function, and services provided by the Regional Services Centers and their advisory boards.

C. Other Charter Issue Considered – No Changes Recommended

1. Agricultural Land Preservation

In 1980, the Montgomery County Planning Board adopted the Functional Master Plan for the Preservation of Agriculture and Rural Open Space in the County. The Plan identified an agricultural reserve of 110,000 acres and a rural open space area of 26,000 acres. The Plan developed specific innovative preservation techniques such as the Rural Density Transfer Zone, the Rural Cluster Zone, and County Transfer Development Rights.

The Council fully implemented the plan in 1981, when it approved comprehensive rezoning to create the Rural Density Transfer Zone through a sectional map amendment. Further changes to the County's Zoning Ordinance have

been made through the years to broaden the application of and strengthen the preservation program. The main purpose of the Plan, and Council action taken since the adoption of the Plan, is to preserve a critical mass of County farmland in perpetuity.

The Commission had before it the following proposed Charter amendment on this issue:

The Montgomery County Executive and Council shall recognize the permanent nature of the many agricultural land preservation programs and the Agricultural Reserve Area of Montgomery County. The Montgomery County Executive and Council may not take any action to change the use or perpetuity of agricultural land preservation decisions and documents in Montgomery County.

Discussion

A consistent line of Maryland Court of Appeals cases, starting with *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980), and culminating in *Save Our Streets v. Mitchell*, 357 Md. 237, 743 A.2d 748 (2000), make it clear that amendments to a county home-rule charter must deal with the “form and structure” of County government, and must not attempt to legislate in the guise of a charter amendment. The courts reach this result because, while the state constitution gives voters the right to vote on county charters and charter amendments, it does not allow voters to initiate ordinary legislation.

The proposed agricultural land preservation amendment does not focus on the “form and structure” of County government. Rather, it attempts to freeze certain current laws and programs in place and make them immune from legislative amendment. In addition, the proposal attempts to affect several land use provisions

that the Council has adopted under the zoning and planning authority delegated in the Regional District Act (MD Code Art. 28), which is also not subject to amendment through the Charter.

Recommendation

While the Commission agrees with the intent of the proposed Charter amendment on this issue, this amendment does not qualify as charter material as defined in applicable case law. Therefore, the Commission recommends no action on this issue.

V. Appendix

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**Charter of
Montgomery County,
Maryland**

**Montgomery County
Government**

County Executive

Douglas M. Duncan

County Council

Phil Andrews
Derick Berlage
Nancy Dacek
Howard Denis
Blair G. Ewing

Isiah Leggett
Marilyn Praisner
Steven A. Silverman
Michael L. Subin

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***Editor's note**—The current County Charter was adopted at an election held Nov. 5, 1968, and, as indicated by history notes accompanying amended sections, was amended by subsequent elections. The County's first Charter was adopted in 1948.

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**CHARTER
OF
MONTGOMERY COUNTY, MARYLAND**

Preamble

We, the people of Montgomery County, Maryland, a body corporate and politic, under the Constitution and general laws of the State of Maryland, do adopt this Charter as our instrument of government.

ARTICLE 1. LEGISLATIVE BRANCH.

Sec. 101. County Council.

All legislative powers which may be exercised by Montgomery County under the Constitution and laws of Maryland, including all law making powers heretofore exercised by the General Assembly of Maryland but transferred to the people of the County by virtue of the adoption of this Charter, and the legislative powers vested in the County Commissioners as a District Council for the Montgomery County Suburban District, shall be vested in the County Council. The legislative power shall also include, but shall not be limited to, the power to enact public local laws for the County and repeal or amend local laws for the County heretofore enacted by the General Assembly upon the matters covered by Article 25A, Annotated Code of Maryland, 1957, as now in force or hereafter amended, and the power to legislate for the peace, good government, health, safety or welfare of the County. Nothing herein contained shall be construed to authorize or empower the County Council to enact laws or regulations for any incorporated town, village or municipality in said County on any matter covered by the powers granted to said town, village or municipality by the act incorporating it or any subsequent act or acts amendatory thereto.

Editor's note—The authorization of a road project is an executive rather than a legislative administrative act. Eggert v. Montgomery County Council, 263 Md. 243, 282 A.2d 474 (1971).

Sec. 102. Composition and Election.

The Council shall be composed of nine members, each of whom shall be a qualified voter of Montgomery County. Four Councilmembers shall be nominated and elected by the qualified voters of the entire County. Each of the five other members of the Council shall, at the time of election, reside in a different Council district, and shall be nominated and elected by the qualified voters of that district. No member of the Council shall hold any other office of profit in state, county or municipal government. No member of the Council shall be eligible for appointment during the member's term of office to any other office or position carrying compensation created by or under this Charter, except to County Executive in the event of a vacancy. (Election of 11-2-82; election of 11-4-86; election of 11-3-98.)

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Sec. 103. Council Districts.

Montgomery County shall be divided into five Council districts for the purpose of nominating and electing five members of the Council. Each district shall be compact in form and be composed of adjoining territory. Populations of the Council districts shall be substantially equal. (Election of 11-3-98.)

Sec. 104. Redistricting Procedure.

The boundaries of Council districts shall be reviewed in 1972 and every tenth year thereafter. Whenever district boundaries are to be reviewed, the Council shall appoint, not later than February 1 of the year before the year in which redistricting is to take effect, a commission on redistricting. The Commission shall be composed of four members from each political party chosen from a list of eight individuals submitted by the central committee of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the last preceding regular election. Each list shall include at least one individual who resides in each Council district. The Council shall appoint one additional member of the Commission. The Commission shall include at least one member who resides in each Council district, and the number of members of the Commission who reside in the same Council district shall not exceed the number of political parties which submitted a list to the Council. The Commission shall, at its first meeting, select one of its members to serve as its chair. No person who holds any elected office shall be eligible for appointment to the Commission.

By November 15 of the year before the year in which redistricting is to take effect, the Commission shall present a plan of Council districts, together with a report explaining it, to the Council. Within thirty days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within ninety days after presentation of the Commission's plan no other law reestablishing the boundaries of the Council districts has been enacted, then the plan, as submitted, shall become law. (Election of 11-2-82; election of 11-3-98.)

Sec. 105. Term of Office.

Members of the Council shall hold office for a term beginning at noon on the first Monday of December next following the regular election for the Council and ending at noon on the first Monday of December in the fourth year thereafter.

Sec. 106. Vacancies.

A vacancy shall occur when any member of the Council shall, before the expiration of the term for which the member was elected, die, resign the office, become disqualified for membership on the Council, or be removed from office. Unless the Council has provided by law for filling a vacancy by special election, the following process for filling a vacancy shall apply. When a vacancy has occurred, a majority of the remaining members of the Council shall appoint a person to fill the vacancy within thirty days. An appointee to fill a vacancy, when succeeding a party member, shall be a member of the same political party as the person elected to such office at the time of election. If the Council has not acted within thirty days, the County Executive shall appoint a person to fill the vacancy within ten days thereafter. If a person having held the vacant position was a member of a political party at the time of election, the person

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appointed by the County Executive shall be the nominee of the County Central Committee of that party. An appointee shall serve for the unexpired term of the previous member. Any member appointed to fill a vacancy shall meet the same qualifications and residence requirements as the previous member. (Election of 11-2-82; election of 11-8-88; election of 11-3-98.)

Sec. 107. Compensation.

The Council shall prescribe bylaw the compensation for its members. No change in the compensation of members of the Council shall become effective during the term of office of the Council enacting the change.

Sec. 108. Officers of the Council.

The Council shall elect, from among its members, a president of the Council, who shall preside over meetings of the Council. The Council may provide for the selection of such other officers or employees as it may deem desirable for the exercise of its powers. The Council may temporarily employ or retain special legal counsel to assist it in the exercise of its powers. (Election of 11-6-84.)

Sec. 109. Sessions.

The first and third Tuesdays of each month and such additional days as the Council may determine are designated as days for the enactment of legislation, but in no event shall the Council sit for more than forty-five days in each year for the purpose of enacting legislation. When a first or third Tuesday is an official holiday, the next succeeding Tuesday business day shall be a day for the enactment of legislation. The Council may sit in nonlegislative sessions at such other times as it may determine. In such nonlegislative sessions, the Council may adopt rules and regulations which implement or provide for the administration or execution of legislation under such procedures and provisions for notice and hearing as may be prescribed by law. No business shall be transacted, or any appointments made, or nominations confirmed, except in public session. (Election of 11-4-80; election of 11-2-82.)

Editor's note—In Montgomery Citizens League v. Greenhalgh, 253 Md. 151, 252 A.2d 242 (1969), it was held that the council need not designate an emergency extra session a legislative day separate and apart from the call of the session.

Sec. 110. Exercise of Zoning, Planning and Other Powers.

In the exercise of powers authorized by any act of the General Assembly or the Constitution of Maryland, other than the law making power vested in it by article XI-A of the Constitution and the grant of express powers in Article 25A, Annotated Code of Maryland, 1957, the Council shall follow the procedure set forth in such law or section of the Constitution and the exercise thereof shall be effected in the manner prescribed therein. The powers relating to zoning, planning or subdividing shall be exercised as prescribed by law. (Election of 11-4-86; election of 11-8-88.)

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Sec. 111. Enactment of Legislation.

The Council shall enact legislation only after public hearing upon reasonable notice. No legislation shall be enacted by the Council unless it receives the affirmative vote of five members of the Council. Legislation declaring an emergency and containing a section declaring that it is necessary for the immediate protection of public health or safety, and enacted by the affirmative vote of at least six members of the Council, shall be emergency legislation. Any vote cast by a member on any legislation shall be recorded in the journal of the Council. (Election of 11-4-86.)

Sec. 112. Effective Date of Legislation.

All legislation, except emergency legislation, shall take effect ninety-one days following the date on which it shall become law unless a later effective day is prescribed in the legislation. Emergency legislation shall take effect on the date on which it shall become law. (Election of 11-2-82.)

Sec. 113. Publication of Legislation.

All legislation shall be published as required by the Constitution and laws of Maryland. In addition, a summary of any legislation, except emergency legislation, enacted by the Council shall be published prior to the date on which it becomes effective, in such manner as the Council shall prescribe by law. A summary of emergency legislation shall be published promptly after enactment.

Sec. 114. Referendum.

Any legislation enacted by the Council shall be submitted to a referendum of the voters upon petition of five percent of the registered voters of the County except legislation (1) appropriating money or imposing taxes, (2) prescribing Councilmanic districts, (3) authorizing the issuance of bonds or other financial obligations for a term of less than twelve months, and (4) authorizing obligations for public school sites, construction, remodeling, or public school buildings, whenever the total amount of such obligations authorized to be issued in any one year does not exceed one-fourth of one percent of the assessable base of the County. (Election of 11-7-78; election of 11-6-90.)

Sec. 115. Referendum Procedure.

Any petition to refer legislation to the voters of the County shall be filed with the Board of Supervisors of Elections within ninety days following the date on which the legislation shall become law provided that fifty percent of the required signatures accompanying the petition are filed within seventy-five days following the date on which the legislation becomes law. When a referendum petition has been filed, the legislation to be referred shall not take effect until thirty days after its approval by a majority of the registered voters of the County voting thereon. Emergency legislation shall remain in force from the date it shall become law notwithstanding the filing of a petition for referendum but shall stand repealed thirty days after rejection by a majority of the registered voters voting thereon. (Election of 11-7-78.)

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Sec. 116. Legislative Procedure.

Consistent with law and the provisions of this Charter, the Council shall, by resolution, prescribe its rules of procedure and provide for the publication of its proceedings.

Sec. 117. Limitations.

Neither the Council, nor any member thereof, shall appoint, dismiss, or give directions to any individual employee of the Executive Branch of the County Government.

Sec. 118. Removal of Councilmembers.

A member of the County Council may be removed from office by the affirmative vote of not less than six members of the Council after a public hearing and upon a finding that the Councilmember is unable by reason of physical or mental disability to perform the duties of the office. The decision of the Council may be appealed by the removed Councilmember within ten days to the Circuit Court by petition. Upon the filing of a petition, the Court may stay the removal pending its decision. Upon appeal, the Court may make *de novo* determinations of fact. A member of the County Council also may be suspended and removed from office in the manner provided in Section 2 of Article XV of the Constitution of Maryland. (Election of 11-2-82; election of 11-4-86.)

ARTICLE 2. EXECUTIVE BRANCH.

Sec. 201. Executive Power.

The executive power vested in Montgomery County by the Constitution and laws of Maryland and by this Charter shall be vested in a County Executive who shall be the chief executive officer of Montgomery County and who shall faithfully execute the laws. In such capacity, the County Executive shall be the elected executive officer mentioned in Article XI-A, Section 3, of the Constitution of Maryland. The County Executive shall have no legislative power except the power to make rules and regulations expressly delegated by a law enacted by the Council or by this Charter. (Election of 11-2-82.)

Editor's note—The authorization of a road project is an executive rather than an administrative act, Eggert v. Montgomery County Council, 263 Md. 243, 282 A.2d 474 (1971).

Sec. 202. Election and Term of Office.

The County Executive shall be elected by the qualified voters of the entire County at the same time as the council and shall serve for a term of office commencing at noon on the first Monday of December next following the election, and ending at noon on the first Monday of December in the fourth year thereafter, or until a successor shall have qualified. (Election of 11-2-82.)

Sec. 203. Qualifications.

The County Executive shall have been a resident of Montgomery County for the year preceding the election or appointment, shall be not less than thirty years of age, shall be a qualified voter of

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Montgomery County and shall not hold any other office of profit in federal, state, county or municipal government. The County Executive shall not, during the term of office, be eligible for appointment to any other County office or position carrying compensation. The County Executive shall devote full time to the duties of the office and shall not participate in any private occupation for compensation. (Election of 11-2-82.)

Editor's note—2000 L.M.C., ch. 4, § 1, added Section 1A-107, County Executive Residency Requirement, to Chapter 1A, Establishing the Structure of County Government, which states that the County Executive must have been a resident of the County for one year before the Executive is elected or appointed.

Sec. 204. Compensation.

The compensation of the County Executive shall be prescribed by the Council by law. The Council shall not change the compensation of any County Executive during the term of office to which elected. (Election of 11-2-82.)

Sec. 205. Vacancy.

A vacancy in the office of County Executive shall exist upon the death, resignation, disqualification, or removal of the County Executive. The Council, by a vote of not less than five members, shall appoint a successor to fill the vacancy within forty-five days of the vacancy. An appointee to fill a vacancy, when succeeding a party member, shall be a member of the same political party as the person elected to such office at the time of election. If the Council has not made an appointment within forty-five days, the Council shall appoint within fifteen days thereafter the nominee of the County Central Committee of the political party, if any, of the person elected to such office. The Chief Administrative Officer shall act as County Executive and perform all the duties of that office until such time as the vacancy has been filled. (Election of 11-2-82; election of 11-4-86.)

Sec. 206. Removal of the County Executive.

The County Executive may be removed from office by the affirmative vote of not less than six members of the Council after a public hearing and upon a finding that the County Executive is unable by reason of physical or mental disability to perform the duties of the office. The decision of the Council may be appealed by the County Executive within ten days to the Circuit Court by petition. Upon the filing of a petition, the Court may stay the removal pending its decision. Upon appeal, the Court may make *de novo* determinations of fact. The County Executive also may be suspended and removed from office in the manner provided in Section 2 of Article XV of the Constitution of Maryland. (Election of 11-2-82; election of 11-4-86.)

Sec. 207. Temporary Absence or Disability.

In the event of the temporary absence or disability of the County Executive, the Chief Administrative Officer shall perform the duties of the County Executive, unless the County Executive shall designate in writing some other person in the Executive Branch.

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Sec. 208. Veto.

Upon the enactment of any legislation by the Council, it shall be delivered within three days to the County Executive who within ten days thereafter shall approve or disapprove it. If the County Executive disapproves such legislation, it shall be returned to the Council within three days after the Executive disapproves it with the reasons for the disapproval stated in writing. Not later than 60 days after receiving the Executive's message of disapproval, the Council may, by the affirmative vote of six members, enact legislation over the disapproval of the County Executive. Any legislation which has been neither approved nor disapproved by the County Executive shall become law on the fourteenth day after enactment. (Election of 11-2-82; election of 11-4-86; election of 11-6-90.)

Sec. 209. Information on Executive Branch.

The County Executive shall provide the Council with any information concerning the Executive Branch that the Council may require for the exercise of its powers.

Sec. 210. Chief Administrative Officer.

The County Executive shall appoint a Chief Administrative Officer subject to confirmation by the Council. The Chief Administrative Officer shall be a professionally qualified administrator who shall serve at the pleasure of the County Executive, with compensation determined by the County Executive subject to the approval of the Council. (Election of 11-2-82.)

Sec. 211. Duties of the Chief Administrative Officer.

The Chief Administrative Officer shall, subject to the direction of the County Executive, supervise all departments, offices, and agencies of the Executive Branch, advise the County Executive on all administrative matters and perform such other duties as may be assigned by the County Executive, or by this Charter. (Election of 11-2-82.)

Sec. 212. Principal Departments.

In the Executive Branch there shall be an Office of the County Attorney, a Department of Finance and any departments, agencies, offices, or other bodies prescribed by this Charter, or by the Council by law.

Sec. 213. County Attorney.

The County Executive shall appoint a County Attorney, subject to confirmation by the Council. The County Attorney shall be the chief legal officer of the County, conduct all the law business of the County, be a legal advisor to the Council, and be the legal advisor to the County Executive, all departments, and other instrumentalities of the County Government. The County Attorney shall represent the County in all actions in which the County is a party. The County Attorney and the staff of the office shall engage in no other law practice. The County Attorney may, with the approval of the Council, temporarily employ special legal counsel to work on problems of an extraordinary nature when the work to

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be done is of such character or magnitude as to require services in addition to those regularly provided by the County Attorney. The County Attorney shall serve at the pleasure of the County Executive but, upon request, shall be entitled to a public hearing before the Council prior to dismissal from office. (Election of 11-2-82; election of 11-6-84.)

Sec. 214. Department of Finance.

The Department of Finance shall be the custodian of all County funds, securities and insurance policies; collect taxes, special assessments, license fees and other revenue; manage indebtedness, invest and disburse County funds; prepare an Annual Financial Report containing a detailed account of all monies received and paid out by the County and perform such other functions as shall be prescribed by law. (Election of 11-8-88.)

Sec. 215. Appointments.

The County Executive, after receiving the advice of the Chief Administrative Officer, shall appoint a single officer to head each department, principal office or agency of the Executive Branch, and an officer to fill any position in the Executive Branch designated by law as a non-merit position, all subject to the confirmation of the Council. Except for commissions appointed to advise the Council, the County Executive shall appoint, subject to the confirmation of the Council, all members of boards and commissions unless otherwise prescribed by state law or this Charter. (Election of 11-8-94.)

Sec. 216. Appointment of Other Employees of the Executive Branch.

All employees of the Executive Branch other than those specifically provided for in this Charter shall be appointed and removed and their salaries shall be fixed under the merit system by the heads of the several departments, offices and agencies of the County.

Sec. 217. Reorganization of the Executive Branch.

The Council may prescribe by law the organization of the Executive Branch of County Government. The County Executive may submit to the Council in writing, reorganization plans reallocating powers, functions or responsibilities of the various departments and agencies of the Executive Branch. A reorganization plan shall become law ninety days following its presentation to the Council, if by that time it has not been disapproved by a vote of five members of the Council. (Election of 11-4-86.)

Sec. 218. Internal Audits.

The County Executive shall cause internal audits of all departments, offices and agencies of the Executive Branch, and other internal audits as prescribed by law, to be performed. (Election of 11-8-88.)

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ARTICLE 3. FINANCE.

Sec. 301. Fiscal Year.

The fiscal year of the County shall commence on July 1 of each year and end on June 30 in the following year, unless otherwise prescribed by state law.

Sec. 302. Six-Year Programs for Public Services, Capital Improvements, and Fiscal Policy.

The County Executive shall submit to the Council, not later than January 15 of each even-numbered year, a comprehensive six-year program for capital improvements. The County Executive shall submit to the Council, not later than March 15 of each year, comprehensive six-year programs for public services and fiscal policy. The six-year programs shall require a vote of at least five Councilmembers for approval or modification. Final Council approval of the six-year programs shall occur at or about the date of budget approval.

The public services program shall include a statement of program objectives and recommend levels of public service by the County government, and shall provide an estimate of costs, a statement of revenue sources, and an estimate of the impact of the program on County revenues and the capital budget.

The capital improvements program shall include a statement of the objectives of capital programs and the relationship of capital programs to the County's long-range development plans; shall recommend capital projects and a construction schedule; and shall provide an estimate of costs, a statement of anticipated revenue sources, and an estimate of the impact of the program on County revenues and the operating budget. The capital improvements program shall, to the extent authorized by law, include all capital projects and programs of all agencies for which the County sets tax rates or approves budgets or programs. The Council may amend an approved capital improvements program at any time by an affirmative vote of six Councilmembers.

The fiscal program shall show projections of revenues and expenditures for all functions, recommend revenue and expenditure policies for the program period and analyze the impact of tax and expenditure patterns on public programs and the economy of the County.

The County Executive shall provide such other information relating to these programs as may be prescribed by law.

All capital improvement projects which are estimated to cost in excess of an amount to be established by law or which the County Council determines to possess unusual characteristics or to be of sufficient public importance shall be individually authorized by law; provided however, that any project declared by the County Council to be of an emergency nature necessary for the protection of the public health or safety shall not be subject to this requirement if the project is approved by the affirmative vote of six Councilmembers. Any project mandated by law, statutory or otherwise, interstate compact, or any project required by law to serve two or more jurisdictions shall, likewise, not be subject to this requirement. The County Council shall prescribe by law the methods and procedures for implementation of this provision. (Election of 11-7-78; election of 11-4-86; election of 11-3-92; election of 11-5-96.)

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Sec. 303. Capital and Operating Budgets.

The County Executive shall submit to the Council, not later than January 15 and March 15, respectively of each year, proposed capital and operating budgets including recommended expenditures and revenue sources for the ensuing fiscal year and any other information in such form and detail as the County Executive shall determine and as may be prescribed by law. These budgets shall be consistent with the six-year programs. A summary shall be submitted with the budgets containing an analysis of the fiscal implications for the County of all available budgets of any agencies for which the Council sets tax rates, makes levies, approves programs or budgets. (Election of 11-6-84; election of 11-3-92.)

Sec. 304. Budget Hearing.

The Council shall hold public hearings on the proposed budget and the six-year programs required by this Charter, commencing not earlier than twenty-one days following their receipt.

Sec. 305. Approval of the Budget; Tax Levies.

The Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget. The Council shall approve each budget, as amended, and appropriate the funds therefor not later than June 1 of the year in which it is submitted.

An aggregate operating budget which exceeds the aggregate operating budget for the preceding fiscal year by a percentage increase greater than the annual average increase of the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the twelve months preceding December first of each year requires the affirmative vote of six Councilmembers. For the purposes of this section, the aggregate operating budget does not include: (1) the operating budget for any enterprise fund; (2) the operating budget for the Washington Suburban Sanitary Commission; (3) expenditures equal to tuition and tuition-related charges estimated to be received by Montgomery College; and (4) any grant which can only be spent for a specific purpose and which cannot be spent until receipt of the entire amount of revenue is assured from a source other than County government.

The Council shall annually adopt spending affordability guidelines for the capital and operating budgets, including guidelines for the aggregate capital and aggregate operating budgets. The Council shall by law establish the process and criteria for adopting spending affordability guidelines. Any aggregate capital budget or aggregate operating budget that exceeds the guidelines then in effect requires the affirmative vote of seven Councilmembers for approval.

By June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. Unless approved by an affirmative vote of seven Councilmembers, the Council shall not levy an ad valorem tax on real property to finance the budgets that will produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year plus a percentage of the previous year's real property tax revenues that equals any increase in the Consumer Price Index as computed under this section. This limit does not apply to revenue from: (1) newly constructed property, (2) newly rezoned property, (3) property that, because of a change in state law, is assessed differently than it was assessed in

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the previous tax year, (4) property that has undergone a change in use, and (5) any development district tax used to fund capital improvement projects. (Election of 11-7-78; election of 11-6-84; election of 11-6-90; election of 11-3-92; election of 11-8-94; election of 11-3-98.)

Sec. 306. Item Veto or Reduction.

Upon approval of the budget, it shall be delivered within three days to the County Executive who within ten days thereafter may disapprove or reduce any item contained in it. If the County Executive disapproves or reduces any item in the budget, it shall be returned to the Council with the reasons for the disapproval or reduction in writing. The Council may, not later than June 30 of that year, reapprove any item over the disapproval or reduction of the County Executive by the affirmative vote of six members, except that the affirmative vote of five members shall be required in the case of the budgets of the Council, the Fire and Rescue Commission, the Fire Departments and Rescue Squads, the Housing Opportunities Commission and Montgomery College. (Election of 11-4-80; election of 11-2-82; election of 11-4-86; election of 11-8-88; election of 11-3-92.)

Sec. 307. Supplemental Appropriations.

Any supplemental appropriation shall be recommended by the County Executive, who shall specify the source of funds to finance it. The Council shall hold a public hearing on each proposed supplemental appropriation after at least one week's notice. A supplemental appropriation that would comply with, avail the County of, or put into effect a grant or a federal, state, or county law or regulation, or one that is approved after January 1 of any fiscal year, requires an affirmative vote of five Councilmembers. A supplemental appropriation for any other purpose that is approved before January 1 of any fiscal year requires an affirmative vote of six Councilmembers. The Council may, in a single action, approve more than one supplemental appropriation. The Executive may disapprove or reduce a supplemental appropriation, and the Council may reapprove the appropriation, as if it were an item in the annual budget. (Election of 11-7-2000.)

Sec. 308. Special Appropriations.

A special appropriation is an appropriation which states that it is necessary to meet an unforeseen disaster or other emergency, or to act without delay in the public interest. Each special appropriation shall be approved by not less than six Councilmembers. The Council may approve a special appropriation at any time after public notice by news release. Each special appropriation shall specify the source of funds to finance it. (Election of 11-4-86; election of 11-7-2000.)

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Sec. 309. Transfer of Funds.

The County Executive may at any time transfer an unencumbered appropriation balance within a division or between divisions of the same department. Transfers between departments, boards or commissions, or to any new account, shall be made only by the County Council upon the recommendation of the County Executive. The total cumulative transfers from any one appropriation shall not exceed ten percent of the original appropriation. No transfer shall be made between the operating and capital budget appropriation.

Sec. 310. Surplus.

The County may accumulate earned surplus in any enterprise fund or unappropriated surplus in any other fund. With respect to the General Fund, any unappropriated surplus shall not exceed five percent of the General Fund revenue for the preceding fiscal year. An unappropriated surplus may be used to fund any supplemental or special appropriations. (Election of 11-7-2000.)

Sec. 311. Limitations on Expenditures.

No expenditures of County funds shall be made or authorized in excess of the available unencumbered appropriations therefor.

Sec. 311A. Limitations on Expenditures for Landfills in Residential Zones.

No expenditure of County funds shall be made or authorized for the operation of a landfill system of refuse disposal on land zoned for residential use. (Election of 11-7-78.)

Editor's note—See East v. Gilchrist, 296 Md. 368, A.2d 285 (1983); holding section 311A cannot be given effect under circumstances involving an order of the secretary of health and mental hygiene and requirement of local funding under public general law.

Sec. 311B. Limitations on Expenditures, Contracts, and Permits for Burying or Trenching Sewage Sludge in Residential Zones.

No expenditure of County funds shall be made or authorized for the construction or operation of a system for burying or trenching sewage sludge on land zoned for residential use, nor may the County purchase or contract for the service of burying or trenching sewage sludge on land zoned for residential use. Also, the County may not seek federal or state permits for the burying or trenching of sewage sludge in residential zones. (Election of 11-4-80.)

Sec. 312. Indebtedness.

The County may incur debt. No indebtedness for a term of more than one year shall be incurred by the County to meet current operating expenses. All County indebtedness for a term in excess of one

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year shall become due not later than thirty years after the date of issuance. If at any time the Council shall have failed to appropriate and to make available sufficient funds to provide for the timely payment of the interest and principal then due upon all County indebtedness, it shall be the duty of the Director of Finance to pay, or to make available for payment, to the holders of such indebtedness from the first revenues thereafter received applicable to the general funds of the County, a sum equal to such interest and principal. (Election of 11-6-90.)

Sec. 313. Purchasing.

The Council shall prescribe bylaw a centralized system of purchasing and contracting for all goods and services used by the County. The centralized purchasing system shall be administered under the professional supervision of the Chief Administrative Officer subject to the direction of the County executive.

Sec. 313A. Purchasing, Contracting for Goods, Services with C&P Telephone Company.

The County Government may not purchase and contract for goods and services with the C&P Telephone Company (C&P) unless C&P includes telephone subscribers in Gaithersburg Maryland, and Montgomery Village in the Washington Metropolitan Area Telephone Exchange (MET) at local rates no higher than local rates charged MET subscribers in Bethesda, Silver Spring, Kensington and Rockville telephone exchange areas. (Election of 11-2-82.)

Editor's note—In Rowe, et al. v. The Chesapeake and Potomac Telephone Company of Maryland, et al., 65 Md. App. 527, 501 A.2d (1985), it was held that Charter section 313A could not be given effect because it conflicted with a state Public Service Commission Order.

Sec. 314. Competitive Procurement.

The Council shall prescribe bylaw for competitive procurement for purchases by or contracts with the County in excess of an amount or amounts established by law. (Election of 11-4-80; election of 11-6-90.)

Sec. 315. Audit.

The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees. The complete report of the audit shall be presented to the Council and copies of it shall be made available to the public.

Editor's note—Res. No. 10-457, introduced and adopted on Nov. 1, 1983, adopted procedures for the selection of the independent auditor.

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Sec. 316. Public Access to Fiscal Documents.

All fiscal documents required by this Charter shall be public records, and copies shall be made available to the public. Any estimates, reports, or justifications on which they are based shall be open to public inspection subject to reasonable regulations.

ARTICLE 4. MERIT SYSTEM AND CONFLICTS OF INTEREST.

Sec. 401. Merit System.

The Council shall prescribe bylaw a merit system for all officers and employees of the County government except: (a) members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney; (b) the heads of the departments, principal offices and agencies, as defined by law; (c) any officer holding any other position designated by law as a non-merit position; (d) one confidential aide for each member of the Council; (e) two senior professional staff members for the Council as a whole as the Council may designate from time to time; (f) three special assistants to the County Executive as the Executive may designate from time to time; (g) special legal counsel employed pursuant to this Charter; (h) members of boards and commissions; and (i) other officers authorized by law to serve in a quasi-judicial capacity.

Any law which creates a new department, principal office, or agency, or designates a position as a non-merit position, requires the affirmative vote of six Councilmembers for enactment. Any law which repeals the designation of a position as a non-merit position requires the affirmative vote of five Councilmembers for enactment.

Officers and employees subject to a collective bargaining agreement may be excluded from provisions of law governing the merit system only to the extent that the applicability of those provisions is made subject to collective bargaining by legislation enacted under Section 510, Section 510A, or Section 511 of this Charter.

The merit system shall provide the means to recruit, select, develop, and maintain an effective, nonpartisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The council shall establish bylaw a system of retirement pay.

The Council by law may exempt probationary employees, temporary employees, and term employees from some or all of the provisions of law governing the merit system, but the law shall require these employees to be recruited, selected and promoted on the basis of demonstrated merit and fitness. (Election of 11-4-80; election of 11-6-84; election of 11-8-94; election of 11-5-96; election of 11-3-98; election of 11-7-2000.)

Editor's note—Section 401 of the Montgomery County Charter was interpreted in Anastasi v. Montgomery County, 123 Md. App. 472, 719 A.2d 980 (1998).

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Sec. 402. Personnel Administration.

The County Executive shall be responsible for adopting personnel regulations for the administration and implementation of the merit system law. These regulations shall be adopted in the manner provided for by law. The Chief Administrative Officer, under the direction of the County Executive and subject to merit system laws and regulations, shall be responsible for administering the County's merit system. (Election of 11-4-80.)

Sec. 403. Merit System Protection Board.

There is established a Merit System Protection Board composed of three members who are qualified voters of the County appointed by the Council. One member shall be appointed each year for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed only for the remainder of that term. Appointment shall be made so that not more than two members of the Board shall be members of the same political party. No member shall hold political office or participate in any campaign for any political or public office during the member's term of office. Members of the Board shall be compensated as prescribed by law. (Election of 11-4-80.)

Sec. 404. Duties of the Merit System Protection Board.

Any employee under the merit system who is removed, demoted, or suspended shall have, as a matter of right, an opportunity for a hearing before the Merit System Protection Board, which may assign the matter to a hearing examiner to conduct a hearing and provide the Board with a report and recommendations. The charges against the employee shall be stated in writing, in such form as the Board shall require. If the Board assigns the matter to a hearing examiner, any party to the proceeding shall have, as a matter of right, an opportunity to present an oral argument on the record before the Board prior to a final decision. The Board shall establish procedures consistent with law for the conduct of its hearings. The decisions of the Board in such appeals shall not be subject to review except by a court of competent jurisdiction. The Council shall provide by law for the investigation and resolution of formal grievances filed under the merit system and any additional duties or responsibilities of the Board. The Board shall conduct on a periodic basis special studies and audits of the administration of the merit and retirement pay systems and file written reports of its findings and recommendations with the Executive and the Council. The Board shall comment on any proposed changes in the merit system law or regulations in a timely manner as provided by law. (Election of 11-4-80.)

Sec. 405. Political Activity.

No officer or employee of the County shall be prohibited from participating in politics or political campaigns; however, the Council may by law restrict political activities by County officers and employees (including members of boards and commissions) who serve in a quasi-judicial capacity. No County officer or employee shall be obligated to contribute to a political campaign or to render political service. (Election of 11-2-82; election of 11-3-98.)

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Sec. 406. Prohibition Against Private Use of Public Employees.

No member of the Council, the County Executive, or any officer or employee of the County shall detail or cause any officer or employee of the County to do or perform any service or work outside of the officer's or employee's public office or employment. (Election of 11-2-82.)

Sec. 407. Prohibition Against Additional Compensation.

No member of the Council and no officer or employee of the County whose salary is fixed, in whole or in part, by this Charter, the laws of the County, or its personnel regulations, shall be entitled, directly or indirectly, to any other salary, expenses, or compensation from the County for performance of public duties except expenses for travel and subsistence incident to the performance of official duties as prescribed by law. (Election of 11-2-82.)

Sec. 408. Work During Official Hours.

All officers and employees of the Executive or Legislative Branches who receive compensation paid in whole or in part from County funds shall devote their entire time during their official working hours to the performance of their official duties.

Sec. 409. Corrupt Practices.

No person whose salary or expenses are paid in whole or in part from County funds shall invite, accept, offer, give or promise to give any money or any valuable thing in consideration of appointment or employment by the County. Any person violating this Section shall be removed from any public office or employment held and be subject to such other penalties as may be prescribed by law. (Election of 11-2-82.)

Sec. 410. Code of Ethics.

The Council shall adopt by law a code of ethics applicable to all public employees. In this section, public employee includes each County employee, elected officer, and appointed officer, including a member of a board or commission, and any other person designated by law.

The code of ethics shall at a minimum regulate: (a) conflicts of interest; (b) solicitation and receipt of gifts; (c) other employment of present and former public employees; (d) lobbying; (e) financial disclosure by public employees; (f) the use of County property and County insignia; and (g) the use of the prestige of office.

The code of ethics shall:

- a) provide that each public employee owes a fiduciary responsibility to the County, which the public employee shall not breach by any public or private action;

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The Charter

- b) prohibit a public employee from obtaining an economic benefit as a result of public employment if the economic benefit is received on terms more favorable than those available to persons who are not public employees;
- c) allow waivers from restrictions and requirements of the code if a waiver is in the best interest of the County and all pertinent facts are disclosed to the public;
- d) authorize enforcement of the code and impose penalties for violations; and
- e) include any other provisions required by State law or that the Council finds serve the purposes of this section.

The Council by law shall prohibit corrupt practices by any individual or organization that attempts to obtain or is a party to a contract with the County, including kickbacks in the award of County contracts and using confidential information obtained in performing a contract with the County for personal gain or the gain of another without the approval of the County.

The Council may by law establish a commission to enforce and interpret the code of ethics and related laws. The Council by law may allow an ethics commission to retain legal counsel with the approval of the Council, subject to appropriation, and may exempt legal counsel for the commission from Section 213. (Election of 11-2-82; election of 11-5-96.)

Sec. 411. Reserved.

Editor's note—Section 411, related to prohibited activities and derived from Char. Res. No. 8-935, § 3 as amended by an election of 11-2-82, was repealed by an amendment of 11-5-96.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 501. Disaster—Continuity of Government During Emergencies.

In order to ensure continuity of government during an emergency caused by a disaster or enemy attack, the Council shall prescribe by law for the temporary suspension of specific provisions of this Charter and for temporary succession to the powers and duties of public offices whether filled by election or appointment.

Sec. 502. Annual Report.

The County Executive shall prepare and provide to the Council and the public, within sixty days after the end of each fiscal year, an annual report setting forth the activities and accomplishments of the County Government.

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Sec. 503. Annual Compilation of Laws.

As soon as practicable each year, the County Attorney shall have published a compilation or a cumulative supplement to the County Code, with index, which shall include all legislation and regulations of a general or permanent nature adopted or approved by the Council or County Executive during the preceding year. (Election of 11-6-90.)

Sec. 504. County Code.

Unless the Council shall provide for more frequent publication by law, each ten years there shall be compiled under the direction of the County Attorney an annotated code of all public local laws, County legislation, and regulations then having the force and effect of law, and this Charter. The Council may, by legislation, legalize this code and shall cause it to be published in an indexed volume. (Char. Res. No. 7-711; election of 11-6-90.)

Sec. 505. Right to Information.

Any person shall have the right to inspect any document, except confidential police records, personnel records, or records of a confidential private nature as defined by law. The Council may adopt reasonable regulations for such inspection. A certified copy of any such document shall be furnished upon payment of a reasonable fee established by such regulations. This section shall not apply to a document or other material obtained or prepared in anticipation of litigation or for use in legal proceedings to which the County is a party.

Sec. 506. Separability.

If any article, section, or provision of this Charter shall be held unconstitutional, invalid, or inapplicable to any person or circumstance by the final decision of a court of competent jurisdiction, all other articles, sections, or provisions of this Charter and their application to all other persons and circumstances shall be separable and shall not be affected by such decision.

Editor's note—Charter amendment that conflicts with public general law may not be submitted to votes for approval. Montgomery County v. Bd. of Supervisors of Elections, 311 Md. 512, 536 A.2d 641 (1988).

Sec. 507. Amendment.

This Charter may be amended in the manner provided in Section 5 of Article XI-A of the Constitution of Maryland.

Sec. 508. Effective Date.

This amended Charter shall become effective from and after the thirtieth day after its adoption.

MONTGOMERY COUNTY CODE
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Sec. 509. Charter Review Commission.

There shall be a Charter Review Commission appointed by the County Council every four years, within six months after the Council assumes office, for the purpose of studying the Charter. The Commission shall be composed of eleven members who shall be residents of the County, five of whom shall be appointed from a list of names submitted by the County Executive. Not more than six members shall be of the same political party. The chairperson shall be designated by the Council and the vice-chairperson shall be designated by the County Executive. The Commission shall report at least once to the Council on the Commission's activities within one year after appointment of the Commission. Commission reports shall be submitted not later than May 1 of every even-numbered year. The reports shall contain recommendations concerning proposed Charter amendments, if any. (Char. Res. No. 8-935, § 1.)

Sec. 510. Collective Bargaining.

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers. Any law so enacted shall prohibit strikes or work stoppages by police officers. (Election of 11-4-80.)

Sec. 510A. Collective Bargaining—Fire Fighters.

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County career fire fighters. Any law so enacted shall prohibit strikes or work stoppages by career fire fighters. (Election of 11-8-94.)

Sec. 511. Collective Bargaining—County Employees.

The Montgomery County Council may provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the County Government not covered by either Section 510 or Section 510A of this Charter. Any law so enacted shall prohibit strikes or work stoppages for such officers and employees. (Election of 11-6-84; election of 11-8-94.)

Sec. 512. Hearing Examiners.

Hearing examiners authorized by law to conduct hearings and render written reports and recommendations may preside over matters referred to them at the request of executive branch agencies, the Merit System Protection Board, and the County Board of Appeals under procedures provided by law, in addition to any matters assigned to them by the Council in the exercise of its powers as provided by law. (Election of 11-4-86.)

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Sec. 513. Effect of Certain Amendments.

The taking effect of this Charter, or any amendment to this Charter, shall not of itself affect the tenure, term, status, or compensation of any appointed officer or employee of the county then holding office, except as directly provided in this Charter. Any amendment to this Charter that increases or decreases the number of members of the county council, or alters the provisions for election of the members of the council, shall initially apply to the members of the council elected at the next election after the adoption of the Charter amendment. (Election of 11-4-86; election of 11-3-98.)

Editor's note—Charter amendments approved at the election held on November 3, 1998, repealed the heading, subheadings (“General” and “Merit System”) and opening paragraph of the Schedule of Transitional Provisions, renumbered section 1 to section 513, and repealed section 2. Section 3 was deleted by Charter amendment approved at the election held on November 6, 1990. Charter amendments approved at the election held on November 2, 1982, revised the Schedule of Transition Provisions by repealing existing sections 2—16 and enacting new sections 2 (formerly section 16) and 3 (formerly section 17).

Minority Opinion
Special legal counsel provision
Charter Amendment to Section 108 - Officers of the Council

Commission members Titus and Welsh respectfully dissent from the majority opinion on the issue of retaining special legal counsel for the Legislative Branch subject to appropriation, and do not endorse the proposed amendment to Charter Section 108. The amendment is wholly unnecessary and will inevitably lead to expensive and unnecessary intergovernmental conflicts. Separate counsel for County agencies should be the exception, not the rule. The Charter provides that the County Attorney is the legal counsel for the County Executive, the County Council, and all departments and instrumentalities of County government. The County Attorney has the power to appoint special legal counsel with the approval of the Council, when such an appointment is warranted and has responsibly exercised this power in the past.

In light of the federal government's recent experience with the now expired independent counsel law, it is especially troubling that the County is proceeding in the opposite direction. The proposed amendment to Charter Section 108 will not "enhance the stability and balance of the executive-legislative relationship," as stated in Council President Silverman's memorandum dated February 26. If the majority's recommendation is approved by the voters it will sow the seed of unnecessary, protracted, and expensive conflict at the local level and will alter the existing roles of the Executive and Council as defined in the existing Charter.




MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

OFFICE OF THE COUNCIL PRESIDENT

MEMORANDUM

February 26, 2002

TO: Kenneth E. Clark, Chairperson
Charter Review Commission

FROM: Steven A. Silverman, Council President 

SUBJECT: Charter amendment regarding special legal counsel

I understand that, at the Commission's meeting on February 13, your members expressed an interest in seeing a draft of the Charter amendment you discussed regarding special legal counsel, for which my colleagues Ike Leggett, Blair Ewing, and Marilyn Praisner had already communicated their support. The Council appreciates your interest in this amendment, and I have attached a draft prepared by our legal staff, which we commend for your consideration.

The attached amendment takes a comprehensive approach and conforms the existing Charter authorizations for special legal counsel for the Council and County Attorney to their current scope and practice. Its major provision is the proposed new §411, which extends the authority to retain legal counsel that was given to the Ethics Commission in §410 to other quasi-judicial bodies which review Executive branch decisions (the Board of Appeals, the Merit Systems Protection Board, the Human Rights Commission) and similar bodies that may be created by law in the future. The Human Rights Commission and the Ethics Commission are the only Executive branch agencies mentioned. The proposed §411 also extends this authority to offices in the legislative branch. Under current law the offices in the legislative branch are the Council Office, the Office of Legislative Oversight, the People's Counsel, the Office of the Inspector General, and the Office of Zoning and Administrative Hearings. As with the Ethics Commission, any special legal counsel must be expressly approved by the Council and is subject to appropriation.

The fundamental purpose of this amendment is to avoid the possibility of the Executive branch investigating itself. If the independence of agencies that were created to oversee the Executive branch of County government and rule on whether it has acted according to law is



compromised because those bodies must turn in all cases to the Executive's attorney for legal advice and representation, then those agencies have lost their essential purpose. We feel very strongly that the ability to retain their own counsel when necessary -- which, as the Ethics Commission has shown, need not be used to be effective in protecting its independence -- is not unique to the Council.

We have no quarrel with the County Attorney; his office does a fine job representing us and the rest of the government. However, asking his office to take on potentially conflicting duties could put him in an institutionally untenable position. This amendment sets no precedent for line departments in the Executive branch; it would apply only to those quasi-judicial bodies and legislative branch offices that are intended to perform certain "watchdog" functions which, in our view, are critical to maintaining the quality of County government and its fairness to our citizens and employees.

I know how carefully your Commission guards the integrity of the County Charter. In our view, this amendment will bolster that integrity and enhance the stability and balance of the Executive-Legislative relationship.

Please let me know if we or our staff can answer any questions or help the Commission in any way.




OFFICE OF INSPECTOR GENERAL

Norman D. Butts
Inspector General

MEMORANDUM

January 28, 2002

TO: Kenneth Clark, Chairman
Charter Review Commission

FROM: Norman D. Butts 
Inspector General

SUBJECT: Charter Amendment to Authorize Independent Legal Counsel

I write in support of a charter amendment to authorize independent legal counsel for the Office of Inspector General (OIG). County Council created OIG in 1997 as an independent legislative branch agency tasked with the following:

- to review the effectiveness and efficiency of programs and operations of County government and independent County agencies;
- to prevent and detect fraud, waste, and abuse in government activities; and
- to propose ways to increase the legal, fiscal, and ethical accountability of County government departments and County-funded agencies.

Furthermore, the law establishing the OIG, directs the inspector general to comply with generally accepted government auditing standards. Those principles, commonly known as "Yellow Book" standards, are issued and revised periodically by the United States General Accounting Office. The Yellow Book's general standards provide professional guidance to the OIG in the areas of staff qualifications, organizational independence, due professional care, and internal and external quality control. The independence standard is most applicable to the issue of independent legal counsel.

The independence standard provides that, "In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, should be free from personal and external impairments to independence, should be organizationally independent, and should maintain an independent attitude and appearance." (Emphasis mine). The Office of County Attorney (OCA) has been able to provide the OIG with legal services in a number of very important areas regarding general municipal law. However, there are specific areas where I strongly believe special counsel not associated with OCA is



appropriate and necessary under the Yellow Book standards. Allow me to briefly explain with just three examples:

- **Access to Information.** The OIG law states that the inspector general is entitled to information held by executive branch and other agencies. The law allows the OIG to request any information and issue a subpoena if the request is not complied with. As inspector general I am concerned about what will happen when the OIG issues a request or subpoena for information held by a County office or department and the director of the office or department convinces the OCA that the information can not be accessed by the OIG. If an OCA attorney represented a department or office in moving to quash a subpoena, I do not believe it would be appropriate to have another OCA attorney represent the OIG in an action to enforce that same subpoena.
- **Confidential Information.** The handling of sensitive material by an attorney involved in OIG work is not a theoretical exercise. It is a daily reality. An attorney providing legal services to the OIG is frequently privy to highly confidential material, similar to that developed by law enforcement personnel in the course of an investigation. That is one of the critical reasons virtually all federal inspectors general have independent legal counsel. OCA attorneys with their principal loyalty to the executive branch will find themselves increasingly uncomfortable as they participate in OIG work that questions the efficacy of some elements of executive branch operations and the individuals responsible for carrying out those operations. This is compounded by the fact that OCA is increasingly involved in the administrative operations of other county departments.
- **Contract Review.** When reviewing County contracts we often come across evidence showing substantial OCA involvement in negotiating the original contract, contract amendments, or issues such as liquidated damages. As inspector general I feel uneasy having the OIG seek advice and counsel from one OCA attorney about work a colleague in the same office has done. At the very least I believe that situation has the appearance of being a conflict of interest for OCA and the appearance of an impairment of OIG independence. The county spends over \$400 million annually for goods and services obtained through procurement contracts.

In conclusion, although OIG remains committed to using OCA resources where feasible, I believe the inspector general should have the ability to obtain independent legal counsel. I further believe the decision about obtaining independent legal counsel is one that should be made by the inspector general alone, subject only to County Council oversight with respect to appropriations.

Thank you for your consideration of this request. If you have any questions or need any additional information, please do not hesitate to contact me.

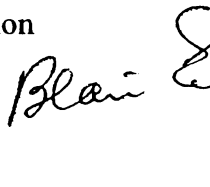


MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

December 18, 2001

TO: Charter Review Commission

FROM: Blair G. Ewing
Councilmember At-Large 

SUBJECT: Outside Counsel for the Inspector General

This is to inform you that I agree with and support Councilmember Isiah Leggett's recent request that the Charter Review Commission agree to an amendment to the Charter which would authorize an independent legal counsel subject to appropriation for certain agencies of the County Government, including the Office of Inspector General.

Thank you for your consideration of this issue. I look forward to hearing from you in the near future.

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

MEMORANDUM

December 11, 2001

MARILYN J. PRASNER
DISTRICT 4

TO: Charter Review Commission

FROM: Marilyn J. Praisner *MJP*
Councilmember

SUBJECT: Outside Counsel for Inspector General

I am writing to inform you that I support Councilmember Isiah Leggett's request that the Commission study a charter amendment to authorize independent legal counsel subject to appropriation for certain agencies of the County government, including the Office of Inspector General.

I agree with Councilmember Leggett that the recent correspondence between the County Attorney and the Inspector General have brought this issue to light and the situation requires resolving. Thank you for your consideration and I look forward to your response.

MJP:jln
C: Blair Ewing
Isiah Leggett
F:joy:corresp/dec/IG-Charter Review

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

ISIAH LEGGETT

MEMORANDUM

November 29, 2001

TO: Kenneth Clark, Chairperson
Charter Review Commission

FROM: Isiah Leggett, Councilmember

A handwritten signature in black ink, appearing to read "Isiah Leggett", written over the "FROM:" line.

SUBJECT: Charter amendment to authorize independent legal counsel

Recent discussions between the Inspector General and the County Attorney have raised serious questions as to whether the Inspector General should be authorized to retain independent legal counsel without the approval of the County Attorney, as the County Ethics Commission currently is. The same question could reasonably be asked with respect to other agencies of County government which review and rule on actions of the Executive branch. I would like the Charter Review Commission to study this issue and give the Council your views on the merits of such a Charter amendment.

Let me offer a little background. As you may recall, in 1996 the Council amended that year's Question A, which revised Charter §410, to allow the Council by law to authorize the County Ethics Commission to retain its own legal counsel without the approval of the County Attorney. Any such retainer would be subject to appropriation and express Council approval. The voters approved Question A by a 78%-22% margin, and in 1997 the Council enacted the needed implementing legislation. Thus far, the Ethics Commission has not found it necessary to retain independent counsel, but the Charter provision has nonetheless been a valuable way to underscore and bolster that Commission's independence from the Executive branch.

The Office of the County Inspector General, created in 1997 by legislation which I sponsored, and made permanent in 2000, was directed by County Code §2-151(a) to:

- (1) review the effectiveness and efficiency of programs and operations of County government and independent County agencies;
- (2) prevent and detect fraud, waste, and abuse in government activities; and

- (3) propose ways to increase the legal, fiscal, and ethical accountability of County government departments and County-funded agencies.

The Inspector General is appointed for a 4-year term by the County Council but functions independently of both the Council and Executive. In pursuing these objectives, the Inspector General necessarily seeks information from departments in the Executive branch, which has frequently led to disagreements with those departments and the County Attorney. Under Charter §213 the County Attorney is the legal adviser for both Executive branch agencies and the Inspector General. The Inspector General has twice this year sought the County Attorney's permission under §213 to retain special counsel, and the County Attorney has twice refused that request. In my view, to perform as the law intends the Inspector General must be able to obtain (subject to appropriation) legal advice and representation that is not beholden to or influenced by any other agency of County government. The only way to give him that ability is to amend the Charter to expressly grant that authority. I hope you will consider such an amendment favorably.

Although the issue has not recently arisen, the same requirement for independent legal advice could apply to those quasi-judicial bodies, such as the County Board of Appeals, the Human Rights Commission, and the Merit Systems Protection Board, which review and rule on actions of the Executive branch of County government. Thus the same question should be asked with respect to them. To avoid repetitious Charter amendments, I think any provision that so empowers the Inspector General should likewise apply to these bodies.

I appreciate the Commission's consideration of this issue and know that you will give it your customary thorough review and objective analysis.

C: Councilmembers
County Attorney
Inspector General

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**MARYLAND CODE
STATE GOVERNMENT
TITLE 10. GOVERNMENTAL PROCEDURES
SUBTITLE 5. MEETINGS**

§ 10-501. Legislative policy.

(a) In general.- It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

- (1) public business be performed in an open and public manner; and
- (2) citizens be allowed to observe:
 - (i) the performance of public officials; and
 - (ii) the deliberations and decisions that the making of public policy involves.
- (b) Accountability; faith; effectiveness.-

(1) The ability of the public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies and to witness the phases of the deliberation, policy formation, and decision making of public bodies ensures the accountability of government to the citizens of the State.

(2) The conduct of public business in open meetings increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.

(c) Public policy.- Except in special and appropriate circumstances when meetings of public bodies may be closed under this subtitle, it is the public policy of the State that the public be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings.

[1991, ch. 655.]

§ 10-504. Conflict of laws.

Whenever this subtitle and another law that relates to meetings of public bodies conflict, this subtitle applies unless the other law is more stringent.

[An. Code 1957, art. 76A, § 15; 1984, ch. 284, § 1; 1991, ch. 655.]

§ 10-505. Open sessions generally required.

Except as otherwise expressly provided in this subtitle, a public body shall meet in open session.

[An. Code 1957, art. 76A, §§ 9, 10; 1984, ch. 284, § 1; 1991, ch. 655.]

§ 10-508. Closed sessions permitted.

(a) In general.- Subject to the provisions of subsection (d) of this section, a public body may meet in closed session or adjourn an open session to a closed session only to:

(1) discuss:

(i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or

(ii) any other personnel matter that affects 1 or more specific individuals;

(2) protect the privacy or reputation of individuals with respect to a matter that is not related to public business;

(3) consider the acquisition of real property for a public purpose and matters directly related thereto;

(4) consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;

(5) consider the investment of public funds;

(6) consider the marketing of public securities;

(7) consult with counsel to obtain legal advice;

(8) consult with staff, consultants, or other individuals about pending or potential litigation;

(9) conduct collective bargaining negotiations or consider matters that relate to the negotiations;

(10) 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) prepare, administer, or grade a scholastic, licensing, or qualifying examination;
- (12) conduct or discuss an investigative proceeding on actual or possible criminal conduct;
- (13) comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or
- (14) before a contract is awarded or bids are opened, 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.

(b) **Limitation.-** A public body that meets in closed session under this section may not discuss or act on any matter not permitted under subsection (a) of this section.

(c) **Construction.-** The exceptions in subsection (a) of this section shall be strictly construed in favor of open meetings of public bodies.

(d) **Vote; written statement.-**

(1) Unless a majority of the members of a public body present and voting vote in favor of closing the session, the public body may not meet in closed session.

(2) Before a public body meets in closed session, the presiding officer shall:

(i) conduct a recorded vote on the closing of the session; and

(ii) make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.

(3) If a person objects to the closing of a session, the public body shall send a copy of the written statement required under paragraph (2) of this subsection to the Board.

(4) The written statement shall be a matter of public record.

[An. Code 1957, art. 76A, § 11; 1984, ch. 284, § 1; 1991, ch. 655.]

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**MARYLAND CODE
STATE GOVERNMENT
TITLE 10. GOVERNMENTAL PROCEDURES
SUBTITLE 6. RECORDS**

§ 10-601. "Political subdivision" defined.

In this subtitle, "political subdivision" means:

- (1) a county;
- (2) a municipal corporation in the State;
- (3) an unincorporated town in the State;
- (4) a school district in the State; or
- (5) any special district in the State.

[1984, ch. 285, § 8.]

§ 10-612. General right to information.

(a) General right to information.- All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

(b) General construction.- To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this Part III of this subtitle shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

(c) General Assembly.- This Part III of this subtitle does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a law of the State, registered.

[An. Code 1957, art. 76A, §§ 1A, 3; 1984, ch. 284, § 1.]

§ 10-613. Inspection of public records.

(a) In general.- Except as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time.

(b) Rules or regulations.- To protect public records and to prevent unnecessary interference with official business, each official custodian shall adopt reasonable rules or regulations that,

subject to this Part III of this subtitle, govern timely production and inspection of a public record.

[An. Code 1957, art. 76A, § 2; 1984, ch. 284, § 1.]

§ 10-618. Permissible denials.

(a) In general.- Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

(b) Interagency and intra-agency documents.- A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit.

(c) Examinations.-

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of test questions, scoring keys, and other examination information that relates to the administration of licenses, employment, or academic matters.

(2) After a written promotional examination has been given and graded, a custodian shall permit a person in interest to inspect the examination and the results of the examination, but may not permit the person in interest to copy or otherwise to reproduce the examination.

(d) Research projects.-

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of a public record that contains the specific details of a research project that an institution of the State or of a political subdivision is conducting.

(2) A custodian may not deny inspection of the part of a public record that gives only the name, title, expenditures, and date when the final project summary will be available.

(e) Real property.-

(1) Subject to paragraph (2) of this subsection or other law, until the State or a political subdivision acquires title to property, a custodian may deny inspection of a public record that contains a real estate appraisal of the property.

(2) A custodian may not deny inspection to the owner of the property.

(f) Investigations.-

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of:

(i) records of investigations conducted by the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff;

(ii) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or

(iii) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, a State or local correctional facility, or a sheriff.

(2) A custodian may deny inspection by a person in interest only to the extent that the inspection would:

(i) interfere with a valid and proper law enforcement proceeding;

(ii) deprive another person of a right to a fair trial or an impartial adjudication;

(iii) constitute an unwarranted invasion of personal privacy;

(iv) disclose the identity of a confidential source;

(v) disclose an investigative technique or procedure;

(vi) prejudice an investigation; or

(vii) endanger the life or physical safety of an individual.

(g) Site-specific location of certain plants, animals or property.-

(1) A custodian may deny inspection of a public record that contains information concerning the site-specific location of an endangered or threatened species of plant or animal, a species of plant or animal in need of conservation, a cave, or a historic property as defined in Article 83B, § 5-601 (k) of the Code.

(2) A custodian may not deny inspection of a public record described in paragraph (1) of this subsection if requested by:

(i) the owner of the land upon which the resource is located; or

(ii) any entity that could take the land through the right of eminent domain.

(h) Inventions owned by State public institutions of higher education.-

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of that part of a public record that contains information disclosing or relating to an invention owned in whole or in part by a State public institution of higher education for 4 years to permit the institution to evaluate

whether to patent or market the invention and pursue economic development and licensing opportunities related to the invention.

(2) A custodian may not deny inspection of a part of a public record described in paragraph (1) of this subsection if:

(i) the information disclosing or relating to an invention has been published or disseminated by the inventors in the course of their academic activities or disclosed in a published patent;

(ii) the invention referred to in that part of the record has been licensed by the institution for at least 4 years; or

(iii) 4 years have elapsed from the date of the written disclosure of the invention to the institution.

(i) Trade secrets, confidential commercial information, confidential financial information of the Maryland Technology Development Corporation.- A custodian may deny inspection of that part of a public record that contains information disclosing or relating to a trade secret, confidential commercial information, or confidential financial information owned in whole or in part by the Maryland Technology Development Corporation.

[An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1; ch. 285, § 8; 1991, chs. 330, 378; 1998, ch. 218; 1999, ch. 74; 2000, ch. 13.]

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OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: Justina Ferber, Senior Legislative Analyst
Montgomery County Council

FROM: Marc P. Hansen, Chief *Marc*
Division of General Counsel

DATE: December 22, 2001

RE: *Caffrey v. Department of Liquor Control, et al.*

As promised, I am forwarding to you a memorandum to Ken Clark regarding the above referenced case. I would appreciate it if you could see that this material is distributed to the Charter Review Commission. Thanks.

MPH/vrp

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OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: Kenneth E. Clark, Chair
Charter Review Commission

FROM: Marc P. Hansen, Chief *Marc Hansen*
Division of General Counsel

DATE: December 22, 2001

RE: Charter Section 505 – Right to Information

On October 17, 2001, I briefed the Charter Review Commission on the interplay between Charter Section 505 (Right to Information) and the State Public Information Act (PIA). I indicated that questions have arisen concerning whether Charter Section 505 has waived executive privilege, legislative privilege, and the attorney-client privilege. My office had previously advised that a court **might** construe Charter Section 505 as waiving these privileges.

In *Caffrey v. Department of Liquor Control, et al.*, Mr. Caffrey argued that Charter Section 505 waived the County's right to claim executive privilege and attorney-client privilege. This case arose because the County, citing executive privilege and attorney-client privilege, declined to release certain documents to Mr. Caffrey, who had sought the documents under the PIA. Although the County (because of changed circumstances) released all documents sought by Mr. Caffrey, Mr. Caffrey pressed for an award of attorney fees under the PIA. Mr. Caffrey argued that he was entitled to attorney fees because Section 505 prohibited the County's assertion of executive privilege and attorney-client privilege—therefore, Mr. Caffrey reasoned the County's assertion of these privileges was unreasonable entitling him to an award of attorney fees under the PIA.

The Circuit Court denied an award of attorney fees to Mr. Caffrey who then appealed to the Court of Special Appeals. The Court of Special Appeals issued an unreported opinion on November 20, 2001.

The Court of Special Appeals affirmed the Circuit Court's denial of Mr. Caffrey's request for attorney fees. The Court stated, "We need not definitively interpret the Charter provision [Section 505]. The specific question before us is whether appellees [the County] had a reasonable basis in law to withhold the documents." The Court went on to conclude, "We are

Kenneth Clark, Chair, Charter Review Commission
Re: Charter Section 505 – Right to Information
December 17, 2001
Page 2

not aware of any decisions interpreting section 505. A reasonable interpretation of that section is that it does not waive privileges existing at common law or by statute, such as the Maryland Public Information Act (‘defined by law’).”¹ The Court finally noted, “The Office of the County Attorney has indicated that a court could interpret section 505 as waiving certain privileges. It has not advised county agencies, to our knowledge, that such privileges have been waived.”

As you can see, the Court has sidestepped reaching a definitive conclusion that Charter Section 505 waives executive privilege and the attorney-client privilege—although the Court strongly hints that it is doubtful that (if called upon) it would interpret Charter Section 505 in that manner. In the final analysis, however, Charter Section 505 remains without a definitive judicial interpretation. A copy of the Court’s opinion is attached.

If I can provide the Commission with further information regarding this matter, please let me know.

MPH/vrp

cc: Charles W. Thompson, Jr., County Attorney
Bill Mooney, Assistant Chief Administrative Officer
Michael Faden, Senior Legislative Attorney

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¹Charter Section 505 provides that, “Any person shall have the right to inspect any document, except . . . records of a confidential private nature as **defined by law**.” (Emphasis added).

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2952

September Term, 2000

ANTHONY G. CAFFREY

v.

DEPARTMENT OF LIQUOR CONTROL FOR
MONTGOMERY COUNTY, MARYLAND, et al

Eyler, James R.,
Bloom, Theodore G.
(Ret., specially assigned),
Thieme, Raymond G., Jr.
(Ret., specially assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: November 20, 2001

Appellant, Anthony G. Caffrey, contends that the Circuit Court for Montgomery County erred in denying an award of counsel fees and costs against appellees, the Montgomery County Department of Liquor Control, the Board of License Commissioners, the Office of Procurement, and the Ethics Commission, in an action under the Maryland Public Information Act, Maryland Code (1957, 1995 Supp.) State Government (SG), § 10-611 through 10-628. Finding no error, we shall affirm the judgment of the circuit court.

In 1997, Montgomery County requested proposals to operate and manage county owned liquor stores. The request for proposals provided that any offeror should submit a proposal outlining a plan for the operation and management of stores, a statement of the offeror's retail business and management experience, and a staffing plan. If an offeror received a grade of 70 percent or higher, the offeror could submit a cost proposal. The award was to be made to the offeror submitting the lowest price proposal. Appellant was an offeror, and he was not awarded the contract.

On October 29, 1997, appellant filed a bid protest, and on February 4, 1998, he filed a complaint with the County Ethics Commission. The latter was based on the fact that a principal in the entity which was awarded the bid, Mr. Leonard Kligman, sat on the Board of License Commissioners. The bid protest was dismissed. Subsequently, Mr. Kligman resigned from the Board, acknowledged a violation of the ethics laws, and was reprimanded

by the Ethics Commission.

In September, 1997, appellant submitted a request to appellees, pursuant to the Maryland Public Information Act, requesting documents pertaining to the selection of liquor store operators. In 1998 and in 1999, appellant submitted additional requests. Appellees produced various documents, but not all of the documents that had been requested, citing privileges available under the Maryland Public Information Act.

On March 2, 2000, appellant filed a complaint, later amended, in the Circuit Court for Montgomery County against appellees. Appellant requested an *in camera* review of the withheld documents, pursuant to SG, § 10-623; an order requiring the production of documents withheld; an award of actual and punitive damages; attorney's fees; and costs. On July 25, 2000, while the case was pending, appellant submitted a Public Information Act request to the Office of the County Attorney, requesting the same documents that he had previously requested from appellees. On August 28, 2000, the County Attorney's Office advised appellant that it would disclose the documents previously withheld and, at that time, forwarded 36 documents.

On October 13, 2000, appellees filed a motion for summary judgment and attached to it additional documents, asserting that all documents sought had then been produced. On October 25, 2000, appellant moved for summary judgment, seeking *in camera*

review of 27 paper documents and an unknown number of electronically stored documents. Appellant also requested a finding that the documents should not have been withheld and, based on that finding, sought an award of attorney's fees and costs.

On October 30th, 2000, the circuit court held a hearing on appellees' motion. The circuit court held (1) that the Department of Liquor Control enjoyed immunity from an action for attorney's fees, pursuant to Md. Code (1990, 1997 Supp.) Courts and Judicial Proceedings (CJ) § 5-504(2) (formerly § 5-318(2)), (2) the Board of License Commissioners had an attorney-client privilege with respect to the four documents withheld by it, and thus, they had been properly withheld, (3) the Ethics Commission properly withheld one document but improperly redacted notes in the margin of two other documents, and (4) the Office of Procurement properly withheld one document because it was outside the scope of the request, but should have disclosed another document that had been withheld. As a result of the ruling in (1), the court did not determine whether the documents withheld by the Department of Liquor Control had been properly withheld. In making its ruling in (2), the court rejected appellant's argument that the attorney-client privilege and other privileges available under the Maryland Public Information Act had been waived by the County Charter. On January 16, 2001, the circuit

court executed an order embodying the above rulings.

On January 17, 2001, the circuit court held a hearing on appellant's motion and, specifically, the question of entitlement to attorney's fees and costs. The circuit court found that appellant was a substantially prevailing party under the Maryland Public Information Act and that the lawsuit had caused the disclosure of certain documents but, in the exercise of its discretion, declined to award attorney's fees and costs to appellant. On January 23, 2001, the court executed an order to that effect.

Questions Presented

Did the trial court abuse its discretion in denying an award of counsel fees and costs to appellant because it erred as a matter of law in its rulings concerning the disclosed documents?

A. Does the Montgomery County Department of Liquor Control, which is "immune from all suits for damages" under Courts and Judicial Proceedings Article, section 5-318, (re-numbered as section 5-504) have immunity from an award of attorney's fees and costs under the Maryland Public Information Act, State Government Article, section 10-623(f)?

B. Does the Montgomery County Charter, section 505, waive attorney-client privilege and deliberative privilege so that these exemptions cannot be asserted to sustain an otherwise permissible denial under section 10-618 of the Maryland Public Information Act?

Maryland Public Information Act

The Maryland Public Information Act establishes a public policy and a general presumption in favor of the disclosure of government or public documents. Consequently, the Act should be interpreted in favor of disclosure. See Md. Code SG § 10-612; Office of the Governor v. Washington Post, 360 Md. 520, 544 (2000). A custodian of a public record shall deny inspection of the record if it is privileged or confidential, or the inspection would be contrary to a statute, Court of Appeals rule, or an order of court. See Md. Code SG § 10-615. A custodian shall deny inspection of certain specific public records as set forth in section 10-616 and certain specific information as set forth in section 10-617.

A custodian is permitted to deny inspection of a document if the custodian determines that inspection would be contrary to the public interest and if denied pursuant to section 10-618. See Maryland Code SG § 10-618(a). The subsections that are relevant to the issues before us are subsections (b) and (f). Subsection (b) provides: "[a] custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit." Subsection (f) provides that a custodian may deny inspection of investigative records under certain circumstances.

Section 10-619 permits temporary denials and provides that the custodian shall seek judicial review within ten days after the denial.

A person denied inspection of a public record may seek judicial review. See Md. Code SG § 10-623. A court may examine the public record *in camera* to determine whether any part of it may be withheld. See § 10-623(c)(2). Subsection (d) provides:

(1) A defendant governmental unit is liable to the complainant for actual damages and any punitive damages that the court considers appropriate if the court finds that any defendant knowingly and willfully failed to disclose or fully to disclose a public record that the complainant was entitled to inspect under this Part III of this subtitle.

(2) An official custodian is liable for actual damages and any punitive damages that the court considers appropriate if the court finds that, after temporarily denying inspection of a public record, the official custodian failed to petition the court for an order to continue the denial.

Subsection (f) provides: "[i]f the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred."

Discussion

When appellees withheld the documents in question, they asserted the following privileges applicable to some or all of the documents: (1) the attorney client privilege, pursuant to

section 10-615, (2) executive privilege, pursuant to section 10-615, (3) the privilege applicable to specific documents identified in sections 10-616 and 10-617, (4) inter/intra agency deliberative decisions under section 10-618(b), (5) investigative records under section 10-618(f), and (6) temporary denials under section 10-619.

Appellant recognizes that the circuit court had discretion to deny attorney's fee and costs and further recognizes that we review that ruling to determine if the discretion was abused. Appellant argues that it was abused because the court committed two errors of law: (1) in ruling that the Department of Liquor Control was immune from liability for attorney's fees under CJ, section 5-504, and (2) that the attorney/client and deliberative privileges under SG, section 10-615 and section 10-618, respectively, were not waived by virtue of county charter section 505. In light of those asserted errors, appellant requests that we vacate the circuit court's ruling and remand for a reconsideration of attorney's fees and costs.

A.

Maryland Code, CJ, section 5-504 provides that "[t]he Department of Liquor Control for Montgomery County shall be: (1) [i]mmune from all suits for damages; and (2) [s]ubject to suit only for the enforcement of contracts made by the Department of Liquor Control for Montgomery County." Appellant points out that

generally, in American jurisprudence, damages do not include attorney's fees unless provided by statute or contract, or are warranted by virtue of certain types of conduct (American rule). See Hess Construction Co. v. Board of Education of Prince George's County, 341 Md. 155, 159-60 (1996). Consequently, the statute should not be construed to include immunity from attorney's fees. Additionally, appellant points out that the Maryland Public Information Act separates damages and attorney's fees. Finally, appellant attempts to distinguish A. S. Abell Publishing Co. v. Mezzanote, 297 Md. 26 (1983), a case relied upon by appellees.

First, we note that appellant does not challenge the denial of damages; the denial of attorney's fees and costs is the only issue before us. With respect to the latter, the threshold issue is whether appellant substantially prevailed. -See Kline v. Fuller, 64 Md. App. 375, 381 (1985). The circuit court found that appellant had substantially prevailed, and that finding is not challenged on appeal.

Once the threshold has been crossed, the following non-exclusive criteria should be considered in addition to other relevant criteria: (1) the benefit to the public derived from suit, (2) the nature of complainant's interest in the released information, and (3) whether the agency's withholding had a reasonable basis in law. Kirwan v. The Diamondback, 352 Md. 74,

96 (1998) (quoting Kline v. Fuller, 64 Md. App. 375, 386 (1985)).

The circuit court applied the above criteria and found that (1) the suit only marginally benefitted the public interest, (2) appellant had little personal interest in the release of the records because his bid protest had been dismissed and he was ranked bidder number four out of six, and (3) appellees had a reasonable basis for withholding the documents. It is only the last conclusion that is challenged by appellant, for the reasons stated earlier.

In A.S. Abell, there was a claim for attorney's fees and costs under the Maryland Public Information Act against the Maryland Insurance Guaranty Association. The specific question was whether a statute, Art. 48A, section 517, that granted the Maryland Insurance Guaranty Association immunity from "liability" prevented the award of attorney's fees and costs that were permissible under the Maryland Public Information Act. The Court stated that the immunity statute prevailed and explained that, ordinarily, a specific enactment prevails over an incompatible general enactment in the same or another statute. While the case has some relevance and tends to favor appellee's position, we agree with appellant that it is not controlling because the immunity statute in A.S. Abell granted immunity from "liability" whereas CJ section 5-504 grants immunity from "all suits for damages."

Nevertheless, applying general rules of statutory construction, we interpret section 5-504 as providing immunity from the claim presented in this case. The primary goal of statutory interpretation by a court "is to ascertain and effectuate the intention of [the] legislature." Board of License Commissioners v. Tove, 354 Md. 116, 122 (1999) (quoting Oaks v. Connors, 339 Md. 24, 35 (1995)). The text of the statute is the starting point when determining legislative intent. See Marriott Employees Federal Credit Union v. Motor Vehicle Administration, 346 Md. 437, 444-45 (1997). When the statutory language is free from ambiguity, the courts generally will not go beyond that language in ascertaining legislative intent. See Tove, 354 Md. at 122. In Marriott, the Court of Appeals explained, "[s]ometimes the statutory language is susceptible of more than one meaning. When faced with an ambiguity, courts must consider not only the literal or usual meaning of the words, but also the meaning of words in light of the statute as a whole and within the context of the objectives and purposes of the enactment." Marriott, 346 Md. at 445 (citing Romm v. Flax, 340 Md. 690, 693 (1995)).

The specific question before us is whether the term "damages," as used in section 5-504 of the Courts and Judicial Proceedings Article, includes attorney's fees. Since the term is not defined in the statute, we first try to give it its plain,

ordinary meaning.. See Toye, 354 Md. at 122-23. Additionally, the Court of Appeals cautioned that, "[a] statute must be construed in context, and the plainest language may be governed by the context in which it appears." Curran v. Price, 334 Md. 149, 172 (1994). In other words, all of the provisions of a statute should be construed to harmonize with one another, to the extent possible. See id. (citing Condon v. State, 332 Md. 481, 491 (1993)).

Black's Law Dictionary, sixth edition, defines "damages" as, "[a] pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another." Black's Law Dictionary 389 (6th ed., West 1990). While the plain meaning of "damages" alone does not completely resolve the question, subsection (2) of section 5-504 makes it clear that the intent of the Legislature was to grant general immunity to the Department of Liquor Control, except for suits for the enforcement of contracts. Additionally, as near as we can determine, this public local law was first enacted in the early 1940's. The notion that attorney's fees would have to be expressly mentioned would not have been likely to occur to the Legislature because many of the exceptions to the so-called American rule had not come into being.

B.

Appellant, after recognizing the privileges that exist under the Maryland Public Information Act, contends that they were waived pursuant to the County Charter, section 505. That section provides:

any person shall have the right to inspect any document, except confidential police records, personnel records, or records of a confidential private nature as defined by law. The Council may adopt reasonable regulations for such inspection. A certified copy of any such document shall be furnished upon payment of a reasonable fee to established by such regulations. This section shall not apply to a document or other material obtained or prepared in anticipation of litigation or for use in legal proceedings to which the County is a party.

Appellant argues that the privileges available under the Maryland Public Information Act, if not waived by section 505, could only exist as "records of a confidential private nature as defined by law." Appellant further argues that "confidential" and "private" must have different meanings or they would be redundant. Consequently, appellant concludes that "private" must refer to the nature of the interest being protected and does not include a public interest. In support of this conclusion, appellant states the legislative history indicates that the Office of the County Attorney believes that the charter and the Maryland Public Information Act were not coextensive.

We need not definitively interpret the charter provision. The specific question before us is whether appellees had a reasonable basis in law to withhold the documents. See Kirwan, 352 Md. at 96. In Kirwan, the question was whether certain documents were "education records" and thus protected from disclosure under the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g. The Court of Appeals, in affirming the denial of counsel fees even though the complainant had prevailed in obtaining documents, stated that the definition of "education records" was broad and could be construed to encompass the records in question. Additionally, the Court observed, there were no prior Maryland cases dealing with the issues presented and, moreover, little case law anywhere with respect to the meaning of "education records." The Court concluded, therefore, that defendant's position "was not wholly unwarranted." See Kirwan, 352 Md. at 99. Certainly, the same is true here.

We are not aware of any decisions interpreting section 505. A reasonable interpretation of that section is that it does not waive privileges existing at common law or by statute, such as the Maryland Public Information Act ("defined by law"). It is clear that the section has not waived all privileges with respect to public documents because it expressly reserves the work product privilege. That reservation makes it unlikely that there

was an intent to waive the attorney-client privilege, at the very least. The Office of the County Attorney has indicated that a court could interpret section 505 as waiving certain privileges. It has not advised county agencies, to our knowledge, that such privileges have been waived.

Appellant does not contend there was an inadequate basis for the privileges if they existed; only that they did not exist. We conclude that appellees had a reasonable basis upon which to believe that the privileges did exist and, therefore, to withhold the documents. Consequently, we find no abuse of discretion.

**JUDGMENT AFFIRMED. COSTS
TO BE PAID BY APPELLANT**

ATT. ATTORNEY

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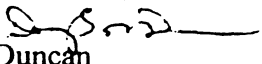
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

MEMORANDUM

August 8, 2000

TO: Michael L. Subin
President, Montgomery County Council

FROM: 
Douglas M. Duncan
County Executive, Montgomery County

SUBJECT: Proposed Charter Amendment

00 AUG 8 P 2 : 45
RECEIVED COUNTY

I wish to go on record about the County Attorney's recommendation to amend the Charter with respect to public information and accessibility to information. I appreciate the County Attorney's legal position on this subject, but disagree with his conclusions on the matter.

The provisions in the Charter that address public access to information have been part of the Charter since its inception. The salutary principles established in the Charter should not be abandoned simply because State law requires a different result. Since the Maryland Public Information Act was passed over twenty years ago, Montgomery County has dutifully adhered to it and the principles of openness established in it and in our Charter. I do not believe we should seek change simply because someone might interpret the Charter in a way different from the course that this government has followed over more than twenty years.

I firmly believe that we should not abandon the principles of openness established in the Charter, and would ask that you reconsider your decision to place the County Attorney's recommended charter amendment on the fall ballot.

DJS:dar

**MARYLAND CODE
CONSTITUTION OF MARYLAND
ARTICLE XI-A LOCAL LEGISLATION**

Section 1. Charter boards; preparation and adoption of charter.

On demand of the Mayor of Baltimore and City Council of the City of Baltimore, or on petition bearing the signatures of not less than 20% of the registered voters of said City or any County (Provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition), the Board of Election Supervisors of said City or County shall provide at the next general or congressional election, occurring after such demand or the filing of such petition, for the election of a charter board of eleven registered voters of said City or five registered voters in any such Counties. Nominations for members for said charter board may be made not less than forty days prior to said election by the Mayor of Baltimore and City Council of the City of Baltimore or the County Commissioners of such County, or not less than twenty days prior to said election by petition bearing the signatures written in their own handwriting (and not by their mark) of not less than 5% of the registered voters of the said City of Baltimore or said County; provided, that in any case Two thousand signatures of registered voters shall be sufficient to complete any such nominating petition, and if not more than eleven registered voters of the City of Baltimore or not more than five registered voters in any such County are so nominated their names shall not be printed on the ballot, but said eleven registered voters in the City of Baltimore or five in such County shall constitute said charter board from and after the date of said election. At said election the ballot shall contain the names of said nominees in alphabetical order without any indication of the source of their nomination, and shall also be so arranged as to permit the voter to vote for or against the creation of said charter board, but the vote cast against said creation shall not be held to bar the voter from expressing his choice among the nominees for said board, and if the majority of the votes cast for and against the creation of said charter board shall be against said creation the election of the members of said charter board shall be void; but if such majority shall be in favor of the creation of said charter board, then and in that event the eleven nominees of the City of Baltimore or five nominees in the County receiving the largest number of votes shall constitute the charter board, and said charter board, or a majority thereof, shall prepare within 18 months from the date of said election a charter or form of government for said city or such county and present the same to the Mayor of Baltimore or President of the Board of County Commissioners of such county, who shall publish the same in at least two newspapers of general circulation published in the City of Baltimore or County within thirty days after it shall be reported to him. Such charter shall be submitted to the voters of said City or County at the next general or Congressional election after the report of said charter to said Mayor of Baltimore or President of the Board of County Commissioners; and if a majority of the votes cast for and against the adoption of said charter shall be in favor of such adoption, the said charter from and after the thirtieth day from the date of such election shall become the law of said City or County, subject only to the Constitution and Public General Laws of this State, and any public local laws inconsistent with the provisions of said charter and any former charter of the City of Baltimore or County shall be thereby repealed.

[1914, ch. 416, ratified Nov. 2, 1915; 1963, ch. 192, ratified Nov. 3, 1964; 1992, ch. 207, ratified Nov. 3, 1992.]

Section 1A. Alternate procedure for county to adopt charter.

The procedure provided in this section for adoption of a charter may be used in any county in lieu of the procedures provided in Section 1 of this Article, and a charter adopted pursuant to this section has the effect of a charter adopted in accordance with the provisions of Section 1. The board of county commissioners of any county at any time may appoint a charter board. Said charter board shall be registered voters and shall consist of an uneven number of members, not fewer than five or more than nine. The board of county commissioners shall appoint a charter board within thirty days after receiving a petition signed by five percent of the registered voters of the county or by ten thousand voters of the county, whichever is the lesser number. If additional charter board members are nominated by petitions signed by three percent of the registered voters of the county or by two thousand registered voters, whichever is the lesser number, delivered to the board of county commissioners within sixty days after the charter board is appointed, the board of county commissioners shall call a special election not less than thirty or more than ninety days after receiving petitions, unless a regular election falls within the designated period. The appointees of the board of county commissioners and those nominated by petitions shall be placed on the ballot in alphabetical order without party designation. The voters may cast votes for, and elect a number of nominees equal to the number of charter board members originally selected by the board of county commissioners, and those so elected are the charter board. The charter board, within 18 months from the date of its appointment, or if there was an election for some of its members, within 18 months from the date of the election, shall present a proposed charter for the county to the board of county commissioners, which shall publish it at least twice in one or more newspapers of general circulation in the county within thirty days after it is presented. The charter shall be submitted to the voters of the county at a special or regular election held not earlier than thirty days or later than ninety days after publication of the charter. If a majority of the votes cast for and against the adoption of the charter are in favor of its adoption, the charter shall become effective as the charter of the county on the thirtieth day after the election or such later date as shall be specified in the charter.

[1969, ch. 786, ratified Nov. 3, 1970; 1992, ch. 207, ratified Nov. 3, 1992.]

Section 2. General Assembly to provide grant of express powers; extension, modification, etc., of such powers.

The General Assembly shall by public general law provide a grant of express powers for such County or Counties as may thereafter form a charter under the provisions of this Article. Such express powers granted to the Counties and the powers heretofore granted to the City of Baltimore, as set forth in Article 4, Section 6, Public Local Laws of Maryland, shall not be enlarged or extended by any charter formed under the provisions of this Article, but such powers may be extended, modified, amended or repealed by the General Assembly.

[1914, ch. 416, ratified Nov. 2, 1915; 1977, ch. 681, ratified Nov. 7, 1978.]

Section 3A. Method of election of members of county councils.

The charter for the government of any county governed by the provisions of this Article may provide for the election of members of the county council by the voters of councilmanic districts therein established, or by the voters of the entire county, or by a combination of these methods of election.

[1971, ch. 358, ratified Nov. 7, 1972; 1975, ch. 785, ratified Nov. 2, 1976; 1977, ch. 682, ratified Nov. 7, 1978; 1980, ch. 136, ratified Nov. 4, 1980; 1982, ch. 729, ratified Nov. 2, 1982; 1986, ch. 694, ratified Nov. 4, 1986; 1986, ch. 707, ratified Nov. 4, 1986; 1996, ch. 82, ratified Nov. 5, 1996.]

Section 5. Amendments to charters.

Amendments to any charter adopted by the City of Baltimore or by any County of this State under the provisions of this Article may be proposed by a resolution of the Mayor of Baltimore and the City Council of the City of Baltimore, or the Council of the County, or by a petition signed by not less than 20% of the registered voters of the City or County, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition. A petition shall be filed with the Mayor of Baltimore or the President of the County Council. An amendment so proposed shall be submitted to the voters of the City or County at the next general or congressional election occurring after the passage of the resolution or the filing of the petition. If at the election the majority of the votes cast for and against the amendment shall be in favor thereof, the amendment shall be adopted and become a part of the charter of the City or County from and after the thirtieth day after said election. The amendments shall be published by the Mayor of Baltimore or President of the County Council once a week for five successive weeks prior to the election in at least one newspaper published in said City or County.

[1914, ch. 416, ratified Nov. 2, 1915; 1977, ch. 681, ratified Nov. 7, 1978.]

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Table A: Charter Review Commission Issues

Charter Issues Considered	Parties in Support
Proposed Alternatives for Election of the County Council	
Maintain the current system (4 at-large and 5 single member districts)	Councilmember Dacek Councilmember Praisner Bruce Adams, former Councilmember Neil Potter, former Councilmember and County Executive; representing MC Taxpayer's League Gail Ewing, former Councilmember Bill Mooney, Assistant CAO, Office of Executive Melpi Jefferies, Pres., League of Women Voters Linda Plummer, Pres., NAACP William Sher, Redistricting Commission David Davidson, Redistricting Commission
Alter the Size of the Council	
Create two additional district seats	I. Dean Ahmad, Pres., Montg. Civic Federation Steve Berry, Redistricting Commission Eileen Finnegen, Individual Alan Prettyman, Montg. Co. Republican Party Yale Wiesberg, Political Consultant (favors 6 district, 5 at-large)
Add one at-large and one district seat	Steve Berry
Maintain five districts, but increase the number of Council members elected from each district	Tony Caffrey, Individual
Return to a seven-member Council with at-large seats	Bill Hanna, former Councilmember
Alter the method used to elect Councilmembers	
All at-large seats	Roy Buyer, Individual Tony Caffrey
All district seats	Steve Poteat, former Director, Upcounty Regional Services Center (favors all district with the exception of at-large President)
Cumulative voting	Dr. Ahmad Tony Caffrey
Proportional representation – party lists or preferential ballots	Dr. Ahmad Tony Caffrey
Stagger terms	Gail Ewing Neal Potter Bill Hanna
Constituents select the Council President	Steve Berry Steve Poteat Yale Wiesberg
Make Council positions full-time	Bill Hanna Tony Caffrey Herbert Fockler, Consultant to the UN

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Other Charter Issues

Proposal to authorize the use of special legal counsel subject to appropriations for certain agencies of County government, including the Office of Inspector General	Norman Butts, Inspector General Councilmember Silverman Councilmember Leggett Councilmember Praisner Councilmember Ewing
Proposal to amend § 109 and § 505 of the Charter — Public Information	Charles Thompson, County Attorney
Proposal to increase the number of signatures required to petition a Charter amendment	Dr. Ahmad
Proposal to protect agricultural land	Councilmember Ewing

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MEMORANDUM

March 8, 2002

TO: Catherine Titus, Commissioner
Charter Review Commission

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: Charter amendment regarding agricultural land preservation

You asked me, through Councilmember Dacek's office, to review a proposed Charter amendment regarding agricultural land preservation in the County and analyze whether it is proper for inclusion in the Charter under Maryland law. Unfortunately, I must conclude that this amendment does not qualify as "Charter material" as defined in the relevant caselaw.

A consistent line of Court of Appeals cases, starting with *Cheeks v. Cedlair*, 287 Md 595 (1980) and culminating in *Save Our Streets v. Mitchell*, 357 Md 237 (2000) make clear that amendments to a County home-rule Charter must deal with the "form and structure" of County government, and must not attempt to legislate in the guise of a Charter amendment. The Courts reach this result because, while the state Constitution give voters the right to vote on County Charters and Charter amendments, it does not allow voters to initiate ordinary legislation.

The draft I saw earlier of an agricultural preservation amendment did not focus on the "form and structure" of County government. Rather, it attempted to freeze certain current laws and programs in place and make them immune from legislative amendment. In that way it is very similar to the rent control amendment excluded from the ballot in *Cheeks*, and even more so to the speed hump amendment excluded in *Mitchell*. (The *Mitchell* opinion provides an excellent review of the law on this issue.) In addition, the draft I reviewed attempted to affect several land use provisions which the Council has adopted under the zoning and planning authority delegated in the Regional District Act (MD Code Art. 28), which is also not subject to amendment through the County Charter.

I hope this answers your question. Feel free to call on me again if further issues arise.

C: Councilmember Dacek

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CHARTER AMENDMENT
Charter of Montgomery County, Maryland

Amendment to Article 5. General Provisions – Agricultural Land Preservation

In 1980 the Montgomery County Planning Board approved and adopted the “Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County.” This plan amended the General Plan for the physical development of the Maryland-Washington Regional District and the Master Plan for Highways within Montgomery County, Maryland, and the following master plans: Clarksburg, Damascus, Fairland, Beltsville, Upper Northwest Branch, Colesville, Olney, Sandy Spring/Ashton, Boyds, Poolesville Vicinity, as well as the Patuxent River Watershed Master Plan.

In 1980, the Montgomery County Council first adopted text amendments to the Zoning Ordinance establishing the Rural Cluster Zone, Rural Density Transfer Zone, and the transferable development rights system. On January 6, 1981, this plan was fully implemented when the Montgomery County Council approved the comprehensive rezoning to create the Rural Density Transfer Zone through a Sectional Map Amendment. Further changes to the Zoning Ordinance have been made through the years to strengthen the program and broaden its application. The most wide ranging changes were those adopted by the County Council in the summer of 1987 to comprehensively amend the Zoning Ordinance to establish TDR Zone districts as receiving areas and designating them on County zoning maps as recommended in area master plans. Additional modifications to TDR receiving areas have been implemented from time to time as master plans have been amended by the Montgomery County Council.

The Plan and County Council actions have been designed to focus on the preservation of farmland and to establish a framework that will contribute to the continuation of farming in Montgomery County. This Plan was the first comprehensive plan for the preservation of agriculture and rural open space in the County, as well as in the region, that is closely linked to an established countywide growth management program.

The Plan identified an Agricultural Reserve of 110,000 acres and a Rural Open Space Area of 26,000 acres, which are the focus of the preservation program. The Plan developed specific innovative preservation techniques such as the Rural Density Transfer Zone, Rural Cluster Zone, and County Transfer Development Rights. The County also fully supports all of the State’s Agricultural Land Preservation Programs. This Plan is part of the County’s commitment to supporting the Maryland Planning Act of 1992 and “Smart Growth” legislation and policies.

The main purpose of the agricultural preservation bundle of programs is to preserve in perpetuity a critical mass of active farmland in the County. It is in the public interest to preserve farmland. There are numerous studies that support the fact that there are substantial benefits in compact

form of growth, which is encouraged under the County's General Plan. Since farmland preservation serves a series of public purposes, Montgomery County must commit itself to the permanent preservation of farmland. Without this permanent commitment farmland will continue to be converted to residential, commercial, industrial, institutional and public facilities.

The "Future of Agriculture Study For Montgomery County, Maryland" was published in January 1995. A number of recommendations were made in this report including recommendation number 4, "Establish, formally adopt and publish, a County policy reflecting a firm commitment to nurturing an economically viable agricultural sector...". This report also proposed the creation of an Agricultural Preservation Advocate within the County Government.

The Montgomery County Zoning Ordinance, in Division 59-C-9, Agricultural Zones, clearly states the purpose of the Rural zone (59-C-9.21). "The purpose of this zone is to preserve rural areas of the county for agriculture and other natural resources development, residential uses of a rural character, extensive recreational facilities, and protection of scenic and environmentally sensitive areas." Under Division 59-C-9.23 the purpose of the Rural Density Transfer zone says in part, "Agriculture is the preferred use in the Rural Density Transfer zone."

In support of all of the above public policies a proposed Charter Amendment to the Montgomery County, Maryland Charter is recommended, under Article 5 General Provisions. The wording of the Charter Amendment is as follows:

"The Montgomery County Executive and Council shall recognize the permanent nature of the many Agricultural Land Preservation programs and the Agricultural Reserve Area of Montgomery County. The Montgomery County Executive and Council may not take any action to change the use or perpetuity of Agricultural Land Preservation decisions and documents in Montgomery County."

###

LIST OF PANELISTS

**Charter Review Commission
Wednesday, December 6, 2000 at 8:05 A.M.**

Business Community Leaders

Larry Cunnick, President of Biocon, Inc.
Duc Duong, Maryland High Tech Council,
Director of Md. Technology Development Center
Tony Falls, Legislative Affairs, IBM Corporation
Wendell Holloway, VP for Government Relations,
Suburban Hospital
Janyce Hedetniemi, Community Liaison Office,
National Institutes of Health
David Smith, Senior VP for System Development,
Suburban Hospital
Ray Westfall, Manager, Human Resources,
Lockheed Martin

**Charter Review Commission
Wednesday, January 10, 2001 at 8:10 A.M.**

Leaders of the County Minority Community

Pedro & Mireya Gonzales, Spanish Catholic Center
Elnora Harvey, Silver Spring Citizens Advisory Board
Bel Leong-Hong, Organization of Chinese Americans
Linda Plummer, President, Montgomery County Chapter of the NAACP
Henry Quintero, Latino Civic Rights Task Force of Maryland
George Thomas, Saturday School Program
Jinhee Kim Wilde, Korean American Association

**Charter Review Commission
Wednesday, March 14, 2001 at 8:10 A.M.**

Academic Community

Donald Norris, Professor of Public Policy, Director of Maryland Institute
for Policy Analysis and Research
University of Maryland Baltimore County

Carl Stenberg, Dean of Arts and Humanities College
University of Maryland Baltimore County

Costis Toregas
President of Public Technology Inc.

MINUTES

CHARTER REVIEW COMMISSION

Wednesday, January 9, 2002

7:30 P.M. – 9:00 P.M.

East County Regional Services Center

Commissioners Present

Kenneth Clark, Chair
Kenneth Muir
Grace Orlansky
Catherine Titus
William Welsh

Staff

Justina Ferber, Legislative Analyst
Sonya Healy, Legislative Analyst
Cheryl Brite, Legislative Services Coordinator
Crystal Brockington, Legislative Services Coordinator

Absent

Cari Dominquez
Royce Hanson, Vice-Chair
Edward Marks
Kimchi Mentzer
Elisabeth Ruben
Randy Scritchfield

Chairman Clark opened the meeting by welcoming everyone to the roundtable discussion about Council representation and the options for the most efficient and effective Council structure. He presented a short background of the Commission's study thus far and of the demographic changes that occurred in the County over the last ten years.

The participants were introduced: Steve Berry, Redistricting Commission; David Davidson, Redistricting Commission; William Sher, Redistricting Commission; Herbert Fockler, Political Consultant; Phyllis Campbell Newsome, Commission on the Future; Frank Kahn, Islamic Society of Washington; Bob Carbone, Retired University of Maryland Professor; Dave Abrams, the Gazette; Claire Iseli, Councilmember Praisner's staff; Tony Caffrey; Firoze Deen; Eileen Finegem; Ann Marie Gerber; James Offord; and Yale Wiesberg.

Mr. Clark explained that the Charter was last amended in 1986. Since then the population of the County has grown to 875,000.

The following demographics have changed:

- 15,000 decrease in Caucasian residents,
- 40,000 increase in African-American residents,
- 37,000 increase in Asian residents, and a
- 45,000 increase in Hispanic residents.

Mr. Clark stated that the original intent of the Charter Review Commission was to evaluate the charter to see if it was appropriate for the 21st century. The issue of the Council structure and minority

representation emerged in various discussions, and the Commission wanted to explore this in greater detail. He said that the Commission was not only examining ethnic minority representation but also geographic disparities. He stated that many Upcounty citizens believe they need additional representation on the Council.

Mr. Clark opened the meeting for individual comments on the structure of the Council.

Discussion – Council Representation

Mr. Wiesberg said that many civic activists wanted a change, and he reviewed the history of the Council structure. He explained that the dramatic demographic changes in the County have not generated a diversity of elected officials or candidates. He recommended adding two district seats and a permanent president elected by the people, who would serve four years. Mr. Wiesberg recommended six district seats to increase minority representation and five at-large seats to counterbalance parochialism. He said that the committee system works well and recommended adding another committee to focus on transportation issues.

Mr. Caffrey said that he did not receive notice of the first public meeting.

Mr. Sher stated that he did not agree that people were shut out of the political process, and did not favor changing the Council structure.

Mr. Davidson commented that he takes the hippocratic position to first do no harm. He advised the Commission to be aware of the unintended consequences of any action taken and was concerned about balkanization. He stated that the County has good representation, and that there were always going to be majority/minority districts because of the level of diversity.

Mr. Berry said that he was a member of the Redistricting Commission and his main concern is keeping communities together. As a member of that commission, he recognized the difficulties in readjusting district boundaries. He recommended adding two seats to the Council to create additional districts.

Mr. Clark asked if you had two more districts to work with for redistricting purposes, what would the probable lines have been?

Mr. Berry responded that it would depend on where you start, however, District 3 is currently shaped like a donut with surrounding districts, and this area may have been divided differently.

Mr. Davidson added that he would need to see the maps and figures before he speculated as to the outcome. He stated that as a member of the Redistricting Commission, he had to agonize over even minor changes. Most of the public does not seem to want major changes, and Councilmembers do not want to be thrust into an entirely new community. If the Commission created two additional districts, it is not likely to solve much.

Mr. Wiesberg stated that the County needed to start making it easier for minorities to be elected. He said the district system was implemented to encourage minority representatives, however, not one minority

has been elected by district and only one has been elected at-large. Under the Prince George's system, more minorities are elected and this enables communities to be kept together. With the current system, there may not be one minority on the next Council. The Charter Review Commission can have an impact on this.

Ms. Titus said that the NAACP provided comments to the Commission and the organization is in favor of retention of the present structure. She continued that just because we would like to have increased minority representation does not mean it is going to happen by adding districts. She cited District 5 and District 2 as examples.

Mr. Wiesberg stated that many minorities would not agree with the NAACP's position, and asked how the County will be viewed if there is not one minority on the Council for the next four years?

Mr. Caffrey agreed with Mr. Wiesberg and recommended complete district representation. He stated that he would compromise from his suggestion at the last public forum, and recommended five districts with 3 members each.

Mr. Wiesberg said that Upcounty also lacks representation, and five Councilmembers come from the eastern part of the County. He recommended eleven Councilmembers because this is the number of members in Prince George's and Fairfax County and in the District of Columbia.

Ms. Finnegen stated that she is a resident of Hillandale and lives in District 5. She recommended more Council districts so school districts and planning areas are not divided. She stated that parts of communities are marginalized under the current system and added that geographical representation would help to maintain balance in communities.

Mr. Kahn commented that he is a 37-year resident and hates hearing that Montgomery County focuses on diversity and inclusiveness while there are few minority representatives.

Ms. Newsome stated that the job of becoming a Councilmember has to be made more attractive and appealing to all races. Councilmembers have an extremely difficult job. She said she disagreed with the NAACP position and explained that the individuals represented by the NAACP are not monolithic therefore the organization does not speak for all individual minorities.

Mr. Fockler commented that Mr. Hanson produced an interesting analysis of the structural options for the Council. He stated that Montgomery County needs to be a model of democracy and diversity for the rest of the world. He discussed the history of the County from 1776 to present and expressed concern about the amount of money that needed to be raised to win a Council seat. He also claimed that there is basically only one party in the County with strength and these factors present challenges for minorities in electing a representative. Mr. Fockler stated that the Executive/Council system is an antiquated, inefficient form of government because it leads to deadlock. He recommended returning to the county manager system because leaders are trained in administration and management.

Mr. Wiesberg stated that in the 1980s the Allied Civic Group and the Montgomery County Civic Federation moved to the current model of county government and every large county in Maryland has a County Executive. He believed that most people would say that this form of government is working because of its checks and balances.

Ms. Orlansky said that most of the individuals at the hearings do not think that change is warranted, but many also said that this was the first time they were consulted. She recommended better communication between the government and the public. She also recommended outreach efforts on grassroots levels to minority members in the community to encourage minority participation in political action. This does not mean that structural changes need to be made.

Mr. Wiesberg replied that the parties are engaged in this type of activity. He stated that there are minorities on the Planning Board, School Board, Washington Suburban Sanitary Commission (WSSC) and various committees and commissions, but they cannot move up to the next tier of public service.

Ms. Orlansky stated that changing the system is not going to guarantee that minorities will move up to the next level.

Mr. Clark commented that there needs to be incentive to encourage participation in politics.

Mr. Muir asked Mr. Wiesberg if he would be in favor of County funding for private campaigns like the State is currently considering.

Mr. Wiesberg stated that this would level the playing field. He said he ran Mr. Silverman's campaign, and knows what it takes to get elected in the County. He estimated that a candidate needs \$100,000 to even open the door for an at-large race.

Mr. Sher said that any individual can get elected with the proper credentials. He stated that the voters put their faith in Mr. Leggett because of his background and experience, and suggested that more needs to be done to learn how to build power.

Mr. Wiesberg responded that there will never be change with this type of system because the demographic numbers are showing an increase in the minority population, but no minority candidates are elected.

Mr. Berry stated that only one individual, George Leventhal, had come forward to run for Councilmember Leggett's seat due to the high cost associated with campaigning for an at-large seat.

Mr. Wiesberg replied that this is indicative of the problems with the current system. He stated that someone moved from District 18 to District 20 to get Mr. Leggett's seat.

Mr. Caffrey expressed concern about public officials and heads of departments having no experience in their respective fields or management training and favored Mr. Fockler's ideas.

Mr. Fockler stated that Progressive Montgomery works hard to build political strength among the minority community. He recommended that the Brookings Institution and University of Maryland look at Montgomery County government development since the 1930s and out of this study would come a new type of government. He also provided the names of several political textbooks the commission may wish to review.

Mr. Wiesberg said that the County needs the Executive/Council system to ensure checks and balances.

Mr. Sher agreed and stated that it is not just checks and balances, but also responsiveness that is the key. He stated that the city manager system did not work well, and this is one of the reasons we have the current system.

Mr. Clark stated that the County has a Chief Administrative Officer that works under the Executive, this ensures management expertise while maintaining checks and balances.

Mr. Welsh said that when the Charter Review Commission began it did not envision this type of Pandora's box. He stated that the Commission's review started by looking forward to see if the charter was appropriate for the next 25 years. He believes the pressing need is not guaranteed by changing numbers on the Council. He said that there have been lots of numbers tossed out; even 3 member slates have been discussed.

Mr. Wiesberg asked what Mr. Welsh about a permanent president for the Council. He continued that Councilmember Leggett is in favor of this type of amendment and Fairfax County and the District of Columbia use this model.

Mr. Welsh responded that he would consider this because it would increase stability.

Mr. Clark encouraged the participants to submit additional testimony in writing by January 31, 2002.

The public forum was concluded at 8:50 p.m.

Mr. Clark reviewed the dates of the remaining Charter Review Commission meetings and assigned members responsibility for reporting on various issues the Commission had considered.

Ms. Titus made a motion to adopt the minutes from December 12 with amendments. The motion passed unanimously.

The Charter Review Commission adjourned at 9:00 p.m.

CHARTER REVIEW COMMISSION

Wednesday, December 12, 2001

7:30 P.M. – 9:00 P.M.

Upcounty Regional Service Center

Commissioners Present

Kenneth Clark, Chair

Cari Dominquez

Ken Muir

Grace Orlansky

Randy Scritchfield

Cathy Titus

Staff

Justina Ferber, Legislative Analyst

Sonya Healy, Legislative Analyst

Cheryl Brite, Legislative Services Coordinator

Absent

Royce Hanson, Vice-Chair

Edward Marks

Kimchi Mentzer

Elisabeth Ruben

William Welsh

Chairman Clark opened the meeting by welcoming everyone to the roundtable discussion of Council representation and of options for the most efficient and effective Council structure. He presented a short background of the Commission's study thus far and of the demographic changes that have occurred in the County over the last ten years. He noted that Mr. Hanson's discussion paper was sent to all invitees.

Mr. Clark advised everyone that there would be an additional public forum on January 9 at 7:30 p.m. at the Eastern Montgomery Regional Services Center.

The participants were introduced: Steve Berry, Redistricting Commission; Nancy Hilsop, Upcounty Regional Services Center; Mike Knapp, Germantown Alliance; Linda Plummer, NAACP; Steve Poteat; Former Director Upcounty Regional Service Center; Alan Prettyman, Chair Republican Central Committee; Janice Yarde, Gaithersburg-Germantown Chamber of Commerce; Royal Buyer; and Tony Caffrey.

Mr. Clark explained that the Charter was last amended in 1986. Since then the population of the County has grown to 875,000.

The following demographics have changed:

- 15,000 decrease in Caucasian residents,
- 40,000 increase in African-American residents,
- 37,000 increase in Asian residents, and a
- 45,000 increase in Hispanic residents.

Mr. Clark opened up the meeting for individual comments on the structure of the Council.

Discussion – Council Representation

Mr. Caffrey commented that Maryland has the largest amount of people in the nation living under local government charters at 78 percent. Florida is second with 69 percent and California is third. Under a charter, lawmakers have the ability to enact anything that does not conflict with state law. Mr. Caffrey favored multiple seat districts because he does not want to reduce competition among legislators.

Mr. Buyer stated that “not in my back yard” (NIMBY) issues predominate in the County and suggested that parochial interests restrain county politicians.

In response to a request for examples of nimbyism affected decisions, Mr. Buyer explained that certain road projects are not built even though the need exists for these projects. He recommended having all Council members run at-large with the requirement that they live in particular districts. Mr. Muir noted that the school board uses that system for its elections.

Mr. Prettyman stated that his comments are not on behalf of the Montgomery County Republican Party but as an individual. He said that certain groups are shut out of the system, and that additional Councilmembers would increase the cost of running the government. He suggested that proportional representation was another option, but is often confusing and may disenfranchise individuals. He noted that if you look at the State delegation, these representatives do not reflect the population of the County either and recommended leaving the system as it is or increasing the number of district Councilmembers. He stated that the Republican Party would provide formal comments to the Commission at a later date.

Mr. Berry recommended devising a system that would keep communities together, which he felt is the largest problem with the current system. During his work on the Redistricting Commission, the decision was made to separate District 2, which had grown by 32 percent. The Commission could not cross municipal boundaries, so it had no choice but to separate Olney. In the end, the core of Olney was kept together, but outer areas like Ashton and Sandy Spring were segmented out. If there were more districts to work with, communities could be kept together in districts. He stated that there is a need for at least one more district. He noted that the cost of running at-large was prohibitive.

Mr. Poteat stated that for the past 35 years as a county employee, he worked with 36 different Councilmembers. It was his belief that the one thing that they had in common was that they all know where they live, and most Councilmembers vote along these lines. He expressed the view that the current Council districts are too large to adequately represent all the individuals, and that at-large positions reduce the chance of minority representation. He recommended something similar to the Fairfax County model, which has nine district members and one at-large member with the at-large member elected as Council President. Fairfax County does not have an

elected county executive. He noted that the upcounty district has about one third of the County's population, but only one Councilmember as a district representative.

Mr. Clark stated that under the existing system, everyone votes for a majority of the Councilmembers. Each individual votes for four at-large seats and for one district seat.

Mr. Scritchfield commented that the current system favors denser areas of the County.

Ms. Plummer provided a statement from the Montgomery County Chapter of the NAACP. The Chapter's position is that the Council should remain as it is. The group does not believe any of the proposed changes will increase minority representation.

Mr. Prettyman stated that the dollars are what count in large districts.

Mr. Berry agreed and noted that at-large races price average citizens out of the running and shuts down the system to the minority population.

Mr. Knapp explained that it was difficult for individuals to get attention for issues, if they do not have a lot of representation. For example, Germantown is one of the fastest growing areas in the County, stretching from the Potomac to the Patuxent Rivers, and having one person to represent the interests of the whole area is not adequate. Running a Council race at-large costs you three to five times more than running in a district. Mr. Muir stated that part of the reason for the current system is to get away from balkanization.

Ms. Yarde stated that the Gaithersburg-Germantown Chamber does not receive the same level of response from at-large members as they do from district members. She will obtain the Chamber's view and get back to the Charter Review Commission with a position.

Ms. Orlansky asked if Montgomery County is ready for a full-blown legislative body, with 21 members working full-time to run the government. Mr. Prettyman stated that this type of system would go too far.

Ms. Dominquez commented that the Commission should not confuse population growth with demographic shifts and suggested that increasing the number of seats on the Council will not necessarily help diversity. She felt that minority groups needed to mobilize candidates and money to win elections. She stated that the lack of minority representation did not mean a change in the Council structure was needed.

Mr. Prettyman stated that the current system is set up to keep incumbents in office. Mr. Clark asked if he would feel the same if the Republicans were in power. Mr. Prettyman responded that he would feel the same. Mr. Knapp stated that a different system needed to be coupled with outreach activities to encourage minority candidates to run. Mr. Berry said that many minority candidates decline to run because of the expense of an at-large race, and it is not a partisan issue.

Mr. Caffrey recommended having 21 members with proportional voting. He would create seven districts with three members in each district. This type of system would promote competition among the legislators and increase minority representation.

Ms. Titus pointed out that the County is going to be in tough economic times for the next few years, so the Commission has to be practical. As far as redistricting is concerned, the redistricting process always draws lines in communities; it is the nature of the job. Ms. Titus worked for a Councilmember that was elected by district, and explained that to do an effective job they had to see the whole picture, not just district issues. She could consider increasing the Council by one district, but is hesitant to add too many new seats. She noted that Baltimore City and Prince George's County is now looking for ways to reduce their large Councils.

Ms. Orlansky inquired whether the County citizens wanted to move all the way to single member districts or maintain a mix. Mr. Berry stated that he is not prepared to go to an all district Council. He suggested not expanding by more than two seats with one additional at-large seat and one district seat. He liked the idea of having one at-large member elected as Council president.

Mr. Poteat agreed with Mr. Berry and reiterated that he favors the Fairfax County model. In Fairfax County the people elect the Council president on an at-large basis.

Mr. Clark thanked everyone for his or her participation in the discussion.

Mr. Clark asked the Charter Review Commission members to review the minutes of October 17 and November 14 and to make a motion for adoption. The minutes of October 17 and November 14 were unanimously adopted as submitted.

A memorandum was distributed to the Commission members from Councilmember Praisner in support of a charter amendment to authorize independent legal counsel for the Office of Inspector General.

The meeting adjourned at 9:45 p.m.

MINUTES

CHARTER REVIEW COMMISSION

Wednesday, November 14, 2001 at 8:10 A.M.
3rd Floor Council Conference Room
Council Office Building

Commissioners Present

Ken Clark, Chair
Royce Hanson, Vice-Chair (by speakerphone)
Grace Orlansky
Elisabeth Rubin
Randy Scritchfield
William C. Welsh

Staff

Bill Mooney, Assistant Chief Admin. Officer
Justina Ferber, Legislative Analyst
Sonya Healy, Legislative Analyst
Cheryl Brite, Legislative Serv. Coordinator

Absent

Cari Dominquez
Ken Muir
Edward Marks
Kimchi Mentzer
Catherine Titus

Chairman Clark opened the meeting by welcoming everyone to the roundtable discussion of Council representation and of options for the most efficient and effective Council structure. He presented a short background of the Commission's study thus far and of the demographic changes that have occurred in the County over the last ten years. He noted that Mr. Hanson's discussion paper was sent to all invitees and that Mr. Hanson was participating by way of speakerphone.

Mr. Clark advised everyone that there would be additional public forums at 7:30 p.m. on December 12 in the Upper County Regional Services Center and at 7:30 p.m. on January 9 in the Eastern Montgomery Regional Services Center.

Discussion

The guests were introduced: Councilmember Nancy Dacek, Councilmember Marilyn Praisner, former Councilmembers Bruce Adams, Gail Ewing, William Hanna, Neal Potter and League of Women Voters President Melphi Jeffreis and Dr. I. Dean Ahmad President of the Civic Federation. Mr. Clark opened up the meeting for individual comments on the structure of the Council.

Mrs. Dacek explained that she has had a long history with the issue of Council structure and advised that she had cast the deciding vote as a member of the Charter Review Commission that recommended the current Council structure. When the Council was increased from seven to nine members with five by district, bipartisan government returned to the Council. She suggested that any recommended changes be carefully crafted.

Mrs. Praisner stated that the system works well the way it is. The Council currently enjoys a balance between district and at-large seats, and the constituents vote for a majority of the Council. Other counties have different structures that do not work as well. For instance, the Prince George's County Council is made up of all district representatives. In this all district system there is no incentive for consensus, and it creates significant isolation and makes it difficult to work together. She noted that nine members is a reasonable number of Councilmembers.

Mr. Adams commented that the current mixed system was a compromise when it was developed; however, he felt it was a win-win situation. He was on the Council when it was increased from seven to nine members. Nine seems like a better system because everyone is represented by a majority of the Council and there is accountability. He complimented Dr. Hanson's discussion paper. Using the General Assembly as an example, he stated that the sheer numbers of representatives have not addressed the minority representation issue.

Dr. Ahmad advised that he represented the Montgomery County Civic Federation and would like to see more district representation. He expressed the belief that the current system is broken and that increasing the number of Councilmembers from seven to nine was only a halfway measure. He stated that the residents of Greater Olney are a perfect example because redistricting will divide Olney into two separate districts. Additional districts would give more flexibility to address this problem. However, additional districts may not address minority needs. He recommended a system of proportional representation similar to the model used in Israel.

Mrs. Jeffreis recommended keeping the Council at no more than nine. She stated that the Council should not create more provincial interests or balkanization. Minority representation on the Council is a problem, but will not be solved with additional Council seats or districts.

Mr. Potter stated that separating districts by race would be problematic because we have a mixed, integrated community. He felt that it is difficult to find African-American candidates who could afford to run for office. He noted that the current Council system was adopted in 1986 and effective in 1990 and was a compromise plan that works well because it holds a majority of the Council accountable to everyone and allows all members to focus on the County's overall needs. He recommended that partisan politics be avoided on the Council.

Mrs. Ewing expressed the view that nothing will guarantee minority representation short of creating substantially more Council seats with very small districts. She felt that that type of system would create fiefdoms and become too unruly and parochial. She suggested that Prince George's County is a good example of what happens when there are too many competing local interests. She felt that if the number of Council seats was increased, then at-large seats should be maintained. She noted that a smaller district could be ignored if its representative was a member of the wrong party or was disliked by colleagues. She also noted the need for additional office space, staff, and operating expenses for additional Councilmembers. She expressed the belief that there is no inherent advantage in changing the current system.

Mr. Hanna stated that he was elected both from a district seat and an at-large seat. He stated that he would like to go back to a seven-member Council. He noted that in a representative democracy, the goal is to elect the best person you can for the job. He stated that if you elect everyone by district there is extreme pressure to stay parochial. At-large candidates are more likely to act like statesmen, while district members generally vote their constituency. He did not recommend all at-large seats or more districts. He suggested that the minority representation problem would not be solved even if there were twenty-five districts. He felt that the solution was to find good ethnic candidates and elect them.

Mr. Mooney stated that the current system works well and encourages consensus building. Too much parochialism would generate impasses. He suggested that the state and federal government does not affect the lives of individuals the way that local government does. Speaking as a resident of Greater Olney, he felt that residents were not unhappy with the redistricting recommendations. He noted the importance of the balkanization comments because problems could arise in all-district representation. Issues requiring super-majority votes could allow only three Councilmembers to prevent an action that would benefit the whole community.

Mrs. Praisner explained that there is a difference between how an individual is elected and how one votes and that Councilmembers do not always vote their district.

Mrs. Dacek stated that she would not have won if she had to run at-large, and that she and former Councilmember Betty Ann Krahnke were Republicans that benefited from the establishment of district seats. She felt that some parochialism is good because members of districts can explain local issues to the Council as a whole. She noted that the County is getting so complicated that it is impossible for anyone to know everything about all of the areas of the County and district members know their districts. She acknowledged that Olney residents will have concerns with two Councilmembers; however, she still expressed support for the current system. She stated that it was essential that the Council maintain a mix of both district and at-large members.

Dr. Ahmad stated that he has supported the current system in the past and noted that Olney residents are generally happy with their current representatives, but have concerns for the future. He felt that smaller districts meant reduced costs for individuals running for office and that citizens feel more comfortable talking to their own representative. He did not see anything negative about a Councilmember feeling pressure from the district they represent.

Mrs. Ewing stated that in Prince George's County the Council is entirely parochial and that developers only have to work with one Councilmember. This model creates an atmosphere of wheeling and dealing and the appearance of conflict of interest. In Montgomery County, developers have to work with a majority of Councilmembers. She advised that minorities live in all areas of the County and that it would be difficult to create a minority district.

Mr. Potter stated that the focus should be on the issues and on who is going to do the best job. He felt that most individuals did not even know who their Council representatives are.

Mr. Clark asked how changing the make-up of the Council would affect an issue like the ICC? Mrs. Ewing responded that it would not change anything.

Mrs. Jeffreis responded that it would not change the process. She noted that the League of Women Voters fields calls and the majority of individuals do not know who their Councilmembers are, even when they have their ballots.

Dr. Ahmad stated that the Montgomery County Civic Federation is made up of a wide variety of citizens' groups that unanimously voted against the ICC. He felt that it is not a NIMBY issue because those that are not directly affected vote with those who are.

Mr. Scritchfield stated that the goal should not be increasing minority representation, but better representation and developing the best form of government. He suggested that there was merit to adding two Council districts to dilute the power of the at-large representatives. He felt that balkanization and parochialism were cynical terms for representation.

Mrs. Dacek stated that there is something to what Mr. Scritchfield said. She felt that at-large members were more interested in the more populated areas, and that there is a tendency to support the densely populated areas of the County. She was not sure if a minor change in Council representation was worth the effort.

Mr. Scritchfield responded that there is a feeling in the northern part of the County that their interests are not being represented. Mrs. Jeffreis stated that Bethesda felt that it lacked representation because it gets all the traffic.

Mr. Adams stated that going to eleven members would be alright. He noted that he was most sympathetic to this proposal, but if he had to vote today, he would vote against it. He advised that the County is growing and the demographics are changing.

Dr. Ahmad explained that increasing to eleven Councilmembers would be a step in the right direction and would create more manageable district sizes.

Mr. Clark stated that currently there are 175,000 people per district and that two more districts would make for approximately 100,000 people per district.

Mrs. Dacek stated that if there has to be any change that this would be the only one she could support.

Mrs. Ewing stated that she would consider eleven Councilmembers, but that giving up voting for a majority of the Council at-large is just too much to give. She felt that there needed to be enough at-large seats to counterbalance the district seats. She advised that when she served on the Council, Councilmembers went out of the way to protect smaller regions that may not have had as much of a voice. The reality is that things like master plans are done around dense areas so more attention goes to these areas, but overall Councilmembers try to represent all the interests of the County.

Mrs. Dacek explained that in an election year people know which areas have the most votes.

Mrs. Orlansky asked Mr. Hanna why he would want to return to seven members? Also, she wanted to hear more about proportional voting.

Mr. Hanna responded that it is a more efficient Council system with seven members and that it also costs less. He felt that going to eleven members would be a terrible mistake, and that the objective should be good government and electing the best people. He noted that the Council is a full-time job, and the County needed individuals that can work full-time for the public good. He felt that the average person has no idea what is going on. Individuals dissatisfied with their representatives should elect new ones. He felt that additional Councilmembers would not accomplish anything and that voters depend on the individuals they elect to do the right thing. He agreed with Mrs. Ewing that the at-large balance on the Council should be maintained.

Dr. Ahmad stated that most people do not know the issues and trust Councilmembers to make decisions. He stated that citizens, including civic groups, are responsible for providing lots of information and perspective to district Councilmembers. Small improvements would make a great difference. As far as proportional voting is concerned, Israel's system runs slates of candidates. For example, if Democrats get 60 % of the vote then 60 % of the seats go to Democrats. There is also something called single transferable slates, where the party puts out slates of candidates. The top candidate gets the most votes and the votes for second place are distributed among the candidates that are on the winning slate.

Mrs. Ewing stated that she is a strong supporter of term limits, staggered elections, and requiring public hearings if a committee substantially alters a bill in a significant way prior to enactment (this was a recommendation from her Montgomery College students).

Mr. Potter stated that he favored staggered terms as well, but the State Constitution may not permit staggering terms. He felt that staggering the terms retained experienced Councilmembers. He felt that adding additional districts will not help the problems of areas of the County that feel they are ignored. He stated that he was also against the Charter's limitations on surplus funds, and that the rainy day fund was created to circumvent this provision. He felt that the County needed reserves in bad economic times and that it was an unwise Charter provision.

Mr. Hanna agreed the idea of staggered elections had merit to maintain institutional knowledge and noted the potential for eliminating all of the important experience and information in one election. He felt that continuity is very important and the object of elections are to maintain good government. He suggested that before adding any more Councilmembers that the Commission asks the question, what is this going to do to the Council? He recommended that the Commission look at what is good for the County as a whole.

Mrs. Orlansky noted that there should be ways to improve and increase communication with Councilmembers.

Mr. Hanna and Mrs. Dacek stated they were/are always available for constituent issues, however, sometimes no one shows up at community meetings.

Dr. Ahmad stated that even if all district representatives were elected, an individual would not be prevented from talking to all Councilmembers. He suggested that the Charter Review Commission speak directly with the Montgomery County Civic Federation. He recommended that the Charter provision on referendum be amended. Currently, an individual needs to gather signatures from 5 % of registered voters on a petition to place a referendum issue on the ballot, but only 10,000 signatures are needed to petition an amendment to the Charter. Mr. Clark advised that

the Commission has studied the referendum issued and recommended that it not be changed. The Commission has consistently recommended in each of its last few reports that the number of signatures to petition an amendment to the Charter be increased to 5 percent of registered voters. Mr. Potter stated that he did not support a change in the referendum provision of the Charter, but did support an increase in the number of petition signatures for a Charter amendment.

Mr. Scritchfield stated that efficiency is not based on the number of Councilmembers or there would only be one or two Councilmembers. He felt that every at-large member leaned towards supporting the densely populated areas of the County.

Mrs. Dacek stated that this is why the current system was a compromise solution.

Dr. Ahmad reiterated his desire to change the referendum provision of the Charter.

At the conclusion of the forum, Mr. Clark discussed scheduling issues with Charter Commission members. A memo from the Redistricting Commission was distributed.

The next meeting was scheduled for 7:30 p.m. on December 12 in the Upper County Regional Services Center.

Mr. Clark adjourned the meeting at 10:00 a.m.

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MINUTES

CHARTER REVIEW COMMISSION Wednesday, March 14, 2001 at 8:10 A.M. 6th Floor Council Conference Room Council Office Building

Commissioners Present

Ken Clark, Chair
Royce Hanson, Vice-Chair
Ken Muir
Grace Orlansky

Absent

Cari Dominquez
Edward Marks
Kimchi Mentzer
Elisabeth Rubin
Randy Scritchfield
Catherine Titus
William C. Welsh

Staff

Ed Latner, Asst. County Attorney
Justina Ferber, Legislative Analyst
Cheryl Brite, Legislative Serv. Coordinator

Guests

Donald Norris
Professor of Public Policy
Director of Maryland Institute
for Policy Analysis and Research
University of Maryland Baltimore County

Carl Stenberg
Dean of Arts and Humanities College
University of Maryland Baltimore County

Costis Toregas
President of Public Technology Inc.

Appropriateness of Charter for the Framework of Governance

The Charter Review Commission invited members of the academic community to participate in a panel discussion to discuss the implications of the information revolution and its technology for the structure and processes of county government. Not in the use of technology by government, as such, but in how the wide use of information technologies may change the political and governmental processes in ways that suggest needs to adapt "constitutional" arrangements. Chairman Ken Clark welcomed the following panel members: Donald Norris, Professor of Public Policy, Director of Maryland Institute for Policy Analysis and Research, University of Maryland Baltimore County; Carl Stenberg, Dean of Arts and Humanities College, University of Maryland Baltimore County; and Costis Toregas, President of Public Technology Inc.

Issues

Panelists were asked to address the following issues:

1. To what extent does public access to and increasing sophistication in the use of information and information technologies challenge the "trinity" of reform principles on which local government structure (and our Charter) tend to be based: (1) accountability through elections and legislative oversight; (2) executive hierarchy; and (3) expert management of discrete governmental functions?
2. With the advent of technologies that facilitate the formation of virtual communities, are modifications warranted in a representative system that is based primarily on the presumption that the geographic community is the most salient (or only) interest to be formally represented in a local governing body?
3. How should the county government adapt its institutions to address concerns for transparency of information and integrity in decision making in an environment of information overload and equal access to valid and specious information?
4. To what extent should a charter address any of these (and other related) issues, as opposed to dealing with them through other public policies or informal processes?

Discussion

With regard to the first issue, Commissioner Hanson noted that the County Executive and County Manager systems are embedded in the idea of a small government system where the executive or manager sits at the head of system with directors of departments as experts in their field. He noted that technology undermines the concept of hierarchy because information can no longer be kept in house since citizens have instant access to all information. He asked whether government should be organized in the way that people think and act politically.

Mr. Toregas stated that it depends on how you frame the issue. He noted that he had been a county resident for many years but had never been engaged or invited to discuss government structure. He stated that 1. The Commission must communicate its role and responsibility to county residents; 2. Technology is pervasive, but should not be used to make changes to government structure without deliberation because the deliberative process is important; and 3. The issue of hierarchy is moot because everyone can communicate. He noted that the public/private lines are blurring because either county employees or contractors deliver services. He stated that citizens don't know who picks up their garbage because it could be the city, county or state or a contractor. He noted that the digital divide was an important issue and the Metropolitan Washington Council of Governments has established a digital divide task force.

Dr. Stenberg stated that Montgomery County is a national leader and that it is wise to look at the charter but the quickness of change can make it a complex and frightening task. He advised that he is working on electronic democracy for the City of Baltimore so they can hear directly from citizens. There are concerns about the empowerment that technology provides which can cause people to be bypassed, ignoring representative democracy. Citizens have expectations that officials will respond, but the volume of email overwhelms officials. Technology empowers but carries some threats such as overwhelming respondents. Also, with

so much information available, citizens develop expertise on issues in which they are involved, but that expertise can be limited. Today the flattening hierarchy is the general direction in management; however, technology can reinforce stovepipe structures and isolation.

Commissioner Hanson asked how the county could find ways of using technology and networks to enhance the deliberative process and create a more informed dialog and if changes could be made to improve the structure of government.

Mr. Toregas stated that the deliberative process is the key whether you have a participatory or representational democracy and that the traditional model of representative democracy should be bolstered with some component of participatory democracy with rules and principles. He noted that Santa Monica has an email service where citizens are notified of agenda items and expressed the view that this type of information sharing allows confrontation to become collaboration. He also noted that the GIS system can be used to inform everyone and that using computer technology reduces expenses.

Dr. Stenberg agreed with the need to educate citizens and noted that public hearings are not a forum for education. He asked if the charter allows the Council to go beyond hearing requirements to inform and educate and if notification and hearing requirements are compatible with the technology of today.

Commissioner Orlansky expressed the view that Montgomery County is comfortable with representative democracy because citizens want their elected representatives to have the responsibility for decision making. Commissioner Hanson noted that the county has a geographically based system of districts that has evolved over time; however, many interests are not geographically based such as business and ethnic interests. He asked if the county needed to change its representative system to benefit more interests.

Mr. Toregas stated that there were many reasons to elect people by geography and that the efficiency and excellence of the government structure relates to geography but that the rationale for geographic representation is fast disappearing and no longer valid. Many issues are regional in nature and there are many communities of interest such as senior citizens, ethics groups, etc. There is a new vocabulary and different dialog for government such as list-serve, email, GIS, and it is time to think aggressively in a revolutionary way.

Dr. Stenberg stated that government structures are evolving and shifting from local, state and national, to neighborhood, regional, and global. He noted that the structure of local government was set up many years ago and is antiquated. The idea of local government needs to be rethought to deal with the problems that ignore boundaries. The challenge is neighborhood issues vs. countywide and regional issues and to what extent do neighborhood issues and single member districts get in the way of countywide and regional issues.

Dr. Norris joined the discussion and stated that over the last thirty years, information technology has not yet transformed government. Technology has automated government functions and provided efficiencies. Technology has potential but it has costs for purchase, implementation, and care & feeding. Technology has numerous consequences that are good but tends not to change the functions of government. He stated that technology would not change government as long as there is one person, one vote. There needs to be integration among the stovepipes.

Mr. Toregas expressed the view that technology will transform government. He suggested that the Commission has the opportunity to transform cross-boundary leadership and leadership across stovepipes. He noted that changing the charter will provide the opportunity to attack the problem of why technology is not moving government forward. He suggested the Commission look at the electorate and how they are empowered and avoid the notion of elected officials and how many. He suggested that there be a regional charter commission.

Dr. Stenberg stated that it was hard to do anything with regional collaboration and an electoral system. Government has to function and bureaucracies need to communicate.

Dr. Norris stated that technology can cause information overload and there needs to be a mechanism for detecting unnecessary information. He referred to the digital divide and acknowledged that as socio-economic status declines, fewer families have access to technology. He advised that providing access is not sufficient and that training must be provided. He noted that technology doesn't make improvements, but how technology is used facilitates improvement.

Commissioners expressed the view that "baby boomers" have not been as engaged politically as their parents and grandparents and that it is not known how the behavior of "baby boomers" will affect the structure and function of government especially as they retire.

Chairman Clark thanked the panelists for their time.

Miscellaneous

Commissioner Orlansky suggested that the Commission view the video on Montgomery County government made by the Council office at its next meeting.

It was agreed that the Commission will not schedule additional panel discussions at this time and will discuss at its next meeting what has been learned thus far from the panels.

It was noted that the Commission should consider the right to information issue addressed in Charter Section 505.

Mr. Latner advised that the county won the court case related to Ballot Questions. The plaintiffs did not follow the process for challenging questions.

The next meeting was scheduled for May 9 and there will be no meeting in April. The meeting adjourned at 9:45 AM.

Attached are the written comments submitted by Costis Toregas.

Written Remarks from Mr. Toregas

As a county resident for 25 years, I have never heard of the good work that I know this commission is carrying out, nor of basic elements of the charter. Education and engagement of residents must become a priority, using the very technology tools (cable, emails, portals) that we are discussing. The charter references to informing the public must reflect these new communications tools as well.

1. *To what extent does public access to and increasing sophistication in the use of information and information technologies challenge the "trinity" of reform principles on which local government structure (and our Charter) tend to be based: (1) accountability through elections and legislative oversight; (2) executive hierarchy; and (3) expert management of discrete governmental functions?*

Not challenge but enhance. Words like discrete and hierarchy are gone, replaced by customer centric and network. Representation is important for deliberation, but enhanced by e-participation. Digital divide must be addressed effectively. Supporting cross boundary leadership (within the staff stove pipes, across public systems of the region, integrating other sectors of society) must be a priority of governance system.

2. *With the advent of technologies that facilitate the formation of virtual communities, are modifications warranted in a representative system that is based primarily on the presumption that the geographic community is the most salient (or only) interest to be formally represented in a local governing body?*

Life events, citizen become focal points, time and community of interest enrich geography as factors defining representation. Infrastructure of roads, water etc. mean geography will play a role in service delivery (regional more than local!), but not necessarily in representation. Start using electronic democracy tools (listserves, ai distance learning, power point, collaboratory, threaded email dialog, GIS).

3. *How should the county government adapt its institutions to address concerns for transparency of information and integrity in decision making in an environment of information overload and equal access to valid and specious information?*

Initiating dialog on privacy/access which will result in institutions and processes reflective of what we are learning in knowledge management. Revise section 505 of the charter through organized dialog of staff, elected officials, business and beyond. Build on y2k lessons and community resurgence. E-mail systems can overwhelm elected officials with volume. Answer is either technology (filters, ai responses) or structural (deal with small groups in network).

4. *To what extent should a charter address any of these (and other related) issues, as opposed to dealing with them through other public policies or informal processes?*

Foundations of charter should not change (but what are the foundations?). Area of structural changes (interaction with school boards, fragmented governance made coherent through technology) can be addressed by charter. GPs should define new opportunities for engagement. If this does not get us going, I am sure each of you will bring a stimulating agenda.

MINUTES

CHARTER REVIEW COMMISSION

Wednesday, January 10, 2001 at 8:10 A.M.

6th Floor Council Conference Room

Council Office Building

Commissioners Present

Ken Clark, Chair
Cari Dominquez
Ken Muir
Grace Orlansky
Elisabeth Rubin
Randy Scritchfield
Catherine Titus
William C. Welsh

Absent

Royce Hanson, Vice-Chair
Edward Marks
Kimchi Mentzer

Staff

Ed Latner, Asst. County Attorney
Justina Ferber, Legislative Analyst
Cheryl Brite, Legislative Serv. Coordinator

Guests

Pedro & Mireya Gonzales
Elnora Harvey
Bel Leong-Hong
Linda Plummer
Henry Quintero
George Thomas
Jinhee Kim Wilde

Appropriateness of Charter for the Framework of Governance

The Charter Review Commission invited leaders of the County minority community to participate in a panel discussion concerning the capacity of the governmental system provided in the County Charter to address effectively the needs of the community. Chairman Ken Clark welcomed the following panel members: Pedro and Mireya Gonzales of the Spanish Catholic Center, Elnora Harvey of the Silver Spring Citizens Advisory Board; Bel Leong-Hong of the Organization of Chinese Americans; Henry Quintero of the Latino Civic Rights Task Force of Maryland; George Thomas of the Saturday School Program; and Jinhee Kim Wilde of the Korean American Association. Linda Plummer of the MC/NAACP also attended.

Discussion

Panelists were asked to address the following issues:

- How the current structure of county government affects your community, neighborhood, or group.
- The adequacy of the county's system of representation in fairly reflecting your interests and responding to the needs of your community, neighborhood or group.

- Ideas about how the County's governmental system, its organization, or ways of serving its diverse communities and citizens could be improved, but for barriers created by the Charter.
- How you and your members engage in civic life at community and county-wide levels, and what might be done to increase opportunities for fuller and more efficacious engagement in County governance.

The panelists spoke about the difficulty of getting minority community members to participate in government and to volunteer to serve on County advisory boards due to language and cultural barriers. It was recognized that it is daunting for most people to participate in government when English is not their first language. It was stated that with African Americans, there is a matter of trust that has to be built in order to obtain their involvement and that history has not always been friendly or rewarding for them and there have not always been opportunities. The County population is increasingly more diverse as the population grows. There is not only value in diversity of participation, but participants reach back to their communities and funnel important information and build alliances.

It was stated that it is incumbent on the government to get into the outreach business and to provide training to reach the communities that are targeted as minority communities to get them involved. It was recommended that the County leadership take the lead to reach out to people through ethnic organizations, churches, recreation centers, and ethnic newspapers and free publications, etc. to bring information to minority communities.

It was noted that the Hispanic and Asian communities might not participate because they don't hear about government activities in the language that they speak. This does present problems for government because, unlike the Hispanic population, Asians do not speak the same language. Chinese, Korean, Filipino, Japanese, and Vietnamese are examples of some of the major Asian American languages spoken in Montgomery County.

It was agreed that the language barrier is a significant one causing difficulty for many people in understanding the Charter. There was agreement that information technology has increased communication, but some residents such as the elderly and non-English speaking need to be reached in other ways. Many people are not aware that the Charter exists. It was suggested that an executive summary of the Charter could be translated and printed in various languages for distribution.

Panelists called attention to non-profits, such as the Spanish Catholic Center, which assist minority residents, and their need to have the financial means to be able to provide such assistance. The Spanish Catholic Center serves 35,000 low-income people at three branches in the county.

Panelists commended the Commission for inviting the minority community to participate in its Charter discussions. It was recommended that standards and outcome measures be set for outreach to minorities to determine what is being achieved within a specific timeframe.

It was noted that the management in County government centers is white and the support staff is black. It was suggested that the County place more blacks in management and that an

outreach letter from the County Executive be distributed to all citizens informing them about County services.

The need for a multi-cultural center was mentioned, and Ms. Ferber advised that one is being built now. It was noted that many of the smaller minority organizations operate from someone's home or office and that no one on the panel was aware that the multi-cultural center had been funded. Panelists noted that County services are aimed at the native born and not the minority culture. An example was the menu at a County senior center that was not suitable for an Asian diet where the addition of rice or something similar would address the needs of Asian participants.

Suggestions made by the panelists are summarized as follows:

1. Increase education, training and outreach to involve minority residents.
2. Set standards and outcome measures for outreach to minorities.
3. Personally request minority residents to get directly involved.
4. Give more time for recruiting for service on County boards, committee, and commissions and other County service in order to give time to react and apply.
5. Provide for diverse representation in the Charter in Redistricting Section 104.
6. Increase minority appointments to management positions in County government.
7. Allow non-citizens to vote to increase the political participation of minorities.
8. Help clarify citizen's geographic identification, i.e. councilmanic district, legislative district, congressional district, etc.
9. Prepare an executive summary in plain language of the Charter so it can be translated.
10. Send a copy of the Charter to the civic associations requesting their review and comments.
11. Provide video teleconferencing in the government centers.
12. Translate the League of Women Voters, "Voters Guide" into several languages.
13. Translate government materials into several languages.
14. Provide financial assistance to organizations that assist minorities.
15. Review County services to determine if they address multi-cultural needs.

The Chair thanked the panelists for their participation and suggested that they send any other suggestions they may have to the Commission in writing.

Miscellaneous

There was discussion of the litigation related to ballot Question A. Copies of an editorial and letter from Frank Vteric were passed out along with a copy of the complaint.

The next meeting was scheduled for 8:00 A.M. on Wednesday, February 14 or Wednesday, March 14, depending on the schedule of speakers.

The meeting adjourned at 9:55: A.M.

MINUTES

CHARTER REVIEW COMMISSION Wednesday, December 6, 2000 at 8:05 A.M. 6th Floor Council Conference Room Council Office Building

Commissioners Present

Ken Clark, Chair
Royce Hanson, Vice-Chair
Cari Dominquez
Edward Marks
Grace Orlansky
Randy Scritchfield
Catherine Titus

Absent

Kimchi Mentzer
Ken Muir
Elisabeth Rubin
William C. Welsh

Staff

Deborah Snead, Assistant CAO
Marc Hansen, Senior Asst. County Attorney
Justina Ferber, Legislative Analyst
Cheryl Brite, Legislative Serv. Coordinator

Guests

Larry Cunnick, President of Biocon, Inc.
Duc Duong, Maryland High Tech Council
Director of Md. Technology Development Center
Tony Falls, Legislative Affairs, IBM Corporation
Wendell Holloway, VP for Government Relations,
Suburban Hospital
Janyce Hedetniemi, Community Liaison Office,
National Institutes of Health
David Smith, Senior VP for System Development,
Suburban Hospital
Ray Westfall, Manager, Human Resources,
Lockheed Martin

Appropriateness of Charter for the Framework of Governance

Chairman Clark welcomed the guests who were invited to participate in a panel discussion to seek ideas from business community leaders concerning the capacity of the governmental system provided in the County Charter to address effectively the needs of the community. The Commission is reviewing the County Charter in light of the changes that have occurred over the last 30 years in the County's economic structure and demographic profile, and the revolutionary changes in information technology.

Mr. Hanson asked the panelists to address the following issues:

- How the current structure of county government affects your community, neighborhood, or group.
- The adequacy of the county's system of representation in fairly reflecting your interests and responding to the needs of your community, neighborhood or group.

- Ideas about how the County's governmental system, its organization, or ways of serving its diverse communities and citizens could be improved, but for barriers created by the Charter.
- How you and your members engage in civic life at community and county-wide levels, and what might be done to increase opportunities for fuller and more efficacious engagement in County governance.

The discussion centered on concerns, structure of government, and business participation in government.

Concerns

The groups discussed the need to change the perception that business is bad and pointed out that Montgomery County is the economic engine of the State. It was explained that business people are neighbors and are also interested in the well being of the community and that the economic health of the business community and citizens interrelate. The following issues were outlined by guests as concerns of the business community:

- affordable housing
- transportation and traffic
- space for business expansion
- hotel capacity
- conference space
- meeting space
- demand for lab space for the biotech community
- impact of Federal agencies

It was noted that the County economic development policy emphasis is concentrated on the high tech and biotech industries; however, the County has not made an effort to continue the momentum to develop and encourage these industries.

Government Structure

While business representatives felt that the County government structure is awkward, they had no recommendations for major changes to the structure. They believed that Park and Planning is like a third branch of government, and suggested that it was important for Park and Planning and the Executive and Legislative branches to make an effort to see things the same way. It was also suggested that the policy of the General Plan, based on wedges and corridors and the County as a bedroom community of the District, be changed.

Panelists discussed the lack of integration in County government and the need to flatten its organization. It was agreed that management today is matrix management and that the stovepipe management structure of County government is no longer practiced by businesses. In response to the question of whether the County Executive position should be stronger, panelists agreed that there should not be a board of directors micro-managing every decision.

Panelists expressed the view that County government is reactive, not proactive and that there is not enough planned citizen and business involvement in government actions. It was agreed that businesses also have a responsibility to be proactive and to communicate with the County government and the community.

The panelists stated that businesses are not interested in changing the structure of government but are looking for leadership. An example of proactive leadership was given as the long-term vision and investment in Life Sciences Center. Businesses are frustrated with government when influenced by a vocal minority but recognize that listening to individual concerns is part of the political process; however, it was felt that government has a responsibility to govern for the greater good. Another frustration expressed in dealing with the County government is that decisions are never final e.g. the ICC and Conference Center. It was suggested that the Charter needs to foster political leadership.

Business Involvement in Government

Although businesses are not as interested in changing the structure of government, it was acknowledged that businesses ask employees to take action by voting. Government and business are changing and businesses that previously did not work closely with the community are now getting engaged. The nature of County businesses has changed; previously business was concentrated on land development, now it is high-tech and biotech. The view was expressed that it was not fair that large property and business owners are only allowed three minutes to testify at a Council public hearing when other organizations are allowed five minutes. It was suggested that the County government begin to change its procedures to address the community of young people who want instantaneous recognition and don't want to sit in a room and wait to be heard.

In response to the question of who do businesses turn to when they have a problem, panelists indicated that they think of who they know on a personal level who can help and usually it is someone in the Department of Economic Development or in the County Executive's office. There is no one official office or person to contact and there is no consistency on how business issues are addressed. Panelists advised that Federal agencies have a system and protocol that they are required to follow when dealing with County government.

Panelists stated that more communication is needed to engage the County in the regular activities or affairs of business. It was agreed that Maryland is a very provincial, very divided state and that the County and State need to have a more global view and that most business issues are regional.

Miscellaneous

The September 13, 2000, minutes were adopted. The next meeting was scheduled for 8:00 A.M. on Wednesday, January 10, and representatives of the County minority community will be invited to participate in a panel discussion. The meeting adjourned at 9:28 A.M.