



2006
*Report of the
Charter Review Commission*

Montgomery County, Maryland



CHARTER REVIEW COMMISSION

April 30, 2006

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's my pleasure to submit the 2006 Report for the Council's consideration. The Charter provides an effective framework for governance that continues to support the ever-changing needs of the County and its residents.

Since October 2004, the Commission has analyzed a variety of issues that could result in Charter amendments; however, the Commission is recommending only two proposed amendments. The first proposal would amend Charter Section 107, Compensation, to provide that membership on the Council shall be considered a full-time position for the purpose of determining compensation. The Commission believes that it's important for the Charter to reflect the fact that Councilmembers spend at least 40 hours per week on Council-related business.

The second proposal would amend Charter Section 208, Veto, to clarify the timing of an Executive veto and the deadlines for Council transmittal of legislation. This amendment would allow the Council to enact legislation that would specify how to compute such time periods under Section 208. This issue was brought to the Commission's attention by legal staff from the County Attorney's Office and the Council Office.

The Commission appreciates the comments it received from business groups, civic organizations, government officials, non-profit organizations, and residents because this information helped the Commission identify issues and guided its deliberations on matters that affect County residents. Without the participation of all of these groups, the Commission would not have functioned as effectively.

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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kenneth K. Muir".

Kenneth K. Muir, Chair
Charter Review Commission

Montgomery County Council

CHARTER REVIEW COMMISSION

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*Sylvia Brown Olivetti ***

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Robert M. Skelton

Shelton Skolnick

Sally L. Sternbach

** Resigned in May 2005*

*** Resigned in April 2005*



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Staff

Sonya E. Healy, Legislative Analyst, County Council Office

Justina Ferber, Legislative Analyst, County Council Office

Carol Edwards, Legislative Services Coordinator, County Council Office

***Joseph Beach, Assistant Chief Administrative Officer,
Office of the County Executive***

Marc P. Hansen, Deputy County Attorney, Office of the County Attorney

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

Charter Section 509, adopted by amendment in 1976, requires the quadrennial appointment of an eleven-member, bipartisan Commission to study the Charter and to 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, Councilmembers, other government officials, and the public. A report on the Commission's activities must be submitted to the Council no later than May 1 of every even-numbered year. The biennial report outlines the issues that the Commission considered and may recommend Charter amendments to include on the general election ballot. By mid-August, the Council determines which Charter questions will be placed on the ballot.

Since July 2003, this Commission has studied a variety of issues that could result in Charter amendments. The Commission held public forums in February and October 2005, requested comments from various business, civic, ethnic, and nonprofit groups and

individuals, and met with several County representatives. The Executive and each Councilmember were invited to meet with the Commission. Eight Councilmembers met with the Commission and discussed a range of County issues. Information gathered from these discussions and comments received from the public were evaluated to determine if Charter amendments were needed to improve governmental performance and accountability.

II. SUMMARY OF CHARTER REVIEW COMMISSION RECOMMENDATIONS

A. Recommendations for Charter Amendments

These amendments were originally proposed in the 2004 Report of the Charter Review Commission.

1. Amend Section 107, Compensation

The Commission recommends amending Charter Section 107 to provide that membership on the Council shall be considered a full-time position for the purpose of determining compensation. The Commission voted (7-2) to recommend this Charter change, so that the Charter reflects the reality that being a Councilmember is a full-time job. (Refer to discussion beginning on page 6.)

2. Amend Section 208, Veto

The Commission voted (10-0) to amend Charter Section 208 to clarify the timing of an Executive veto and the deadlines for Council transmittal of legislation. This amendment would allow the Council to enact legislation that would specify how to compute deadlines. (Refer to discussion beginning on page 11.)

B. Recommendations Requiring No Charter Changes

1. Structure of the County Council

A majority of the Commission voted (6-4) to maintain the current structure and size of the Council. One of the issues that emerged during the Commission's discussions with civic groups, one current and one former Councilmember, and residents was the need to evaluate the current structure of the Council and the number of Councilmembers. Business representatives, government officials, political groups, and residents all expressed views on this issue. Most of the current Councilmembers did not see any need to change the size or structure of the Council.

A variety of ideas were proposed; however, three alternatives dominated the discussions: maintain the current Council structure with four at-large seats and five single-member district seats; increase the number of single-member district and at-large seats and maintain the current balance of representation; or change the Council to nine all-district representatives. The Commission recommends no changes to the Council structure or the number of Councilmembers. (Refer to discussion beginning on page 14.) A minority opinion on this issue is contained in the appendix (A-26).

2. Congruency of Petition and Ballot Language

The Charter Review Commission has undertaken a review of the petition process used by individuals and organizations to effect changes to the Montgomery County Charter. The current petition process is based on State and County law and administrative procedures. Currently, the determination on final ballot language occurs relatively late in the process and leaves little time for petitioners to challenge ballot language. The Commission (10-0) recommends that the Council evaluate a revised process for making decisions about the final ballot language to limit potential discrepancies in petition language and how issues are ultimately presented to voters on the ballot. (Refer to discussion beginning on page 18.)

3. Number of Signatures Required to Petition a Charter Amendment

The Commission reviewed the disparity between Charter Section 114 and Article XI-A, Section 5, of the Maryland Constitution. The Commission took no position on this issue; however, it believes that future Commissions should study this issue if there is legislative momentum at the State level to change the signature requirements. (Refer to discussion beginning on page 26.)

4. Improving Access to the Electoral Process

The Commission believes that there is a need to identify and expand opportunities for County residents, especially representatives of political and ethnic minority groups, to acquire expertise regarding policy issues; to achieve leadership positions in County-sponsored activities; and to gain experience in conducting political campaigns for public office. The Commission recommends that the Council and Executive give serious consideration to creating more meaningful opportunities to develop a new generation of County leaders with particular attention given to attracting political and ethnic minority involvement and participation. Some Commission members also expressed concern about the amount of funding necessary to conduct a successful political campaign in the County because this factor may prevent some otherwise qualified candidates from running for office.

The Commission heard testimony and received materials outlining a number of voting methodologies (*e.g.*, proportional voting, instant runoffs, etc.) used in the City of Takoma Park and other areas of the United States. Alternative electoral systems could lead to outcomes that more accurately reflect voter intent and possibly increase representation of political and ethnic minority groups on elected bodies. The Commission recommends that the Council and Executive consider whether one or more alternative voting methodologies warrants further study for possible implementation in the County. (Refer to discussion beginning on page 29.)

III. ISSUE AREAS

A. RECOMMENDATIONS FOR CHARTER AMENDMENTS

These amendments were originally proposed in the 2004 Report of the Charter Review Commission.

1. FULL-TIME VERSUS PART-TIME COMPENSATION Amend Charter Section 107, Compensation

Background

The question of whether the Charter should include language treating service on the Council as a full-time or part-time position was originally referred to this Commission in 2002 by the Committee to Study the Compensation of the County Executive, County Council, Sheriff, and State's Attorney (Committee to Study Compensation). Article 1 of the Charter contains provisions relating to the structure and compensation of the Council. The Charter is silent on the issue of whether membership on the Council is a full- or part-time position, and there is no guidance on compensation. As a result, the Committee to Study Compensation has struggled throughout the years with how to determine the appropriate salary for Councilmembers. By contrast, Charter Section 203 makes it clear that the Executive's position is full-time and bars the Executive from engaging in any private occupation for compensation.

Clarifying whether a Councilmember position should be considered a full- or part-time job has implications beyond simply determining the amount of time a Councilmember should devote to Council-related business. Other rules must be defined, such as: whether a Councilmember should be permitted to have outside employment; if outside employment is permitted, what types of limitations should be imposed; what constitutes a Council-related activity for the purpose of determining the number of hours

worked; and who should have the responsibility for determining whether a Councilmember is serving as a full-time representative.

Discussion

Full-time versus Part-time

The Executive and each Councilmember were invited to meet with the Commission. Eight current Councilmembers and one former Councilmember met with the Commission and provided input on a variety of Charter-related issues. Among the issues discussed was whether the Charter should explicitly state that membership on the Council is a full-time position. Councilmembers reported regularly working significantly more than 40 hours per week on Council-related business. Councilmembers representing districts reported that they tended to spend more time providing constituent services, while at-large Councilmembers reported spending more time on countywide issues. In both cases, Councilmembers stated that service on the Council requires at least as much, if not more, time than a traditional full-time job.

Several Councilmembers also expressed the view that it's difficult to recruit minorities and individuals who are "breadwinners" to run for the Council because the position does not pay enough to induce them to give up full-time jobs in the private sector. At least one Councilmember noted that that the current Council salary (just under \$80,000 per year) is substantially below what a full-time senior manager in the non-profit sector would receive.

A comparison of the salary structure of County legislative bodies in comparable jurisdictions indicates that the current salary structure for Montgomery County

Councilmembers is at the low end of the range for full-time positions. (A chart with this information is contained in the appendix on A-30.)

In discussing this issue, the Commission recognized that there could be disadvantages to defining service on the Council as a full-time position; however, the additional costs of increasing Council salaries to reflect the full-time nature of the job would be a minimal increase in a \$3.8 billion County budget. Also, amending the Charter to provide that Councilmember positions are full-time for the purpose of determining compensation doesn't automatically translate into higher salaries. No change in the compensation for Councilmembers would become effective during the term of office of the Council enacting the change. In addition, the Committee to Study Compensation determines if salary increases are justified for Councilmembers.

Prohibition on Outside Employment

Even if the Charter is amended to provide that service on the Council is a full-time job, the question remains whether the amendment should also expressly prohibit some or all outside employment for Councilmembers. The Commission debated this issue at length.

As noted above, Charter Section 203 expressly precludes the Executive from any outside employment for compensation. In contrast, the Council has historically had several members who have engaged in some type of outside employment. In recent years, Councilmembers have held teaching positions, practiced law, provided consulting services, and worked for the federal government, while still representing their constituents.

Council voting records show that there may be a correlation between the number of Council votes missed and whether a Councilmember holds an outside job. Thus, one could infer that outside employment may have an adverse effect on Councilmembers' attendance at voting sessions.

On the other hand, the Commission heard testimony at its public forum from community representatives that allowing Councilmembers to engage in some outside employment can help keep Councilmembers "in touch" with the community. Several Councilmembers also expressed similar views on this issue. The Montgomery County Chamber of Commerce also advised the Commission that allowing Councilmembers to retain outside employment may serve to encourage small business owners to run for office because they could maintain their businesses while serving on the Council.

The Commission also evaluated whether a Charter amendment clarifying that service on the Council is a full-time commitment should include some limit on outside employment to prevent potential conflicts of interest. The Commission considered several alternatives that would limit outside employment for Councilmembers. One option would be to prohibit Councilmembers from engaging in any "substantial" private occupation for compensation. Another option would be to prohibit Councilmembers from engaging in any private occupation for compensation "except an occupation that the entity which interprets the code of ethics and related law under Charter Section 410 (the County Ethics Commission) has approved after determining that engaging in the occupation will not interfere with the member's duties of office."

It would be difficult, if not impossible, to determine what constitutes "substantial" outside employment, so enforcement could be challenging. The Commission believes

that the issue of outside employment is best left to the electoral process. During each election, voters have the ability to decide whether a Councilmember's outside employment has interfered with legislative performance, and if they conclude that it has they may defeat that incumbent.

Recommendation

After reviewing all these factors, the Commission voted (7-2) in favor of the proposed Charter amendment below. The proposal affirmatively states that service on the Council should be treated as a full-time position for the purpose of setting compensation for Councilmembers. This would not limit the extent to which a Councilmember could engage in paid outside employment. Instead, it would let the electorate decide whether a Councilmember's outside employment poses a conflict of interest or significantly impacts the time spent on Council business.

The Committee to Study Compensation could take into account the Charter's definition of the position as full-time to determine the appropriate level of compensation for Councilmembers in the future. The amendment would not require the Committee to Study Compensation to increase Council salaries, but could help the Committee to decide whether to maintain or increase the Council's current salary.

Proposed Amendment (Recommended language is underlined.)

SECTION 107. Compensation.

The Council shall prescribe by law the compensation for its members. Membership on the Council shall be considered a full-time position for the purpose of determining compensation. No change in the compensation of members of the Council shall become effective during the term of office of the Council enacting the change.

2. DEADLINES TO EXERCISE AN EXECUTIVE VETO
Amend Charter Section 208, Veto

Background

At the request of legal staff from the County Attorney's Office and the Council Office, the Commission reviewed the deadlines imposed by Charter Section 208 concerning when the Executive must approve or disapprove legislation enacted by the Council. The current provisions in Section 208 may lead to uncertainty as to the date by which the Executive must exercise the power to veto legislation enacted by the Council. Charter Section 208 is not always implemented in a consistent manner because it's unclear how days are counted in certain circumstances.

Discussion

Charter Section 208 provides, "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." Section 208 also provides, "Any legislation which has been neither approved nor disapproved by the County Executive shall become law on the fourteenth day after enactment."

These provisions can't always be applied in a consistent and unambiguous manner. For example, if the Council enacts legislation on a Thursday, it's not clear if the legislation must be delivered to the Executive on Sunday or Monday. There also are questions about how holidays are counted, the consequences associated with late delivery, and what happens if the Executive takes no action after receipt of legislation. In light of these concerns, the Commission concluded that it would be prudent to clarify how time is to be computed under Section 208.

Recommendation

The Commission recommends a Charter amendment that would clarify the time within which the Executive must either approve or disapprove legislation enacted by the Council. The Commission made this same recommendation in its 2004 Report and continues to believe that this Charter amendment is necessary.

The Executive would have ten days after receiving the legislation to approve or disapprove it. The Commission also proposes that legislation would become law, if the Executive neither approves nor disapproves it, on the eleventh day after the Executive receives it. This change preserves for the Executive a maximum of ten days to take action on legislation.

The Commission also proposes that the Executive must deliver an approval or disapproval notice to the Council, with the reasons for any disapproval stated in writing, within ten days after receiving the legislation from the Council. The Charter currently allows the Executive up to 16 days after enactment of legislation to deliver a veto message to the Council. The Executive does not oppose shortening the time within which a veto message must be transmitted to the Council.

Finally, the Commission noted that County Code Section 1-301, which is contained in the appendix (A-57), provides a methodology for computing deadlines that is consistent with those used by the courts and the Maryland General Assembly. So that this Code provision can apply to Section 208, the Commission recommends that the Charter authorize the Council to specify by law how to compute the time periods under this Section.

The Commission voted (10-0) in favor of amending Charter Section 208. The recommended amendment to Charter Section 208 follows:

Proposed Amendment

(Recommended language is underlined and deleted language is bracketed.)

Section 208. Veto.

Upon the enactment of any legislation by the Council, [it] the Council President shall [be delivered] within three days deliver it to the County Executive, who within ten days [thereafter] after receiving it shall approve or disapprove it. If the [County] Executive disapproves such legislation [it] the Executive shall [be returned] return it to the Council within [three days after the Executive disapproves it] ten days after receiving 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] eleventh day after [enactment] the Executive receives it. The Council may by law further specify how any period of time mentioned in this section is measured.

B. RECOMMENDATIONS REQUIRING NO CHARTER CHANGES

1. COUNCIL STRUCTURE

Background

Charter Section 102, Composition and Election, provides that the Council is comprised of nine members. Four Councilmembers are elected by the qualified voters of the entire County and each of the remaining five Councilmembers must reside in a different Council district and be elected by the qualified voters of that district. The Council structure has been discussed and considered at length by prior Commissions. Since 2002, the Commission has received testimony from community organizations, political leaders, and residents on this issue. This year's inquiry was prompted by a proposal from former Councilmember Isiah Leggett, who suggested that the Commission consider recommending a Council composed of eight district members and three at-large members, and a proposal from Councilmember Silverman, who suggested a Council composed of seven district members and six at-large members.

Discussion

The main options considered for restructuring the Council were as follows:

- 1) maintain the current Council structure with four at-large seats and five single-member district seats;
- 2) increase the number of single-member district and at-large seats and maintain the current balance of representation; or
- 3) change the Council to nine all-district representatives.

Along with a variety of other factors, the following issues emerged as the Commission evaluated restructuring the Council: the balance between district and at-

large representation; the size of Council districts; the diversity of representation on the Council; the cost of campaigns; and the budget impact of changing the current structure.

Balance Between District and At-Large Representation

The current Council structure, with five district and four at-large seats, was implemented so that County residents would be represented by legislators who have local as well as countywide constituencies. Each area of the County has one district member who is elected to represent the interests of residents in a particular geographic area and four at-large members who may focus on issues that affect the entire County. Residents are not limited to dealing only with their district representatives, but may also contact the four at-large Councilmembers, each of whom has an obligation to serve all County residents. This Council structure was designed to maintain an important balance between local and countywide interests, and it provides an opportunity for alliances to form among at-large and district members depending upon the issue under consideration.

Some people expressed the view that increasing district representation could exacerbate parochialism and political horse-trading. Some other jurisdictions have found that too much district-level representation places greater pressure on allocating budget resources because of competition among districts. Increasing the number of districts may also reduce the representativeness of the Council because a voter could not vote for a majority of the Councilmembers.

Size of Council Districts

In 2005, the Montgomery County Department of Planning estimated the County's population to be 942,000, which means that each of the five Council districts contained approximately 188,400 residents. Maintaining the current Council structure means that,

as the County's population grows, each Councilmember will represent a larger number of constituents. Proponents of adding additional district seats argue that more district representation could translate into improved communication with constituents and enhanced representation.

The majority of the Commission does not believe that adding district seats will bring about enhanced representation. For example, if two additional district seats were added, district Councilmembers would still be representing approximately 134,570 residents, which is a significant number of voters. It's virtually impossible for Councilmembers to interact with all of their constituents. A reduction in the number of constituents a Councilmember represents may not result in a significant improvement.

Proponents of small districts argue that it's easier and more affordable for candidates to run for the Council. Some believe that small districts would enable less well-known candidates to be elected by making it easier to develop a grassroots network and to meet with more local groups. It's debatable whether smaller districts would reduce the cost of running for a Council seat or that candidates win seats solely based on the amount of campaign funds spent. Several Councilmembers told the Commission that elections are won based on a combination of factors including a candidate's platform, relationships with constituents, an organized and mobilized group of campaign volunteers, and campaign finances. Some people suggested that issues surrounding funding for election campaigns should be addressed through changes in State campaign finance regulations instead of changes to the Council structure.

Diversity of Representation

While the linkage between the current Council structure and a perceived lack of diversity has not been established, some residents expressed the view that the current Council does not adequately reflect the County's diversity. Other residents expressed the view that unless the number of Council seats is substantially increased, more districts wouldn't necessarily translate into greater economic or ethnic diversity on the Council because the County generally doesn't have large geographic concentrations of minority voters in one area. Some Councilmembers told the Commission that there are other factors beyond the structure of the Council that may keep political and ethnic minority representatives from running for office. For example, some of these representatives come from organizations that may not work within the local political party system.

Experiences in some other jurisdictions indicate that all single-member districts, especially small homogenous ones, may produce elected officials with more limited agendas and more parochial views. For example, officials representing small districts may have fewer incentives to compromise with colleagues because their re-election does not depend on appealing to a broad cross-section of residents.

Budget Impact

Adding more Councilmembers also has a budgetary impact. Each additional Councilmember position would cost the taxpayers approximately \$415,000 for salaries and administrative expenses associated with the position. While adding this amount to a County budget of more than \$3.8 billion would have a minimal impact, the additional cost per Councilmember would increase the budget of the Council Office by approximately five percent. Additional Councilmembers also would increase the

workload for Council staff because each member generally proposes new policy initiatives.

Recommendation

After much deliberation and consideration, a majority of the Commission found no compelling reason to change the existing Council structure and voted (6-4) in favor of maintaining the existing structure and number of Councilmembers. A minority report on this issue is contained in the appendix (A-26).

2. CONGRUENCY OF PETITION AND BALLOT LANGUAGE

Introduction

The Charter Review Commission has undertaken a review of the petition process used by individuals and organizations to effect changes to the County Charter. The current petition process is based on State and County law and administrative procedures. Timelines are specified and certain actions required by stakeholders have been codified. Separate reviews have been undertaken by the current and former Charter Review Commissions as to the number of signatures that should be required to place a Charter amendment proposal on the general election ballot; however, to date the issue of congruency of the descriptive language in Charter amendment petitions and ballots has not been reviewed by past Commissions.

Registered voters who sign a Charter amendment petition outside of their local supermarket decide whether or not to sign based on several factors: what they might already know about an issue; what the circulator tells them about the proposed amendment; and what they read on the information and signature pages of the petition. If the sponsor is successful in gathering the requisite number of signatures, the petition is

filed with the Executive. State Election Law provides that the County Attorney generally is charged with drafting the ballot title, the description of the proposed Charter amendment, and the voting choices; however, County Code Section 16-16 mandates another process. The Council has the final say about what actually appears on the ballot. Several months after signing the petition and under the pressure of the voting booth, voters are faced with trying to recognize the Charter amendment they thought they supported—but it just doesn't quite look the same. Why can't the wording on the ballot be the same as what they signed outside the supermarket?

Coming up with a process that allows congruency between petition and ballot language could be as simple as re-ordering the steps involved in the current process or as complex as changing State Election Law. This analysis will evaluate the current process, propose changes to the process, and examine what would be required to implement these changes.

Discussion

Current Process

The current process for petitioning a Charter amendment to the general election ballot is governed by a mix of State and County laws.¹

1) Sponsor decides to pursue a Charter amendment. Amendments to the Charter may be proposed by either the Council or by a petition signed by not less than 20 percent of registered voters or 10,000 registered voters.² The sponsor develops a Charter amendment and decides to pursue it through the petition process.

1. Based on a memo prepared for the Charter Review Commission by Marc Hansen, Deputy County Attorney, Office of the County Attorney, April 14, 2005 (A-49).

2. Maryland Constitution, Article XI-A, Section 5.

The sponsor contacts the County Board of Elections for a petition “package” and receives the free State Board of Elections Charter petition form with instructions,³ including the information page and signature page. The State Election Code regulates the content and process of petitions.⁴ Additionally, the petitioner receives a set of instructions unique to the County, strongly suggesting that the sponsor take advantage of the “early determination of sufficiency” process.

The petition must be accompanied by an information page that contains, among other things, the subject and purpose of the petition and the sponsor of the petition. The signature page must also include the subject and purpose of the petition and a fair and accurate summary of the proposal or the full text of the proposal. If the sponsor elects to use a summary of the proposal, the circulator of the petition must have a copy of the full text of the proposal and make that copy available to a prospective signer.⁵

2) *Sponsor develops petition language.* Next, the sponsor drafts the language of the proposed Charter amendment including the information required above.

3) *Optional determination of sufficiency.* The sponsor may submit a petition to the Director of the County Board of Elections for a “determination of its sufficiency.” The Director may ask for the County Attorney’s advice in making the determination.⁶ The purpose of this step is to ensure that the ballot initiative does not serve some illegal or unconstitutional purpose and that the required data is contained on the signature and information pages. This review doesn’t result in the actual language that will appear on the ballot.

3. Maryland State Election Code, Section 6-103.

4. Maryland State Election Code, Section 6-101 *et seq.*

5. *Ibid.*

6. Maryland State Election Code, Section 6-202.

4) **Signature gathering.** The sponsor, with the assistance of one or more circulators, gathers signatures from self-declared registered voters in the County.

5) **Conformance review.** Once the sponsor believes a sufficient number of signatures has been gathered, the sponsor must file the petition with the Executive.⁷ After determining the petition “is in conformance with the requirements of law,” the County Executive must send the petition within 24 hours to the Board of Elections for signature validation.⁸

6) **Mandatory determination of sufficiency.** The Board of Elections must declare the petition deficient if it finds, based on the advice of the County Attorney and the Board of Elections attorney, that the proposed Charter amendment isn’t legal. This determination must not be inconsistent with any advance determination made under County Code Section 6-202.⁹

7) **County Council develops ballot language.** State law provides that, unless some other process is mandated by law, the County Attorney drafts the ballot title, the description of the proposed Charter Amendment, and the voting choices.¹⁰ County Code Section 16-16 mandates another process: “There shall appear in print on the voting machine or ballot, a ballot title of the proposed amendment which shall be prepared by the Council in such form as to present the purpose and substance of the amendment fairly and concisely.” At this stage of preparing the ballot question, State law provides an opportunity for the County Government to determine that a proposed Charter question is not legal. The State Election Code Section 7-102 states that a Charter amendment question qualifies for inclusion on the ballot upon “determination of the governing body . . . that a petition has

7. Maryland Constitution Article XI-A, Section 5.
8. Maryland State Election Code, Section 6-205.
9. Maryland State Election Code, Section 6-206.
10. Maryland State Election Code, Section 7-103.

satisfied all the requirements established by law. . . ”

The Court of Appeals has held that the ballot wording must constitute a “statement in understandable language” of the question submitted. This standard includes the concept that the ballot wording “must convey with reasonable clarity the actual scope and effect of the measure, if adopted.”¹¹

Divergence of Language

The ballot language developed by the Council in step seven is generally different from what is developed by the petition sponsor in step two. Sometimes these differences arise because the sponsor is trying to comply with different laws governing the language that must appear in documents used for two different purposes—convincing voters of the need for an amendment and producing neutral ballot language.

Sometimes the sponsor puts forward a proposed amendment because the Council can’t or won’t act. If the issue is particularly controversial, sponsors may disagree with the Council’s wording of the ballot description for the amendment. Petition sponsors have complained to the Commission that, after spending hundreds of hours gathering signatures for a proposed amendment, the Council can produce ballot wording that the sponsor views as unfavorable.

Would it be possible to have the actual ballot language agreed on much earlier in the process? Are State and County laws flexible enough to allow changes within the established process? Do we need to explore changes in County or State law to bring petition and ballot language into greater congruence?

11. Surratt v. Prince George’s County, 320 Md. 439, 447 (1990).

Michael Faden, Senior Legislative Attorney for the Council, in a memorandum to the Commission dated September 13, 2005, offers several reasons for the divergent language:

“The petition language and the ballot wording are legally two different things. Under State law governing the content of petitions to place a question on the ballot, both the signature page and the information page must contain ‘**a description of the subject and purpose of the petition.**’ The State law also requires the petition signer to be shown either the **full text** of the proposal or a **fair and accurate summary** of its substantive provisions. The required description and summary are not the official ballot wording. The ballot wording could be derived directly from either, although that has never been the County’s practice.”¹²

The County’s practice is exactly what may need to change. Mr. Faden’s memorandum goes on:

“The petition signer does not see the actual ballot wording. As the previous paragraph notes, the petition is not required to contain, and in my experience does not contain, the actual wording that appears on the ballot.”

Again, this is exactly the problem petition sponsors have brought to the Commission.

The memorandum continues as follows:

““The ballot wording must convey with reasonable clarity the actual scope and effect of the measure, if adopted.”¹³ This is the standard that the drafter of the ultimate ballot wording (in this County, the County Council acting under long-time County law) is legally required to meet. The Council is not free to put any wording they want, let alone biased wording, on the ballot. If the ballot is inaccurate, misleading, or incomplete, the Maryland courts can and will correct it before the election is held.”

In practice, there is little time for sponsors to pursue court action before the ballots are printed. If the ballot language is so critical, why not let the parties propose language meeting the tests outlined above much earlier in the process? There does not

12. Ibid.

13. Ibid.

appear to be State or County law precluding the development and approval of ballot language before signature gathering begins.

Recommendation

Proposed Process

The key question is how to engage the County Attorney and Council much earlier in the process, giving the sponsor the benefit of their input and deciding the final ballot language before beginning the expensive, laborious, and time-consuming process of collecting the 10,000-plus signatures currently required. Essentially, what would be required to accomplish this would be to move step seven (Council development of ballot language) forward in time to make it part of step three (early determination of sufficiency). There don't appear to be any timing requirements in either the Charter or the State Election Laws that would preclude moving the development of ballot language to an earlier point in the process. Thus, an opportunity for language congruence between petitions and ballots may be within our grasp and may not require either a Charter amendment or changes to the State Election Laws. These recommendations could lead to a more predictable process.

The modified process could be implemented as follows:

1) Sponsor decides to pursue a Charter amendment. The only change would be to the wording contained in the package distributed by the Board of Elections to the sponsor. The wording might change from "strongly suggesting" that the sponsor take advantage of an "early determination of sufficiency" process to "strongly advising" the sponsor to work with the Council to develop the actual ballot language. This change appears to be

entirely within the control of the Board of Elections, since it's only advisory to the petition sponsor and not a legal requirement.

2) Sponsor develops petition language. No change.

3) Optional determination of sufficiency. No change.

3A) County Council develops preliminary ballot language. The sponsor would next submit the proposed ballot language to the Council. Although not required by law, the County Attorney is typically involved in the process. The sponsor could also be involved in a cooperative dialogue about the ballot language as well. The resulting ballot language would be clearer to all involved and would be available for review or a legal challenge well in advance of any statutory limits, ballot printing, and the election.

4) Signature gathering. No change.

5) Conformance review. No change.

6) Mandatory determination of sufficiency. No change.

To fully implement this modified process, a change in County Code Section 16-16 may be necessary, especially if the Council is to be bound to the ballot title and the descriptive language it approves well in advance of the election. Without this change, the Council might be able to revise a ballot description it initially approves. The Commission voted (10-0) to advise the Council to explore the changes detailed above to limit potential discrepancies in petition language that identifies a particular ballot issue and how this issue is ultimately described to the voters at the polls.

3. NUMBER OF SIGNATURES REQUIRED TO PETITION A CHARTER AMENDMENT

Background

The Maryland Constitution, Article XI-A, Section 5, provides that amendments to county charters or the Baltimore City Charter can be proposed “by a petition signed by not less than 20 percent 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.” This provision was ratified in 1915.

The populations of the County and the State have increased greatly since 1915 and can reasonably be expected to continue increasing. As population numbers increase, 10,000 becomes an ever decreasing percentage of the population. Replacing this number with a percentage requirement may make more sense, as this would tie the number of signatures required to the population numbers.

To determine a reasonable percentage requirement, it’s useful to start by looking at the situation in 1915 to understand what 10,000 signatures represented as a percentage of the registered voters at that time.

Discussion

In 1915, Baltimore City was the most populous jurisdiction in Maryland. Since the County’s population and suburban character today are more like Baltimore City in 1915 than the rural counties at that time, it may be reasonable to determine the appropriate signature requirement for Montgomery County by analogizing it to Baltimore City.

The Commission was unable to find data on the number of registered voters in Baltimore City in 1915, so this number is estimated based on historical population data and current registration data.

The population of Baltimore City was 558,485 in 1910 and 733,826 in 1920, according to the U.S. Bureau of the Census.¹⁴ Averaging the 1910 and 1920 numbers results in an estimation that Baltimore City's population was approximately 646,156 in 1915.

The Montgomery County Department of Planning estimated that the County's population was 942,000 in January 2005.¹⁵ According to the County Board of Elections, in November 2004, the County had 517,170 registered voters.¹⁶ Thus registered voters were 55 percent of the County's population at the most recent election.

This percentage can be applied to the population of Baltimore City in 1915 to estimate the number of registered voters in 1915. Since women couldn't vote in 1915, we reduced this number by half, estimating that women represented approximately half of registered voters, which resulted in 27.5 percent. In 1915, if 27.5 percent of the population registered to vote in Baltimore City, there were 27.5 percent of 646,156, or 177,693 registered voters in Baltimore City. The resulting conclusion is that 10,000 was 5.6 percent of the registered voters in Baltimore City in 1915. For Montgomery County, based on the 2004 registration data, a 5.6 percent requirement would be 29,105 signatures.

14. U.S. Bureau of the Census. Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 To 1990, www.census.gov/population/www/documentation/twps0027.html.

15. www.mc-mncppc.org/research/data_library/population/po7.shtm.

16. www.montgomerycountymd.gov/siteHead.asp?page=http://www.777vote.org/.

If one argues that the relevant number for determining the number of signatures needed for a Charter amendment is the population being represented by the signatures, 10,000 was 1.5 percent of Baltimore City's population in 1915. In the County in January 2005, 1.5 percent of the population was 14,579, which was 2.8 percent of the registered voters.

Various opinions on this issue have been expressed on this Commission and at the public hearings. Some people argue that the requirement should be 5 percent because of the following: this is the County's Charter requirement for a referendum on legislation; changing the Charter shouldn't be easier than overturning laws; and this is the percentage requirement for third party candidates to be on the ballot in Maryland. Some argue for even higher percentages. Others argue that since it's so difficult to collect 10,000 signatures, the current level is a reasonable requirement as an absolute level of effort. They say that raising the requirement would weaken the ability of residents to affect how they are governed.

Some argue that the signatures required should be calculated as a percentage of the votes cast in the previous local election, instead of as a percentage of registered voters. Since the number of votes cast is a significantly smaller number, 5 percent of the votes cast works out to much less than 5 percent of the registered voters.

To reflect the population growth since 1915, and to account for future population changes, these analyses indicate that the Maryland Constitution's requirement of 10,000 signatures may need to be changed to a percentage requirement of about 2.8 percent or alternatively 5.6 percent of the registered voters in the County. The signature requirement question has been considered by the Commission over the years. Past

Commission reports have recommended that the Council petition the Montgomery County Delegation in Annapolis to introduce and to work for the passage of a Constitutional Amendment to increase the signature requirement. In 2004, the Commission voted to take no position because no legislation on this issue was introduced in the 2004 General Assembly session. In 2005, the legislation on this issue was withdrawn.

During the 2006 General Assembly session, the Montgomery County Delegation introduced a Constitutional Amendment, House Bill 991, which would have changed the signature requirement for petitioning Charter amendments. This proposal would have allowed the County to establish a signature requirement of not less than 5 percent and not more than 10 percent of the registered voters through the Charter Amendment process. Since the Montgomery County Delegation didn't push for action on this bill during the legislative session, it died in the House of Delegates Environmental Matters Committee without a hearing.

Recommendation

A majority of the Commission took no position on this issue; however, it believes that future Commissions should study this issue, if there is legislative momentum in the Maryland General Assembly to change the signature requirements.

4. IMPROVING ACCESS TO THE ELECTORAL PROCESS

Background

Although the issues are not within the strict purview of the Commission, during the course of its deliberations, Commission members discussed two additional proposals to improve access to the electoral process. The first proposal would create an incubator

project where individuals would increase their experience with local policy issues and which could ultimately lead to future candidates and elected officials. The Commission also discussed alternative voting methods as a way to enhance political and ethnic diversity in representation.

Discussion

Commission members and Councilmembers, especially Councilmember Praisner, discussed creating an incubator project to groom individuals for elected office. There is a need to identify and expand opportunities for County residents, especially representatives of political and ethnic minority groups, to acquire expertise regarding County issues, to achieve leadership positions in County-sponsored activities, and to gain experience in conducting political campaigns for public office, which could then improve an individual's ability to run for the Council or Executive offices. As Councilmember Praisner pointed out, such an approach could legitimately respond to some of the concerns about increasing the size of the Council.

During the Commission's discussions on this issue, it was noted that historically, one point of entry to County political service has been election to public office at the municipal level; however, only about one-third of County residents live in a municipality. In addition, it was noted that service on a County board or commission can enhance an individual's leadership skills and expertise with respect to the issues that constitute the agenda of a particular board or commission. However, as a general matter, appointments to such boards or commissions are not made based on whether an applicant has the leadership potential that might eventually lead to elected office. In this regard, Councilmember Praisner suggested that the current Regional Service Center Advisory

Boards might be restructured to serve as incubators for future County leaders, if careful consideration were given to the scope of their authority to participate in County affairs.

With respect to improving overall access to the electoral process, the Commission heard testimony and received materials from David Moon, Program Director, FairVote-Center for Voting and Democracy, an organization headquartered in Takoma Park, outlining a number of voting methodologies (*e.g.*, proportional voting, instant runoffs, etc.) used in the City of Takoma Park as well as other areas of the United States. According to FairVote, such alternative electoral systems significantly improve political and ethnic diversity in representation.

Recommendations

All members of the Commission believe that the Council and Executive should give serious consideration to developing more meaningful opportunities to develop a new generation of County leaders and elected officials, with particular attention given to attracting political and ethnic minority participation and involvement. The Commission supports creating an incubator project where individuals could gain experience dealing with local policy issues.

The Commission also recommends that the Council and Executive familiarize themselves with FairVote's materials, contained in the appendix (A-59), and consider whether one or more of the alternative voting methodologies warrants further study for possible implementation in the County.



APPENDIX



**Charter of
Montgomery County,
Maryland**

**Montgomery County
Government**

County Executive
Douglas M. Duncan

County Council

Phil Andrews
Howard A. Denis
Nancy Floreen
Michael Knapp
George L. Leventhal

Thomas Perez
Marilyn Praisner
Steven A. Silverman
Michael L. Subin

MONTGOMERY COUNTY CODE

**PART I.
THE CHARTER.***

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- § 104. Redistricting Procedure.
- § 105. Term of Office.
- § 106. Vacancies.
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- § 116. Legislative Procedure.
- § 117. Limitations.
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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 by law 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 by law 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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- 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 bylaw 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.

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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 ON COUNCIL STRUCTURE

Commissioners Habermeier, Reeder, Skelton, and Skolnick respectfully dissent from the majority report on Council structure. Although the County's existing Council structure can be effective for counties with smaller populations, recent and prospective developments in the County make it worth considering alternative structures for the Council similar to those adopted by other large counties. Our dissent should not be seen as a criticism of current Councilmembers because we are grateful for their valuable County service.

A case can be made for increasing the number of district seats. We believe that County Government will be more responsive to residents if it's based on local representation. Moreover, the Council's structure has not kept pace with the County's rapid population growth. The Council consists of members representing five districts, each with a greater population than a Maryland legislative district; and four at-large members, each representing more people than a member of the United States Congress.

Discussion

Advantages of Increasing the Number of Districts

If more districts were created, each district would be smaller and communication and representation could be improved. Smaller districts may enable Councilmembers to become more knowledgeable about district issues, and residents could become more familiar with their representatives.

At-large governance is appropriate when local governments represent smaller populations. In 2005, the Montgomery County Department of Planning estimated that the County's population was 942,000, which is larger than six states and the District of

Columbia. In addition, the County's population is 46 percent greater than it was in 1986 when the current system was adopted.

We believe that more districts may increase the chance for minority views to be represented. The percentage of the County's population belonging to ethnic groups has increased substantially since the current system was adopted.

Advocates of four at-large seats argue that a resident with five points of access to the Council (one district representative plus four at-large representatives) is in a better position to influence County Government than a resident with only one district representative. This proposition is only true for residents who share concerns with a large group, since large numbers of votes matter in at-large elections. For individual residents, influencing an at-large member is very difficult, since one vote is an extremely small percentage of the votes in an at-large race.

We believe that smaller districts make it easier to run for office because costs are reduced and there is less ground to cover. Smaller districts could increase the possibility of political and ethnic minority representation and could foster more constituent involvement.

Public Support for More Districts

This Commission has received testimony from civic groups, ethnic groups, former public officials, and residents in favor of increasing district representation on the Council. At a public forum in 2003 and at two public forums in 2005, most of the testimony favored increasing the number of district seats, including the testimony of former County Executive and former Councilmember Neal Potter, who favored 9 district and no at-large seats. Former Councilmember Isiah Leggett proposed a Council structure of eight district

and three at-large members. Councilmember Steven Silverman proposed a Council with seven district members and six at-large members.

Evidence from Other Counties

In 2005, this Commission reviewed a sample of County government structures based on the sample developed by the 2002 Committee to Study Compensation. This list is composed of counties across the United States that were similar to the County in affluence, population, and suburban character. This Commission found that representation by district (with no at-large seats) dominated the sample. Of the 13 counties surveyed, nine had only district members, two had only at-large members, and two had mixed representation (with more district than at-large members).

The Montgomery County Civic Federation provided the Commission with a report from the Government Performance Project of Syracuse University.¹ This report gave the County a grade of B. The top-rated county, Fairfax, has only one at-large councilmember. The Maryland county with the second highest rating, Baltimore, has all district members. Of the nine charter counties in Maryland, six have councils elected exclusively by district; one is governed by an at-large council; and two (including Montgomery County) have mixed representation.

Recommendation

We believe that the information before this Commission indicates that to better represent the large and diverse population of the County, the Council structure should be changed to include more district and fewer at-large seats. The number of residents represented by each Councilmember is simply too large. The voters should have the

¹ It should be noted that the Commission did not perform a detailed analysis of the criteria used to rate each county.

opportunity to consider changing the structure of the Council in the 2006 General Election.

Council Structure Information for Nationwide Counties Similar to Montgomery Co, MD

County	Population 2005	Council Size	Population per CM	District or At-large	County Budget * (000s)	Council Budget *	Outside employment permitted	Part-time or Full-time Job	Salaries * For position
Baltimore Co, MD	754,292	7	108,700	All district	\$ 2,200,000	\$ 1,600,000	Yes	Part-time	\$50,000 Chair
Bergen, NJ	884,118	7	126,303	All at-large	\$ 400,000	\$ 1,000,000	Yes	Part-time	\$45,000 CMs \$28,263 Chair
DuPage, IL	904,161	18	113,990	All district	\$ 463,200	\$ 1,530,491	Yes	Full-time	\$27,263 CMs \$101,856 Chair
Fairfax, VA	969,749	10	92,500	9 dist./ 1 at-large	\$ 5,075,000	\$ 3,671,000	Yes	Not clearly defined	\$46,305 CMs \$59,000
Hennepin Co., MN	1,116,200	7	159,457	All district	\$ 1,838,777	\$ 1,850,000	Yes	Full-time	\$72,340 Chair
King County, WA	1,737,034	13	138,461	All district	\$ 3,400,000	\$ 12,600,000	Yes	Full-time	\$68,118 CMs
Lake, IL	646,356	23	28,015	All district	\$ 402,000	\$ 1,200,000	Yes	Not clearly defined	\$110,195
Mecklenburg, NC	695,454	9	93,000	6 dist./ 3 at-large	\$ 1,200,000	\$ 334,000	Yes	Part-time	\$68,000 Chair \$34,000 CMs
Montgomery, PA	750,097	3	250,032	All at-large	\$ 476,100	\$ 1,500,000	Yes	Part-time	\$25,003 Chair \$20,002 CMs
Oakland, MI	1,194,156	25	47,766	All district	\$ 620,500	\$ 2,800,000	Yes	Part-time	\$78,815 Chair \$76,042 CMs
Palm Beach, FL	1,131,184	7	161,598	All district	\$ 3,800,000	\$ 2,976,623	Yes	Part-time	\$31,000
San Mateo, CA	707,161	5	141,432	All district	\$ 1,450,000	\$ 1,250,000	Yes	Full-time	\$84,384
Westchester, NY	923,459	17	54,321	All district	\$ 1,600,000	\$ 3,315,000	Yes	Full-time	\$79,000
Montgomery, MD	873,341	9	97,038	5 dist./ 4 at-large	\$ 3,000,000	\$ 6,700,000	Yes	Part-time	\$68,060 CP \$43,060 CMs
							Yes	Not clearly defined	\$82,222 Chair \$74,747 CMs

*As of 2005

Source: County governments.

To: Charter Review Commission

From: Isiah Leggett

Re: County Council Elections

Date: February 15, 2005

In 1986, when I was first elected to the County Council as one of two at-large members, the Council was composed of seven members. Five members were elected from Council districts and two were elected at-large. In reality, the five Council members elected from the districts were in essence also elected at-large. The district council members simply had to live in a particular geographical area, but everyone in the county voted for the district Council members as well as the at-large members, similar to the current school board election system.

Following the election of 1986, the county had a very significant debate regarding the manner in which Council members were elected. There was much discussion in the county from a variety of sources regarding the size, composition, and a number of related issues on this subject. After careful deliberations and evaluations of this matter, I proposed to change the Council composition by increasing the size from seven to nine members. Three at-large Council members and six from geographical districts would be elected solely by the residents living in the districts. This proposal was debated thoroughly by all interested parties, but many in the business community at that time were resistant to any change from the existing seven member council. In order to obtain sufficient support from all parties involved in the debate on the proposed change, I co-sponsored for referendum the legislation for the current system of four at-large and five geographical district Council members. Voters overwhelmingly approved. When we proposed the current system in 1986, the Council clearly stated that the proposal should be viewed as a temporary measure and the matter would be revisited after a couple of elections. The Council specifically argued this point because they knew at the time the number of districts and the at-large seats would have to be adjusted for the anticipated population increases and shifts in the geographical distributions of citizens throughout the county.

In 1994, after a review of the population changes and responding to the council's earlier call to revisit the matter, I proposed for Council consideration, an increase in the number of council members from nine to eleven. The 1994 proposal recommended that we have eight members elected from Council districts and three at-large members. At the time, I also proposed that the Council president be elected directly by the citizens from one of the three at-large seats. This latter proposal is not included in the current changes I am recommending at this time. This matter was discussed by the Council and we were not able to agree on a particular change or, as some argued, whether we should alter the current system at all.

I remain convinced that we must change the current four at-large and five districts member system in the county. **The proposal I believe that is in the best interest of the county at this time is to simply increase the size of the council from nine to eleven members with three elected at-large members and eight elected from council districts.** Maintaining at least three at-large members ensures that we have adequate balance regarding the potential impact council decisions will have on the county as a whole. Increasing the number of district seats will begin to address the many valid arguments that have been made recently about the size and make-up of the current five districts seats. I believe that there is some merit in the arguments of those seeking to change the current system regarding the negative impacts on inclusion, diversity of the council, campaign cost, etc. These arguments need to be addressed.

When the current council election system was first proposed in 1986, the average size of a council district was about 110,000 citizens. Today that number is approximately 185,000 and growing, and, if not adjusted in some way, it will soon reach 200,000 per district. The large number of residents per Council member in each district and the vast geographical areas they represent is highly unusual for council bodies of our type in the country. It is clear to observe that the current district seats are spread over very large geographical areas; they are not compact, and given the size of these districts, it is difficult for candidates to compete without large sums of monies. It is even more difficult to develop competitive grassroots campaigns in such large districts. The record is unmistakable that the current system has a negative impact on minority candidates. We have elected only two minority persons to the council in the county's history. It is also noteworthy that relatively few minority people have actually run for the county council. Clearly this is not because we do not have worthy or qualified minority citizens who could properly serve on the county council if elected. Generally, they decided not to run because it is too costly and our council districts are too large and not compact. Any change that adds additional smaller council districts seats certainly will impact positively the number and competitiveness of minority candidates running for the council. Some have argued that increasing the council size by only three district seats for a total of eight seats is not worth changing at all because it only represents a small reduction in the number of citizens in a district and many of the negative problems associated with the current system will continue to exist. This position does not fully comprehend the problem and is not realistic when you evaluate the campaign plight of our diverse population in potentially tough primary elections.

I believe that increasing the size of the council from nine to eleven members with three at-large and eight members elected from districts is in the public's best interest. This recommendation is one that I have carefully examined and earlier suggested as part of my original proposal in 1994. I respectfully request that you carefully reconsider this proposal at this time in order to help resolve this important issue for the citizens of Montgomery County.



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

STEVEN A. SILVERMAN
COUNCILMEMBER

MEMORANDUM

October 17, 2005

To: Charter Review Commission

From: Councilmember Steven Silverman

Subject: Structure of the County Council

I welcome the Commission's review of the current structure of the County Council. Our current system of representation has been in place since 1990, a decade and a half ago. During that time the County population has increased from about 750,000 residents to well over 900,000 today. We are on our way to becoming a jurisdiction of 1,000,000 people. In addition, as we know, Montgomery County has become increasingly diverse. In 1990, the population was approximately 77% white, 12% African American, 8% Asian, and approximately 8% Hispanic/Latino. The 2000 census reflected the increasing diversity of our County: the population was 68% white, 15% African American, 11.3% Asian, and 11.5% Hispanic/Latino. The trend of increasing diversity continues and it enriches the quality of civic life in Montgomery County.

A mixed system of At-Large and District Councilmembers has served our residents well. Each resident has a **majority** of the members of the County Council who are directly accountable to him or her. That is a fundamental principle of accountability that should be retained.

I would like to propose an increase in the size of the County Council to thirteen (13) members, with 7 elected by District and 6 elected At-Large.

I believe this proposal addresses a number of issues. Increasing the number of Councilmembers will provide more opportunities to elect members reflecting the diversity of our County. It increases the opportunities for women and minority candidates to run and get elected. It responds to the concerns that have been raised that the current districts are too large in population, creating challenges for residents to communicate effectively with Councilmembers on the range of issues facing the County and to receive prompt and thorough constituent assistance. At the same time, my proposal retains the fundamental and essential balance of At-Large and District Councilmembers. **It retains the core principle that every resident should have a majority of the Council directly accountable to him or her.**

Memorandum
October 17, 2005
Page 2

I believe our mixed system of District and At-Large Councilmembers has served the County well. It has ensured attention to both issues of countywide significance and important district concerns. Given the significant increase in the County's population over the last 15 years, I agree that the size of the Council should increase so that we can better serve all of our residents and the wide range of issues and concerns facing Montgomery County.

A Council structure with 7 District Councilmembers and 6 At-Large Councilmembers meets the twin tests of maintaining fundamental accountability principles while responding to the increasing size and diversity of our County. I hope you will support it.

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APPROVED 3/3/05

**CHARTER REVIEW COMMISSION
PUBLIC FORUM**

**Thursday, February 17, 2005; 7:30 p.m.
3rd Floor Conference Room
Council Office Building**

Minutes

Commission Members Present:

Kenneth Muir, Chair
Barbara Smith Hawk, Vice Chair

Julie Davis
Mollie Habermeier
Cheryl Kagan
Michael McKeehan
Randy Scritchfield
Robert Skelton
Shelton Skolnick

Staff:

Sonya Healy, Legislative Analyst
Carol Edwards, Legislative Services
Coordinator
Justina Ferber, Legislative Analyst
Marc Hansen, Chief, Division of General
Counsel, Office of the County Attorney
Joe Beach, Assistant Chief Administrative
Officer

Commission Members Absent:

Sylvia Brown Olivetti
Javier Miyares

The Chair of the Charter Review Commission, Kenneth Muir, welcomed the speakers and guests to the public forum. The Chair spoke briefly about the background and purpose of the Charter Review Commission, and mentioned that it is a bipartisan Commission appointed by both the Executive and the County Council. The Commission would like comments on the following issues: 1) whether the State Constitution should be amended to increase the number of signatures required to petition a County Charter amendment; 2) how the County's current budget process could be improved; and 3) whether residents have any other suggestions for achieving the goals sought by the three unsuccessful initiatives on last November's ballot (changing the size and composition of the Council, placing term limits on the Executive and Councilmembers, and preventing the Council from overriding the tax cap). The Commission's next report will go to the Council in May 2006.

The following speakers testified:

1. Dale Tibbitts – Chairman, Vote YES on C

Dale Tibbitts, representing Vote Yes on C, testified that his organization recommends changing the composition of the Council to 9 single-member districts. The organization supports 9 single-member districts because the County's population has grown enormously and the cost of campaigning countywide is more expensive. Mr. Tibbitts testified that the number of signatures

required to put a charter amendment and referendum on the ballot should remain at 10,000 because of the complications and difficulty to collect them.

Commissioner Skelton asked Mr. Tibbitts if he had an opinion on former Councilmember Ike Leggett's proposal to change the number of Councilmembers to 11. Mr. Tibbitts reiterated his position to make the Council 9 single-member districts.

2. *Rich Parsons – President, Montgomery County Chamber of Commerce*

Mr. Parsons stated that better democracy, not more ballot questions, should be the goal of any proposed changes. Mr. Parsons testified that the Chamber of Commerce recommends that 20 percent of registered voters should be required to put an amendment to the Charter on the ballot. Mr. Parsons commented that there is an imbalance between the County Executive and the County Council in the budget process. He supports limiting the Council's discretion on the budget and giving the Executive more authority. He thinks that the Executive should play a larger role in the land use/master plan process and that the Charter is heavily weighted in favor of the Council in this area. He sees no advantage to 9 single Councilmember districts and recommended leaving the structure of the Council unchanged, with 4 districts and 5 at-large representatives.

Commissioner Habermeier asked Mr. Parsons which signature requirement he supported: 20 percent of registered voters in the County or 25,000 voters, as also mentioned in his testimony, since 20 percent of registered voters would be over 100,000 voters. Mr. Parsons maintained that he supported the 20 percent requirement and feels that the bar should be set high. He also stated that a ballot question should only be used in extraordinary cases.

Chairman Muir asked Mr. Parsons to comment on the General Assembly's proposal on the number of signatures being a local option. Mr. Parsons said that the Chamber supports the proposal.

Commissioner Kagan asked Mr. Parsons to comment on the fact that the County Executive has less authority in the County's budget process than the Governor has in the State's budget process. Mr. Parsons reiterated the Chamber's position that the Executive should have more authority in the budget process, but prefers a middle ground approach between the State and County processes. He is in favor of requiring a supermajority on budget beyond the Executive's budget. He pointed out that since the 1980's the Executive has no land use authority or authority to appoint Commissioners to the Planning Board.

3. *Wayne Goldstein*

Mr. Goldstein commented on the fact that the Ficker Amendment, Question C, received approximately 40 percent of the vote in favor of increasing the number of signatures to place a charter amendment on the ballot. He encouraged the Commission to take another look at the issue and made the following recommendations:

- Read about the Government Performance Project and the 75 largest counties and cities in the country to see if a correlation exists between the grades that jurisdictions earned and the makeup of their legislatures.
- Explain why 16 jurisdictions in this study that use a mix of district and at-large legislators do it 16 different ways. Get factual reasons why one of these ways might be better than any of the others, for Montgomery County.
- Study what previous Commissions discussed in 1984 and 1986, particularly page 15 of the 1986 Commission's report that recommended creation of some districts because of: (1) population increase now and in the future since the Council was first created; and (2) the difficulty and expense for minorities to run countywide for the Council, discouraging minority candidates.

Mr. Goldstein testified that he is not in favor of giving the County Executive the same budget power as the Governor. He feels that this would decrease accountability for both branches of government. The current structure of frequent Council public hearings and worksessions gives the civic community a chance for more involvement in the process.

4. *Arnold Gordon – President, Norbeck Meadows Civic Association*

Mr. Gordon testified that in theory, the balance of power between the Council and the Executive and the checks and balances that result are generally satisfactory. However, he commented that the Council, because of the large constituencies each of its members represent, has become beholden to the County Executive. He suggested that the Commission recommend reducing the number of at-large districts and create eleven or more individual districts to reduce the influence of campaign money. Mr. Gordon endorses Mr. Leggett's position to have 8 districts and 3 at-large seats. He thinks that smaller constituencies will permit closer relationships with Councilmembers, encourage accountability, foster more direct representation, and facilitate more minority representation. He is not in favor of increasing the number of signatures required to place a Charter amendment on the ballot and does not support Mr. Parson's 20 percent requirement. Mr. Gordon is not in favor of giving the Executive more authority. He maintains that the citizens of Montgomery County would rather have a weak County Executive, and suggested that the Executive position should only have the level of power given to a County manager.

Commissioner Kagan asked Mr. Gordon if having more than one Councilmember represent Olney (GOCCA) works well. Mr. Gordon testified that his community finds it difficult to be heard when three Councilmembers are involved in vital decisions that affect Olney. He feels that a smaller constituency will allow for closer relationships with the Councilmembers and greater accountability.

Mr. Gordon was asked how many people are in his organization. He replied that there are 75 people in the Norbeck Meadows Civic Association.

5. *Cary Lamari*

Mr. Lamari testified that there is a problem with the current system of electing the County Council which has led to an imbalance in the decision-making process in the County. He believes the system is heavily slanted toward money interest particularly in the development community because of the cost of running for election. The expense of campaigning especially as an at-large candidate deters many talented and well-qualified citizens from running for public office. He commented that increasing community representation and increasing the number of Councilmanic Districts would reduce the cost, would open up the opportunity for minority citizens to run for office, create a closer relationship between citizens and elected officials and increase accountability of these officials. Mr. Lamari supports increasing the Council to 11 members – 9 districts and 2 at large.

On the issue of signatures, Mr. Lamari remarked that it is an incredible task to collect 10,000 signatures to place a Charter amendment on the ballot. He stated that increasing the number of signatures will diminish citizens' ability to express themselves, and he does not support a change.

Commissioner Kagan asked Mr. Lamari if he had to choose between more Council districts or the number of signatures, which he would choose. Mr. Lamari stated that he would prefer to have more districts, but still thinks the signature issue is important.

6. *Richard Zierdt – Treasurer, Randolph Civic Association*

Mr. Zierdt testified that the Executive Committee of the Randolph Civic Association voted unanimously to oppose increasing the number of signatures required to place an amendment on the ballot. He remarked that collecting 10,000 signatures is a difficult task and if anything, the number of signatures required should be lowered. Mr. Zierdt stated that "if the concern is that 10,000 voters is much smaller than 20 percent of registered voters, the percentage to reflect the increase in population should be lowered. The Randolph Civic Association recommended that both percentages be lowered to 2 percent or 8,000 registered voters, whichever figure is lower.

Commissioners asked how many households the Randolph Civic Association represents. Mr. Zierdt replied that the Association represents 1,340 households, 6 are on the Executive Committee.

7. *Marvin Weinman – Representing Montgomery County Tax Payers League*

Mr. Weinman testified that the right of petition must be reserved. Petitioning gives the citizens of Montgomery County the opportunity to be involved in the governmental process and to have their voices heard on matters that impact the quality of life as residents in the County. The

League opposes increasing the signature requirement over 10,000, because the opportunity for future petitions for referendum from civic groups would be almost impossible.

On the issue of improving the budget process, Mr. Weinman stated that the suggestion to give the Executive budget and revenue authority, similar to the Governor would not be an improvement. From the League's perspective, the budget and revenue process would be improved by implementing changes rather than delegating authority. Over the last 6 months, increased cooperation between the County Executive and the Council has improved the process.

Mr. Weinman suggested that the Commission, before making any recommendation on these issues, clearly identify the problem the Commission is trying to solve and the benefits derived by the citizens of the County if the recommendations are implemented.

8. *Yale Wiesberg – The New Democratic Policy Network of Montgomery County (NDPN)*

Mr. Weisberg testified on the composition of the County Council. While he stated that the current system is not broken, his group offered two suggestions to improve the Council. The New Democratic Policy Network suggested: (1) increasing the Council to 11 members, with 6 elected by district and 5 elected at-large, or (2) increasing the Council to 13 members, with 7 elected by district and 6 elected at-large. NDPN believes that this change would lead to a more diverse Council, giving women, minorities, and Republicans a greater chance to be elected. NDPN does not support going to all district with no at-large members.

Mr. Weisberg indicated that the Policy Network's Board had not taken a formal vote on their recommendations.

The New Democratic Policy Network consists of 75 members with 9 serving on the Executive Board.

9. *Dan Wilhelm – Representing Montgomery County Civic Federation*

Mr. Wilhelm stated that Councilmembers are accessible and very receptive to meeting with the public. The Civic Federation was responsible for collecting signatures to place Question C on the ballot and encouraged citizens to vote for it. Since the population has increased significantly since 1986, the Civic Federation takes the position that under the current system, Councilmembers represent too many people to effectively know their views and represent them. Question C would have significantly reduced the number of people the at-large Councilmembers represent from about one million to approximately 120,000. The Civic Federation also supported Question C because of the high cost to run a countywide campaign. At-large candidates must get contributions from large donors because of the high cost of running for office, and the Civic Federation's believes that generates too much undue influence.

On the issue of required signatures for a Charter amendment and placing a referendum question on the ballot, the Civic Federation urges that the number for both be 10,000. Mr. Wilhelm also

commented on the difficulty and time commitment associated with collecting signatures. On the issue of all districts versus district and at-large representation, the majority of the Civic Federation supports 9 Councilmember districts.

Commissioner Davis reminded the Commission that in the 1984 election, the main obstacle to having all districts was that voters did not want to give up their right to vote for more than one person. All districts means you only get to vote for one representative. Under the current structure, everybody gets to vote for all Councilmembers. Commissioner Davis asked if the Civic Federation would support an increase in Council seats that maintained some type of balance with at-large seats. This alternative could reduce the size of districts, but maintain a mix of representation. Mr. Wilhelm stated that the Civic Federation has no position at this time on this particular proposal, but generally favors all district representation.

10. *Doug Prouty – Vice President of Montgomery County Education Association*

Mr. Prouty stated that he was not only speaking for MCEA, but also on behalf of public employee unions: SEIU Local 500, UFCW Local 1994, and the Montgomery County Career Fire Fighters Association. The public employees' unions support amending the State Constitution to replace the 10,000 signature requirement with a 20 percent of registered voters requirement. The unions feel that 20 percent is a more logical requirement, would set a higher bar for petitions and ensure that the number of signatures required would adjust for changes in population growth.

The unions oppose changing the County budget process. They feel that the current system reflects the checks and balances needed in our system of government and that placing too much power in one branch would fundamentally weaken the government.

Mr. Prouty stated that the unions are troubled by the Commission's decision to revisit the three ballot initiatives that the citizens of Montgomery County rejected in the November election. The unions' position is that if these ballot initiatives had merit, then the voters would have passed them.

Commissioner Skolnick commented that the unions had campaigned to defeat the ballot questions and asked Mr. Prouty how much his union contributed. Mr. Prouty guessed that the figure was approximately \$25,000.

Chairman Muir stated that in the past, the unions had been against raising the number of signatures and asked for the unions' current position. Mr. Prouty stated that the firefighters are in favor of raising the signature threshold.

11. *Nancy Soreng – League of Women Voters of Montgomery County*

Ms. Soreng testified that in December of 2003, before the Charter Review Commission, the League of Women Voters supported a County Council that is elected at large with some members running from districts. The Board participated in a coalition to defeat the ballot

measure that would have replaced at-large Councilmembers with members elected by residents of new Councilmanic districts. Ms. Soreng commented that since the voters rejected the idea of changing to an all district Council, she was surprised that the Commission is seeking comments on the issue again. However, since there is interest by some groups in the County to revisit this issue again, the League decided to restudy the composition of the Council. The League has also decided to study the issue of whether a councilmember position is a full time job. The League's Board will review the proposals and present recommended study items to its membership for a vote in May. The League will study these items, produce a fact sheet, and meet to come to a consensus and either reaffirm or revise their position. At present, the Board's general sentiment is that the Charter serves the County well and the group does not have any recommendations for change.

Commissioner Skolnick asked how much the League spent to participate in a coalition to oppose the ballot questions. Ms. Soreng stated that the League's advocacy group contributed \$500.

12. Peggy Denis

Ms. Denis testified that she is in favor of smaller local government. Ms. Denis commented on the difficulty of collecting signatures and opposed increasing the number of signatures needed to put an amendment on the ballot. She does not agree with Ike Leggett's proposal of 8 single member districts and 3 at-large because of the expense associated with running for an at-large seat. However, she would support 9 single-member districts or 9 single-member districts and one at-large seat, with this seat being reserved for the Council president.

13. George Sauer

Mr. Sauer commented that not only does he not believe in increasing the number of signatures needed for a Charter amendment, but suggested that it be cut to 5,000. He would support using a percentage of the population versus a set number of signatures.

The forum adjourned at 9:10 p.m.

Approved 11/17/05

**CHARTER REVIEW COMMISSION
PUBLIC FORUM**

Monday, October 24, 2005; 7:30 p.m.

**7th Floor Hearing Room
Council Office Building**

Minutes

Commission Members Present:

Kenneth Muir, Chair
Julie Davis
Mollie Habermeier
Michael McKeehan
Robert Reeder
Robert Skelton
Shelton Skolnick
Sally Sternbach

Commission Members Absent:

Barbara Smith Hawk, Vice Chair
Cheryl Kagan
Randy Scritchfield

Staff:

Sonya Healy, Legislative Analyst
Carol Edwards, Legislative Services
Coordinator
Marc Hansen, Chief, Division of General
Counsel, Office of the County Attorney

INTRODUCTORY COMMENTS

The Chair of the Charter Review Commission, Kenneth Muir, welcomed the speakers and guests to the public forum. The Chair spoke briefly about the background and purpose of the Charter Review Commission and mentioned that it is a bipartisan Commission appointed to serve a 4-year term.

The Charter is the County's constitution for County Government. The Charter Review Commission makes recommendations to the Council for possible Charter amendments; however, the Council may or may not approve putting the proposed amendments on the General Election ballot which would be voted on in November 2006. The Commission has had some preliminary discussions on possible amendments but has come to no conclusions.

General comments are welcomed, but the Commission asked for specific recommendations on the following issues: 1) Council structure – number of members; mix of districts and at-large seats; 2) if the Charter should specify that being a Councilmember is a full- or part-time job, and whether or not to prohibit outside employment; 3) whether the State Constitution should be amended to increase the number of signatures required to petition a County Charter amendment; 4) if the County's process for reviewing petition language should require a final determination on ballot language before signatures are collected, and 5) clarifying the timing of an Executive veto and deadlines for Council transmittal of legislation.

The Commission is required to issue a report to the Council in May of even years. The next report is due in May 2006.

SPEAKERS

1. Georgette Godwin – representing Montgomery County Chamber of Commerce

Ms. Godwin testified that the Chamber supports the current structure and size of the County Council, with four at-large members and five district members. The Chamber believes that the current size and structure of the County Council provides for both district and countywide representation of, and responsiveness to, the County's residents.

The Chamber believes that eliminating or reducing the relative number of at-large County Council positions would significantly reduce the level of representation each individual resident currently enjoys. The Chamber takes the position that reducing or eliminating the number of at-large Council positions would increase parochialism and political horse-trading during budget deliberations.

The Chamber supports maintaining the current approach, which is that the Council positions should remain part-time, reducing the likelihood that the Council will evolve into a managerial entity. The Chamber believes that having Council positions remain part-time would constrain the cost of government on taxpayers.

The Chamber supports increasing the number of signatures required to petition a County Charter amendment to reflect the County's population growth.

The Chamber supports maintaining the current process for drafting ballot language because 1) changing it would reduce the government's accountability to the public; and 2) the change does not identify a timeline or a process for resolving any disagreement between the petitioner and the County.

Commissioner Davis asked Ms. Godwin what ratio (at-large versus district) the Chamber would support in the proposal to increase the size of the Council. Ms. Godwin responded that the Chamber would be more inclined to comment when the Commission has a specific proposal.

2. Neal Potter – Former County Executive and County Councilmember

Mr. Potter testified that he prefers to keep the position of Councilmember as a part-time position, so individuals could continue outside employment. If a person runs for office and loses, he/she needs to have another form of employment to rely on.

Mr. Potter commented that the population of the County has increased significantly and it is beginning to cost far more for at-large candidates to run for office. He noted that having all-district representation on the Council would mean smaller groups for Councilmembers to reach and be less expensive to represent. If each of the 9 districts were half the size they are now, this would give voters more personalized representation.

Commissioner Sternbach asked Mr. Potter if he supports increasing the size of the Council. Mr. Potter responded that 9 Councilmembers are enough and the current system works. Increasing the size of the Council would create a need to enlarge staff and office space which would result in increased cost.

Commissioner Davis stated that the previous Charter Review Commission had recommended that the Council be recognized as a full-time job for compensation purposes. Councilmembers could continue to have outside employment but the Ethics Commission would oversee that issue. Commissioner Davis asked Mr. Potter if he supports recognizing the Council as full-time with no prohibition on outside employment. Mr. Potter commented that the Council should be paid on a full-time basis but doesn't want to limit individuals from running because they have outside jobs. He feels that the Commission's prior recommendation on this issue seems fair because people cannot afford to take the risk of the expenditures involved to run for the Council. The proposal may provide a means for the average person to run for office.

Chairman Muir asked Mr. Potter why he would support an all-district Council when the voters voted against this approach in the last election. Mr. Potter responded that voters need to be better educated about the proposal, so they can understand the benefits of more district representation.

3. Richard Zierdt – representing Randolph Civic Association

Mr. Zierdt testified on behalf of the Randolph Civic Association. In regard to the structure of the Council, the civic association believes that the County Council should be entirely locally-elected. The association does not agree that all-district representation leads to parochialism and finds no evidence that at-large elected county governments are any better in governing than those that are locally-elected.

In regard to the requirement to have 10,000 signatures to petition a Charter Amendment, Mr. Zierdt stated that signatures are difficult to collect. Raising the minimum will weaken the one tool citizens have to direct how they are governed. On the congruency of ballot language, Mr. Zierdt testified that it would be better to have ballot questions decided before they are circulated.

Commissioner Skolnick asked Mr. Zierdt to comment on the proposal to increase the size of the Council. Mr. Zierdt responded that the current number of Councilmembers (9) is enough.

4. Arnold Gordon – President, Norbeck Meadows Civic Association

The Norbeck Meadows Civic Association views the balance of power between the Council and the Executive as being generally satisfactory in theory. In practice however, the Association believes that because of the large constituency the Council represents, each of its members have become beholden to the Executive. The association is concerned about the influence of campaign funds from construction and developer interests that are given to Councilmembers. The Association supports eliminating at-large districts and creating 9 or more individual districts (or 8 districts and 3 at-large). Smaller districts decrease the influence of campaign funding over

election outcomes. Campaigning in smaller districts takes less money, is more personal, and permits more one-on-one contact and communication with candidates. Smaller districts permit closer relationships with Councilmembers and greater accountability.

Norbeck Meadows Civic Association supports Councilmanic positions as full-time status provided no outside employment is allowed.

The Association is opposed to increasing the numbers of signatures required to amend the County Charter. It is difficult to collect 10,000 and more than 10,000 would present an impossible obstacle and prevent people from expressing dissatisfaction with the status quo.

Commissioner Skolnick asked Mr. Gordon if his association plans to work on a petition to change the structure of the Council (8 district and 3 at-large) on the ballot. Mr. Gordon replied that at this point, the Association probably will not work on a petition.

5. Ron Resh – representing The Greater Bethesda-Chevy Chase Chamber of Commerce

Mr. Resh testified that the Bethesda-Chevy Chase Chamber of Commerce supports the present size and composition of the Council and believes that it works well. It minimizes parochialism and balances the desirability of local representation against the need for a broader countywide approach on issues before the Council. The Chamber is convinced that the success of many of the Chamber's key issues rest on the balance between district and at-large representation on the Council.

On the issue of a full-time versus part-time Council, the Chamber supports the current Charter provision which does not specify that membership on the Council should be a full-time position. The voters adopted this position, and the Chamber sees no valid reason to change it at this time. Mr. Resh's testimony states that "by not precluding members of the Council from pursuing outside employment interests and activities as time permits and as they see fit, we retain an important opportunity for them to share everyday experiences with residents and taxpayers of the County."

The Chamber sees no reason for the disparity between the petition signatures required for a charter amendment (20 percent or 10,000) and those needed for a referendum (5 percent or slightly more than 27,000). The Chamber believes that the 1915 Charter amendment provision is outdated and should be in line with the more recent referendum requirement.

In regard to the congruency of ballot language, the Chamber supports the current system and believes it should remain unchanged. The Chamber believes that ballot language should be clear and concise and should accurately reflect the full extent of the proposed amendment. However, the Chamber is concerned about any change that would compel the County Attorney and the County Council to commit time and resources to develop language prior to the collection of signatures.

6. Dale Tibbitts – representing Montgomery County Civic Federation

Mr. Tibbitts testified that the Civic Federation supports changing the County Council representation to 9 single-member districts and no at-large districts. The Civic Federation believes that the at-large races have become too expensive and have created more special interest contributors (developers and land use attorneys). In turn these special interest contributors appear to exert undue influence on County policies and actions. The Civic Federation believes that 9 smaller, community based districts will create the best, most representative form of local government for the residents of Montgomery County.

The Civic Federation does not advocate increasing the Charter amendment signature requirement. Mr. Tibbitts emphasized the difficulty and the immense amount of time involved to collect 10,000 signatures. The Civic Federation also advocates for congruency of ballot language and believes that the procedure needs to change.

The Civic Federation would like the Commission to review the Government Performance Project study by the Maxwell School of Citizenship and Public Affairs.

Commissioner Skelton asked Mr. Tibbitts if the Civic Federation has a position on the 8 district, 3 at-large proposal for the structure of the Council. Mr. Tibbitts responded that the Civic Federation's current position is to have 9 all districts and no at-large seats.

Commissioner Reeder asked if the Civic Federation had a position on the issue of full-time versus part-time. Mr. Tibbitts replied that the Civic Federation has no position on this issue.

Commissioner Skolnick asked Mr. Tibbitts if the Civic Federation plans to have another citizen petition drive for the next election on the structure of the Council. Mr. Tibbitts replied that the Civic Federation has not made a decision on another petition drive.

7. David Moon – Program Director for Fair Vote: The Center for Voting and Democracy

The Center for Voting and Democracy is a national non-partisan, non-profit organization based in Takoma Park that studies elections and advocates reform to promote increased participation and fair representation. The organization has been in existence for 13 years.

FairVote would like the debate about the structure of the County Council to move in a direction other than the single-member districts versus the at-large, winner-take-all system. Fair Vote believes that single member districts: 1) impose geography as the main factor in representation; 2) force governments to prioritize local representation over the benefits of having candidates seek countywide support; and 3) can grant political power unevenly.

Commissioner Habermeier asked Mr. Moon if FairVote has a position on the signature issue. Mr. Moon stated that FairVote has no position on the signature issue.

8. Peggy Denis

In regard to the issue of the number of signatures required to petition a County Charter amendment, Ms. Denis testified that it is difficult to collect signatures. However, people are willing to sign the petition once they understand what it is about. She commented that most of the voters do not know who their at-large Councilmembers are. She believes that at-large Councilmembers represent special interest groups rather than the people.

9. Marvin Weinman – representing Montgomery County Taxpayers’ League

The Taxpayers’ League believes that raising the number of signatures required to petition a County Charter amendment would virtually eliminate the opportunity for the public to collect approximately 26,000 signatures and deprives individuals of basic rights. The League believes that this would create a situation where only deep-pocketed special interest groups could afford to successfully petition for Charter amendments. The Taxpayers’ League asks the Commission not to recommend this issue for legislative consideration.

Mr. Weinman testified that the current size of the Council provides adequate representation. Electing four additional Councilmembers does not guarantee better public representation. He testified that increasing the size of the Council would mean an increase in staff for each Council position, and create a need for modification in the Council hearing rooms, thus creating a significant cost impact.

On the issue of ballot language, Mr. Weinman testified that many citizens did not clearly understand what they were voting for because of the way the question was written. He testified that implementing a final determination could delay the start of petition collection or possibly invalidate early petition signatures from consideration. The current system is not working well, but the solution offered does not solve the problem of continued ballot confusion based on the Council’s sometimes questionable wording of ballot questions. Mr. Weinman offered a two-step process for providing accurate issue presentation for ballot consideration: (1) the petition wording and (2) the ballot wording. First, there should be an early petition wording submission to the MFP Committee for review leading to a determination verifying that a legal petition has been generated. Next, the Council should approve a clearly presented representation of the petition’s intent for inclusion on the ballot. The Council should hold a session for approval of the ballot wording. At this worksession, a petitioner representative should be allowed to provide a brief comment on any ballot wording that they believe is not clear or not an accurate representation of the petition’s intent.

If a decision is made to designate the Council as full-time, the Taxpayers’ League would find it absolutely necessary to have an Ethics Commission review and have a hearing on their recommendations on any issues such as restrictions for outside earning and any other appropriate rules for ethics compliance they may identify. Council recommendation on ethics requirements to be imposed should be subject to review and comment at a public hearing before any Charter Amendment is finalized.

Commissioner Habermeier asked Mr. Weiman why shouldn't the number of signatures required to petition a charter amendment be increased from 10,000. Mr. Weiman replied that it would deny the rights of the average citizen to petition.

10. Wayne Goldstein

Mr. Goldstein mentioned the Government Performance Project which studied 75 of the largest counties and cities in the U.S. Only 4 percent or 3 jurisdictions let voters elect a majority of their representatives through both at-large and district representation. He suggested that the voters could elect an at-large Council President and/or Vice President to represent the entire County instead of rotating them; however, the County has had district Councilmembers serve well as Council Presidents. An at-large Council President could further reduce the influence of the County Executive.

On the issue of full-time versus part-time, Mr. Goldstein questions whether or not full-time pay, with a prohibition against outside employment, would cause politicians to do their job more effectively. While full-time work deserves full-time pay, he recommends that the voters should decide if they are getting their money's worth.

Mr. Goldstein believes that 9 or 13 all districts would provide better government. On the issue of ballot language, he would support a non-partisan body to decide the language.

11. Yale Wiesberg

Mr. Wiesberg supports changing the composition of the Council to 6 districts and 5 at-large members or 7 districts and 6 at-large members. Eleven or 13 Councilmembers would make the structure more compact and increase diversity on the Council. He does not support all districts. He thinks that the Charter Review Commission should recommend that the Council be full-time in the Charter with no prohibition on outside employment. He recommends placing a \$25,000 income limit on outside employment.

12. Charles Wolf

Mr. Wolf commented that when voters vote for the County Executive, they know who they are voting for. Councilmembers are never going to be known by the entire population. He believes that smaller districts would allow voters to know their Councilmembers, and therefore recommends smaller Council districts.

The forum ended at 9:15 p.m.

PROCESS FOR CHARTER AMENDMENT

Marc P. Hansen, Chief
Division of General Counsel

April 14, 2005

- I. Amendment to Charter may be proposed by:
 - a. County Council;
 - b. petition signed by not less than
 1. 20% of registered voters; or
 2. 10,000 registered voters.¹
- II. State Election Code regulates the content and process of petitions.²
- III. State Election Board must provide instructions and forms without charge.³
- IV. The petition must contain:
 - a. An information page that contains, among other things:
 1. a subject and purpose of the petition; and
 2. the identification of the sponsor of the petition.
 - b. A signature page that includes, among other things:
 1. a subject and purpose of the petition; and
 2. a fair and accurate summary of the proposal or the full text of the proposal.
 - c. If the sponsor elects to use a summary of the proposal, the circulator of the petition must have on hand a copy of the full text of the proposal and make that copy available to the signer.⁴
- V. Sponsor may submit a petition to the Director of the Montgomery County Board of Elections for a “determination of its sufficiency”. The Director may ask for the County

1. Maryland Constitution, Article XI-A, Section 5.
2. Maryland State Election Code, Section 6-101 *et seq.*
3. Section 6-103.
4. Section 6-101.

Attorney's advice in making the determination.⁵

- VI. Once a sufficient number of signatures have been gathered, a sponsor must file the petition with the County Executive.⁶ After determining the petition "is in conformance with the requirements of law", the County Executive must send the petition to the Board of Elections within 24 hours.⁷
- VII. The Director must declare the petition deficient, if the Director finds, based on County Attorney advice, that the proposed Charter Amendment is not legal. This determination must not be inconsistent with any advance determination made under Section 6-202.⁸
- VIII. State law provides that, unless some other process is mandated by law, the County Attorney drafts the ballot title, the description of the proposed Charter Amendment, and the voting choices.⁹ But the County mandates another process. Section 16-16 of the Montgomery County Code provides, "There shall appear in print on the voting machine or ballot, a ballot title of the proposed amendment which shall be prepared by the Council in such form as to present the purpose and substance of the amendment fairly and concisely." At the stage of preparing the ballot question, State law provides an opportunity for the County government to determine that a proposed Charter question is not legal. Section 7-102 states that a Charter Amendment question qualifies for inclusion on the ballot upon "determination of the governing body....that a petition has satisfied all the requirements established by law...."
- IX. The Court of Appeals was held that the ballot wording must constitute a "statement in understandable language" of the question submitted. This standard includes the concept that the ballot wording "must convey with reasonable clarity the actual scope and effect of the measure, if adopted." *Surratt v. Prince George's County*, 320 Md. 439, 447 (1990).

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5. Section 6-202.
6. Maryland Constitution Article XI-A, Section 5.
7. Section 6-205.
8. Section 6-206.
9. Section 7-103.

MEMORANDUM

TO: Members, Charter Review Commission

FROM: Michael Faden, Senior Legislative Attorney

SUBJECT: Charter amendment ballot language (Issue IIIC)

DATE: September 13, 2005

Because the Commission is scheduled to discuss this topic at your meeting this week, I thought it would be helpful to clarify the relationship of Charter amendment petitions and the ballot wording that the voters ultimately see.

An earlier version of the memo to the Commission drafted by Commissioner McKeehan asserted that: "Several months after signing the original petition..., a voter is faced with trying to recognize the Charter amendment, which may or may not look the same as the original petition language. The wording on the ballot should be the same as the petition language a voter signs up to support outside of the supermarket." This description misstates the current law and ballot wording process in several important ways.

Current Law

-- *The petition language and the ballot wording are legally two different things.* Under state law governing the content of petitions to place a question on the ballot, both the signature page and the information page must contain "a **description of the subject and purpose of the petition**". The state law also requires the petition signer to be shown either the **full text** of the proposal *or* a **fair and accurate summary** of its substantive provisions. The required description and summary are not the official ballot wording. The ballot wording could be derived directly from either, although that has never been the County's practice.

-- *The petition signer does not see the actual ballot wording.* As the previous paragraph notes, the petition is not required to contain, and in my experience does not contain, the actual wording that appears on the ballot.

-- *"The ballot wording must convey with reasonable clarity the actual scope and effect of the measure, if adopted."*¹ This is the standard that the drafter of the ultimate ballot wording (in this County, the County Council acting under long-time County law) is legally required to meet. The Council is not free to put any wording they want, let alone biased wording, on the ballot. If

¹*Surratt v. Prince George's County*, 320 Md. 439 (1990).

the ballot is inaccurate, misleading, or incomplete, the Maryland courts can and will correct it before the election is held.

Proposed Changes

Commissioner McKeehan's proposal includes 2 elements: an early decision on the ballot language, and a shift of approval responsibility from the Council to the County Attorney. In my view, the first may be worth trying if it can be done consistently with state law, but the second is inadvisable.

State law² authorizes the County Elections Director, with the advice of the County Attorney, to determine the "sufficiency" of the "format" of a petition before it is filed (presumably before it is circulated). This determination will bind the Elections Board, but not the Council. It's unclear whether the term "format" as used in the state law includes the ballot wording. However, the County probably could adopt, under County law, a parallel process to approve the ballot wording before a Charter amendment is circulated. If the Commission thinks this is a good idea, you could recommend this – as a change in County law, because it probably would not meet the legal test for a Charter amendment – to the Council.

Everyone would agree that a petitioner cannot be relied on to draft objective ballot wording; the petitioner's draft is as likely as anyone else's to be misleading. This task then must be assigned to some public official or body. Current County law³ entrusts it to the County Council, elected by the voters. The state Elections Article⁴ would delegate this task to the County Attorney, but because the state law allows County law to supersede it on this point, the County law's assignment to the Council prevails.

Commissioner McKeehan's "Potential Solution" would include the ballot wording in the advance determination process and require the County Attorney to give advance approval to the ballot wording. This would effectively remove the County Council from the ballot wording approval process. As he candidly notes, the "final 'determination of sufficiency'" would be made by the "County Executive/County Attorney". This point highlights the major flaw in his recommendation: *it would shift the decision from 9 elected officials, acting in public, to one elected official, acting in private.* It's difficult to understand how this arrangement would improve public access to and transparency of the decision-making process, let alone the quality of the ballot wording. Even if the task is delegated solely to the County Attorney, and the Executive is not specifically mentioned in whatever amendments to state and County law are needed to adopt this change, the County Attorney is not an independent actor. He or she is appointed by, works for, reports to, can be fired by, and primarily represents the County Executive.

²MD Code, Election Law Art., §6-202.

³County Code §16-16.

⁴MD Code, Election Law Article, §7-103(c)(3)(i).

2004 Question C

As the letter you received from Dale Tibbitts, former chair of the Vote Yes on C Committee, indicates, much of the impetus for this kind of change comes from their feeling that the Council inserted biased wording on the ballot for 2004 Question C. Before the Commission accepts that conclusion, let me review the history to set the record straight. The actual ballot wording for 2004 Question C was:

Question C

Charter amendment by petition

County Council – Election by District

Amend Sections 102, 103, and 104 of the County Charter to:

- divide the County into 9, rather than the current 5, Council districts;
- elect all Councilmembers by district, rather than the current 5 by district and 4 at large; and
- reduce from 5 to 1 the number of Councilmembers each voter can vote for.

The Vote Yes Committee and other Question C proponents objected to the 3rd bullet, which the Council added to a proposed staff draft. The Vote Yes Committee argued that this clause was argumentative rather than descriptive and, as one of many effects of the proposed amendment, the reduction in voter choice should not be singled out for special mention. The Council believed that the loss of voter choice (reducing the number of Councilmembers each voter could vote for from 5 to 1) was a central element in the proposed Charter amendment which the voters should be informed of, despite the proponents' strong preference to minimize or avoid mentioning it.⁵

In drafting Charter amendment ballot wording for Council consideration, Council staff tries to limit the wording to *functional* information – what would the amendment do? – which is appropriate for ballot wording, and does not interpret the primary and secondary *effects* of the amendment – what would change because of it? The latter can easily flow into arguments for and against, and thus is not appropriate for ballot wording. In our view the reduction in the number of Councilmembers each voter could vote for was a *functional* element of Question C – it was one of the 3 ways the amendment would modify the current Council election structure. Proponents argued that the shrinkage in the size of each Council district (because of the proposed shift from 5 to 9 districts) was equally worthy of mention on the ballot. We thought that was a rather obvious secondary *effect* of the amendment, which normally would not be suitable for ballot wording.

⁵Since Question C was rather decisively defeated (39% yes, 61% no), it's unlikely that the ballot language played a central role in the result.

Conclusion

This debate on the proper wording for ballot Question C illustrates the kinds of decisions that must be made for every ballot question. As previously mentioned, the question Commissioner McKeehan's memo poses is: who should make those decisions? Assuming that these decisions should not be left to either the proponents of the amendment or an unelected body like the Elections Board, only 2 choices remain at the County level: the County Executive or the County Council. As already mentioned, in our view the Council is superior to the Executive in terms of public access, presence of varying views, and overall transparency.

I will be glad to discuss this issue further at your meeting.

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MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

TESTIMONY OF GEORGE L. LEVENTHAL
VICE PRESIDENT, MONTGOMERY COUNTY COUNCIL
ON HOUSE BILL 648
TO MODIFY THE NUMBER OF SIGNATURES REQUIRED TO PLACE
A CHARTER AMENDMENT ON THE COUNTY BALLOT
February 24, 2005

Madam Chair and members of the Environmental Matters Committee, thank you for the opportunity to testify before you this afternoon in support of HB 648. This legislation will give the voters of Maryland the chance to correct an anomaly in the state Constitution.

In 1915, Article XI-A was added to the Maryland Constitution allowing citizens to petition changes to the charter of Baltimore City or any county to the ballot. The language provides that the signatures of at least 20% of the registered voters of Baltimore City or any County shall be required to qualify a charter amendment for the ballot, but that in any case 10,000 signatures shall be sufficient to complete a petition. In 1915, Baltimore City was the largest jurisdiction in the state, and 10,000 signatures were close to 20% of its voters. Most other jurisdictions in the state did not even have 10,000 registered voters. Baltimore City today has 311,501 registered voters. Twenty percent of those would amount to 62,300 voters, yet a charter amendment could qualify for the Baltimore City ballot with only 10,000 valid signatures (3.2 percent of registered voters). Montgomery County is Maryland's largest jurisdiction today, with 518,690 registered voters. Twenty percent of these would amount to 103,738 registered voters, yet charter amendments qualify for the ballot with only 10,000 valid signatures – less than two percent of registered voters in the county!

Even the state of California, which is well-known as a haven of direct democracy, does not allow propositions to qualify for the ballot with such a low threshold of signatures. In that state, statutory changes may be placed on the ballot with five percent of the total votes cast for Governor in the preceding gubernatorial election and constitutional amendments may be placed on the ballot with eight percent of the total votes cast for Governor in the preceding gubernatorial election. If California's requirements were applied to Montgomery County, 23,721 signatures (eight percent of the 296,524 Montgomery County votes cast for Governor in 2002) would be required to amend the charter, which is the county's constitution, and 14,826 signatures would be required to make a statutory change. In the famously liberal city of Berkeley, California, where I went to college, 10 percent of the total votes cast for Mayor are required to petition a question to the ballot, which would amount to 28,496 signatures in Montgomery County (10 percent of the 284,963 votes cast for Montgomery County Executive in 2002).

The reason why Montgomery County is especially interested in allowing the voters to eliminate this historic anomaly is that we have had more than our share of charter amendments petitioned to the ballot. One serial activist and perennial candidate alone, Robin Ficker, has petitioned charter amendments to the Montgomery County ballot 18 times since 1974. Fourteen of these have been rejected by county voters and three were found invalid by Maryland courts. Each of these charter referenda imposes significant costs on the county, to determine whether the signatures are valid, to determine whether the proposed charter amendment is valid, to determine the effects upon county government if the amendment is adopted, and to represent the county in the inevitable legal challenges.

HB 648 empowers the voters of this state to determine whether this historic anomaly in our state Constitution should be updated. It will utilize direct democracy — a vote first of the citizens of the state and then another vote by the citizens of each county — to address the abuse of direct democracy that Robin Ficker has foisted upon Montgomery County citizens. If the voters approve the amendment to the state Constitution, voters in each jurisdiction may then determine an appropriate threshold for qualifying amendments to their charter — not more than 20% and not less than 5% of registered voters in the county (or Baltimore City). HB 648 in no way restricts voter choices: if the voters decide they would prefer to maintain requirements for ballot questions in Maryland counties that are more permissive even than those in Berkeley, California, they will have the right to vote against this Constitutional Amendment.

Again, thank you for giving me the chance to testify today.

MONTGOMERY COUNTY CODE

Sec. 1-301. Rules of Interpretation.

The following rules of interpretations apply to resolutions adopted by the council and to laws enacted by the council in legislative session:

(1) *Bold face.* There is no legal significance to a word in this Code solely because it appears in bold face. Bold face indicates that the term is defined in the Code or is a heading.

(2) *How to compute periods measured in months.* If a period of time is measured in months, the period begins and ends at 12:01 a.m. on the same number day of a month. However, if there are not enough days in the final month for this to be possible, the period ends on the final day of the final month.

(3) *How to compute deadlines.* If the Code requires or allows a person to perform an act within a specific time period measured in days, the person must compute the deadline in the following manner:

a. Count the day after the event as the first day of the period, if the period follows an event.

b. Count the remaining number of days in the period. However, if the period is seven (7) days or less, omit Saturdays, Sundays, and legal holidays.

c. Do not count the last day if it is a Saturday, Sunday, or legal holiday or if the office where the person must file a paper or perform an act is not open during the regular hours of that office.

(4) *Requirements to act by a specific date.* If the law requires or allows a person to act by a specific date, but the specific date is a Saturday, Sunday, or legal holiday, the person may perform the act on the next day that is not a Saturday, Sunday, or legal holiday.

(5) *Signatures.* The signature of a person may be the actual signature of the person or a mark that the person has authorized.

(6) *Singular and plural.* The singular includes the plural and the plural includes the singular.

(7) *Tense.* The present tense includes the future tense.

(8) *Title of sections.* Titles and captions are not part of the law of the county. They only advise the reader of the content of each section. (1987 L.M.C., ch. 35, § 1.)

CONSTITUTION OF MARYLAND

ARTICLE XI-A, LOCAL LEGISLATION.

(added by Chapter 416, Acts of 1914, ratified Nov. 2, 1915)

SEC. 5. 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 *(amended by Chapter 681, Acts of 1977, ratified Nov. 7, 1978)*.



The Center for
Voting and Democracy

6930 Carroll Ave., Suite 610
Takoma Park, MD 20912 - (301) 270-4616
(301) 270-4133 (fax) · info@fairvote.org
www.fairvote.org

Montgomery County Charter Review Commission
100 Maryland Ave, 5th Floor
Rockville, MD 20850

February 27, 2006

Honorable Kenneth Muir:

As you may recall, in my capacity as Program Director of FairVote – The Center for Voting and Democracy, I testified before the Montgomery County Charter Review Commission last October and again in December of 2005, concerning the need to replace the current winner-take-all voting system in Montgomery County with a fairer method of representing the area's political and racial diversity. As you near presentation of a final report to the County Council on your recommendations, I urge you to revisit fair alternatives to the current box imposed by the false dichotomy of the hybrid at-large, winner-take-all/district scheme and the all-district scheme. Specifically, I urge you to make a recommendation that the County Council conduct a formal study of proportional voting and instant runoff voting methods for Montgomery County primary and general elections. This is an important step to take, in spite of the Commission's ultimate recommendation to retain the hybrid system for upcoming elections. In fact, the League of Women Voters of Montgomery County has begun the process of pursuing a parallel study.

FairVote is a nonpartisan, nonprofit organization that provides expertise in voting systems and election reform to citizen groups and government across the country. Recently, we have been focusing on our own backyard, where political polarization concerning development in Montgomery County has been on the rise. But the current polarizing dynamic need not exist at all. There is ample availability of creative solutions to these problems that other communities -- such as Cambridge, MA; Peoria, Illinois; Chilton County, Alabama; Amarillo, Texas; and dozens of other cities, counties and even Fortune 500 companies -- have successfully employed for years.

We think it is critical to address these alternatives (ie: cumulative voting, choice voting, and limited voting), given that they present clear ways of bridging the growing polarization and political divide between the pro and anti-development factions in the County. Likewise, these fair proportional voting alternatives would also provide fair representation to communities of color and political minorities, despite any geographic dispersion, and without altering the natural political and partisan power dynamic on the Council.

These changes are long overdue. Regarding racial and ethnic minorities, Montgomery County has grown increasingly more diverse in recent decades, yet local government is still strikingly homogeneous. In terms of political minorities, the development debate threatens to overshadow any objective discussion of how to improve representation on the County Council.

Furthermore, FairVote's compromise proposals are simple and well within the purview of the Montgomery County Council to apply to the County Charter. As an attorney licensed in Maryland, it is my opinion that Maryland state law does not specifically require the current, winner-take-all voting system, which contributes to the current polarization and under-representation. Maryland state law also does not specifically conflict with our proposed changes to the Charter. Regardless, these implementation issues should be addressed in a formal Council study.

Please contact me to discuss our proposals in greater detail or should you have any questions.

Sincerely,

David Moon, Program Director



**TESTIMONY OF DAVID H. MOON, PROGRAM DIRECTOR
FAIRVOTE – THE CENTER FOR VOTING AND DEMOCRACY**

MONTGOMERY COUNTY CHARTER REVIEW COMMISSION
OCTOBER 24, 2005

SUBJECT: Proposed Charter Amendments to the Structure of the County Council

Introduction: Thank you to the members of the Montgomery County Charter Review Commission for holding this hearing on potential changes to the size and structure of the Montgomery County Council. I am Program Director of FairVote - The Center for Voting and Democracy, as well as a licensed attorney in the State of Maryland and a Montgomery County native. FairVote is a national non-partisan, non-profit organization, based in Takoma Park that studies elections and advocates reforms to promote increased participation and fair representation. We have particular expertise in electoral systems design, as well as areas such as voting rights, and electoral competitiveness.

Throughout the nation, we have spent the last thirteen years working with numerous communities to educate the public on how to implement modern electoral systems that boost turnout and civic engagement, while ensuring that racial and ethnic minorities are fairly represented. We have worked with jurisdictions of all sizes and types from around the nation who shared common problems stemming from our reliance upon winner-take-all election systems. Our work has taken us from Cambridge, Massachusetts; to Amarillo, Texas; to Burlington, Vermont; and many other communities in between. In recent years, we have taken an interest in improving democracy in our own backyard.

The Changing Face of Montgomery County: The Montgomery County of today is not the County that I grew up in. The cement factory in Bethesda has given way to high-rises and a revitalized downtown, while Silver Spring has undergone a massive facelift over the last decade. All the while, the intervening decades have witnessed Montgomery County shifting to an increasingly diverse community with over one-third of its voters being from a non-white community. According to the United States Census Bureau's 2004 population estimates, the County now contains a 15% African American population, a 13% Asian population, and a 13% Hispanic of Latino population. Throughout all of this change, however, the racial and ethnic composition of the council has remained shockingly homogenous. Since the creation of the council in 1948, only one African American has been elected to an at-large seat. This has prompted some, such as Councilmember Phil Andrews to comment in the press that "if this were Mississippi, you would be jumping up and down, saying how can you tolerate this system.... How do you defend a system that has produced one minority in a half-century?" But because the county's minority population is not concentrated in any one area, Councilmember Steve Silverman rightly noted that it would be nearly impossible to carve a council district where a majority of residents are non-white.

It is this dynamic that lies at the heart of the problem of representation in Montgomery County, and it is precisely the reason why FairVote stands before you today to ask you to move the debate about the structure of the County Council, beyond the false dichotomy of single member districts versus at-large, winner-take-all.

The Problem with Single Member Districts: Single member districts necessarily impose geography as the primary factor in representation, thereby requiring cohesive voting groups to live in compact densities in order to receive their fair share of representation. This solution works for many urban minorities, but Montgomery County does not have such a demography that makes this work. Likewise, single member districts force governments to prioritize local representation over the benefits of having candidates seek support countywide. Lastly, single member districts can grant political power unevenly, as they often grant representation to 51% of voters within a district, but leave the remaining 49% without a representative that shares their views.

The Problem with At-Large, Winner-Take-All: As a result, Montgomery County has chosen to use a hybrid single member and at-large system for Council elections. At-large, winner-take-all, however, allows a 51% majority to control 100% of the at-large seats – thereby skewing the overall makeup of the body. Setting the threshold for election of 51% of the total countywide population also makes it exceedingly difficult for racial and ethnic minorities to ever receive their fair share of the at-large council seats – a fact that is demonstrated by the history of representation in Montgomery County. Furthermore, many voters, in tacit recognition of the limitations of at-large, winner-take-all systems engage in strategic voting where they waste their at-large votes and only vote for one of the four candidates they are entitled to vote for. Nevertheless, at-large elections have the benefit of creating incentives for candidates to reach out to voters throughout the county.

The At-Large, Proportional Voting Solution: These goals of countywide representation, local representation, and fair minority representation are not mutually exclusive. Around that nation, over 100 jurisdictions employ at-large proportional voting systems (also known as modified at-large systems) to remedy exactly the problems facing Montgomery County. These systems, where politically cohesive groupings of voters earn seats in proportion to their share of the voting population, are used in communities ranging from Peoria, Illinois; Cambridge, Massachusetts; and dozens of counties and cities in Texas, North Carolina, and Alabama. There are various voting systems that achieve this, but essentially what they do is lower the threshold in at-large elections so that candidates win seats proportionally. This would mean Montgomery County voters could elect five district representatives as under the current system, but the candidates running for the four at-large seats would each need roughly 25% of the countywide vote in order to win, rather than the current 50% that shuts out racial and ethnic minorities.

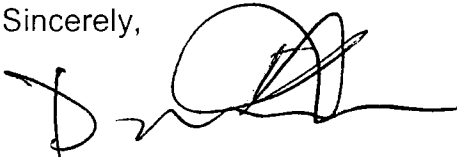
Two such at-large proportional voting systems used within the United States are cumulative voting and choice voting. Under ***cumulative voting*** – voters would vote for up to four at-large candidates, and their votes would be evenly distributed among candidates they support. Under choice voting, voters would rank candidates in order of choice (1st, 2nd, 3rd, etc.). Once a voter's first choice is elected or eliminated, excess votes are

counted for subsequent choices until all seats are elected. A variation of this system, instant runoff voting, is on the ballot for use in Takoma Park municipal races in the November 8th election. The reform has garnered the endorsement of all current elected officials and candidates for office, as well as County Councilmembers Tom Perez and George Leventhal. It is time to open the debate about representation in Montgomery County and to consider these fair reforms.

For more information, please visit <http://www.fairvote.org/pr>

Additionally, we have provided a manual about municipal electoral systems design for each member of the County Charter Review Commission. The manual discusses the various types of electoral systems that exist and their pros and cons. Though the focus of the manual is on City Council election methods, the exact same principles apply to County Council elections.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Moon', with a large, stylized initial 'D' and a long horizontal flourish extending to the right.

David Moon, Program Director
FairVote – The Center for Voting and Democracy
(301) 270-4616