



2014
***Report of the
Charter Review Commission***

May 2014
Montgomery County, Maryland



CHARTER REVIEW COMMISSION

April 30, 2014

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

Dear Councilmembers:

On behalf of the Charter Review Commission, I submit the 2014 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.

Our last report was issued in May 2012 and since that time the Commission studied six issues related to the current charter and recommends one change to the existing charter. Following the recent vacancy on the County Council, the Commission learned of the ambiguity of certain Charter provisions governing the appointment of a new Councilmember. To clarify this ambiguity, the Commission recommends the Charter be amended to clarify that any person that fills a vacancy in a Council district must reside in the district as it exists at the time the vacancy occurs.

The Commission appreciates the comments it received from government officials and residents that guided us to identify issues and deliberate on matters that affect County residents. Without the participation of all of these groups, the Commission would not have functioned as effectively.

Thank you for the opportunity to serve the County as members of this Commission.

Respectfully submitted,

A handwritten signature in black ink, reading "Molly Mahoney Matthews".

Molly Mahoney Matthews, Chair
Charter Review Commission

CHARTER REVIEW COMMISSION

Members

Molly Mahoney Matthews, Chair

Mark Feinroth, Vice-Chair

Cherri Branson¹

Jerry Cave²

Barry Cohen³

Diane Nash Dillon

Guled Kassim

Thomas King

Albert Pearce

Shawn Sullivan⁴

¹ Appointed in November 2012; resigned in February 2014

² Appointed in June 2012

³ Appointed in June 2012

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2014 Report of the Charter Review Commission

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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 subsequent amendments.

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

The Commission researches and evaluates Charter issues raised by the 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 recommends Charter amendments to include on the general election ballot. By mid-August, the Council determines which Charter questions in addition to those raised by petition, will be placed on the ballot.

Since its last report was issued in May 2012, the Commission studied several issues related to the current charter and at this time recommends one change to the existing charter. During its term, the Commission met with Councilmembers Phil Andrews, Roger Berliner, George Leventhal, and Valerie Ervin, County Executive Isiah Leggett, and relevant Executive staff. Information gathered from these discussions was evaluated to determine if Charter amendments were warranted to improve governmental performance and accountability.

SUMMARY OF ISSUES STUDIED

Recommendations Requiring Charter Amendments

➤ *Residency Requirements for Council Vacancies*

There is ambiguity in the Charter regarding the residency requirement of a Councilmember appointed to fill a vacancy for a Council district. To resolve this ambiguity, the Commission recommends the Charter be amended to clarify that any person that fills a vacancy in a Council district must reside in the district as it exists at the time the vacancy occurs.

Other Issues Studied

➤ *Special Hiring Authority for People With Disabilities*

During the course of our study, the Council proposed, and County residents approved, a Charter amendment to allow special hiring authority for people with disabilities. Since there is very little data regarding the costs associated with this type of authority, the Commission recommends implementing a program on a pilot basis and carefully tracking costs and benefits.

➤ *Council President Term*

The Council President is elected by his or her colleagues to a single-year term. The Commission studied whether to amend the Charter to provide for a longer term. Since the Charter does not limit the number of years a Councilmember can serve as President, the Commission does not recommend any Charter changes on this issue.

➤ *Removal of Elected Officials for Misconduct*

Recent incidence of serious misconduct by elected officials in neighboring jurisdictions led the Commission to examine whether the provisions of the Charter for removal of elected officials for misconduct are adequate. The Commission concludes that State law is adequate to address these issues and therefore did not recommend a Charter amendment.

➤ *Police Civilian Review Board*

The Commission was concerned about a lack of oversight of the Police Department's complaint process and considered whether there should be a civilian review board to oversee the complaint process. The Commission concludes that the issue was more properly addressed by legislation, not a Charter amendment, and encourages the Council to consider adopting such legislation. A minority statement on this issue is in the appendix (A-32).

➤ *Operation of the Commission*

The Commission examined its own operations and makes several recommendations concerning appointments to, and the operation of, the Commission.

ISSUE AREAS

1. RESIDENCY REQUIREMENT FOR COUNCIL VACANCIES

As a result of a recent vacancy on the County Council, an issue was raised with the Commission regarding the ambiguity of certain Charter provisions governing the appointment of a new Councilmember. Appointment of a new Councilmember is governed by two Charter provisions: Charter §106 requires a member appointed to fill a vacancy to meet the same qualifications and residence requirements as the member. Charter §10 provides that “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.”

In 2014, the Councilmember representing District 5 resigned. Under Charter §106, the Council must appoint an individual that meets the same qualifications and residence requirements as the previous member. The District 5 Councilmember was re-elected to Office in November 2010. However, before the vacancy occurred, the Council reviewed the boundaries of all Council districts, as required by Charter §104. Following this review, the Council changed the district boundaries, effective in March 2012, including the boundaries for District 5.

The Councilmember resigned after the boundary for District 5 was redrawn. The Commission discussed when redrawn Council district boundaries take effect and whether the Council must appoint a replacement from District 5 as it existed when the Councilmember was elected or from District 5 as it existed at the time of the vacancy. Attorneys from both the Council and County Attorney’s Office reviewed the Charter and concluded that the newly appointed Councilmember must reside in District 5 as it existed at the time of the vacancy. The attorneys also agreed that a Charter amendment should clarify this ambiguity.

To resolve this ambiguity, the Commission recommends the language in the Appendix on page A-42, which would clarify that any person that fills a vacancy in a Council district must reside in the district as it exists at the time the vacancy occurs.

2. SPECIAL HIRING AUTHORITY FOR PEOPLE WITH DISABILITIES

The Commission considered whether to recommend a disability hiring preference amendment to the Charter. While the Commission was studying this issue, the Council moved forward with a proposed Charter amendment on this topic and voters approved the amendment.

The Commission met with disability advocacy groups, the Montgomery County Office of Human Resources, and Councilmembers on this topic. The Commission attempted to determine the costs and benefits of these programs where they have been implemented by local municipal governments.

The Commission found very little data on the costs to provide employment opportunities to candidates with physical or mental handicaps. There is data reported on the savings associated with federal and state programs that benefit these individuals. Savings can occur when a beneficiary becomes employed and receives either a smaller government benefit package or becomes completely self-sufficient as a result of the employment. No studies were found that directly examined a local or municipal government that tracked costs of providing accommodations to handicapped employees or the costs of training provided to managers and coworkers.

The Commission also closely examined the Federal government disability hiring program known as "Schedule A." There is ample evidence of this program's success and cost savings, but even Federal government managers have found it challenging to provide cost data for this

initiative. The Commission was unable to find an accurate barometer to realistically measure costs associated with implementing a disability hiring preference program for the County. Therefore, the Commission recommends a cautious approach to implementation.

The Commission recommends the County implement the program on a pilot basis and a carefully track the costs and benefits. The Council should provide a limited annual appropriation during the initial implementation period in order to ensure that direct and indirect costs are audited, compared, and evaluated.

3. COUNCIL PRESIDENT TERM

Charter §108 requires the Council to elect a President among its members to preside over Council meetings. Current Council practice is to elect a President for a one-year term. The County Executive and some Councilmembers met with the Commission and advocated for the Council President's term to be longer than one year. Some persons believed that a single-year term is not long enough for the member in that role to fully understand the role and effectively interact with the State Legislature. The short term may cause discontinuity in dealings with the State Legislature on serious issues affecting Montgomery County. Finally, a Councilmember wrote an editorial which appeared in *The Gazette* and outlined issues the Maryland General Assembly addresses that adversely affecting Montgomery County, including:

- The County gets back in direct State aid only a small portion of every tax dollar it sends to Annapolis; other counties get much more of their tax dollars returned to them.

- Tens of millions of dollars of teachers' pension costs were shifted to County tax payers without any commensurate authority over pay and benefit increases for school personnel.
- The Maryland Transportation Authority is pricing Montgomery commuters off the multibillion-dollar ICC Highway.
- The County educates 17% of the State's public school students but was designated only 11% of the initial state funding for statewide school construction in Fiscal Year 2014.

A contributing factor to these adverse affects could be the annual turnover in Council Presidents, which may make it easier for State legislators to just wait things out and ignore the County's concerns.

The Commission met with two former Council Presidents who advocated that the Council President be elected by the voters to a four-year term. This may avoid a revolving door of leadership that can dilute the Council's power. However, these individuals felt that even a two-year term would be an improvement.

The Commission considered the following options to determine the Council President's term:

- *Council-elected four-year term.* Since the Charter does not restrict the length of the Council President's term, the Councilmembers themselves could extend the term. This approach does not build in voter accountability for performance, but could deal effectively with possible discontinuity aspects in dealings with Annapolis.
- *Voter-elected four-year term.* Directly electing the Council President to a four-year term would provide accountability to the voters and continuity in dealings with the

state legislature. This option raises the possibility of “chemistry issues” in dealings with the Councilmembers over a much longer term and may require an increase in Council size to accommodate a full time Council President.

These options raised the following questions and concerns that the Commission discussed:

- Does this enlarged role for the Council President require more than one person; one as President and one as councilmember?
- Should the Council President be elected by the Council or by the voters?
- If the Council President is elected by the Council should the Council President’s term be defined in the Charter as one, two, or four years?
- If the Council President is elected by the voters for four years, should the Council President be an at large member? And should the size of the Council be increased?
- Should a longer term involve an election where the voters would determine the Council President;
- A multi year term probably should require a separate position for the Council President who could not possibly handle the added responsibilities as collateral duties;
- Rotating the President’s role on an annual bases does afford more opportunity for other Councilmembers to get the exposure that the role affords;
- Since Councilmembers are split on this issue, a proposal from the Commission may not be accepted.

Subsequent polling of additional Council members added counter balance to the issue of voter involvement in adding an amendment to the Charter. Some Councilmembers believed that

Charter §108 provides sufficient flexibility. Additionally, the Commission contacted outside interest groups, but their input showed a lack of interest on the matter.

The Commission concludes that since the term of the Council President is not limited by the Charter to one year, a longer term is a discretionary issue that the Council could resolve without a Charter amendment. Therefore, the Commission is not recommending a Charter amendment to address this issue.

4. REMOVAL OF ELECTED OFFICIALS FOR MISCONDUCT

Recent incidents of criminal behavior and other serious misconduct by elected officials in several neighboring jurisdictions led the Commission to examine whether the provisions of the County Charter for removal of elected officials for misconduct are adequate. Charter §118 is the only provision on Councilmember removal and authorizes removal for mental or physical inability to perform the duties of office. There is no provision in the Charter for removal for misconduct.

Elected officials in Montgomery County are also subject to Article XV, Section 2 of the Maryland Constitution, which provides for removal from office for conviction of a felony, or conviction of serious misdemeanors relating to public duties.

Virginia and the District of Columbia have provisions similar to those in Maryland. In addition, Virginia authorizes removal of an elected official for neglect of duty, misuse of office or incompetence, as found by a court, and the District of Columbia authorizes removal, pursuant to a super majority vote of the District Council, for “gross failure to meet the highest standards of office.”

The Commission concludes that Maryland law is adequate to protect the citizens of the County, and that no Charter amendment is necessary. Whether removal for misconduct other than that resulting in conviction of a crime, as exists in Virginia and the District of Columbia, should be part of the law of Maryland is a matter for the General Assembly, not the County Charter.

5. POLICE CIVILIAN REVIEW BOARD

The Commission considered recommending a Charter amendment to create a citizen panel to review complaints against police officers. The Commission concluded that while such a panel functions successfully in other nearby jurisdictions, the issue is more properly addressed by the Council as a legislative initiative rather than a Charter amendment.

The Commission's study of citizen review panels included a discussion with representatives of the County Police Department, Office of Human Resources, and the Fraternal Order of Police. The participation of these entities was invaluable to the Commission's deliberations. The Commission also examined the Prince George's County Citizens Complaint Oversight Panel (CCOP). The Prince George's County CCOP Executive Director gave a telephone interview and the Commission received excerpts of the CCOP's 2012 Annual Report which included a history of the agency.

Montgomery County Police Chief Thomas Manger and his senior management team have made dramatic improvements in the process by which complaints against police officers are processed and adjudicated. It is clear to the Commission that Chief Manger has emphasized transparency and integrity in the complaint process. Yet the confidential nature of complaints that may eventually result in personnel actions and the constraints imposed by the Maryland

Police Officers bill of rights have made it difficult for the Department to communicate effectively with citizens who have filed complaints.

We therefore recommend that the Council consider adopting an oversight panel using the Prince George's County model. The CCOP was established in 1990. Its mission is to ensure that anyone with a complaint about a Prince George's County police officer is able to file a formal complaint and that every complaint is swiftly, fully and fairly investigated. From 1990 to 2001, the CCOP did not itself conduct investigations or adjudicate complaints. The CCOP acted as an impartial civilian ombudsman assuring the public that alleged acts of police misconduct are promptly and fully addressed. This review function continues to the present day but late in 2001 the CCOP was authorized through the County Council to conduct its own investigations and issue subpoenas. Our recommendation to the County Council is that Montgomery County incrementally adopt a CCOP process beginning as Prince George's County did in 1990.

The Prince George's County CCOP is composed of seven members, appointed by the Executive and confirmed by the Council. It is staffed by an administrative director and a clerk. Under current law, the CCOP reviews all complaints filed against police officers for violations of law or regulation, all cases involving a police officer's discharge of a firearm and any in-custody deaths that may have resulted from a police officer's use of force. The cost of the CCOP for its small staff contingent and its expenses was \$250,000 in Fiscal Year 2012 and is part of the County Executive's appropriation for independent Prince George's County agencies.

The Commission recommends that the County Council consider adopting legislation to create a County version of the Citizens Complaint Oversight Panel. The size and diverse population of our County presents both the police and the County government with a responsibility to provide a better and more transparent mechanism for our residents to hold our

law enforcement personnel to the highest standards of professionalism and integrity. A minority statement on this issue is contained in the appendix (A-32).

6. OPERATION OF THE COMMISSION

The Commission examined its own operation with a view to offering recommendations to the Council and to the next appointed Commission concerning the Commission's future activities.

The Commission is established under Charter §509. It consists of 11 members appointed by the Council within six months after a new Council takes office. Five of the appointees must be from a list of names provided by the Executive. The members of the Commission have four-year terms.

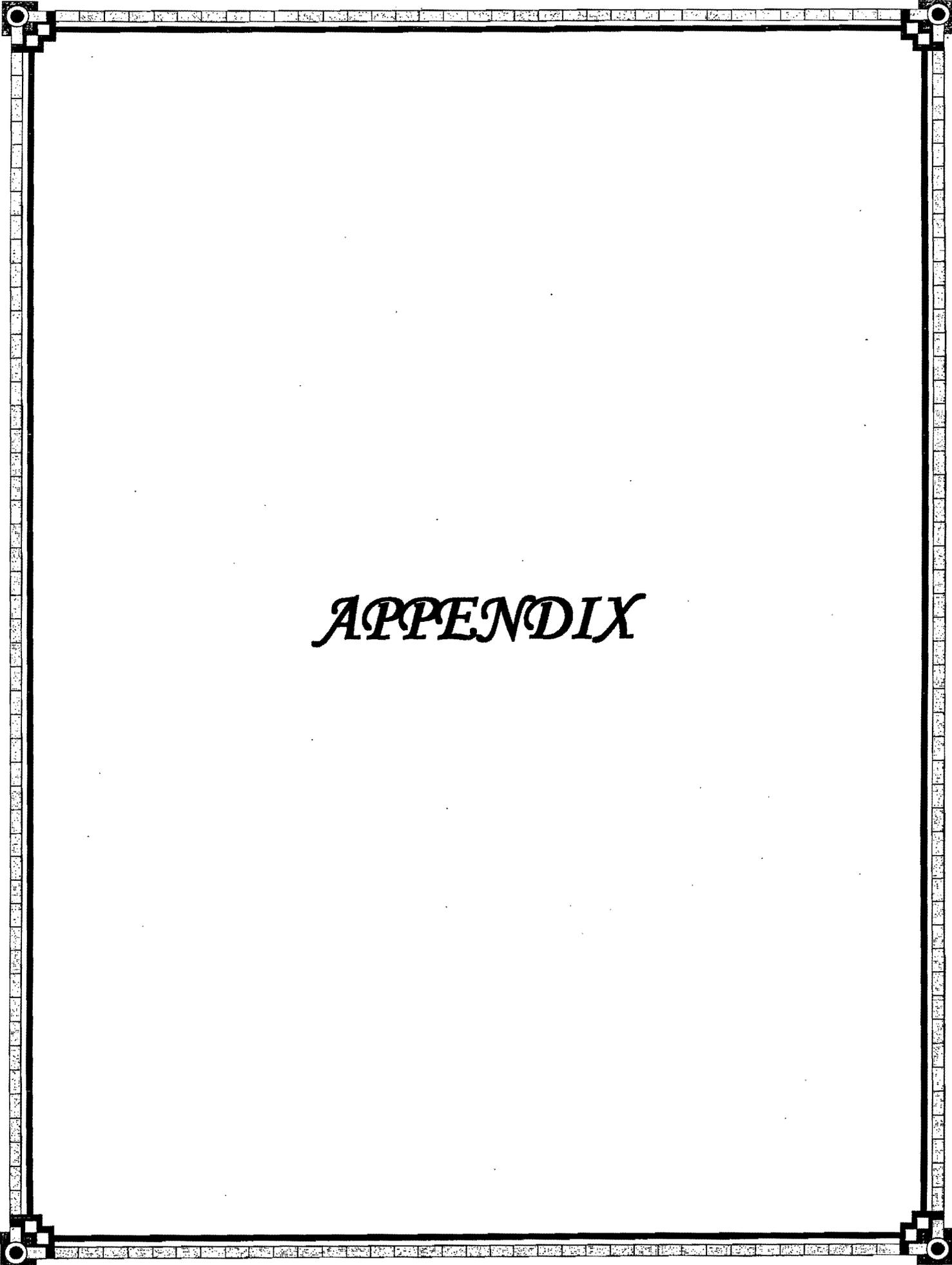
Section 509 requires the Commission to report to the Council every even-numbered year "concerning proposed Charter amendments, if any." The Charter has been in effect since 1968 and, while amended occasionally, may not be in need of such regular review. Nevertheless, biennial review is required under §509, and we are not recommending an amendment to the Charter to reduce the frequency of the Commission's reports to the Council.

However, the Commission makes several recommendations for future appointments to the Commission and for future Commissions:

- Under the Council's appointment practice, a newly appointed Commission does not always include members who have serviced on prior Commissions. While records of the work of prior Commissions are made available to new Commission members, new Commissions may not have the benefit of the experience of prior Commission members. The Commission believes that the including individuals who previously served on the

Commission would assist the new Commission in performing its duties. Accordingly, the Commissions recommends that in appointing a new Commission every four years: (1) the Council invite incumbent Commission members to re-apply; (2) the Executive include some incumbent members in the list of candidates its submits for Council appointment to the Commission; (3) that at least three of the 11 members of a new Commission be people who have previous service on the Commission; and (4) the Council should consider designating a member with prior experience on the Commission as the Commission chairperson.

- Identifying problems in County government that might be addressed by a Charter amendment is a difficult task. Future Commissions may benefit from making efforts early in their four-year terms to publicize the work of the Commission to civic organizations, the business community, and other constituencies in the County in order to be better informed of Charter issues from those affected by County government.
- While the current Commission has met monthly, future Commissions may wish to consider less frequent meetings unless pending agenda items require otherwise. In that way, the time and energies of the Commission members can be better focused and utilized.



APPENDIX

MONTGOMERY COUNTY CODE

**PART I
THE CHARTER.***

Article 1. Legislative Branch.

§ 101. County Council.

§ 102. Composition and Election.

§ 103. Council Districts.

§ 104. Redistricting Procedure.

§ 105. Term of Office.

§ 106. Vacancies.

§ 107. Compensation.

§ 108. Officers of the Council.

§ 109. Sessions.

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

§ 111. Enactment of Legislation.

§ 112. Effective Date of Legislation.

§ 113. Publication of Legislation.

§ 114. Referendum.

§ 115. Referendum Procedure.

§ 116. Legislative Procedure.

§ 117. Limitations.

§ 118. Removal of Councilmembers.

*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.

MONTGOMERY COUNTY CODE
The Charter

Article 2. Executive Branch.

§ 201. Executive Power.

§ 202. Election and Term of Office.

§ 203. Qualifications.

§ 204. Compensation.

§ 205. Vacancy.

§ 206. Removal of the County Executive.

§ 207. Temporary Absence or Disability.

§ 208. Veto.

§ 209. Information on Executive Branch.

§ 210. Chief Administrative Officer.

§ 211. Duties of the Chief Administrative Officer.

§ 212. Principal Departments.

§ 213. County Attorney.

§ 214. Department of Finance.

§ 215. Appointments.

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

§ 217. Reorganization of the Executive Branch.

§ 218. Internal Audits.

Article 3. Finance.

§ 301. Fiscal Year.

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

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§ 303. Capital and Operating Budgets.

§ 304. Budget Hearing.

§ 305. Approval of the Budget; Tax Levies.

§ 306. Item Veto or Reduction.

§ 307. Supplemental Appropriations.

§ 308. Special Appropriations.

§ 309. Transfer of Funds.

§ 310. Surplus.

§ 311. Limitations on Expenditures.

§ 312. Indebtedness.

§ 313. Purchasing.

§ 314. Competitive Procurement.

§ 315. Audit.

§ 316. Public Access to Fiscal Documents.

Article 4. Merit System and Conflicts of Interest.

§ 401. Merit System.

§ 402. Personnel Administration.

§ 403. Merit System Protection Board.

§ 404. Duties of the Merit System Protection Board.

§ 405. Political Activity.

§ 406. Prohibition Against Private Use of Public Employees.

§ 407. Prohibition Against Additional Compensation.

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§ 408. Work During Official Hours.

§ 409. Corrupt Practices.

§ 410. Code of Ethics.

§ 411. Reserved.

Article 5. General Provisions.

§ 501. Disaster—Continuity of Government During Emergencies.

§ 502. Annual Report.

§ 503. Annual Compilation of Laws.

§ 504. County Code.

§ 505. Right to Information.

§ 506. Separability.

§ 507. Amendment.

§ 508. Effective Date.

§ 509. Charter Review Commission.

§ 510. Collective Bargaining.

§ 510A. Collective Bargaining—Fire Fighters.

§ 511. Collective Bargaining—County Employees.

§ 512. Hearing Examiners.

§ 513. Effect of Certain Amendments.

MONTGOMERY COUNTY CODE
The Charter

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).

See County Attorney Opinion dated 3/12/09 explaining the Inspector General's authority to investigate an ongoing personnel matter as part of the goal of detecting and deterring fraud, waste and abuse. See County Attorney Opinion dated 10/1/08 explaining Council's ability to impose limitations on the Executive's ability to seek and obtain grants. See County Attorney Opinion dated 6/8/04-A describing the possible violation of separation of powers in a law authorizing the Council to set certain transportation fees without County Executive approval. See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People With Disabilities and the role of the County Attorney as the legal advisor for the County. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

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The Charter

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.)

Editor's note—See County Attorney Opinion No. 90.003 dated 3/30/90-A explaining that the County Charter requires a candidate for Council to reside in the councilmanic district that the person seeks to represent.

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.)

Editor's note—See County Attorney Opinion dated 3/24/11 discussing the redistricting process. See County Attorney Opinion dated 3/20/91 explaining that the Redistricting Commission may consider and recognize natural and public municipal boundaries in creating new boundaries for councilmanic districts [updates 1981 analysis]. See County Attorney Opinion dated 3/20/91-A describing the impact of the Voting Rights Act on redistricting.

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

MONTGOMERY COUNTY CODE
The Charter

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.)

Editor's note—See County Attorney Opinion No. 95.003 dated 12/6/95 explaining that the Council retains the authority to control whether the Commission on Redistricting plan becomes law, but the Council must take action within 90 days of receiving the plan. See County Attorney Opinion dated 1/9/92 explaining that not all meetings fall within the Open Meetings Act and, therefore, not all meetings need to be open to the public or included in public notice.

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 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.)

Editor's note—See County Attorney Opinion dated 2/19/99 discussing filling an interim Council vacancy by temporary appointment pending a special election.

Sec. 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. (Election of 11-7-06.)

MONTGOMERY COUNTY CODE

The Charter

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 employ or retain special legal counsel to assist it in the exercise of its powers, and may provide by law for special legal counsel to assist, advise, or represent any office of the legislative branch in the exercise of its duties. Any special legal counsel employed or retained under this section shall be subject to appropriation and is not subject to Section 213. (Election of 11-6-84; election of 11-5-02.)

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 the Council shall not sit for more than forty-five days in each year for the purpose of enacting legislation. When a first or third Tuesday is an official holiday, the next succeeding Tuesday business day shall be a day for the enactment of legislation. The Council may sit in nonlegislative sessions at such other times as it may determine. In nonlegislative sessions, the Council may adopt rules and regulations which implement or provide for the administration or execution of legislation under procedures and provisions for notice and hearing prescribed by law. The Council shall not take or discuss any action except in public session or in a closed session expressly allowed by the Council rules of procedure. The Council rules of procedure shall permit the same or greater public access to Council sessions as the state Open Meetings Act or any successor state law. The Council shall not make or confirm any appointment in a closed session. (Election of 11-4-80; election of 11-2-82; election of 11-5-02.)

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.

See County Attorney Opinion dated 7/14/00 discussing the need to modernize the Charter in relation to access to documents. See County Attorney Opinion dated 6/19/00 recommending an amendment to the Charter to conform with State law.

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 containing a section declaring that it is necessary for the immediate protection of the public health, safety, or interest, and enacted by the affirmative vote of at least six members of the Council, shall be expedited legislation. Expedited legislation, as defined in this section, is the emergency legislation referred to in Article XI-A, Section 3, of the Constitution of Maryland. Any vote cast by a member on any legislation shall be recorded in the journal of the Council. (Election of 11-4-86; election of 11-5-02.)

Editor's note—See County Attorney Opinion dated 1/13/09 discussing soliciting money as a form of free speech.

Sec. 112. Effective Date of Legislation.

All legislation, except expedited legislation, shall take effect ninety-one days after the date when it becomes law, unless a later effective date is prescribed in the legislation. Expedited legislation shall take effect on the date when it becomes law, unless a different effective date is prescribed in the legislation. (Election of 11-2-82; election of 11-5-02.)

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 expedited legislation, enacted by the Council shall be published before the date when it takes effect, in such manner as the Council shall prescribe by law. A summary of expedited legislation shall be published promptly after enactment. (Election of 11-5-02.)

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.)

Editor's note—Charter § 114 is cited in Montgomery County Volunteer Fire-Rescue Association v. Montgomery County Board of Elections, 418 M.463, 15 A.3d 798 (2011), and quoted in Doe v. Montgomery County Board of Elections, 406 Md. 697, 962 A.2d 342 (2008).

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Sec. 115. Referendum Procedure.

Any petition to refer legislation to the voters of the County shall be filed with the Board of Elections within ninety days after the date when the legislation becomes law, provided that fifty percent of the required signatures accompanying the petition are filed within seventy-five days after the date when the legislation becomes law. When a referendum petition that contains the required signatures 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 voting thereon. Expedited legislation shall remain in effect from the date it becomes law notwithstanding the filing of a petition for referendum, but shall be repealed thirty days after its rejection by a majority of the registered voters voting thereon. (Election of 11-7-78; election of 11-5-02.)

Editor's note—Charter § 115 is cited in *Montgomery County Volunteer Fire-Rescue Association v. Montgomery County Board of Elections*, 418 M.463, 15 A.3d 798 (2011), and in *Doe v. Montgomery County Board of Elections*, 406 Md. 697, 962 A.2d 342 (2008).

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.

Editor's note—See County Attorney Opinion dated 10/1/08 explaining Council's ability to impose limitations on the Executive's ability to seek and obtain grants.

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.)

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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).

See County Attorney Opinion dated 11/28/11-A regarding the constitutionality of permitting community benefits agreements. See County Attorney Opinion dated 3/12/09 explaining the Inspector General's authority to investigate an ongoing personnel matter as part of the goal of detecting and deferring fraud, waste and abuse. See County Attorney Opinion dated 10/1/08 explaining Council's ability to impose limitations on the Executive's ability to seek and obtain grants. See County Attorney Opinion dated 4/12/06 discussing development districts and sources of information for the Executive Fiscal Report. See County Attorney Opinion dated 4/12/06, concerning development districts, which cites Charter Section 201. See County Attorney Opinion dated 6/8/04-A describing the possible violation of separation of powers in a law authorizing the Council to set certain transportation fees without County Executive approval. See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People with Disabilities and the role of the County Attorney as the legal advisor for the County. See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

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 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.)

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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.

See County Attorney Opinion dated 11/26/01 explaining that the police department cannot void red-light citations issued based upon an automated traffic control signal, but the County Attorney may do so.

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.)

Editor's note—See County Attorney Opinion dated 2/19/97 explaining that the County Executive has the authority to establish a separate salary schedule for non-merit heads of departments and principal offices within the Executive Branch. [attachment]

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.)

Editor's note—See County Attorney Opinion dated 2/19/99 discussing filling an interim Council vacancy by temporary appointment pending a special election.

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.)

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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.

Sec. 208. Veto.

Upon the enactment of any legislation by the Council, the Council President shall within three days deliver it to the County Executive, who within ten days after receiving it shall approve or disapprove it. If the Executive disapproves such legislation, the Executive shall return it to the Council within ten days after receiving it, with the reasons for the Executive's 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 Executive. Any legislation which the Executive has neither approved nor disapproved shall become law on the eleventh day after the Executive receives it. The Council may by law further specify how any period of time mentioned in this section is measured. (Election of 11-2-82; election of 11-4-86; election of 11-6-90; election of 11-7-06.)

Editor's note—See County Attorney Opinion dated 1/13/09 discussing soliciting money as a form of free speech. See County Attorney Opinion dated 6/8/04-A describing the possible violation of separation of powers in a law authorizing the Council to set certain transportation fees without County Executive approval.

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.

Editor's note—Section 209 of the Montgomery County Charter was quoted in Caffrey v. Montgomery County, 370 Md. 272, 805 A.2d 268 (2002).

See County Attorney Opinion dated 10/1/08 explaining Council's ability to impose limitations on the Executive's ability to seek and obtain grants.

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.)

Editor's note—See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 2/19/97 explaining that the County Executive has the authority to establish a separate salary schedule for non-merit heads of departments and principal offices within the Executive Branch. [attachment]

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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.)

Editor's note—See County Attorney Opinion dated 3/12/09 explaining the Inspector General's authority to investigate an ongoing personnel matter as part of the goal of detecting and deterring fraud, waste and abuse. See County Attorney Opinion dated 12/17/08 discussing the authority and role of the Merit System Protection Board and the role of the County Attorney as legal adviser. See County Attorney Opinion dated 1/8/08 regarding collection of debts owed to the County. See County Attorney Opinion dated 4/10/06-A discussing the appointment and supervision of heads of departments and principal offices. See County Attorney Opinion dated 4/10/06, concerning the Chief Administrative Officer's authority to terminate an appointed office, which quotes Charter Section 211. See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 4/4/91 explaining that a special assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs with no effect on the status and rights of the employees.

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.

Editor's note—See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

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 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.)

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Editor's note—See County Attorney opinion dated 12/17/08 discussing the authority and role of the Merit System Protection Board and the role of the County Attorney as legal adviser. See County Attorney Opinion dated 1/8/08 regarding collection of debts owed to the County. See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People with Disabilities and the role of the County Attorney as the legal advisor for the County. See County Attorney Opinion dated 4/26/99 explaining that a transfer of development rights easement continues to restrict development even when the underlying zoning of the property is changed. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 4/18/91 explaining that it is inappropriate for the County Attorney's Office to respond to requests for legal advice from a source outside of the County government.

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.)

Editor's note—See County Attorney Opinion dated 6/3/08 discussing public purpose funds and non-public purpose funds. See County Attorney Opinion dated 1/8/08 regarding collection of debts owed to the County.

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.)

Editor's note—See County Attorney Opinion dated 11/28/11-A regarding the constitutionality of permitting community benefits agreements. See County Attorney Opinion dated 12/17/08 discussing the authority and role of the Merit System Protection board and the role of the County attorney as legal adviser. See County Attorney Opinion dated 4/10/06-A, discussing the appointment and supervision of heads of departments and principal offices. See County Attorney Opinion dated 1/27/03 explaining that the interagency coordinating board membership provision in the Code does not conflict with the Charter appointment provision or with the State enabling law. See County Attorney Opinion dated 2/19/99 discussing filling an interim Council vacancy by temporary appointment pending a special election. See County Attorney Opinion dated 5/22/98 explaining that a recreation area advisory board does not have the authority to elect representatives to the County Recreation Board; those representatives are appointed by the County Executive. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 4/4/91 explaining that a special assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs with no effect on the status and rights of the employees.

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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.

Editor's note—See County Attorney Opinion dated 12/17/08 discussing the authority and role of the Merit System Protection Board and the role of the County Attorney as legal adviser. See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion dated 4/4/91 explaining that a special assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs with no effect on the status and rights of the employees.

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.)

Editor's note—See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

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.)

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.

Editor's note—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

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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.)

Editor's note—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations. See County Attorney Opinion dated 2/5/96 explaining that the budget must include recommended expenditures and revenue services for the Board of Education and including the legislative history of the section. See County Attorney Opinion No. 90.008 dated 11/20/90

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discussing the use of consent calendars to consolidate capital improvement bills and proposed amendments to the County Code to permit more than one item on the consent calendar at a time. [attachment]

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.)

Editor's note—See County Attorney Opinion dated 5/5/09 regarding the County Executive's ability to impound appropriated funds. See County Attorney Opinion dated 10/1/08 explaining Council's ability to impose limitations on the Executive's ability to seek and obtain grants. See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations. See County Attorney Opinion dated 6/9/98 addressing the creation of Department of Liquor Control by State law and the department's funding and expenditures. See County Attorney Opinion dated 5/8/98 explaining that State law created the Department of Liquor Control and gives the Council oversight over the department, but does not give the Council budget or appropriation authority. See County Attorney Opinion dated 2/5/96 explaining that the budget must include recommended expenditures and revenue services for the Board of Education and including the legislative history of the section.

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.

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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 nine, not 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 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; election of 11-4-08.)

Editor's note—See County Attorney Opinion dated 5/5/09 regarding the County executive's ability to impound appropriated funds. See County Attorney Opinion dated 10/1/08 explaining Council's ability to impose limitations on the Executive's ability to seek and obtain grants. See County Attorney Opinion dated 6/29/06 regarding the calculation of Charter Revenue Limit. See County Attorney Opinion dated 6/20/06, concerning the Charter revenue limit, which interpreted Charter Section 305. See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations. See County Attorney Opinion dated 6/9/98 addressing the creation of Department of Liquor Control by State law and the department's funding and expenditures. See County Attorney Opinion dated 5/8/98 explaining that State law created the Department of Liquor Control and gives the Council oversight over the department, but does not give the Council budget or appropriation authority. See County Attorney Opinion dated 1/26/98 analyzing a petition to amend charter to require any increase in taxes to be approved by referendum. See County Attorney Opinion dated 7/14/94 explaining that the Education Article allows Council to place restrictions on tuition and fees by the Board of Trustees of Montgomery College, and that a proposed amendment to Charter § 305 re approval of budget, appropriation of funds, and levying taxes does not appear to conflict with State law. See County Attorney Opinion dated 9/3/92 explaining flaws in § 305 based on a misleading petition and an amendment that conflicts with State law. See County Attorney Opinion dated 7/14/94 explaining flaws in § 305 based on a misleading petition and an amendment that conflicts with State law. See County Attorney Opinion dated 10/30/91-A describing the additions to Charter § 305 by Question F as not conflicting with the TRIM amendment.

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,

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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.)

Editor's note—See County Attorney Opinion dated 5/5/09 regarding the County Executive's ability to impound appropriated funds. See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

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.)

Editor's note—See County Attorney Opinion dated 5/5/09 regarding the County Executive's ability to impound appropriated funds. See County Attorney Opinion dated 10/1/08 explaining Council's ability to impose limitations on the Executive's ability to seek and obtain grants. See County Attorney Opinion dated 4/7/99-A clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

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.)

Editor's note—See County Attorney Opinion dated 5/5/09 regarding the County Executive's ability to impound appropriated funds. See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

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

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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.)

Editor's note—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

Sec. 311. Limitations on Expenditures.

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

Editor's note—See County Attorney Opinion dated 10/28/10 comparing the limits on Council authority to make changes to retirement benefits with its ability to modify health benefits. See County Attorney Opinion dated 10/1/08 explaining Council's ability to impose limitations on the Executive's ability to seek and obtain grants. See County attorney Opinion dated 4/28/08 regarding collective bargaining negotiations of benefits for current employees and future retirees. See County Attorney Opinion dated 9/7/07 discussing methods of acquiring the construction of infrastructure for development districts. See County Attorney Opinion dated 5/3/00 clarifying that the County cannot enter into agreements until funds have been appropriated.

Editor's note—Former Sec. 311A, Limitations on Expenditures for Landfills in Residential Zones, adopted by the election of 11-7-08, was repealed by the election of 11-4-08. 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.

Editor's note—Former Sec. 311B, Limitations on Expenditures, Contract, and Permits for Burying or Trenching Sewage Sludge in Residential Zones, adopted by the election of 11-4-80, was repealed by the election of 11-4-08.

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 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.)

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Editor's note—See County Attorney Opinion dated 10/23/91 explaining that a loan guarantee to a non-profit corporation is comparable to that of the County making a loan under Ch. 23B. A loan guarantee would not constitute either an operating expense or a capital expense, and could not exceed 1 year.

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.

Editor's note—See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee. See County Attorney Opinion dated 9/23/91 explaining that State law does not prohibit the Department of Liquor Control from entering into contracts with private entities to operate the liquor stores.

Editor's note—Former Sec. 313A, Purchasing, Contracting for Goods, Services with C&P Telephone Company, adopted by the election of 11-2-82, was repealed by the election of 11-4-08. 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.)

Editor's note—See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion dated 9/23/91 explaining that State law does not prohibit the Department of Liquor Control from entering into contracts with private entities to operate the liquor stores.

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 by law 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 by law 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.

The Council by law may establish within the merit system a program to recruit and select qualified individuals with severe physical or mental disabilities on a noncompetitive basis. (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; election of 11-6-2012.)

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Editor's note—Section 401 of the Montgomery County Charter was cited in Montgomery County, Maryland v. Jansa, 153 Md. App. 346, 836 A. 2d 745 (2003) and interpreted in Anastasi v. Montgomery County, 123 Md. App. 472, 719 A.2d 980 (1998).

See County Attorney Opinion dated 10/28/10 comparing the limits on Council authority to make changes to retirement benefits with its ability to modify health benefits. See County Attorney Opinion dated 3/12/09 explaining the Inspector General's authority to investigate an ongoing personnel matter as part of the goal of detecting and deterring fraud, waste and abuse. See County Attorney Opinion dated 12/17/08 discussing the authority and role of the Merit System Protection Board and the role of the County Attorney as legal adviser. See County Attorney Opinion dated 11/26/01-A explaining that police sergeants are considered FLSA exempt, even though certain duty assignments may render them eligible for overtime pay. See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion dated 2/19/97 explaining that the County Executive has the authority to establish a separate salary schedule for non-merit heads of departments and principal offices within the Executive Branch. [attachment] See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion No. 95.002 dated 5/17/95 explaining that a member of retirement plan who retires under the retirement incentive plan may participate in a County contract awarded under the procurement process. See County Attorney Opinion No. 90.007 dated 7/24/90 explaining that the County Council may amend the uniform salary plan only through legislation and not by resolution.

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.)

Editor's note—See County Attorney Opinion dated 12/17/08 discussing the authority and role of the Merit System Protection Board and the role of the County Attorney as legal adviser. See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee. See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion No. 90.007 dated 7/24/90 explaining that the County Council may amend the uniform salary plan only through legislation and not by resolution.

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

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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.)

Editor's note—Section 403 of the Montgomery County Charter was cited in Montgomery County, Maryland v. Jamsa, 153 Md. App. 346, 836 A. 2d 745 (2003)

See County Attorney Opinion dated 12/17/08 discussing the authority and role of the Merit System Protection Board and the role of the County attorney as legal adviser. See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter.

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.)

Editor's note—Section 404 of the Montgomery County Charter was cited in Montgomery County, Maryland v. Jamsa, 153 Md. App. 346, 836 A. 2d 745 (2003)

See County Attorney Opinion dated 12/17/08 discussing the authority and role of the Merit System Protection Board and the role of the County Attorney as legal adviser. See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter.

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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Editor's note—See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See Attorney General Opinion No. 98-003 (unpublished) dated 1/27/98 explaining that the State election laws preempt the County from regulating the solicitation of political contributions. See County Attorney Opinion dated 12/10/97 explaining that the County may prohibit members of its quasi-judicial boards and commissions from soliciting funds for partisan political campaigns or restricting other political activities that conflict with a compelling County interest.

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.)

Editor's note—See County Attorney Opinion dated 8/11/00 indicating that an elected official running for office must devote "official" time to official duties.

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.)

Editor's note—See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion No. 90.002 dated 3/30/90 explaining that a County employee may receive two paychecks (one as a full-time County employee and one as a paid member of a committee) within certain parameters.

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.

Editor's note—See County Attorney Opinion dated 8/11/00 indicating that an elected official running for office must devote "official" time to official duties.

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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;
- 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.)

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Editor's note—See County Attorney Opinion dated 8/23/02 describing the elements required for a complaint to the Ethics Commission to initiate an investigation. See County Attorney Opinion dated 9/8/98 explaining that County law limiting contractors from seeking or obtaining an economic benefit in addition to payment does not extend to sub-contractors unless the Office of Procurement requires its contractors to extend the prohibition to sub-contractors.

Sec. 411. Reserved.

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

ARTICLE 5. GENERAL PROVISIONS.

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

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

Sec. 502. Annual Report.

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

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.)

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Sec. 505. Right to Information.

Any person shall have the right to inspect any document held by County government, except confidential police records, personnel records, records of a confidential nature as defined by law, or records that are or may be exempted from disclosure under the state Public Information Act or other applicable state or federal law. The Council may adopt reasonable regulations for such inspection. A certified copy of any such document shall be furnished upon payment of a reasonable fee established by such regulations. This section shall not apply to a document or other material obtained or prepared in anticipation of litigation or for use in legal proceedings to which the County is a party. (Election of 11-5-02.)

Editor's note—Former Section 505 of the Montgomery County Charter was quoted and interpreted in Caffrey v. Montgomery County, 370 Md. 272, 805 A.2d 268 (2002), where it was held that former Section 505 waived executive privilege and attorney-client privilege in relation to public information requests. At the 2002 general election, the voters approved an amendment to Montgomery County Charter Section 505 making the section consistent with State public information protections.

See County Attorney Opinion dated 7/14/00 discussing the need to modernize the Charter in relation to access to documents. See County Attorney Opinion dated 6/19/00 recommending an amendment to the Charter to conform with State law.

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.

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

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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.)

Editor's note—Charter Sec. 510 is cited in Mavor and City Council for Ocean City v. Bunting, 168 Md. App. 134, 895 A.2d 1068 (2006).

See County Attorney Opinion dated 10/28/10 comparing the limits on Council authority to make changes to retirement benefits with its ability to modify health benefits. See County Attorney Opinion dated 7/22/10 regarding the steps in the out-of-cycle collective bargaining process. See County Attorney Opinion dated 5/4/09 regarding the steps in the collective bargaining process. See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process.

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.)

Editor's note—See County Attorney Opinion dated 10/28/10 comparing the limits on Council authority to make changes to retirement benefits with its ability to modify health benefits. See County Attorney Opinion dated 7/22/10 regarding the steps in the out-of-cycle collective bargaining process. See County Attorney Opinion dated 5/4/09 regarding the steps in the collective bargaining process. See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process.

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.)

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Editor's note—See County Attorney Opinion dated 10/28/10 comparing the limits on council authority to make changes to retirement benefits with its ability to modify health benefits. See County Attorney Opinion dated 7/22/10 regarding the steps in the out-of-cycle collective bargaining process. See County Attorney Opinion dated 5/4/09 regarding the steps in the collective bargaining process. See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process.

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.)

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 ("Schedule of Transitional Provisions"), subheadings ("General" and "Merit System"), and opening paragraph of "Schedule of Transitional Provisions"; renumbered section 1 under "General" to section 513; and repealed section 2 under "Merit System." Section 3 was repealed by Charter amendment approved at the election held on November 6, 1990. Previously, Charter amendments approved at the election held on November 2, 1982, revised "Schedule of Transition Provisions" by repealing former sections 2—16 and enacting new sections 2 (formerly section 16) and 3 (formerly section 17).

Minority Position Re: Police Civilian Review Board
From: Diane Nash Dillon, Albert Pearce, Jerry Cave

A minority of the Commission does not support the recommendation that the Council consider adopting an oversight panel using the Prince Georges County model for a number of reasons. Chief among these is a finding that the extremely high annual costs attendant with implementing the Prince Georges County model are not justified in Montgomery County because of the absence of hard data required to justify implementing such a comprehensive and expensive program.

Additionally, in contrast with Prince Georges County, the Montgomery County Police Department already has a process that accepts complaints in many formats, and stresses the transparency of its existing system as integral to preserving community trust in the police department. As such, during its investigation the Commission did not discover an outcry among residents of Montgomery County to establish a citizen review board to redress grievances toward the police department.

In reaching this position, the minority finds it persuasive that the Montgomery County Police Department already has a system in place that updates complainants as to the status of their complaint and informs them when their complaints are resolved. Complainants are informed if disciplinary action was taken, although specific disciplinary actions are not disclosed because of the safeguards in the Maryland Law Enforcement Officer's Bill of Rights.

MEMORANDUM

December 26, 2013.

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 
Michael Faden, Senior Legislative Attorney 

SUBJECT: Residency Requirement for Appointed Councilmember

We have been asked for our opinion concerning the residency requirement for the person appointed to fill the vacant District 5 Council seat. Specifically, the pending question is whether the appointee must be a resident of District 5 as it was configured at the previous Council election in November 2010 or as it is currently configured after the 2012 redistricting. Although the issue is not free from doubt, for the reasons discussed in this memo we conclude that the appointee must be a resident of District 5 as it is configured when that person is appointed.

Background

County Charter §106 authorizes the Council to appoint a person to fill a vacant Council seat within 30 days after a vacancy occurs unless the Council has enacted a law requiring the vacancy to be filled by a special election. County Code §16-17(b) requires a special election to be held to fill any vacancy that occurs "before December 1 of the year before a year in which a quadrennial state election will be held." Since this vacancy will occur after that date, the Council is authorized to appoint a person to fill this vacancy within 30 days after the vacancy occurs.

Charter §106 contains the following eligibility requirements for the appointee:

Any member appointed to fill a vacancy shall meet the same qualifications and residence requirements as the previous member.

Charter §102 contains the following residence requirement for a Councilmember:

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. (Emphasis added.)

On December 10, 2013, Councilmember Valerie Ervin announced her intention to resign her Council membership on January 3, 2014. Councilmember Ervin was re-elected as the District 5 Councilmember in November 2010. Under Charter §102, Councilmember Ervin was required to be a qualified voter of the County and a resident of District 5 when she was elected.

Charter §104 requires the Council to review the 5 Council districts and, if appropriate, adjust their boundaries to reflect changes in population, every 10 years, beginning in 1972. The Council reviewed the existing districts and enacted Bill 31-11, Council Districts – Boundaries, effective March 7, 2012. Bill 31-11 modified the boundaries of District 5, based on changes in population since the previous 2002 redistricting.

Therefore, under these unusual circumstances, the question has arisen whether the appointee to fill this vacancy must be a resident of District 5 as it was configured at the previous Council election in November 2010 or as it is currently configured after the 2012 redistricting. Although much of District 5 remains the same, significant portions of the current District 5 were not part of District 5 in 2010 and significant portions of the former District 5 are no longer contained in the current District 5.

Analysis

To interpret the intent of the County Charter, we must look first to the Charter's language. In *Morris v. Prince George's County*, 319 Md. 597, 603 (1990), the Maryland Court of Appeals explained:

There is no doubt that the beginning point of statutory construction is the language of the statute itself... And sometimes it may not be necessary to go further than the scrutiny of statutory language, for the language itself may be sufficiently expressive of the legislative purpose or goal.

Unfortunately, this is not one of those times. The requirement previously cited in Charter §106 -- "*the same qualifications and residence requirements as the previous member*" -- can mean either residing in the same district that the previous member represented when she was elected (the former District 5) or residing in the district that the previous member represented when she left office (the current District 5). In *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 75 (1986), the Court noted:

We also recognize the rule that where a statute is plainly susceptible of more than one meaning and thus contains an ambiguity, courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives and purpose of the enactment. In such circumstances, the court, in seeking to ascertain legislative intent, may consider the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.

The issue then becomes: what is the "residence requirement" that the previous member must meet? Charter §102 does not explicitly require that a District Councilmember must continue to reside in the district the person will represent. Rather, it provides that "*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.*" (Emphasis added.) The County Attorney, in Opinion No. 90.03 issued on March 30, 1990, interpreted a prior version of this sentence to require that a District Councilmember must reside in the district the person would represent at the time of nomination and election.

The 1990 County Attorney opinion, relying on dicta in *Dorf v. Skolnik*, 280 Md. 101 (1977), also asserted that a District Councilmember must continue to reside in that district during the member's entire term of office.¹ In *Dorf*, the Court held that a State law requiring that a member of a party central committee be a resident of the jurisdiction for which the committee member was elected when the central committee voted to nominate a person to fill a vacant seat in the General Assembly voided the nomination because the central committee member (who was the decisive vote) had moved out of the jurisdiction before the vote. The Court explained:

The cases generally hold that when residence is a prerequisite to a given office then a change of residence vacates that office, absent a legislative expression to the contrary. 280 Md. 101, 115.

Unlike Charter §102, the State law in question in *Dorf* expressly provided that a member who relinquishes his or her residency "shall be considered to have resigned."

The provision in question here (Charter §102) expresses a clear intent to be an exception to the general rule stated in *Dorf* because it only requires residency in the district at the time of election. The relevant language in Charter §102 is derived directly from language in the original 1968 County Charter. The Commentary prepared for the Council on the Proposed 1968 Charter on page 12 discussed this part of §102:

The requirement in the present charter that a Councilman reside in the district from which elected for two years prior to the election and during his full term of office is not carried over to the new charter. The new charter would require only that a Councilman elected from a district be a resident of that district at the time of his nomination and election.

The effective date of the 2012 Council redistricting, enacted in Bill 31-11, is also critical to any analysis. Bill 31-11 did not contain a specific effective date. The Council enacted the Bill on November 29, 2011, and the Executive signed it into law on December 7, 2011. Therefore, by operation of Charter §112, Bill 31-11 took effect on March 7, 2012.²

¹ Recognizing the inconsistency of this conclusion with the express language of the Charter, the County Attorney backtracked somewhat in footnote 3 on p. 6 of the opinion. We also note that the duration of the residency requirement beyond the election was a hypothetical question that the County Attorney did not need to decide.

² Similarly, redistricting bills enacted in 1981, 1991, and 2001 also contained no specific effective date and thus took effect 91 days after they became law.

In our view Charter §104 required this redistricting bill, and thus the new districts, to take effect in 2012:

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...

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. (Emphasis added)³

Therefore, when Bill 31-11 took effect on March 7, 2012, the former District 5 no longer existed. This raises a hypothetical question whether a Councilmember could be redistricted out of the member's seat by a boundary change during the member's term of office. We do not believe so. Charter §118 governs the removal of a Councilmember from office and does not include as a reason that the member no longer resides in the district the member represents.

The purpose of the residency requirement in Charter §102, as currently drafted, is to assure that the Councilmember who is elected from a district is a resident of the district when elected. While a person who resides outside of a district arguably may be capable of representing the residents of that district, the framers of the 1968 Charter believed that it was important for at least one Councilmember to reside in each district. However, as previously noted, the 1968 Charter removed the requirement that a District Councilmember remain a resident of the district throughout the member's entire term of office.

It flows from this policy that the person appointed to the vacant District 5 Council seat must be a resident of District 5 when the person is appointed. If one substitutes "appointment" for "election" in Charter §102, the relevant phrase would read: "*each of the five other members of the Council shall, at the time of appointment, reside in a different Council district.*" Appointing a person who lives in the former District 5 but not in the current District 5 (and thus lives in one of the other 4 districts) would conflict with the desired result that each of the 5 district members live in a different district.

It is also instructive to look at the County law governing a special Council election. County Code §16-17 requires a special election to fill a Council vacancy that occurs before December 1 of the last year of the term. Code §16-17(b) provides that:

- (1) A vacancy on the Council that occurs before December 1 of the year before a year in which a quadrennial state election will be held must be filled by a special election as provided in this Section.
- (2) *The special election must be conducted among the registered voters of the Council district represented by the previous member,*

³ Md. Const. Art. III, § 5 requires redistricting of State legislative districts in the 2nd year after the decennial census, but does not prescribe an effective date for the new districts. Unlike Bill 31-11, the General Assembly, in adopting Joint Resolution 2 in 2012 to modify the legislative district boundaries, expressly made the new boundaries effective at the beginning of the next legislative term of office in January 2015.

or among the registered voters of the entire County when the previous member did not represent a Council district.

- (3) The person elected to fill a Council vacancy must meet the same qualifications and residence requirements, but need not be registered to vote in the same political party, as the previous member. (Emphasis added) * * *

In this case, the previous member, Councilmember Ervin, when she resigned, represented the current District 5, not the former District 5. It follows that if the Council vacancy were being filled by a special election, the candidates and the qualified voters would have to be residents of the current District 5. We do not see any reason to deviate from this policy for an appointee.

Conclusion

Requiring a District Councilmember to live in the district at the time of election is a qualification for office. The logical point in time to determine qualifications for an office is when the person takes office, not when the person's predecessor took office. Requiring the appointee to reside in the current District 5 when appointed fully satisfies the intent and purpose of Charter §102. For these reasons, we conclude that the person appointed by the Council to fill the District 5 vacancy must be a resident of District 5 as it exists when that person is appointed.

Council Action

The Council, as the County legislative body and the entity delegated by the County Charter to fill this vacancy, has the authority to decide this issue in making this appointment.

In addition, the Council may later want to consider an amendment either to Charter §106 governing Council vacancies to clarify the cited language and how this situation should be handled in the future or to Charter §104 to further specify when a Council redistricting bill takes effect when it occurs during the middle of a term every 20 years.

We are available to discuss this matter at your convenience.

cc. Confidential Aides
Steve Farber
Marc Hansen
Linda Lauer



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Robert H. Drummer
Senior Legislative Attorney

Michael Faden
Senior Legislative Attorney

FROM: Marc P. Hansen *Marc Hansen*
County Attorney

DATE: December 27, 2013

RE: Residency Requirement for Appointed Councilmember

You have asked whether I agree with your advice to the County Council that an individual appointed by the Council to fill the vacancy in the District 5 Council seat must reside in District 5 as reconfigured in 2012 by Bill 31-11.¹ You have also noted that your conclusion is "not free from doubt."

I agree with your conclusion and join you in urging the Council to consider proposing to the voters an amendment to the Charter to remove any doubt as to what residency requirements apply to an individual filling a vacant District Council seat after the district boundaries have been altered in connection with the issuance of the decennial census.

Explanation

Valerie Ervin, the Councilmember representing District 5, announced that she will resign effective January 3, 2014. Under Charter Section 106, the Council must appoint within 30 days an individual to fill the District 5 vacancy. The individual appointed must "meet the same qualifications and residence requirements as the previous member." (Charter Section 106)

¹ A copy of your memorandum to the County Council dated December 26, 2013, is attached.

Robert Drummer
Michael Faden
December 27, 2013
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In 2010, Ms. Ervin was a resident in District 5 and was elected by the voters of District 5 to represent that District. In 2012, as required by Charter Section 104, the Council reviewed the boundaries of all the Council districts in light of the results of the United States decennial census. As a result of this review, the Council changed the boundaries of District 5, effective March 7, 2012, by enacting Bill 31-11.

As your memorandum of advice succinctly states, "Specifically, the pending question is whether the appointee must be a resident of District 5 as it was configured at the previous Council election in November 2010, or as it is currently configured after the 2012 redistricting."

As indicated, I agree with your conclusion that an individual appointed to fill the District 5 vacancy must be a resident of District 5 as reconfigured in 2012 by Bill 31-11. I join you in noting that this conclusion is "not free from doubt."

I agree with your conclusion primarily for two reasons: First, the Charter language of Section 104 provides, as you note, "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." (Emphasis added) Hence, the Charter envisions that redistricting legislation will ~~be become~~ effective mid-election cycle—at least as you note every 20 years. Second, even though mid-term redistricting as required by the language of Charter Section 104 could result in a Councilmember no longer residing in the district which elected her (or him), this result would not offend Charter Section 102, which requires that "Each of the five other members of the Council shall, at the time of election, reside in a different Council district." As your memorandum notes, the 1968 Charter Commentary appears to make clear that requiring a "District" Councilmember to continue to reside in the district during her or his term of office was considered and rejected. Thus, there is no Charter language or Charter history that would justify imposing a statutory gloss on Charter Section 104 (or Bill 31-11) that pushes the effective date of redistricting legislation to the following election.

Consideration of Charter Amendment

As explained, the Charter language appears to dictate the result reached in this legal advice. The policy behind changing the boundaries of a Council district in the middle of the election cycle, however, is elusive. The requirement in Charter Section 104 that redistricting take effect mid-election cycle appears in the 1968 Charter. At that time, *all* Councilmembers were elected "by the qualified voters of the entire County" even though five of the seven Councilmembers "shall, at the time of his election, reside in a different one of the five Councilmanic districts of the County." (1968 Charter Section 102) Perhaps allowing a district Councilmember to move into a different district after an election was not seen as problematic in 1968 since all Councilmembers were elected by the entire County. Now, District members "shall be nominated and elected by the qualified voters of that district." (Charter Section 102)

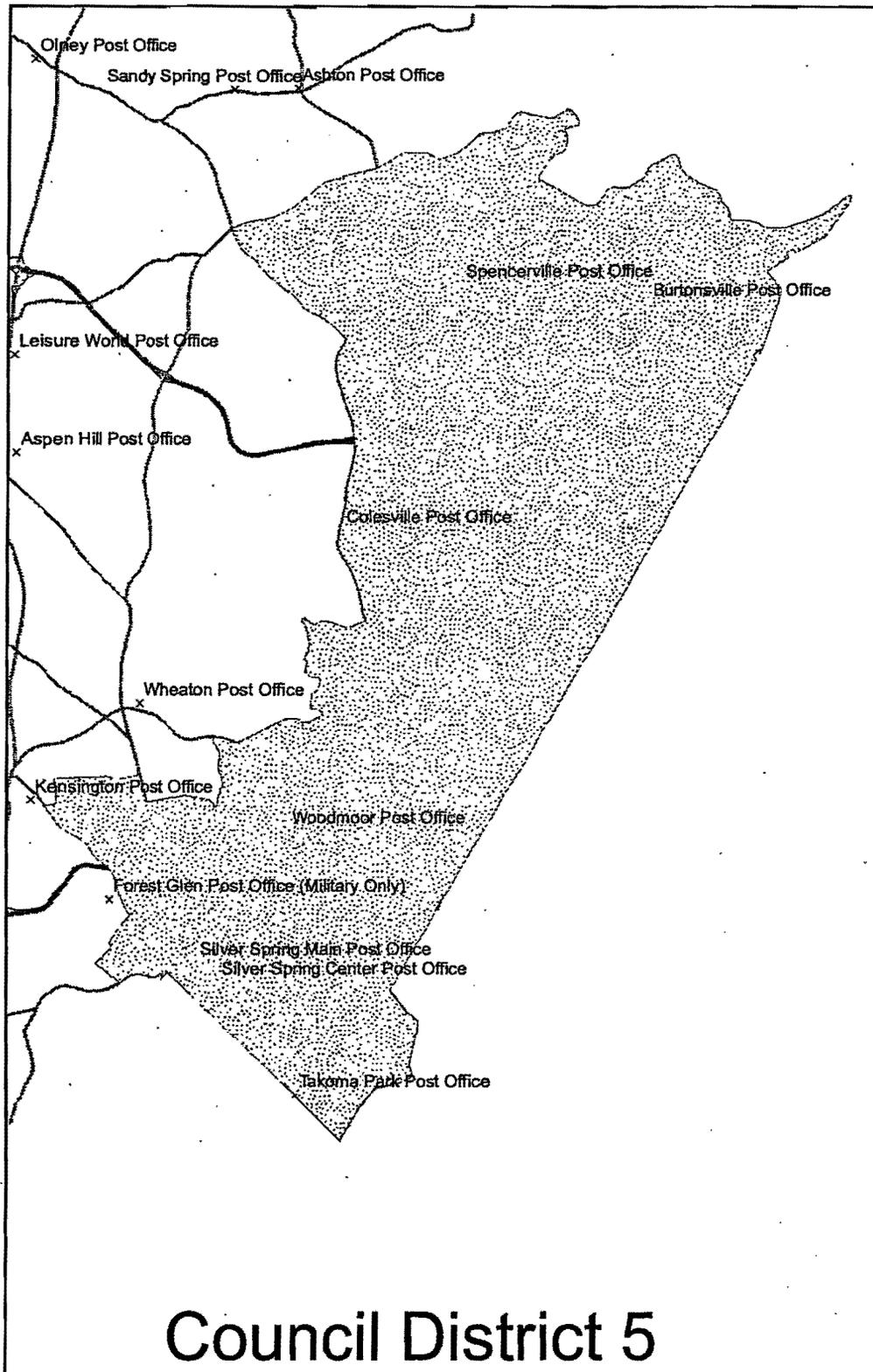
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So, Charter Section 104, as written, creates the potential situation where voters may find themselves legislated into a new district mid-election cycle and represented by a Councilmember they did not have the opportunity to vote for (or against). Given this anomaly, the Council should review the interplay between Charter Sections 102 and 104 and determine if the current arrangement, which was essentially established in 1968, continues to make policy sense where a district Councilmember is elected by the voters of one particular district.

cc: Craig Rice, President, County Council
Isiah Leggett, County Executive
Steve Farber, Council Administrator
Bonnie Kirkland, Assistant Chief Administrative Officer

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Council District 5 - 2011 Boundary



District 5 includes the communities of Briggs Chaney, Burnt Mills, Burtonsville, Calverton, Capitol View, Cloverly, Colesville, Fairland, Four Corners, Hillandale, Lyttonsville, Silver Spring, Spencerville, Takoma Park, and White Oak. The District's southern boundary is the District of Columbia line; its eastern boundary is the entire length of the Montgomery/Prince George's County line.

Vacancy residency requirement amendment (Council staff draft 2)

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. After any redistricting plan becomes law, the boundaries of the Council districts so established shall apply to the next regular election for Councilmembers and to any special election held or appointment made to fill a vacancy on the Council that occurs after those boundaries are established.

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 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. If the previous member was elected by the voters of a Council district, any person appointed to fill that vacancy shall reside in the district represented by the previous member as it exists when the vacancy occurs.

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] Council 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.

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