

MEMORANDUM

TO: County Council

FROM: Michael Faden, Senior Legislative Attorney
Amanda Mihill, Legislative Analyst *amihill*

SUBJECT: **Action:** Proposed Charter Amendments

The Charter Review Commission presented its 2010 report to the Council on June 15.¹ The Commission did not recommend any amendment to the Charter. The Council held a public hearing on the report on June 29, at which representatives of the County Executive and other speakers urged the Council to place a Charter amendment on the ballot to allow a special hiring authority for disabled persons. To date no Councilmember has directed staff to draft an amendment.

Council staff is aware of several Charter amendment petitions that are being circulated, but the only one filed with the Board of Elections is shown on ©5. That amendment, which would reduce the number of at-large Councilmembers from 4 to 2, has major substantive flaws, which the Board of Elections' counsel has pointed out to its proponent. Those flaws include inserting an immediate effective date without designating which 2 Councilmembers elected on the 2010 ballot would not serve, and its failure to conform other Charter provisions, including the 9-vote property tax cap waiver provision, to the smaller number of Councilmembers. If this amendment is submitted as shown, Council staff questions whether it would meet all legal standards for inclusion on the ballot.

Council staff asked Robin Ficker, the primary proponent of two other reputed Charter amendment petitions, to forward the text of those proposed amendments (see email to Mr. Ficker on ©6), but he had not responded when this packet went to print. Council staff obtained from Mr. Ficker's Facebook site the text of one ballot question regarding term limits (see discussion below), but has been unable to find the text of a second petition regarding tax caps that he may be circulating.

If Mr. Ficker files a second petition with sufficient signatures by the August 9 deadline, or if anyone else does the same, the Council is scheduled to meet on August 12 to approve the necessary ballot language.

¹The Commission Report is available from Council staff or online at http://www.montgomerycountymd.gov/content/council/pdf/SCANNED_DOCS/2010charterreviewcommissionreport.pdf.

The only Charter amendment in the attached resolution is:

A. Term Limits – County Council and County Executive

Council staff understands that Robin Ficker is circulating a petition to limit the number of terms that a member of the County Council and the County Executive may serve to 3 consecutive terms. To staff's knowledge, Mr. Ficker has not submitted this petition to the Board of Elections. **Council staff recommends the Council adopt the language proposed in the attached resolution on ©1, conditional on the petition qualifying for inclusion on the 2010 ballot.** Staff drafted this language based on the petition text on Mr. Ficker's Facebook page (©7). Under County law this resolution does not need the Executive's signature.

An amendment to the state Election Law Article, quietly enacted in 2006, appears to remove the Council's authority, contained in County law, to approve ballot language for County Charter amendments and transfer that authority to the County Attorney. While this authority could be transferred back to the Council's own attorney by a County law, this has not been done. Council staff will draft an appropriate amendment to do so as part of a larger revision of the County law covering Charter amendments and referenda. In the meantime, the Acting County Attorney has indicated that he will endorse and certify the ballot language the Council adopts.

Attached on ©3 is another resolution conditionally confirming that Mr. Ficker's petition for a Charter amendment on term limits qualifies for the November ballot. As we interpret the state election law, the County Executive must approve this resolution.

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Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Proposed Amendments to County Charter

Background

(1) §5 of Article XI-A of the Maryland Constitution, §7-102(c)(3)(i) of the Elections Article of the Maryland Code, and §16-14 of the Montgomery County Code provide that amendments to the Charter of Montgomery County may be proposed by a resolution of the County Council. §5 of Article XI-A of the Constitution also provides that amendments to the Charter may be proposed by a petition signed by at least 10,000 registered voters of the County and filed with the President of the County Council.

(2) Under §7-103(c)(3)(i) of the Elections Article of the Maryland Code, proposed Charter amendments must be certified to the County Board of Elections on or before the third Monday in August in the year of a general or Congressional election at which those Charter amendments will be submitted to the voters. §16-16 of the County Code provides that a ballot title or summary, prepared by the County Council, of all proposed Charter amendments must appear in print on the voting machine or ballot.

(3) A petition to amend Sections 105 and 202 of the Charter has been circulated and may be filed with the County Board of Elections. The Board of Elections has not determined whether the petition has the required number of signatures to qualify for inclusion on the 2010 general election ballot.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The following Charter amendment must be placed on the 2010 general election ballot if the petition containing the amendment qualifies for inclusion on the 2010 ballot.

A

Term Limits – County Council and County Executive

By petition the voters of Montgomery County propose to amend Sections 105 and 202 of the Charter of Montgomery County as follows:

SECTION 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. In no case shall a Council Member be permitted to serve more than three consecutive terms. Any member of Council who will have served three or more consecutive terms at noon on the first Monday of December 2014 shall be prohibited from commencing to serve a successive term of office at that time.

SECTION 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. In no case shall a County Executive be permitted to serve more than three consecutive terms. Any County Executive who will have served three or more consecutive terms at noon on the first Monday of December 2014 shall be prohibited from commencing to serve a successive term of office at that time.

The ballot for this question must be designated and read as follows:

Question A

Charter amendment by petition

Term Limits – County Council and County Executive

Amend Sections 105 and 202 of the County Charter to:

--limit the County Executive and members of the County Council to 3 consecutive terms in office, and

--provide that a County Executive and any member of the County Council who will have served 3 or more consecutive terms on December 1, 2014, cannot serve another successive term in the same office.

FOR AGAINST

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Qualification For Ballot Of Petitioned Amendment To County Charter

Background

(1) §5 of Article XI-A of the Maryland Constitution provides that amendments to the Charter of Montgomery County may be proposed by a petition signed by at least 10,000 registered voters of the County and filed with the President of the County Council. §7-102(c)(3)(ii) of the Elections Article of the Maryland Code provides that an amendment to the Charter will qualify to be placed on the general election ballot if the governing body of the County determines that the petition that submitted the amendment has satisfied all requirements of law relating to petitions initiating Charter amendments.

(2) Although the Elections Article of the Maryland Code does not define the term “governing body”, the County Council interprets that term, consistent with other state laws and court decisions interpreting them, to mean the County Council and County Executive acting jointly.

(3) Under §7-103(c)(3)(i) of the Elections Article of the Maryland Code, proposed Charter amendments must be certified to the County Board of Elections on or before the third Monday in August in the year of a general or Congressional election at which those Charter amendments will be submitted to the voters. §16-16 of the County Code provides that a ballot title or summary, prepared by the County Council, of all proposed Charter amendments must appear in print on the voting machine or ballot. A separate resolution, adopted by the County Council concurrently with this resolution, contains those ballot titles.

(4) A petition to amend Sections 105 and 202 of the Charter has been circulated and may be filed with the County Board of Elections. The Board of Elections has not determined whether the petition has the required number of signatures to qualify for inclusion on the 2010 general election ballot.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Council finds, as required by Section 7-102(c)(3)(ii) of the Elections Article of the Maryland Code, that the following amendment to the County Charter proposed by petition will have met all requirements of state law and thus

Faden, Michael

From: Faden, Michael
Sent: Thursday, July 08, 2010 4:46 PM
To: 'robinficker@msn.com'
Cc: Jurgensen, Margaret
Subject: Charter amendments

Mr. Ficker-

We are preparing the Council resolutions to adopt ballot language for any Charter amendments that are placed on the ballot by petition. I understand that you are circulating 2 petitions, one for Council and Executive term limits and the other to limit certain taxes the County can impose.

It would assist the process, and lead to earlier resolution of any issues that arise, if you could send the text of each petition to this office. As you know, the Council cannot modify the wording of any proposed amendment. But it needs to see that wording in order to adopt an accurate summary for the ballot question.

The Council hopes to conditionally adopt the ballot language by July 27, assuming that each petition being circulated will receive sufficient signatures, and is scheduled to begin that process on July 13. Accordingly, I would appreciate it if you could forward the text of each amendment to me at your earliest convenience.

Michael E. Faden
Senior Legislative Attorney
Montgomery County Council
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mike.faden@montgomerycountymd.gov

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Facebook helps you connect and share with the people in your life.



Proposed Term Limit Amendment

[Back to Robin Ficker for Homeowners Committee](#)

Topic: Proposed Term Limit Amendment

Displaying the only post.



Robin Ficker for Homeowners Committee Here is the language of the Petition to Amend the Charter of Montgomery County:

We, the undersigned registered voters of Montgomery County do hereby petition to have submitted to the registered voters of Montgomery County for approval or rejection at the next election this amendment of the Charter of Montgomery County in accordance with the provisions of Article XI-A of the Constitution of Maryland.

It is the intent of this proposed amendment to bar the Members of the Montgomery County Council and the County Executive from serving more than three consecutive terms of office, although no officeholder who has served three consecutive terms will be barred from running for reelection to more than three non-consecutive terms. This proposed amendment is intended to apply to both current and future officeholders.

The full language of the proposed amendment to Section 105 of the Charter, "Term of Office," is as follows:

"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. In no case shall a Council Member be permitted to serve more than three consecutive terms. Any member of Council who will have served three or more consecutive terms at noon on the first Monday of December 2014 shall be prohibited from commencing to serve a successive term of office at that time."

The full language of the proposed amendment to Section 202 of the Charter, "Election and term of office," is as follows:

"The County Executive shall be elected by 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 regular election, and ending at noon on the first Monday of December in the fourth year thereafter, or until a successor shall have qualified. In no case shall a County Executive be permitted to serve more than three consecutive terms. Any County Executive who will have served three or more consecutive terms at noon on the first Monday of December 2014 shall be prohibited from commencing to serve a successive term of office at that time."

about 3 months ago

⑦