



2018
Report of the
Charter Review Commission

May 2018
Montgomery County, Maryland

April 30, 2018

Montgomery County Council
Stella Werner Council Office Building
100 Maryland Avenue, 5th Floor
Rockville, Maryland 20850

Dear Councilmembers:

On behalf of the Montgomery County Charter Review Commission, I am pleased to submit the 2018 Report of the Commission.

In summary, we are making the following recommendations:

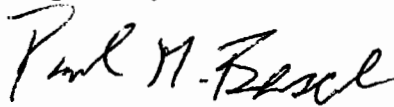
1. We are recommending a complete revision of the manner in which the members of the Redistricting Commission are appointed. Now the nine members are basically selected by the Democratic and Republican Central Committees. The Commission is recommending that this be amended so there will be an 11-member Redistricting Commission, with no guarantee that any Central Committee will be able to have representation, but instead ALL the registered voters of our county will be eligible to apply to be on the Redistricting Commission. In addition, we recommend that no more than four members of the Redistricting Committee be registered in the same political party, thus forcing any group from one party to seek support from others and hopefully leading to compromise recommendations.
2. We are recommending a change in the Charter provision governing how many Council Member votes are needed to override the charter limit on property taxes. We are NOT recommending a significant change, but only a limited change that we feel is logical. Currently, "a unanimous vote of nine, not seven Councilmembers" is needed to increase real property taxes beyond the Charter limit, which is tied to the increase in the Consumer Price Index. This is so even if there are not nine members currently serving on the Council. This restriction would effectively prohibit Council action when there is a vacancy on the Council, legally limiting the ability of the government to manage in a crisis. We recommend that the word "unanimous" be retained, but the phrase "nine not seven" be stricken and replaced with "all current." Also, the change from "nine" to "all current" will ensure that if the Council membership is increased in the future, there will be no doubt that unanimity will still be needed to exceed the Charter tax cap.
3. We are recommending informal actions to provide a smooth transition from our Commission to the next one, which we hope will become regular for all future Commissions. Specifically, we recommend an informal meeting between our members and members of the next Charter Review Commission at the beginning of the next

Commission's term. This should provide our successors with some of the benefits of our experience.

We are not recommending any change in the structure of the County Council, although we spent a great deal of time investigating this subject. The reasons are provided in this report. There is also a minority report on this subject.

On a personal note, I want to thank the officers and members of the County Council for appointing me to be the Chairperson of the Commission. It has been a great honor and pleasure to work with the members of the Commission, a group of dedicated county residents, including members of the Democratic, Republican, and Green parties, plus unaffiliated voters. We worked well as a team and we hope the results of our efforts will show that we did our best for the residents of Montgomery County.

Respectfully submitted,

A handwritten signature in cursive script that reads "Paul M. Bessel". The signature is written in dark ink and is positioned above the printed name.

Paul M. Bessel, Chairperson
Charter Review Commission, 2014 through 2018

CHARTER REVIEW COMMISSION

Members

Paul M. Bessel, Chair

Sharon Freeman, Vice-Chair

Wendy Cohen

Gregory Decker¹

Jennifer Hunt²

Larry Lauer

Timothy Lighter

Joshua Lipsky

Randy McDonald

Angela Rey³

Aryeh Shudofsky

Jonelle Williams⁴

Edward Wisneski

¹ Appointed in December 2017

² Resigned in March 2016

³ Resigned in May 2017

⁴ Appointed in May 2016



2018 Report of the Charter Review Commission

Staff

**Josh Hamlin, Legislative Attorney,
County Council Office**

**Marie Jean-Paul, Legislative Services Coordinator,
County Council Office**

**Ed Lattner, Chief, Division of Government Operations,
Office of the County Attorney**

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I. INTRODUCTION

The Constitution of Maryland, Article XI-A, enables counties to adopt charters to establish local governments. County charters are, in effect, constitutions for county governments because they establish the duties and responsibilities for the different branches of government.

The voters of Montgomery County adopted a charter form of government in 1948. In subsequent general elections, voters adopted several amendments to the original Charter. The current Charter was adopted in 1968, with 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 2016, the Commission studied several issues related to the current Charter and held a well-attended public hearing on October 18, 2017. The Commission is recommending two changes to the existing charter at this time. During its term, the Commission met with several Councilmembers and relevant Executive staff, and extended invitations to meet with other Councilmembers and the County Executive.

II. SUMMARY OF ISSUES CONSIDERED

Recommendations Requiring Charter Amendments

➤ Selection of members of the Redistricting Commission

The Charter Review Commission recommends to the County Council that it include on the ballot for November 2018 a proposal to eliminate the role of the central committees of political parties in the selection of the members of the Redistricting Commission that is appointed every ten years to review the boundaries of the Council districts.

➤ Nine-vote requirement to increase real property tax

The Charter Review Commission also recommends that the County Council also include on the November 2018 ballot a change to Section 305's requirement to increase the real property tax above any increase in the Consumer Price Index from "a unanimous vote of nine, not seven, Councilmembers" to "a unanimous vote of all current Councilmembers." This change would allow an increase, by a unanimous vote, when there is a vacancy on the Council; under the current provision, such an increase would be impossible even if all serving Councilmembers support it.

Recommendations Not Requiring Charter Amendments

In addition to studying the issues surrounding the above recommendations, members of the Commission studied several other issues which did not result in recommendations requiring Charter amendments.

➤ Structure of the County Council (At-large and district seats)

The Montgomery County Council currently is made up of 4 at-large members (elected by all voters in the County), and five district members (elected by the voters in each of five districts, based on a map established every 10 years after the federal census. Several County residents testified in

favor of changing this structure at the Commission public hearing held on October 18, 2017, either to eliminate all at-large members or to reduce their number. After much consideration public input, and many discussions, the Commission recommends that there be no change in the structure of the County Council. A minority statement on this issue is in the appendix (A-33).

➤ *Council President Term*

The Council President is elected by his or her colleagues to a single year term. The Commission heard from Councilmember Floreen at its public hearing on this issue, and considered whether to amend the Charter to provide for direct election of the Council President, to a four-year term, by the voters of the County. The Commission considered the benefits of such a process, and contrasted them with the benefits of the existing provisions, and does not recommend a Charter amendment to provide for election of the Council President by the voters of the County.

➤ *Other issues discussed*

The Commission also met with relevant legislative and executive branch staff and examined, but does not make any recommendation on, the following issues:

- procedural matters related to capital improvements, supplementary appropriations, and special appropriations, as provided in Charter Sections 302, 307, and 308, respectively;
- issues related to transfers of funds, surplus, and indebtedness, as provided in Charter Sections 309, 310, and 312, respectively;
- the collective bargaining provisions in Charter Sections 510, 510A, and 511 including the provisions for binding arbitration in Sections 510 and 510A; and
- the possibility of new section providing for open meetings for all County boards, committees, and commissions.

➤ *Operation of the Commission*

The Commission recommends scheduling an informal meeting between some of its members and members of the next Charter Review Commission at the beginning of the next Commission's term. Commission members felt that they would have benefited from the insight and experiences of members of the prior Commission, and believe that establishing, even informally, some level of continuity, will allow the next Commission to "hit the ground running" and function more efficiently.

III. ISSUE AREAS

A. RECOMMENDATIONS FOR CHARTER AMENDMENTS

1. REDISTRICTING COMMISSION

The Charter Review Commission recommends amendment to Charter Section 104 to remove party central committees from their role in the selection of the Redistricting Commission; expand the membership of the Redistricting Commission to 11 members; and provide for representation of all Council districts in the Redistricting Commission's membership.

Introduction

The Charter now provides for redistricting of the five Council district seats every ten years, after the federal census. The group that makes the map of these districts is the Redistricting Commission, currently appointed as follows:

- the central committees of parties that received 15 percent of the vote – as a practical matter always the Democratic and Republican parties – each provide a list of eight people to the County Council; and
- the Council selects four from each list, plus one additional member.

No provision is made for any other party's registered voters to be selected, although there are significant numbers of members of the Green and Libertarian parties in Montgomery County. The second largest group of voters in our County, those voters who do not choose to affiliate with either party, is totally unable to have any of its group as members to be even considered for membership on the Redistricting Commission, even though some of them might be very interested in this subject. The Charter Review Commission feels the current method of appointing the members of the Redistricting Commission is not the best for the residents of our county and we recommend this be revised.

The CRC's main recommendations are:

- eliminate the "lock" on Redistricting Commission membership by the central committees of the Democratic and Republican parties;
- open membership on the Redistricting Commission to all County voters (including those registered with the Democratic, Republican, Green, and Libertarian parties, plus the large number of voters who choose not to register with any party);
- expand the number of members of the Redistricting Commission to eleven, to allow for more voices in the work of that Commission; and
- require that at least one, but no more than four, members of the Redistricting Commission be from any party received 15 percent of the total vote cast for all candidates for the Council in the last preceding regular election.

Rationale

Since Section 104 was added to the Charter in 1968, Montgomery County has changed dramatically in size, demographics and voter registration. Montgomery County voters are no longer members of only the two political parties. While Democratic Party registration is the largest at 384,000, registered unaffiliated voters is 142,000, which is larger than Republican Party registration of 127,000. (Voter registration totals drawn from Md. State Board of Elections, 2016) There are also Libertarian, and Green Party voters in the County. Almost 22% of county voters do not belong to the two main political parties.

By effectively allowing only the Democratic and Republican central committees to submit individuals for appointment to the Redistricting Commission, the selection process eliminates almost one quarter of registered voters from having a voice in the makeup of Councilmanic districts. In addition, the central committees of each party are typically the most partisan members of their respective party, and thus any recommendation they make would likely be motivated by a desire to establish or solidify party dominance, rather than developing equitable Council districts.

The Council appoints many Commissions and Task forces from members chosen from the public at-large, after public solicitation for members. The Redistricting Commission the only such body

to which appointment is effectively conditioned on membership in a limited number of partisan groups, effectively eliminating input from unaffiliated voters and smaller parties. A more neutral redistricting commission would help ensure that the voters select their council members rather than the majority party selecting their voters. The County Right to Vote Task Force considered this issue comprehensively, and in its 2014 Report recommended changes to both the State and County processes to ensure more neutral redistricting (see A-54). While the Right to Vote Task Force's recommendations are not identical to the changes proposed by the Commission, the basis for them is the same.

Conclusion

The Commission believes that the residents of the County are not well-served by any form of gerrymandering. We feel that the current Charter provisions for the appointment of members of the Redistricting Commission makes it more, rather than less, likely that gerrymandering can occur. We believe a change in the way the Commission is appointed will make a non-partisan result in redistricting more likely.

The Commission therefore recommends that the proposed amendment to Section 104 of the Charter in the Appendix on page A-68 be submitted to the voters for ratification on the November 6, 2018 ballot. This amendment would:

- eliminate the role of party central committees in selecting members of the Redistricting Commission;
- expand the size of the Commission from nine to 11 members;
- provide that the Commission include at least one, but not more than four members of each political party which polled at least 15 percent of the total vote cast in the preceding regular election; and
- require that at least one member of the Commission reside in each Council district.

2. CHARTER TAX CAP

The Charter Review Commission recommends amendment to Charter Section 305's requirement to increase the real property tax above any increase in the Consumer Price Index from "a unanimous vote of nine, not seven, Councilmembers" to "a unanimous vote of all current Councilmembers."

Charter Section 305 currently requires a vote of all nine members to set a real property tax rate "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." It should be noted that under the existing provision, if there is a single vacancy on the Council, there is no way that the Council can raise taxes in excess of the limit, as even a unanimous vote would only garner eight votes. There must be nine affirmative votes, even if there aren't nine sitting members of the Council.

Prior to 2008, seven votes were needed to exceed the "Charter cap." In the 1990s two efforts were made to change the seven vote requirement to a majority requirement of five. Both of those efforts were unsuccessful. The existing requirement was the result of a 2008 Charter amendment. "Question B" was petitioned onto the ballot of November 4, 2008, and received 194,151 votes in favor (51%) and 189,091 votes against (49%).

The Commission has fielded requests from residents and interest groups to consider recommending an amendment to this provision throughout its term. At the Commission's January 2016 public hearing, two of the three members of the public who testified asked the Commission to recommend that the nine vote requirement to exceed the Charter cap be changed to a majority of five, or possibly the super majority of seven votes that were required before 2008.

The Commission recommends that the current "nine vote" Charter provision be changed. However, we are not in any way suggesting that less than a unanimous vote should be required. Our concern is simply that by requiring nine votes, when the Council has one or more vacancies it is impossible to exercise this power. We do not think that is a good way to run a government. We do recommend a continuation of the unanimity requirement to raise property taxes for the simple

reason that this requirement was imposed by a petition drive that was approved by the voters. While we understand the voters' intention in approving a requirement that unanimity is needed to break the Charter tax limit requirement, we feel it was not likely the intent of the voters to make this action impossible, *no matter what the circumstances*, when there are vacancies on the Council. If that had been the desire of the petitioners and the voters, they could have written that it is impossible to break the charter limit when there are one or more vacancies on the Council. They did not do that, so we believe the appropriate requirement is a unanimous vote of all current Councilmembers.

An additional potential benefit of this change is that, if the number of Council seats is increased in the future, no amendment will need to be made to this Section of the Charter in order to retain the unanimity requirement.

The Commission therefore recommends that the proposed amendment to Section 305 of the Charter in the Appendix on page A-69 be submitted to the voters for ratification on the November 6, 2018 ballot. The amendment would change the existing vote requirement to increase the real property tax above any increase in the Consumer Price Index from "a unanimous vote of nine, not seven, Councilmembers" to "a unanimous vote of all current Councilmembers."

B. RECOMMENDATION OF NO CHANGE TO CHARTER

1. COMPOSITION OF THE COUNTY COUNCIL

The Charter Review Commission recommends no change in the current composition of the County Council

Introduction

The Montgomery County Council currently is made up of four at-large members (elected by all voters in the County, and five district members elected by the voters in each of five districts, based on a map established every 10 years after the federal census.) Several County residents testified in

favor of changing this structure at the Commission public hearing held on October 18, 2017, either to eliminate all at-large members or to reduce their number. After detailed review, long discussions, and serious review of the comments made at the public hearing, the Commission recommends that there be no change in the structure of the County Council.

Reasons Given to Eliminate At-Large Council positions, and Responses

First we should examine the reasons given for eliminating or lessening the number of at-large Councilmembers. One reason given is that the current structure permits, and has resulted in, having several Councilmembers who live very close to each other, thus making for less representation on the Council from other areas of the County. This is a serious argument and deserves serious consideration.

It should be noted that this problem, if it is a problem, may solve itself at the upcoming 2018 County Council election. Although the Council currently has three Members who live in Takoma Park, only one of them is running for reelection to the Council in 2018, and so far, only one or two, out of about 30 who have filed to run, live in Takoma Park. There is, of course, no guarantee that any of them will be elected.

Next, we must deal with the idea that the voters of Montgomery County should have the maximum right to vote for those candidates whom they feel will best represent them. If the voters of the entire County voted in 2010 and 2014 to elect three Council Members who live in Takoma Park, who is to say they did the "wrong" thing? Maybe the voters of the entire County, including the areas currently unrepresented or under-represented, felt that these were the best people to elect to the Council. Even if that were not the case, why should those candidates who put together the best campaigns and received the most votes be penalized because they happened to live near each other? If the voters in other parts of the county wanted more representation they could have organized around candidates in their part of the county and worked to elect him, her, or them.

Third, we must examine how the current structure of the Council works and whether there are serious problems with it. Some say it is unreasonable to expect at-large Councilmembers, who

each represent more than one million people, to be as responsive to residents as those who represent districts, which have a little over 200,000 people. That sounds right at first, but we should examine facts before reaching a conclusion.

Many residents feel that some of the most responsive Councilmembers are among the at-large members. Some at-large Councilmembers are routinely praised for the handling of resident questions and complaints, sometimes more so than some of the district members. There is no objective evidence that district members, merely because they represent fewer people, are more responsive to residents than at-large members, and there is some evidence of the opposite being the case.

Another argument in favor of eliminating, or reducing the number of, at-large Councilmembers is that the County has become too large for anyone to campaign and serve over a million people. This argument, too, sounds good at first. However, if it were true, why is it that about 30 people have filed with the Board of Elections to run for At-Large positions while fewer have filed to run for district Council seats? If it was so difficult to run for an at-large seat because of the size of County's population, it would be expected that there would be a much larger number of candidates running for district seats rather than at-large seats.

Conversations with many of the candidates running for at-large seats elicited reasonable answers to the question why they chose to seek that office rather than a district Council seat. Their answers were almost always, "I want to serve the whole county rather than just one district." Obviously, the candidates themselves do not believe the County is too large for them to run for at-large seats, since they are doing so, and they are ready and willing to campaign in the whole County rather than just one district. Why should they be prohibited from campaigning in the whole County if they feel that is not a burden and is in fact a benefit to them?

Some who testified at the public hearing suggested increasing the number of members of the Council, some of them saying keep the at-large seats but increase the number of district seats. However, our County Council is about the same size as other similar jurisdictions, and any increase in the overall size of the Council would likely cost a great deal of money for taxpayers for

additional, office space and salaries for the additional Councilmembers and staff. Also, any increase in the size of the Council would likely make decision-making more difficult. Large groups have more problems reaching decisions, especially compromise decisions, than smaller groups. See, “Evidence the Smaller Governing Bodies are Better,” 2012, by Feargal Hogan, which includes statistical evidence which shows that smaller school governing bodies tend to be more effective (https://www.whatdotheyknow.com/request/evidence_the_smaller_governing_b)

Reasons for maintaining the current Council structure

There are some positive reasons for keeping the current Council structure. Having four people elected by all voters in the county provides for almost half the Council Members having a broader view than those that represent a single district. It is possible that district Councilmembers would also have this broader view and not seek special decisions or favors for their district, but it is also entirely possible — and experience in other counties indicates that it is more than possible — that if the Council were entirely made up only of representatives of districts, it would lose the broader view of County issues that it has now and there would be more logrolling (“you vote for my local interest and I’ll vote for yours”).

It should also be pointed out that every voter in the county currently has the ability to vote for a majority of the Councilmembers, the four at-large and the one from that voter’s district. This should not be ignored, as it gives voters much more power to elect whom they wish than they would have if they could only vote for a single Councilmember from their own local district.

Another issue is whether at-large or district representation leads to more “pork” spending. A detailed study of the facts about this issue was done by L. Southwick, Jr., in 1997. He found that “spending, debt, and taxes are both significantly and substantially higher in cities where ward [district] representatives have greater power than in cities where at-large representatives have the greater power. (See, “Local Government Spending and At-Large Versus District Representation; Do Wards Result in More “Pork”? <http://onlinelibrary.wiley.com/doi/10.1111/1468-0343.00027/abstract>)

A final reason for not recommending something so radical as a change in the Council structure at this time is that there have recently been other major changes in Montgomery County government and any further major changes should be put off simply for that reason. Term limits and public financing of elections have resulted in a dramatic increase in the number of candidates, and will ultimately result in substantial turnover on the Council after the 2018 election. It is best to wait and see the longer term effects of these new policies before adding another major change such as a change in the number of at-large and district Councilmembers.

History of Charter Review Commission consideration of this issue

We should also consider the history of how the current structure of the Council came to be and how it has been reviewed.

In its 1984 Report, the Charter Review Commission concluded:

The Committee believed that a principal argument made by those who favor electing Councilmembers by district -- that the citizen would feel less remote from his local legislative body and that the individual Councilmembers would be more responsive to citizen requests and understanding of their needs -- is not grounded in fact. To the contrary, Montgomery County's Councilmembers, both the current body and predecessors, are and have been responsive and conscientious almost to a fault. Citizens find no problem getting a hearing either from an individual member or from the entire assembly, and there is no evidence that because a Councilmember lives in one part of the County he or she does not understand the problems of other areas and take them into consideration in developing a position in the best interests of the entire community.

In the 1986 Report, the Commission formally recommended what is now the structure of the Council:

The Charter should be amended to increase the size of the County Council to nine members, with five of them elected from five separate districts and four of them elected at large.

A proposal to elect five Council members by district and two at-large, maintaining the present seven-member Council was petitioned to the ballot and narrowly defeated by the voters in the General Election in November, 1984.

The principal reasons for this recommendation are: (1) the great increase in population in Montgomery County since the present seven person Council was established and projected population growth in the future which will make our County more populous than several states; (2) the difficulty and expense to run countywide for the Council, discouraging minority candidates and interests; and (3) with a nine member council, each voter will be able to vote for a majority, four at-large and one from the district, which satisfies the main objection to the five-two proposal. To the suggestion that increasing the County Council to nine will be too costly, a majority of the Commission believes that this is a classic "red herring". The additional funds involved will be de minimis in relation to the overall cost of County Government, and we have a vastly different county since a seven person governing body was established, long prior to the County Charter.

Election of some of the County Council by district is an idea whose time has come again and again. The majority of the Commission supporting of this proposal perceives a strong responsibility to the expressed wish of citizens for this change which, if approved by the electorate this year, will become effective for the County Council election in 1990.

The voters approved the new structure for the Council at the general election in November 1986 and the first Council under the new structure was elected in 1990.

Charter Review Commissions that have considered this issue in the past. It was considered by the 2008, 2006, and 2004 Charter Review Commissions, in addition to the Charter Review Commission in 1998 that recommended adoption of the current system. All of these Charter Review Commissions recommended keeping the current Council structure. Who are we, the 2018 Commission members, to dispute what so many other members of Charter Review Commissions decided in the relatively recent past?

The 2008 Commission report was brief on this issue. It concluded, 5-4, that this issue was worthy of further study but that Commission did not have time to do so. Note that four members felt it was not worthy even of further study.

The 2006 Commission voted 6-4 to maintain the current structure and size of the Council. It was noted that this Commission consulted with many people, in government and outside, and considered proposals from two Council Members to change the structure to three at-large and eight district seats, and six at-large and seven district seats, respectively.

The majority of the 2006 Commission concluded:

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

The Report went further:

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

“After much deliberation and consideration,” The 2006 Commission voted 6-4 to maintain the current Council structure. (There was a minority report.) The Commission in 2004 reached a similar conclusion, with similar language included in the 2004 Report. The vote then to retain the current Council structure was 9-2.

Conclusion

For all these reasons, and having carefully considered all proposals for changes in the structure of the Council, the Charter Review Commission recommends that the current structure of the County Council remain as it is.

A minority report on this issue is contained in the appendix (A-33).



APPENDICES



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 Audit.

Article 3. Finance.

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

MONTGOMERY COUNTY CODE
The Charter

§ 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.

MONTGOMERY COUNTY CODE
The Charter

§ 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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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 Nomination and election and throughout the member's term of office, reside in a different Council district, and shall be nominated and elected by the qualified voters of that district. Any change in the boundaries of a Council district after a member is elected shall not render the member ineligible to complete the term for which the member was elected. 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; election of 11-4-14.)

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.

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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 or any other law amending the boundaries of Council districts 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. (Election of 11-2-82; election of 11-3-98; election of 11-4-14.)

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. In no case shall a Councilmember 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 2018 shall be prohibited from commencing to serve a successive term of office at that time. For purposes of this Section, service of a term includes complete service of a full term and partial service of a full term. Partial service of a full term means service by a Councilmember of more than two years of a term. (Election of 11-8-16.)

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. 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. (Election of 11-2-82; election of 11-8-88; election of 11-3-98; election of 11-4-14.)

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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.)

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.

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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.)

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 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

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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; election of 11-4-14.)

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).

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,

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the Court may make *de novo* determinations of fact. A member of the County Council also may be suspended and removed from office in the manner provided in Section 2 of Article XV of the Constitution of Maryland. (Election of 11-2-82; election of 11-4-86.)

ARTICLE 2. EXECUTIVE BRANCH.

Sec. 201. Executive Power.

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

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

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. 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 2018 shall be prohibited from commencing to serve a successive term of office at that time. For purposes of this Section, service of a term includes complete service of a full term and partial service of a full term. Partial service of a full term means service by a County Executive of more than two years of a term. (Election of 11-2-82; election of 11-8-16.)

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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.)

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 the County Executive shall exist upon the death, resignation, disqualification, or removal of the County Executive. 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, 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; election of 11-8-16.)

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

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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 for 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 Audit.

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 5/5/09 regarding the County executive's ability to impound appropriate 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 expenditure 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, non-partisan, 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. Jamsa, 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 law. 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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The Charter

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 Mayor 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 Report: Council Structure and Current Population

Charter Sections 102 & 103

During 2017, Charter Review Commission (CRC) members began to independently hear concerns raised by the public regarding four of nine members of the County Council who are elected at-large. Concerns centered on the high number of at-large members residing in Takoma Park. While the over-representation from one area was the most commonly cited issue, the CRC held a public hearing on October 18, 2017 to glean further insights into other areas of concern.

Based on public testimony presented at the hearing, it appears that concerns stem from a number of issues beyond over-representation of Takoma Park. The CRC's discussion of the hearing testimony determined that the most substantive concern raised focused on how at-large members can be more directly accountable to residents and communities.

In order to gain further insight on this issue, CRC member Jonelle Williams met with several Montgomery County residents and civic organizations. Some of the residents and civic organizations with whom he met echoed that the primary concern with at-large seats surrounds the accountability of at-large members, as well as over-representation in general.

The heart of the accountability concern is the following question: to whom are the Council members – particularly at-large members – accountable, given that they cannot be linked to direct representation of any group of citizens or neighborhoods? Many independent, non-partisan groups (such as the NAACP Legal Defense Fund and FairVote, see Attachments 1 & 2) have examined the issue of at-large representation vs. single member districts, and have determined that single member districts present the more representative electoral process. The question then is, are the concerns of the citizens of Montgomery County adequately represented by the current Council structure?

The current council configuration of 5 districts and 4 at-large seats has been in place since 1990. The county population at that time was 757,027.¹ Each of the five Councilmanic districts represented approximately 151,400 citizens. In the 28 years since, the county has grown to a population of over 1.1 million residents (13.2% increase over the 1990 population). Each of the five County Council districts now averages approximately 220,000 residents. Each at-large member, meanwhile, represents the needs of more than one million residents. An increase of nearly 70,000 residents per council district and the geographic diversity of Montgomery County as a whole call into question whether the current Council structure continues to be adequate, or does the Charter need to be amended to more effectively represent this growth.

In addition, primary election results tend to group candidates from the dominant political party in core population areas of the county, leaving much of the county without local representation. Large parts of the county, outside of the most densely populated areas, have no local representation on the Council (as shown in Attachment 3). The result is under-representation of Up County and East County communities, where concerns are different from Down County communities including safety issues, transportation problems, housing, and economic and employment issues, among others. These needs call for attention from representatives closer to those communities. Without proper representation of Up County and East County communities, many citizens, perhaps a plurality of citizens, could correctly feel underserved by the current Council structure.

Conclusion and Recommendation:

The Charter Review Commission (CRC) serves an important function for the citizens of Montgomery County. By listening to concerns regarding the functionality of the County government, discussing those concerns in a non-partisan setting, and making recommendations for systemic changes, the CRC makes the Charter a living, viable document that increases the responsiveness of County government to the changing needs of county citizens. Upon examination of the current County Council structure (Charter Sections 102 & 103), the changing demographics and growth in the County, and the public testimony provided, we believe now is the time to consider changing the makeup of the County Council by having more smaller and more responsive

¹ <https://www.census.gov/population/cencounts/md190090.txt>

council districts. The growth of the county's population outside the "beltway" area demands attention and local representation. We strongly recommend the current County Council, or the next CRC, make reviewing, modifying, and rejuvenating the structure of the County Council a priority.

Attachment 1: NAACP Legal Defense Fund At-Large Frequently Asked Questions

Attachment 2: FairVote Overview of At-Large and Single Member Districts

Attachment 3: Current residence of County Council Members

Submitted for CRC Members:

Greg Decker

Larry Lauer

Aryeh Shudofsky

Jonelle Williams

Excerpted from: Nicolas Flores. "A History of One- Winner Districts for Congress," undergraduate political science thesis at Stanford University, published at <http://archive.fairvote.org/library/history/flores/index.html>

Chapter 2

A Historical Background

A Brief Overview of Electoral Systems

At-large

Single- and Multimember Districts

The Uncommitted Constitution

Conclusion

Notes

Racial gerrymandering has drawn a great deal of criticism from both sides of the political spectrum, as politicians, judges, and academics all struggle with the perplexing question of how racial minority representation can be preserved within our single-member district plurality system. Curiously, as divisive and balkanizing as this practice allegedly is, it certainly raises very little alarm among voters. While occupational and educational affirmative action is overwhelmingly opposed by white citizens,[1] public opinion surveys simply have not identified a tide of popular resentment against electoral benefits for racial minorities.[2]

There is a simple reason for this: the general public is simply aloof to the design of electoral districts, not to mention wholly unconcerned with the overall structure our current voting system.[3] It has been written that "Election procedures seem about as important to the understanding of American politics as accounting procedures are to the understanding of American business." [4] From this observation, it would be surprising if a majority of Americans grasped the influence an electoral system can have on their vote.

The importance of the procedures with which any level of government chooses to elect its officeholders cannot be underestimated, for the type of electoral system significantly affects who ultimately gets elected. The composition of Congress would be markedly different if every state elected its Representatives at-large, or from multimember districts utilizing alternative voting procedures. Election results, meaning who actually wins the contested seats, are quite dependent on the type of voting scheme that is used. It follows that electoral laws are thus of special importance to every group and individual in society, because they help to decide who makes the other laws.[5]

In this chapter I will start by describing the various differences between at-large, multimember, and single-member district elections. I will then show that although many of the Framers may have preferred districts, the Constitution still fails to mandate any particular system for Congressional elections. As a matter of fact, the Constitutional Convention reached a general consensus that state

legislatures should be allowed to choose their own electoral system, since they would be best acquainted with the needs of their constituents. While Article I, Section 4 of the Constitution grants concurrent jurisdiction over this matter to Congress, its power was originally meant to be exercised only in times of emergency. Hence, my main argument here is that there was a great deal of ambiguity about who retained ultimate authority over elections, as Congress' power was left quite unclear.

This historical background will therefore highlight two points. First, that past Congresses may not have been using their electoral authority in the intended context when enacting districting laws. And second, that Rep. Watt has a valid claim in seeking to reestablish states' ability to select their own voting systems.

A Brief Overview of Electoral Systems

In order to fully understand the ensuing discussion, it is necessary to distinguish between the different electoral systems that currently exist within today's American democratic practice.[6] In the next several pages I will briefly summarize at-large, multimember district, and single-member district elections. But it is important to keep in mind that these descriptions assume the use of plurality voting procedures. For as I will show much later in this thesis, the use of PR voting schemes within at-large and multimember districts would drastically alter the idiosyncrasies described below.

Although the States' Choice of Voting Systems Act would allow states to decide how their Representatives would be elected, not all of the following structures represent available options. This is because at-large and multimember district elections, when used with plurality voting, have a dilutionary impact on minorities voting strength within polarized communities.[7] Thus many states, especially in the South, would likely avoid the plurality version of these systems out of fear of potential litigation.[8]

At-large

Also commonly referred to as the general ticket, at-large elections are held statewide, meaning that the state's entire Congressional delegation is voted on by all of its eligible voters. For example, if there are seven seats up for election, then a voter may vote once for seven different candidates. Inherent to this system is a notorious sweep effect that can cause gross deficiencies in representation when used with plurality voting procedures. Any party that can muster a bare plurality of the vote will tend to win all or most of the seats up for election.[9] Minority interests be they geographic, partisan, or racial that are not in political agreement with the statewide majority can easily have their political power diluted, and worse, be left without any representation. These flaws are hardly inconspicuous, and have left many at-large systems, on numerous levels of government, vulnerable to attack on constitutional grounds.[10]

There are two benefits that may come from this system though. First and most significant is that at-large elections avert the need to create districts, majority-minority or otherwise, and are therefore much more efficient for state legislatures. Politicians are not permitted to choose the

voters, and the evils of gerrymandering are conveniently avoided. Second is that candidates elected at-large tend to more represent the interests of the whole state rather than the narrow, parochial interests to which district Representatives are perceived as being more susceptible.[11] Related to this argument is that voters in at-large elections are not limited to the choice of only one candidate, but instead can have an impact on all of the Congressmen elected from their home state.

Single- and Multimember Districts

Districting is a task that requires state legislatures to partition their states into smaller subdivisions from which Representatives can be elected. There are two types of district elections: single-member, where voters are only allowed to elect one candidate to Congress; and multimember, in which two or more Representatives are elected from a single district. Although the distinction is obvious, the critical difference between the two may not be.

Simply put, multimember districts, even when fairly drawn, can still dilute minority voting strength. This is due to the fact that a bare plurality could potentially determine the gamut of Representatives for the region, gaining a disproportionate share of political power. Minorities may once again be left without representation, especially when their interests differ sharply from the majority. Therefore, multimember systems can be strikingly similar to at-large elections, as both share the same unsatisfactory sweep tendency.

Yet if a state were to choose between district and at-large plurality elections, districting especially that of the single-member variety could usually be considered the more inclusive option for minorities. This practice requires legislatures to divide up their population, dispersing the state's majority throughout a number of different regions. There exists within these smaller districts a higher probability that the minority group will be able to win at least one seat.[12] With the majority unevenly splintered, those in the statewide minority should now be able to overcome their numerical disadvantage in order to elect a Representative of their choice. As a result, single-member districts have long been praised for their ability to improve minority representation within the American winner-take-all paradigm.[13]

Another proverbial merit of districting is that the practice is believed to bring the voters closer to their Representative, not only geographically, but also in terms of social distance and interest.[14] Since this country's inception, a tremendous amount of value has been placed on the proximate connection between Congressperson and citizen. District Representatives are normally required to live amongst their constituents, increasing responsiveness and providing both sides with a sort of spatial bond. In this way, these officeholders are perceived to have their fingers on the pulse and general sentiment of their particular community. And if citizens are displeased in any way with the quality of representation their Congressperson provides, they can respond quickly by voting that person out of office.

The main criticism of districting is that the practice provides those who draw the boundaries an inordinate amount of control over electoral outcomes. The partisan distribution of states, historically never much of a mystery, has always been easily exploitable. (With recent advances in computer technology, mapmakers can currently discern a state's political composition down to each city block.) Politicians are then conversely choosing voters, with districting representing an

attractive way in which election results can nearly be predetermined. The term gerrymandering is used to refer to this type of political manipulation, as it unfairly excludes or disadvantages a distinctive group within the process of drawing district lines.[15]

It has been persuasively argued that all districting is gerrymandering.[16] This is due to the fact that even independent, apolitical districting plans are bound to have harsh political consequences.[17] No matter how these districts are drawn, there will inevitably be some groups that are disadvantaged as a result of these subdivisions.[18] Competition is thereby stifled, with most elections becoming remarkably predictable months before campaigning even begins.

While admittedly brief, this section detailed the most important characteristics of at-large and district electoral systems. Both have their advantages and disadvantages. On one hand, the problems with at-large elections are inherent and unavoidable when used with a plurality voting procedure; the majority will almost always win all of the contested seats. On the other hand, the drawbacks of districting are more of a functional nature, and can be proactively mitigated with a tweaking of boundary lines. Minority representation is augmented by the fact that states are carved up into subdivisions, with every area of the country gaining legislative influence. As I will show in the next section, these were characteristics that motivated the Framers of the Constitution to express a preference for single-member districts.

The Uncommitted Constitution

The Constitution falls surprisingly silent on the subject of how Congressional Representatives should be elected, even though the electoral systems described above have existed from the very beginnings of this country. But while there is no explicit requirement, there is still a great deal of evidence that suggests that district elections were projected.

First, there are the numerous references from James Madison's contributions to the *Federalist papers*. In Number 56, he remarked "Divide the largest state into ten or twelve districts and it will be found that there will be no peculiar local interests in either which will not be within the knowledge of the Representative of the district." [19] Later in that same essay, Madison reasoned that "The Representatives of each state will bring with them a considerable knowledge of its laws, and a local knowledge of their respective districts." [20] The final excerpt comes from Number 57, in which he declared that each Representative of the United States will be elected by five or six thousand citizens.[21] As a result, from these arguments it appears that Madison assumed most Representatives would be elected by districts rather than at-large.[22]

There were other indications of this preference as well. George Mason asserted a conception of the House of Representatives during the Constitutional Convention that resonates even today, arguing that it ought to know and sympathize with every part of the community, and ought to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it.[23] Then there was a statement made by Alexander Hamilton at the New York ratifying convention, in which he said that "The natural and proper mode of holding elections will be to divide the state into districts in proportion to the number to be elected." [24]

Consequently, it seems that districts were most likely the true intention of the Framers of the Constitution, with some holding on to this preference well after the Philadelphia Convention.

Yet the delegates to the Constitutional Convention also reached a general consensus that decisions regarding electoral methods were best left to the legislators of each state, since they could decide which plan was most suitable for their constituents.^[25] There was very little debate on this topic, as most of the Framers were firm believers in state choice. Madison summarized this sentiment: "Whether the electors should vote by ballot, or viva voce, should assemble at this place or that place, should be divided into districts, or all meet at one place, should all vote for all the Representatives, or all in a district vote for a number allotted to the district these, and many other points, would depend on the legislatures, and might materially affect the appointments." ^[26]

So the Founding Fathers preferred district elections, but declined to mandate them within the Constitution because they believed states should have the right to choose for themselves how they would elect their Representatives to Congress. This issue became increasingly unclear when Article I, Section 4 was introduced. It states that The Times, Places and Manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such regulations. ^[27] This confusing construction granted Congress concurrent jurisdiction over electoral matters, an issue that raised a great deal of controversy. When submitted to public scrutiny, the federal government's supervisory power was staunchly opposed based on fears that this authority would be abused. Property qualifications, inconvenient times of elections, and all kinds of plots by Congress to continue itself in power were imagined. ^[28]

Madison tried to explain Congress' capacity in *Federalist* Number 59. There he claimed

[The Framers] have submitted the regulation of elections for the federal government, in the first instance, to the local administrations; which, in ordinary cases, and when no improper views prevail, may be both convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety. ^[29]

This statement was quite significant, because it articulated the intended context in which Congress should utilize its electoral authority: namely, only in those times of emergency.

Consequently, eight of the original thirteen states proposed amendments during their ratification conventions that sought explicit restrictions on when this power could be exercised.^[30] Three states put forth the same revision which held that Congress shall not alter, modify, or interfere in, the times, places, or manner of holding elections (except when the Legislature of any State shall neglect, refuse, or be disabled by invasion or rebellion to prescribe the same). ^[31] Two others widened Congress' authority to include on that list those situations in which states made regulations subversive of the rights of the people to a free and equal representation in Congress.

[32] It thus appears that Congress' electoral authority was widely viewed with suspicion, and probably only to be used in dire circumstances.

Still, the federal Legislature's power was never placed within bounds. In the first session of the first Congress in 1789, a Representative from South Carolina proposed an amendment that would have limited Congress' authority over elections much like those of the state ratification conventions outlined above. Surprisingly, for reasons other than a condemnation of the principle,[33] the amendment was voted down by a mere five votes.

Nonetheless, the reality remains that a majority of the original thirteen states conceived Congress' authority over lower house elections to be quite limited and certainly not to be maintained vis-à-vis a state's need to adapt its electoral system to its own regional exigencies. While a decision was eventually reached, it was hardly a settled issue. First, a number of states were clearly unsatisfied with Congress' unchecked authority over states' electoral decisions. This was evidenced not only in the fact that eight states opposed this federal power, but further, by the close vote on the proposed amendment. Second, the Constitution itself remained equivocal on the issue, as the provision could easily be subject to two different interpretations. Overall, history proves that states were thought best to make their own electoral decisions, while Congress' authority over the matter was as questionable as it was conditional.

Conclusion

The three electoral systems described above (at-large, multimember, and single-member districts) can be thought to exist within a dilutionary hierarchy. Single-member districts constitute the most representative electoral system available within a plurality voting scheme, which is no doubt why so many of the Framers expressed their preference for it. Conversely, at-large elections, because of their unfair sweep effect, exhibit the largest dilutive impact. Multimember districts exist somewhere in between, depending on their size and the number of Representatives they contain.

But while single-member districts do a much better job of ensuring minority inclusiveness, several states did not need this benefit at the inception of the Republic. Their circumstances were different from those of other, larger states: they lacked the diversity of regional and partisan interests, so subdivisions were considered unnecessary. The important point here is that these states were allowed to tailor their own electoral system to their own regional exigencies. As shown above, the Framers of the Constitution wanted states to have this capability, since the states would know their own interests better than any other decision-making body.

Unfortunately, the Framers confused this topic by granting Congress a concurrent jurisdiction over electoral decisions in Article I, Section 4. The situations in which the federal Legislature could use this power were clearly thought to be quite limited, as a significant majority of the original thirteen states responded by proposing amendments seeking to codify permissible preconditions. While none of these revisions were ultimately adopted, the fact remained that states were the only actors who possessed a settled and intended authority to make decisions about electoral matters.

Notes

[1] See Howard Schuman, Charlotte Steeth, Lawrence Bobo, and Maria Krysan, *Racial Attitudes in America* 170-183 (Harvard University Press, 1997).

[2] Hugh Davis Grahman, *Voting Rights and the American Regulatory State*, in *Controversies in Minority Voting* 177, 193 (Bernard Grofman and Chandler Davidson, eds., The Brookings Institution, 1992) [hereinafter Grofman and Davidson, *Controversies*].

[3] Timothy G. O'Rourke, *The 1982 Amendments and the Voting Rights Paradox*, in Grofman and Davidson, *Controversies* 85, 107.

[4] Amy, *Real Choices* 9.

[5] Douglas W. Rae, *The Political Consequences of Electoral Laws* 3 (Yale University Press, 1971), taken from Amy, *Real Choices* 9.

[6] These different structures may be used at any level of government to elect federal Representatives, state legislators, city council members, and even local school boards. However, in the interest of clarity, I will only discuss them in the context of Congressional elections.

[7] Chandler Davidson and Bernard Grofman, "Editors' Introduction," in *Quiet Revolution in the South* 3, 7 (Chandler Davidson and Bernard Grofman, eds., Princeton University Press, 1994) [hereinafter Davidson and Grofman, *Quiet Revolution*].

[8] Laughlin McDonald, *The 1982 Amendments of Section 2 and Minority Representation*, in Grofman and Davidson, *Controversies* 66, 71. Fear of litigation is so pervasive that the threat alone has forced many jurisdictions to change.

[9] Leon Weaver, *Semi-Proportional and Proportional Representation Systems in the United States*, in *Choosing an Electoral System* 191, 193 (Arend Lijphart and Bernard Grofman, eds., Praeger, 1984) [hereinafter Lijphart and Grofman, *Choosing*].

[10] *Ibid*, 193.

[11] *Ibid*, 192.

[12] *Ibid*, 193.

[13] See Madison, *supra* note 18.

[14] Weaver, in Lijphart and Grofman, *Choosing* 193.

[15] Guinier, *Tyranny* 232, n182.

- [16] Robert G. Dixon, Jr., *Democratic Representation: Reapportionment in Law and Politics* 462 (Oxford University Press, 1968).
- [17] Amy, *Real Choices* 51.
- [18] Weaver, in Lijphart and Grofman, *Choosing* 193.
- [19] Madison, in Kramnick, *Federalist* 340.
- [20] *Ibid*, 341.
- [21] *Federalist Number 57* (James Madison), in Kramnick, *Federalist* 346.
- [22] *Reapportionment and Redistricting*, ed. John Moore, in *Congressional Quarterly's Guide to US Elections* 925, 926 (Congressional Quarterly, 1994).
- [23] Joel Francis Paschal, *The House of Representatives: Grand Depository of the Democratic Principles*, 17 *Law and Contemporary Problems* 276, 276-77 (Duke University, 1952).
- [24] Quoted in Lawrence F. Schmeckebier, *Congressional Apportionment* 131 (Brookings Institution, 1941).
- [25] Rosemarie Zagari, *The Politics of Size* 106 (Cornell University Press, 1987). Also see *infra* note 97.
- [26] *Ibid*, 106.
- [27] United States Constitution, Article I, §4.
- [28] Paschal 278.
- [29] *Federalist Number 59* (James Madison), in Kramnick, *Federalist* 353.
- [30] Paschal 278; *Congressional Globe*, 27th Congress, Second Session, Volume 11, Part II, Appendix 320-22, 348-49 (1842) [hereinafter *1842 Congressional Globe*]. The eight states were Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia.
- [31] They were Virginia, North Carolina, and Rhode Island. *Ibid*, 321-22.
- [32] Massachusetts and New Hampshire. *Ibid*, 320-21.
- [33] See *ibid*, 349 for an explanation of the history.

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org



Washington, D.C. Office
1444 Eye Street, NW, 10th Floor
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

AT-LARGE VOTING FREQUENTLY ASKED QUESTIONS

What is at-large voting?

Under at-large voting, all voters cast their ballots for all candidates in the jurisdiction. In Beaufort city council elections, for example, all voters cast their ballots for five positions, with the top five candidates who receive the most votes citywide winning seats on the city council.

Why is at-large voting discriminatory?

At-large methods of election are often discriminatory because they, in combination with racially polarized voting, prevent voters of color from electing their candidates of choice where they are not the majority in the jurisdiction. Under this system, the votes of voters of color often are drowned out or submerged by the votes of a majority of white voters who often do not support the candidates preferred by Black voters.

How does at-large voting affect communities of color?

Fewer and fewer districts still practice at-large voting. That is because courts and other decision-makers long have recognized that discriminatory methods of election, like at-large voting, enhance the discrimination that communities of color experience because of socioeconomic and other disparities in life opportunities between Black and white communities.

LDF has long worked to eradicate discriminatory at-large methods of election that dilute the voting strength of communities of color.

How can districts switch from at-large to district-based voting?

Elected officials can call for a referendum on the question of moving from at-large to district voting, and voters can approve a change to the method of election through a referendum. South Carolina law empowers local city councils to take a simple majority vote to change the method of election through a referendum. Alternatively, communities can petition a city council to put the question of a change to the method of election to the voters. Without action by local municipalities, politicians who choose to maintain at-large voting can face time-consuming and costly litigation.

How are single-member districts created?

To remedy dilutive at-large electoral systems, single-member districts are created by a demographic mapping expert and include at least one district in which voters of color are the majority of the voting-age population in that district. These districts must satisfy all relevant laws and traditional redistricting principles. These districts are not intended to guarantee the election of politicians of a particular color, but rather to empower voters to elect their candidates of choice.

Are at-large systems rare or widely-used?

Since the passage of the Voting Rights Act in 1965, numerous at-large systems have been struck down under Section 2 of the Voting Rights Act. Although at-large voting is becoming rarer and rarer, in part due to the advocacy of LDF and other civil rights organizations, such discriminatory election systems remain in some places in our democracy, such as in Beaufort City.

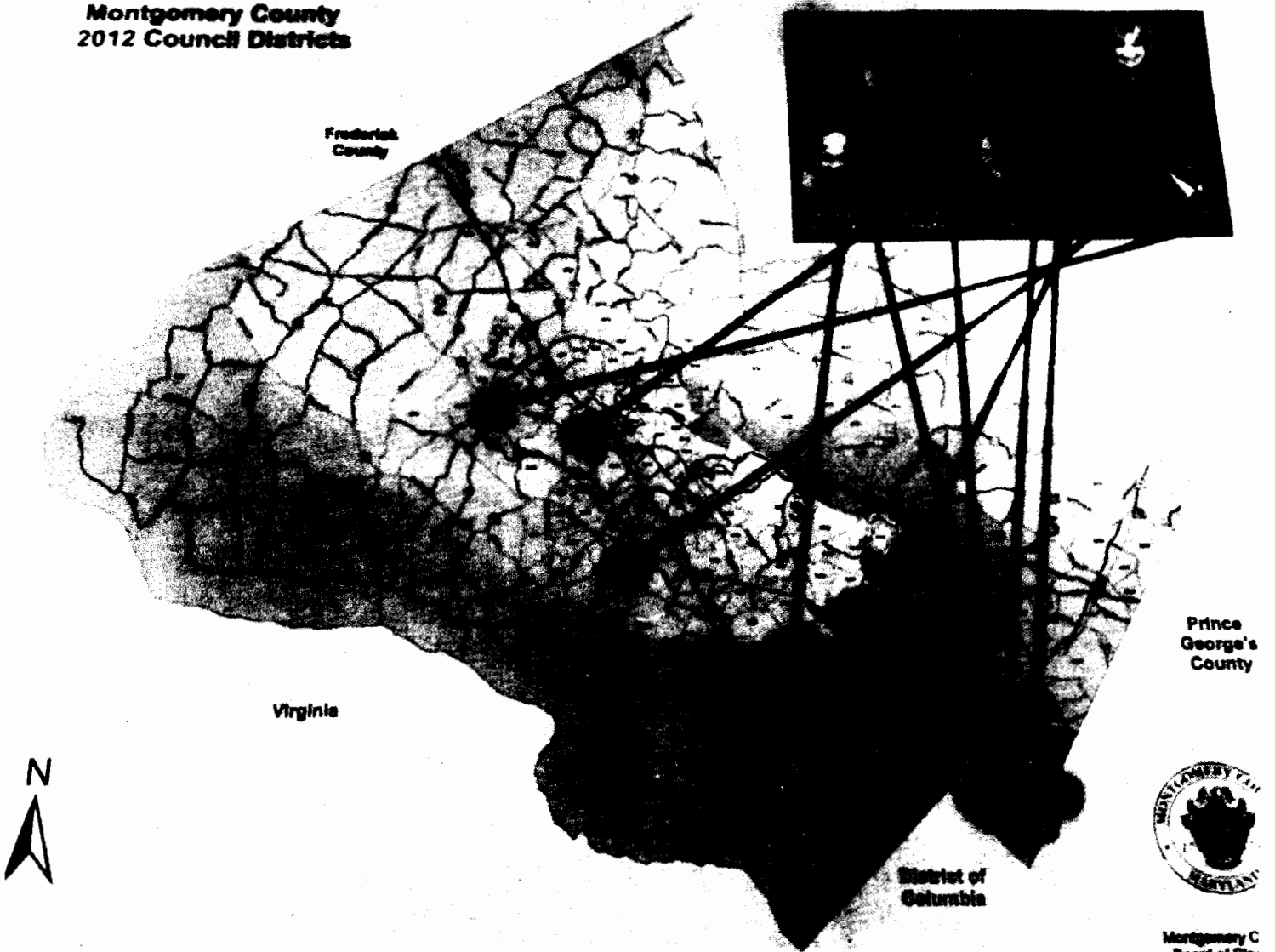
The Voting Rights Act forbids the use of any electoral scheme, such as the at-large method of election, that submerges the votes of people of color in elections that a white majority of voters control. Widely considered the crown jewel of American democracy, the Voting Rights Act is the most effective tool for protecting voters of color against methods of election – like at-large voting – that weaken the voting strength of communities of color.

What are some notable cases that struck down at-large voting?

In a case that LDF successfully litigated, *Dillard v. Crenshaw County, Alabama*, a federal district court found that hundreds of Alabama districts intentionally employed at-large electoral methods to discriminate against Black voters. Because of that litigation, 176 jurisdictions settled and adopted some form of district voting. Following *Dillard*, in which 183 jurisdictions throughout Alabama ultimately abandoned their discriminatory at-large method of elections, few jurisdictions in Alabama still use this potentially dilutive voting scheme.

More recently, in *Georgia State Conference of the NAACP v. Fayette County Board of Commissioners*, LDF successfully challenged the at-large electoral method to the county board of commissioners and board of education in Fayette County, Georgia.

**Montgomery County
2012 Council Districts**



Redistricting provisions in different charters

(prepared by PB, originally prepared June 2015, updated March 13, 2017)

Montgomery

Sec. 104. Redistricting Procedure.

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

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

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.

Anne Arundel

Sec. 1203. Decennial Charter Revision Commission.

At or before the first annual legislative session of the County Council after the publication of each decennial census of the population of the United States, the County Council shall appoint by resolution a **Charter Revision Commission for the purpose of making a**

comprehensive study of the County government and the updating of its Charter where necessary, including the matter of the revision of the councilmanic districts of the County. The Commission shall be composed of a number of representative citizens of the County equal to the **number of councilmanic districts in the County**, with each member of the County Council making one appointment, who shall report to the Council their findings and recommendations, together with drafts of any recommended revisions of the Charter, within twelve months after their appointment. The Charter Revision Commission shall receive from the County an appropriation sufficient to carry out its duties and responsibilities.

(Bill No. 93-80; Res. No. 35-12)

Editor's note – The 2012 amendment changed the number of the members of the Decennial Charter Revision Commission to equal the number of councilmanic districts in the County, and provided that each member of the County Council shall make one appointment to the Commission.

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Baltimore

Sec. 207. Revision of councilmanic districts.

(a) Redistricting commission; composition. Not later than March 1 of the year after each decennial census of the United States, the County Council shall establish, by resolution, a councilmanic redistricting commission. The commission shall be composed of five members appointed by the County Council. A person who holds elective office is not eligible for appointment to the commission.

(b) Commission action. The commission shall hold at least three public hearings, and, by October 15 of the year in which the commission is appointed, the commission shall recommend to the county council legislation to revise, amend, or reconstitute, but not to increase or decrease the number of, councilmanic districts in effect at such time. The legislation shall provide for councilmanic districts that are compact, contiguous, and substantially equal in population, and in which due regard is given to current natural, geographic, and community boundaries.

(c) Council action. The county council shall hold one or more public hearings on the

recommendation of the commission, and by January 31 of the year following the appointment of the commission, the council shall adopt a final redistricting plan by legislative act adopted by a majority plus one of the total number of county council members. The final plan may not increase or decrease the number of councilmanic districts in effect at the time. The plan shall provide for councilmanic districts that are compact, contiguous, and substantially equal in population, and in which due regard is given to current natural, geographic, and community boundaries.

(d) Final redistricting plan. The final redistricting plan adopted by the county council is not subject to the executive veto provided in Article III, Section 308(g), but is subject to the referendum provision of Article III, Section 309.

(Bill No. 78, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978) (Bill No. 67-02, 2002, § 1) (Approved by voters Nov. 5, 2002; effective Dec. 5, 2002)
Editor's note:

By Bill 59-11, § 1, the County Council revised and reconstituted the councilmanic districts in accordance with the 2010 census.

Cecil

214. Redistricting

(a) The Council shall appoint by resolution a Redistricting Commission not later than April 1 of the year following each decennial census date. The **central committee of each** political party polling at least twenty-five percent of the total vote cast for the Executive at the last preceding general election shall nominate **five persons** to serve on the Commission. Each such list shall include one person who resides in each residency district. The Council shall appoint all such nominees as members of the Commission as well as **one or two additional members** of the Commission, as the case may be, to ensure that its total membership equals an odd number. The Council shall appoint the Chair of the Commission from among the Commission members. No person shall be eligible for appointment to the Commission who holds elective office.

(b) By November 15 of the year before the year in which redistricting is to take effect, the Commission shall present to the Council a plan of residency districts, together with a report explaining it. Within thirty days of receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within ninety days after submission of the plan no other legislation reestablishing the boundaries of the residency districts has been enacted, the plan as submitted shall become law.

(c) Any residency district established in accordance with this section shall be compact, contiguous, substantially equal in population, and have common interests as a result of geography, occupation, history, or existing political boundaries.

(d) An ordinance establishing residency districts shall be exempt from referendum.

Dorchester

213. Redistricting.

(a) Not later than April 1 of the year after each decennial census date, the Council shall appoint a Commission on Redistricting. The **central committee** of each political party that polled at least 25 percent of the total vote cast for all the candidates for Council at the last preceding general election shall nominate **five** persons to serve on the Commission. Each such list shall include one person who resides in each district. The Council shall appoint all such nominees as members of the Commission as well as one additional member of the Commission. The Council shall appoint the Chairperson of the Commission from among the Commission members. No person shall be eligible for appointment to the Commission who holds elective office.

(b) By November 15 of the year before the year in which redistricting is to take effect, the Commission shall present to the Council a plan of council districts, together with a report explaining it. Within 30 days of receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within 90 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.

(c) Any council district established in accordance with this section shall be compact, contiguous, substantially equal in population, and have common interests as a result of geography, occupation, history, or existing political boundaries. (d) An ordinance establishing council districts shall be exempt from referendum.

Frederick

214. Redistricting

(a) The Council shall appoint by resolution a Redistricting Commission not later than April 1 of the year following each decennial census date. The **central committee** of each political party shall nominate **three** persons to serve on the Commission if, at the time of nomination, at least twenty-five percent of the total number of registered voters in the County are affiliated with the political party. The Council shall appoint all such nominees as members of the Commission as well as two or three additional members of the Commission, as the case may be, who are unaffiliated with any political party for at least two years prior to the date of appointment, to ensure that its total membership equals an odd number. The Chair of the Commission shall be elected by and from the Commission members. No person shall be eligible for appointment to the Commission who holds elective office.

(b) By November 15 of the year following each decennial census date, the Commission shall present to the Council a plan of Council Districts, together with a report explaining it. Within thirty days of receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within ninety days after submission of the plan no other legislation reestablishing the boundaries of the Council Districts has been enacted, the plan as submitted shall become law.

(c) Any Council District established in accordance with this section shall be compact, contiguous, substantially equal in population, and have common interests as a result of geography, occupation, history, or existing political boundaries.

(d) An ordinance establishing Council Districts shall be exempt from referendum.

Harford

Section 205. Redistricting procedure.

(a) The boundaries of Council districts shall be established in 1974 and re-established in 1982 and every 10th year thereafter. Whenever district boundaries are to be established or reestablished, the Council shall appoint, not later than February 15 of the year prior to the year in which redistricting is to be effective, a commission on redistricting, composed of **two** members from each political party chosen from a list of five names submitted by the **governing body of each political party** which polled at least fifteen percent of the total vote cast for all candidates for the Council in the immediately preceding regular election or which had at least fifteen percent of the registered voters in the County on the date of that election. The Council shall appoint one additional member of the Commission, who shall not be a member of any of the political parties entitled to two members of the Commission and shall be a registered voter in Harford County. The Commission shall, at its first meeting, select one of its members to serve as chair. No person shall be eligible for appointment to the Commission if that person holds any elected office.

[Amended by Bill No. 12-32]

(b) By October 1 of the year prior to the year in which redistricting is to be effective, the Commission shall prepare, publish, and make available a plan of Council districts and shall present that plan, together with a report explaining it, to the Council. The plan shall provide for Council districts that are compact, contiguous, and substantially equal in population. No less than fifteen calendar days and no more than thirty calendar days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within seventy calendar days following presentation of the Commission's plan no other law establishing or re-establishing the boundaries of the Council districts has been enacted, then the plan, as submitted, shall become law.

Section 206. Term of Council members.

A Council member shall serve for a term beginning at noon on the first Monday in

December next following election, and ending at noon on the first Monday in December in the fourth year thereafter.

Howard

202 (f)
Redistricting.

1. Boundaries.

The Council shall appoint, by resolution, not later than April 1 of the year after each decennial census date, a Councilmanic Redistricting Commission. The **Central Committee** of each political party which polled at least twenty-five per centum of the total vote cast for all the candidates for the Office of County Executive in the last preceding general election shall nominate **three persons** to serve on the Commission. The Council shall appoint all such nominees as members of the Commission as well as one additional member of the Commission. The Council shall appoint the Chairperson of the Commission from among the Commission members. No person shall be eligible for appointment to the Commission who holds elective office.

By October 15 of the year in which the Commission is appointed, the Commission shall prepare a plan of Councilmanic Districts and shall present that plan to the Council. Within thirty days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If by March 15 of the year following submission of the plan, no ordinance re-establishing the boundaries of the Councilmanic Districts has been enacted, then the plan as submitted by the Commission shall become law. Any Councilmanic District established in accordance with this Article shall be compact, contiguous, substantially equal in population, and have common interest as a result of geography, history, or existing political boundaries. Any ordinance establishing Councilmanic Districts shall be exempt from referendum.

The Board of Supervisors of Elections shall take any necessary steps to implement any such revisions of the Councilmanic District Boundaries so adopted.

Prince George's

Section 305. Redistricting Procedure.

The boundaries of Council districts shall be reestablished in 1982 and every tenth year thereafter. Whenever district boundaries are to be reestablished the Council shall appoint, not later than February 1 of the year prior to the year in which redistricting is to be effective, a commission on redistricting, composed of **two** members from each political party chosen from a list of five names 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

immediately preceding regular election. The Council shall appoint one additional member of the Commission who shall serve as chairman. No person shall be eligible for appointment to the Commission if he holds any elected office. By September 1 of the year prior to the year in which redistricting is to be effective, the Commission shall prepare, publish, and make available a plan of Council districts and shall present that plan, together with a report explaining it, to the Council. The plan shall provide for Council districts that are compact, contiguous, and equal in population. No less than fifteen calendar days and no more than thirty calendar days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If the Council passes no other law changing the proposal, then the plan, as submitted, shall become law, as of the last day of November, as an act of the Council, subject to Sections 320 and 321 of this Charter. Such law shall be adopted by resolution of the County Council upon notice and public hearing. (Amended, CB-92-1974, ratified Nov. 5, 1974; Petition ratified Nov. 4, 1980; Amended, CB-69-2002, ratified Nov. 5, 2002; Amended, CB-55-2012, ratified Nov. 6, 2012)

Editor's note—Members of the Prince George's County Redistricting Commission were appointed by CR-5-2001. The Commission's plan was allowed to become law without amendment by the Council.

Members of the 2011 Prince George's County Redistricting Commission were appointed by CR-2-2011. CB-64-2011 adopted the 2011 County Council Redistricting Plan.

Talbot

Wicomico

B. Districting procedure.

The boundaries of Councilmanic Districts shall be established within two years after the publication of the Decennial Census figures of the United States Bureau of the Census. Note: Original language: "in 1989 and reestablished in 1992 and every 10th year thereafter."

1. Whenever district boundaries are to be established or re-established, the County Council shall appoint, not later than February 15 of the year prior to the year in which redistricting is to be effective, a redistricting commission. By September 1, the redistricting commission shall prepare, publish and make available to the public a plan of the proposed councilmanic districts and shall present that plan to the County Council. The plan shall provide for councilmanic districts that are reasonably compact, contiguous and substantially equal in population.

2. No less than fifteen (15) calendar days and no more than forty-five (45) calendar days after receiving the plan of the commission the Council shall hold a public hearing on the plan.

3. Following the public hearing, the Council may adopt the plan as presented or may make any modifications or amendments to the plan.

4. Seventy (70) days following presentation of the commission's plan, the plan as finally adopted by the County Council shall become law. Note: It is the intent of the Council to establish a Redistricting Commission to initially propose a Redistricting plan. After Public Hearing the Council may adopt the Commission's Plan, or may adopt revisions. However the time at which the Redistricting Plan as finally adopted becomes law is based on the original presentation of the Commission's Plan.

Summary

MoCo - 9 members, Central Committees
Anne Arundel - 7 members (does charter revision and redistricting too), Council
Baltimore - 5 members, Council
Cecil - 11 members, Central Committees
Dorchester - 11 members, Central Committees
Frederick - 7 members, Central Committees
Harford - 5 members, Central Committees
Howard - 7 members, Central Committees
PG - 5 members, Central Committees
Talbot -
Wicomico - Council

11 members - 2
9 members - 1 (MoCo)
7 members - 3
5 members - 3
number not specified - 1

appointed by Central Committees - 7
appointed by Council - 3

FAIR REDISTRICTING

Background

Every 10 years following the decennial census, Maryland and Montgomery County are required to redraw the boundaries of federal, state, and local legislative districts. At the state level, redistricting of congressional and state legislative districts is left in the hands of partisan elected officials who have interests in drawing districts that increase their own odds of winning reelection and in enhancing the power of their political party at the expense of voter choice. This allows for Maryland congressional and state legislative districts to be gerrymandered into strange, unintuitive shapes and sizes that benefit incumbents and political parties at the expense of the voters living in those districts. Too often, communities and voting blocs in Maryland are irrationally “cracked” and “packed” to prevent them from achieving fair representation in elected bodies. To respect the rights of all voters, the redistricting process must be reformed. Elected officials should *not* choose their voters; voters should choose their elected officials.

At the state level, the mechanics of the redistricting process differs depending on the type of districts being redrawn, but self-interested politicians draw all districts:

- **Congressional districts:** The Maryland General Assembly must pass a bill to redistrict Maryland’s 8 congressional districts. Congressional redistricting legislation is treated as a regular bill by the General Assembly; it must be passed by both the Maryland Senate and the Maryland House of Delegates, and the Governor has veto power.
- **Maryland General Assembly districts:** The Maryland Constitution requires the Governor to prepare and present a redistricting plan to the Maryland General Assembly. The President of the Senate and the Speaker of the House must ensure that the Governor’s plan is introduced as a joint resolution for consideration. If the General Assembly refuses to enact a different redistricting plan within 45 days, the Governor’s plan becomes law.⁵⁵

Montgomery County has a fairer system of redistricting the County Council districts, although further improvements can be made:

- **Montgomery County Council Districts:** Article I, Section 104 of the Montgomery County Charter establishes a redistricting commission that is responsible for redistricting the County Council districts. The commission consists of four members from each political party that polled at least 15 percent of the vote casts for all candidates for the Council in the preceding regular election. Each member is chosen from a list of eight individuals submitted by the central committee of each eligible political party. Each list includes at least one individual who resides in each Council district. The Council appoints one additional member. The commission, at its first meeting, selects one of its members to serve as its chair. No person who holds an elected office is eligible for commission membership.⁵⁶

To minimize gerrymandering, several other states have adopted neutral redistricting methods. One method is to create neutral redistricting criteria that prohibit line-drawers from redistricting to achieve partisan ends. Redistricting plans are then subject to judicial review to ensure that the neutral redistricting criteria has been satisfied.

Another method used in other states to minimize gerrymandering is to remove redistricting from the control of politicians completely. In these states, a neutral redistricting commission typically draws the redistricting plans. A commission is used to redistrict in Montgomery County, but its membership is not equally split among the county's political parties, and thus it is not entirely neutral. To protect the rights of underrepresented political minorities, a redistricting commission should be comprised of an equal number of members from all sizable and durable political parties, including more than just the Republican and Democratic parties. To avoid concerns of gaming the commission, political parties that are new and small should be excluded. Additionally, the redistricting commission should have to pass a redistricting plan through a supermajority vote. Furthermore, the data that the redistricting commission relies on in drawing lines should not include political information, such as the addresses of incumbents and the political affiliations of registered voters.

An additional way to minimize gerrymandering is for the redistricting process to be conducted in a transparent manner and to allow for broad public participation, such as allowing the public to submit testimony and propose redistricting plans. Maryland currently allows the public to submit comments to the Governor's redistricting advisory committee, and these principles should equally apply to redistricting carried out by a neutral redistricting commission.

Although adopting fair redistricting in Maryland may present concerns that the Democratic Party is "unilaterally disarming" while other states continue to be gerrymandered to favor the Republican Party, Maryland can minimize these concerns by exploring the possibility of entering into an interstate agreement with a state that has a similarly sized Congressional delegation but has been gerrymandered to favor Republicans, such as Wisconsin. Regardless, these concerns are substantially outweighed by the fundamental unfairness of Maryland's current redistricting process, which sacrifices representation for underrepresented voters and completely disrespects the rights of our state's voters to choose their own elected representatives.

Recommendations

State-level Recommendations:

36. Neutral Redistricting Criteria:

The Task Force recommends that the County Council advocate for the Maryland General Assembly to establish the following neutral redistricting criteria for congressional redistricting and state legislative redistricting:

1. No redistricting plan or district may be drawn with the intent to favor or disfavor a political party or incumbent.
2. Notwithstanding recommendation #36.1, districts may not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.
3. Congressional districts* must consist of adjoining territory, be compact in form, and of substantially equal population. Due regard must be given to natural boundaries and the boundaries of political subdivisions.

*Criteria in #36.3 currently apply to the redistricting of Maryland General Assembly districts under the Maryland Constitution, art. III, sec. 4, but not to the redistricting of congressional districts.

37. Neutral Redistricting Commission:

The Task Force recommends that the County Council advocate for the Maryland General Assembly to establish a neutral state redistricting commission that will determine the boundaries of congressional and Maryland General Assembly districts.

The Task Force further recommends that the state redistricting commission be governed by the following specific principles:

1. *Powers and duties:* The commission's redistricting plans should be final and binding upon the state, subject only to judicial review for compliance with the neutral redistricting criteria and the obligations placed on the commission.
 2. *Composition:*
 - a. The commission must consist of three members each from every political party recognized in Maryland that has had at least 5,000 registered members over the preceding five years, and three unaffiliated members not registered with any political party.
 - b. No person who holds any elected office is eligible for appointment to the commission.
 - c. No commissioner may hold any elective office in Maryland during the two-year period following their tenure on the Commission.
 3. *Member selection:* The governor must appoint the commission members. The state central committee, or equivalent body, of each political party that is eligible for representation on the commission must submit to the governor a list of commission candidates from that political party. The governor must appoint three members from each list submitted. The governor must also appoint three unaffiliated members.
 4. *Officers:* The chair and vice chair of the commission may not both be members of the same political party or both be unaffiliated with any political party.
 5. *Data restrictions:* In establishing districts, the commission may not use any of the following data:
 - a. addresses of incumbents; or
 - b. political affiliations of registered voters.
 6. *Transparency and public participation:* The commission must:
 - a. make all of its meetings, deliberations, and proceedings open to the public, and make all records used in its deliberations and proceedings open to public inspection and copying; and
 - b. accept and consider testimony and proposed redistricting plans from members of the public.
 7. *Voting:* Passage of a redistricting plan requires the support of at least two-thirds of the commission's members.
- 38. Enforcement:** The Task Force recommends that the County Council advocate for the Maryland General Assembly to establish private right of action for any Maryland resident, municipality, or county to sue the state for declaratory and equitable relief to enforce compliance with the neutral redistricting criteria or the obligations imposed on the state redistricting commission.
- 39. Transparency:** The Task Force unanimously recommends that the County Council advocate that any redistricting process adopted by the state provide maximum opportunity for public scrutiny and include public hearings and a recorded vote by members.

County-level Recommendations:

40. The Task Force recommends that the County Council establish a neutral County Redistricting Commission to determine the boundaries of County Council districts every 10 years after the decennial census.
41. The Task Force further recommends that the county redistricting commission be governed by the following specific principles:
 1. The neutral redistricting criteria recommended for congressional and state legislative redistricting should equally apply to redistricting County Council districts.
 2. A separate county redistricting commission should be established to redistrict the County Council districts. The commission should be structurally and functionally identical to the state redistricting commission, *except*:
 - a. the membership threshold for political parties should be 1,000 registered voters in Montgomery County; and
 - b. appointments should be made by the County Executive, with candidate lists submitted by the county central committees, or equivalent bodies, of the political parties represented on the commission.
 3. The enforcement mechanism and transparency requirements recommended for congressional and state legislative redistricting should equally apply to redistricting of the County Council districts.

Minority Views

Minority view #1

We fully agree with the suggestions and recommendation provided with this document. Just recently, Maryland's current districting, especially the 3rd and 6th Districts, have been the basis for the distinct honor and title by the *Washington Post* that puts Maryland as the 2nd worst gerrymandered state in the nation. It is the firm belief of the minority position that this topic of gerrymandering will not be seriously considered by the Montgomery County Council, as long as the current political structure is in place. To stop the process that keeps the liberals, themselves, in power will not be considered by its members and the perpetuation of gerrymandering will continue as long as the democrats are in the position of power in Maryland. A lot of Maryland's ultra liberal position is largely due to its gerrymandering. Maryland should not justify its pathetic position as the second worst gerrymandered state in the Nation by pointing to another state, like Texas. Most of the Task Force members stress how they think Maryland is leader in political "progressive" thinking. Perhaps it is time for Maryland to lead by reducing its gerrymandering. Voters should choose their representative but representative should not be able to choose their voters.

Minority view #2

This study would reduce gerrymandering by requiring more compact legislative districts and establishing fixed criteria for drawing boundaries when redistricting. It also reduces the ability of the major political parties to influence the redistricting process. These redistricting recommendations apply to national, state, and county elections.

National Elections: given the nature of the current Congress, Maryland should not give up its ability to elect Members of Congress who reflect the views of the great majority of the voters in this state. Limiting Maryland's ability to counter the disproportionate number of representatives elected to Congress by states such as Texas is ill-advised. Consider how the Texas legislature re-districted after

the 2000 census, the second time when conservatives gained control of the legislature. Consider also the odd shapes of Texas legislative districts and what they accomplish. Maryland should not disarm unilaterally.

Accordingly, Maryland should delay the application of uniform redistricting measures until a sufficient number of other states adopt similar redistricting constraints. Maryland did this when it joined the National Popular Vote Interstate Compact on the apportionment of presidential electors, which does not take effect until such time as the signatory states have an absolute majority in the electoral college.

Also, there are those who complain that a major party "hegemony" controls both Maryland and the County. To combat this perceived evil, they seek to reduce or eliminate whatever advantages these broadly based, inclusive parties may enjoy under the current political system. Here, they would give 5,000-member parties the same number of seats on redistricting committees as 1,000,000-member parties.

Those who seek these changes may not appreciate the fact that others could use them to foster the agenda of less progressive interest groups. We know that there are a fair number of people who strongly support the elimination of all gun regulations; who want to close all abortion clinics; and who focus entirely on cutting taxes, without regard to maintaining services or social justice. To avoid increasing the potential power of such narrow special interest groups, Maryland should maintain the current balance between the major and minor parties.

Montgomery County Right to Vote Task Force
Proposed Recommendation from Voting Rights Subcommittee

Topic: Redistricting / Gerrymandering

Background:

Every 10 years following the decennial census, jurisdictions are required to redraw the boundaries of federal, state, and local legislative districts. In Maryland, the redistricting processes differ depending on the type of districts being redrawn:

- **Congressional districts:** The Maryland General Assembly must pass a bill to redistrict Maryland's 8 Congressional districts. Congressional redistricting legislation bill is treated as a regular bill by the General Assembly; it must be passed by both the Maryland Senate and the Maryland House of Delegates, and the Governor has veto power.
- **Maryland General Assembly districts:** Article III, Section 5 of the Maryland Constitution requires the Governor to prepare and present a redistricting plan to the Maryland General Assembly. The President of the Senate and the Speaker of the House must ensure the Governor's plan introduced as a joint resolution for consideration. If the General Assembly refuses to enact a different redistricting plan within 45 days, the Governor's plan becomes law.
- **Montgomery County Council Districts:** Article I, Section 104 of the Montgomery County Charter establishes a redistricting commission that is responsible for redistricting the county's single-member districts. The Commission consists of 4 members from each political party which polled at least 15% of the vote casts for all candidates for the Council in the preceding regular election. Each member is chosen from a list of 8 individuals submitted by the central committee of each eligible political party. 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 that 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.

At the state level, both Congressional and state legislative redistricting is left in the hands of partisan elected officials who have an interest in drawing districts that benefit their odds of winning reelection and in enhancing the power of their political party at the expense of voter choice. To achieve these ends, line-drawers may use the gerrymandering techniques of "cracking" and "packing". As described by *Redistricting the Nation*:

- **Packing** concentrates a bloc of voters, e.g., members of a political party, into a single district. This allows the other party to win in the surrounding districts.
- **Cracking** splits a bloc of voters among a large number of multiple districts to prevent that bloc from constituting a majority in a district.

Through packing, cracking, and other gerrymandering techniques, districts can be drawn in strange, unintuitive shapes and sizes to benefit incumbents and political parties who would not otherwise be able to achieve of such electoral success. Under Maryland's current redistricting process, elected officials choose their voters, instead of voters choosing their elected officials.

To minimize gerrymandering, several states have adopted neutral redistricting methods. One method, as adopted in Florida, is to create neutral redistricting criteria that prohibits line-drawers from redistricting to achieve partisan ends. Redistricting plans may then be subject to judicial review to ensure that the neutral redistricting criteria has been satisfied.

Another common method to minimize gerrymandering is to remove redistricting from the control of elected politicians completely. In these states, redistricting plans typically are enacted by a "redistricting commission." A commission is also used to redistrict in Montgomery County. As described by the National Conference of State Legislatures and various states' laws:

- **Composition.** Most redistricting commissions are required to have memberships that are balanced or nearly balanced between the two dominant political parties. Some states reserve seats on the commission for members of third political parties or unaffiliated voters.
- **Member selection.** How commission members are chosen varies widely from state to state. Appointments may be made by the majority and minority leaders in the state legislature; by the Governor; by the chairs of the state political parties; by the judiciary; by a nonpartisan government agency; or by some combination of these options.
- **Number of members:** The number of commissioners also varies widely state-to-state, ranging from as large as 18 members to as small as 5 members (excluding Arkansas, which has a 3 person partisan commission).
- **Voting procedures:** States also vary as to whether the commission must adopt a plan by a simple majority vote or a supermajority vote. In California, which has a commission comprised of 5 Democrats, 5 Republicans, and 4 of neither political party, a redistricting plan may only be adopted if 3 members of each group vote in favor of it.

Ideally, the membership of a redistricting commission would respect all sizable political parties—more than just the Republican and Democratic Parties, but less than every political party to avoid concerns of gaming. Below are the political party registration of voters in Maryland, as reported in the February 2014 Voter Registration Activity Report from the Maryland State Board of Elections:

Active Registered Voters in Maryland by Political Party, February 2014

Political Party	Number of Registered Voters
Democrat	2,050,805
Republican	947,339
Libertarian	13,424
Green	8,432
Americans Elect	287
Unaffiliated	649,854
(Other)	36,158

Active Registered Voters in Montgomery County by Political Party, February 2014

Political Party	Number of Registered Voters
Democrat	351,513
Republican	122,265
Libertarian	2,048
Green	1,518
Unaffiliated	145,973
(Other)	3,390

Finally, a way to minimize gerrymandering is for the redistricting process to be conducted in a transparent way and to allow for broad public participation in the redistricting process, allowing members of the public to submit testimony and proposed redistricting plans. According to the Maryland Department of Planning website, Maryland currently has processes in place that allow for the public to submit comments to the Governor's redistricting advisory committee. Requiring transparency and allowing public participation could equally apply if redistricting was carried out by a neutral redistricting commission.

Proposed Recommendations:

Subcommittee action: All of the recommendations below were endorsed by the 4 Subcommittee members present at the meeting when this was considered, except the recommendation that members of the Redistricting Commission not be allowed to run for elective office for 2 years following their tenure on the Commission, which the Subcommittee voted 2 for, 2 against.

State-level Recommendations: The following recommendations apply to both Congressional redistricting and state legislative redistricting.

I. Neutral Redistricting Criteria

1. No redistricting plan or district may be drawn with the intent to favor or disfavor a political party or incumbent
2. Districts may not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and
3. Congressional districts* must consist of adjoining territory, be compact in form, and of substantially equal population. Due regard must be given to natural boundaries and the boundaries of political subdivisions.

*Criteria in #3 currently apply to the redistricting of Maryland General Assembly districts under the Maryland Constitution, art. III, sec. 4, but not to the redistricting of Congressional districts.

II. Neutral Redistricting Commission:

1. Powers and duties: A State Redistricting Commission shall determine the boundaries of Congressional and Maryland General Assembly districts every 10 years after the decennial census. The Commission's redistricting plans shall be final and binding upon the state, subject only to judicial review for compliance with the Neutral Redistricting Criteria and the obligations placed on the commission.

2. Composition:

- a. The Commission shall consist of 3 members each from every political party recognized in Maryland that has had at least 5,000 registered members over the preceding 5 years, and 3 unaffiliated members not registered with any political party.
 - b. No person who holds any elected office is eligible for appointment to the Commission.
 - c. No Commissioner may hold any elective office in Maryland during the 2-year period following their tenure on the Commission.
3. Member selection: The Governor shall appoint the Commission members. The state central committee, or equivalent body, of each political party that is eligible for representation on the Commission shall submit to the Governor a list of Commission candidates from that political party. The Governor shall appoint 3 members from each list submitted. The Governor shall also appoint the 3 unaffiliated members.
4. Officers: The Chair and Vice Chair of the Commission may not both be members of the same political party or both be unaffiliated with any political party.
5. Data restrictions: In establishing districts, the Commission may not use any of the following data:
- a. Addresses of incumbents.
 - b. Political affiliations of registered voters.
 - c. Previous election results.
6. Transparency and public participation: The Commission must:
- a. Make all of its meetings, deliberations, and proceedings open to the public, and make all records used in its deliberations and proceedings open to public inspection and copying
 - b. Accept and consider testimony and proposed redistricting plans from members of the public
7. Voting: Passage of a redistricting plan requires the support of at 2/3rds of the Commission's members.

III. Enforcement

Any Maryland resident, municipality, or county may sue the state for declaratory and equitable relief to enforce compliance with the Neutral Redistricting Criteria or the obligations imposed on the State Redistricting Commission.

County-level Recommendations:

- The Neutral Redistricting Criteria recommended for Congressional and state legislative redistricting should equally apply to redistricting of the Montgomery County Council districts.
- A separate County Redistricting Commission should be established to redistrict the Montgomery County Council districts. The commission should be structurally and functionally identical to the state redistricting commission, *except*:
 - The membership threshold for political parties should be 1,000 registered voters in Montgomery County

- Appointments should be made by the County Executive, with candidate lists submitted by the county central committees, or equivalent bodies, of the political parties represented on the Commission.
- The enforcement mechanism recommended for Congressional and state legislative redistricting should equally apply to redistricting of the Montgomery County Council districts

Pros and Cons:

Pros:

- Respects the right of the voters in a democracy to be represented by representatives of their own choosing
- Enhances public confidence in the redistricting process
- Allows broad public participation in the redistricting process
- Affords fair electoral opportunities to political minorities
- Decreases odds of unrepresentative one-party control
- Abolishes the conflict-of-interest state legislators currently have in drawing their own districts

Cons:

- Abolishes gerrymandering in Maryland without achieving national fairness in redistricting, which unfairly disadvantages the political party currently in control of the redistricting process by allowing states controlled by a different political to continue to gerrymander.

Sources:

Current (2012-2022) Redistricting Maps in Maryland:

- **Congressional districts:**
 - <http://www.mdp.state.md.us/Redistricting/redistrictingIMap.shtml> (interactive map)
- **Maryland General Assembly districts:**
 - <http://www.mdp.state.md.us/Redistricting/redistrictingLegislativeIMap.shtml> (interactive map)
- **Montgomery County Council districts:**
 - http://www.montgomerycountymd.gov/council/district_map.html

Maryland and Montgomery County related sources:

- Maryland Constitution, Art. III
- Montgomery County Charter, Art. I, Sec. 104.
- Maryland Department of Planning, *Redistricting: Congressional and Legislative Districts: Redistricting FAQs*, <http://planning.maryland.gov/Redistricting/faq.shtml>
- Maryland State Board of Elections, *Voter Registration Activity Report: February 2014*. http://www.elections.state.md.us/pdf/vrar/2014_02.pdf

- Maryland Department of Planning, *Redistricting: Redistricting*, <http://planning.maryland.gov/Redistricting/2010/home.shtml>

Other sources:

- National Conference of State Legislatures, *Redistricting Commissions: Legislative Plans*, <http://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx>
- Redistricting the Nation, *Glossary*, <http://www.redistrictingthenation.com/glossary.aspx>
- Florida Constitution, Art. III, Sec. 20, 21 – <https://www.fairdistrictsnow.org/redistricting/amendments/>
- Iowa Code § 42.4 – <https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=82&input=42.4>
- Legislative Services Agency, *Legislative Guide to Redistricting in Iowa*, <https://www.legis.iowa.gov/DOCS/Central/Guides/redist.pdf>
- Hawaii Revised Statutes § 25-2 – http://hawaii.gov/elections/reapportionment/documents/Haw_RevStat.pdf
- California Constitution, Art. 21 – http://www.leginfo.ca.gov/.const/article_21
- Micah Altman & Michael McDonald, *The Promise and Perils of Computers in Redistricting*, 5 Duke Journal of Law and Public Policy 69 (2010), <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1026&context=djclpp>

5. REDISTRICTING PROCEDURE
Section 104, Redistricting Procedure

Background

A Redistricting Commission must be appointed to redraw the boundaries of County Council districts after each decennial census. In 1998, §104 of the County Charter was amended to enlarge the Redistricting Commission from five members to nine. It was hoped at the time

³ Timothy Firestine, Chief Administrative Officer, on October 14, 2009, and Nick Johnson and Phil Oliff came from the Center on Budget Priorities on March 11, 2009.

⁴ Mr. Firestine.

that this larger group would be more representative of the County. (See discussions in the 1996 and 1998 reports of the Charter Review Commission.) The current Charter Review Commission considered this subject again with the goal of identifying an improved process for determining election districts for members of the County Council. They studied jurisdictions nationwide to see what limits they place upon the formation and operation of their Redistricting Commissions.

Discussion

Montgomery County's Redistricting Commission is dominated by the two main political parties, each of which nominates eight candidates for membership. In order for a political party to have representation on the Redistricting Commission, the Charter requires that 15% of the total votes for all candidates for Council in the last preceding regular election be cast by members of that party. The County Council is required to appoint four members from each slate submitted by a qualifying party and name a ninth member of its own choosing. Unless the Council appoints an unaffiliated voter, a member of a third party, or a party reaches the 15% participation threshold, this denies participation in the redistricting process to the nearly 25% of voters who register with no party or a smaller party. The only stated qualifications for membership on the Redistricting Commission are that a Commissioner cannot hold an elective office, at least one must reside in each Council District, and the number of members of the Commission who reside in the same Council district must not exceed the number of political parties which submitted a list to the Council.

In order to determine whether there might be a better way to select a redistricting Commission and to draw district lines, members of the Commission did independent research and submitted their findings to the Commission for review. These reports are included in the Appendix beginning on page A-56. They include:

- Procedures for Better Redistricting, January 11, 2010
- Whether a Charter Amendment Should Impose Standards on a Councilmanic redistricting plan, December 8, 2009
- Redistricting Commission and Criteria in Six States, December 8, 2009
- Redistricting Procedures in Maryland Counties and Baltimore City, November 30, 2009
- Summary of Non-Governmental Organization Recommendations on Redistricting, January 3, 2010
- Political Science Literature about Redistricting Process, December 2, 2009
- A Menu of Issues and Possible Charter Changes, January 13, 2010

In contrast to our bi-partisan Redistricting Commission, many “good government” groups recommend non-partisan commissions that, in theory, would not deliberately draw district lines to favor a political party, a group, or a person. Some states list specific standards for how to draw the lines. A few such as California go further and try to assure that members of a Redistricting Commission are representative of the electorate and unbiased.

The memorandum on page A-56 gives a compact summary of the Charter Review Commissioners research findings, preceded by some motivation for the study.

Recommendations

After the Charter Review Commission had reviewed the above research, the ad hoc Redistricting Study Committee Chair (Wolff) offered a menu of possible changes in the County Charter. (See Memorandum on A Menu of Issues and Possible Charter Changes on page A-85.) Commissioners did not reach consensus on a different approach for forming a Redistricting Commission. For a variety of reasons, the Commission-voted to close discussion of this subject and voted 6-2-1 not to pursue the issue further. The Commission noted that there was not much time left in their term and recommends that the next Commission review their extensive research and consider whether to study the issue further.

Charter Review Commission Recommendations

I. Redistricting Commission

The Commission recommends (9-0), that the following amendment to Section 104 of the Charter be submitted to voters at the November 6, 2018 General Election:

Section 104 Redistricting Procedure

The boundaries of Council districts shall be review 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] eleven registered voters who reside in the County. The Commission shall include at least one but no more than four members 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.] At least one member of the Commission shall reside in each council district. 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 or any other law amending the boundaries of Council districts 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.

II. Charter Tax Cap

The Commission recommends (8-1), that the following amendment to Section 305 of the Charter be submitted to voters at the November 6, 2018 General Election:

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 therefore not later than June 1 of the year in which it is submitted.

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

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

By June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. Unless approved by a unanimous vote of [nine, not seven] all current 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.