



**2024**  
**Report of the**  
**Charter Review Commission**

**Montgomery County, Maryland**

**April 24, 2024**

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

Dear Councilmembers:

On behalf of the Montgomery County Charter Review Commission, I am pleased to submit the Commission's 2024 Report.

I wish to acknowledge the tremendous support that the Commission has received from Council staff and staff in the Office of the County Attorney. Their cooperation and professionalism have made the Commission's task easier.

I also want to thank the Commissioners for their service, cooperation, and collegiality.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jim Michaels". The signature is written in black ink and is positioned above the typed name and title.

Jim Michaels, Chair  
Charter Review Commission

# Montgomery County Charter Review Commission

## Commission members appointed in July, 2023

Jim Michaels, Chair  
Karen Cordry, Vice Chair<sup>1</sup>  
Sherry Brett-Major  
Howard Denis  
Cece Grant  
Marvin Lynch  
David Nachtsheim  
Jeffrey Naftal  
Michael Persh  
Dylan Presman  
Marcela Samuels

### Staff

Khandikile Sokoni, Legislative Attorney, Office of the County Council  
Erin Ashbarry, Chief, Division of Government Operations, Office of the  
County Attorney  
Amina Haleem, Assistant County Attorney  
Lisa Brennan, Assistant County Attorney  
Stephen Mathany, Legislative Services Coordinator, Office of the  
County Council

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<sup>1</sup> Regrettably, Karen Cordry passed away on November 20, 2023.

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## **I. INTRODUCTION**

### **A. The County Charter**

Article XI-A of the Maryland Constitution enables counties to adopt a charter that establishes a local government with approval of the voters. A county's charter effectively serves as its constitution and establishes the duties and responsibilities for the different branches of the county government. The Maryland Constitution provides that the General Assembly will enact into law its grant of express powers to the County, which the County can then use to form its charter. After a charter is adopted and approved by the voters, the County Council acting as the legislative branch has the authority to enact local laws on the matters specified in the General Assembly's grant of express powers (subject to the provisions of the Maryland Constitution and general laws of the state). Article XI-A of the Constitution provides that a County Council may not sit for the purposes of enacting legislation for more than 45 days each year, although those days need not be consecutive.

### **B. How the Charter is Amended**

Under the Maryland Constitution, amendments to the Charter may be proposed by the County Council. An amendment can also be proposed by a petition of the voters that is signed by 20% or more of the County's registered voters but, in any case, 10,000 signatures is deemed to be legally sufficient. That standard was established in 1915. So a petition to amend a charter in a county with less than 50,000 registered voters requires signatures from 20% of the voters, and in counties with more than 50,000 registered voters, the 10,000 signature requirement applies.

By the 1970s, Montgomery County's population exceeded 500,000 and for the November 1976 election there were 309,326 registered voters.<sup>2</sup> Consequently a petition to change the County Charter in 1976 would have required only 10,000 signatures, representing 3.23% of registered voters. Montgomery County's population as of 2020 was 1,062,061, and for the November 2022 election there were 673,373 registered voters.<sup>3</sup> Consequently, a petition to change the Charter containing the 10,000 required signatures would represent only 1.485% of registered voters in 2022. Some public officials have questioned the relative ease of having charter questions placed on the ballot by such a small number of voters, but that is a

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<sup>2</sup> According to the Maryland Department of Planning, the Census Bureau reported that Montgomery County had a population of 522,809 in 1970. See

[https://www.montgomeryplanning.org/research/data\\_library/population/po8b.shtm](https://www.montgomeryplanning.org/research/data_library/population/po8b.shtm).

<sup>3</sup> The Census Bureau reports the Montgomery County population as 1,062,061 on April 1, 2020.

<https://www.census.gov/quickfacts/fact/table/montgomerycountymaryland,US/POP010220>.

Maryland Board of Elections data available at:

[https://elections.maryland.gov/press\\_room/2022\\_stats/GG22/Eligible%20Active%20Voters%20by%20County%20-%20GG22.pdf](https://elections.maryland.gov/press_room/2022_stats/GG22/Eligible%20Active%20Voters%20by%20County%20-%20GG22.pdf)

matter that must be addressed by the Maryland General Assembly by way of a Constitutional Amendment.

If the County Council passes a resolution proposing an amendment to the Charter, or after a petition is filed with the required number of signatures, the proposed Charter amendment must be submitted to the voters for their approval at the next general election. If the majority of votes cast on the proposed amendment are in favor of it, the amendment will become a part of the Charter after the 30<sup>th</sup> day following the election.

### **C. The Role of the Charter Review Commission**

The voters of Montgomery County first adopted a charter form of government in 1948. After voters adopted the initial charter, they adopted various amendments in subsequent elections. The current County Charter was adopted in 1968 and has been amended through the years. Charter §509, adopted by amendment in 1976, requires the quadrennial appointment of an eleven-member, multi-partisan Commission to study the Charter and make recommendations on potential Charter amendments. Commission members serve four-year terms, without compensation. No more than six of the eleven members may be from the same political party. The County Council nominates six members and the Chair, while the County Executive nominates five members and the Vice Chair.

The Commission researches and evaluates Charter issues raised by its Commissioners, the County Executive, Councilmembers, other government officials, and the public. A report on the Commission's activities is to be submitted to the Council by May 1 of every even-numbered year. The biennial report outlines the issues that the Commission considered and any recommendations for changes.

By mid-August, the Council determines whether to adopt a resolution approving any proposed charter amendment for inclusion on the General Election ballot in November. The Council, however, is not limited to considering the proposed amendments studied or recommended by the Charter Review Commission. The Council is also responsible for placing on the November ballot any proposed Charter amendment raised by a petition that was certified as meeting the signature and other legal requirements.

### **D. The Commission's Proceedings from September 2023 – April 2024**

The County Council confirmed the appointments of the current Commission members on July 11, 2023, and the current Commission held its first meeting on September 13, 2023. Keeping with recent practice, the Commission's regular meetings are held on the second Wednesday of the month at 8:00 a.m., in the Werner Council Office Building in Rockville, Maryland, and are open to the public. The Commission's agendas and meeting minutes from September 2023 to April 2024 are included in Appendix G to this Report.

The Council's former President, Evan Glass, addressed the Commission at its monthly meeting in October 2023. Council President Andrew Friedson spoke at the Commission's November 2023 meeting, and County Executive Marc Elrich addressed the Commission at its December 2023 meeting. The Commission heard from the Executive Director of the Council, Marlene Michaelson, at its February 2024 meeting.

On November 9, 2023, the Commission issued a Press Release soliciting suggestions from the public about potential Charter changes that should be considered. A copy of the November 9th Press Release is included as Appendix B to this Report. The Commission received five comments in response to the November 9 Press Release. Copies of those submissions are included as Appendix C to this report. In addition, the Commission reached out to the Directors of the County's five Regional Service Centers and their Citizens Advisory Boards to solicit their input by providing them with a copy of the November 9th Press Release.

On February 23, 2024, the Commission announced it would be holding two public listening sessions in March on three topics related to potential Charter amendments. The topics and potential Charter amendments identified in the February 23rd Press Release were the three topics that are the subject of this Report. The notice invited interested individuals to appear before the Commission at an in-person hearing in the Council Office Building during the afternoon on March 6, 2024, on at an online virtual meeting held during the evening on March 6. The February 23rd Press Release also invited members of the public to submit written comments on the proposed amendments.

A copy of the February 23 Press Release is included as Appendix D to this Report. Only three individuals testified before the Commission during the March listening sessions, which were video recorded. The video recording of the listening sessions can be viewed on the Internet using this link: <https://www.montgomerycountymd.gov/crc/sessions.html>

Two of the March hearing participants also submitted written statements and a copy of their submissions is included as Appendix F to this Report.

## **II. SUMMARY OF COMMISSION RECOMMENDATIONS**

### **1. Council President: Direct Election and President's Term**

#### **1a. Direct Election by Voters: Should the Charter be amended in section 108 to provide that County voters shall elect a President of the Council instead of having the Council's members elect a President?**

The Commission voted unanimously against recommending such a change to the Charter by a vote of 10 to 0.

#### **1b. Term of the Council President: Does the Commission recommend that the Council elect a President to serve for two years instead of one year as is the current practice?**

The Commission voted in favor of this recommendation by a vote of 7 to 3.  
In favor: Chair Michaels, Commissioners Grant, Lynch, Naftal, Persh, Presman and Samuels.  
Opposed: Commissioners Brett-Major, Denis, and Nachtsheim.

**1c. Recommending a Charter change or a change in the Council’s operating rules: Should the change making the term of the Council President two years instead of one year be included in the County Charter as a legal requirement (rather than a policy change in the Council’s operating rules)?**

A majority of the Commissioners opposed recommending a change to the Charter for this purpose. There were 4 votes favoring a Charter change and 6 votes opposed.  
In favor: Commissioners Grant, Naftal, Persh, and Samuels  
Opposed: Chair Michaels, Commissioners Brett-Major, Denis, Lynch, Presman and Nachtsheim.

**2. Requirements for Council Approval of Budget and Revenue Matters under Section 305.**

**2a. Should section 305 of the Charter concerning the budget and tax revenue be changed so that all three actions listed in Section 305 require a consistent, two-thirds majority vote for approval?**

The Commission voted in favor of this recommendation by a vote of 8 to 2.  
In favor: Chair Michaels, Commissioners Grant, Lynch, Nachtsheim, Naftal, Persh, Presman and Samuels.  
Opposed: Commissioners Brett-Major and Denis.

**3. County Executive Appointments to Non-Merit Positions under Section 215**

**3a. Should section 215 of the Charter be amended to allow the County Executive to make appointments to non-merit positions below the level of Department head or agency head without obtaining confirmation by the Council?**

The Commission did not have a majority in favor of recommending this change, with a vote that was tied 5 to 5.  
In favor: Commissioners Lynch, Denis, Persh, Presman and Samuels.  
Opposed: Chair Michaels, Commissioners Brett-Major, Grant, Nachtsheim and Naftal.

**3b. Should section 215 of the Charter be changed to state that the County Executive’s appointment to fill any non-merit position shall become final if the County Council fails to reject the appointment within a specified time period?**

The Commission voted in favor of this recommendation by a vote of 9 to 1.  
In favor: Commissioners Brett-Major, Denis, Grant, Lynch, Naftal, Persh, Presman, Nachtsheim and Samuels.  
Opposed: Chair Michaels.

**3c. Should the time allotted for the Council to reject the Executive’s nominee for a non-merit position before the appointment becomes final be 60 days instead of 45 days?**

The Commission voted 6 to 3 in favor of recommending that the allotted time period be 60 days rather than 45 days, with one Commissioner abstaining.

In favor: Commissioners Brett-Major, Lynch, Naftal, Persh, Presman and Nachtsheim.

Opposed: Commissioners Denis, Grant, and Samuels.

Abstained: Chair Michaels.

**III. OTHER TOPICS IDENTIFIED FOR POTENTIAL CONSIDERATION**

The Commission is required to issue its first report to the Council by May 1, 2024, which is less than eight months after its initial meeting in September 2023. Following that, the Commission will have a two-year period in which it can study additional topics for its second report which is due by May 1, 2026. With that in mind, the Commissioners selected three topics to study that they thought could be completed by the due date of the first report. However, the Commissioners had preliminary discussions about the topics listed below, which might be topics considered for the Commission’s 2026 report.

Office of People’s Counsel. A Commissioner proposed that a study be conducted on the benefit of adding a provision to the Charter concerning the Office of People’s Counsel, to supplement the existing provisions in the County Code and to mandate the funding and appointment of an independent People’s Counsel. The People’s Counsel would not represent parties in land use controversies but would inform public actions on land use matters and promote a full and fair presentation of relevant issues in administrative proceedings. Under the existing law, the People’s Counsel is also tasked with providing technical assistance to citizens and citizen organizations to increase their awareness and understanding and encourage their effective participation in the land use process. The Commission decided to defer further discussion on this topic until after its 2024 Report is completed.

Staggering the terms for Councilmembers. It was suggested that the Commission study the possibility and potential benefit of electing half of the County Council every two years instead of having all eleven members elected during the Gubernatorial election year. Some believed it would promote continuity and possibly avoid a situation where very few members have familiarity with the complex County budget. After studying the issue, it was determined that the Maryland Constitution contains a mandate for the County’s election to occur only in the Gubernatorial election year. Consequently, this is a matter that could not be addressed in a Charter amendment and would require the General Assembly to adopt a constitutional amendment.

Revising the Process for Filling a Vacancy on the Council or in the Office of County Executive. The Maryland Constitution authorizes the County Council to enact legislation that

provides for special elections when a vacancy occurs. The Council previously enacted such legislation, which calls for a special election to be held, except in certain circumstances such as when the vacancy occurs during the last year of a 4-year term which is the year of a regular election. In that case, the Council can, within 30 days, appoint someone to fill the vacancy. If the Council is not able to fill a vacant Council seat within 30 days, the County Executive can fill it by appointing someone who has been nominated by the elected Central Committee of the Party of the Council member who previously occupied the seat. If the Council is unable to fill a vacancy in the Office of County Executive within 30 days, the Chief Administrative Officer continues serving as the Acting County Executive until a new County Executive is appointed by the elected Central Committee of the Party of the former Executive.

Council President Friedson addressed the Commission at its November 2023 meeting. At that time, he suggested that the Commission work with the Council staff to study this issue and consider whether changes are warranted either to the County Code or the Charter, or both. In light of the ongoing work by Council staff on this issue, which could result in the introduction of legislation, the Commission deferred consideration of the issue to a later time.

Generating additional revenue. In October 2023, former Council President Evan Glass addressed the Commission and suggested that one possible area for the Commission to study was the budget process and how revenue is generated. For example, are changes needed to ensure adequate revenue can be generated to meet the County's needs? As previously noted, related to that topic, Commissioners decided to study the requirements for votes by a supermajority of the Council to establish an operating budget and set property tax rates for the following fiscal year.

Office of Legislative Oversight. Former Council President Glass suggested that after the Council appoints its new Executive Director in 2024, the Commission might consider whether the Office of Legislative Oversight (OLO) should be more integrated with the Council's functions by bringing OLO under the direct leadership of the Council's Executive Director.

Conflicting Ballot Questions. One Commissioner noted that the Charter could be amended to expressly state what will happen if voters approve conflicting ballot questions. In 2002, the Maryland Attorney General issued an opinion expressing the view that the conflicting ballot questions must be deemed to have failed because in light of the conflict neither one could be given effect.<sup>4</sup> However, that opinion is not a binding legal precedent and the Maryland courts have never addressed this issue. A Charter amendment adopting the Attorney General's Opinion could reduce both uncertainty and the possibility of litigation if this occurred. In 2022, the previous Charter Review Commission recommended a different approach which the County Council voted to reject in July 2022.<sup>5</sup>

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<sup>4</sup> See 87 Op. Att'y Gen. 99 (July 18, 2002).

<sup>5</sup> The 2022 the Charter Review Commission recommended that when voters approve conflicting ballot questions, whichever question received more approval votes should be given effect.

Surplus of Reserve Funds. One Commissioner suggested a study of Charter Section 310, “Surplus of Reserve Fund” to consider whether the current Charter requires the County to operate with sufficient reserve funds.

Councilmember Salaries. One Commissioner suggested studying the process for how the Council determines its salary and whether any changes to that process are warranted.

County Executive’s Role - Property Taxes. One Commissioner suggested that the Commission examine the permissions the Charter gives to the County Executive regarding property taxes.

#### **IV. DISCUSSION OF ISSUES AND RECOMMENDATIONS**

##### **A. Council President: Direct Election and President’s Term**

###### **Summary of Issue**

Under Charter Section 108, the County Council elects a president to preside over its meetings. The Commission was joined at its October 11, 2023 meeting by the Council’s former President Evan Glass, and was joined at its November 8, 2023 meeting by the then-Vice President Andrew Friedson. Both requested that the Commission consider possibilities for changing the Charter with respect to the office of the Council President, so that voters would directly elect one of the four At-Large members to the position of Council President for a 4-year term. Former President Glass also noted that it takes time to become familiar with the administrative responsibilities and establish a working relationship with the Council staff and suggested having a President serve in the oversight function for a longer period could be beneficial. The President currently serves for a one-year term.

County Executive Marc Elrich subsequently met with the Commission on December 13, 2023. He advised the Commission that he opposed changing the Charter to establish direct election of the Council President for a 4-year term, and expressed his view that rotating the presidency among the members was beneficial.

Based on these discussions, the Commission decided to study whether Section 108 of the Charter should be changed to provide for the direct election of the Council President by the voters. Commissioners also decided to study whether the Council’s current practice of choosing a President every December should be changed so that the President would serve for a longer term.

## Background

Charter section 108 provides that the County Council shall elect a president to preside over meetings.<sup>6</sup> The Charter is silent regarding the length of the president's term. However, the Council has established in the Montgomery County Code and in its Rules of Procedure that the election of officers shall occur each December and at such other times as the Council shall determine.<sup>7</sup> As a result, the Council members currently elect a new President and a Vice President every year, although there is no rule preventing members from re-electing the same person to serve consecutive or multiple one-year terms. It has been a recent custom, however, for the Council to select a President and a Vice President for a one-year term, after which it elects the current Vice President to become the President for the following year.

During Commission meetings, there was discussion about the political dynamics surrounding the annual selection of a president by the council members which necessarily involves private "backroom" conversations to develop a consensus. It was noted that such a process is not transparent to the public and is naturally subject to the influence of special or private interests. Former President Glass and then-Vice-President Friedson favored a more democratic method of letting the public decide. Former President Glass also shared his perspective based on his then 10-month tenure as president; he noted that it takes time to become familiar with the administrative responsibilities and establish a working relationship with the Council staff, and he suggested that having a President serve in the oversight function for a longer period with less frequent changes could be beneficial. They both also acknowledged that the Council President has limited powers and authority, leaving the president to play largely an administrative role in the operations of the Council. While the President sets the Council's agenda, any member wishing to change the agenda can make a motion to adopt the change which requires only approval from a simple majority.

In discussions, some Commissioners noted that the current process allows the Council to select a president who is skilled at developing a consensus among the Council members, which would not necessarily be the focus of an election by voters that would also be affected by candidates' fundraising ability and their name recognition across the broader County. Some mentioned that having voters elect an At-Large member to be the President would eliminate

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<sup>6</sup> "Section 108. Officers of the Council. The Council shall elect, from among its members, a president of the Council, who shall preside over meetings of the Council. The Council may provide for the selection of such other officers or employees as it may deem desirable for the exercise of its powers."

<sup>7</sup> See Montgomery County Code Art IV, Division 2, Subdivision I, Sec. 2-67 (1970 L.M.C., ch. 23, § 1). ("Election of officers. The council shall elect from among its members not later than December 31 in the year in which they take office, and at such other times as the council in office shall determine, a president and a vice-president. The president shall be the presiding officer, and in his absence the vice-president shall preside and perform the duties of the president."). See also Rules of Procedure of the County Council. Rule 1 (g) *Election of Council officers; determination of committee structure and membership*. ("The Council elects a Council President, a Council Vice-president, and other officers as Council desires at first Council meeting each December.")

the opportunity for District members to serve as President even though they might be excellent at consensus building.

Previous Charter Review Commissions have addressed this issue three times. In 2008, the issue was briefly considered and then deferred to a later date for further exploration. In 2014, the Charter Review Commission recommended no change because the Charter does not limit the number of years a Councilmember can serve as President.<sup>8</sup> In 2018, the Charter Review Commission again recommended no change.<sup>9</sup>

Based on the preliminary discussions, Commission members decided to study three issues:

1. Should the Charter be amended to allow voters to directly elect a Council President to a 4-year term? Within this topic, the Commissioners considered the multiple ways a direct election might be structured if such a change were made. For example, the At-Large member with the highest vote total might be deemed the new President for their entire 4-year term, or a separate election could be held every four years for one At-Large seat that is specifically designated as the President's seat.
2. Even if the Council members continue to select the President, should the Charter be changed to specify the length of the Council President's term and, if so, what should be the length of that term?
3. Should the Council members' terms be staggered so that the At-Large members (and a President) are elected at one election with the District members being elected two years later?

After further study, it was determined that a provision of the Maryland Constitution requires the election of all County officials to be held at one time during the Gubernatorial election cycle. For that reason, the Charter could not be amended to create staggered terms for Council members in order to have some members elected in the Presidential election year. Consequently, the Commission members did not develop recommendations on that issue and this report discusses only the first two questions listed above.

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<sup>8</sup> See Charter Review Commission 2014 Report, at page 2 ("The Commission studied whether to amend the Charter to provide for a longer term. Since the Charter does not limit the number of years a Councilmember can serve as President, the Commission does not recommend any Charter changes on this issue.").

<sup>9</sup> See Charter Review Commission 2018 Report, at page 3 ("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.").

## Discussion of Pros and Cons

In exploring this issue, the Charter Review Commission considered multiple options that included making no changes and maintaining the status quo as well as restructuring the current system. These discussions explored many options while resisting the urge to overdesign a new system. Specifically, the Commission evaluated the advantages and disadvantages of:

- Separately electing a Council President or keeping it as an internal selection by the Council members;
- Requiring the position of President to rotate in some automatic fashion instead of having an annual election of selection by the Council members;
- Expanding the term of President from one-year to either two years or four years;
- Recommending a Charter amendment versus recommending that the Council amend the County Code and its own internal rules of procedure.

In considering whether the Council President should be chosen by voters or the Council members, Commission members weighed the competing values of giving voters a greater voice versus the belief that the Council itself can best determine how to organize its administrative functions. Commission members also considered the Council President's official duties and historical role, and how those might be expected to change or expand if that individual is elevated to a higher status for an entire 4-year term.

The Commission initially considered the idea of having County voters directly elect a Council President that would occupy one of the four At-large seats. In that scenario, candidates for the position of Council President would appear separately on the ballot from other candidates who seek one of the other three At-large seats. That would require a well-qualified candidate seeking to be President to forego the opportunity to seek any other seat on the Council. A possible effect could be that individuals who might be leading candidates for At-large seats would not win any seat if they choose to run for the President's seat and lose. Consequently, this option could have the disadvantage of losing some well-qualified potential Council members.

To address that concern, the Commissioners discussed the possibility of allowing all candidates running for an At-Large seat to also file separately to run and win the position as President at the same time. Under that approach, the winner of the contest for President would win an At-large seat and the top three finishers in the At-large race (excluding the person already chosen as President) would also win an At-large seat. Even though every candidate on the ballot would be eligible to win only one At-large seat, and a total of four would still be elected, a legal question was raised about whether this approach would be permitted under the Maryland law that prohibits candidates from seeking election to more than one office at a

time.<sup>10</sup> Because ultimately, no Commissioner favored direct election of the Council President, the Commission did not pursue a more definitive answer to that legal question.

There was also discussion about the possibility of conducting one election for the four At-large seats as we do today, but amending the Charter to specify that the candidate who receives the largest number of votes will become the Council President for the four-year term. Alternatively, that person could become the President for only two years, while the Council would select a Vice President who would become President for the remaining two years. That approach would afford District members an opportunity also to serve as the President.

A principal disadvantage to making the candidate with the largest number of votes the President is that it would create an incentive for “bullet voting” where voters select only one At-large candidate on the ballot instead of casting votes for all four seats, with the hope that they can move their choice to the top of the field to become the President. A question was also raised about what impact this approach might have on the financing of campaigns for At-large seats, and whether or not publicly financed candidates would be at a disadvantage.

With respect to the length of the Council President’s term, the Commission deliberated on the benefits and disadvantages of having the President serve one, two, or four years. The Commission considered the current practice of choosing a different president each year and whether the new President faces difficulty in quickly learning during the transition period how to effectively perform the additional duties and responding effectively to the public and news media. Commission members considered whether any such difficulties might be addressed by expanding the length of the term, increasing continuity, and allowing the public to establish a relationship with a Council President whom they would interact over multiple years.

With respect to having a single individual elected to serve as Council President for the full 4-year term, some Commissioners wondered whether that individual might become politically assertive and seek to exercise greater influence or expand their role beyond what is currently outlined in the County Code. Others asked whether it could lead to the creation of factions within the Council. For example, is a Council President appointed for one-year more likely to speak on behalf of the Council as a body and with, at least, the implied support of the majority of their colleagues? On the other hand, would a President independently elected by voters for four years be more inclined to speak on behalf of the particular constituency that supported their election, possibly leading to some discord between the President and other Council members? How would this potential for imbalance affect the body’s ability to achieve compromise and consensus?

Commissioners also posed questions about what type of relationship would exist between an elected Council President and the County Executive, and whether they would act

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<sup>10</sup> MD. Election Law Code Ann. § 5-204(a) (2021) (“An individual simultaneously may not be a candidate for more than one public office.”)

more collaboratively or more competitively. Some anticipated a natural competition from the expectation that an elected Council President would automatically be considered a candidate for the office of County Executive.

The Commission also discussed the possibility of extending the Council President's term beyond one year even if the selection remains the Council's responsibility. That would address the desire for greater continuity expressed by Council members Glass and Friedson. The advantage of a two-year term could be enabling a smoother rotation of the position with less frequency while maintaining collegiality among council members. Moreover, that could be accomplished in legislation enacted by the Council (and modification of its internal rules) without a Charter amendment. Any future Council could just as easily enact legislation taking a different approach if they determined that adjustments were appropriate. Thus, leaving the County Charter unchanged would give the Council flexibility in resolving future issues internally based on its needs.

Nevertheless, several Commission members who support a term longer than one year for the Council President expressed a preference for having that change included as a mandate in the County Charter because reliance on the strong authority of the Charter would resolve the issue more permanently. This would require the support of the current Council just as in the case of the legislative approach, but a Charter amendment would make it more difficult for a future Council to revert to a one-year term by amending the Charter again and then obtaining voter approval in a referendum.

### **Public Input**

Three individuals spoke at the public listening sessions. All three participants opposed changing section 108 of the Charter to have voters directly elect the Council President and all three supported the current practice of choosing the President for a one-year term. They all expressed support for a system that allows the seven District members of the Council to serve as President. One participant expressed concern about the potential for creating competing interests between the County Executive and a Council President that is elected for four years. Another participant suggested that the Council should adopt a rule requiring a super majority of eight votes to choose the President rather than a simple majority of six votes.

### **Recommendations and Final Vote**

After considering the duties of the Council President and the administrative nature of the position, the Commission did not find a compelling reason to change the Charter concerning the position of Council President. The Commission members unanimously recommend that the Council continue to select a President as permitted by the existing Charter, and we recommend against an amendment calling for voters to directly elect the President.

However, a majority of the Commission recommends that the Council select its President for a two-year term rather than for one-year as it does today. A majority also recommends that the Council make this change in legislation that amends the County Code with a corresponding change in the Council's internal rules, but do not recommend changing the Charter for this purpose. The Commission took no position on the method used by Council members to choose its President or their ability to choose the same person to serve multiple terms. The final vote of the Commission was as follows:

**1. Council President: Direct Election and President's Term**

**1a. Direct Election by Voters: Should the Charter be amended in section 108 to provide that County voters shall elect a President of the Council instead of having the Council's members elect a President?**

The Commission voted unanimously against recommending such a change to the Charter by a vote of 10 to 0.

**1b. Term of the Council President: Does the Commission recommend that the Council elect a President to serve for two years instead of one year as is the current practice?**

The Commission voted in favor of this recommendation by a vote of 7 to 3.  
In favor: Chair Michaels, Commissioners Grant, Lynch, Naftal, Persh, Presman, and Samuels.  
Opposed: Commissioners Brett-Major, Denis, and Nachtsheim.

**1c. Recommending a Charter change or a change in the Council's operating rules: Should the change making the term of the Council President two years instead of one year be included in the County Charter as a legal requirement (rather than a policy change in the Council's operating rules)?**

A majority of the Commissioners opposed recommending a change to the Charter for this purpose. There were 4 votes favoring a Charter change and 6 votes opposed.  
In favor: Commissioners Grant, Naftal, Persh, and Samuels  
Opposed: Chair Michaels, Commissioners Brett-Major, Denis, Lynch, Presman, and Nachtsheim.

**B. Requirements for Council Approval of Budget and Revenue Matters under Charter Section 305**

**Summary of Issue**

The County Executive must submit a capital budget and an operating budget to the County Council each year. The Council can increase, decrease, add, or delete any appropriation item in the budgets that are submitted by the Executive. Section 305 of the County Charter describes the three mechanisms by which the Council approves spending levels and tax rates but specifies three different voting thresholds for the Council's decision making:

- It takes a vote of at least **seven** Council members (a super majority of the eleven-member Council) to approve an operating budget that exceeds the previous year's budget after adjustment for inflation.
- Each year, after considering the projection for inflation and tax revenue the County will receive, the County Council adopts spending affordability guidelines for the capital and operating budgets. It takes a vote of **eight** Council members to approve an increase in the operating budget that exceeds these affordability guidelines.
- After the Council approves an operating budget and, if necessary, approves a spending increase with the applicable supermajority of seven or eight votes, it considers whether there is a need for increasing the property tax rate to fund the budget (specifically, the aggregate weighted property tax rate). It takes a **unanimous vote of all eleven** current Council members to approve that property tax rate increase. However, unanimous approval is not required for increases in other taxes or fees to provide the needed revenue for the increased budget.<sup>11</sup>

The Commission recommends that Charter Section 305 be changed to make the thresholds consistent so that for all three of the actions listed in that section, approval requires the votes of two-thirds of the sitting Council members. With that change, for the current eleven-member Council, eight votes would be required for all three actions.

## **Background**

Approval by a supermajority on budget matters has occurred frequently in Montgomery County. For example, as recently the spring of 2023, the Council approved a budget that exceeded its affordability guidelines for the Fiscal Year 2024.

Over the past 40 years or so, Section 305 has been amended several times. Changes in Section 305 reflect an ongoing and spirited discussion in Montgomery County in an effort to rationalize and continually improve the budgetary process. The most recent change to Section 305 was made in 2020 when the voters approved an amendment to replace the limit on increases in total revenue from the property tax with a limit on increases in the real property tax rate. Also in 2020, the Council voting levels required under Section 305 were increased as part of the amendment that increased the size of the Council from 9 to 11 members. Still, Section 305 continued to have three different supermajority thresholds.

For most matters, legislative actions require a simple majority. It's not uncommon, however, for counties in Maryland to require a supermajority for certain significant or

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<sup>11</sup> A Charter amendment approved by the voters in 2018, when the Council still had only nine members, replaced the words "unanimous vote of nine, not seven Councilmembers" with the current wording "affirmative vote of all current Councilmembers" based on the concern that they would be legally prohibited from acting when there was a vacancy on the Council.

contentious decisions, especially in budgetary matters. In matters such as determining spending levels and tax rates, special capital expenditures, and reserve draw-downs, an affirmative vote of more than a majority of a council is often required.

As we consider changes to the existing Montgomery County Charter with respect to supermajority voting, it is informative to see how other similarly situated counties in Maryland use supermajority voting to decide budgetary matters of significance. Examples from the Charters of Anne Arundel County, Prince George's County, Howard County, and Baltimore County are contained in Appendix H.

### **Discussion of Pros and Cons**

The role of a supermajority requirement is establishing a higher approval threshold for a specific action or decision when the matter is sufficiently important or contentious that it ought to have wide support in order to advance some public value or goal. The particular value or goal can differ depending on the circumstances. In some cases, it might be to protect the rights of the individual or the minority. In a different case, it might seek to create stability in decisions once they are made to prevent them from being reargued repeatedly. In another case, the requirement for a supermajority might reflect a judgment that the impact of the action is so great and sweeps so broadly that it ought to be taken only with the approval of a larger percentage of the decision-making body than a simple majority.

There are multiple provisions in the County Charter that require approval by a supermajority of the County Council and within the Charter the supermajority thresholds differ. During the consideration of this issue, some Commissioners expressed the view that consistency in the supermajority thresholds for budget-related matters would be a better policy. They suggest that it would establish a clear and predictable decision-making framework, and foster stability and coherence in governance. They believe uniformity ensures that key policy decisions requiring a supermajority are approached consistently over time, promoting transparency and bolstering public trust in the legislative process.

Having different thresholds for parts of the same decision-making process can be destructive to the integrity of the process as a whole. For example, having different thresholds for the taxing and spending portions of budget means that different coalitions might be needed for different portions of the same budget process. One could imagine having sufficient votes to change the spending level without having sufficient votes to adjust revenue appropriately to fund the change.

In addition, changing the supermajority threshold from a specific number to either a fraction or a percentage of the Council's sitting members would create flexibility if there are vacancies on the Council. Also, if the total number of Council members changes in the future, as it did in 2022, we can eliminate the need to amend the charter again by specifying a fraction or percentage (e.g., two-thirds) instead of a particular number of votes (e.g., eight).

The Commission also discussed the particular circumstances that led to the unanimous vote requirement in section 305 that applies to property tax rate increases. Prior to 2020, that provision applied somewhat differently and used limits on the amount of revenue collected to regulate tax rate changes, but it contained the same unanimous vote requirement to exceed those limits. The provision has a long history, including multiple citizens' petitions seeking to change the Charter to make it more difficult for the Council to increase property tax rates. Some petitions failed, but ultimately one succeeded in imposing the requirement for a unanimous vote, which at the time meant votes from nine Council members.

The Commissioners recognize that for some County residents, the requirement for a unanimous vote is a means for making tax rate increases as difficult as possible under the County charter. In fact, a citizens' petition in 2020 resulted in a ballot initiative that sought to prohibit certain property tax rate increases outright even if the increase was supported unanimously by all Council members. That ballot initiative was rejected by the voters.

With this background, a majority of Commissioners still supported replacing the unanimous vote requirement in section 305 with a two-thirds vote requirement. Unanimous vote requirements have the potential to magnify the influence of narrow or special interests and allow them to prevail over the broader public interest even with the most minimal support. It does not serve the best interests of the County to allow one Council member to exercise veto power over ten other members who represent the vast majority and a broad cross section of a highly diverse County. There's also an unnecessary risk that one or two members could use their potential veto as leverage to obtain support for something that might benefit their district but not the larger County. The judicious use of supermajorities has its place, but allowing one or two votes to prevail over the other nine or ten others also has the potential for undermining democratic principles.

### **Public Input**

There were three participants in the Commission's Public Listening Sessions, and all three commented on the proposal to revise Charter Section 305.

One participant stated that a change should be based on something other than a desire for "symmetry" in the voting percentage formulas, and that exceeding spending affordability guidelines should continue to require eight votes (a two-thirds majority). He also supported retaining the unanimous vote requirement for raising property tax rates.

A second participant thought that the required supermajority needed to exceed the spending affordability guidelines was reasonable. With respect to the requirement for a unanimous vote to increase the property tax rate, which voters previously approved in a ballot referendum, he expressed his belief that this is a reasonable restriction on the taxing process and stated that the Council has been able in the past to increase property taxes with a unanimous vote.

The third participant expressed her support for retaining the requirement for a unanimous vote of the Council to increase the property tax rate.

### **Recommendation and Final Vote**

The Commission recommends changing Charter Section 305 to make the Council voting requirements consistent for all three actions described in that section, so that a two-thirds majority vote would be required for all three. That would mean approval by two-thirds of the sitting members. For an eleven-member Council, two-thirds, after rounding up to the next whole vote, would require eight votes.

The majority of the Commission believes that a supermajority of two-thirds requires broader support than a simple majority and, therefore, is likely to increase acceptance across the County's diverse population. Having a broader consensus enhances legitimacy and mitigates the potential for decisions to be driven by narrow interests. This strengthens the decision-making process and may improve County-wide acceptance of the outcome for difficult budget and tax decisions. Utilizing a two-thirds supermajority threshold is in line with other Maryland counties, which likely bolsters acceptance.

In addition, the majority believes that consistency in the threshold across all three actions would promote both fair and predictable governance, foster public trust, and promote a stable framework for local administration and decision-making. Consistency reduces complexity by providing a clear, uniform, and transparent decision-making framework, and facilitates efficient execution of the applicable processes or policies.

Changing the supermajority threshold from a specific number of votes to either a fraction or a percentage of the Council's sitting members would ensure flexibility if there are vacancies on the Council. Specifying a fraction or percentage (e.g., two-thirds) instead of a specific number of votes (e.g., eight) would eliminate the need to amend the Charter again if the total number of Council members changes, as it did in 2022.

It's recognized that having a supermajority requirement can slow down the policymaking process compared to a process that only requires a simple majority because a higher level of policy agreement is needed. That could prolong deliberations. But a supermajority is already required for all three policy actions governed by Section 305 and a majority of the Commission concludes this remains acceptable based on the perceived benefits previously discussed.

A majority of the Commission approves the proposed change even though the approval threshold for increasing the property tax rate would become two-thirds instead of a unanimous vote. It is difficult to foresee circumstances where the best interests of the County as a whole are served by allowing one member to exercise veto power over ten other Council members who represent not only the vast majority but a broad cross section of this highly diverse County. Of course, this would need to be approved by voters, even though in past elections

voters approved the unanimous vote provision. But we think voters should be given the opportunity to reconsider this now that the Council has been expanded to eleven members. The unanimous approval requirement was added when we had a nine-member Council, but it has less appeal and is more difficult to justify with our current eleven-member Council.

On the issue of amending Charter Section 305, the Commission's final vote was as follows:

## **2. Requirements for Council Approval of Budget and Revenue Matters under Section 305.**

### **2a. Should section 305 of the Charter concerning the budget and tax revenue be changed so that all three actions listed in Section 305 require a consistent, two-thirds majority vote for approval?**

The Commission voted in favor of this recommendation by a vote of 8 to 2.

In favor: Chair Michaels, Commissioners Grant, Lynch, Nachtsheim, Naftal, Persh, Presman and Samuels.

Opposed: Commissioners Brett-Major and Denis.

### **Concurring Statement of Chair Michaels on Eliminating the One-Person Veto for Property Tax Rates**

Concurring statement of Chair Michaels in which Commissioner Naftal joins:

Section 305 of the County Charter specifies three different voting thresholds for the Council's decision-making on the budget. Approving the operating budget can require a supermajority of either seven votes or eight votes depending on the circumstances. If an increase in property tax rates is needed to fund that budget, the tax increase must be approved by the unanimous vote of all sitting Council members (eleven votes). I agree with the Commission's recommendation to change Charter Section 305 so that approval by two-thirds of the Council's sitting members (eight votes) is the consistent standard for approving all three actions governed by Section 305. I write separately because I believe one aspect of the recommendation deserves greater discussion given that it's likely to be controversial.

The proposal would eliminate the one-person veto created by Section 305's requirement for unanimous approval to increase property tax rates. I favor that result because a supermajority of two-thirds is adequate for encouraging negotiation and compromise on the decision about tax rates. On the other hand, the existing unanimous approval requirement, rather than encouraging compromise, serves to force concessions to appease even the tiniest faction regardless of their position's merit. Section 305 currently allows a one-person veto that cannot be overridden. Even the County Executive does not have that type of absolute veto authority. Accordingly, I support the proposed change for approving tax increases even if the other proposed changes to Section 305 are not made.

The Commission's recommendation reflects a sincere belief that a uniform two-thirds vote requirement for all three actions would establish a clear and predictable decision-making framework that aims to have consistency in how key policy decisions are decided, thereby bolstering public trust in the legislative process. However, I expect the public discussion will likely seek to minimize the significance of those benefits and focus instead on just one thing – the possibility that some future increase in property tax rates could occur with the support of 8, 9, or 10 votes when it might have been prevented due to an inability to achieve unanimous approval by all 11 Council members. Having the unanimous approval provision in our Charter suggests that we're willing to sacrifice fundamental fairness and cast aside the democratic principle of majority rule if that will result in a smaller tax bill.

Some have noted that the unanimous approval requirement has, so far, not prevented our Council from obtaining the consensus needed to adopt a budget that is adequately funded. That doesn't justify it logically or explain its necessity. I also recognize that in certain limited circumstances, state law overrides Section 305 and allows the Council to adopt a budget that includes a property tax increase without unanimous approval, which occurred as recently as 2023. But I don't believe our historical good fortune justifies preserving a provision that has the potential to permit just a few to overturn the will of the majority.

The origin of the unanimous vote requirement is a 2008 ballot initiative that was approved by a margin of only 5,060 votes out of the 443,652 voters who participated in the November, 2008 election. That was when "unanimous" meant the support of 9 Council members. We currently have over 1 million County residents and over 684,000 registered voters (22% more than 2008).<sup>12</sup> After 16 years and an expansion of the Council that now requires 11 unanimous votes, it's not only reasonable but sensible to give today's voters a chance to revisit this issue, just as our Charter Review Commission revisits these issues from time-to time.

Some might argue that the voters' decision in 2008 to adopt the "unanimous" standard should be respected and allowed to stand. Using that rationale, we never would have asked voters in 2008 whether to replace the 7 out of 9 vote requirement previously adopted in a 1990 ballot initiative. The history of Section 305 alone demonstrates that we consider our Charter to be a living document, adaptable to meet changing circumstances, current needs, and present-day values. Our Charter Review Commission exists precisely because Montgomery County residents expect us to continually re-evaluate the Charter and consider the benefits of potential changes.

While we might wish to never see another tax increase, that's nevertheless a power we grant to our democratically elected legislators, with the expectation they can and will determine when the circumstances and public interest call for them to do just that, even if it's politically unpopular. The financial well-being of our County depends on the majority having both the wisdom and courage to do so. Allowing 1 or 2 legislators to veto and override the will of 9 or 10 others reflects a system in which a small minority who are unwilling to lose, are

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<sup>12</sup> By comparison, in the November, 2008 General Election, Montgomery County had 557,673 registered voters.

permitted to create a stalemate that forces an outcome that was already rejected by the majority as suboptimal.

Attaining the required supermajority of two-thirds can require negotiations and compromise that take more time than a simple majority, but supermajorities are already required currently for all three approval actions listed in Section 305. The proposal would only add one additional vote to one of the three actions, while reducing unanimous approval to a two-thirds majority for another action, which should take less time, not more. Overall, the proposal would reduce the possibility of a stalemate.

Unanimous vote requirements have the potential to magnify the influence of narrow or special interests and allow them to prevail over the broader public interest even with the most minimal support. It does not serve the best interests of the County to allow one or two Council members to exercise veto power over nine or ten other members who represent the vast majority and a broad cross section of our highly diverse County. There's also an unnecessary risk that one or two members could use their potential veto as leverage to obtain support for something that might benefit their district or some special interest but not benefit the County as a whole. The judicious use of supermajorities has its place, but allowing one or two votes to prevail over the other nine or ten has the potential for undermining democratic principles.

I disagree with the argument made by some that unless we require unanimous approval, some areas of the County will go unrepresented, and the process will lack participation and input from a diverse range of stakeholders. That argument confuses the right of the minority view to be represented and heard, with the right of the minority to control or change the outcome. Requiring a two-thirds vote of 8 to approve tax increases will still require negotiation with the minority when it has as few as 4 out of 11 votes. While some might argue that unanimous approval is needed to ensure the minority view is not ignored, in truth it's intended to ensure the majority can be ignored by giving the minority veto power over the majority with just a single vote.

I reject the suggestion that the Commission should withdraw its recommendation because it might be politically unpopular and possibly defeated. That argument is particularly unavailing when the question presented is simply whether voters should be allowed to decide. I don't doubt the potential for a well-funded campaign by special interests to defeat the proposal. But I also do not doubt the ability of rational, well-informed voters to reject the arguments that place financial self-interest above basic democratic principles. Voters already did that in 2020 by rejecting a proposed amendment that would have banned all property tax increases even with unanimous approval. After 16 years, today's voters have a legitimate interest in reconsidering the voters' 2008 decision by a thin margin to allow an extreme minority veto. I recommend that our Council give voters that opportunity.

Finally, because it might be helpful to readers, below I've provided an abbreviated summary of the history of the "unanimous approval" requirement in Section 305:

## Background on the supermajority requirement for approving property tax rates

In 1990, voters approved a ballot initiative that amended Charter Section 305 to require a supermajority instead of a simple majority (7 votes of the 9-member Council) to approve real property tax rates that would produce revenue exceeding the amount of revenue produced in the preceding year after adjustment for inflation. However, a 2008 ballot initiative resulted in voters approving another amendment, this time changing the 1990 supermajority requirement to require the votes of all 9 Council members instead of 7 (i.e., all sitting members at that time). That meant that after 2008, a single Council member could block passage of a budget favored by the other 8 members.<sup>13</sup> While 443,652 voters in Montgomery County voted in the November 2008 election, that ballot question to amend Charter Section 305 was approved by a margin of only 5,060 votes.<sup>14</sup>

In 2018, voters approved another amendment to replace the requirement for 9 votes with a requirement that all current Council members approve, to ensure that approval can be obtained by a unanimous Council if there is a vacancy on the Council.

In 2020 voters approved a ballot initiative revising Section 305 again, so that the provision would apply to increases in the property tax rate itself rather than to increases in the revenue produced by that rate.<sup>15</sup> Based on another 2020 ballot initiative that amended the Charter to expand the Council's size, it now takes the unanimous vote of 11 Council members to increase property tax rates. In the same election, voters rejected an amendment proposed by a citizen petition that would have outright prohibited any increases in property tax revenue above the rate of inflation even with unanimous approval by all Council members. That ballot initiative was rejected by the voters.<sup>16</sup>

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<sup>13</sup> The 2008 Ballot Question appeared as follows:

Property Tax Limit - Votes Needed to Override – Charter Amendment by petition:

Question B – Amend Section 305 of the County Charter to require a unanimous vote of 9 Councilmembers, rather than the 7 out of 9 votes currently required, to levy a tax on real property that will produce revenue that exceeds the annual limit on property tax revenue set in that section.

<sup>14</sup> Election result for the 2008 Amendment to Charter Section 305:

Votes for: 194,151 (50.7%).

Votes against: 189,091 (49.3%).

<sup>15</sup> Votes for: 299,720 (62.5%)

Votes against: 179,512 (37.5%)

<sup>16</sup> Votes for: 204,163 (42.9%)

Votes against: 272,277 (57.1%)

### **Minority Views on the Proposed Change to Charter Section 305:**

Commissioners Denis and Brett-Major oppose the recommendation of the majority and oppose all of the recommended changes to Section 305 recommended by the Commission. Their individual statements are provided below:

#### **Dissenting Statement of Commissioner Denis on the Proposed Change to Charter Section 305**

The decision to raise tax rates is a complex and contentious policy issue with far-reaching consequences. Since the 1990's, County residents have expected unanimous votes to exceed the "tax cap", which ensures the highest possible level of consensus in this important policy area. Reducing the supermajority threshold from unanimous to two thirds votes in this area diminishes shared decision-making and buy-in by lowering the requirement for broad consensus, potentially allowing tax decisions to be made without the full support and participation of a more diverse range of stakeholders. Council members represent different and distinct areas of the County, including at-large members, and achieving a full consensus on any vote to exceed the "tax cap" ensures that all areas of the County are represented. In particular, enabling each Council member to have a veto in tax policymaking provides members who dissented in a budget increase with an opportunity to block full funding of the budget.

While making each of the three supermajority thresholds in section 305 consistent at two-thirds could simplify the decision-making process and increase transparency, I conclude that this is less of a policy imperative than the goal of having each council member have greater input in this important policy making area.

#### **Dissenting Statement of Commissioner Brett-Major Opposing the Recommendation for Amending Section 305**

I write independently of the other Commissioners to explain why I oppose their recommendation that the Charter be amended to require a supermajority of two-thirds (2/3) for all three actions listed in section 305. To reach a two-thirds (2/3) supermajority of the County Council (11 members), 8 votes (rounded up) is required.

Currently, under section 305, approval of an operating budget greater than the annual average increase of the CPI requires an affirmative vote of 7 votes or 64% of the County Council, approval of operating budget that exceeds affordability guidelines requires an affirmative vote of 8 votes or 73% of the County Council, and a unanimous vote (11 votes) to approve a property tax rate increase. The requirement for a stepwise increase in agreement by the County Council may be understood to reflect the increasing impact to county residents.

This proposed charter amendment is brought forward with the intention of streamlining percentages; however, the effect may result in some voices being excluded from pertinent discussions. In this matter, lowering an approval requirement does not take into account that meaningful negotiations may be time consuming and may require compromise. The County

Council has successfully achieved results thus far under the graduated requirements of section 305, and I respectfully oppose recommending a change.

### **C. County Executive Appointments to “Non-Merit” Positions under Charter Section 215**

#### **Summary of Issue**

Section 215 of the Charter authorizes the County Executive to appoint an officer to head each department, principal office, or agency of the Executive branch, and also appoint officers to fill any other position in the Executive branch that is designated in the County Code as a “non-merit” position.<sup>17</sup> Under Section 215, all such appointments must be confirmed by the County Council. County Executive Elrich asked the Commission to consider recommending a change to Section 215, to eliminate the requirement for obtaining the Council’s confirmation for appointments to those non-merit positions that are not the head of a department, principal office, or agency of the Executive branch.

While the Council normally acts on nominees expeditiously, there is no specified deadline in the Charter, the potential exists for having an extended period where the candidates has not been acted on by the Council within 60 days and the position will remain vacant. The Council has, however, enacted legislation containing certain guidelines that are contained in County Code Section 1A-102. Those guidelines state that the Council should vote on the proposed appointment within 60 days but, if it does not, then it may no longer vote on that appointment and the County Executive should then either resubmit that nominee for appointment or submit a different nominee for appointment. The Charter also does not contain requirements for how the Council should conduct its confirmation process as it evaluates the Executive’s nominees for appointment to non-merit positions.

A “non-merit” position is one that is filled by appointment, making it distinguishable from a “merit” position” or career position that is filled using the type of competitive hiring practices that are common in government agencies. For a “merit” position the job applicant must satisfy the qualifications and eligibility criteria specified in the job posting used to notify the public of the vacancy, and there is no confirmation process involving the Council. For non-merit positions, the Executive making the appointment judges their qualifications before sending their nomination to the Council which can conduct its own inquiry on the applicant’s suitability before deciding whether to confirm the appointment.

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<sup>17</sup> “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.”

## Background

County Executive Elrich joined the Commission for its meeting on December 13, 2023. During the meeting, he proposed that the Commission consider a Charter amendment to allow the Executive to make appointments to fill certain non-merit positions within the executive branch without having to obtain confirmation of the appointment by the Council. This change would not apply to about 23 positions that are the heads of a department or principal office, or the head of an executive branch agency. But the proposed change would apply to about 36 other non-merit positions that currently require Council confirmation.

During the course of the Commission's deliberations, and after informal discussion with Council staff, members of the Commission broadened the inquiry and developed an alternative proposal as a potential way to reduce the potential for delay in filling non-merit positions. For all positions that are subject to confirmation, the alternative would establish a predictable deadline for the Council to act on the nomination, and the appointment would become final if the Council did not vote to reject the appointment before the specified time, either 45 or 60 days.

Under Charter Section 210, the County Executive appoints a Chief Administrative Officer (non-merit) subject to confirmation by the Council. The Chief Administrative Officer supervises all departments, offices and agencies of the Executive Branch. After receiving the advice of the Chief Administrative Officer, the County Executive appoints a single officer to head each department, office or agency of the Executive Branch, all subject to the confirmation of the Council. Montgomery County and the school system have about 30,000+ employees, a budget of \$6.8B dollars and deliver services for over a million residents. Other than a limited number of designated Executive non-merit positions (approximately 60), the remaining employees of the Executive Branch are covered under the merit system which governs the hiring, supervision and retention process for "merit" employees. See Charter Section 216. In addition to its role in confirming the County Executive's non-merit appointments, the Council exercises responsibility with respect to personnel management through its administration of the merit system. See Charter Section 401.

Eleven Maryland counties have ratified charter forms of government: Anne Arundel, Baltimore, Cecil, Dorchester, Frederick, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico. All of these are governed by a County Council and nine of the eleven counties are led by a County Executive (all except Dorchester and Talbot). In each case, the County Executive must obtain approval from the Council to appoint and hire the head of a department, agency and office. While there are differences in whether the positions are identified and designated in the text of the Charter, the Charters of the other counties place time limits on how long the Council has to act on the County Executive's appointment, whereas in Montgomery County, those limits were enacted by the Council in legislation (See Code Section 1A-102).

After meeting with the County Executive, the Commission initiated its research of the issue, including conversing with some staff members of the Council and the County Executive. Based on those discussions and preliminary research, the Commission decided to consider two changes to Charter Section 215:

1. Whether to allow the County Executive to make appointments to non-merit positions below the level of Department head or agency head without obtaining confirmation by the Council; and
2. Whether the County Executive's appointment to fill any non-merit position should become final if the County Council fails to reject the appointment within a specified period, such as 45 or 60 days.

### **Discussion of Pros and Cons**

The Commission welcomed the input of the County Executive and appreciated his taking time to meet with us and share his perspective on a range of issues affecting the County, including some changes that would require action by the General Assembly. His principal request for this Commission was his recommendation that the number of non-merit positions subject to Council confirmation be reduced, to ease the transition when there is a change in administrations with many new appointments, and to speed up the process generally when there is turnover in crucial positions.

Because the Commission was evenly split on this issue, this Report contains no recommendation. Nevertheless, the Commissioners gave the issue careful and thoughtful consideration. Our respect for the Executive and his genuine interest in an effective and efficient executive branch compels us to present this issue with a full discussion of the pros and cons, which might facilitate consideration of the issue again in the future.

### **Reasons for Reducing the Number of Appointments Requiring Council Confirmation:**

As the chief executive officer, the County Executive is responsible for executing the laws and seeing that the County operates effectively and efficiently. To fulfill that expectation, he needs the Council's consideration of his nominees to fill the almost 60 non-merit positions at the highest levels in the County's executive branch. Positions below the department head and agency head level require technical knowledge and skills and often are filled with career government professionals. But they may be classified as non-merit positions when they also require the ability to lead and implement policy, and in some cases set policy for the administration. It would not be in the best interests of any Executive to treat these as patronage positions and nominate political cronies because the Executive is judged by the results his administration achieves.

The Council's regular and continual oversight over the operations and performance of executive branch agencies is sufficient to enable it to address situations where one of the top

60 officials is not capable of meeting expectations. The Executive has pointed out that in Maryland's state government, positions below department head and agency head do not require conformation by the Maryland Senate, and he asks that the same approach be taken in Montgomery County. He views this as a matter of efficiency that will allow operations to run more smoothly during times of transition or when there are unexpected urgencies.

When vacancies occur, particularly in management and operations, a prolonged and uncertain appointment process could impact service delivery, safety, and the operations of the County. Moreover, competitive or hard-to-fill positions may be more difficult to fill if sought-after candidates are left without a time-certain process. One way to mitigate that possibility is to reduce the number of positions subject to the confirmation process, which is the proposal being made by the County Executive.

The Commission was evenly divided on this issue with five Commissioners recommending the change requested by the County Executive, and five opposing it. However, nine Commissioners supported an alternative proposal that would seek to mitigate concerns about potential delays in the confirmation process.

#### **Reasons for Retaining Confirmation by the Council for Non-merit Positions:**

The Commission is grateful for the input received on this issue from the Council's most recent Executive Director, Marlene Michaelson, who addressed the Commission at its February 14, 2024 meeting.<sup>18</sup> Others acting as staff for the Commission, who are Council employees, also provided valuable information and their perspective. The Council staff are knowledgeable about County management and operations. Acting on appointments to the non-merit positions, which are small in number but are key positions in the executive branch, is one of the Council's key oversight functions. The Council routinely acts on the vast majority of appointments in a few weeks, even when recesses and holidays must be accommodated.

After consulting with Council staff, it appears that its appointments typically are processed within a few weeks and it is rare for appointments not to be acted upon within the 60-day time frame specified in County Code Section 1A-102. When that occurs, however, it is because there are unanswered questions and additional inquiry is needed to determine how the nominee's background and experience fit with the responsibilities of the particular position. That would not be the time for "automatic approval." But the objective should be completing the inquiry and making a sound and supportable decision, that has support of the legislative body charged with the oversight function.

Ms. Michaelson expressed concern about weakening the Council's oversight with a Charter amendment that eliminates the checks and balances created by the confirmation

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<sup>18</sup> Ms. Michaelson recently retired as Executive Director of the Council after serving in the position since 2018, and having more than 35 years of service to the County government.

requirement. She noted that during the past several years, eleven merit-positions were re-classified as non-merit positions (representing 30 percent of the 36 non-merit positions) to afford the Executive greater flexibility in making appointments to fill the positions. She noted, however, that these are positions requiring substantial subject matter expertise, often filled by career civil servants with depth of experience. However, the flexibility given to the Executive to make appointments outside the competitive hiring process comes with the knowledge that the Council will be able to evaluate and approve the candidates. The major question Ms. Michaelson's testimony raises is whether it is wise to eliminate the confirmation requirement and thereby create the opportunity for a future Executive to appoint political supporters rather than well-qualified subject matter experts, with the knowledge that the Council has no ability to evaluate, question or prevent the appointment.

#### **Discussion of the Commission's Recommended Alternative:**

Understanding that the Council might be hesitant to amend the Charter to take the approach suggested by the County Executive, the Commission also focused on an alternative that would seek to prevent unreasonable delays without eliminating the Council's oversight role altogether. The proposal was to amend Section 215 of the Charter to state that the County Executive's appointment to fill any non-merit position becomes final if the County Council fails to reject the appointment within a specified time period (which could be either 45 or 60 days). A majority of the Commissioners voted to recommend this alternative and specify the period as 60 days, which would hold the Council accountable for the 60-day deadline it set for itself in the County Code (Chapter 1A, Section 1A-102).

Requiring that appointments be considered within a predictable time limit is a common-sense and balance approach that, if adopted, can avoid an extended period of management uncertainty in the appointment process and potential disruption of County services. It would maintain independent oversight from the Council while establishing predictability for the County Executive in managing personnel actions.

Today, if the Council does not act in 60-days, it can simply extend the inquiry and the Executive must either resubmit the nomination (or nominate a different candidate). The Commission is proposing a change that would adopt a rule already followed in other jurisdictions. Under the proposed rule, once the Council reaches its own 60-day deadline, if it still has unanswered questions or concerns, it could either act to reject the appointment, or take no action and allow it to automatically become final. Based on our discussions with staff, this is not likely to occur very often, but having the rule in place would give greater assurance that in difficult or unusual circumstances, efficiency will prevail.<sup>19</sup>

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<sup>19</sup> If the Commission's recommended change is made to Charter Section 215, the Council would need to enact a conforming amendment to County Code Section 1A-102 which proscribes the process for appointing and confirming officials.

Having a date certain for an appointment decision (whether 45 or 60 days) can have a positive impact on filling appointments, especially for hard-to-fill and competitive positions, where candidates have other options and want to know the outcome of the hiring decision in a reasonable time. Under the proposed alternative, the Council might choose to simply accept some routine, non-merit appointments without legislative action. There are ample precedents in Maryland, including, for example, Frederick County, where an appointment becomes effective in the event that the Council fails to take action within thirty days after submitted by the Executive.

Only one member of the Commission opposed the proposed amendment because it would essentially call for the Council to take a public vote to reject the candidate when the record is incomplete, rather than permitting the Council to defer the decision. The Council's only other option would be allowing automatic confirmation based on an incomplete record, which that Commissioner viewed both as unlikely and imprudent, and he noted that this is not what the County Executive requested. The Executive's original request was simply to allow him to have the sole decision making authority in making the appointment, and eliminate the oversight role of the Council for certain positions below the level of department head or agency head. Because a candidate would risk public rejection before the Council's inquiry is complete, the proposal could impact the Executive branch's ability to attract potential candidates. The Executive's opinion on that aspect of the proposal is not part of the record.

### **Public Input**

Of the three individuals who spoke at the public listening sessions, one favored eliminating the confirmation requirement for the County Executive's appointment of non-merit employees and noted that the Council also hires non-merit employees that are not subject to the confirmation process. The other two participants stated the view that the Executive's appointments should continue to require Council approval, with one of them noting that the process involves due diligence to ensure the candidate is a good fit for the position.

### **Recommendations and Final Vote**

Commissioners were evenly divided on whether to recommend a Charter amendment that would eliminate the requirement for Council confirmation of the Executive's appointments to non-merit positions below the level of Department head or agency head. Accordingly, the Commission is making no recommendation that issue.

By a vote of 9 to 1, the Commission favored a Charter amendment that would make the Executive's appointment for any non-merit position final if the County Council does not act to reject that appointment within a specified period. The Commission then discussed whether the specified period should be 45 or 60 days. A majority favored 60 days as the recommended time period. Accordingly, the Commission recommends that Section 215 of the County Charter be amended by adding the italicized sentence shown below at the end, which would read as follows:

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. ***If the Council fails to act to confirm or reject an appointment within 60 days of its submission to the Council by the County Executive, the appointment shall stand approved.***

The Commission's final votes on the issues raised under Charter Section 215 were as follows:

**3. County Executive Appointments to Non-Merit Positions under Section 215**

**3a. Should section 215 of the Charter be amended to allow the County Executive to make appointments to non-merit positions below the level of Department head or agency head without obtaining confirmation by the Council?**

The Commission did not have a majority in favor of recommending this change, with a vote that was tied 5 to 5.

In favor: Commissioners Lynch, Denis, Persh, Presman and Samuels.

Opposed: Chair Michaels, Commissioners Brett-Major, Grant, Nachtsheim and Naftal.

**3b. Should section 215 of the Charter be changed to state that the County Executive's appointment to fill any non-merit position shall become final if the County Council fails to reject the appointment within a specified time period?**

The Commission voted in favor of this recommendation by a vote of 9 to 1.

In favor: Commissioners Brett-Major, Denis, Grant, Lynch, Naftal, Persh, Presman, Nachtsheim and Samuels.

Opposed: Chair Michaels.

**3c. Should the time allotted for the Council to reject the Executive's nominee for a non-merit position before the appointment becomes final be 60 days instead of 45 days?**

The Commission voted 6 to 3 in favor of recommending that the allotted time period be 60 days rather than 45 days, with one Commissioner abstaining.

In favor: Commissioners Brett-Major, Lynch, Naftal, Persh, Presman and Nachtsheim.

Opposed: Commissioners Denis, Grant, and Samuels.

Abstained: Chair Michaels.

## **Statement of Chair Michaels on the Proposal to Eliminate the Confirmation Requirement for Certain Positions**

I favor retention of the requirement for the Council to confirm appointments to the non-merit positions as currently provided in the Charter. Although the Commission is evenly divided and no recommendation is being made, I write separately to provide clarification on a few points.

At the outset, while I did not support the Executive's request to eliminate the confirmation requirement for some non-merit positions, I wish to note that there has been no question that the Executive's recommendation is based only on his desire to ensure efficiency in carrying out the functions of the executive branch. At first glance, the total number of non-merit positions that would be affected by the amendment might seem small at 36, but a change in administration can result in significant turnover. The Executive's interest in and need for having the ability to get his or her new administration off to a quick start should not be discounted or taken lightly. Our current County Executive faced the unprecedented, immense challenges of a pandemic just 15 months after taking office. Having to get a few dozen appointments confirmed at the start of a new administration while being responsive and effective in addressing a major crisis and still providing basic services can be expected to be a daunting task.

I'm a firm believer in checks and balances, which is the foundation of the legislature's function in confirming executive appointments at the local, state, or federal level. For me, that principle rises in importance above all others. At no time has this Commission's discussion been about the actions or potential actions of our current Executive, Marc Elrich. I believe, however, that the Council's oversight role is the only guaranteed protection against an unknown future Executive who might opt to reward political supporters with appointments to non-merit positions that demand more than just political skills but also call for professional training and expertise.

But I also take our current Executive's concerns seriously, so I would leave the door open for the possibility of a more detailed examination of this issue, to determine if the Executive has concerns that can be addressed in some other way. For example, does the County Executive have the authority he or she needs to act with adequate swiftness and bypass the usual confirmation process in emergency situations? Are there particular non-merit positions that should be identified as those that are eligible for emergency appointment, and thus carved out of section 215's coverage? The feasibility of other options for limited circumstances would be worth considering.

## **Dissenting Statement of Chair Michaels on the Majority's Recommendation to Create a Deadline for the Council to Reject Appointments**

I write independently from the other Commissioners to explain why I oppose their recommendation that the Charter be amended to make any Executive appointment to fill a

non-merit position final if the Council fails to reject that appointment within 60 days. I am concerned about the possibility of unintended consequences with such an amendment, especially in light of the fact that the record does not demonstrate any existing problem that it would solve.

As the majority report appropriately notes, the record does not reflect any history of there being a recurring problem with timeliness in confirming appointments for non-merit positions. None of the elected officials or staff who spoke to the Commission described the confirmation process as unwieldy or broken. Consequently, the current discussion about the need for a 60-day deadline is principally about theoretical possibilities and reflects some Commissioners' preference for having a rule similar to the rule in some other counties' charters.

To be clear, Montgomery County is not without an existing rule on this issue. Our current rule is contained in County Code Section 1A-102, which already states that the Council should act on a nomination within 60 days. Section 1A-102 specifies that if the Council does not act within 60 days, it may no longer act on that nomination, and the County Executive should either resubmit it or submit a different nominee. In other words, today, when the Council does not act within 60 days, the original nomination is deemed to be terminated. That establishes a cooperative and conciliatory system where the Council is not required to publicly reject the Executive's nominee, but is permitted to let it lie while it continues its inquiry and builds a more complete record. That affords the Executive the option to wait out the process or submit a different nominee, without harming the professional reputation of the original nominee undeservingly.

Instead of a conciliatory process, the majority would compel a public rejection. They ask the Council to cast aside the current process and reverse their existing rule, so if the Council does not or cannot act in 60 days, the nomination would be automatically confirmed, whether or not the inquiry and record are complete. The actual effect would be to force the Council to affirmatively reject nominees whenever an inquiry is not completed to its satisfaction in 60 days. That risk could deter many would be applicants from seeking the position.

The County Executive did not request the rule proposed by the majority. He merely asked Commissioners to consider exempting a subset of the non-merit positions from the confirmation process altogether (those below the department head or agency head level). It should be noted that the Commission majority's proposed 60-day deadline would apply to all non-merit positions, including the department head and agency head positions for which the County Executive supports retaining the confirmation requirement.

I think it's understandable that an Executive might not prefer a rule that requires the Council to affirmatively reject his nominees instead of allowing the Council to extend the inquiry to gather more information and ask the Executive to resubmit the nomination if the 60th day passes. There's no reason to believe that when the Council has unanswered questions they'll allow automatic acceptance of the nominee on the 60<sup>th</sup> day. There's also no reason to

believe nominees will allow their name to be resubmitted after the Council publicly announces its rejection. At the very least, the Executive's view on the impact of such a rule on his future nominees is something that should be considered, but given his specific and narrow request and recommendation, his view on the proposed rule is not part of the current record.

The Commission was fortunate to receive the testimony of the Council's Executive Director, Marlene Michelson, who explained how the confirmation process operates and the Council's record of acting on nominations within a short time, with only rare exceptions. She described the process as typically cooperative and timely. That served to highlight the fact that on the few occasions when delay did occur, it was due to the need for additional time to develop a more complete record of a nominee's experience and qualifications to ensure they were a good fit for the particular position. That is precisely the circumstance when a rigid deadline would not be in the best interests of the County government.

The non-merit positions that are subject to confirmation are not uniform in nature. For positions at the department head or agency head level, the focus might be on leadership and policy setting. Below that level, however, the key criteria might be the nominee's subject matter expertise based on particular job experience and skills developed over a long career. The purpose of the confirmation process is to allow the Council to investigate and judge whether the nominee's qualifications and experience are a good match for the specific position.

Based on the testimony of the Council's Executive Director, even though a delay in the process is not typical, delay can occur if the Council's initial investigatory efforts do not resolve all of the unanswered questions about whether the nominee's background matches the job requirements. In that case, the normal course is to defer the decision while attempting to gather more information. Infrequently, a nomination might occur just before a Council recess, but even then, the relatively short recess has not caused unreasonable delay. Imposing an arbitrary deadline of 60 days could be expected in at least some cases to force the Council to reject the nominee when it is not yet ready to reach a conclusion without assembling a more complete record. The majority might prefer the certainty and predictability of an inflexible calendar deadline, but for the reasons explained below, I do not view that as a better outcome for the County government.

Today, the Council has the option to defer its decision, extend the inquiry, and complete the investigation. The Council can ask the Executive to resubmit the nomination if the 60 days passes. Under the rule sought by the majority, the Council would instead have to affirmatively reject the appointment prematurely which might result in the rejection of some qualified nominees. This could make it generally more difficult to attract qualified candidates across the board if potential employees are deterred from participating in a process where they perceive they risk public rejection and harm to their professional reputation simply because the background investigation takes longer than expected or longer than optimal.

Making public service positions more difficult to fill is not in the County's best interest. These tend to be highly specialized positions requiring many years of experience, which are not

easily filled in the public sector. Caution is warranted before making that more difficult. Because we have not been presented evidence of an actual problem with timeliness in the current confirmation process that needs to be addressed, I cannot join in the recommendation of the majority which in my view could have unintended and unfortunate consequences.

## **V. APPENDICES**

## **Appendix A**

### **Charter of Montgomery County**

# 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 [10/29/21](#) explaining that, although the capital budget limits the County Executive's expenditure of money for a capital project, the Executive can use that completed facility for any legitimate governmental purpose absent a law or appropriation limiting the Executive's use of that facility. 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 [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.

### Sec. 102. Composition and Election.

The Council shall be composed of eleven 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 seven 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; election of 11-3-20.)

**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 seven Council districts for the purpose of nominating and electing seven 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; election of 11-3-20.)

**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 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. 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. (Election of 11-2-82; election of 11-3-98; election of 11-4-14; election of 11-6-18.)

**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.)

**Editor's note**—See County Attorney Opinion dated [11/28/16](#) discussing amendments to the Charter regarding reconciliation of term limits.

#### **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.)

**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.

#### **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 six 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 seven 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; election of 11-3-20.)

**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 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 seven members of the Council after a public hearing and upon a finding that the Councilmember is unable by reason of physical or mental disability to perform the duties of the office. The decision of the Council may be appealed by the removed Councilmember within ten days to the Circuit Court by petition. Upon the filing of a petition, the Court may stay the removal pending its decision. Upon appeal, the Court may make *de novo* determinations of fact. A member of the County Council also may be suspended and removed from office in the manner provided in Section 2 of Article XV of the Constitution of Maryland. (Election of 11-2-82; election of 11-4-86; election of 11-3-20.)

## **Article 2. Executive Branch.**

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### **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 [10/29/21](#) explaining that, although the capital budget limits the County Executive's expenditure of money for a capital project, the Executive can use that completed facility for any legitimate governmental purpose absent a law or appropriation limiting the Executive's use of that facility. 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](#), 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.)

**Editor's note**—See County Attorney Opinion dated [11/28/16](#) discussing amendments to the Charter regarding reconciliation of term limits.

### **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 six 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; election of 11-3-20.)

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

#### **Sec. 206. Removal of the County Executive.**

The County Executive may be removed from office by the affirmative vote of not less than seven 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; election of 11-3-20.)

#### **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 seven 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; election of 11-3-20.)

**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]

#### **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 and the Council. If the County Executive removes the County Attorney, the Council must approve or disapprove the removal by an affirmative vote of six Councilmembers within 30 days of receiving notice of the removal. The County Executive must provide notice of the removal to the County Council within 3 days. If the Council does not act within 30 days, the County Attorney must not be removed. The County Attorney may also be removed by an affirmative vote of seven Councilmembers, with the consent of the County Executive. The County Council must provide notice of the removal to the County Executive within 3 days. The County Executive must approve or disapprove the removal within 15 days of receiving notice of the removal. If the County Executive does not act within 15 days, the County Attorney must not be removed. During the period of time before removal is confirmed, the County Attorney must be put on paid leave. (Election of 11-2-82; election of 11-6-84; election of 11-8-22.)

**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.

### **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 six members of the Council. (Election of 11-4-86; election of 11-3-20.)

**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.**

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### **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.

### **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 six 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 seven 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; election of 11-3-20.)

**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](#) 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 seven 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 eight 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 all current Councilmembers, the Council shall not levy an ad valorem weighted tax rate on real property to finance the budgets that exceeds the ad valorem weighted tax rate on real property approved for the previous year. The weighted tax rate is calculated by determining the sum of each property tax rate adjusted by the proportion of assessable base that is charged that tax rate. (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; election of 11-6-18; election of 11-3-20; election of 11-3-20.)

**Editor's note**—See County Attorney Opinion dated [10/29/21](#) explaining that, although the capital budget limits the County Executive's expenditure of money for a capital project, the Executive can use that completed facility for any legitimate governmental purpose absent a law or appropriation limiting the Executive's use of that facility. 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 [6/20/06](#), 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 seven members, except that the affirmative vote of six 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; election of 11-3-20.)

**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 six Councilmembers. A supplemental appropriation for any other purpose that is approved before January 1 of any fiscal year requires an affirmative vote of seven 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; election of 11-3-20.)

**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 seven 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; election of 11-3-20.)

**Editor's note**—See County Attorney Opinion dated [5/5/09](#) regarding the County Executive's ability to impound appropriated funds.

See County Attorney Opinion dated [4/7/99](#) clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

### **Sec. 309. Transfer of Funds.**

The County Executive may at any time transfer an unencumbered appropriation balance within a division or between divisions of the same department. Transfers between departments, boards or commissions, or to any new account, shall be made only by the County Council upon the 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 [3/13/19](#) regarding inclusion of non-appropriation clauses in DLC leases, enabling termination of leases where adequate funds for rent are not appropriated. See County Attorney Opinion dated [2/18/19](#) explaining the County's ability to provide a landlord with either a general obligation note or a limited obligation revenue note to repay the landlord for the cost of tenant improvements. 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.)

**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.

#### **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.**

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#### **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 or more confidential aides 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 seven Councilmembers for enactment. Any law which repeals the designation of a position as a non-merit position requires the affirmative vote of six 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; election of 11-6-18; election of 11-3-20.)

**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 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.)

**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 [9/2/03](#) analyzing that, although permitted under personnel and collective bargaining principles, a grant program to cover closing costs for public safety employees would be taxable income to the employees receiving the benefit. 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.

#### **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.)

**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.**

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**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.)

#### **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 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 Ms. 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.)

**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).

## **Appendix B**

### **Press Release Soliciting Public Comments (November 9, 2023)**

## **Charter Review Commission**

### **PRESS RELEASE - 11/9/2023**

The Montgomery County Charter Review Commission is soliciting public comments on what matters the Commission should consider for possible revisions to the County's Charter.

The County Charter is the constitutional framework for the County Government. The County Council, in coordination with the County Executive, appoints an eleven-member, bi-partisan, Charter Review Commission to study the County Charter and recommend changes. The Council recently appointed new Commission members in July, 2023.

The Commission is required to submit a report to the County Council on its activities in every even-numbered year, on or before May 1. The report must include the Commission's recommendations for possible Charter revisions, if any. Those recommendations can lead to proposed Charter amendments being adopted by the Council and submitted for voter approval at the next election.

The Commission currently is seeking suggestions from the public on the topics it should study, with particular focus on matters that could be the subject of recommendations included in its report due by May 1, 2024. The Commission requests that those comments be submitted before its meeting scheduled for January 10, 2024. Suggestions for other matters that might be appropriate for longer-term study and inclusion in its May, 2026 report are also welcomed. Comments received after the January 10 meeting will be considered in a subsequent report.

Public comments can be submitted by email to: [charterreview.commission@montgomerycountymd.gov](mailto:charterreview.commission@montgomerycountymd.gov). Comments sent by postal mail should be addressed to:

Charter Review Commission  
Council Office Building  
100 Maryland Ave., 6<sup>th</sup> Floor  
Rockville, MD 20850

The Commission also expects to hold public listening sessions early in 2024 to receive input on the possible charter revisions being considered by the Commission.

Previous reports of the Charter Review Commission, the minutes and recordings of prior meetings, and a link that can be used to access a copy of the County Charter can be viewed here: <https://www.montgomerycountymd.gov/crc/index.html>.

## **Appendix C**

### **Written Comments Received from the Public**

## **Mathany, Stephen**

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**From:** Gordon Brenne <brenne.gordon@gmail.com>  
**Sent:** Wednesday, January 3, 2024 2:45 PM  
**To:** Charter Review Commission  
**Cc:** Esther Wells; Joan Fidler; Leigh Henry; Ann Hingston; Friedson, Andrew; Joshua Montgomery  
**Subject:** Charter Reform Prioities- Taxpayers League

### **[EXTERNAL EMAIL]**

Here's our top three based on major failures of good government principles last year. Gordie Brenne, Treasurer, MC Taxpayers League

1. Property Taxes- Lower property tax revenue increase limit. Combined rate increase and appraisal inflation socked most with a 10% jump this year. Return to CPI standard and require CE and unanimous Council approval for override. Also, fix the definition of "new construction" for assessments to exclude tear down/rebuilds-this discriminates against those in unimproved houses.
2. Governance- Reform governance of WSSC and Planning to balance CE and Council controls. Governance failures consistently have led to management failures. Last year's well documented debacles with the WSSC GM and Commission members, and Planning management and their Board supervision are Exhibit A.
3. Spending Controls- Reform Council spending affordability controls to go beyond revenue forecasts and include spending increases only if justified by improved outcomes. This would include education spending above Maintenance of Effort levels, and other agency spending not justified by performance improvements, both base and increased spending. Last year's surprise tax increase caused approved controls to be scuttled for an invented emergency, and resulted in above market pay increases without performance improvements.

## FW: MC Charter recommendation: a review Sec. 509

Charter Review Commission <CharterReview.Commission@montgomerycountymd.gov>

Wed 1/3/2024 2:08 PM

To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; Mathany, Stephen <Stephen.Mathany@montgomerycountymd.gov>

 1 attachments (92 KB)

CRC Letter to Council 9.16.22.pdf;

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**From:** ALBERT LAUER JR <larry.lauer@comcast.net>

**Sent:** Friday, December 29, 2023 5:31 PM

**To:** Charter Review Commission <CharterReview.Commission@montgomerycountymd.gov>

**Subject:** MC Charter recommendation: a review Sec. 509

### [EXTERNAL EMAIL]

CRC Chair Michaels and members of the Charter Review Commission (CRC):

I am writing in response to the CRC email of November 16 requesting suggestions for items the Charter Review Commission should consider. I was honored to be appointed a Commission member on last two CRCs. There were many Charter issues reviewed and discussed during those 8 years, some of which were acted on by the body and some of which were not for various reasons. These items are detailed in the year end reports of the past CRCs.

There is one critical issue that is not mentioned in most recent CRC annual report because it occurred after the report was finalized and submitted to the County Council. It has to do with the very mission of citizen participation in review and a suggested **amendment of the MC Charter as stated in Sec. 509** which established the Charter Review Commission.

Attached is a letter from the last CRC to the County Council dated September 16, 2022. The Chair's letter describes the cavalier way the Council treated the recommendations for amendments and the final report the CRC at its work session of July 26. The entire CRC membership, regardless of party affiliation, was so disturbed by the conduct of the work session and the Council's lack of serious consideration of the work done by the CRC over many months that members wanted to resign in protest. In lieu of that, we (all the members) drafted a letter to the Council expressing in detail our concern and disappointment. CRC Chair George Margolies signed and delivered it to the MC Council and County Executive. Amazingly, CRC received NO RESPONSE to our letter of September 16 from any member of the MC Council, the County Executive or any of their staff.

As is stated in the letter "We do not consider this a trivial matter". Citizen participation and review of the County Charter has a long and honored history in Montgomery County. Over the years many Charter Amendments provided by this citizen review have dramatically changed County governmental structure and expanded the participation of citizens in the democratic life of the county. If this is no longer a valued trait, if the politicians want to propose amendments the MC Charter without citizen involvement, then Sec. 509 of the Charter should be removed and replaced as Council power as outlined in Charter Sec. 101.

It is my hope that the present CRC will review the attached correspondence from prior CRC and have a serious discussion with the current Council on expectations of the Charter review and any changes to Sec. 509 that could avoid the unseemly conclusion of the last Commissions work.

Respectfully submitted-  
A. Lawrence Lauer,  
Olney, Md  
Member CRC 2016, 2020



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<https://www.montgomerycountymd.gov/cybersecurity>

Montgomery County  
Charter Review Commission

September 16, 2022

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

Dear Councilmembers:

I am writing to express the views of my fellow Commissioners on the Charter Review Commission, which convened earlier this week for the first time after our summer recess to consider the manner in which the county council responded to the Commission's recommendations for charter amendments to be placed upon this November's ballot.

The Commission acknowledges that it is an advisory body to the county council and that final authority rests with the council. However, each of the Commissioners, as evidenced by our lengthy April 29, 2022 Report, with several appendices, takes his/ her role seriously, with the expectation that the recommendations would be given earnest consideration.

Thus, Commissioners were extremely disappointed that, on July 26, 2022, the council quickly disposed of the Commission's recommendations at your work session. Incredulously, there was no discussion among councilmembers then regarding the Commission's recommendation to change the residency requirement for the county executive and to add one for councilmembers. If any respect were to be shown for the work of the Commission, we would have expected the council at least to have articulated a rationale for not moving this proposition to the November ballot. Yet, not a word was said about this publicly.

As to our recommendation to place on the ballot a question to address the matter of conflicting ballot questions, Commissioners were quite surprised that the council followed the lead of Councilmember Glass to simply thank the CRC for our "thoughtful discussion" and summarily dismiss the rationale of our recommendation. Mr. Glass argued that the root of the problem is the ease in which citizens can petition questions onto the ballot, given the low threshold of signatures needed under the State Constitution to place a question onto the ballot. The CRC, of course, cannot change the existing state requirement, but we can seek to protect the rights of voters to decide and our recommendation did that. It is myopic to "throw the baby out with the bathwater," so to speak, when the issue of irreconcilable ballot questions arose this past 2020. Irrespective of how many signatures are needed, this issue may arise again and again (as it did in 1984).

Had both conflicting ballot questions passed in 2020, the voters' will would not have been discernable only because there is no direction on this issue in the charter and, thus, in accordance with the opinion of the attorney general, they both would have been deemed to have failed. The CRC, in a responsible fashion, sought to address this very concern, and it appeared that many councilmembers were poised to agree and move this to November's ballot—until Councilmember Glass argued that there was plenty of time to push the consideration of such a charter amendment to another cycle, if even then. The inaction of the council at this juncture is more than just a disappointment. It is a dereliction of your responsibility to address a concern that has been identified by a body appointed by you, having drafted a remedy that you deliberately chose not to place before the voters when it may very well be needed at a future election.

Then, to add insult to injury, the council bypassed the consultative role of the CRC by placing on the ballot a question as to the future removal of a county attorney without requesting the input of the Commission. When the matter was first raised before the county council on June 21<sup>st</sup> by the introduction of a letter by the former county attorney with a recommendation as to this matter, the council president stated that it was premature to be considered for this election cycle, and it was suggested that the CRC might first weigh in with a recommendation.

Yet, lo and behold, at your July 26<sup>th</sup> meeting, without seeking our advice or input, the council unanimously approved placing on the November ballot a charter amendment as to the removal of the county attorney. While it is your right to bypass the Charter Review Commission to place ballot questions, your decision further magnified the apparent disregard you have for the role and efforts of the Charter Review Commission.

We do not consider this a trivial matter. Some Commissioners considered resigning in the wake of your July 26<sup>th</sup> meeting as a protest. Others desired to make this more public and direct their criticism of the council's actions. All were persuaded otherwise, permitting the full Commission to have a robust discussion at our September 14, 2022 meeting. This correspondence is a product of those deliberations.

So as to end on a more positive note, permit us to make a few suggestions for the new council taking its seats this December and the next Commission to be appointed:

- Schedule semi-annual breakfast meetings with Commissioners for informal discussion of the work of the CRC so as to refer then-current thinking of councilmembers for CRC review, and for the council to remain aware of the ongoing work of the CRC prior to issuance of its report;
- Move up the review and approval earlier on the council calendar of recommendations emanating from the CRC. We recognize that the council is somewhat constrained by Section 509 of the charter allowing for the CRC to submit its report as late as May 1<sup>st</sup>. The Commission, on its part, should commit to submitting its report well prior to May 1<sup>st</sup>. Yet, if the first recommendation is accepted, the council will be aware far in advance of the final

report of the pending recommendations of the CRC. There need not have been an interval of 53 days between our report of April 29<sup>th</sup> and our presentation to the council on June 21<sup>st</sup>.

- Have the council act on charter amendments prior to its last meeting before the August recess and the Board of Elections deadline for ballot language. The current practice puts the council under pressure to make a hasty decision, failing to allow new amendments to be vetted by the CRC, let alone the public. By resolution or regulation, provide that no new amendment to the charter for placement on the ballot can be approved at the last session of the council prior to the Board of Elections deadline, unless it has been submitted previously to the CRC for review.

Our terms are coming to an end this December. We look forward to the next council appointing successor Commissioners within six months after the council takes office, as stipulated in section 509 of the charter, to receive the advice and input as to the future review and recommendations of the county's charter.

Respectfully,



George Margolies, Chair  
Charter Review Commission

c: County Executive  
Commissioners  
Christine Wellons

## FW: Revisions to the Charter

Charter Review Commission <CharterReview.Commission@montgomerycountymd.gov>

Wed 1/3/2024 2:04 PM

To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; Mathany, Stephen <Stephen.Mathany@montgomerycountymd.gov>

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**From:** dogwalker1965 <dogwalker1965@proton.me>

**Sent:** Thursday, December 14, 2023 1:15 AM

**To:** Charter Review Commission <CharterReview.Commission@montgomerycountymd.gov>

**Subject:** Revisions to the Charter

### [EXTERNAL EMAIL]

Esteemed Members of the Commission,

I have lived my entire life in Montgomery County. As a member of this community, and mother, I must tell you, I lost faith in these Board of Education members. I am frustrated that as a parent, that we have no recall options set in place for the Board of Education members. This needs to change immediately, as well as, the Superintendent being appointed by the Board of Education. This should be a democratic vote and come before tax payers/parents in their own geographic districts. Not people across the entire county. Otherwise, corruption takes place by people in other districts voting for people who they don't know or care about, because it doesn't affect them. These are the changes I feel have needed to be made for the future of our youth.

Respectfully,  
J. Garcia



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<https://www.montgomerycountymd.gov/cybersecurity>

## FW: Charter Review Requests

Charter Review Commission <CharterReview.Commission@montgomerycountymd.gov>

Wed 1/3/2024 2:05 PM

To: Sokoni, Khandikile Mvunga <Khandikile.Sokoni@montgomerycountymd.gov>; Mathany, Stephen <Stephen.Mathany@montgomerycountymd.gov>

-----Original Message-----

From: Rosalind Hanson <rahanson4@gmail.com>

Sent: Monday, December 4, 2023 7:41 AM

To: Charter Review Commission <CharterReview.Commission@montgomerycountymd.gov>

Subject: Charter Review Requests

[EXTERNAL EMAIL]

Good morning,

I ask that our charter be reviewed for the opportunity to establish the following:

- 1) A recall option for members of the MCPS Board of Education.
- 2) A recall option for the Superintendent of the Board of Education.
- 3) A superintendent voted in by the citizens of Montgomery County as opposed to appointed by the Board of Education.
- 4) Board of Education district candidates voted for only by those that live within the geographical district they're running to represent. As opposed to the entire county as is currently the case.

Thanks,  
Rosalind

Sent from Rosalind's iPhone. Please excuse typos and short responses.

[<https://www.montgomerycountymd.gov/mcg/Resources/Images/Cybersecurity-footer.png>]

For more helpful Cybersecurity Resources, visit: <https://www.montgomerycountymd.gov/cybersecurity>

## **Appendix D**

### **Press Release Announcing Public Listening Sessions (February 23, 2024)**

# Montgomery County Charter Review Commission to Hold Virtual and In-Person Public Listening Sessions on Three Potential Charter Amendments

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For Immediate Release: Friday, February 23, 2024

ROCKVILLE, Md., Feb. 23, 2024— The Charter Review Commission will hold two listening sessions with the public on March 6, 2024, to receive input on three potential Charter amendments. Additional details concerning the potential amendments are provided below.

One listening session will be held in-person in the Council Office Building in Rockville on Wednesday, March 6, 2024, from 2:00 to 3:30 p.m. The in-person session will be recorded so that the public can view it online afterward. A second listening session will be held virtually on March 6 from 7:00 p.m. to 8:30 p.m. Details on how to participate are provided below.

### Topics for the Listening Sessions

The Montgomery County Charter is the constitution of the Montgomery County government. As provided in the Charter, the [Charter Review Commission](#) is an 11-member body appointed by the County Council to study and recommend changes to the Charter. These recommendations may lead to proposed amendments being placed by the Council on the ballot to be voted upon by registered voters.

The Commission has tentatively considered and seeks public input on the following potential Charter amendments:

1. Whether to amend the Charter to provide for voters to directly elect one At-Large member of the County Council to also serve as the Council President for four years, a position that would coincide with that person's four-year term as an At-Large member. This would be an amendment to Section 108 of the Charter.

- An alternate proposal would have Council members choose a President for a two-year term instead of the one-year term that historically has been used. The Council could accomplish this by adopting an operating rule, enacting legislation, or through a Charter amendment.



2. Whether to amend Section 305 of the Charter to make several provisions more consistent in how the Council makes decisions concerning the operating budget and property tax revenue.

- In the current budget process, the Council uses multiple variables, including the inflation rate and projections about expected revenue from income taxes and property taxes, to create spending affordability guidelines. Subsequently, the County Executive submits to the Council a proposed operating budget, which may or may not be within the Council's previously stated spending guidelines. The Council must then enact an operating budget.
- Section 305 of the Charter establishes three different voting levels for the Council to finalize its operating budget:
  - If the Council decides to approve operating budget expenditures that exceed the previous year's operating budget by more than the increase in the consumer price index, the Council must approve that budget with seven votes instead of a simple majority, which is six votes.
  - However, if the proposed operating budget exceeds the Council's own previously stated spending affordability guidelines, it must approve the budget with eight votes.
  - If the Council decides the property tax rate should be increased by any amount to produce the revenue needed to fund its operating budget, that decision must be approved unanimously by all Council members. Today, that requires all eleven Council members to agree, but when the requirement for unanimous approval was initially created, there were only nine Council members.
  - Public input is solicited on whether Section 305 of the Charter should be amended to create consistency and require a two-thirds majority for all three actions listed in Section 305. A two-thirds majority would require eight votes in the existing 11-member Council.

3. Whether to amend Section 215 of the Charter to allow the County Executive to fill non-merit positions without the confirmation of the Council when the position does not involve the head of a department or principal office or the head of an agency of the Executive Branch. Currently, there are at least 36 non-merit positions that would be covered by the amendment, that currently receive Council confirmation. By comparison, there are at least 23 non-merit positions that are heads of a department, principal office or agency that would remain subject to Council confirmation.

- As an alternative proposal, if Section 215 is not amended to eliminate the requirement for Council confirmation for certain non-merit positions, should the Charter be amended to allow the County Executive's appointments for non-merit positions to become final if the Council does not act to confirm, reject, or defer the appointment within 45 days, or some other time specified in the Charter amendment?

### **Details on Public Participation**

Members of the public are invited to share their views on the subjects described above either in-person or during an online session. The in-person listening session will be held on Wednesday, March 6, 2024, from 2:00 p.m. to 3:30 p.m. in the Council Office Building, located at 100 Maryland Ave., Rockville, MD. The hearing 

will be held on the 3<sup>rd</sup> floor. To register to speak at the in-person listening session, please sign up by clicking [HERE](#).

If you have a prepared written statement, which is not necessary, please bring courtesy copies to share with the Commissioners or send a copy of the statement by email to [charterreview.commission@montgomerycountymd.gov](mailto:charterreview.commission@montgomerycountymd.gov).

A remote, virtual listening session will also be held on Wednesday March 6, 2024 from 7:00 p.m. to 8:30 p.m. If you would like to speak at the remote virtual session, you must preregister at least two business days in advance of the listening session using [THIS LINK](#), or you may call 240-777-7905 to register. If you have not preregistered, the Commission cannot guarantee that you will be able to speak at the session.

If you would like to attend the virtual session without speaking, please use the following link to login to the virtual meeting: [Virtual Meeting Room](#)

Questions about registration can be addressed to Stephen Mathany via email at [stephen.mathany@montgomerycountymd.gov](mailto:stephen.mathany@montgomerycountymd.gov) or by phone at 240-777-7905.

Residents wishing to participate and needing accessibility accommodations or translation services must email Lucia Jimenez at [lucia.jimenez@montgomerycountymd.gov](mailto:lucia.jimenez@montgomerycountymd.gov) at least two business days in advance of the listening session.

All speakers at each of the Listening Sessions will have three minutes to speak. If you have spoken at a previous listening session, you may be placed at the end of the queue to speak again.

If a listening session is canceled due to inclement weather, please submit your written comments to [charterreview.commission@montgomerycountymd.gov](mailto:charterreview.commission@montgomerycountymd.gov). Emergency closure information is available at <https://www.montgomerycountymd.gov/cupf/info-cupf/emergency.html>.

Members of the public are welcome to submit written comments to the Charter Review Commission on the matters listed above or on any topic that might be appropriate for longer-term study. Public comments can be submitted by email to:

[charterreview.commission@montgomerycountymd.gov](mailto:charterreview.commission@montgomerycountymd.gov).

Comments sent by postal mail should be addressed to:

Charter Review Commission

Council Office Building

100 Maryland Ave., 6<sup>th</sup> Floor

Rockville, MD 20850

# # #

*Release ID: 24-069*

*Media Contact: Stephen Mathany 240-777-7905*



## **Appendix E**

### **Video Links for Public Listening Sessions**

[March 6, 2024 - Charter Review Commission Listening Session - Hybrid](#)

[March 6, 2024 - Charter Review Commission Listening Session - Virtual](#)

## **Appendix F**

### **Written Testimony Received in connection with March 6, 2024 Listening Sessions**

# Charter Review Commission, Public Listening Session March 6, 2024

Statement of A. L. Lauer, [REDACTED] Olney, Md  
20832-concerning proposed amendment to Charter  
sections 108 and 305.

**Oppose** the creation of a new publicly elected Council President from among the four at-large members that would serve for four years for the following reasons:

1. It is unnecessary because the MC Council, if it wished, could select any of the 11 members to serve as president for four years by a yearly internal vote of a majority of sitting members. In history it has never done and it has not been a problem. The amendment is a solution looking for a problem.
2. It would be unfair to exclude the seven district Council members of a chance to serve as Council President. There is no reasonable argument to assume that an At-Large Council member is smarter, more experienced or innately more qualified to be Council President. As a practical consideration, is there any reason the 7 District Council Members would vote to place this on the ballot?
3. If approved, it would be damaging to the unity of Montgomery County because At-Large Council members statistically come from down county areas (often referred to as the “Democratic Crescent”) If adopted it would promote the feeling of isolation

and powerlessness of up-county residents that do not, historically or statistically elect At Large Council Members and the district Councilmember would not have the opportunity to serve as Council President.

4. Selecting a four-year elected Council President creates problems we don't currently have. It would create a fractured power structure within the county government. The voters county wide select a four-year County Executive to manage the complex county government and having a elected four year Council President could lead to competing interest and divided loyalties. It is also possible to be stuck with a less than satisfactory Council President for four years with the no possibility of change. Again, the proposed amendment is a solution looking for a problem.

As to changes to section 305- titled "Approval of the budget: Tax Levies" Is there a problem here? If the budget is within the Council spending affordability limit a majority vote is needed. If the budget is more than the Council established affordability limit, it is reasonable that super majority vote is required to exceed the limit.

Tax Levies above the prior year's ad valorem weighted tax rate is the only one that requires a unanimous vote of the Council. This was approved by the voters in a ballot referendum and is a reasonable restriction on the taxing process. It should be noted that the Council in the past has been able to increase property taxes with a unanimous vote and there is no reason that the Council can't do it in the future.

## Charter Review Commission Testimony- March 6, 2024

### Gordie Brenne, Treasurer, Montgomery County Taxpayers League

1. **Council President-** We like referendums, but the President should continue to be selected by council members for a one year term, and should require a high hurdle of eight votes. We see no inherent benefit in limiting the choice to “at large members”, and have concerns about the benefits and accountability of the “at large” member franchise which operates as a down county cabal. Voters want to hold members accountable for choices that affect complex internal Council processes that they can’t understand (and are often the result of factors that change year to year like changes to land use policies, or economic factors that are hard to predict), and the results of which voters will only see after the fact. Council members can make mistakes, but residents should not be punished for more than one year. Four years is an eternity given the daily volume and impact of policy decisions.
2. **Budget and Property Tax Revenue Votes-** Property taxes and how they are spent have complex accountability, transparency, economic incentive, and equity issues that each Council member must weigh. Charter changes should be subject to a voter referendum and preparation for that will require more explanation than the simple symmetry of Council voting percentage formulas.

**Going above council spending affordability guidelines should require a high hurdle of 8 votes (2/3rds majority)** since those guidelines are already recommended by the GO Committee and approved early in the budget cycle, and any changes to those guidelines should require compelling new evidence that a super majority agrees with.

Too many home owners saw property tax increases this year of over 20%. This happened because two years ago the Council stripped the CPI limit on revenue increases from the Charter, leaving spending control guidance as the only way to prevent whopper tax increases. But, last year the Council overrode the guidelines they had just adopted so that they could increase teacher and county employee pay with record budget increases. There was no compelling new evidence to support the over 10% pay raises county employees received, and for teachers, this was just a month after the Council approved a Maintenance of Effort ceiling on MCPS spending.

**Raising property tax rates should require the highest hurdle of a unanimous vote** because this becomes the primary control if spending affordability guidelines fail. The 4.7% tax rate increase happened because the Council process was manipulated by the CEs fabricated education “emergency” to bypass the Charter vote requirement. Council members either believed there was an “emergency”, or were cynically persuaded they had political cover for their actions. Property taxes are regressive and any rate increase disproportionately effects lower income residents. They are also the victims of inefficient state and local process interfaces, and weak incentives caused by separating accurate and timely assessment controls from local revenue and spending controls. This allows

wealthier residents to defer paying property taxes on tear down rebuilds, and increases the burden on residents in unimproved homes and renters (see two future considerations below).

**Future Consideration:** A very important Charter change that you didn't consider is a revision to define tear down rebuilds (aka McMansions) as "new construction" subject to immediate reassessment and a tax increase. Escaping "new construction" treatment under the current Charter results in shifting increased taxes from these new down county homes to residents living in unimproved homes and renters. How should a down county Council member weigh this equity issue when voting a property tax rate increase?

**Future Consideration:** We are the last state to do assessments at the state level. The county should join with other counties to take over assessments now performed by the state (SDAT), and keep the 10% haircut the state now gets. What remains is inefficient County (DPS) and SDAT processes, and interfaces between them that result in delayed reassessments pending occupancy permits for new construction, major improvements, and tear down rebuilds. These equity issues should make policy makers cautious about anything less than a unanimous vote for rate increases until these processes are fixed. Add likely significant drops in commercial property tax revenues due to high vacancy rates that will put further pressure on property taxes raised from beleaguered single family home owners and renters to justify a unanimous vote to change rates.

3. **Non-Merit Appointments-** The CEs political appointments should continue to require Council approval to control patronage abuses.

**Mathany, Stephen**

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**From:** Kenneth Becker <Kbecker@rbmgt.com>  
**Sent:** Wednesday, February 28, 2024 5:46 PM  
**To:** Charter Review Commission  
**Subject:** Proposed Charter Reviews

[EXTERNAL EMAIL]

I read with interest your email dated February 23<sup>rd</sup> regarding the upcoming charter review proposals. However, my question is how these proposals are identified? They seem somewhat marginal at best.

My concern is how we elect our County Executive. For two successive elections our current Executive has won with margins of less than forty votes. In my mind, this is outrageous and in both cases should have been the subject of an automatic run off election. Is this within the purview of the Charter Commission. Is there a way to get this on their agenda. Does it take a petition. If it is not part of the Charter (which would certainly seem appropriate, what is the authorizing authority?

Thanks so much for your consideration and response.

Kenneth Becker  
[REDACTED]  
Potomac, MD 20854  
[REDACTED]

Sent from Mail for Windows

## **Appendix G**

### **Commission Agendas & Meeting Minutes**

**September 2023 – April 2024**

## **AGENDA**

### **CHARTER REVIEW COMMISSION**

Wednesday, April 24, 2024, 8:00 a.m.

Council Office Building

4th Floor, Capital Crescent Conference Room

100 Maryland Ave., Rockville, MD

Virtual: [Zoom](#) | Password: 799966 | Dial In: +13017158592

(All times approximate)

#### **8:00 a.m. – ADMINISTRATIVE MATTERS**

- Acknowledgment of a Quorum
- Approval of Agenda (as reordered)

#### **8:05 a.m. – FINAL APPROVAL AND ADOPTION OF THE COMMISSION’S 2024 REPORT**

- Change requested by Commissioner Nachtsheim to vote with the majority on Question 2 (Budget Section 305)
- Commissioner Naftal joining Chair’s Concurring Statement on One-Person Veto
- Motion to approve and adopt the Report of the Commission as previously circulated with approval for Staff or the Chair to make technical or other non-substantive edits or corrections

#### **8:15 a.m. – APPROVAL OF MINUTES OF APRIL 10, 2024 MEETING**

- Requested edit for clarification

#### **8:20 a.m. – STAFF REPORT ON THE PROCESS FOR ISSUING AND ANNOUNCING THE REPORT**

- Projected date for submission to Council
- Projected date for Press Release and publication on webpage
- Council’s request for Chair to testify in mid-June (date not confirmed)

#### **8:25 a.m. – PROPOSED SCHEDULE FOR NEXT MEETING**

- Proposal to cancel meeting on May 8 with next meeting to be Wednesday, June 12th
- June discussion: Identifying topics for future study
  - Topics deferred from last year
  - Topics identified by the public in previous written comments and listening sessions
  - Planning community listening sessions in the fall (Oct., Nov., Dec.)
  - Outreach to regional Citizens Advisory Boards
  - Continue dialogue with elected officials

## **ADJOURN**

## **AGENDA**

### **CHARTER REVIEW COMMISSION**

Wednesday, April 10, 2024, 8:00 a.m.

County Office Building – Capital Crescent Conference Room

100 Maryland Avenue, Rockville, MD 20850

Virtual Link: [ZOOM](#) | Password: 539440 | Dial in: (301) 715 8592

(All times are approximate)

#### **8:00 a.m. – ADMINISTRATIVE MATTERS**

- Acknowledgment of a Quorum
- Approval of Agenda
- Approval of minutes of March 13, 2024 meeting

#### **8:05 a.m. REVIEW OF DRAFT 2024 REPORT**

**8:05 - 8:25 a.m.– Group 1: Voter Direct Election of Council President; Term of the President**

**8:25 - 8:45 a.m. – Group 3: Requirements for Approval of Budget & Revenue Matters under Charter Section 305**

**8:45 - 9:05 a.m. – Group 4: Executive Appointments to “Non-merit” Positions under Charter Sect. 215**

**9:05 a.m. – 9:20 a.m. – Discussion or Comments on Other Portions of Draft Report**

#### **9:20 a.m. DISCUSSION OR COMMENTS ON PROPOSED SCHEDULE**

#### **9:25 a.m. REPORT FROM STAFF**

#### **ADJOURN**

**CHARTER REVIEW COMMISSION (CRC)**  
**April 10, 2024 – 8:00 a.m.**  
**County Office Building – Capital Crescent Conference Room**  
**100 Maryland Avenue, 4<sup>th</sup> Floor**  
**Rockville, MD 20850**

**Minutes**

<p><b>Commission Members Present:</b>          Jim Michaels, Chair          Dylan Presman <b>(Virtual)</b>          Howard Denis          Jeffrey Naftal <b>(Virtual)</b>          Marvin Lynch          Sherry Brett-Major          David Nachtsheim <b>(Virtual)</b>          Michael Persh          Marcela Samuels <b>(Virtual)</b>          CeCe Grant <b>(Virtual)</b></p>	<p><b>Staff Present:</b>          Khandikile Sokoni, Office of the County Council          Stephen Mathany, Office of the County Council          Amina Haleem, Office of the County Attorney  <b>(Virtual)</b>          Dale Tibbits, Office of the County Executive  <b>(Virtual)</b></p>
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**Commission Chair Jim Michaels called the meeting to order with a quorum at 8:04 a.m.**

**I. Administrative Items**

- a. Commissioner Naftal moved approval of the agenda, second by Commissioner Persh, adopted unanimously.
- b. Commissioner Presman moved approval of the March 2024 minutes, second by Commissioner Persh adopted unanimously.

**II. Review of 2024 Draft Report**

Received an overview from Chair Michaels of the process for finalizing the report. He explained that typographical and non-substantive edits/corrections will be made before the report is finalized. Final vote taken on Study Group areas:

- a. Voter Direct Election of Council President; Term of the President.  
 Positions have not changed since the last meeting.
- b. Requirements for Approval of Budget & Revenue Matters under Charter Section 305.
  - i. Commissioner Nachtsheim moved to change the question so that only the Consumer Price Index and Affordability Guidelines sections would require a two-thirds vote by the Council. The motion did not receive a second.
  - ii. Commissioner Nachtsheim changes votes from yes to no (now 7-3 still in favor) and will add to the dissenting opinion.
  - iii. Commissioner Brett-Major’s dissenting opinion
    1. Clarifications to be made on dissenting opinion before publishing of final report.
- c. Executive Appointments to “Non-merit” Positions under Charter Sect. 215.
- d. Any other aspects of the draft report for review: None.

**III. Discussion or comments on the proposed schedule**

- a. Anyone with an individual statement or proposed revisions should be submitted to the chair by no later than April 15, 2024.

- b. Final draft of the report will be circulated on Friday, April 19, 2024
  - c. The next meeting will be held on April 24, 2024 to approve the final report.
  - d. The Commission will determine at the next April meeting whether or not they will meet in May.
- IV.** Motion to adjourn: By Commissioner Nachtsheim, seconded by Commissioner Samuels.  
Meeting adjourned at 8:43 AM.

**NEXT MEETING:** April 24, 2024 at 8:00 AM.

## **AGENDA**

### **CHARTER REVIEW COMMISSION**

Wednesday, March 13, 2024, 8:00 a.m.

Council Office Building, 4th Floor, Capital Crescent Trail Conference Room  
100 Maryland Ave., Rockville, MD

[Virtual Zoom Link](#)

Meeting ID: 868 8793 8767; Passcode: 569560; Dial-in: +1 301 715 8592

(All times are approximate)

#### **8:00 a.m. – ADMINISTRATIVE MATTERS**

- Acknowledgment of a Quorum
- Approval of Agenda
- Approval of minutes of February 14, 2024, meeting

#### **8:05 a.m. PUBLIC LISTENING SESSIONS**

- Commissioners may comment on and discuss their takeaways from the public listening sessions

#### **8:15 a.m. ESTABLISHING MAJORITY POSITIONS on RECOMMENDATIONS**

**8:15 - 8:30 a.m.– Group 1: Voter Direct Election of Council President; Term of the President**

**8:30 - 8:45 a.m. – Group 3: Requirements for Approval by Super Majority on Budget & Revenue Matters under Charter Sect. 305**

**8:45 - 9:00 a.m. – Group 4: Executive Appointments to “Non-merit” Positions, Charter Sect. 215**

#### **9:00 a.m. PLANS and ASSIGNMENTS for DRAFTING MAJORITY POSITIONS in the FIRST REPORT**

- Included in the Report, for each issue being covered:
  - Background facts and research findings
  - Summary of options and proposals considered
  - Summary of public input (including government officials)
  - Recommendations approved by a majority with rationale
  - Write-ups by individuals or minority view (if there is any)
  - Status report on topics still being studied (with projected date for follow-up report with recommendations).

#### **9:25 a.m. – REPORT FROM STAFF**

- Making all written submissions by the public available to the Commissioners

## **ADJOURN**

### **REMINDER OF APRIL MEETINGS**

- April 10, 2024, at 8:00 a.m. – DISCUSSION OF REPORT FIRST DRAFT
- April 24, 2024 at 8:00 a.m. – ADOPTION OF FINAL REPORT

### **PROPOSED SCHEDULE FOR PREPARING REPORT FOLLOWING MARCH 13 MEETING**

- Drafters to circulate their first drafts by March 25 to all Commissioners and Staff.
  - Members who elect to write an individual opinion can choose whether to circulate their draft and seek concurrence from other members.
  - Commissioners and Staff should provide written comments on each section to its drafter by April 1.
- First drafts to be combined with introductory matter into a single master document during March 26 – March 31.
  - The master document would also include any individual or dissenting opinions that were submitted by March 25.
  - The master document comprised of all first drafts could be circulated by April 1 to all Commissioners and Staff.
- Drafters to review any comments from April 2 – April 9.
- April 10 Regular meeting. Based on discussion and comment at the April 10 meeting, authors to submit revised draft (second draft) by April 15 for incorporation into the master document. (This includes any revised individual opinions or dissenting opinions).
- Revised drafts incorporated into a new master document between April 16 - 19, and then circulated to all on or before April 20.
- **SEPCIAL MEETING** of the Commission on Wed. April 24 for Commission’s final vote on issuing a final Report. Staff submits Final Report to the Council April 25-30, 2024
- Press release announcing Commission Report and posting on public website, but not until a week following its transmission to the Council.

**CHARTER REVIEW COMMISSION (CRC)**  
**March 13, 2024 – 8:00 a.m.**  
**County Office Building – Capital Crescent Conference Room**  
**100 Maryland Avenue,**  
**Rockville, MD 20850**

**Minutes**

<p><b>Commission Members Present:</b>          Jim Michaels, Chair          Dylan Presman <b>(Virtual)</b>          Howard Denis          Jeffrey Naftal <b>(Virtual)</b>          Marvin Lynch          Sherry Brett-Major          David Nachtsheim <b>(Virtual)</b>          Michael Persh          Marcela Samuels <b>(Virtual)</b>          CeCe Grant <b>(Virtual)</b></p>	<p><b>Staff Present:</b>          Khandikile Sokoni, Office of the County Council          Stephen Mathany, Office of the County Council          Lisa Brennan, Office of the County Attorney <b>(Virtual)</b></p>
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**Commission Chair Jim Michaels called the meeting to order with a quorum at 8:03 a.m.**

**I. Administrative Items**

- a. Commissioner Presman moved approval of the agenda, second by Commissioner Nachtsheim, adopted unanimously.
- b. Commissioner Nachtsheim moved approval of the February 2024 minutes, second by Commissioner Presman, adopted unanimously.

**II. Comments on Public Listening Sessions**

- a. While turnout was smaller than hoped for, it was important and necessary to hear from residents.

**III. Majority Positions and Recommendations**

**a. Voter direct election of the Council President; term of the President.**

- i. Commissioners Persh, Naftal, and Grant believe that two-year terms (appointed by peers) would be appropriate to allow the Council President sufficient time to preside over the Council.
- ii. Commissioner Nachtsheim believes that this should be left up for the Council to determine and does not need to be a Charter amendment.
- iii. Voted on Questions
  1. Should the Council President be directly elected by the voters?
    - a. 0 in favor
    - b. 10 opposed (Chair Michaels and Commissioners Nachtsheim, Grant, Presman, Naftal, Samuels, Persh, Brett-Major, Lynch and Denis)
  2. Should the Council Presidency be 2-year term?
    - a. 7 in favor (Chair Michaels and Commissioners Presman, Naftal, Grant, Samuels, Lynch, and Persh)
    - b. 3 opposed (Commissioners Nachtsheim, Denis, and Brett-Major)

3. Should the 2-year term be a Charter amendment?
  - a. 4 in favor (Commissioners Naftal, Grant, Samuels, Persh)
  - b. 6 opposed (Chair Michaels and Commissioners Presman, Lynch, Nachtsheim, Denis, Brett-Major)
- b. Requirements for approval by super majority on budget and revenue matters under Charter Sect. 305
  - i. Should the Charter be changed to require a 2/3 vote for all 3 actions listed in Section 305?
    1. 8 in favor (Chair Michaels and Commissioners Presman, Naftal, Grant, Samuels, Lynch, Nachtsheim, and Persh).
    2. 2 opposed (Commissioners Denis and Brett-Major).
  - c. Executive Appointments to “non-merit” positions, Charter Section 215.
    - i. Should the County Executive have authority to make non-merit appointments, below the Agency Head level, without confirmation by the County Council?
      1. 5 in favor (Commissioners Presman, Lynch, Samuels, Persh, and Denis).
      2. 5 opposed (Chair Michaels and Commissioners Naftal, Grant Nachtsheim, and Brett-Major).
    - ii. Should there be a deadline for the County Council to take action to reject County Executive Appointments for all non-merit appointments?
      1. 9 in favor (Commissioners Presman, Naftal, Grant, Lynch, Samuels, Nachtsheim, Persh, Denis, and Brett-Major).
      2. 1 opposed (Chair Michaels).
    - iii. Should the deadline limit be 60 or 45 days?
      1. In favor of 60 Days – 6 (Commissioners Presman, Naftal, Lynch, Nachtsheim, Persh, and Brett-Major).
      2. In favor of 45 Days – 3 (Commissioners Samuels, Denis, and Grant).
      3. Chair Michaels abstained.
- IV.** Plans and assignments for drafting majority positions in the first report.
  - a. Schedule for drafting adopted by unanimous consent.
  - b. Assignments for Drafting
    - i. Section 108 Council Presidency – Commissioner Brett- Major
    - ii. Section 305 Budget – Commissioner Presman
    - iii. Section 215 non-merit appointments – Commissioner Persh
  - c. Minority individual or group opinions can be drafted for inclusion in the final report.

Commissioner Persh moved to adjourn, second by Commissioner Naftal

**V. MEETING ADJOURNED AT 9:33 AM.**

**AGENDA**  
**CHARTER REVIEW COMMISSION**

Wednesday, February 14, 2024, 8:00 a.m.  
Council Office Building, 6th Floor, Potomac River Conference Room  
100 Maryland Ave., Rockville, MD  
[Zoom Link](#)

(All times are approximate)

**8:00 a.m. – ADMINISTRATIVE MATTERS**

- Acknowledgment of a Quorum
- Approval of Agenda
- Approval of minutes of January 10, 2024, meeting

**8:05 -8:25a.m. – INTRODUCTION OF GUEST: Marlene Michaelson, Executive Director, Montgomery County Council**

- Remarks by Ms. Michaelson on Executive Appointments under Charter Section 215
- Questions and answers

**8:25 a.m. DISCUSSION & STRAW POLL**

- Groups can address unanswered questions remaining from the previous month.
- The straw poll is to determine which topics have support from a majority for discussion in the first report (with recommendation).
- A topic that is not supported for inclusion could still receive further study and be included in a subsequent report.
- Support for including a topic does not necessarily indicate a recommendation for or against the proposed Charter change. Input received at public listening sessions in March will be considered before a formal vote is taken on whether to support a proposed change.

**8:25 - 8:40 Group 4: Executive Appointments to “Non-merit” Positions, Charter Sect. 215**

**8:40 - 8:50 Group 1: Voter Direct Election of Council President; Term of the President**

**8:50 - 9:05 Group 2: Other Council Election & Structure Issues (e.g., staggered terms)**

**9:05 - 9:20 Group 3: Requirements for Approval by Super Majority on Budget & Revenue Matters under Charter Sect. 305**

**9:20 - 9:30 a.m. – DISCUSS SCHEDULE for PUBLIC LISTENING SESSIONS**

- Request for Public Input on topics to be covered in the first Report
- Speakers to sign-up and pre-register in advance; sessions will be recorded
- Held during the week of March 4 - 8
  - In-person hearing, Council Office Building, on a weekday afternoon (2:00 - 3:30 p.m.)
    - Staff report on available date, place, and time for in-person hearing
    - Can the public also choose to testify online as they do for Council hearings?
  - Virtual hearing via Zoom held on a weekday evening (6:00 - 7:30 p.m.)
- Public Announcement by Feb 19 with list of topics to be covered
  - Press release distributed to media, e-mail subscribers, boards & commissions list
  - Direct e-mail to 5 Citizens Advisory Boards (via the 5 Regional Directors)
  - Are there social media accounts that can be used?

**9:30 a.m. – REPORT FROM STAFF ON COMMENTS RECEIVED SINCE JANUARY MEETING**

**ADJOURN**

**CHARTER REVIEW COMMISSION (CRC)**  
**February 14, 2024 – 8:00 a.m.**  
**County Office Building – Potomac River Conference Room**  
**100 Maryland Avenue, 6<sup>th</sup> Floor**  
**Rockville, MD 20850**

**Minutes**

<p><b>Commission Members Present:</b>          Jim Michaels, Chair          Dylan Presman <b>(Virtual)</b>          Howard Denis          Jeffrey Naftal <b>(Virtual)</b>          Marvin Lynch <b>(Virtual)</b>          Sherry Brett-Major          David Nachtsheim          Michael Persh          Marcela Samuels <b>(Virtual)</b>          CeCe Grant <b>(Virtual)</b></p>	<p><b>Staff Present:</b>          Khandikile Sokoni, Office of the County Council          Stephen Mathany, Office of the County Council          Lisa Brennan, Office of the County Attorney <b>(Virtual)</b></p>
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**Commission Chair Jim Michaels called the meeting to order with a quorum at 8:02 a.m.**

**I. Administrative Items**

- a. Mr. Persh moved approval of the agenda, second by Mr. Nachtsheim, adopted unanimously.
- b. Mr. Nachtsheim moved approval of the January 2024 minutes, second by Mr. Lynch adopted unanimously.

**II. County Council Executive Director Marlene Michaelson on Council confirmation of County Executive appointments.**

The Commission heard from Ms. Michaelson on:

- a. Difference between merit and non-merit positions
  - i. Merit – Lengthy and extensive hiring process, including advertisement of positions, screening of candidates by the Office of Human Resources to ensure candidates meet job requirements before they can be shortlisted for interviews.
  - ii. Scrutiny of credentials to match job requirements.
- b. Non-merit – The County Executive can appoint whoever he/she wants for these positions. The Only chance the public gets to see these non-merit appointments are the County Council interviews of the candidates appointed for these positions.
- c. This helps eliminate a County Executive awarding unqualified people who say were helpful to his/her campaign with senior positions within the administration.
- d. The County Council does everything possible and routinely processes the appointments over a two-meeting period.
- e. Situations where there has been a true delay are where the County Council has had serious concerns regarding the candidate and the Council asked for additional information.
- f. The 4 Special Assistants that the County Executive hires do not really need to be interviewed and may be exempt already from the process.

- g. The County Council does not have a formal ability to remove a non-merit position if they are not performing well.
- h. Removing the Council confirmation of eligible non-merit appointments removes an important mechanism of checks and balances.

**III. Study Group Topic Discussions and Straw Votes**

The Commission heard reports from the various study groups and took an informal straw vote as follows on whether to continue with this issue:

- a. Executive Appointments to “Non-merit” Positions, Charter Sect. 215
  - i. Unanimously agreed to hear public input at the listening sessions for this issue.
  - ii. Mr. Persh believes strongly that having a timeclock may be the better way to go about this, which still allows the Council to review appointments but forces them to do so in a timely manner.
- b. Voter Direct Election of Council President, Term of President
  - i. Possibly ends as two questions:
    - 1. Should the president be directly elected?
    - 2. What should the term of the Council President office be, and would this change require staggered elections?
  - ii. Should this be a Charter change, or should this be decided by the Council itself which currently selects its president under Council Rules of Procedure?
  - iii. Unanimously agreed to hear public input at the listening sessions for this issue.
- c. Other Council Election & Structure Issues (e.g., staggered terms)
  - i. Pre-empted by the State of Maryland.
  - ii. Possibly include in the report that this is something that the State should look into itself to allow Counties to make their own decisions.
  - iii. Unanimously agree to not proceed with public input at the listening sessions for this issue because the Charter cannot be amended due to pre-emption at the State level.
- d. Requirements for Approval by Super Majority on Budget & Revenue Matters, Charter Sect. 305.
  - i. Does the threshold get moved from a precise number to a percentage?
    - 1. This allows for no charter change requirements if the size of Council changes again.
    - 2. Also changes the threshold if there happens to be a vacancy on the Council.
  - ii. Unanimously agreed to hear public input at the listening sessions on this issue.

**IV. Listening Sessions to discuss the issues approved by straw vote will be held on March 6, 2024**

- a. Hybrid at the County Office Building – 2:00 PM to 3:30 PM
- b. Virtual Zoom meeting 7:00 PM to 8:30 PM

Mr. Nachtsheim moved to adjourn, second by Mr. Natal

**MEETING ADJOURNED AT 9:40 AM.**

## AGENDA

### CHARTER REVIEW COMMISSION

Wednesday, January 10, 2024, 8:00 a.m.

Council Office Building, 6th Floor, Potomac River Conference Room, 100 Maryland Ave., Rockville, MD

[Virtual Zoom Link](#)

(All times are approximate)

#### **8:00 a.m. – ADMINISTRATIVE MATTERS**

- Acknowledgment of a Quorum
- Approval of Agenda
- Approval of minutes of December 13, 2023, meeting

#### **8:05 a.m. – REPORTS BY STUDY GROUPS**

**8:05 - 8:25 Group 1: Voter Direct Election of Council President**

**8:25 - 8:50 Group 2: Other Council Election & Structure Issues**

**8:50 - 9:05 Group 3: Requirements for Budget & Revenue in Charter Sect. 305**

**9:05 - 9:20 Group 4: Executive Appointments - “Non-merit” Positions under Charter Sect. 215**

- Group summary of its research: information & data gathered.
- Options considered with Pros & Cons for each.
- Conclusions? Was there a group consensus? Individuals’ views?
- Other Commission members: questions or requests for additional information?
- General discussion and debate: next steps?

#### **9:20 - 9:30 a.m. – SCHEDULING PUBLIC LISTENING SESSIONS**

- Purpose: seeking input on topics likely to be the subject of recommendations in first Report
- Proposal for scheduling (all with pre-registration, and all recorded):
  - Virtual, 1 weekend morning Feb. 3 or 4 (11:30 a.m. – 1:00 p.m.);
  - In-person, 1 weekday, Council Office Bldg. between Feb. 1 – 8 (2:00 - 3:30 p.m.);
  - Virtual, 1 weekday early evening Feb 12 – 13, or 15 (6:00 - 7:30 p.m.).
- Discuss methods for soliciting public participation (with Commissioner CeCe Grant)
  - Press release distributed to media, e-mail subscribers, boards & commissions list
  - Direct e-mail to 5 Citizens Advisory Boards (via Regional Directors)
  - League of Women Voters?
  - Social media accounts?

#### **9:30 a.m. – REPORT FROM STAFF: COMMENTS RECEIVED IN RESPONSE TO NOVEMBER PRESS RELEASE**

- Number of public comments received to date.
- Method for providing Commissioner access to comments.

#### **9:30 a.m. – REMINDER OF NEXT MEETING**

- February 14, 2024, at 8:00 a.m.
- Anticipated Discussion
  - Takeaways from public comments and listening session(s)
  - Straw poll on each topic: does a majority favor a recommendation or conducting further study?
  - Making plans and assignments for drafting first Report.
  - Report may include:
    - Findings & recommendations approved by a majority (if any)
    - Write-ups of minority or dissenting views (if any)

- A status report for topics that are still being studied (with projected date for follow-up report containing any recommendations).
- A possible schedule:
  - First draft(s) circulated to all Commissioners and Staff by March 2
  - Can provide written comments to drafter before March 13
  - Discussion at March 13 meeting
  - Second draft(s) circulated by March 27
  - Commission final vote on issuing report at the April 10 meeting.

**ADJOURN**

**MEETING DISCUSSION DOCUMENTS ATTACHED BELOW**

**CHARTER REVIEW COMMISSION (CRC)**  
**January 10, 2024 – 8:00 a.m.**  
**County Office Building – Potomac River Conference Room**  
**100 Maryland Avenue, 6<sup>th</sup> Floor**  
**Rockville, MD 20850**

**Minutes**

<p><b>Commission Members Present:</b>          Jim Michaels, Chair          Dylan Presman <b>(Virtual)</b>          Howard Denis          Jeffrey Naftal <b>(Virtual)</b>          Marvin Lynch          Sherry Brett-Major          David Nachtsheim          Michael Persh          Marcela Samuels <b>(Virtual)</b>          CeCe Grant <b>(Virtual)</b></p>	<p><b>Staff Present:</b>          Khandikile Sokoni, Office of the County Council          Stephen Mathany, Office of the County Council          Amina Haleem, Office of the County Attorney  <b>(Virtual)</b>          Dale Tibbitts, Office of the County Executive</p>
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**Commission Chair Jim Michaels called the meeting to order with a quorum at 8:04 a.m.**

**I. Administrative Items**

- a. Mr. Presman moved approval of the agenda, 2<sup>nd</sup> by Ms. Samuels, adopted unanimously.
- b. Mr. Presman moved approval of the December 2023 minutes 2<sup>nd</sup> by Mr. Naftal, adopted unanimously.

**II. Study Group Discussion.** Heard reports from the various study groups which reports were distributed along with the meeting materials:

- a. Group 1 – Term of Council President (Ms. Brett-Major and Mr. Lynch)
  - i. Two sections – term of Council President and term limits of Council President.
  - ii. Should the office of Council President be a separate office from Councilmember, directly elected by the voters?
  - iii. Subject identified by then Council President Glass as well as then Council Vice-President Friedson.
  - iv. Concern of creating conflict among the County Executive, County President, and County Councilmembers and that the Council President would no longer speak for the Council itself, but for the office of the Council President.
  - v. Discussed the possibility of a two-year term of the Council President’s Office.
- b. Group 2 – Staggered elections of Councilmembers (Mr. Persh and Ms. Grant)
  - i. If implemented, would start in 2026.
  - ii. Staggered every two years for four-year terms.
    - 1. One option is to have the election of only district members in one election cycle and the election of at-large members at the next election.
    - 2. Would need to determine which set only got a two-year term to begin the staggering of elections.

- iii. Elections would be held in presidential and gubernatorial election cycles, with a hope to not have a voter turnout problem in either.
    - iv. Need to look at implications regarding other jurisdictions that have staggered elections, as well as how public financing would work in the different election cycles.
  - c. Group 3 – Section 305 – How budgets are adopted and how revenue is raised? (Mr. Pressman and Mr. Persh)
    - i. Should the supermajority requirements for budget aspects be uniform?
    - ii. Supermajority would be 8 of 11 as a two-thirds majority would be two-thirds rounded up to the next whole number.
    - iii. Using a percentage instead of an exact number would allow for a two-thirds vote based on the number of sitting Councilmembers.
  - d. Group 4 – Changes to Section 215 – Appointments – Non-merit personnel (Mr. Persh, Mr. Nachtsheim, and Ms. Samuels). Reviewed the County Executive’s suggestion that the County Council be removed from the appointment process for non-merit appointments.
    - i. To address any timing concerns, should the Council have a quick time limit to approve or deny the appointment? If they do not act within that time frame the appointment is deemed final?
    - ii. There are about 60 positions that would be considered non-merit.
    - iii. County Council Executive Director, Marlene Michaelson, to address the Commission regarding this at the February meeting.
- III. **Discussion of Listening Sessions**
  - a. Carry out two listening sessions, one in-person and the other virtual.
  - b. Before holding listening sessions, the Commission will conduct straw votes (February 14) on the study group issues discussed today.
  - c. No Quorum required for the listening sessions.
- IV. Public comments received will be sent from Staff to the Commission via email.
- V. Mr. Naftal moved to adjourn, second by Mr. Persh

**MEETING ADJOURNED AT 9:38 AM.**

**AGENDA**  
**CHARTER REVIEW COMMISSION**

Wednesday, December 13, 2023, 8:00 a.m.

Council Office Building, 6th Floor, Potomac River Conference Room, 100 Maryland Ave., Rockville, MD

(All times are approximate)

**8:00 a.m. – IN MEMORIAM: COMMISSIONER AND VICE-CHAIR KAREN CORDRY**

**– ACKNOWLEDGMENT OF QUORUM AND UNANIMOUS CONSENT  
TO PROCEED WITH GUEST SPEAKER**

**8:05 a.m. – INTRODUCTION OF GUEST: COUNTY EXECUTIVE MARC ELRICH**

- Remarks by County Executive Marc Elrich
- Question and answer session

**8:45 a.m. – ADMINISTRATIVE MATTERS**

- Approval of agenda
- Approval of minutes of November 8, 2023 meeting

**8:50 a.m. – REPORTS BY STUDY GROUPS**

**Group 1: Voter Direct Election of the Council President**

**Group 2: Other Council Election and Structure Issues**

**Group 4: Requirements related to the Budget Process in Section 305 of the Charter**

**Up to 10 minutes for each group:**

- Study Group status report: At which of the following stages is the group?
  - Information and fact gathering
  - Developing a list of options and alternative approaches
  - Developing a list of pros and cons for each option or approach
  - Forming a recommendation
- Has the group gathered documents or materials that can be circulated now to other Commissioners for their review, so they can begin familiarizing themselves with the issues?
- Commissioners' questions or requests for additional information (as time permits, or later by email)
- Proposing a realistic date for circulating a write-up of the options, pros & cons. Would other commissioners be able to review the write-up before our January 10 meeting discussion?
- January's meeting could be divided into a 30-minute discussion for each of the 3 groups.

**9:20 a.m. – GROUP 3: OFFICE OF PEOPLE'S COUNSEL**

- Reconstituting the group now or defer to Spring 2024?
- Need for a different timeline: first status report in January? February? or March?

**9:25 a.m. – PUBLIC LISTENING SESSIONS:** Staff to assist in identifying date, place, and time by the January meeting.

**9:30 /9:35 a.m. – ADJOURN**

**CHARTER REVIEW COMMISSION (CRC)**  
**December 13, 2023 – 8:00 a.m.**  
**County Office Building – Potomac River Conference Room**  
**100 Maryland Avenue, 6<sup>th</sup> Floor**  
**Rockville, MD 20850**

**Minutes**

<p><b>Commission Members Present:</b>          Jim Michaels, Chair          Dylan Presman <b>(Virtual)</b>          Howard Denis          Jeffrey Naftal <b>(Virtual)</b>          Marvin Lynch          Sherry Brett-Major          David Nachtsheim <b>(Virtual)</b>          Michael Persh          Marcela Samuels <b>(Virtual)</b>          CeCe Grant <b>(Virtual)</b></p>	<p><b>Staff Present:</b>          Khandikile Sokoni, Office of the County Council          Stephen Mathany, Office of the County Council          Erin Ashbarry, Office of the County Attorney          Amina Haleem, Office of the County Attorney          Dale Tibbitts, Office of the County Executive</p> <p><b>Guest Present:</b>          Mark Elrich, County Executive</p>
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**Commission Chair Jim Michaels called the meeting to order with a quorum at 8:00 a.m.**

1. In memoriam remarks regarding the passing of Vice-Chair Karen Cordry by Chair Michaels.
2. Administrative Matters
  - a. Approved Agenda – Motioned by Mr. Presman 2<sup>nd</sup> by Mr. Persh
  - b. Minutes – Adopted as revised.
3. Office of the People’s Counsel
  - a. Ms. Brett-Taylor suggests deferring the People’s Counsel until after the State has decided on a current bill regarding a similar issue.
4. County Executive Elrich addressed the Commission on the following issues that he proposes the Charter Review Commission review:
  - a. Adjusting the charter so that Executive appointees below the level of department head and deputies will not need to be confirmed by the Council.
  - b. Term limits for the County Executive continue to match with the County Council.
    - i. Having a two-term limit makes you a lame duck in your second term.
    - ii. The Charter Review Commission should oppose the citizen amendment petition.
  - c. Mixed views on the direct election of the County Council President
    - i. Powers of the Council President may not be compelling enough beyond title and agenda setting to require a direct election.
  - d. The downside of having staggered terms for Councilmembers is that there would be significantly less turnout in years that the County Executive was not up for election.
5. Study Group reports
  - a. Direct election of Council President – Ms. Brett-Taylor and Mr. Lynch
    - i. By the next meeting, have fully drafted direct questions for the entire Commission to discuss.

- ii. Added comments from the County Executive will supplement the discussion before the next meeting.
  - b. Council Election and Structure Issues – Ms. Grant and Mr. Persh
    - i. If the CRC decides to recommend staggered elections; how would the numbers look for each election.
      - 1. District – Gubernatorial Elections
      - 2. At-Large – Presidential Elections
    - ii. Will share data and more concrete research prior to the January meeting.
  - c. Requirements related to Section 305 of the Charter – Budget Issues - Mr. Presman and Mr. Persh.
    - i. Currently in fact-finding stage
    - ii. County Executive comments will be taken into consideration for the study group report which is targeted to be ready by the January meeting.
  - d. Reports should be distributed to the members (if ready) by the Friday (January 5, 2024) prior to the next meeting.
- 6. Listening sessions
  - a. One daytime and one evening if possible.
  - b. One at the County Council office and one at another County building if possible.
  - c. Circulate through Press releases and other channels (Ms. Grant) as possible to enhance possible turnout.
- 7. Whether to add looking at section 215 – County Executive Appointments – to the study groups for the first CRC session.
  - a. Mr. Persh, Mr. Nachtsheim, Ms. Samuels.
  - b. Mr. Tibbitts to provide a full list to the CRC for review.

**Meeting adjourned at 9:31 AM – Motioned by Mr. Lynch – 2<sup>nd</sup> by Mr. Persh.**

**AGENDA**  
**CHARTER REVIEW COMMISSION**  
Wednesday, November 8, 2023, 8:00 a.m.  
Council Office Building, 6th Floor  
100 Maryland Ave., Rockville, MD

(All times approximate)

**8:00 a.m.**

**I. ACKNOWLEDGMENT OF QUORUM & UNANIMOUS CONSENT TO PROCEED WITH GUEST SPEAKER**

**8:05 a.m.**

**II. INTRODUCTION OF GUEST: COUNCIL VICE-PRESIDENT ANDREW FRIEDSON**

- Remarks by Vice-President Friedson
- Question and answer session

**8:45 a.m.**

**III. ADMINISTRATIVE MATTERS**

- Approval of agenda
- Approval of minutes of October 11, 2023 meeting

**8:50 a.m.**

**IV. IDENTIFICATION OF ISSUES FOR STUDY**

- Review Staff's prepared list of the items previously identified by Commission members.
- Discussion: selection of topics for study from November to February for the Report that's due by May 1, 2024
- Establishing small "work groups" for each topic (volunteers)
  - Work groups will create and implement a "study plan" (may choose a group lead for organizing the effort)
  - Groups should plan to provide a status report at the December meeting, and identify its target date for submitting research and findings in a memorandum to the full Commission.
  - Note: Discussions at the December and January meetings are preliminary to a formal vote by the Commission on its recommendations, which would likely occur in February. Some topics might be held over for additional study after February for inclusion in a second report.

**9:25 a.m.**

**V. NOVEMBER OUTREACH EFFORTS**

- Solicitation of topics from the public (via web and email)
- Solicitation of topics from the 5 regional Citizens Advisory Boards, with advance notice of public listening sessions in January (via email)

**9:30 a.m.**

**VI. AJOURN**

**CHARTER REVIEW COMMISSION (CRC)**  
**November 8, 2023 – 8:00 a.m.**  
**County Office Building – Potomac River Conference Room**  
**100 Maryland Avenue, 6<sup>th</sup> Floor**  
**Rockville, MD 20850**

**Minutes**

<b>Commission Members Present:</b> Jim Michaels, Chair Karen Cordry, Vice-Chair Dylan Presman <b>(Virtual)</b> Howard Denis Jeffrey Naftal <b>(Virtual)</b> Marvin Lynch Sherry Brett-Major David Nachtsheim <b>(Virtual)</b> Michael Persh Marcela Samuels <b>(Virtual)</b> CeCe Grant <b>(Virtual)</b>	<b>Staff Present:</b> Khandikile Sokoni, Office of the County Council Stephen Mathany, Office of the County Council Erin Ashbarry, Office of the County Attorney <b>(Virtual)</b> Dale Tibbitts, Office of the County Executive
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**Commission Chair Jim Michaels called the meeting to order with a quorum at 8:01 a.m.**

1. Administrative Matters
  - a. Approved Agenda – Motioned by Mr. Presman
  - b. Minutes – Adopted as revised – Motioned by Mr. Presman – 2<sup>nd</sup> by Mr. Lynch
2. Circulated Materials
  - a. Discussed plans to distribute Outreach Plans document to Regional Citizen Advisory Boards – Motioned by Chair Michaels – 2<sup>nd</sup> by Mr. Presman
    - i. Added in item regarding comment deadline for first report (January 15) – Mr. Persh.
    - ii. Changes adopted by unanimous consent.
  - b. Decided to have one or two listening sessions around January prior to deliberation of decided upon issues.
3. Heard from Council Vice-President Andrew Friedson:
  - a. Items for the Charter Review Commission to consider:
    - i. Independently elect the Council President:
      1. Similar to City of Baltimore Council President
      2. Keep the current number of Councilmembers – Elected Council President would replace one of the four at large members.
      3. Council would still elect the Vice-President.
    - ii. Term Limits:
      1. Does not matter what seat you are in (District, Council President, At-Large) each have a maximum of three terms.
      2. Other option is to limit the Council President to one term only.
      3. Look at how the Planning Board term limits work.
    - iii. Staggering of terms:

1. There has been a large turnover of Councilmembers over the last two elections.
2. Would need to determine what election cycle you would have the President term start.
3. Terms would remain as four-year terms, but staggered elections would elect Councilmembers to overlapping terms.
- iv. Vacancies at the local level (section 106 Council – Section 205 Executive):
  1. Should there be special elections when there is a vacant Executive or Council seat?
  2. To the greatest extent possible, let the constituents decide on their representatives.
4. Topics that have been put on the table for discussion:
  - a. Specific proposals:
    - i. Direct election of Council President
    - ii. Council Structure
    - iii. Office of People’s Counsel
    - iv. Budgetary sections of the Charter
  - b. Study groups for these items:
    - i. Council President Election – Mr. Natal, Mr. Lynch, Ms. Brett-Major, Ms. Samuels.
    - ii. Council election structure – Mr. Nachtsheim, Mr. Persh, Ms. Brett-Major, Ms. Samuels. After the meeting, Commissioner CeCe Grant also joined the study group on the Council election structure.
    - iii. Office of People’s Counsel – Vice Chair Cordry, Chair Michaels, Mr. Nachtsheim.
    - iv. Budget sections of the Charter- Mr. Persh, Mr. Presman, Mr. Nachtsheim.
  - c. Informal status reports of study groups should be ready for next month.
5. Motion to adjourn – Chair Michaels – Second – Vice Chair Cordry

**Meeting adjourned at 9:34 AM**

**AGENDA**  
**CHARTER REVIEW COMMISSION**  
Wednesday, October 11, 2023, 8:00 a.m.  
Council Office Building, 6th Floor  
100 Maryland Ave., Rockville, MD  
**Virtual Meeting Link:** [CRC Zoom Meeting](#)

(All times are approximate)

**8:00 a.m.**

**I. ACKNOWLEDGMENT OF QUORUM & UNANIMOUS CONSENT TO PROCEED WITH GUEST SPEAKER**

**8:05 a.m.**

**II. INTRODUCTION OF GUEST: COUNCIL PRESIDENT EVAN GLASS**

- Remarks by President Glass
- Question and answer session

**8:35 a.m.**

**III. ADMINISTRATIVE MATTERS**

- Approval of agenda
- Approval of minutes of September 13, 2023 meeting

**8:40 a.m.**

**IV. INITIAL BRAINSTORMING SESSION TO IDENTIFY POTENTIAL ISSUES FOR CONSIDERATION IN 2023-2024 FOR THE COMMISSION'S FIRST REPORT**

- State issue and identify the Charter section affected, if possible
- Summarize briefly with a 2-3 minute explanation
- Leave debate and discussion for next meeting
- Before the November meeting, staff will compile the list, identify overlaps, legal limitations, and note whether the issue has been previously studied or recommended

**9:25 a.m.**

**V. STAFF NOTES**

- General Volunteer & Driver Volunteer registration forms
- Other staff administrative matters

**9:30 a.m.**

**VI. AJOURN**

**CHARTER REVIEW COMMISSION (CRC)**  
**October 11, 2023 – 8:00 a.m.**  
**County Office Building – Potomac River Conference Room**  
**100 Maryland Avenue, 6<sup>th</sup> Floor**  
**Rockville, MD 20850**

**Minutes**

<p><b>Commission Members Present:</b>          Jim Michaels, Chair          Karen Cordry, Vice-Chair          Dylan Presman          Howard Denis          Jeffrey Naftal (Virtual)          Marvin Lynch          Sherry Brett-Major          David Nachtsheim          Michael Persh          Marcela Samuels</p> <p><b>Commission Members Absent:</b>          Cece Grant (Attempted to attend virtually)</p>	<p><b>Staff Present:</b>          Khandikile Sokoni, Office of the County Council          Stephen Mathany, Office of the County Council          Erin Ashbarry, Office of the County Attorney          Dale Tibbitts, Office of the County Executive</p>
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**Commission Chair Jim Michaels called the meeting to order with a quorum at 8:05 a.m.**

1. Heard remarks by Council President Glass:
  - a. It is important to keep an open discussion and working relationship with the County Council.
  - b. Potential Charter issues relevant to the County Council:
    - i. Should the Office of Legislative Oversight (OLO) be more integrated with Council functions and executive director leadership?
      1. Mr. Presman raised the concern should OLO and Office of Management and Budget functions be separate so that they are not influenced by the Legislative or Executive branches?
    - ii. Issues regarding the budget process and revenue generation. How does the County go about generating more revenue?
    - iii. Previous requests from Councilmembers:
      1. Direct vote of Council President for 4-year term instead of County Council appointing on a yearly basis.
        - a. This issue was never officially voted on by the County Council.
        - b. Council President Glass noted that it would allow for some continuity year-to-year regarding the functioning of the office, but he did not recommend strengthening the powers of the President.
      2. Adding two districts to the Council (adopted).
      3. Changing the at large makeup – have residency requirements for the at large members (defeated).
  - c. Vice-Chair Cordry brought up the example of the Office of People’s Counsel existing but not being funded.

- i. Council President Glass strongly cautioned the CRC from weighing in on policy topics.
    - ii. Council President Glass defined policy topics as anything you would see in the budget and/or legislative debate.
  - d. Chair Michaels asked if the CRC should look at the conflicting ballot measures debate which was brought up and rejected last time.
    - i. Council President Glass believes that the better issue to focus on is the threshold for an amendment to get onto the ballot.
    - ii. This threshold is part of the Maryland State Constitution so a change would likely have to first happen at the State level.
- 2. Approval of Agenda – motioned by Mr. Persh
- 3. Approval of Minutes from September 13, 2023
  - a. Mr. Lynch requested a change in point 3A – changing the word “abides” to “derives.”
  - b. This change was approved unanimously.
- 4. Potential Charter issues for the CRC to deliberate.
  - a. Chair Michaels – Should the Council President be selected by direct election or appointed by the Council?
  - b. Mr. Lynch – Look into the process regarding how the Council determines its salary and if this should still be the process.
  - c. Mr. Persh – Should the voting requirements to approve budget levels remain as they currently are?
  - d. Ms. Samuels – Look into the rate of taxation within the County.
  - e. Vice-Chair Cordry – Funding of the Office of the People’s Counsel.
  - f. Mr. Nachtsheim – Wants to look at the permissions the Charter gives the County Executive regarding property taxes.
  - g. Mr. Naftal – Look at Section 310, Surplus of Reserve Fund. Does the Charter require the County to operate with sufficient reserve funds? (Jeff Natal)

Motion to adjourn made by Mr. Presman, seconded by Vice-Chair Cordry.

**Meeting adjourned at 9:30 AM**

**AGENDA**  
**CHARTER REVIEW COMMISSION (“CRC”)**

**Wednesday, September 13, 2023, 8:00 a.m.**  
**Council Office Building, 6th Floor**  
**100 Maryland Ave., Rockville, MD**

(Times are approximate)

**8:00 a.m. -- I. PROCEDURAL MATTERS**

- Acknowledgment of a Quorum
- Approval of the Agenda

**8:05 a.m. -- II. OPENING REMARKS**

- Welcoming remarks (Jim Michaels, Chair)
- Introduction of CRC members and staff:
  - Khandikile Sokoni, Legislative Attorney, Office of the County Council
  - Erin Ashbarr, Assistant County Attorney
  - Stephen Mathany, Legislative Services Coordinator, Office of the County Council

**8:15 a.m. -- III. THE COMMISSION**

**1. Overview of “Welcome Packet” Previously Distributed by Staff**

- The mission and history of the CRC
- Staff’s role
- What qualifies as a matter for the Charter?
- Reminder - Parliamentary Procedures online training
- Reminder - Open Meetings Act online training
- Reminder – Ethics training

**2. How issues are selected for CRC review**

- Input from Commission Members: Consensus or Vote of Commission Members
- Input from the County Executive and Council members
- Input from the public in solicited comments and public forums

**3. Timeline for Submission of first report**

- CRC’s draft Report submitted to Staff in March 2024
- Final Report approved by the CRC in April 2024
- Final report due to the Council: May 1, 2024
- Presentation at Council in June 2024

**4. Questions by Commissioners**

**8:45 a.m. -- IV. IDENTIFY AGENDA TOPICS FOR OCTOBER MEETING**

**1. Council President's request to address the Commission (Oct. or Nov.)**

**2. Extending an invitation to the County Executive**

**3. Initial brainstorming session: identifying potential issues for Commission's consideration**

- State issue and identify section of Charter
- Explain in 2-3 minutes
- Leave debate for next meeting
- By next meeting staff will have compile them into a single list; identified topics that overlap, topics outside the Commission's jurisdiction, and topics previously studied or considered.

**4. Discuss community outreach efforts**

**9:15 a.m -- V. ADMINISTRATIVE ITEMS**

**1. Next Meeting.** Selecting next meeting date (Oct. 11th ?) and regular time for future meetings that will be "hybrid" to allow members to attend either in-person or online).

**2. Opportunity for Commissioners' questions and staff guidance on:**

- ID Badges, Parking arrangements, Reimbursement for travel & dependent care
- Attendance

**9:30 a.m. -- VI. ADJOURN**

**CHARTER REVIEW COMMISSION**  
**September 13, 2023 – 8:00 a.m.**  
**County Office Building – Potomac River Conference Room**  
**100 Maryland Avenue, 6<sup>th</sup> Floor**  
**Rockville, MD 20850**

**Minutes**

<b>Commission Members Present:</b> Jim Michaels, Chair Karen Cordry, Vice-Chair Cece Grant Dylan Presman Howard Denis Jeffrey Naftal Marvin Lynch Sherry Brett-Major David Nachtsheim Michael Persh Marcela Samuels	<b>Staff Present:</b> Khandikile Sokoni, Office of the County Council Christine Wellons, Office of the County Council Stephen Mathany, Office of the County Council Erin Ashbarry, Office of the County Attorney Dale Tibbitts, Office of the County Executive
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**Commission Chair Jim Michaels called the meeting to order with a quorum at 8:04 a.m.**

1. Opening statement made by Chair Michaels
  - a. Focus on community outreach.
  - b. Utilize Citizens Advisory Boards.
  - c. Long Term Goals:
    - i. First Report due May 1, 2024
    - ii. Drafting to begin in February.
2. Introduction of Charter Review Commissioners and staff.
3. Explanation of Charter Review Commission (“CRC”) from Council Staff provided by Senior Legislative Attorney Christine Wellons and Legislative Attorney Khandikile Sokoni.
  - a. Montgomery County derives its powers through the state of Maryland legislature.
  - b. The County Charter is County Constitution that provides the framework of government.
  - c. The County Charter provides for the structure of County government; thus it cannot impose legislative matters.
  - d. Many issues may be pre-empted by state or federal law.
  - e. Charter Amendments may be proposed as recommendations by the CRC to the County Council.
  - f. Charter amendments may also be petitioned for by the public. The CRC would be able to provide input regarding any Charter amendments that make the ballot from public petitioning.
  - g. Christine Wellons led a short discussion regarding difference between legislative and charter matters.
  - h. Public listening sessions are conducted to receive input from County residents.

- i. CRCs in the past have had sub-committees to discuss separate matters.
- 4. Explanation of Training Materials – Khandikile Sokoni.
  - a. All training materials have been provided via email and are online.
  - b. Vice-Chair Cordy and Chair Michaels must do the open meetings law training within 90 days of appointment.
  - c. Training should be done at the outset of term.
  - d. Ethics training will be held by the director of the Ethics Commission (real-time training).
- 5. Open Meetings law prohibits electronic meetings of quorum. – Christine Wellons.
  - a. Unless administrative matter, substantive issues should not be discussed by the CRC as a body over email.
  - b. Any comments to drafting need to be sent directly back to the Commissioner without copying all, to avoid any Open Meetings Act violations.
- 6. General Overview of first term – Chair Michaels.
  - a. Next meeting will be to develop a list of ideas to consider.
  - b. Develop assignments of who will work on what issues.
  - c. Council President Glass will meet with the CRC at the next meeting.
  - d. County Executive Elrich would also like to meet with the CRC, likely in December.
  - e. CRC will keep open invitation for other Councilmembers to meet.
  - f. In November and December, the CRC will aim to narrow down its topics.
  - g. By February, the CRC should plan to have a preliminary vote on positions for the report.
  - h. A draft of the Report of the Charter Review Commission will be completed in March.
  - i. In April, the CRC will take a vote on the final report.
- 7. Reports
  - a. The first Charter Review Commission Report will be due May 2024 and the next one 24 months later.
  - b. The Report can contain a majority and minority report.
  - c. Marcela Samuels brought up concerns that last Council did not take up any issues after all the work of the CRC.
    - i. Chair Michaels stated that he has met with the previous Chair to discuss this issue.
    - ii. This is part of why the Council President wants to come and meet with the CRC.
    - iii. Changes can be proposed by both Council and the County Executive for the CRC to investigate.
  - d. How well attended are the CRC listening sessions.
    - i. Depending on topic, previous listening sessions have been widely attended.
    - ii. COVID and topics limited some discussion for previous charter session.
    - iii. Using the Community Advisory Boards will hopefully help increase participation.
- 8. Next meeting – Chair Michaels
  - a. Will be held at 8AM due to Council President Glass’s schedule.
  - b. The CRC will start brainstorming issues – Debates will be held at later meetings.
- 9. Future meetings
  - a. They can be hybrid if needed.
  - b. Currently held on the 2<sup>nd</sup> Wednesday of every month. The Chair called a vote on the preferred meeting times:

- i. 8:00 Vote – Dylan Pressman, Howard Denis, Marvin Lynch, Jeffrey Naftal, Sherry Brett-Major, David Nachtsheim, and Marcela Samuels.
- ii. 8:30 Vote – Chair Michaels, Vice-Chair Cordy and Cece Grant.

Motion to adjourn made at 9:18 AM – Adjourned by Chair Michaels.

## **Appendix H**

**Selected Provisions from the Charters**

**of**

**Anne Arundel County**

**Prince George's County**

**Howard County**

**and**

**Baltimore County**

## **Anne Arundel County (7 members on Council)**

### **“Sec. 709. Action on the budget by the County Council.**

After the public hearing specified in the preceding section, the County Council may decrease or delete any items in the budget except those required by the public general laws of this State and except any provision for debt service on obligations then outstanding or for estimated cash deficits. The County Council shall have no power to change the form of the budget as submitted by the County Executive, to alter the revenue estimates except to correct mathematical errors, or to increase any expenditure recommended by the County Executive for current or capital purposes. In any year except a year during which members of the County Council will be elected, the County Council may completely fund for the next two ensuing fiscal years those capital projects designated in the capital budget proposed by the County Executive which are designated to be completely funded for two fiscal years pursuant to Section [705](#) of this Charter. If the County Executive proposes amendments to the budget so as to increase items in the budget or add items to the budget, the Chair of the County Council shall give reasonable public notice of the proposed amendments and hold a public hearing on the amendments, provided that the County Council may *waive the public hearing by a vote of five members.*” (italics added, 2/3 approx.)

### **“Sec. 716. Restrictions on capital projects; amendment to capital budget after adoption of budget.**

No obligations of the County shall be authorized in any fiscal year for or on account of any capital project not included in the County budget as finally adopted for such year; provided, however, that upon receipt of a written request from the County Executive, the Council may, by the *affirmative vote of five members*, amend the County budget. The total amount of appropriations to the capital budget may only be increased from revenues received from anticipated sources but in excess of budget estimates therefor, or from revenues received from sources not anticipated in the budget for the current fiscal year.” (italics added).

## Prince George's County (11 members on Council)

### Section 816. - Emergency Appropriations.

“To a public emergency, which constitutes a sudden, unexpected or unforeseen condition or occurrence, creating an imminent hazard to life, health or property and requiring an immediate action, the Council may, by resolution and upon the recommendation of the County Executive, make emergency appropriations from contingent funds, from revenue received from anticipated sources but in excess of the budget estimates therefor, from revenues received from sources not anticipated in the budget for the current fiscal year, or from any prior year available and uncommitted fund balance. To the extent that there may be no available unappropriated revenues to meet such emergency appropriations, the Council may, by legislative act *approved by a two thirds affirmative vote of the full County Council*, authorize the issuance of emergency notes which may be renewed from time to time.” (italics added)

**Howard County (5 members on Council)**

**Section 615B. - Restrictions on use of surplus revenues.**

“(a) Restrictions on Use of Excess Surplus Revenue. Any excess surplus shall be used to:

(1) Fund capital projects;

(2) Reduce existing County debt; and/or

(3) Fund appropriations in the current expense budget for capital outlay and for non-recurring expenses.

(b)Modification of Restriction. The restriction on the use of excess surplus imposed by this section may be modified by an ordinance passed by an *affirmative vote of 2/3 of the members of the County Council.*” (italics added)

## **Baltimore County (7 members on Council)**

### **Sec. 709. - Action on the budget by the county council.**

“After the public hearing specified in the preceding section, the county council may decrease or delete any item in the budget except those required by the public general laws of this state and except any provision for debt service on obligations then outstanding or for estimated cash deficits. The county council shall have no power to change the form of the budget as submitted by the county executive, to alter the revenue estimates except to correct mathematical errors, or to increase any expenditure recommended by the county executive for current or capital purposes. The adoption of the budget shall be by the *affirmative vote of a majority of the total number of county council members* established by this Charter on an ordinance to be known as the Annual Budget and Appropriation Ordinance of Baltimore County. With respect to county borrowing heretofore or hereafter approved by the voters as provided by section 718 of this article (notwithstanding any contrary provisions of borrowing ordinances heretofore approved by the voters), the county council, at any time, or from time to time, after adoption of the budget or amendments thereto as provided by section 716 of this article, shall adopt bond issue authorization ordinances authorizing the issuance of bonds at one time, or from time to time, to provide the means of financing capital projects included in the budget as amended to the extent the same are to be financed from borrowing. All of said ordinances shall be exempt from the executive veto.” (italics added)