

AGENDA
CHARTER REVIEW COMMISSION

Wednesday, November 13, 2024, 8:00 a.m.
Council Office Building, 4th Floor, 100 Maryland Ave., Rockville, MD

Join Zoom Meeting

<https://us02web.zoom.us/j/85910468462?pwd=AObXhLpR7uT4GeGdrlGNZLaLo8bqJj.1>

Meeting ID: 859 1046 8462

Passcode: 873228

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 September 11, 2024, meeting

8:05 a.m. – INTRODUCTION OF GUEST: Cheryl Gannon, Montgomery County Civic Federation

- Remarks by Cheryl Gannon, President, Montgomery County Civic Federation.
Topic: “Why Montgomery County Needs the Office of People’s Counsel”

See Attachment #1: Op-Ed published May 19, 2023 by Bethesda Magazine (MoCo 360)

- Question and answer session

8:45 a.m. – Charter Amendment Ballot Question on Term Limits for the Executive

- County Question A: Voter approval for reducing the limit from three to two terms.
- Reaction by Ballot Question Sponsor (Attachment #2, article by MoCo 360, Nov. 6, 2024)

“An initiative resulting in the referendum was sponsored by the Committee For Better Government, which is led by Reardon Sullivan, a former Montgomery County Republican party chair and unsuccessful 2022 GOP county executive nominee. * * * Sullivan praised the results in an email to MoCo360 Tuesday evening. “The political elites in Montgomery County lost despite big name endorsements, stealing our signs, manipulating the Charter Review Commission, and lying about the drivers of the petition,” Sullivan wrote. “The voters know authenticity and good governance when they see it.”

9:00 a.m. – The Benefits of Authority to Create Special Taxing Districts (M. Persh)

- Summary of Issue
 - Background information: video recording of recent public budget forum
<https://www.youtube.com/watch?v=x9aAT9n2qEq> (from 55:00:00 to 1:07:00).
- Potential future presentation by staff from the Office of the Executive
- State law pre-emption: could limit Commission’s role to advocating for state legislation

9:15 a.m. – Referenda Voting Systems - Report on Research (D. Nachtsheim)

- See Attachment #3, Memorandum by D. Nachtsheim.

9:25 a.m. – Staff Comments

ADJOURN

REMINDER FOR NEXT MEETING

- Next scheduled meeting is December 11, 2024 at 8:00 a.m.

Attachment #1

<https://moco360.media/2023/05/19/opinion-why-montgomery-county-needs-the-office-of-the-peoples-counsel/>

Opinion: Why Montgomery County needs the Office of the People's Counsel

Role is key in leveling the playing field between developers and residents.

by [Alan Bowser](#) and [Elizabeth Joyce](#) May 19, 2023 3:00 pm Updated June 20, 2023 2:10 pm

The County Council's Planning, Housing and Parks (PHP) Committee recently declined to fund the Office of the People's Counsel, which operated between 1999 and 2008 but has remained unfunded since then.

County Executive Elrich's FY23 and FY24 budgets proposed refunding the agency, which represents the public interest (but not parties) in land use proceedings and provides technical assistance to residents.

The Council failed to fund the OPC last year, and recently, Council Vice President Andrew Friedson proposed Bill 18-32 to remove the current OPC statute from the county code and replace the OPC with a toothless technical assistance agency. The Montgomery County Civic Federation opposes Bill 18-23 and supports funding the OPC to support the needs and rights of residents.

Residents testifying at an April 18 council hearing on Bill 18-23 strongly agreed with us. Of the 11 who testified, 10 argued for rejecting the bill and permanently funding the OPC. The only supporter, a former lobbyist for the developer-funded Coalition for Smarter Growth, opposed the right of residents to obtain legal information from the county on zoning and their land use rights.

The OPC's role is to protect the public interest, to promote full and fair administrative proceedings, and to help produce sound land use decisions. It also helps level the playing field between developers and ordinary residents, who don't stand a chance against wealthy financial interests with expert attorneys on retainer.

The committee's resistance to the OPC is troubling because of their recent unanimous passage (10/22) of Thrive Montgomery 2050, the county's controversial new 30-year general plan, rushed through by the previous County Council before the last election.

Thrive Montgomery creates the foundation for a myriad of new planning initiatives related to housing, transit, and the environment, which will affect most residents and require thoughtful and comprehensive analyses of prospective changes to communities throughout the county.

Now, more than ever, residents would benefit from the technical assistance and advocacy provided by the Office of the People's Counsel.

Montgomery County residents will need informed legal advice to negotiate the complex new landscape Thrive is likely to create. Montgomery County Civic Federation members were encouraged that the at-large members of the County Council: Albornoz, Glass, Jawando and Sayles, all expressed support for the Office of the People’s Council at our online candidate forum last spring.

Although OPC’s two-person staff operated only between 1999 and 2008, it accomplished a great deal. From 2002 to 2007, the OPC participated in 267 land use proceedings and provides 18,281 instances of technical assistance on 135 different subjects, as well as 47 mediation sessions at a cost ranging from \$104,000 to \$246,375 per year (the most recent budget request for FY 24). Martin Klauber, the first People’s Counsel, prided himself on deescalating conflicts and solving problems amicably. “I really believe people can sit down and negotiate their differences.”

In a 2008 report from the Office of Legislative Oversight (OLO), the OPC received considerable praise. Most government respondents supported continuing the OPC as a neutral party that represents the public interest. They praised the OPC’s explanations of the land use decision process in advance of hearings, which better prepared residents to participate, to present relevant and legally significant testimony, and even to develop suggestions that may influence the final design or conditions placed on land use approvals.

Land use attorneys complimented the People’s Counsel’s success in promoting a complete record, his moderating influence on hearing participants, and success in making proceedings go more smoothly. Some respondents urged expanding the OPC’s role to represent individuals rather than the public interest as now defined by the law.

The OPC gives low-income and minority residents access to needed help. A recent racial equity/social justice (RESJ) analysis of the bill by the Office of Legislative Oversight (4/19/23) stated: “As advocates for the public’s interest in land use decisions, Office of the People’s Counsel can be uniquely positioned to advocate for the interests of BIPOC and low-income constituents not typically represented in land use decisions.” OLO urged fully funding the OPC and requiring RESJ reviews for all land use proposals. Because the law now requires RESJ analyses of all new laws and ZTAs, a funded OPC could help the county avoid challenges and even lawsuits over perceived civil rights violations.

The OLO report made several recommendations for the Council to pursue: (1) to revisit the purpose, duties, and structure of OPC as outlined in County law; and (2) postpone the personnel decision regarding reappointment of the OPC until the Council completes that review. The report did not suggest eliminating or defunding the OPC.

Council Opposition: So why do some council members want to make the OPC a toothless technical information office with no legal powers? Most arguments for this viewpoint are meritless.

First, the OPC’s proposed FY 24 funding is negligible—\$246,375 or .0004% of the FY 23 budget. Yes, there is a budget crunch. But councilmembers recently proposed to spend \$315,000 further media outreach, on top of the council’s \$25M media budget and up to \$300K on canvassing, when current agencies such as the Planning Board (with a \$25.4M budget last year) have millions to spend on outreach. So why is the currently unfunded OPC not a priority?

Second, although the OLO report repeatedly charged the council with addressing their modest recommendations, the Council chose not to comply for 15 years. Yet because Elrich has recently requested OPC funding, the council is blaming him for not proposing language to modify the OPC statute as recommended in the OLO report. At a recent Planning, Housing, and Parks Committee meeting (43:48), committee members took turns chastising Elrich's land use expert, despite her willingness to work with them on the issue. The goal of this tactic is clear—to avoid responsibility for an unpopular effort to defund an agency that helps their constituents.

Third, The OLO report undercuts critics' claims that OPC would favor residents at the expense of other parties. The OPC's charge, as the statute makes clear, is to serve the public interest—not the County nor petitioners nor residents involved in the process. A report from 2007 cited by OLO showed the OPC "most often appeared in support of an application or remained neutral" (p. 21). Therefore, fears of OPC working on behalf of residents who want to "stop projects" are baseless.

Finally, and most important, is the argument (recently voiced by developer lobbyists) that "government funds must not be used to advocate for residents." By that logic, we would not have a robust Montgomery County Office of Consumer Protection, ethics commissions, inspectors general, or Federal agencies such as the FTC, the SEC, and the EEOC to protect residents' rights. Do the bill's sponsors (both of whom have accepted significant developer donations) really want to oppose the needs and rights of their constituents after last year's bitter conflicts about Thrive and the forced resignation of the Planning Board? Democrats (the party of all council members) seek to promote the greatest good for the greatest number. So why would the council intensify the crisis of trust they have created by seeking to eliminate this successful agency?

As the Civic Federation has argued for two years, there is no excuse for not funding the Office of the People's Counsel. They should address OLO's recommendations and fund the OPC immediately.

Attorney Alan Bowser, president of the Montgomery County Civic Federation and contributor to many civic organizations, lives in Silver Spring.

Second Vice President Elizabeth Joyce, a member of the Maryland Legislative Agenda for Women Board, also lives in Silver Spring.

Attachment #2

<https://moco360.media/2024/11/06/elrich-facing-final-two-years-in-office-after-term-limit-referendum-passes/>

Elrich facing final two years in office after term-limit referendum passes

County charter will be amended to limit county executive to two terms

by **Ginny Bixby** November 6, 2024 12:55 am

County Executive Marc Elrich (D) is facing his final two years in office after voters passed a term-limit referendum Tuesday that will amend the county charter to restrict the county executive to serving two terms.

An initiative resulting in the referendum was sponsored by the Committee For Better Government, which is led by Reardon Sullivan, a former Montgomery County Republican party chair and unsuccessful 2022 GOP county executive nominee. The committee gathered enough valid signatures earlier this fall to have the referendum placed on the ballot, despite criticism from the county's Charter Review Commission.

The referendum will amend the county charter to limit a county executive to serving two consecutive terms instead of three consecutive terms. That limit, which also applies to County Councilmembers, was approved by voters in 2018. Elrich is currently serving the second year of his second four-year term.

Nearly 68% of county voters cast a ballot in support of the referendum, according to results posted by the Maryland State Board of Elections.

Elrich said he was disappointed by the results when he spoke to MoCo360 at the watch party for Democratic Senate candidate Angela Alsobrooks in College Park on Tuesday evening.

"You've got Republicans who couldn't beat me one on one, the developers couldn't beat me one on one. They faced an election in two years. The best strategy was to try to use term limits to knock me out," Elrich said. "They didn't tell people that the executive already had term limits ... they're smart enough to lie and misrepresent the truth, because that's where Republicans stand."

Sullivan praised the results in an email to MoCo360 Tuesday evening.

"The political elites in Montgomery County lost despite big name endorsements, stealing our signs, manipulating the Charter Review Commission, and lying about the drivers of the petition," Sullivan wrote. "The voters know authenticity and good governance when they see it."

While the initiative was originally posed by Sullivan as nonpartisan despite his prominent Republican connections, the race was increasingly politicized in the days leading up to the general election.

The Montgomery County Republican Central Committee voted to endorse the referendum, while the Montgomery County Democratic Central Committee lent its name to a movement

against the proposed charter change. Several signs placed at polling places urging residents to vote against the initiative bore the name of the Democratic party.

In the weeks preceding Election Day, the movement opposing the referendum gained momentum, with U.S. Sen. Chris Van Hollen (D-Md.), Rep. Jamie Raskin (D-Dist. 8), former County Executive Ike Leggett, four state senators and 14 state delegates who represent the county encouraging constituents to “vote no” when they cast their ballots, according to the “Against Question A” political action committee website.

Meanwhile, those supporting the referendum, including a political action committee backed by real estate developers and businesses, raised 30 times as much money, collecting more than \$66,000 compared to the \$2,300 received by the opposition, according to state campaign finance data.

Nine of the 11 members of the entirely Democratic Montgomery County Council were among the opposition, urging voters to select “no,” according to the Against Question A committee’s website. Council President Andrew Friedson (D-Dist. 1) and Councilmember Dawn Luedtke (D-Dist. 7) did not publicly take a position.

Several unions also recommended a “no” vote, including the Amalgamated Transit Union (ATU) Local 689, International Brotherhood of Electrical Workers (IBEW) Local 26, Service Employees International Union (SEIU) Local 500, the Municipal & County Government Employees Organization (MCGEO) Local 1994, and the Montgomery County Education Association, the local teachers union.

Attachment #3

Memorandum

From: Commissioner David Nachtsheim

Question: Are there referenda voting systems in which voters are presented with multiple discrete choices relating to the enactment, change, or annulment of a law, including a provision of a constitution?

Answer: In practice, no.

Referenda, also called initiatives or ballot propositions, are often used to determine public support for and to effectively enact a change of a law or provision of a constitutional document. The change can include the establishment of a new law or constitutional provision, the amendment of an existing law or constitutional provision by partial change or substitution, or repeal of a law or constitutional provision without substitution. Some nations have rules for referenda that limit the scope of changes that can be proposed, or the jurisdictional level (national, provincial, county, city/village) of a law subject to change by referendum. Other constraints include the number of required voters, and the proportion of favorable votes required for enactment.

Referenda are generally framed as providing a choice to support a specific change. The tacit understanding of the referendum is that the change will create a new law where none exists, or nullify all or part of an existing law and enact a change of the law in a specified way, or repeal the law. Approval of the referendum by a sufficient number of votes will enact the change. Referenda seldom present a full set of options to voters. For example, a referendum proposing a specific standard for term limits of an elected or appointed office will typically only specify a precise number as a limit on terms. Voters have the choice to approve that precise number as a limit, or not approve that limit. Voters who oppose term limits, and voters who approve of a different numerical limit, are both constrained to vote "NO" on the referendum and their different preferences are not considered. As an alternative, voters could simultaneously be presented with the option to:

- Impose no term limits,
- impose the limit of terms specified in the referendum to be served consecutively,
- impose the limit of terms specified in the referendum to be served in the lifetime of a candidate, whether or not served consecutively,
- impose a different limit of terms to be served consecutively, or
- impose a different limit of terms to be served in the lifetime of a candidate, whether or not served consecutively,
- repeal any existing term limits.

Within the United States, 24 States allow citizens to bypass the legislature and initiate legislation through the petition process. These include Alaska, Washington, Oregon, California, Idaho,

Nevada, Montana, Wyoming, Colorado, Utah, Arizona, Nebraska, Oklahoma, Missouri, Arkansas, Illinois, Louisiana, Michigan, Ohio, Florida, Maine, and Massachusetts. 23 states have popular referendum processes. These include Alaska, Washington, Oregon, California, Idaho, Nevada, Montana, Wyoming, Colorado, Utah, Arizona, Nebraska, Oklahoma, Missouri, Arkansas, Michigan, Ohio, Maryland, and Massachusetts. <https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-processes>

States impose various restrictions on the scope and content of citizen-initiated proposals. 49 States provide for legislatively referred constitutional amendments. Many States allow legislatures to initiate ballot measures. <https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-processes>

California:

California provides that referenda may only address the approval or rejection of a statute or part of a statute. California also provides for ballot initiatives to recall elected officials, repeal laws, and enact laws. <https://elections.cdn.sos.ca.gov/ballot-measures/pdf/statewide-initiative-guide.pdf>

New York:

New York allows the State legislature to refer statewide ballot measures for constitutional amendments and bond issues, but bars citizen-originated initiatives or referenda. https://ballotpedia.org/New_York_2024_ballot_measures

Florida:

Florida allows citizens to initiate constitutional amendments or call a constitutional convention, but bars citizen-originated legislation or repeal legislation. The Florida State legislature, and two designated State Boards, may place measures on the ballot as legislatively referred constitutional amendments. [Laws_governing_the_initiative_process_in_Florida](#)

Illinois:

Illinois allows citizens to initiate constitutional amendments. Citizens may not initiate state statutes or veto referendums. The Illinois General Assembly may place legislatively referred constitutional amendments on the ballot with a three-fifths majority vote of each chamber. https://ballotpedia.org/Laws_governing_the_initiative_process_in_Illinois

Maryland:

Maryland prohibits referenda relating to appropriations, except that an increase of an appropriation may be referred to the public upon petition, and non-emergency laws subject to referendum may not take effect until 30 days after voter approval, and an emergency law shall stand as repealed 30 days after voter rejection. <https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-processes#marylandpr>