

Charter Review Commission

Approved Minutes

C. Vernon Gray Room

January 14, 2020

Charter Review Commission Members Present: Richard Butler, Judith Center, Ayesha Holmes, James Howard, Deeba Jafri, Elgin Klugh, Stu Kohn, Fred Leong, Margaret Ann Nolan, Dawn Popp, Paul Skalny, Yolanda Sonnier, Chairperson, and Carolan Stansky

Charter Review Commission Members on Teleconference: Fred Leong

Staff Present: Lynne Rosen, Legislative Analyst, Gary Kuc, County Solicitor, John Gwynn, Assistant County Solicitor, and Diane Schwartz Jones, Council Administrator

Ms. Sonnier opened the meeting at 8:35 a.m.

Ms. Sonnier announced that Mr. Gwynn has accepted a new position and will be leaving Howard County government. Mr. Kuc will continue to provide legal advice to the Commission.

The Commission members approved the minutes of the December 5, 2019 with the correction to remove Judith Center from the Charter Review Commission members who were present on December 5, 2019. Ms. Sonnier abstained from the vote.

The members chose the date of March 11, 2020 for an additional Commission meeting and chose March 3, 2020 at 7:00 p.m. for the next public hearing and March 12, 2020 as a make-up date in the event the Commission cannot hold a public hearing on March 3, 2020 due to inclement weather. Ms. Sonnier requested that the members arrive by 6:45 p.m. for the public hearing.

Ms. Sonnier discussed the timeframe relevant to the Commission. The report of the Commission is due to the County Council by May 1, 2020. The members have discussed whether to pick an earlier date to submit the report. The report will need to be on the Council's schedule. If trying to get language on the ballot, the Commission may need to report sooner rather than later. Ms. Sonnier discussed the impact of submitting the report to the Council during budget season.

Mr. Howard discussed that a time sensitive issue is changing the structure of the County Council. He discussed the possibility of drafting a brief interim report that would be ready by a certain date, possibly by March 15, 2020.

The members discussed that Mr. Howard's suggestion is a good one.

Ms. Popp discussed that there is still time to have substantive discussions about items that need to be discussed and move them up on the timeframe for discussion.

The members discussed having an interim report ready for the public hearing date.

Mr. Howard discussed that the Commission has not yet discussed if the Commission wants to recommend changes to the structure of the Council and if yes, what would be the structure of the Council.

Ms. Schwartz Jones discussed that if the Commission decided to have an interim report ready by March 15, 2020, the Council could have a monthly meeting on March 16, 2020.

Mr. Kuc discussed that he must provide a summary of any written questions for the ballot to the State Board of Elections by July 31, 2020. He discussed the timeframe for introduction of a resolution to meet this deadline. Mr. Kuc discussed that there would be a summary of the proposed changes to the Charter on the ballot. The Office of Law drafts the summary of the resolution for the ballot.

Ms. Stansky discussed there is a limit on how many things the Council and the citizens can digest. The Charter requires the Commission report to be submitted by May 1, 2020, but this date may be impracticable. She discussed submitting a report earlier than May 1, and in the future, the Council could request a report by March 15 rather than changing the May 1 date in the Charter. Ms. Stansky discussed a report that includes a request with things that should be changed, items that could be studied in the future, and operational issues that do not raise to the level of charter material but could be changed.

Mr. Leong discussed that some items that could be on the ballot may have a different deadline, for example, the Council structure, and should be in a different category. The Commission has the power to make any comments in its report. The main issue is the Council structure that needs to be given earlier consideration to meet the timeframe for the 2020 ballot.

Ms. Sonnier discussed that the items for discussion on January 28, 2020 will be moved to February 11, 2020 and February 11, 2020 items will be discussed on January 28, 2020.

Mr. Kohn discussed language he proposed to be inserted at the end of Section 203(a) so that there is no controversy in the future on this subject:

“The Council shall in its inaugural year in its first meeting in December vote on a designated Chairperson and Vice Chairperson for each applicable Council Board. In the second year and following the current Vice Chairperson shall automatically be the Chairperson of all Boards whereby the Council serves. The Council shall select the succeeding Vice Chairperson.”.

The members discussed if they wanted to discuss the proposed language at the February 11, 2020 meeting or drop the proposed language. The members chose to drop the proposed language.

The members reviewed the table of Charter Review Commission Issues beginning with Section 211(a) and dropped the provisions relating to that section.

Mr. Skalny discussed the practical limitations of recommending placing four or five issues on the ballot. How do you handle the large number of issues that have been identified that

are worthy of change? These are issues that have been discussed for a year that may end up being dropped.

Mr. Kuc discussed that the Commission can put in its report an appendix or another format alerting the Council that there are other issues that the Commission thinks are important and should be presented to the Council. There could be a list of which issues received majority support and a list of which issues received less than majority support.

Mr. Skalny discussed three buckets. One bucket of issues that the majority does not favor, one bucket of issues that a majority favors and do not make it to the top of the issues that the majority favors, and one bucket that are the issues that the members believe should be addressed and are the top five or six recommendations that the Council may agree to.

Ms. Stansky discussed that the Commission Report from eight years ago had eight items and four of those items were adopted by the Council.

Mr. Kuc discussed that the Charter does not prescribe the minutiae of County government. These are big picture items regarding who is exercising power and how. He discussed the need to determine what is proper Charter material. The number of Councilmembers is a clear structural issue that a Charter needs to deal with. The Charter is the Constitution that has the structure of powers.

Mr. Leong discussed that the report should be focused on those things that are significant enough to be on the ballot. Any other issues the Council can decide how it wants to proceed. The Council can take recommendations and decide to do something differently. The Council is who will decide whether to proceed with recommendations. The Commission is making recommendations.

The members dropped the issues in Sections 211 and 214 of the Table of Issues.

Ms. Stansky discussed the process for dropping items and the need to get moving. She discussed that an item like Section 302(i)(3) (State of the County Report) that members feel strongly about may not be Charter material but should be in the report. The report should include representation of what went on in Commission meetings. It is not a Charter change, but it is an operations issue.

Mr. Leong discussed including another category of items that are worthy to be looked at.

Mr. Howard discussed having other categories in the report.

Ms. Center discussed that the mandate of the Commission is to discuss Charter amendments. She discussed concern that if the report raises other issues, the Commission could be exceeding its authority.

Ms. Sonnier discussed that additional items that received a lot of discussion and emotion could be included in the Commission Report.

Mr. Howard discussed that the term of the Commission members is two years.

Mr. Leong discussed a process for assigning someone to draft language for certain items and for deciding if certain items should be part of the report. He discussed finding a way to express that an item was identified but is not Charter material.

The members discussed the issue of the public accessing the State of the County report under Section 302(i)(3) at no charge.

Ms. Nolan discussed a suggestion that the report include the recommended Charter amendments and other matters of note that were considered that do not rise to the level of Charter material. There will be time after the Commission completes its review of the Charter to look at what the Commission dropped. There are a certain number of matters of note that could be put in an appendix. People can draft language for dropped matters of note.

Mr. Kuc discussed that Section 903 refers to permanent boards and Section 902 refers to temporary boards. Only Section 903 provides for the removal of members.

Ms. Popp discussed that a resolution that creates a temporary board could include removal provisions.

Mr. Kuc discussed that this issue of removal of members from temporary boards could be addressed in the County Code.

Ms. Sonnier discussed what she heard suggested by Ms. Nolan that if an issue is dropped it could be included in the Commission report as issues that were identified by the Commission members. Ms. Sonnier discussed the extensive discussion relating to Section 914 that “notice” must include electronic publication.

Ms. Popp discussed that Section 914 is part of the notice issue that is to be discussed today.

Ms. Stansky discussed that the Charter includes references to notice in a certain number of instances.

Mr. Kuc discussed that the requirement that proposed legislation be published in the newspaper is a requirement under the State Constitution.

Mr. Skalny discussed that the Commission members can include more stringent requirements to provide more notice. The Charter refers to notice in numerous places. He discussed that “notice” could be defined to include “electronic notice”.

Mr. Kuc discussed reviewing the notice requirements in the Charter one at a time and that the Open Meetings Act has requirements for notice.

The members discussed Item 7 on the compilation of list of major issues: Should the requirements for notice in the Charter be changed? If yes, should electronic notice be required? Should there be a requirement for posting in the George Howard Building and Howard County public libraries? Unless prohibited by State law, should requirements for publication in the newspaper be eliminated?

Ms. Sonnier discussed that Mr. Kuc advised that each reference to notice should be discussed.

Mr. Skalny discussed that a search of the Charter for notice found five places. Section 605 has a requirement for notice of a public hearing on the budget by the Council.

Ms. Popp discussed if electronic notice should be added to the notice requirement.

Mr. Skalny discussed that Section 602 also has a requirement for notice of public hearings the County Executive is required to hold to receive public comment on the budget in a newspaper of general circulation. Should this be electronic publication as well?

Ms. Sonnier discussed that the members previously discussed that notice should be electronic and at least 14 days in advance of a public hearing for both sections.

Ms. Stansky asked if notice is currently being provided electronically?

Ms. Schwartz Jones discussed that prefiled bills are provided online and published in the Baltimore Sun, and one other newspaper.

Mr. Skalny discussed that electronic public notice is currently provided. He discussed if a requirement should be added that electronic public notice be provided when it is currently provided.

Ms. Sonnier discussed what if electronic public notice is not provided in the future?

Mr. Howard discussed that if electronic public notice were not provided in the future, the public would react.

Ms. Stansky discussed if electronic public notice does not need to be in recommendations because it is currently provided. This could be a housekeeping issue that could be addressed if the Charter is rewritten sometime in the future. This could be in a future revision. She discussed that it would be a waste of County resources if Commission ideas drop away.

Ms. Nolan discussed the importance of public notice. There could be a Charter amendment that is omnibus in nature regarding public notice. An amendment could require that all notice should be provided at a minimum electronically.

Mr. Skalny discussed that the County should look for all opportunities for public notice.

Mr. Howard discussed the need to use widely used forms of communication.

Ms. Nolan discussed the use of electronic notice or next generation.

Mr. Kohn discussed adding a requirement for notice 14 days in advance of a public hearing on the budget by the Council.

Ms. Sonnier discussed that this is a two-prong issue of electronic notice and 14 days in advance of the public hearing.

Mr. Skalny discussed requiring commonly used forms of electronic communication, unless otherwise provided by federal or State law.

Ms. Popp discussed electronic notice could be a definition issue in Section 914.

Ms. Schwartz Jones reviewed the following provision of Section 209(c): “The title of each bill and the time and place of the hearing thereon shall be published once a week for two successive weeks in at least one newspaper of general circulation in the County, and in at least one electronic medium readily available to the public.”

Ms. Sonnier discussed that the sections dealing with the budget do not have this language.

Mr. Kuc discussed that the members could provide a global recommendation for electronic notice or amend sections that do not have electronic notice and track the language in Section 209(c).

Ms. Nolan discussed changing the definition section and having one Charter amendment.

Ms. Popp discussed adding a notice provision to Section 914 and amending other sections to say as defined in Section 914. There would be a cross reference to Section 914 in each of the other sections.

Ms. Nolan discussed if the change discussed by Ms. Popp could be one Charter amendment.

Ms. Schwartz Jones reviewed the following provision in Section 604: “All of the documents required by this section shall be made available in at least one electronic medium that is readily available to the public.”

Mr. Kuc discussed that Section 602 does not have electronic notice language, and that Section 605 is also silent. Section 604 speaks to electronic notice.

Ms. Nolan discussed if the members wanted one Charter amendment dealing with notice, could one amendment amend Section 914 and enumerate all the other changes in the sections. Ms. Nolan discussed only amending Section 914 as opposed to fixing every single section.

Ms. Sonnier discussed Ms. Popp’s suggestion to amend Section 914 and all other sections cross reference Section 914.

Mr. Kohn discussed a requirement for publication at least 14 days in advance for transparency so that the public has documents 14 days in advance of meeting. Mr. Kohn asked if there is a required timeframe for publication of bills and resolutions in the newspaper?

Ms. Schwartz Jones reviewed the provision in Section 209(c) requiring that the title of each bill and the time and place of the bill hearing be published once a week for two successive weeks in at least one newspaper of general circulation in the County, and in at least one

electronic medium readily available to the public. Under this provision, publication could be on a Monday and the following Monday, which does not equal 14 days.

The members further discussed if Section 914 should be amended to include electronic notice.

Mr. Kohn discussed amending Section 605 to add “at least 14 days in advance” after “published”.

Ms. Schwartz Jones discussed that she will inquire into the notice that was provided last year by the Council Administrator for the public hearing on the budget.

Ms. Nolan discussed that Section 605 does not specify the timing of the required publication notice.

The members agreed that a discussion of at least 14 days in advance of a public hearing should be included in the Report. Ms. Popp and Mr. Skalny will work on this language.

Ms. Nolan discussed a bucket of issues relating to “public engagement”.

The members discussed Item 9 that was suggested by the County Executive’s Office: Should the term of office of members of Citizen Boards under Section 404 be reduced from five years to three years.

Mr. Howard discussed that a three-year commitment is a lot easier than a five-year commitment.

Ms. Sonnier discussed the intent of this change is to encourage more citizen participation.

The members discussed their support of this suggestion.

Mr. Howard discussed including an explanation of the purpose of the suggested language in the report.

The members discussed Item 10: Should the number of days for action required under the Charter, for example, presenting passed legislation to the County Executive for approval or disapproval, be changed from calendar days to business days?

Ms. Jafri discussed that this language was suggested by Jessica Feldmark.

Mr. Leong discussed this is a practical issue.

Mr. Kuc discussed that the relevant provision is in Section 209(g).

Ms. Popp discussed that this issue could also be addressed globally in Section 914.

Ms. Nolan discussed the need to search the Charter to see if this issue occurs elsewhere in the Charter.

The members discussed identifying references in the Charter to “calendar days” and “days”.

Mr. Kuc discussed that “calendar days” appears once in Section 209 but there are more times when “day” appears by itself in other sections.

Ms. Nolan suggested that the Office of Law review the Charter for these references.

Mr. Kuc discussed that the Office of Law will review this issue.

The members discussed Item 16: Should the prohibitions against discrimination in Section 709 of the Merit System be consistent with Code discrimination provisions?

Mr. Leong discussed that the sticking point was whether “occupation” should be on the list.

Ms. Sonnier discussed that there was discussion not to include “occupation”. There was discussion not to list protected classes if these classes were to change in the future.

Mr. Kuc referenced Section 12.208 in the County Code relating to unlawful employment practices.

Ms. Sonnier discussed that Section 709 does not include gender identity or expression and other protected classes that are included in the County Code. The County Code provides more protections than what is in the Charter.

The members discussed the issue of including “occupation” in Section 709.

Ms. Sonnier discussed including a catch all in Section 709 that would include any other protections defined in the County Code.

Mr. Skalny discussed that the Code is the law in the County.

Ms. Sonnier discussed if an amendment is needed to the Charter to list out all the protected classes.

Ms. Holmes discussed if the protections in the County Code protecting employees also apply to volunteers, for example, a citizen on a task force who feels discriminated against because of her race.

Mr. Howard discussed State and federal protections.

Ms. Holmes discussed that the County Code is more tightly written to apply to employees. If there is an issue of an employee being discriminated against, the County Code applies.

Ms. Sonnier discussed what happens if the Code is changed in the future.

Mr. Skalny discussed that another protected class could be added to the Code after the Charter is amended and then the Charter is missing a class again.

Ms. Popp discussed not wanting to debate these issues as a Charter issue. The protected classes are already addressed in the Code.

Ms. Stansky asked the Office of Law if the County is exposed to any legal liability if the language in the Charter is left as is.

Mr. Kuc discussed that the average Howard County employee is not looking to the Charter for how to sue the County. The employee is going to a Human Resources individual or the Office of Human Rights. Mr. Kuc discussed that the discrimination provisions in Section 709(a) date back to 1968. The County Code was amended in the 1970s. The law has expanded since the Charter was adopted. Other federal and State laws would cover a law suit. He does not see a legal risk to the County by leaving as is. These provisions apply only to the employees in the Merit System.

Ms. Sonnier discussed concern that if leave section as is a disabled person would not see disability included in Section 709(a).

Ms. Jafri discussed not wanting to deal with this issue as a ballot measure because it is covered by the Code.

Ms. Center discussed highlighting some issues that have been covered under federal law relating to disability and gender identity.

Mr. Skalny discussed that this would still be picking and choosing certain protections.

The Commission members discussed leaving Section 709(a) as is because the County Code has the provisions.

Ms. Popp discussed adding language that the Council may by ordinance specify additional protected classes.

Ms. Nolan discussed that the County Council would still have to decide to adopt any Commission recommendations.

Ms. Jafri discussed putting this issue in the report but not recommending addressing it in the Charter.

Mr. Kuc discussed that if all the protected classes were listed in the Charter, and the law was later expanded, the list is then not complete. The Council can propose a charter amendment to the list in Section 709(a).

Ms. Sonnier discusses protected classes like “immigration status” that are not in the Code.

Ms. Sonnier discussed listing all the protected classes in a Charter amendment, including occupation and immigration status, and noting that if more classes are added to the Code in the future, the Council can propose a Charter amendment in the future.

Ms. Nolan discussed continuing the discussion at the next meeting.

Ms. Sonnier discussed closing the loop on Item 16 and then picking up on Item 18 and then taking up Item 1 at the next meeting.

Mr. Leong requested clarification from the Office of Law regarding what protections apply to County employees regarding Whistleblower law.

Ms. Center recalled Mr. Gwynn discussed federal and State laws. Ms. Center discussed that the issue is are these protections sufficient for County employees? The County Auditor proposed suggestions relating to whistleblower law. Ms. Center discussed that there are additional issues beyond financial issues.

Ms. Sonnier adjourned the meeting at 10:43 a.m.