

Charter Review Commission

C. Vernon Gray Room

September 4, 2019

Ms. Sonnier opened the meeting at 8:30 a.m.

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

Staff Present: Lynne Rosen, Legislative Analyst, and John Gwynn, Assistant County Solicitor

The Commission members approved unanimously the minutes of the July 24, 2019 Commission meeting with the change requested by Mr. Kohn that the minutes include his suggested change to the Rules of Procedure to require a simple majority of those present for a quorum.

Ms. Sonnier explained that if anyone wants to hear specific testimony presented at the July 24, 2019 meeting, the audio recording is available on the Charter Review Commission website.

Ms. Sonnier discussed a list of elected officials who represent Howard County in the Maryland General Assembly and the United States Congress who were invited to attend an upcoming public hearing on the October 8, 2019 meeting. The list was distributed to members. Ms. Sonnier reviewed the dates of upcoming public hearings. The public hearing scheduled for October 17, 2019 has been changed to October 24, 2019.

Ms. Sonnier reviewed two issues regarding the Charter Review Commission Rules of Procedure.

The Commission members agreed to change the Rules of Procedure as follows:

Ilg. All official correspondence and written statements of any kind pertaining to the functions and duties of the Commission shall be signed manually OR ELECTRONICALLY by the Chairperson, or the Chairperson's written designee, or by any Commissioner to whom the Chairperson has given a written delegation.

IIIb. A quorum of the Commission for purposes of considering or transacting business shall consist of THREE-FIFTHS (3/5) of the Commission.

The Commission members discussed the testimony from the July 24, 2019 meeting.

Mr. Leong discussed that he posted the notes he took during the meeting on SharePoint. He discussed the time constraints of reviewing the Charter.

Ms. Center discussed the feedback from County Council members who were averse to increasing the number of councilmanic districts.

Ms. Sonnier discussed that the Commission will decide which recommendations for changes to the Charter to make to the County Council. If the Councilmembers disagree with the recommendations, they will give an explanation as to why they disagree.

Mr. Skalny discussed that he reviews the Councilmember's comments and tries to understand their perspective. He believes we need to discount practical issues of size of the current dais and offices. These are issues that should be set aside.

Ms. Nolan commented that these are new members.

Mr. Skalny discussed that some of the Commission members have been involved in the County far longer than the Councilmembers.

Mr. Kohn discussed that he has reached out to elected officials for input, including Delegate Terrasa. He requested that Delegate Terrasa attend a Commission meeting.

Ms. Sonnier suggested that Ms. Terrasa be invited to attend the October 8, 2019 meeting.

Mr. Skalny discussed that letters requesting input have been sent out to the former members of the County Council.

Mr. Leong discussed Councilmember comments relating to the budget process and interactions between the Executive branch and the legislative branch that were not in the questions suggested by the Commission members.

Ms. Stansky discussed that when the Commission reviews Charter provisions relating to the budget, they can review the comments of the Councilmembers. She asked if the former Councilmembers had received letters requesting input on any recommendations for changes to the Charter.

Ms. Sonnier responded that the former councilmembers received letters requesting input.

Ms. Sonnier discussed the issue regarding Section 202(f) of the Charter regarding if the timeframe in the Charter establishing new Councilmanic Districts after the 2020 Census is sufficient to conduct the primary election in June 2022.

Ms. Stansky commented that the timeframes have worked in the past. Advances in information technology should help make things faster. She reviewed Article III, Section 5 of the Maryland Constitution as a model for a timeframe.

Mr. Howard discussed the issue of whether the County Board of Elections can do what it needs to do. He would like to see evidence of any problems.

Ms. Popp discussed if there is an issue, the Commission can make recommendations. The Board of Elections needs to discuss if there are problems as part of the Charter review process.

Ms. Stansky discussed the growth of Howard County, and the need to receive community feedback.

The Commission members discussed the timeframe in the State Constitution for State legislative districts.

Mr. Walsh discussed receiving input from the County Board of Elections.

Ms. Sonnier discussed that an invitation has been extended to the Director of the County Board of Elections.

Ms. Stansky suggested sending another letter asking if there is any benefit to changing the date from March 15 to March 1.

The Commission members reviewed §§ 304, 305, and 401. There were no comments.

The Commission members reviewed § 402.

Ms. Stansky discussed it would be helpful to have a County government organization chart. Ms. Stansky requested that the County Executive provide a current organization chart.

The Commission members did not discuss any recommended changes to § 402.

Mr. Howard discussed differences between the electronic version and the print version of § 403.

Mr. Howard discussed the recommendation of the County Executive regarding §404 to reduce from five years to three years the term of office of the members of citizen boards.

Ms. Jafri discussed that many residents do not want to serve because of the length of the commitment.

Ms. Sonnier commented these are not paid jobs.

Mr. Howard discussed that members can also serve two terms, which is a long commitment.

Mr. Howard discussed changing the term of office from five years to three years. The result could be three consecutive terms.

Ms. Popp discussed that this is a potential recommendation.

Ms. Stansky discussed that the Prince George's County Charter authorizes the County Executive or the County Council to appoint members of citizen boards. Section 404(b) of the Howard County Charter provides for the filling of vacancies. The Prince George's County Charter provides for the removal of members of citizen boards.

Ms. Sonnier discussed that the County Council must confirm the appointees recommended by the County Executive.

Mr. Howard discussed that Section 903 provides for the removal of members of boards and commissions.

Ms. Stansky discussed differences between the Prince George's County Charter and the Howard County Charter regarding removal provisions.

Ms. Nolan discussed political issues relating to removal of members of citizen boards. Ms. Nolan requested that the County Executive be asked for any recommendations concerning Section 903.

Mr. Kohn discussed changing the title of Section 403 to include members of commissions similar to Section 903 that includes members of commissions.

Mr. Walsh discussed that the Charter Review Commission is not covered by Section 404. He discussed that the intent of the language in Section 404 is to be more restrictive.

Mr. Howard discussed that another explanation as to why the Charter Review Commission is not covered under Section 404 is because other provisions of the Charter apply to the Charter Review Commission.

Mr. Walsh discussed that the term of office of five years does not apply to all Commissions.

Mr. Howard discussed that a five-year term of office does not apply to the Charter Review Commission and the Compensation Review Commission.

Ms. Popp discussed that commissions are different and should not be included in Section 404.

Ms. Nolan discussed that specific commissions are controlled by the law that creates the commission.

Ms. Sonnier discussed that the consensus is to keep the title of Section 404 as is.

Mr. Kohn discussed that § 404 refers to the payment of reasonable and necessary expenses as may be provided in the budget. Section 501 requires members of the County Board of Appeals to be paid at the rate of \$1200 per year unless the compensation is otherwise changed.

Ms. Sonnier discussed that Section 404 does not apply to the Board of Appeals. She summarized the recommendation to change from five years to three years the term of office of members of citizen boards.

Ms. Sonnier discussed Section 405 and that some Councilmembers discussed the need for their own counsel.

Ms. Nolan discussed that when councilmembers are first elected they have the belief that they need their own spokesperson. There is another belief that a shared counsel will share confidential matters with the Executive branch. Confidential matters are not shared. A strong County Solicitor will maintain a model of not sharing confidential matters, and the people who work for the county solicitor will maintain the model. People work at the pleasure of the County Solicitor.

Ms. Nolan discussed that people are educated along the way. They become the beneficiary of the system and how the role of the County Solicitor works. There are multiple checks and balances to make the system work. She had this experience in both the Office of the Attorney General and the Office of the County Solicitor.

Ms. Skalny discussed that a public attorney serves many people. There is an appreciation of the depth of the bench that the County Solicitor can provide compared to one person. There is a depth of legal service that can be provided by the Office of Law.

Ms. Nolan discussed that there must be one person who can say this is the law of the County.

Mr. Skalny discussed that that part of the issue is education. There have been times that there is a perception that that the Office of Law reports solely to the County Executive. When you look at the checks and balances in the Charter, this is not the case.

Ms. Popp discussed that there is often an assessment of risk that needs to be explained to the client. She asked Mr. Gwynn if there are two different attorneys giving advice to the County Council and the County Executive.

Mr. Gwynn discussed an example of an issue of animal control. There could be someone in the Office of Law assigned to animal control in the Executive Branch who works with the Executive Branch to put into legal format. Mr. Gwynn reviews for legal sufficiency and it goes to the County Council. All the attorneys represent both the County Executive and the County Council. Mr. Gwynn is the person who reviews for legal sufficiency. Attorneys will not share what they are told by a particular County Council member.

Mr. Howard discussed that if the County Council wanted to sue the County Executive, it would hire its own attorney.

Mr. Kohn discussed that the Charter provides the County Council the opportunity to hire its own attorney.

Ms. Sonnier asked if there were any recommendations for Section 405.

Mr. Leong discussed Ms. Feldmark's comments that the budget of the Office of Law is under the budget of the County Executive. Mr. Leong asked if this should be changed.

Ms. Stansky referred to the organization charts. Under the State government organization chart, the Office of the Attorney General is away from the Governor's Office. The new members are learning the ropes. This could be an issue to further discuss under the budget provisions in the Charter and to look at under the County government organization chart. The Office of Law is not under the County Executive's Office on the County organization chart.

Mr. Kohn discussed what would happen if the County Solicitor left the County.

Ms. Sonnier responded that the County Solicitor would forfeit his office under Section 405(f).

Ms. Center discussed the position of the Department of Justice on the federal government organization chart. She discussed the need to be sensitive to conflicts of interest and to be aware of the need to monitor checks and balances.

Ms. Sonnier discussed the removal provisions in Section 405(f). Ms. Sonnier discussed what would be the impact of expanding the number of members of the County Council on the removal provisions.

Ms. Stansky discussed Section 405(e) that prohibits the County Solicitor or any assistant in the Solicitor's office from practicing as an attorney before the County Council or any office, department, board, commission or agency of the County in any capacity other than representing the County's interests.

Ms. Nolan discussed provisions that require all County employees, including Assistant County Solicitors, to get approval for outside employment.

Mr. Howard discussed requirements for financial disclosures and ethics laws.

Ms. Nolan discussed a recommendation for Section 405(c) to add language that Assistant County Solicitors serve at the pleasure of the County Solicitor.

Mr. Walsh discussed if Section 709 addresses the issue raised by Ms. Nolan.

Ms. Nolan responded that Section 709 does not address the issue that Assistant County Solicitors serve at the pleasure of the County Solicitor.

Ms. Center agreed that the recommended language for Section 405(c) would fortify the independence of the office of law.

Mr. Howard discussed the need for and the specifics of the compensation clause for members of the Board of Appeals in Section 501.

Mr. Walsh discussed the obsolete reference to the Annotated Code of Maryland in Section 501.

Ms. Sonnier discussed the origin of the five-year term of office for members of the Board of Appeals.

Mr. Howard discussed that the term of office is set in State law, and that he was okay with the length of the term of office.

Ms. Nolan requested that the attorney in the Office of Law who is assigned to the Board of Appeals be asked for any recommendations for changes to Section 501.

The Commission members discussed Section 502.

Mr. Leong discussed the recommendation of Councilmember Jung that the County Council shall consider at the first monthly meeting every four years after an election the appointment of a hearing examiner to conduct hearings and make decisions concerning matters within the jurisdiction of the Board of Appeals.

Mr. Howard discussed that this position is currently an employee.

Mr. Skalny discussed that Councilmember Jung suggested that this position be required rather than discretionary. He suggested leaving the language as is because the need for the position depends on the amount of work before the Board of Appeals. The option to appoint a hearing examiner is currently there and does not need to be changed.

Mr. Howard discussed that the hearing examiner is more a civil servant than an appointed official.

Ms. Nolan discussed that in a very complex case, you may want to appoint a hearing examiner.

Mr. Howard discussed the current 90-day time limit on issuing a decision. He discussed treating a hearing examiner as a special master. Another possibility is to allow the Board of Appeals to hear decisions from a hearing examiner on the record. This would be a timesaver.

Mr. Kohn discussed there is no consequence for lack of timely decision.

Ms. Nolan discussed a rule that if a decision not issued in a timely fashion, the issue could be assigned to another judge. This is a perennial issue of decisions not being issued in a timely fashion. Only is there is a change that can be made in the Charter is this an issue for the Commission.

Ms. Sonnier asked if there was a reason the hearing examiner does not have to live in the county.

Mr. Howard discussed that the hearing examiner is an employee. Unless you reconsider the nature of the position, for example, as an appointee, residence is not an issue.

Ms. Sonnier announced that the Commission will begin its review of Article VI. Budgetary and Fiscal Procedures at the next meeting. Ms. Sonnier adjourned the meeting at 10:22 a.m.