

Charter Review Commission

Minutes

C. Vernon Gray Room

September 24, 2019

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

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

Ms. Sonnier opened the meeting at 8:34 a.m.

The Commission members approved unanimously the minutes of the September 4, 2019 Commission meeting. The Commission members approved unanimously the minutes of the September 19, 2019 public hearing with the edit to her name requested by Ms. Nolan.

Ms. Nolan discussed the issues that occurred regarding a quorum of Commission members at the public hearing on September 19, 2019. There was a quorum because Ms. Sonnier called in.

Ms. Sonnier discussed the importance of having a quorum for Commission meetings and public hearings. There was a concern about the meeting today regarding a quorum. She requested Commission members to let staff know in advance if they are unable to attend a meeting. The next public hearing will be on October 24, 2019.

Ms. Sonnier discussed that the written testimony submitted by Mr. Hurewitz at the September 19, 2019 public hearing is available.

Ms. Center discussed the recommendation of Mr. Hurewitz to require a 60 percent super majority of votes cast in favor of repealing the Charter rather than the current majority of votes cast on the question. She discussed that the recommendation makes some sense because of the nature of terminating a foundational document. She discussed if this is a pressing and valid concern that should be put on the ballot.

Mr. Walsh discussed his disagreement with the recommendation. The original Charter does not require a supermajority of votes cast on the question and neither does an amendment to Charter require a supermajority of votes cast on the question.

Ms. Sonnier suggested that discussion on this issue continue when the Commission members review §1003 of the Charter relating to its termination.

Ms. Sonnier introduced Ms. Jennifer Sager, Legislative Coordinator, County Administration. She explained that Ms. Sager would respond to the recommendations suggested by Councilmember Jung, Councilmember Mercer Rigby, and County Auditor Craig Glendenning, in addition to the questions submitted by Mr. Kohn.

Ms. Sager discussed that the Administration supports Councilmember Mercer Rigby's recommendation to § 214 of the Charter to allow the Council to investigate any "recipients of County funding" under its purview. She discussed Councilmember Mercer Rigby's recommendation to add prohibitions against employment discrimination in the classified service based on disability, color, national origin, age, occupation, marital status, sexual orientation, gender identity or expression, familial status, or person appearance to make § 709(a) of the Charter consistent with §12.200 of the County Code. It makes sense for the Charter and the Code to be consistent. She discussed the possible use of a cross reference to §12.200 of the Code. Ms. Sager discussed the support of the Administration to make the sections consistent.

Ms. Sager discussed the disagreement of the Administration with Councilmember Mercer Rigby's recommendation to amend § 606 to allow the County Council to increase, decrease, or delete any items in the County Operating Budget, except those required by the laws of this State or of this County, and except any provisions for debt service on obligations than outstanding or for estimated cash deficits.

The Baltimore City Charter does not have the recommended provision. If there is inconsistency, amendments can be offered. Ms. Sager is not sure what the issue is that the recommendation is trying to address. The Administration is starting to prepare the budget that is to be offered in April. It is a delicate operation. The Administration is concerned with this recommended change to the budget process.

Ms. Sager discussed the recommendations of Councilmember Jung to §§ 203, 204, 215, 405, 502, and 606. The Administration has no position on §203 regarding how the Council wants to administer its staff and no position on §204 regarding when the Council has to act as a body.

Ms. Sager discussed the recommended language for § 215. It is not clear what "inquiry" means. All the issues that fall under "inquiry" may not be known. The Administration does not support this change.

Ms. Sonnier discussed the ability of Councilmembers to contact department heads about audit matters. The members want to be able to contact department heads.

Mr. Skalny discussed the ability of Councilmembers to get the auditor's opinion without influence from the county executive. He is trying to interpret the intent of the recommendation.

Ms. Nolan discussed the intent of the recommendation as being broader. She asked if there was wording the County Executive would support. The County Auditor had a separate set of concerns. If you work for the Council, there is push back from the agencies. Is there some type of amendment from the standpoint of good governance?

Mr. Skalny discussed that it is unrealistic to expect there would never be communication between Councilmembers and County department heads.

Ms. Nolan discussed that the Councilmembers learn who they can call.

Mr. Walsh discussed that § 212 relates to the County Auditor and that § 215 relates to noninterference with the Executive branch. They are different provisions.

Ms. Sager discussed the recommendation from Councilmember Jung relating to § 405. The County Executive does not agree with the proposed change for the reasons that have been discussed.

Ms. Sager discussed the recommendation from Councilmember Jung relating to § 502. The County Executive has no position.

Ms. Sager discussed the recommendation from Councilmember Jung relating to § 606 having to do with moving funds between departments. The County Executive does not agree with this recommendation.

Mr. Kohn asked if the County Executive had any recommendations for changes to the Charter.

Ms. Sager discussed the recommendation of the County Executive to change from five years to three years the term of office of members of citizen boards.

Mr. Kohn asked about the amount of \$18,000 for compensation of the County Executive that is in the Charter. The Commission members discussed the compensation of the County Executive and that § 6.100 of the County Code provides for the compensation.

Ms. Sager discussed that the Charter provision specifying the amount for compensation of the County Executive is obsolete.

Mr. Walsh discussed that the Commission members were told that State law required a set amount for the compensation of the County Executive in the Charter when the Charter was adopted.

Ms. Jafri discussed that the Commission members know the current amount in the Charter is obsolete.

Ms. Sonnier discussed that we do not want to have to make an adjustment to the Charter when the salary changes again in the future.

Ms. Popp discussed that it is fine to leave as is as a base line with knowledge that there is a Compensation Review Commission that is also provided for in the Charter.

Mr. Kohn discussed the relevancy of \$18,000 in § 302(d) of the Charter.

Ms. Sager discussed a possible change to the Charter to require the County Executive to receive at least \$18,000 annually as compensation and allowances.

Mr. Kohn discussed § 302(h) that provides that if a County Executive is unable to perform the duties and responsibilities of the office for a continuous period of six months, the County Council may declare by two thirds vote that the office is vacant. He asked if there should be a lesser time period?

Ms. Sager responded that the County Executive has no position on this issue.

Ms. Sager discussed that the Commission members have received the Howard County Government Organizational Chart.

Ms. Sager discussed that the County Executive does not recommend any changes to § 903 of the Charter.

Mr. Kohn asked if the Hearing Examiner falls under the Board of Appeals.

Mr. Howard discussed the possibility that § 903 of the Charter does not include members of the Board of Appeals.

Mr. Kohn suggested adding a block for the hearing examiner on the organizational chart.

Ms. Popp discussed that the suggestion is outside the scope of the Commission.

Mr. Skalny agreed with Ms. Popp.

Ms. Sager discussed that the Commission meeting schedule will be in the County Executive newsletter.

Ms. Sager discussed the recommendations of the County Auditor. The County Executive has no position regarding suggested changes to § 212 regarding cooperation with the Auditor. The County Executive has no objection to the recommendation relating to fraud, waste, and abuse. The County Executive has concerns that the language relating to inspection of records would be too broad if the language “where necessary for the conduct of his or her office” were to be deleted. The County Executive has concerns with the recommended change to § 213 that would remove the authority of the County Executive to request a special audit. She discussed that no one knows what the future holds. The County Executive does not want to remove authority they may want in the future.

Ms. Sonnier discussed that on the Organizational Chart the County Auditor falls under the County Council. She asked the rationale for having the County Executive be able to order a special audit if the auditor falls under the County Council.

Mr. Skalny discussed that this falls under the concern about talking with department heads.

Mr. Walsh discussed if there is an internal auditor within the County Executive Office there should be an auditor solely under the purview of the County Council.

Ms. Sager discussed that the County Executive disagrees with the County Auditor recommendation to § 212 to grant the County Auditor the authority to conduct performance audits.

Ms. Sager introduced Dr. Holly Sun, Budget Director, Howard County Budget Office, who reviewed the budget process. She discussed that during the fall, County Executive agencies are provided guidance with an early reading of the economy and future indicators. Agencies takes a couple of months to work with their staff and submit a budget request to the Budget Office. The Budget Office works with individual agencies to craft a budget. There is a third round to make additional changes and balance revenues. She discussed the role of the Spending Affordability Advisory Committee that takes time in January through March to make general long-term projections for next year's funding level and any long-term policy recommendations with fiscal impact. The Capital Budget is submitted to the County Council on April 1 and the Operating Budget is submitted to the County Council on April 20. The Council has about one and a half months to work with the County Auditor to review the budgets. There are opportunities for department officers to answer questions, and there are multiple County Council work sessions. There is ongoing revenue forecasting. There are also federal implications to consider. The majority of funds go to personnel costs and debt service for infrastructure projects. Every year the Executive branch does its best to support the priority of funding education.

Mr. Leong asked when the third round occurs.

Dr. Sun responded that the third round is an internal process when the County Budget Office works with the budget teams in the County offices and agencies to make changes in response to revenue forecasts.

Mr. Leong asked about the Councilmember recommendation for authority to delete items from the budget.

Dr. Sun discussed that the authority to delete items exists. The County Council has authority to make limited changes. The Budget Office works with the Council to check with departments and nonprofits regarding these changes. Dr. Sun discussed issues of risk management. There is a risk to the potential solution to get to where you want to be.

Mr. Kohn requested a written response from the County Executive to the questions asked.

Ms. Sager responded she will provide a written response.

Mr. Kohn asked if the positions of the County Executive that Ms. Sager discussed have been shared with the Councilmembers.

Ms. Sager responded that they have not been shared with the Councilmembers.

The Commission members discussed Article VI. Budgetary and Fiscal Procedures.

Ms. Sonnier asked for an explanation of the "budget message", and if it needs to be defined in the Charter.

Dr. Sun discussed that the budget message is a transmittal message in the front of the Budget Book. It is a message to the public and the County Council that highlights the priorities of the budget.

Mr. Gwynn discussed that § 603(c) lists the contents of budget message.

Ms. Sonnier discussed if § 602 (b) that requires publication in a newspaper should be amended to include online publication as well for the same duration.

Ms. Popp discussed conducting a search for the word “newspaper” in the Charter and for each reference to “newspaper” specifying “online” as well or a generic word that references broadly electronic means or format and including this in the Commission recommendations.

Mr. Skalny found seven places when he did a search.

Mr. Leong discussed if there is a definition of different types of money in the Capital Budget as opposed to other categories. How do you define how it is categorized and how it can be moved around?

Dr. Sun discussed that as you go through Article VI, the Article explains how funding can be moved across the categories. These transfers are also explained later in the Article. When there is an emergency is an example of when you can move money from one department to another.

Mr. Kohn discussed amending § 602(b), in the last sentence after “County”, by adding at least two to three weeks prior to the scheduled hearing because the public should know about these hearings.

Ms. Popp discussed that the language states “two successive weeks”.

Mr. Walsh suggested adding “in advance” after “published”.

The Commission members discussed § 603.

Mr. Kohn discussed if “Not later than seventy days prior to the end of the fiscal year” means calendar days or work days. He recommended calendar days.

Ms. Sonnier discussed that she reads the language as calendar days because it does not specify otherwise.

Mr. Klugh asked if calendar days is the usual assumption.

Ms. Sonnier asked Ms. Michelle Harrod, Deputy County Auditor, if 70 days is enough time for the Operating Budget to be submitted to the Council.

Ms. Harrod discussed that the time schedule for budget is very condensed. They would be happy with more than 70 days for the Operating Budget and more than 90 days for the Capital Budget. The budget is extensive. It is a massive budget and any additional time for review is certainly beneficial.

Dr. Sun discussed that other counties do it differently. The benefit in Howard County is that we have better revenue projections because there is another quarter of income tax reports that provides more accuracy for projections. The other issue is that the Board of Education has a

calendar that connects with the existing budget calendar. If any changes are made to the calendar, there are other linkages, including the Board of Education.

Mr. Kohn discussed that he would like to see a brief description of what happens if funding is not provided under § 603(b). This may not be a Charter issue, but he would like information.

Dr. Sun discussed that the out years are more of an aggregate wish list of what will happen than what the reality of the future years will be. It is a difficult exercise each year. It is more an exercise of what can possibly be achieved.

Ms. Harrod discussed that the County Executive has stated the goal to make the Capital Budget more realistic. She agreed that it becomes a wish list, and there becomes a public outcry when a plan has been projected and then reality hits and the plan is cut. Ms. Harrod discussed that she would appreciate any clarification in the Charter that can be made.

Mr. Skalny discussed his concern with making changes to § 603(b). He discussed that it is a political issue when talk about doom and gloom of what could happen.

Mr. Leong asked what other counties do with the out years.

Dr. Sun discussed that there are other counties that have a multiyear plan that matches more closely with fiscal capability. In Howard County, the overall level of what could happen can result in significant cuts that affect expectations.

Ms. Sonnier requested that any suggestions for changes be submitted to the Commission.

The Commission members discussed § 604.

Ms. Sonnier commented on the reference to “electronic medium”.

The Commission members discussed § 605.

The members discussed adding “at least 14 days in advance” to the language requiring the Council Administrator to publish notice of the public hearing on the budget.

Mr. Walsh discussed the need for language that addresses electronic publication.

The Commission members discussed § 606, and that Councilmembers have suggested changes to this section.

Mr. Kohn discussed the language “The Council shall have no power to change the form of the budget as submitted by the Executive...”.

Ms. Nolan discussed that this is a complex legal issue that comes up each year that the Office of Law may want to address in the future.

Mr. Gwynn agreed that he would address this issue in the future.

The Commission members discussed § 607 regarding distribution of the budget free of charge to the press and the definition of “press”.

Ms. Sonnier discussed the cost that is charged for a copy of the budget to other people.

Mr. Skalny discussed that if electronic copies are made available, it is available to everyone.

Ms. Holmes discussed adding language for electronic publication.

Mr. Gwynn discussed that the section is consistent with the Public Information Act. The press is not charged because the press provides a public benefit.

Mr. Howard discussed how to make a distinction of who is the press. "Press" is not well defined.

Mr. Gwynn discussed that there is a definition of press in the Public Information Act. It is the prerogative of the Commission to define "press" in the Charter.

Ms. Popp discussed that the language does not specify the type of "copy". It does not say "hard copy". The language may need to be changed.

Ms. Holmes discussed that the language may need to be changed to include an electronic copy because an electronic copy has no cost.

Mr. Leong discussed what happens if there is a multiyear project in the Capital Budget and asked if funding is technically included in the budget only for the first year.

Dr. Sun discussed that each county adopts an annual budget. Future years deal with anticipated revenues, and there are a lot of implications.

Mr. Leong discussed if the county awards a project that will take three years, what is the amount of the project that the county is obligated for in years moving forward?

Ms. Nolan discussed that the County cannot sign a contract that obligates funds for which no appropriation has been made. There is another provision in the Charter that contracts that require multiyear appropriations need to be approved by the Council.

The Commission members had no comments on § 608.

The Commission members discussed § 609.

Ms. Holmes discussed the recommendation of Councilmember Jung regarding the ability of the Council to move funds within the Operating Budget. Ms. Holmes would like to know if the Council has authority to move funds within a department but not to another department.

Dr. Sun discussed that she believes the recommendation refers to § 606 and not § 609. Section 609 discusses what happens after the budget is adopted and refers to mid-year transfers that are permitted within the same office or department and within the same fund without going to the Council. If move funding between departments, it is necessary to go back to the Council and make recommendation and ask for the Council's approval. She discussed that this is rare, and that snow removal is an example.

Ms. Hussain discussed the Ellicott City flood emergency as an example.

Dr. Sun discussed that during the life and death nature of the emergency in Ellicott City, they worked with the County Council and the Council Auditor's office on an emergency bill to address the situation in Ellicott City.

Ms. Harrod discussed that the emergency in Ellicott City was addressed with legislation, so there had to be and there were public hearings.

The Commission members had no comments on §§ Section 610 and 611.

Ms. Nolan discussed that § 612 is the section that requires certification of appropriations that have been made for contracts that she referred to earlier.

The Commission members had no comments on § 613.

Mr. Kohn requested the definition of "utility" in § 614(a).

Ms. Harrod discussed that these are typically water and sewer funds.

Mr. Kohn discussed adding a definition of "utility" in § 601.

Ms. Sonnier requested that Ms. Harrod provide a definition of "utility".

Ms. Harrod discussed that she will provide a definition of "utility".

The Commission members had no comments on §§ Sections 615, 616, 617, and 618.

Ms. Sonnier adjourned the meeting at 10:24 a.m.