

TESTIMONY BY THE COUNTY EXECUTIVE MARC ELRICH

On the Proposed Amendment to County Charter - County Attorney - Removal Procedures

July 26, 2022

My name is Ken Hartman, Director of Strategic Partnerships, speaking on behalf of County Executive Elrich.

The County Executive agrees it is important that the County Attorney serves and is respected by both branches of government. Ensuring the Council has a role in the dismissal of the County Attorney furthers this goal and is compatible with the charters of our neighbors Howard County and Frederick County.

The Executive believes two amendments to the proposal must be adopted. First, the Executive recommends language to enhance the role of the County Attorney from “a legal advisor to the Council” to “the legal advisor to the Council.” This change reinforces the equal importance of the County Attorney to both branches. In our survey of the charters of Anne Arundel, Frederick, Howard, and Prince George’s counties we found none make the distinction in the County Attorney’s role that we do. Without this change, a County Attorney could find their position jeopardized if they do not concur with Council’s separate, independent legal advisors.

The Executive proposes the Charter specify, as does Howard County, that the term of office for the County Attorney run with the term of the County Executive. This would allow new Executives and new Councils to avoid having to pursue legislative action to make key personnel changes. Without such an amendment, a County Attorney could be unintentionally given a de facto lifetime appointment.

The Executive does not support Charter-mandated deadlines for Council and Executive concurrence with dismissal actions. Not all processes need to be spelled out in the Charter. Neither Frederick nor Howard counties stipulate a schedule. Additionally, time limits can be difficult to meet during certain times of the year due to the legislative calendar.

Finally, a Charter Review Commission review was not performed on this amendment and could help identify additional changes that could prove beneficial, such as minimum qualifications for the County Attorney and dismissal in case of disbarment. The Council may wish to consider delaying action on this amendment to ensure adequate vetting by the Commission.

Thank you for your consideration of this testimony.

CE Recommended Charter Amendment Language:

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] the 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 [but, upon request, shall be entitled to a public hearing before the Council prior to dismissal from office.] for a term concurrent with the term of the Executive. The County Attorney may be removed from office during his or her term by either the County Executive with the consent of a majority of the County Council; or a two-thirds vote of the entire County Council with the consent of the County Executive.

Enclosure: Charter excerpts from neighboring jurisdictions.

<p><u>HOWARD</u> <u>COUNTY</u> <u>CHARTER</u></p>	<p>Section 405. THE OFFICE OF LAW. (a) THE COUNTY SOLICITOR. The Office of Law shall be administered by the County Solicitor. Prior to his appointment, he shall have been a resident of the County for at least two years, a member in good standing of the Bar of the Court of Appeals, and shall have been actively engaged in the general practice of his profession in the State of Maryland for at least five years.</p> <p>(b) POWERS AND DUTIES. The County Solicitor shall be the legal advisor of the County and of its several offices, departments, boards, commissions and other agencies. Except as otherwise provided in this Charter, no office, department, board, commission, agency or branch of the County government which receives County funds shall have any authority or power to employ or retain any legal counsel other than the County Solicitor. The County Solicitor shall also be the legal advisor and legislative draftsman for the Council. He shall, upon request, give advice and opinions upon any legal questions affecting the interests of the County when the same are submitted to him: (1) by resolution of the Council, (2) by written request of the Executive, or (3) by written request, approved by the Executive, of the head of any office or department in the executive branch or any board, commission or agency. All deeds, bonds, contract, releases, agreement, advertisement bids and other legal papers, documents and instructions involving the interests of the County to be executed and approved by any officer of the County shall be submitted to the County Solicitor and shall be approved by him as to their form and legal sufficiency in compliance with the laws and conditions under which executed. The County Solicitor shall have the right of access at all times to the official records of any office, department, board, commission or agency of the County. The County Solicitor shall have such additional legal duties as may be prescribed by directive of the Executive act of the Council not inconsistent with this Charter.</p>	<p>Removal from office:</p> <p>Section 405. The Office of Law. (f) Term of office for the County Solicitor. The County Solicitor shall serve at the pleasure of the Executive and the Council for a term concurrent with the term of the Executive. The County Solicitor may be removed from office during his or her term by either: (i) The Executive with the consent of a majority of the Council; or (ii) A two-thirds vote of the entire Council.</p> <p>If the County Solicitor ceases to meet the qualifications set forth in Section 405(a) of this Charter, or is convicted of OR PLEADS NOLO CONTENDERE TO any FELONY OR crime involving moral turpitude, he or she shall immediately forfeit his or her office.</p>
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<p><u>FREDERICK COUNTY CHARTER</u></p>	<p>Section 411. County Attorney (a) The Executive shall appoint a County Attorney, subject to confirmation by the Council. The County Attorney shall be the chief legal officer of the County and conduct all the law business of the County. The County Attorney shall be a legal advisor to the Executive, the Council, all County departments, agencies, offices and other instrumentalities of the Government...</p> <p>(b) The County Attorney, with the approval of the Executive, and as provided in the Budget, may appoint assistants to serve as members of the legal staff or employ special legal counsel. The County Attorney and the staff of the office shall engage in no other law practice.</p>	<p>Removal from Office:</p> <p>Section 411. County Attorney (a) ...The County Attorney shall serve at the pleasure of the Executive and the Council. The County Attorney may be removed from office by either: (1) the Executive with the consent of five (5) members of the Council; or (2) upon a vote of at least six (6) Council members.</p>
<p><u>PRINCE GEORGE'S COUNTY CHARTER</u></p>	<p>Section 5. - Office of Law. There shall be an Office of Law headed by the County Attorney. To the extent permitted by State law, the County Attorney shall be the legal advisor to the County Executive and all agencies that receive or disburse County funds. He shall also be the legal advisor and legislative draftsman of the Council, unless the Council shall specifically direct otherwise. He shall represent the County in all actions in which the County is a party. He shall be responsible for all County activities directed toward the civil enforcement of laws for the protection of consumer interests. He shall appoint necessary assistants. With the approval of the County Executive and subject to budget limitations, he may engage attorneys on a temporary basis for extraordinary work.</p>	<p>Removal from Office:</p> <p>No specific language on council role regarding removal from office.</p> <p>Section 402. - Executive Powers and Duties. (4) appointing the head of each agency of the executive branch, subject to confirmation by the Council as required by Section 322 of this Charter, and removing the same at his discretion</p>

<p><u>ANNE</u> <u>ARUNDEL</u> <u>COUNTY</u> <u>CHARTER</u></p>	<p>THE OFFICE OF LAW</p> <p>Sec. 525. The County Attorney. The Office of Law shall be administered by the County Attorney. The County Attorney shall be a resident of the County and a member in good standing of the Bar of the Court of Appeals and of the Circuit Court for Anne Arundel County and shall have been actively engaged in the general practice of his profession in the State of Maryland for at least five years prior to appointment. The County Attorney shall serve on a full-time basis and shall not engage in the private practice of law while County Attorney.</p> <p>Sec. 526. Powers and duties of the County Attorney. (a) The County Attorney shall be the legal advisor of the County and of its several offices, departments, boards, commissions and other agencies. Except as provided in Sections 314 and 528 of this Charter, no office, department, board, commission, agency or branch of the County government which receives County funds shall have any authority or power to employ or retain any legal counsel other than the County Attorney. The County Attorney shall also be the legal advisor and, if requested, legislative draftsman for the County Council. The County Attorney shall supervise the election of the nominees of the classified employees as provided in Section 520 of this Charter. The County Attorney shall issue upon request, give advice and opinions upon any legal questions affecting the interests of the County when the same are submitted: (1) by written request of a County Councilman, (2) by written request of the County Executive, or (3) with the approval of the County Executive, by written request of the head of any office or department in the executive branch or any board, commission or agency. All deeds, bonds, contracts, releases, agreements, advertisements, bids and other legal papers, documents and instructions involving the interests of the County to be executed and approved by any officer of the County shall be submitted to the County Attorney and shall be approved by the County Attorney in writing as to their form and legal sufficiency in compliance with the laws and conditions under which executed. The County Attorney shall have the right of access at all times to the official records of any office, department, board, commission or agency of the County. Before the County Executive signs any ordinance passed by the County Council, the County Attorney shall review the ordinance and advise the County Executive as to its legality. The County Attorney shall have such additional legal duties as may from time to time be provided by ordinance not inconsistent herewith.</p>	<p>Removal from Office</p> <p>No specific language on council role regarding removal from office.</p> <p>Article IV. The County Executive Sec. 405. Powers and duties of the Office (a) To supervise, direct and control, subject to law and the provisions of this Charter, the executive branch of the County and to appoint and remove the Chief Administrative Officer, Public Information Officer, Legislative Liaison Officer, Director of Programming, the County Attorney...</p>
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