

**Open Work Session
Charter Amendments
July 5, 2016**

Mr. Cannon asked Mr. Baker if he has reviewed the proposed charter amendments, to which Mr. Baker responded, yes. Mr. Kilmer asked Mr. Baker if four years ago when the charter amendments came from the Charter Committee, if the state had to review the amendments, to which Mr. Baker responded, no. Mr. Joe Holloway asked how does Council know if a charter amendment has been done is illegal. Mr. Baker said there is no agency that looks over the charter amendments. If the County discovers that it is illegal, then we need to correct it. Mr. Cannon said he is open to any comments the Council members have on the charter sections they would like to see amended or corrected. Mr. Cannon said he does not have a problem with putting 10 amendments on the ballot if that is necessary to have a more effective charter. He said there has been some school of thought that there should not be any more than three or four, but he does not have a problem with having more. Mr. Baker said it is mainly a logistics problem. The charter amendments will be sent to the state, not to be confused with Mr. Kilmer's question, and they have never hit a number that the State Board of Elections says that is way too many to put on a ballot. Mr. Baker said he thinks last time there were thirty or forty amendments, and he thinks all of them were good, they were merited, they were problems that maybe were not earth shattering problems, but they were problems that should be taken care of. He thinks the thinking was, maybe they should be combined like they did when they changed to the Executive form of government. There is basically just one question that says this is a redo of the charter instead of having a question on each section. If you have one charter amendment at a time, you have to address each section as a separate question. Mr. Cannon asked how do you let the public know when you say this is a complete redo of the charter. How does the public become informed as to the specific changes? Mr. Baker said the specific changes still have to be set forth in the resolution. The amendments have to be set forth in a separate resolution and then that is advertised five times, so the public clearly knows what each change is but they are combined into one question on the ballot. Mr. Baker said they looked at the amendments last time to see if any of them are really just technical issues, and most of them, to him, just crossed the line of being mere technicalities, such as changing spelling. Mr. Baker said Council can submit as many charter amendments as it wants to. His only concern, at this point in time, is the time frame. Essentially, we need decisions on each and every charter amendment Council wants to put on the ballot, and then we have to draft the resolution and make sure we have the wording exactly correct. Mr. Baker said the state law says the County Attorney has to certify the ballot question(s) to the Board of Elections so, if Council actually passes the resolution, it will be up to Mr. Wilber to certify the questions to the Board of Elections. Mr. Baker said that time frame is four to five weeks. He said it depends how far along Council is in the discussions. Mr. Baker said he has read the minutes, but he has not seen an actual draft of the changes. Mr. Cannon said the closest Council has come is what is in the Brief Book. Mr. Cannon said if there is enough information, he would like to see at the next work session a final draft of the charter amendments. Mr. Cannon asked Mr. Baker if it is a reality to have the charter amendments consolidated on the ballot, to which Mr. Baker said he thinks the three or four that have been mentioned would have to be separate. Mr. Cannon asked what

happens when we add other charter amendments. Mr. Baker said he may be able to come up with some language but that would be a major rewrite of the charter. Mr. Baker said if Council does it as one ballot, you may have different people that have different objections to different sections and it could go either way; the whole thing could go down because one person did not like one section, but they liked all the other sections. He said that is the one detriment in doing it as one question. Mr. Kilmer said he thinks if Council could keep them separate, that would probably be best. Mr. Matt Holloway said he does not think 10 is too many. If you look at the examples from 2012, the questions are short, one paragraph. Mr. Baker said he thinks there is a word limit on the question, so most of the time they are fairly short. Mr. Cannon said Council will work with Mr. Baker over the next week or so, so that when it comes back before Council in two weeks, Council will have a solid structure of what it wants to see and that will still be within the time frame. Mr. Cannon said with the suggestion that this information go to Mr. Wilber, he does not know if that was initially taken into consideration on the prior deadlines that are showing in the Brief Book. He asked Mr. Baker to please take a look at them and let Council know if anything needs to be changed. Mr. Baker said Council should adopt the charter amendments on August 2nd and Mr. Wilber has until August 15th to submit them to the Board of Elections, so he thinks Council is still within the time frame. Mr. Cannon said in two weeks they should see something in the form of a resolution to review. Mr. Baker said Council has seen the form of the resolution; it is all boiler plate. He would rather let Council see the changes of the Charter to a make sure Council is in agreement. Mr. Cannon asked if 10 questions is a good limit for everyone. Mr. Kilmer said he thinks 10 questions would be the upper limit. He does not know, however, if Council has agreed on any of the amendments yet. Mr. Hall said if Council agrees that 10 is a good starting point, then we can eliminate some of those 10, then there is no reason to add more until the next round. He said Council may end up with fewer than 10, but will not have more than 10. Mr. Joe Holloway asked if the County Executive will have any input into the 10 recommendations if he wants to. Mr. Baker said that is up to Council. The Council is taking upon itself to do the charter amendments but, if it wants the County Executive's input that is fine. Mr. Joe Holloway said he did not mean any input into the questions. He means, is there anything from the Executive's Office that they would like to put on the ballot. Mr. Joe Holloway asked how it would work if the County Executive would like to add charter amendment to the ballot. Mr. Baker said the County Executive would have to have the Council's permission. The Council is the only one that can put questions on the ballot. Mr. Joe Holloway clarified that it would have to be by a consensus of the Council if he wanted a question put on the ballot. Mr. Baker said it has to be a supermajority of the Council. It takes five votes to pass charter amendments. Mr. Hall clarified that if the County Executive has questions, he would submit them to Mr. Cannon and then Mr. Cannon would share them with the council members. Mr. Cannon said the Executive is aware that Council is holding work sessions on charter amendments, and he has a copy of the agenda. Mr. Kilmer said he would like to discuss the temporary administrative appointments section as that was something the Charter Review Committee talked about; it is section 414, page 118, in the Brief Book. Mr. Cannon said what Mr. Kilmer is referencing is making sure Council establishes a stronger restriction as far as the 90 day rule is concerned. Mr. Cannon said before it was felt that the way the Charter read was that after 90 days, the Council had the authority to request or be granted a right to extend a temporary appointment or not. An alternate interpretation has been as long

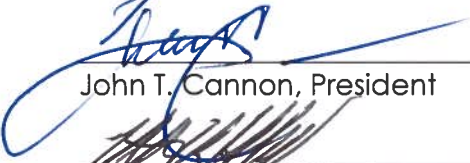
as that individual is qualified, as far as the charter is concerned, they can be a temporary administrative member for eternity, so Council is trying to put more teeth into that section so that if the County Council does not approve the particular individual, the Council has the authority to either ask that person to be dismissed or, in order for the person to continue in an acting position, it has to be approved by the Council, regardless. Mr. Hall said he thinks the County had a temporary acting department head in one department for at least a year and half. Mr. Joe Holloway said it was longer than that, probably three years. They just could not get anybody to move on it, so he thinks this is a good idea. Mr. Joe Holloway said he thinks the work being done was adequate. It was not that he was not qualified, he just did not want to move into an "at will" position. Mr. Hall said the Council was satisfied with his performance, and he thinks his performance was fine, but that is not the intent. Mr. Cannon said the purpose for the amendment is for the County Council to have the responsibility to try move things forward. Mr. Cannon said you do not keep someone as acting for a year and half no matter what the circumstances are. Mr. Kilmer said if Council needs to continue the acting appointment there is the ability to do that. Mr. Joe Holloway said with some of the positions, there are not people out shopping for the job. Mr. Cannon asked all council members if they agree to the proposed change. Mr. Kilmer said some of the proposed charter amendments that he sent to Mr. Cannon and the rest of the Council are things the Charter Review Committee had put forward, but the last Council, as Mr. Baker said, they did not want to clutter up the ballot. Mr. Joe Holloway asked if Council has the minutes from the Charter Review Committee, to which Mr. Kilmer responded they are still online. Mr. Kilmer said some of the wording for this section is slightly different but, in general, it is what the Charter Review Committee recommended. Mr. Cannon said the second item that was noted in the Brief Book, on page 119, referencing the change to the definition of reorganization. He said he is not sure if the definition of reorganization written in blue ink is where it needs to be. Mr. Matt Holloway asked who proposed that definition. Mrs. Hurley said the definition was taken from an organization found online through a Google search, so Council would have a starting point. Mr. Cannon said he thought the Charter is very clear in that you have to have a financial plan in place that shows exactly what the costs and benefits are; the pros and cons. Mr. Kilmer said the Charter does not say what a reorganization is and that is the problem. Mr. Cannon asked, in a reorganization, do you have to move 1 chair or 60 chairs to be classified as a reorganization. Mr. Cannon said this came up due to the substantial changes that were made in the Department of Law. As Council is aware, it was felt that taking a department completely out of the County and then transferring those responsibilities to a contract arrangement with an outside law firm seemed to be a substantial reorganization. Mr. Matt Holloway said he thinks the definition acts as a kind of catchall. It seems that what was just described would fit in the definition and trigger a reorganization. Mr. Baker said he thinks another place on the web adds a couple of different items to the definition that he can put together. Mr. Cannon said the proposed definition of reorganization says it is a management initiated rearrangement of reporting relationships. He does not know that there was a lot of rearrangement of reporting relationships in those circumstances. He thinks the definition needs to go further. Mr. Cannon said when you are reorganizing, he thinks it is more than an organization, it also about cost structure. Mr. Matt Holloway said he recommends for Council to wait and see what the extra words are that Mr. Baker said he can come up with to see if that helps narrow it down a little bit. Mr. Joe Holloway

said he has a question that came from a constituent concerning the situation going on with the health care benefits. He said this may be something Council may need to consider putting in the charter. He said the question is whether the Council can pass any legislation or law, or he will add further, to put in the charter about changing benefits for present employees and retired employees. Mr. Baker said the best place to add that provision is in the Personnel Manual as that is the current location for the retirees' benefits. Mr. Joe Holloway said he is talking about employees and retirees. Mr. Baker said the only way Council can change the Personnel Manual is if the Executive submits the proposed change first. If the Executive submits a change that needs to be made to the Personnel Manual, then Council can rewrite just about anything. He said that gets into a question of Executive versus Legislative, whether or not Council has the right to do that. Mr. Baker said right now it is written in the charter that Council cannot make a change unless it is presented to Council first. Mr. Joe Holloway clarified that the charter would have to be changed, to which Mr. Baker responded, yes, that is correct. Mr. Cannon told Mr. Joe Holloway that if he wishes to pursue a charter amendment, then to let Council know how he wants to move forward. Mr. Cannon said, on page 123, there are some technical or housekeeping changes regarding when vacancies occur. Mr. Kilmer said the Charter Review Committee talked about what happens when there is a vacancy such as what happened with Bob Caldwell and the term to be able to fill it during a special election at the next round of elections instead of having someone serve three years as an appointed member when you can have a special election to fill the seat, under certain conditions, at the presidential election. It was discussed specifically right after the passing of Councilman Caldwell. Mr. Cannon said he thinks it is a viable request. Mr. Cannon said that covers A, B & C. He then asked if Mr. Kilmer if he added a new section under 206, to which Mr. Kilmer responded, yes. The Charter Review Committee added another section in 206 for the County Council vacancies and, with the County Executive vacancy, B, C, D & F were written into that section. It accomplishes the same thing with the County Executive as it does with County Council members. Mr. Kilmer said, basically, if there is a vacancy within a certain time period then the County can have a special election during the presidential election. Mr. Cannon said he thinks the proposed change is worthwhile. Mr. Cannon then said the next item is section 311 where it says the County website or otherwise be published using electronic media. Mr. Kilmer said instead of using the bulletin board, it is published online. He said he does not know if this change is important if Council is looking to trim amendments. He said this came up at the Charter Review Committee, but he does not know if it is vital. Mr. Cannon said he agrees with what Mr. Kilmer is saying. An official bulletin board is not really something that exists anymore. It could be more of an official facebook site. Mr. Cannon continued he said, in section 315 A & B, the Council is looking for 45 days instead of 30 days. Mr. Kilmer said this is a new section that was added after he thought about what happened last year. They had a nominee submitted to Council for a department head, and then there was a snow day so they did not have a council meeting. There was one council meeting to vote up or down the nominee. If Council did not vote, it would have gone into effect automatically. He said he thinks the person's name was submitted between Council meetings. If there is 45 days to vote that would allow, if Council missed a meeting, the opportunity to give due diligence in considering someone. Mr. Kilmer said he felt it was very rushed. He said the request was not submitted at a Council meeting, and they missed a council meeting, and then all of a sudden Council had to vote on the person.

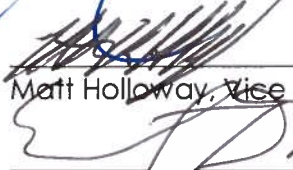
Mr. Kilmer said there was not any time to debate on the merits or really talk to the person. Mr. Cannon said this change this will allow for another meeting as well. He then asked for input from council members. Mr. Cannon then read the following sentence, "The County Executive shall submit any appointments during the legislative session of the County Council." He then asked what is the intent of that sentence. Mr. Kilmer said before the request was submitted to the County Council, and he is not sure if there is a formal submission process besides the Executive Office bringing the request over to the Council Administrator saying this is who I recommend, and it could be the day after a council meeting and that is when the clock starts. He said the proposed change is for the clock to start at a council meeting so the council members know about the request, and it is made public. Mr. Cannon asked if there is a way to incorporate letter C into A & B. Mr. Kilmer said that is fine. Mr. Cannon said he thinks section 407 is important. The way the charter is now, you have an appointment that is made by Council members to serve an entire term and the purpose of the change is to address that and get it back to the public. Mr. Cannon then said B, C, D, E & F all address, to a certain degree, something similar, the general election. Mr. Cannon asked Mr. Baker if there is a way to reduce the terminology. He then asked for clarification that there is a restriction on the number of words. Mr. Baker said that is only on the ballot question. The number of words in the actual charter can be whatever Council wants them to be. He said some of these can be fairly simple. The ballot question can be something as providing for a special election for County Executive and appointments to fill a council vacancy. He said that is the only word limitation, and he does not think Council need to worry about that in this section. Mr. Baker will take a look at the letters to see if there is a way to combine them. Mr. Cannon continued he said, in section 410, they are striking terminology. Mr. Kilmer said it says right now the County Executive can designate anyone in the executive branch to serve as temporary County Executive if he or she leaves, but this will just say the Director of Administration, not just anyone. He said the thought of opening it up to anyone is a bit broad as we can have literally anyone in the executive branch. This just limits it to the Director of Administration. Mr. Baker asked what did Council decide on regarding the budget submission. He said he did not see a decision on the budget section. Mr. Cannon said, as he recalls, Council wanted to get some idea from him or how to tighten it up. He said that it may not be necessary due to the fact that Council may have the last say in reducing tax rates, if possible, if it chooses, and that is the worst case scenario if there is a lack of cooperation or agreement. He would really be interested in knowing from his experience in how he thinks it would be best to tighten it up and come to some conclusion so that it is not left open. Mr. Baker said he will take a look at some of the more recent charters to see if they approached it in a different way but, truthfully, the way the language is drafted, in the normal operation, Council would have the opportunity to reduce tax rates and reduce both real property and personal property, reduces fees and that type of thing. He said, however, in Wicomico County with the constraints we have on us, Council really does not have that luxury. As long as to come up with a balanced budget, Council is using a part of the carry forward, part of the reserves, undesignated fund balance, Council can always balance the budget by taking that away. He said if the County Executive came forward without using that fund, Council, today would not have any choice. Mr. Cannon said he thinks that is what they thought would be the final solution is by reducing the reserves. Mr. Baker said if the Executive is using the reserve funds, but if he is not using the reserve funds, then

Council is stuck. He said at the very start of the Executive form of government, there was a gentleman's understanding that if there was a disagreement, the money would drop into contingency. Mr. Baker said dropping the money into contingency is really the best for both parties because the Executive can always come back and try to convince Council to spend it, and all Council has to do is appropriate the money out of contingency. If he does not, then the money goes into carry forward so it is available for the next year. You have not lost revenue if there is not an agreement to put the money in contingency. He said he has never seen this done before, but it is a thought he had, which is to put the language in the charter that if you reach the point that Council wants to cut the budget and there is no place to cut revenue, just provide in the charter that the money goes into contingency or undesignated carry forward so the revenue is not lost. Mr. Cannon clarified that would be done with Council's authority as opposed to a recommendation. He said Council already has the authority to make the cut, it is only when there is an addition they have to make a recommendation. Mr. Baker said the problem is when Council makes the cut, it is enacting a budget that is not balanced because you still have the same revenue but you cut the expenses. He said in that situation Council would be open to criticism, you are taxing us or you are generating a certain amount of revenue and you are only spending this much money. He can see the taxpayer saying why are you taxing us at this level but you are only spending this much money. Mr. Baker said, normally, the numbers are so small they really do not make much of a difference, but Council could still get that argument and legally speaking Council is supposed to pass a balanced budget. If Council suggested cutting \$500,000 and it is over issues Council wants more information, it is not sure, it wants the money to go someplace else, and the Executive says no. If the Executive says put the money into contingency until we can work it out, then you have a balanced budget but, if he says no, he is not going to put the money in contingency and because Council cannot just put the money in contingency without his approval, then you have an unbalanced budget unless the charter provides in that situation the money goes into a certain account. Mr. Baker said he has never seen that done before. The charter would provide a failsafe that says this is where the money goes if it is cut, and the Executive does not spend it somewhere else. Mr. Cannon clarified that the Council has the authority to add to contingency, to which Mr. Baker responded, no, it does not. Mr. Cannon said the Charter would give the authority to Council to add to contingency, to which Mr. Baker responded, yes. Mr. Cannon said that makes sense, and the other part is creating a realistic deadline as to when the budget would come back to Council. Mr. Baker said, in that case, it really does not make a difference because if Council cuts the budget, and the Executive does not come back, it is automatically going to go into contingency. Mr. Cannon said that might be a solution. Mr. Baker said he is sure it has never been done before, but it is worth taking a look at. Mr. Kilmer said he would be interested in seeing language drafted on that. Mr. Kilmer clarified that Council would talk about the amendments at the next meeting to decide which ones would actually go on the ballot, to which Mr. Cannon responded, yes.

**Open Work Session
Charter Amendments
July 5, 2016**



John T. Cannon, President



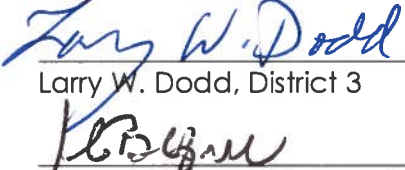
Matt Holloway, Vice President



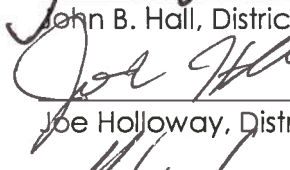
Ernest F. Davis, District 1



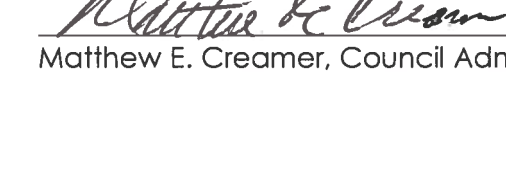
Marc Kilmer, District 2



Larry W. Dodd, District 3



John B. Hall, District 4



Joe Holloway, District 5



Matthew E. Creamer, Council Administrator