

**Open Work Session**  
**Review of Charter Review Committee Recommendations**  
**May 3, 2022**

Mr. Paul Wilber, County Attorney, came before Council.

Mr. Cannon said the sections they reviewed are in the brief book, and Section 202A, qualifications, they chose to review again. He said the recommendation was that they felt someone running for Executive needed to be at least 25 years old, and he believes there was some angst among Councilmembers regarding that.

Mr. McCain said he thought it originally was older than that and the Council went to 25, to which Mr. Wilber responded, he has notes that would have put a whole new section in 202 that would have set forth the qualifications. He said he thinks there was a lot of discussion about that, to which Mr. Cannon responded, he does not think there is currently a mention of age in the Charter, and the Committee recommended that there should be and it was recommended it be 25.

Mrs. Hurley said, if her memory is correct, the Charter Review Committee was looking to match the age requirement to the age requirement of the County Executive, and that currently is 25 years, so that is where the 25 years came from.

Mr. Hastings said he thinks they have enough to deal with and he does not think this is one that is that important. He said they just have to be a qualified voter, which means they have to be at least 18 years old. He said, personally, he does not have any desire to change it considering all the other potential changes they may need to make and the limited room on the ballot.

Mr. Cannon said he agrees with Mr. Hastings. He said he knows what they are really looking for are things they need to kill, things that may not be worth the expense of putting on the ballot.

Mr. McCain said the voters can make that decision if they think that is too inexperienced or too young. Mr. Cannon clarified, he was trying to say that, in the best interest of the people going to the ballot box that they not have 24 questions to review even though if changes are necessary they should be made. Mr. McCain said he can live with it staying like it is.

Mr. Cannon said they will drop this recommendation.

Mrs. Hurley said there were two parts to this. She said they recommended the age and then they also recommended the residency requirement. She said they are making the recommendation for the Council to live in Wicomico County for two years and one year within the district. Mr. Holloway said he thinks that needs to be left in.

Mr. McCain asked what it is currently, to which Mr. Wilber responded, he does not see any existing residency requirement. Mrs. Hurley said there is just a provision about the change in residency where, if they were to live outside of their district, they could not serve that district.

Mr. Holloway said there is only one problem with that. He said, if they have a Council person who has served four years and then redistricting comes along and they are redistricted into a different district, that person could not run, and that is a problem. Mr. Wilber said he thinks the Redistricting Committee tried to keep incumbents in their district, to which Mr. Holloway responded, but it could happen the

other way around. He said, at some point in time in one district within the next ten years there is going to be about probably 3,000-4,000 homes built, and that is going to dramatically change the population and could dramatically change the boundaries. He said they could have a Council person who has served, and if they got popped into another district due to that, they would not be able to run again.

Mr. McCain said another example is his own case where he lives in a district where he is a stone's throw away from the neighboring district, and he literally spends more time in the neighboring district. He said he is just a little pocket in Ms. Acle's district in the part that is across the River, which is a little odd because most of it is on the west side of the County, but he is in the little pocket that jumps across the River. He said he could move down the street a little bit and be in another district, so he should be able to run in the district if he just moved there three months ago. He said, plus, if they file, they have to live in the district when they file, which is eight months ahead of the election, so they would have to be in that district before they file.

Mr. McCain then asked Mrs. Hurley to repeat the recommendation from the Committee. Mrs. Hurley said it would be two years in Wicomico County and one year within the district.

Mr. Hastings clarified, the suggestion is to add that language and that would go on the ballot.

Mr. Holloway said he would do the two years for Wicomico County. Mr. McCain said he likes that they have to live in the County and he thinks that is important.

Mrs. Hurley said she wants to point out that in the Charter it currently says that no member of the County Council should be required to vacate Office by reason of any change in the boundary lines of his Councilmanic District during the term. Mr. Holloway said that does not count for the election.

Mr. Holloway said he thinks they just need to leave the two year residency in the County.

Mr. Cannon asked, why should someone have to live in Wicomico County for two years? What if Elon Musk came to Wicomico County and wanted to run for County Council? He said he is more than qualified, so why would he have to be here for two years? Mr. Holloway responded, they should know something about the County they are going to represent. Mr. Cannon said the voters would vote them out if they did not think they deserved it. He said he thinks it is the voter's decision, not this Council's.

Mr. Holloway said he will say it like Mr. McCain does – these people recommended this; that is what Mr. McCain says all the time. Mr. McCain responded, he thinks they are finding themselves in the position of being fine with the Committee's recommendation, but they are in the situation of whether it ranks high enough to make it to the ballot.

Mr. Cannon said he thinks there was not a two-year requirement, not just since they have had an Executive Form of Government in 2006, even before then, and the County has done quite well. He clarified, he does not think there has been any damage from not having the two-year requirement. Mr. Holloway said he thinks they did quite well before 2006 before they had the County Executive.

Mr. Cannon said the question is whether they want to do the two-year residency. Mr. Hastings said, as nice as it sounds, he does not think it rises to the level of being important enough to go on the ballot, in his opinion, but, then again, he is only lukewarm on this.

Mr. Holloway said he is neutral on this. Mr. Davis said he does not think they need this. Mr. McCain said he is neutral.

Mr. Cannon asked if they decided about 25 years old, to which Mr. Wilber responded, they decided to leave that alone.

Mr. Cannon said 202C is a really important one and he thinks they deferred to Mr. Wilber to review it with the Attorney General. He then read: *No person shall hold Office as a member of the County Council while he or she holds any other Office or employment for profit of or under the State or the County.*

Mr. Cannon said some people were saying that means teachers could not do it, or maybe a police officer or firefighter. He said he knows Mr. Hastings had some concerns on that.

Mr. Hastings said multiple people have brought this up, but, once again, he kind of feels lukewarm and he thinks they want more folks to be able to serve, if that is what they want to do.

Mr. McCain asked if Mr. Wilber discussed this with the Attorney General, to which Mr. Wilber responded, there are a couple of Attorney General opinions. He said the key words in the Charter would be office for profit, which is what has been defined. He said the one Attorney General opinion that had a lot of information was about a part-time professor at a university in Maryland, and that was not considered to be an office for profit because that person did not receive a commission, take an oath, or exercise any portion of the State's sovereign power and was found not to hold an office for profit. He said, to use the example of a teacher, that is an employee of the State or the County, but he does not think a teacher has a commission, takes an oath, or exercises a portion of the State's sovereign power, so he would not consider a teacher to be an office for profit.

Mr. McCain said he used to have to go to a lot of Council meetings in the municipalities and in Delaware and on the Eastern Shore, but a lot of the cities have teachers on their local Board or Council. He said it is the same thing in Delaware when he is at meetings, and he knows a couple of towns that have teachers as mayors, so it just seems like it would be odd that Wicomico would do that because it is not for profit. He said he does not even know how they are defining that term "for profit."

Mr. Wilber said, when they use the words "does not receive a commission or take an oath," that, to him, suggests something other than a State or County employee and is some higher level.

Mr. Cannon said, as it is right now they are okay, to which Mr. Wilber responded, he thinks they are excluding a very small category of people with that language.

Mr. Hastings asked if they are saying that educators can run, to which Mr. Wilber responded, that is what the AG opinion said. Mr. McCain clarified, right now, as their Charter is written, to which Mr. Wilber responded, yes. Mr. Hastings said he has heard for years that it is not allowed. Mr. McCain said he hears all the time that teachers want to run and think they cannot run for County Council because they are a teacher. Mr. Davis said he wonders if it is someone on the other side saying they cannot do it, to which Mr. McCain responded, no, he has just heard that teachers cannot run, but sometimes things get a life of their own. He clarified, someone could have said that 25 years ago and everyone has been repeating it ever since.

Mr. Hastings asked, what about another County employee? He further asked if this language needs to be stronger, to which Mr. Wilber responded, where they might run into an issue with another County

employee would be under ethics and making decisions where they might be conflicted because of holding a position in a County Department. He clarified, it might not prevent them from running, but it might restrict their ability to vote. Mr. Holloway said it has never bothered anybody before. Mr. Hastings said they could just abstain.

Mr. Cannon said 202D is referencing, if a member of the Council ceases to be a qualified voter of the County or is convicted of a crime involving moral turpitude, he forfeits the Office. He said he thinks they already corrected this, to which Mr. Wilber responded, it would be felony or crime involving moral turpitude, so it is the felony or they could have a misdemeanor involving moral turpitude, and both would exclude the Councilmember. Mr. Cannon clarified, this also involves the Executive in Section 409, to which Mr. Wilber responded, yes.

Mr. Cannon asked the Council's take on changing the terminology to include felony.

Mrs. Hurley clarified, the language is actually already in Section 409, Council is just matching it.

Mr. Cannon said they would be changing D for the County Council so it is the same terminology as the County Executive. He then asked what Council thinks as far as the level of importance, to which Mr. McCain responded, it is exactly the same. Mr. Cannon clarified, it is not now, but this would be if they have felony or moral turpitude. He clarified, the Charter amendment would only reference the County Council because the Executive already has that statement, so this is only to change this one section.

Mr. Hastings asked if this would be its own item on the ballot, to which Mr. Wilber responded, yes. Mr. Hastings said the current law is restrictive enough that, if they are convicted of a crime involving moral turpitude, they are saying they would just match it by adding a felony or with crime of moral turpitude. He said he thinks moral turpitude is broader and felony is specific. Mr. Mitchell said it is usually lying, cheating, or stealing.

Mr. Holloway said a few years ago there was a gentleman signed up to run for County Council who actually had been in federal prison for embezzlement. He said someone at the Election Board asked if he could run and they said yes, he could run and he could win. He then asked if this would eliminate that, to which Mr. Wilber responded, this is forfeiture. He clarified, this is if they are in Office and are convicted of a felony or a crime or moral turpitude, and then they would lose the Office. Mr. Holloway said, so that person could have ran and won and served even though he was a convicted felon, to which Mr. Wilber responded, he believes so.

Mr. Cannon asked what moral turpitude includes, to which Mr. Wilber responded, it is basically lying, cheating, and stealing. Mr. Cannon asked, what about murder, to which Mr. Wilber responded, felony can be a broader group of crimes than just moral turpitude. Mr. Cannon said, so if they do not have it in here, then a Council person could Zoom every meeting from the State Penitentiary.

Mr. Mitchell said, in Virginia he practiced a long time and it is really common and they will always say it is lying, cheating, stealing, but he would think that most people would consider killing someone without a reason like self-defense to be morally inappropriate.

Mr. Cannon said he is just wondering whether they need to put this felony issue in here. He said he was just kind of saying that in gest, but they are saying if someone commits a felony, which is more serious than moral turpitude, they could still be on the Council, to which Mr. Mitchell responded, it is different.

He said, if they were on the Council and committed the crime or were convicted of it, then they would forfeit their seat. Mr. Cannon said, as it is now, they could be convicted and still stay on the Council, to which Mr. Wilber responded, yes, as it is now it has to be a crime just involving moral turpitude. Mr. Cannon said right now someone could be convicted of a felony and still serve on the County Council.

Mr. Hastings clarified, felonies do not necessary involve moral turpitude, to which Mr. Mitchell responded, some do not. He said generally moral turpitude is lying, cheating, stealing, and he would think if someone killed someone, but there could be things that are felonies that are not routinely considered moral turpitude, such as a drug offense.

Mr. Cannon asked, as a legal opinion, do they feel that a person committing a felony should be put in here to restrict them from continuing to serve on the County Council; do they want a felon on the County Council, to which Mr. Wilber responded, that is the question. Mr. Cannon said then this probably needs to be put on here. He then asked if that is okay with everyone, to which it was. Mr. Cannon said that is one they will keep on the list for right now.

Mr. Cannon asked, when they reference Section 409, there is nothing being recommended for a Charter change, it was just a reference to compare to 202D, to which Mrs. Hurley responded, it is on the list because there was discussion as to whether that section should be expanded.

Mr. Cannon said next is Section 204 regarding compensation and it says consider adding the Sheriff.

Mr. Hastings said this is basically referring to when they do a salary study with the Compensation and Allowance Commission that they also include the Sheriff.

Mr. Wilber said the State law on this right now is the Sheriff receives an annual salary the greater of \$58,000 or the salary set by the County Council of Wicomico County before the start of the term of Office. He said he thinks the question for the Council is if they want to receive the advice of the Compensation Commission on the Sheriff's salary, or just set it themselves.

Mr. Cannon said it seems very odd that they put it in the Charter that the Compensation Commission deal with the Council and the Executive, but completely seem to forget to even include the Sheriff in that. He said, again, in order to not have too many questions on the ballot, it has been working just fine with the Commission agreeing to accept the Sheriff as one of the obligations to evaluate, and he does not think a Charter amendment is necessary to continue with that.

Mr. McCain said he is not real sure he agrees with that just because they are basically doing something that they are not actually obligated to do.

Mr. Wilber agreed and said it is more of an ask by the Council and they agree to take it on.

Mr. McCain said the next Commission could say they are not going to do it, to which Mr. Cannon responded, the Council can charge them with that responsibility. He said they do not have to have a Charter amendment to make that demand of the Commission, they can say they want them to include the Sheriff. Mr. Wilber said it is a "shall" for the County Council and the Executive, and the Council asks them for the Sheriff. Mr. Cannon said they can demand that. He said the Commission does not care about the Charter per se; the Commission is doing what they have been charged by the County Council to do, and the County Council may not have the authority by Charter to say that, but, as an elected Body, they can obligate a Commission to do anything they want. Mr. Wilber asked what the likelihood is

that the Commission would say it is not in the Charter so they are not going to do it, as he thinks that is quite unlikely.

Mr. Cannon said it would be nice to tie up all the loose ends and have it here, but, again, it is a question of whether they want to put it on the ballot.

Mr. Holloway said he would say to leave it off. He said they can ask the Commission to do it, and future Councils can ask them to do it.

Mr. Hastings said he does not have strong feelings, but he agrees with Mr. Holloway.

Ms. Acle said she does not see a reason to put it on there.

Mr. Cannon said Section 205A and B is in reference to vacancies. He said the recommendation was to remove requirements for special election and change "shall" to "may" for four nominees from the Central Committee and recognize unaffiliated.

Mr. Holloway said they should let Ms. Acle talk about this one.

Mr. McCain said he just thinks it is a simple change at the end of the day. He said they have talked about this before, and he will preface this that they are not saying Ms. Acle was not the person, he is just talking in general that if there are 15 people who applied, there might be another candidate they would like to consider other than the four submitted to the Council.

Mrs. Hurley clarified that Council has already talked about this and gave a consensus. She said the consensus was to remove that requirement. Mr. Wilber said he drafted a sentence for this. He then read: *A vacancy of an unaffiliated Councilmember shall be filled by another qualified unaffiliated person.*

Ms. Acle asked if this was not to open it for everyone to apply, to which Mr. Wilber responded, they need to fill from the same party, but they could have an unaffiliated Council person.

Mr. McCain said at this point they are talking about "may" versus "shall."

Mrs. Hurley said Council already agreed to all of that, and the question now is whether this is a priority. Mr. McCain said he thinks it is.

Mr. Hastings said they have to have the unaffiliated piece because that is most likely going to happen as 21 percent of the current Wicomico County folks are unaffiliated.

Mr. Holloway said this could be simplified pretty easy. He then suggested, other than instant death, let whoever is vacating the seat pick their replacement. He said, if it was an accidental death, then the Council could pick somebody. He said, for example, when Mr. Kilmer left, he could have picked the person to replace him. Mr. McCain said he disagrees with that more. He asked, how they would do that?

Mr. Cannon said he did not think this section had anything to do with appointing anyone, this had to do with whether or not the person appointed would have to go through a reelection, to which Mr. Wilber responded, that is the second piece of this.

Mr. Holloway said, if the Council appoints someone, they would not have to go through an election.

Mr. Cannon said they just put this on the ballot a few years ago. He said Ms. Acle's example is a perfect example. He said Mr. Kilmer initiated this, but the concern was there could be someone who gets appointed within the first year, and that person sits through an entire three more years and they were not really elected by their constituency, they were appointed by the Council, and Mr. Kilmer felt that it would be appropriate to have that individual who was appointed in only the first year to have to go to a special election so the people could decide whether they wanted to keep that individual or have someone else as their representative. He said it was felt at the time that having an appointed representative for a three-year term was too long. He clarified, he is just giving them the history.

Ms. Acle said, once they actually went through it, she thinks, from what she was hearing, it is a very different tone. She said the person just got in Office and now they are going through a campaign cycle, and the citizens are trying to find someone to represent them, so it was not the best choice to put on the ballot.

Mr. Hastings clarified, that is Section 206, and they are still on 205. He said that will be addressed in Section 206 under special elections.

Mr. McCain said they have to decide what they are going to do with 206, and then they will decide the language for 205.

Mr. Hastings said he does not like the special election. He said he does not like what Ms. Acle had to go through as that seemed not helpful.

Ms. Acle said it is also the same with the Board of Education, and keep in mind that she did not have someone running against her, but campaigns are expensive and they are asking someone to do that twice in a two-year period. She said they might not even get candidates who want to do it.

Mr. Cannon asked Mr. Wilber to help clarify this. Mr. Wilber said, on 205A he thinks there is a consensus to have a sentence about an unaffiliated Councilmember because that could happen. He said then the second question is involving 206 and the last sentence of 205A, which is whether Council wants to have a special election to fill a vacancy, or do they want that to be a Council appointment, or, as Mr. Holloway said, the person who goes out appoints the next person in.

Mr. Holloway said he sees what they have been through prior to when they appointed Ms. Acle and when they tried to appoint a School Board member. He said doing appointments is tough because the first thing they have to remember is there are two different parties up here. He said then, if they get into unaffiliated, that really complicates things. Mr. McCain said that is just the way it is, and it is the Council's job to make appointments, to which Mr. Holloway responded, he understands that. He said he is looking at it to be more fair for the citizens and really more fair for the person who either has to run for the election or gets appointed. He said he understands that when they walk in with three years to go it is three years of somebody who has been put in that position without being elected, as Mr. Kilmer said, but, on the other hand, to run like Ms. Acle had to do seemed blatantly unfair too. He then suggested going back to keeping them appointed or leave it like it is.

Mr. Davis said he thinks there should be a special election.

Ms. Acle said she thinks they should be appointed.

Mr. Hastings said he thinks they should be appointed for the full term with no special election.

Mr. McCain said he is kind of leaning towards the appointed and one option would be to also deal with the timeframes. He said, it seems a little odd, which is sort of what happened, but three and a half years is a long time for somebody to serve as appointed. He clarified, he certainly understands the whole thing about having to run twice in a two-year period. Mr. Cannon said that is the responsibility of the Central Committee to explain to all of the people who are applying for the position. Mr. McCain said there are pros and cons to both, so he is definitely very middle of the road, and he does not have a burning desire for either direction. He clarified, it is not ideal, but, unfortunately, it is not ideal anyhow when they have someone leaving.

Mr. Cannon said he would like to see the person be elected.

Mr. Dodd said he thinks they should be appointed.

Mr. Holloway said he thinks they should be appointed.

Mr. Cannon said they have four votes for appointed, so they will have to make a Charter change to strike any reference to being elected. Mr. Wilber clarified, it will strike out 206.

Mr. McCain said he guesses maybe he did not understand the question. He then asked if they are saying they are not doing any appointments, to which Mr. Cannon responded, no, appointments have to be done. He said they are saying, if a person is appointed, do they want to keep the election in place. Mr. McCain said yes, he wants to keep the election in place. He clarified, he wanted to make sure they were not abandoning the appointment and just doing a special election. Mr. Cannon then asked if Mr. McCain wants the appointment to stay or does he want to see a special election, to which Mr. McCain responded, he is voting to say it stays like it is as far as the special election.

Mr. Cannon clarified, the majority wants it to remain as is, so it will remain as is.

Mr. Cannon said the second part of this is with the Central Committee, and in this verbiage there is terminology *shall be filled by a qualified person submitted by the Central Committee*, and many of the Council felt that put them in a huge bind and "shall" should have been "may."

Mr. McCain said the process will still be the same, there will be four recommendations, but if the Council wants to consider a fifth candidate who applied, they could do that and they might appoint someone other than who the Central Committee submitted. He said, at the end of the day, the Council wants to appoint who they feel is the best person.

Ms. Acle said she does not agree with the Central Committee necessarily putting the names forward because it is definitely a delay and she knows citizens were not happy with not having representation for however long it took in that process. She said she also knows that, when there are two parties at play, it is difficult to get a consensus on something. She said she does not know if they can even do this, but it could be Councilmembers of the same party who would select the replacement, to which Mr. McCain responded, he would totally oppose that as they are a Council Body, so every Council person should get a vote. Ms. Acle said, at one of the Charter Review Committee meetings a gentleman made a really good point. She said he was one of the democrats and he said that when he was on the Council the intention was to pick someone who they knew was not going to win in the next election. She clarified, she is not saying that is everyone's mindset. Mr. Davis said they cannot do that because, when he first got on the Council, he was the only democrat here, so they cannot just say that the party would pick the next



person because there would not be anybody here. Mr. Hastings added, that would be the case if there was an unaffiliated. Ms. Acle asked if the County Executive was a democrat at that time, to which Mr. Davis responded, no. Mr. McCain said he just thinks that is too far removed from the whole intent. He said, at the end of the day, it is pretty simple, and he thinks it is just giving Council options.

Mr. Holloway said the Council does not have to choose somebody the Central Committee puts in front of them, to which Mr. McCain responded, yes they do. Mr. Wilber clarified, it says they "shall," and they are talking about changing that to may. Mr. McCain said they have to pick from the four they recommend, period. He said, if there was a fifth person the Council wanted to talk to it would not matter, they could not pick that person.

Mr. Hastings said it clearly states right now that they can ask again for more considerations, or could they ask why it is limited to four and could they say up to seven people from the Central Committee. He clarified, he is just throwing that out there. He said he is asking how much the Council wants the Central Committee to be a part of the process.

Mr. McCain said, at the end of the day the simple thing is to change shall to may, and that goes on all the time. He said he sees this a lot in other Councils and he is sure Mr. Wilber can attest to this that shall and may get talked about all the time. He said it is much easier dealing with may, and it is to Council's advantage as they are trying to appoint the best person possible, and he does not think they want limitations on that. He said most appointments are like that, and when the Governor makes appointments, and their School Board used to be like that when they had an appointed School Board, the local committee would make recommendations to the Governor, but he did not have to pick from those recommendations, he still had the option of picking someone other than who was recommended.

Mr. Cannon asked if everyone is okay with changing shall to may, to which there was a consensus.

Mrs. Hurley said, before moving on, just for clarification, was the recommendation for 205 to remove the requirement for the special election, to which Mr. Cannon responded, no, they are keeping the special election. Mr. McCain said it stays just like it is.

Ms. Acle said the Charter Review Committee recommended to get rid of it, but the Council is going to keep it. Mr. Hastings said they did not have a majority vote to not have the special election.

Mr. Cannon asked Mr. Holloway if he wants there to be a special election, to which Mr. Holloway responded, yes. Ms. Acle said Mr. Holloway said he wanted them to be appointed. Mr. Holloway clarified, appointed and then the election. Ms. Acle said Mr. Holloway said appointed until the next election, to which Mr. Holloway responded, that is not what he meant.

Mr. Cannon asked if Mr. Holloway wants the appointed person to remain for three years, or does he want a special election, to which Mr. Holloway responded, appointed. Mr. Cannon asked, if a person is appointed within the first 45 days, Mr. Holloway wants them to stay throughout the term, to which Mr. Holloway responded, yes.

Mr. Cannon clarified the vote. He said Ms. Acle wants to keep the appointed person in Office for the full term, Mr. Hastings says the same, Mr. Dodd says the same, and Mr. Holloway says the same, so that will be changed to get rid of the special election. He said, at the same time, they will remove shall and replace it with may. Mr. Hastings added, and add unaffiliated.

Mr. Cannon asked if they can put all of that in one vote, to which Mr. Wilber responded, that will all be in the question about Section 205. There was then discussion about how this will go on the ballot. Mr. Cannon said Mr. Wilber will figure out how to put this in. Mr. Wilber said his suggestion is to try to incorporate all this language so they all see the same changes underlined.

Mr. Cannon said Section 304C is next and Mr. Wilber was going to do some research in reference to a Council Administrator and Special Assistance, to which Mr. Wilber responded, there was an AG opinion that touched on this. He then read:

*In our view, the prohibition on final adoption of an ordinance, resolution, rule, or regulation bans the 1954 such action outside the course of a meeting, a matter not clearly addressed in the Open Meetings Act.*

Mr. Wilber said they can have closed sessions to discuss it, but ultimately he thinks there has to be a Resolution for the appointment done in open session.

Mr. Cannon said, to refresh everyone's memory, the reason Council had a real problem with this was it was very important for them to hire a forensic auditor, and Council certainly does not want to let the individuals who are most likely going to be investigated by the forensic auditor know Council is hiring a forensic auditor. He said this does not allow them to do that, which means Council would have to say publicly that they are hiring a forensic auditor.

Mr. Wilber said the problem is, as soon as Council does the hiring and that person begins their examination, the target is clear. Mr. Cannon asked, how can the Council in open session talk about what the justifications are for hiring a forensic auditor, to which Mr. Wilber responded, he is not saying the Council would do that, he is just saying they would put that Resolution out for a yes or no vote. Mr. Cannon asked if they would still be able to discuss it in closed session, to which Mr. Wilber responded, yes, as he thinks they are then in administrative closed session territory.

Mrs. Hurley said letter C mentions by Resolution. She then asked if they have to do it by Resolution? She said there are many contracts that the County enters into that do not come before the Council for approval, so is this something the Council could enter into a contract with, but not necessarily have it approved by Resolution, to which Mr. Wilber responded, he thinks to do it without having a Resolution they would have to strike "by Resolution," and then the question is just hiring or contracting to hire. He said his recommendation would be under most circumstances to do it by a Resolution, but it is not in the Charter in a special circumstance.

Mr. Cannon said he can see why it is required by Resolution for the Council to engage services. He said the only downside he sees is having to make it public, but, if Mr. Wilber is saying they can go into closed session to discuss the meat of the subject, then it sort of limits that problem.

Mrs. Hurley clarified, their discussions are not open to the public in closed session, but if they do it by Resolution, that is in public. Mr. Cannon responded, Mr. Wilber said the Resolution would be cut and dry and there would not be any descriptive vernacular, it would be just yes or no to hiring them. Mr. Wilber said, as soon as that Resolution is passed, then anybody who is paying attention will ask why. He said then, as soon as that person begins their forensic efforts, the cat would be out of the bag.

Mr. Cannon asked what Mrs. Hurley's concerns are on this, to which Mrs. Hurley responded, the situation they ran into with hiring the forensic auditor. Mr. Cannon clarified, Mr. Wilber said they could have had that forensic discussion in closed session with the details and then just simply said they were going to hire a forensic auditor. He said, whether or not the Resolution is passed on a Wednesday and the forensic auditor shows up on a Thursday, the cat is out of the bag anyway.

Mr. McCain said he is not sure this rises to the list to go on the ballot as there seems there is a way they can do it different than they did last time.

Mr. Cannon said he just wants to make sure the Council agrees because initially the Council wanted to remove this to give them more flexibility without having to go into open session, but he thinks Mr. Wilber has assured them they can do it, so it is not necessary to worry about it at this time.

Mrs. Hurley said it is just a rare situation. She said she thinks they had that situation come up one time.

Mr. Hastings said it is important though.

Mr. Cannon said, from what he understands, they are going to leave this as is, to which Mr. Wilber responded, they will leave it as is. He said hopefully it was a once in a forever situation.

Mr. Cannon said, skipping ahead to Bond Counsel in 312 and 313, what is being recommended has to be followed, to which Mr. Wilber responded, he will present Ms. Rader's recommendations and Council can read it, which is easier than trying to discuss it. Mr. Cannon asked if they will be able to understand it because he hates legal jargon, to which Mr. Wilber responded, it is the bond counsel world.

Mr. McCain said they already talked about this language, to which Mr. Wilber responded, Ms. Rader recommended language and he has inserted that and he has put "by Resolution" throughout so they can move these things more quickly. He said that will be in the write up he will send out to Council.

Mr. Cannon said Section 306 talks about action by Council that discusses being physically present. He said they asked Mr. Wilber to come up with language to allow visual attendance.

Mr. Wilber said, based on the last discussions, they talked about saying they must be physically present or visually present with the approval of the Council President due to extenuating circumstances to constitute a quorum. He said that seemed to be the gist of the discussion the last time.

Mr. McCain said he is okay with that, but is there anything at the State level that this would conflict with saying Councilmembers have to be present, to which Mr. Wilber responded, he does not think so. He said he thinks more and more governments are going to allowing present by electronic means.

Mr. Cannon asked what Mr. Wilber will bring forward because obviously being physically present is no longer something this world lives by, to which Mr. Wilber responded, the way he drew it up was physically present or visually present with the approval of the Council President due to extenuating circumstances, so it is not just physically or visually, there has to be an approval and a reason.

Mr. McCain said someone cannot just say they do not want to come to meetings.

Mr. Mitchell asked if they should allow more than just visually present, such as telephone conference. He said he just wrote bylaws for a corporation where they put in some electronic means for the person

to hear everything that is being said, and for the group to hear whatever the absent person is saying, but they do not have to see them.

Mr. Cannon said that is a good compromise. Mr. Mitchell said, from his research, he thinks it is important that the person can hear the group and the group can hear the person. Mr. Cannon said, if somebody has bandages wrapped on them and black eyes, he does not think they want to be on camera the whole time, so he thinks it would be good to say electronically.

Mr. Cannon said next is 314A. Mr. Wilber said this is the noninterference section, and he will give his thoughts based on what he heard. He said he does not understand the word "generally" in here, so he would strike that and he would add a letter C. He said he would add *The County Council may request information from the Executive Branch for Legislative matters.*

Mr. Cannon asked if that means from Department Heads because, to him, that sounds like they will have to do what they do now, which is go to the Executive. Mr. Wilber clarified, the Executive Branch includes all of those Departments. Mr. Cannon said his personal opinion is that it needs to be more specific because the key thing that they are trying to do is they do not want a Department Head to have eight bosses - seven Councilmembers and the Executive, and Council really gets that. He said they also do not want to create a conflict on that employee between what they may tell the Council and how they might have to answer to the Executive. He said that was the reason for the complete separation. He said, on the reverse side of it, it is really tough for a constituent to come to the Council as their Elected Official in their individual district and the only answer the Councilmember can give them is that they will have to talk to the County Executive because he cannot go to the Department Head. He said then they ask why they are the Elected Officials if the only person who can solve their problem is the Executive, so they wanted to kind of find a balance where the Councilmembers could go to Department Heads and express concerns, they just did not want the Council to browbeat the heck out of them, which, unfortunately, there will be Councilmembers who will do that. He said the City had a real problem with that for many years. He then asked where the common ground is, to which Mr. Wilber responded, he does not say information from the Executive, he says from the Executive Branch, which is trying to make it more inclusive, which is why he chose that word. He said then he had "for Legislative matters."

Ms. Acle asked how it works at the State level, to which Mr. Wilber responded, he can find out the answer as he wants to be sure of his answer before he answers that question.

Mr. McCain said the Committee did not make any recommendation on this, to which Mr. Cannon responded, the Council had a concern about this and they asked the Committee to address it. Mr. Hastings said the Committee voted on it and it passed unanimously to delete the word "generally" and insert the words "unless for the purpose of inquiry or information." He said that was the way the Committee addressed it.

Mr. McCain said the only question for the Council tonight is whether they want to add that, to which Mr. Cannon responded, he thinks they do.

Mr. Wilber said, when they read that wording in this Section, it would say the Council could attempt to supervise, direct, administer, or interfere. He said he appreciates the Committee's sentiment with what they came up with, but the wording is not right, so he put a letter C as a new sentence trying to accomplish the same thing so the Council can get information if they have inquiries.

Mr. Hastings said that still would not get at some of the issues with constituent services, to which Mr. Cannon responded, this would allow the Council that flexibility. He said he thinks they should reiterate in here that it is as long as the Councilmember is not in violation of the three prior sections. Mr. McCain said it already says that. He said he thinks there is a word missing, as he thinks there has to be some kind of reasonableness to the request or it has to be justifiable. He said, with what Mr. Wilber just read, he interprets it that he could call the Director of Public Works and say he wants something, and then the next day he could call again and say he wants something else, and it could go on and on. Ms. Acle asked if that has ever happened before, to which Mr. McCain responded, yes.

Mr. Cannon said sooner or later the Executive can pull rank and say that is in violation of the Charter, to which Mr. Wilber responded, yes, the Executive would probably turn off the spicket at that point. Mr. Cannon suggested amending B instead of adding C because that is the real restrictive part.

Mr. Holloway said they have had situations before where they could have Mrs. Hurley try to get information for them. He said his understanding was it is kind of like he can call County Roads and say there is trash along the side of a road, but he cannot call them and tell them to clean it up. He said that is kind of what he has done where he will call and tell them there is a problem and then they go take care of it. He said the other issue they had before, unfortunately, was that it got to the point where a prior County Executive did not even want the Council to talk to the Department Heads, to which Mr. McCain responded, that gets back to the cover letter that the Committee wrote to the Council about the generality of the Council should not be trying to change every item here. He said, at the end of the day, the two forms of government need to work together. He said a lot of this would be solved if they would all just simply work together. Mr. Holloway said the third part of that is, if there is a problem and the Executive's Office will not react or do anything, what do they do then, to which Mr. McCain responded, they bring it up at the election. Mr. Holloway said, in the meantime, the people having the problem have to wait until the election, and that does not make sense.

Mr. McCain said there are also Council people who are not doing their job, and that is unfortunate, but he is not sure how they get around that.

Mr. Wilber said they have a Council comment section at the meetings where the public can air things out if it moves that far.

Mr. Mitchell asked, if they use the language "for Legislative purposes," does that stop helping a constituent who has a specific problem, to which Mr. Wilber responded, it could be a limitation on that.

Ms. Acle said an example could be the fallen hero Legislation where they wanted information from the County Executive or the Finance Department. She said they could say specifically that they are writing Legislation and they need information. She then asked if that is correct, to which Mr. Cannon responded, correct. He clarified, even then he would do that somewhat hesitantly because what can happen, such as in Mr. Holloway's example, is, if he talks to Roads and says there is trash and they go out there, the Executive could ask why they did not finish the other job they were working on, and they could say because Mr. Holloway called and said they need to go there, so then they have a problem all of a sudden. Mr. Wilber said then the employee is caught in the middle.

Mr. Cannon said this is the toughest one they have and he agrees with what Mr. Mitchell said, and "for Legislative purposes" may not go far enough. Mr. Wilber said he can strike that .

Mr. Hastings suggested saying “immediate constituent needs” or something saying there is an immediate need.

Mr. McCain said he just feels like they are trying to circumvent the Executive form of Government, and that is the form of government they have, and they want that separation. He said they have to be careful how they word this.

Mr. Wilber said, if they just say the County Council may request information from the Executive Branch and stop right there, then they are really leaving it to everybody acting reasonably. He clarified, they can have problems on both side, such as having an Executive who is nonresponsive or a Councilmember who is badgering, and both are not where they want to be. He said they are talking about human behavior here, and it is hard to quantify that or limit it in the Charter. He said he thinks the Council needs the Charter-stated ability to ask for information from the Executive. He then asked if they should just leave it there or try to carve this up a little more.

Mr. McCain said he just thinks there is one more word they need in there, which is whether it is reasonable. Mr. Wilber suggested saying “May make reasonable requests for information.” Mr. McCain said that is simple. He said, if someone is asking every day for 1,000 copies of something, that is not reasonable, so there has to be something to protect against that.

Mr. Holloway said they have one form of government with two Bodies. He then asked, is this Body not entitled to any information the County Executive has, to which Mr. McCain responded, not necessarily.

Mr. Cannon asked if there is another section that clearly states that the County Executive is required to give the information the Council requests, to which Mr. Wilber responded, he thinks there is. Mr. Cannon said maybe they can live with that as long as the Executive cannot just refuse it outright. Mr. Wilber said he thinks there is something in the Executive section.

Mr. Holloway asked if it should say after following proper channels? He said they have examples of where they could not get information, to which Mr. Cannon responded, but that comes down to how to get rid of an Executive. Mr. Wilber said that is another discussion.

Ms. Acle asked how State Delegates and Senators get information from the Governor’s Office, to which Mr. Cannon responded, a lot of the Eastern Shore Delegation will just say casually that they need to talk to a Secretary, and they will get back to him on something, so that is an open exchange, but these are employees of the Executive, so it is a whole lot different. He said he is sure the Secretaries have a working relationship with the Governor where they immediately call the Governor and say a Delegate came in and they shared information. He clarified, he is guessing that they openly exchange that information.

Mr. Mitchell said that is what most of the people working in a Congressman’s office do, they call different departments to get things done for constituents.

Mrs. Hurley said Section 402C says the duties and responsibilities of the County Executive shall include but not be limited to providing the Council with any information concerning the Executive Branch which the Council may require for the exercise of its powers.

Mr. Cannon said maybe their problem is solved right there. Mr. Wilber said that says it well. Mr. Cannon said, to Mr. Holloway's point, if it is refused, it is refused, and then they have to figure out something with enough teeth to go in that direction as they never resolved that part of it.

Mr. Wilber suggested perhaps not doing anything to this interference section about information, to which Mr. Cannon responded, he says they just leave it alone. He clarified, just as much as anyone else here, he has been through the thick and thin of this.

Mr. Cannon said Section 315 is confirmation of appointments.

Mrs. Acle said this is requiring that, if it is not done within 45 days, they are automatically approved, but what if there is a vacancy that has not been filled for a year? She then asked, when does the Council step in and say this vacancy has not been filled, and do they need to put language in here if it is not done? Mr. Holloway asked if it says the County Executive must fill these vacancies in that period of time, to which Mr. Wilber responded, no.

Mr. Cannon clarified, this is about confirming appointments from the Executive and it says, if the Council fails to act to confirm or reject an appointment within 45 days of its submission to the Council, the appointment shall stand approved, but that is not what the Council had concerns about.

Mr. McCain asked if the Committee said to just leave this alone, to which Mr. Wilber responded, he thinks so because he shows no change to this. Mr. McCain said the Committee recommended leaving it as is, and they talked about it.

Ms. Acle asked if it was something the Council raised to the Committee as being an issue because maybe they were not even aware they have not had Department Heads for more than two years.

Mr. Cannon said there was never a problem with 315A, but he thinks it was with B. He said he thinks the problem was the fact that they could not make a decision to make an appointment and they had to go beyond that day and extend it. He said he cannot remember what that was for. Mr. Wilber responded, he thinks Mr. Cannon is thinking of the Acting situation where there are so many days, and then it comes back to the Council for so many more days.

Mrs. Hurley said the question the Council submitted to the Committee was should the confirmation be done before a person is hired, so that was the question presented to them, and the Committee did not make any recommendations to change it. Mr. Cannon said that was so irregular, so how would a hire ever be made if the Council had not approved it? Mr. Holloway said it was done, to which Mrs. Hurley responded, yes it was, a couple of times.

Mr. Cannon said what happened was a violation of the Charter, so it comes down again to what control the Council has over the Executive when they violate the Charter. He said this issue and the last one they talked about are both about what to do when the Executive ignores the Charter, to which Mr. Wilber responded, that is a big discussion item. Mr. Cannon said it is because they are trying to find band aid patches on the Charter because of violations that occurred, but the reality is, how would they put a stronger hold on the Executive to keep them from violating the Charter.

Mrs. Hurley reminded Council that they are on a time schedule for the Charter amendments because Mr. Wilber will need to have everything prepared and sent off to the Board of Elections in August. Mr. Wilber said he thinks they are making good progress and they are on schedule.

Mr. Cannon said they can finish this discussion at their second meeting in May. He suggested Council review this carefully before they come to the meeting because these next sections are some tough ones.

Mr. McCain said he is trying to think of an easier way because there are Council recommendations and the Committee recommendations, and he is trying to look at the Charter.

Mr. Wilber said he will give Council a quick preview of what he sees in 408A as that language is very common throughout Charters in the State just the way it is written. He said he thinks a letter B can be added to this about censuring by the County Council for actions which are repeated substantial violations of the Charter. He said, going on to the question of whether the Council can remove the Executive, he does not see the authority for that because that is thwarting the election, but they can have the right to go for Writ of Mandamus in court. He said that would tell the Executive to either do something they have not been doing, or stop doing something they are doing. Mr. Cannon asked if a judge will even hear that, as the Council was told a judge would not even hear that because it is a government issue and it is not to be dealt with in court, to which Mr. Wilber responded, judges would be reluctant to hear it. He said judges do not like to get involved in governmental disputes. Mr. Cannon said that time they were on the front page. Mr. Wilber said it is a tough nut to crack, but someone has to step up and call the balls and strikes, and usually that is the court.

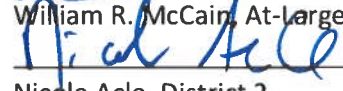
Mr. Cannon said they will finish this up at their next meeting. Mr. Wilber said he will send Council what they have talked about and he can write up the sections about bond so they can work out the other sections and what they want to do there.

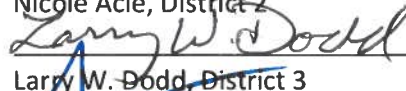
There was no further discussion.

  
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John T. Cannon, President, At-Large

  
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Ernest F. Davis, Vice President, District 1

  
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William R. McCain, At-Large

  
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Nicole Acle, District 2

  
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Larry W. Dodd, District 3

  
\_\_\_\_\_  
Josh Hastings, District 4

  
\_\_\_\_\_  
Joe Holloway, District 5

  
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Laura Hurley, Council Administrator