

# MEMORANDUM

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**TO:** Chevy Chase Village Board of Managers

**FROM:** Charter Revision Committee  
Patricia Baptiste (Grafton Street), Chair  
Robert Goodwin (Bradley Lane), Board Liaison  
Mary Sheehan (West Kirke Street)  
Peter Yeo (Grafton Street)  
  
Shana Davis-Cook (Village Manager) Staff Liaison  
Suellen Ferguson (Village Counsel)

**DATE:** September 10, 2015

**SUBJECT:** Summary Report—Proposed Revisions to the Chevy Chase Village Charter

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The Chevy Chase Village Charter Revision Committee was formed by the Village's Board of Managers on December 8, 2014, following up on a recommendation by the report of the Village Board Task Force on Committees. The need for a comprehensive overhaul of the Village Charter has long been recognized by prior Boards and the current Board and Legal Counsel. The charge to the Charter Revision Committee was to comprehensively review the Village's Charter and recommend to the Board revisions to update and streamline the Charter.

By way of background, a Charter is in essence the constitution of a municipality and sets the framework of the government. The current Village Charter was enacted many years ago and has been revised multiple times over the years. As a result, the current Charter is poorly organized, and contains outdated and unclear wording, multiple inconsistencies, and certain provisions that would be better located in the ordinances. Further, the Charter fails to reflect the Village's Council/Manager form of government, and does not adequately define the roles of various Village personnel.

When reviewing the Charters from other municipalities prior to its initial meeting, Committee members identified other aspects of the Village's governance that could be reviewed to determine if changes should be made. These included the number of Board Members and the name of the governing body (Board of Managers vs. Council).

The Committee formally met on four occasions: January 29, April 23, May 27, and July 6, 2015. The Committee was joined by Village Counsel at all except the initial meeting. This memo highlights the changes the Charter Revision Committee recommends for the Village Charter and additional changes the Committee invites the Board to consider.

## Revisions to Reflect Current Practice and Use

- The Village’s municipal boundaries, an extensive listing of the metes and bounds description for the Village, was removed as we felt it cluttered the Charter. We recommend the Village maintain the metes and bounds description document in the office instead.<sup>1</sup>
- We agreed that most residents will access the Charter on the Village’s website. To make this as useful a document as possible, the Committee recommends the online version contain hyperlinks to relevant State Code provisions, where applicable (i.e., Open Meetings Compliance, the complete listing of municipal powers, Charter referendum procedures, etc.)
- Board Officers:
  - The Board officer descriptions were refined to more accurately describe each officer’s role. Specifically, the description for the Chairman identified this position as the “chief executive officer”, which is incorrect as this role has been delegated to the Village Manager in a Council-Manager form of government. “Chief Executive Officer” was deleted from the Board Chair’s description, and a new Section 501, “Village Manager”, was added to set forth the creation, appointment, powers and duties for the Manager.
  - The “Secretary” had been tasked with taking the minutes of all meetings of the Board of Managers, a task that has been delegated to staff. The description was revised to state that the Secretary only certifies the minutes of the meetings to accurately reflect current practice.
  - An “Acting Chair”, position was listed under the Board Officers, outlining that the Board may appoint another member to act in the place of the Chair in the event that both the Chair and Vice Chair are absent.
- Annual Meeting: Early in our discussions, Counsel advised that Annual Meetings are not common in municipal governments. Historically, the Village’s Annual Meeting of qualified voters is an opportunity for the Board, staff and the Chairs or representatives from Village Commissions and Committees to provide reports on the activities of the preceding year and to outline the goals for the coming year. Additionally, the Village Board convenes a meeting within the Annual Meeting for the purpose of adopting the budget and tax rate for the subsequent year. To clarify that this latter meeting is one of the functions that the Annual Meeting serves, the Committee amended Sec. 203(b), entitled “Annual meeting”, to clarify that a meeting of the Board shall be held at the Annual Meeting to adopt the budget and levy the property tax.
- Elections: Although no procedural changes were proposed to the elections process for the Board of Managers, this section was reorganized to follow the actual election timeline, and sections were reworded to clarify what was intended:

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<sup>1</sup> Early in our work, we determined the current boundary description appears to be incorrect. We recommended, and the Board has scheduled in its CIP a capital project to have the municipal boundaries resurveyed.

- Write-in candidates have never been allowed in Village elections. The amended Charter maintains that prohibition, but now reinforces it by specifically stating: “Write-in candidacy is prohibited”.
  - Clarified that the residency requirement for candidates is one year immediately preceding “the first Saturday in May” rather than “the election” to eliminate potential confusion<sup>2</sup> in years where there is no contested election and the declaration of election takes place at the Annual Meeting.
  - The Village does not hold elections when the number of candidates equals the number of available seats; however, to further clarify, the Committee proposed inserting that “no election will be held” prior to stating that “the qualified candidates shall be declared elected by the Election Supervisors”.
  - All references to “general” election were changed to consistently refer to the “regular” election for the Board of Managers.
  - Deleted a provision pertaining to voting machines, since the Village currently uses paper ballots and likely will continue to do so. If the Village later decides to use voting machines, the retention of the data stored on the machines can be controlled by policy.
- Budget Adoption: The current Charter does not establish a date by which the Board must prepare and adopt a budget for the ensuing fiscal year. This is necessary since the Charter goes on to require that the Board establish a tax rate by a certain date following preparation of the budget. The Committee has therefore proposed the Board prepare its budget by April 1 for the subsequent fiscal year. All references to required public “meetings” during the annual budget review process were changed to refer to public “hearings”, which is a more common term of reference. We have also clarified that if the Board fails to adopt a tax rate for the subsequent fiscal year by May 15, the Board Treasurer is authorized to notify Montgomery County to use the same rate as the prior year or “the constant yield rate, whichever is less”.
  - Emergency Borrowing: We have recommended increasing the borrowing authority to \$500,000 (from \$200,000 currently) to reflect present-day reality.

### **Revisions for Organization and Clarity**

- To improve the readability and organization of the Charter, a table of contents was added to the beginning (consistent with the Village’s Code of Ordinances) and the font was changed to Times New Roman, 12 point.
- Definitions were refined and streamlined to clarify meanings and to provide more accurate descriptions of the words referenced. Although most definitions were deleted because they did not refer to terms contained within the Charter or defined terms that were readily known or apparent, we did add a definition for “public ways”, which correlates to the new “Public Ways and Sidewalks” article.

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<sup>2</sup> The committee identified a discrepancy in the current Charter. Current Section 77-4(a) requires Board candidates to reside in the Village “for at least six months preceding their election”; whereas Section 77-5(d) states that the residency requirement is “thirty days prior to the election”. The committee has clarified the discrepancy and recommends that the residency requirement be expanded to one year. Additionally, the term “reside” was replaced with “domicile”.

- The current Charter used Section numbers beginning with “77-1”. We were unable to determine where this originated. We have proposed a simpler Article and Section outline beginning with “Article I, Section 101”.
- Gender neutrality: all references to specific genders were made neutral including changing Chairman to Chair.
- Several paragraphs within the Charter do not have headers or the headers that were used do not directly correlate to the content within the section/paragraph. New Article, Section and sub-section headers have been added throughout to make it easier for readers to find the information they seek.
- The content was reordered throughout to provide a more logical flow.

### **Deleted Sections**

- “Adoption of Ordinances”—We deleted a requirement to post all passed ordinances on a “bulletin board” at the Village office. The requirement to post all adopted ordinances at the Village Hall was maintained (operationally, passed ordinances are also posted online to the Village’s website).
- “Procurement”—The Village has a separate Procurement Ordinance that contains the regulations and requirements pertaining to procurement and disposition, which are operational matters that are not appropriate for the Charter.
- “Borrowing Power-Library Hall and Post Office Building”—This is an outdated section that allows the Board to mortgage the Village Hall; the likelihood of which is remote and is presently covered within the Board’s powers to borrow—generally and in emergencies.
- “Authority to Contract with Chevy Chase Club”—The Board is authorized to enter into contracts with any person or entity that the Board feels would be in the best interest of the community; there is no need to have a specific provision related to contracts with the Chevy Chase Club. This could also be misconstrued as a limitation since no other entities are listed.
- “Repeal of old Chevy Chase Act [Charter] in Reference to Special Taxing Area”—Counsel advises this section does not need to be included in the Charter, since it refers to a provision of County law that was repealed following the Village’s incorporation and no longer applies.

### **New Sections Added**

- Closed Sessions—The State’s Open Meetings Compliance law limits the circumstances under which a public body can convene in closed session. The Committee felt it was important to include the specific criteria within the Charter so the public is fully aware of the instances when it is permissible for the Board to convene an Executive Session.
- Municipal Powers—Many residents moving into the Village may not be familiar with municipal government structure, therefore new sections, entitled “Powers of the Board of Managers” and “Exercise of Powers” were added to outline the powers the Village has assumed as authorized by the State. Only those municipal powers that the Village has historically and currently exercised were included and a hyperlink to the complete list of powers outlined in Maryland law will be included in the online version of the Village Charter.

- Elections—The Committee has proposed various changes to the elections process, including:
  - Eliminating the requirement for voters to obtain absentee ballots in person.
  - Increase the domicile threshold for Board candidates to one (1) year prior to the election (the first Saturday in May).
- Charter referendum—added to the Referendum Elections section (Section 302) to clarify that the process for petitioning a referendum on a Charter provision is prescribed in State law.
- Personnel Article—a new section outlining the personnel directly hired by the Board was added. This section includes the Village Manager, Legal Services, Chief of Police, and the power to establish a Police Department<sup>3</sup>.

### **Areas for Further Board Consideration**

- Reduce the number of Board Members from 7 to 5—In reviewing other municipalities, we found that almost all municipalities of our general size (population) and service delivery have 5-person boards/councils. The Committee also noted concerns in recent years regarding the ability to maintain a 7-person Board following increased financial disclosure requirements mandated by the State. Counsel highlighted, however, that with a reduction in the overall number, a quorum would be reached with far fewer members (3 in the case of a 5-person Board), which could prove to be problematic. It was also noted that a 7 person Board provides greater opportunity for the different areas of the Village to be represented (e.g., both the east and west sides of Connecticut.) The majority of the Committee favored maintaining the 7 person Board, but refers the issue to the Board for further consideration.
- Change the name of the governing body from the “Board of Managers” to “Village Council—It is not common for municipal governing bodies to be called a “Board of Managers”, and it appears this was an outdated reference to the “Board of Governors”, a term used by the Chevy Chase Club, which was in operation at the time of the Village incorporation, and may have been the only local reference for referring to an incorporation’s governing body. It is far more common for municipal governing body’s to be called “Council”. The Committee was of two minds on this topic. Some Committee members acknowledged the benefits of maintaining this distinctive title, while others noted difficulty when dealing with other governments who are unfamiliar with the term. Additionally, there can also be confusion between the Board of Managers and the Village Manager. Ultimately, the Committee maintained the current title, but presents the matter for the Board to consider.
- Voter eligibility (age and legal status)—The Committee discussed whether to reduce the minimum voter age from 18 to 16 and whether non-US citizens should be allowed to vote in municipal elections. Ultimately, the Committee decided against these changes for

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<sup>3</sup> The actual power to hire police officers has always been delegated to the Village Manager and this delegation remains.

municipal elections, in part, because they would necessitate the Village maintaining a separate voter register in addition to the register maintained by the county.

- Removal Procedure for Elected Officials—The Committee considered adding a procedure for removing Board members who have 3 unexcused absences from Board meetings. This procedure was contained in other municipal Charters we referenced. Counsel cautioned that this process might be a violation of voter rights laws since the voters, and not the elected officials themselves, are empowered with voting to elect and also to remove officials from office. Ultimately, the Committee decided against adding this provision since the issue of excessive unexcused absences has not been a problem for the Village Board.
- Voter-Initiated Referenda (non-Charter amendment referenda) and Official Recall—The Committee discussed allowing voter-initiated referenda and voter-recalls of elected officials. Other municipalities have adopted provisions regarding both voter-initiated procedures; however, the Committee ultimately deferred to the Board to determine if you feel such procedures should be implemented in the Village. In deferring to the Board, the Committee acknowledges that we are unaware of any recent voter interest in such measures.
- Certification of Official Documents—The Committee discussed the role of the Board Secretary and noted that neither the Charter (nor the Code) requires the Secretary to attest ordinances<sup>4</sup> or to sign variance, special permit and appeal decisions rendered by the Board. Nevertheless, this has been the practice for quite some time. Counsel advised that this is not commonly the practice in other jurisdictions. Elsewhere, the municipal Clerk/Manager will attest an ordinance following the signature of the Board/Council Chair and the Clerk/Manager will also attest a hearing decision following the Board/Council’s vote to approve the draft decision. The Committee did not take a position on this; however, we recommend that the Board discuss how it would like to proceed on this operational matter, and amend (new) Section 206, entitled “Adoption of Ordinances”, accordingly.
- Election, noticing of confirmed candidates—The Committee discussed the policy for disclosing how many contested and uncontested seats there are during each year’s election. Members expressed concern that the current practice of not disclosing exactly which incumbent Board Members are not seeking reelection, together with the elimination of nominations from the floor at the Annual Meeting, may have a chilling effect on potential candidates coming forward. Although this is an internal policy matter that is not addressed in the Charter, due to its effect on the overall election process, the Committee brings this concern to the Board’s attention for your consideration<sup>5</sup>.

### **Village Ordinances and Policies Affected by the Proposed Charter Amendments**

If the Committee’s recommended amendments to the Charter are adopted by the Board, certain conforming amendments will be required to the Village’s ordinances and policies. These conforming amendments include the following:

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<sup>4</sup> The Secretary attests ordinances after they have been signed by the Board Chair who signs certifying the Resolution is a correct representation of the ordinance adopted by the Board.

<sup>5</sup> This concern has been brought to the attention of the Election Supervisors, which has scheduled a September 30, 2015 meeting to discuss the current policy.

- To facilitate maintaining staggered terms on the Board of Managers despite Board appointments that may have occurred prior to the election, the Certificate of Candidacy will need to be revised so candidates indicate the specific “seat” they seek, either the unfilled term or a new term that is up for election in that given year. In addition to the “Certificate of Candidacy”, a new “Certificate for Appointment” should be created since the process for appointing Board members to vacancies differs from the regular election process.
- Section 2-6 (c)(2) of the Village’s Public Ethics Ordinance needs to be amended to require that the Financial Disclosure Statement is required to be filed by candidates for appointment when they submit their Certificate of Candidacy (consistent with the rules for candidates seeking election). The current section allows candidates for appointment to submit their completed Financial Disclosure Statement within 30 days after their appointment.
- Section 3-7, “Duties of the Village Manager”, in the Personnel Code will need to be amended for consistency with the revised duties listed in the new Charter Section 501(c), “Village Manager, Powers and duties”.

**Proposed Timeline for Board Consideration and Adoption**

<b>Task</b>	<b>Tentative Date</b>
Introduction of Proposed Amendments	September 14, 2015 Board Meeting
Public Hearing Announcement	October 2015 Crier
Public Hearing and Board Discussion	October 12, 2015 Board Meeting
Adoption of the Proposed Amendments	November 9, 2015 Board Meeting
Publication of Proposed Amendments in <u>The Washington Post</u> , four times at weekly intervals within a period of at least 40 days starting immediately after the date of adoption.	Weeks of <ul style="list-style-type: none"> <li>• November 16</li> <li>• November 23</li> <li>• November 30</li> <li>• December 7</li> </ul>
Effective Date	December 29, 2015