



BALTIMORE COUNTY REDISTRICTING MANUAL

AUGUST, 2010

REDISTRICTING MANUAL

With the enactment of Bill 47-01 in June of 2001, the Baltimore County Council revised and reconstituted the County's seven councilmanic districts in accordance with the 2000 census of the United States. The councilmanic district boundaries established by the bill became effective for the 2002 election.

In December, 2001 the Council passed Resolution 142-01 which established a commission to review the Baltimore County Charter provisions that govern the process of redistricting. These provisions, embodied in Section 207 of the Charter, had remained virtually unchanged since the adoption of the Charter in 1956.

The Commission, chaired by former Councilman John V. Murphy, eventually recommended that the Council adopt legislation to amend the Charter.¹ In response to the Murphy Commission's recommendation, the Council passed Bill 67-02 to amend Charter Section 207. County voters approved the Charter amendment on November 5, 2002.

Charter Section 207 now provides as follows:

Sec. 207. Revision of councilmanic districts.

(a) *Redistricting commission; composition.* Not later than March 1 of the year after each decennial census of the United States, the County Council shall establish, by resolution, a councilmanic redistricting commission. The commission shall be composed of five members appointed by the County Council. A person who holds elective office is not eligible for appointment to the commission.

(b) *Commission action.* The commission shall hold at least three public hearings, and, by October 15 of the year in which the commission is appointed, the commission shall recommend to the county council legislation to revise, amend, or reconstitute, but not to increase or decrease the number of, councilmanic districts in effect at such time. The legislation shall provide for councilmanic districts that are compact, contiguous, and substantially equal in population, and in which due regard is given to current natural, geographic, and community boundaries.

(c) *Council action.* The county council shall hold one or more public hearings on the recommendation of the commission, and by January 31 of the year following the appointment of the commission, the council shall adopt a final redistricting plan by legislative act adopted by a majority plus one of the total number of county council members. The final plan may not increase or decrease the number of councilmanic districts in effect at the time. The plan shall provide for councilmanic districts that are compact, contiguous, and substantially equal in population, and in which due regard

is given to current natural, geographic, and community boundaries.

(d) *Final redistricting plan.* The final redistricting plan adopted by the county council is not subject to the executive veto provided in Article III, Section 308(g), but is subject to the referendum provision of Article III, Section 309.

Section 207 thus prescribes the process for redistricting, the time frames and deadlines for each stage of the process, and the substantive requirements for the composition of the revised districts.

I. BACKGROUND

Most elected offices in the United States represent distinct geographical areas. These areas are electoral districts. Redistricting is the process of redrawing electoral district boundaries.²

In 1962, the Supreme Court, in *Baker v. Carr*, 369 U.S. 186, interpreted the Equal Protection Clause of the 14th Amendment to the U.S. Constitution to require that electoral districts be periodically adjusted or redrawn to account for population shifts among them. According to the court's "one person, one vote" doctrine, malapportioned districts result in the votes of those voters in highly populated districts counting less than those of voters in less populated ones. Those residing in districts of lesser population are over-represented, while those citizens residing in larger districts are under-represented. The Court has firmly established that Equal Protection requires that districts from which State representatives are elected must be as nearly equal in population as is practicable. *Reynolds v. Sims*, 377 U.S. 533, 577 (1964); *Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656, 674 (1964); *Davis v. Mann*, 377 U.S. 678, 690 (1964); *Roman v. Sincock*, 377 U.S. 695, 708 (1964); *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 734 (1964).

The one person, one vote principle was initially applied to state legislatures and congressional districts. Since then, the rule has been extended to the election of county and municipal representatives if such governments exercise substantial governmental powers.

Accordingly, there is a constitutional guarantee of equal representation for equal numbers of people, and legislative districts must be as nearly of equal population as is practicable. The Supreme Court has never set an exact mathematical ratio that will be constitutionally permissible or impermissible, but extrapolating from the many court decisions on this subject, it is likely that variations among districts that approach 20% will be considered unacceptable.

Redistricting is conducted after each decennial census. The U.S. Constitution mandates a periodic census of the country. The population is enumerated every 10 years, and the results are used to allocate Congressional seats, electoral votes, and government program funding. The census is performed by the United States Census Bureau. The next census will be conducted in 2010. Based upon the 2010 data, legislative bodies will redistrict in accordance with their jurisdictional requirements.

II. SUBSTANTIVE LAW

The Baltimore County Charter requires that the Redistricting Commission recommend to the County Council, and that the final plan adopted by the County Council provide for, councilmanic districts that are:

- compact
- contiguous
- substantially equal in population, and
- in which due regard is given to current natural, geographic, and community boundaries

Along with the applicable federal requirements (e.g. compliance with the federal Voting Rights Act), adherence to these standards is the essential prerequisite of any future redistricting plan. This is not to say that the County Council, in preparing the final redistricting plan, may consider only these stated factors. On the contrary, because the process is in part a political one, the Council may consider countless other factors, including broad political and narrow partisan ones, and the Council may pursue a wide range of objectives. So long as the plan does not contravene the Charter criteria, that it may have been formulated to achieve other social or political objectives will not affect its validity. However, those non-Charter criteria cannot override the Charter ones.

It is the responsibility of the County Council to draw the councilmanic districts. Fulfillment of that responsibility involves the exercise of discretion, and because the process is partly a political one, political considerations and judgments may be, and often are, brought to bear. But neither discretion nor political considerations and judgments may be utilized in violation of Charter standards. In other words, if, in the exercise of discretion, political considerations result in a redistricting plan in which councilmanic districts are non-contiguous, are not compact, are of substantially unequal population, etc., that plan will fail. The Charter trumps political considerations. Politics or non-Charter considerations never trump Charter requirements. In this regard, see In the Matter of Legislative Districting of the State, 370 Md. 312(2002).

COMPACT/CONTIGUOUS

Compactness is a practical or functional concept. A district would not be sufficiently compact if it was so spread out that there was no sense of community, that is, if its members and its representative could not effectively and efficiently stay in touch with each other, or if it was so convoluted that there was no sense of community, that is, if its members and its representative could not easily tell who actually lived within the district.

A district must also be contiguous. The definition of contiguity is simple. A contiguous district consists of territory touching, adjoining and connected as distinguished from territory separated by other territory. Therefore, although a district may consist of territory divided by a river or other body of water, a district that is divided by another district does not meet the contiguity requirement. The requirements of compactness and contiguousness are not problematic for Council districts; these criteria often become relevant in challenges to the gerrymandering schemes which are sometimes alleged in Congressional redistricting cases.³

SUBSTANTIALLY EQUAL POPULATION

The requirement for equality of population in the councilmanic districts is the critical element of the redistricting process. This requirement is at the heart of the constitutional guarantee of equal representation.

The standard is not one of absolute equality. The Courts have always acknowledged that there are legitimate reasons to deviate from creating districts with perfectly equal populations, among them, the requirement to create compact and contiguous districts, and to give due regard to certain boundaries, as well as many other factors, including political and partisan considerations. As long as the deviations from a strict population standard are based on legitimate considerations incident to the effectuation of a rational public policy, some deviation is permissible.

As Chief Justice Warren observed in the 1964 case of *Reynolds v. Sims*, 377 U.S. 533, “mathematical nicety is not a constitutional requisite” when drawing legislative plans. All that is necessary is that they achieve “substantial equality of population among the various districts.” That term has come to mean that a legislative plan will not be invalidated for inequality of population if its overall range is less than ten percent. The ten percent standard was first articulated in a dissenting opinion written by Justice Brennan in the case of *Gaffney v. Cummings*, 412 U.S. 735 (1973), and the Court later endorsed and followed the rule.

The most common way of determining if districts are out of balance is to determine the total

maximum deviation, which is the aggregate total of the percentage of variation from the ideal between the largest and the smallest district.

For example, if one assumes a county with 40,000 population and four Council districts, the ideal size of a district would be 10,000 persons:

County population	40,000
Number of Council districts	4
Ideal district size	10,000
<u>Actual district size</u>	<u>% deviation from ideal</u>
District 1 9,500	-5.0%
District 2 9,850	-1.5%
District 3 10,250	+2.5%
District 4 10,400	+4.0%
Total deviation 9%	

In this example, the smallest district has 9,500 persons and is thus 5% smaller than the ideal district size. The largest district, on the other hand, has 10,400 persons, or 4% more than the ideal district. By adding the absolute percentage deviation of the largest district to that of the smallest district, the total maximum deviation in this case is 9%.

There is no magic maximum deviation that is utilized to determine that plans that meet that number will always be permissible and plans that exceed it will always be unlawful. Nevertheless, in local redistricting decisions (State and Congressional redistricting plans are subject to stricter scrutiny regarding permissible deviation), a maximum deviation of 10% or less is likely to be found to be of prima facie validity. Thus, the 10% figure is a helpful rule of thumb, and the Baltimore County Council has utilized and adhered to the rule in the last two redistricting processes.⁴

DUE REGARD

The County Charter requires the Councilmanic Redistricting Commission and the County Council to give “due regard” to current natural, geographic, and community boundaries in drawing the district lines.⁵

This phrase was crafted by the Murphy Commission after its review of the State’s

redistricting process, as well as the processes in other Maryland counties. The concept embodied in the phrase is that when the members of the County Council redistrict as required by law, they should give some form of consideration (“due regard”) to the status quo - to the current natural, geographic and community boundaries of the Councilmanic districts as they were established following the last preceding decennial census.

There are several obvious questions raised by the Charter language chosen by the Murphy Commission. What is “due regard”?, and what is a community? ⁶

The phrase chosen by the Commission most closely mirrors the phrase found in the Maryland Constitution governing legislative redistricting. Since the Maryland Court of Appeals has interpreted this Constitutional provision, it is helpful to review the State provision and the Court’s analysis of it.

Article III, Section 4 of the Maryland Constitution requires each State legislative district to consist of adjoining territory, be compact in form, and be of substantially equal population, and “due regard shall be given to natural boundaries and the boundaries of political subdivisions”.

According to the Court of Appeals, Article III, Section 4 of the Constitution provides two sets of requirements, one subsidiary to the other. The primary set of requirements is that the legislative districts be compact, consist of adjoining territory, and be of substantially equal population. The second set of requirements is subsidiary to these, namely, that legislative districting ought to follow both natural and political boundaries, including both county boundaries and the borders of incorporated municipalities, i.e. the boundaries of political subdivisions. The primary intent of the due regard provision is to preserve those fixed and known features which enable voters to maintain an orientation to their own territorial areas. The requirements of the due regard provision are “mandatory,” yet “fluid”. The Court recognized that each of the constitutional requirements of Section 4 work in combination with one another to ensure the fairness of legislative representation. That they tend to conflict in their practical application is, however, a plain fact, viz, population could be apportioned with mathematical exactness if not for the territorial requirements, and compactness could be achieved more easily if substantially equal population apportionment and due regard for boundaries were not required. In the Matter of Legislative Districting of the State, 370 Md. 312 (2002).

The Court’s holding is that the requirement imposed on the General Assembly to give due regard to natural and political boundaries is subsidiary or secondary to its primary duty to create compact, contiguous legislative districts of substantially equal population. In the give-and-take

process of redistricting, a process that is both political and practical, the first set of requirements - to create compact, contiguous, equally-populated districts - takes precedence over the second - to follow natural and political boundaries in drawing the lines. The report of the Murphy Commission confirms its agreement with this analysis and conclusion.

The April 22, 2002 report of the Murphy Commission states, in part, that:

“In regard to guidelines, there were proposals we considered which in our view should be considered as recommendations but not requirements for future consideration. For example the idea that communities should be kept together is compelling. We added the word “community” to the list of criteria in the Charter to be considered. However there was a suggestion in furtherance of this goal that we should require new districts to preserve community association boundaries. While we found this to be an admirable goal, we could not recommend it as a requirement, in view of the uncertainty of such boundaries and even the make up of the community associations. We could not be certain that after ten (10) years there would always be a contact person for each association. Consequently, we recommend this idea become one of a list of criteria given in the Policy Manual as a guide and goal for the Commission and Council to consider.” (emphases supplied)⁷

Accordingly, both the Councilmanic Redistricting Commission and the County Council must give consideration to current natural, geographic and community boundaries, but their primary task is to create compact, contiguous, equally-populated Councilmanic districts.

COMMUNITY

The more difficult issue is the meaning of the word “community” in Section 207. The Maryland Constitution requires the General Assembly to consider political boundaries, that is, the legally-established boundaries of Maryland’s counties and municipalities. Baltimore County is a single, self-governing political subdivision with no incorporated municipalities. What then are the community boundaries that the County Council must consider?

Because the County has no incorporated municipalities, the boundaries of its communities are oftentimes imprecise. Whereas the boundaries of municipalities are legally established by vote of the registered voters who are residents of the area to be incorporated, the boundaries of Baltimore County’s communities are either historical or have been designated by County Council resolution for purposes of a community plan adopted as part of the Master Plan, or for a specific funding program, or for some other ad hoc purpose.⁸

Recognizing this lack of precision to the boundaries of Baltimore County's communities, the fundamental issue, in analyzing the language of the County Charter, is the meaning of the word "community". According to the Baltimore County Master Plan 2010, there are 31 regional "planning districts", and approximately 40 "community plans" have been adopted by the County Council as amendments to the Master Plan. Additionally, there are numerous "community associations" in the County, official and unofficial, and there are countless other place names in the County.

The Commission members understood the County's history. It seems evident from a reading of the Commission report that the use of the word "community" was intended to mean more than merely "communities of interest", a phrase addressed by the Court of Appeals in its 2002 decision. The Court specifically rejected the argument that the due regard provision protects "communities of interest", a concept the Court found nebulous and unworkable, pointing out that such communities, involving concentrations of people sharing common interests, are virtually unlimited and admit of no reasonable standard.

Likewise, it seems evident that "community" means something more than a place name or a neighborhood, and something other than a planning district. A Baltimore County community is one of the well-established, traditional/historical areas of the County that is recognized by the Master Plan or County Council resolution as a discrete area for purposes of planning or funding.

A subsidiary issue for consideration is that, in almost all cases, these traditional communities are represented by one or more associations. The question then arises as to whether traditional communities are tied to or associated with any particular association(s) that claims to represent the community. Fortunately, the Murphy Commission addressed this issue squarely.

The Commission stated that: "We added the word "community" to the list of criteria in the Charter to be considered. However there was a suggestion in furtherance of this goal that we should require new districts to preserve community association boundaries. While we found this to be an admirable goal, we could not recommend it as a requirement, in view of the uncertainty of such boundaries and even the make up of the community associations."

The Commission thus explicitly rejected the notion that the phrase "community boundaries", as used in Section 207, refers to or is tied to community association boundaries and seemed intent on limiting the meaning of the phrase, due in part to the "uncertainty" of boundaries.

SUMMARY

The Murphy Commission was well versed in the law of redistricting. The Commission recommended the codification of the primary requirements that Councilmanic districts be compact and contiguous and the subsidiary requirement that “due regard” be given to natural, geographic, and community boundaries, characterizing the objects of the due regard phrase, i.e. those natural, geographic, and community boundaries, as matters to be considered.

It seems clear that, with the 2002 amendment to Charter Section 207, compactness, contiguousness, and due regard for natural, geographic, and community boundaries take precedence over otherwise valid political and social factors that the Councilmanic Redistricting Commission or the County Council may consider during the process of redistricting.

A long line of federal court decisions, as well as decisions of the Maryland Court of Appeals, have made it clear that the critical issue is that districts be as nearly of equal population as is possible, but that the creation of compact and contiguous districts is a legitimate reason to deviate from perfect equality of population (but not more than 10%). Other, non-required considerations are equally legitimate, but they may not override the required considerations.

The Maryland Court of Appeals has clarified for the County that the constitutional “due regard” requirement - which is very similar to the County Charter requirement - is a subsidiary requirement that is “fluid”. The Murphy Commission concurred, stating that the elements of the due regard phrase are factors for the consideration of the decennial Councilmanic Redistricting Commission and the County Council.

There have been past instances in which County Council redistricting decisions have affected traditional, recognized communities in the County, i.e. redrawn district lines have split traditional, recognized communities. Such action is not foreclosed to future Councils, but the Council will now be required to give consideration to the current boundaries, however imprecise, of communities before committing to drawing lines that split them. If, after consideration, the Council splits a community in order to render a new map in which Councilmanic districts are compact, contiguous, and of substantially equal population, the Council has met its Charter burden and has acted lawfully. If it does so in order to avoid a legitimate challenge under the Voting Rights Act, it has acted lawfully. But, if the Council’s justification is based solely upon political or social considerations outside of the Charter requirements, its action may well violate the Charter.

III. VOTING RIGHTS ACT

In addition to the requirements of Charter Section 207, there are other legal considerations

that the Council must deal with in the process of redistricting.

Although the Council's primary effort must be to ensure that the seven Councilmanic districts are substantially equal in population, the Council must also ensure that its redistricting actions do not give rise to a claim of vote dilution by a minority class.

Section 2 of the Voting Rights Act of 1965 (43 U.S.C. 1973), as amended in 1982, prohibits any voting practice or procedure that results in a denial or abridgement of the right to vote on account of race or color. The Section provides a private cause of action by which protected groups can challenge election procedures.

The 1986 Supreme Court decision in *Thornburg v. Gingles*, 106 S. Ct. 2752 (1986) set the standard for minority vote dilution cases. Although the case concerned an at-large election system in North Carolina, its holding is applicable to elections in a single-member district system or a multi-member district system.

A finding of discriminatory purpose is not required to establish a voting rights case (unlike a claim that partisan gerrymandering has occurred. In these cases, plaintiffs must prove both intentional discrimination against an identifiable group and an actual discriminatory effect on that group). The basic standard to come out of the case is the establishment of a three-part test that constitutes the "necessary precondition" for the establishment of a claim under the Act. The three-part test is:

- (1) The minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. (Most courts have interpreted Section 2 and Gingles to require a majority of black voting age population).
- (2) The minority group must be able to show that it is politically cohesive.
- (3) The minority group must be able to demonstrate that the white majority votes sufficiently as a block to enable it, in the absence of special circumstances such as the minority candidate running unopposed, usually to defeat the minority's preferred candidate.

While the three-part test provides the primary basis for analysis, it does not necessarily end the inquiry. The three-part test is a threshold test. A plaintiff who can meet the three-part test will stand an excellent chance of prevailing in litigation, but meeting the test merely permits the plaintiff to pass the threshold necessary to establish a claim. In response to a challenge, the court will still

look at the totality of the circumstances and will consider the various factors set out in the Senate Report accompanying the 1982 legislation. They are:

- (1) The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
- (2) The extent to which voting in the elections of the state or political subdivision is racially polarized;
- (3) The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
- (4) If there is a candidate slating process, whether the members of the minority group have been denied access to that process;
- (5) The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
- (6) Whether political campaigns have been characterized by overt or subtle racial appeals;
- (7) The extent to which members of the minority group have been elected to public offices in the jurisdiction;
- (8) Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority groups; and
- (9) Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, standard, practice, or procedure is tenuous.

Accordingly, although equality of population among the seven districts is the critical factor,

race is also a factor for consideration during the process of redistricting.

IV. PROCEDURE

Effective with the next required redistricting of Councilmanic districts, redistricting in Baltimore County involves a two-step process. The chronology of those steps is as follows: ⁹

- (1) The County Council must appoint a five-member Councilmanic Redistricting Commission no later than March 1 of the year following the decennial census, i.e. March 1, 2011;
- (2) The Commission must hold at least 3 public hearings;
- (3) The Commission must recommend legislation encompassing a redistricting plan to the County Council by October 15 of the year in which the Commission was appointed, i.e. October 15, 2011;
- (4) The County Council must hold one or more public hearings on the Commission recommendation; and
- (5) The County Council must adopt a final redistricting plan, by legislative act, by January 31 of the year following appointment of the Commission, i.e. January 31, 2012.

Neither the Commission recommendation nor the Council's final plan may change the number of councilmanic districts in effect at that time.

The Council's legislative act requires the affirmative vote of at least five members for passage. It is not subject to executive veto.

In order to meet scheduling and advertising requirements, the Council's proposed legislation must be introduced no later than the December 19, 2011 meeting for final vote at the January 17, 2012 meeting. The revised districts will become effective for the 2014 election.

Note that the Redistricting Commission has a maximum time frame of seven and one-half months within which to hold its hearings and prepare a redistricting plan as a recommendation to the Council. Assuming the Commission utilizes the entire time permitted to it, the Council has approximately 60 calendar days to hold a public hearing and introduce legislation to revise the

districts.

These time frames raise some practical issues. Whereas the Council is required to hold one or more public hearings, the Councilmanic Redistricting Commission is required to hold at least three public hearings. The Murphy Commission report stressed the “need to engage the citizens of the County in the redistricting process as much as possible” and recommended public hearings “in many locations” around the County. Clearly this outreach role is intended to be the task of the Redistricting Commission. The County Council may have only a relatively brief period of time in which to adopt a final redistricting plan after receipt of the Commission’s recommendation; it is doubtful that the process, as structured by Charter Section 207, permits the Council sufficient time to hold more than the one hearing that is required.

It is equally doubtful that the Councilmanic Redistricting Commission will have the luxury of spending seven months to hold public hearings and to prepare a redistricting plan as a recommendation to the Council. As a practical matter, the Board of Elections will require the completed redistricting plan in sufficient time to prepare for the presidential primary election of 2012. Current state law requires that election to be held on the second Tuesday in February, 2012. If the Council does not receive the Commission recommendation until October, 2011 and does not adopt the final redistricting plan until January of 2012, there is simply not enough time for the Board of Elections to prepare for a February, 2012 election.

Obviously, at the time the County Council appoints the Councilmanic Redistricting Commission, it must require in its charge to the Commission that the Commission submit its recommendation to the Council within a reasonable time frame to accommodate both the Council’s schedule and the needs of the Board of Elections. A reasonable schedule might allot four months to the Commission and three months to the Council, with adoption of a final plan by the Council no later than October 31, 2011.

Another practical issue inherent in this new redistricting process is that it begins on a date certain, and all succeeding deadlines flow from that date. The former language of Section 207 required the County Council to act within a certain time after publication of the census data. Now, the Council must begin the process no later than March 1, independently of the publication or availability of the census data. Therefore, the procedural steps detailed herein should be initiated as soon as possible after January 1 so that the Council is ready to appoint the Commission as soon as the census data is available to the County.

The most reasonable scenario for the conduct of the redistricting process is that the

Commission and the County Council will utilize the same working facilities and the same staff. The logistics involved argue for a joint utilization of facilities because the volume of data to be gathered, stored and securely maintained for a nine-month period is significant. The council library should be used to store and secure the data and as the location for both the Commission and the Council to analyze and work with the data. The Council staff should be utilized because the staff is experienced and non-political; the staff is familiar with the County and can best handle the technical (e.g., the scheduling of public hearings and the drafting of legislation) and legal issues inherent in the process of redistricting.

The staff and all the resources detailed herein will be made available to the Commission as soon as it is appointed and the census data is available. The Commission will work independently to prepare its recommendation to the Council. When that recommendation is presented, the Council will then prepare its legislation pursuant to the Charter requirements.¹⁰

As early as possible after January 1, the Council should contact the County Office of Planning and the State Department of Planning. The Census Bureau will provide all Maryland census data to the Department of Planning which in turn will provide the data, in electronic form, to each County. The Council should obtain a separate computer unit to be utilized solely for the redistricting project, and the Council library should be designated as the location for the computer and all other data associated with the project. The library should not be used for any other purpose until the project is completed.

The Council should ask the Director of Planning to assign a staff person to the Commission and Council for the duration of the redistricting project. This person will effectively be a Council employee for that time period, will report to the Council Office for work, will operate the computer, and will answer to the members of the Redistricting Commission, the members of the County Council, and any other staff designated by these two bodies.¹¹

The census data supplied by the State will contain the total number of persons by precinct and block (a block is an area bounded by visible features, such as a road, stream, power line, railroad track, etc.) and total number of persons by major race group and by voting age population. A housing unit count will also be included. The Council will purchase a software program that will enable the Commission and the Council to work with the census data. The program allows the user to adjust, or move, councilmanic district boundary lines; each adjustment of the lines concurrently registers the change in population count that results.

In addition to the census data, the following data should be obtained, again, as early as

possible after January 1:

- A listing of all precincts by councilmanic district, number, and voting location
- A population breakdown, by precinct, and by race, for each councilmanic district
- A complete voter registration list
- The complete results of the preceding gubernatorial election
- A copy of the most recent redistricting bill
- Maps of each current councilmanic district (2' X 4'), showing existing boundaries and internal monuments
- Maps of legislative and congressional districts
- A directory of street addresses, indicating the election district, precinct, legislative district, congressional district, and zip code for each street address

All of this data will be made available to the Commission members and the members of the County Council, and maintained in the Council library.

The objective for both the Commission and the Council is to redistrict by aggregating precincts into each Councilmanic district (see Bill 47-01 attached as Exhibit D). The Councilmanic boundary lines should be identifiable monuments - precinct lines, roads, schools, etc., and the existing precinct lines are the starting point. The Commission and the Council must follow precinct line boundaries if at all possible and under no circumstances deviate from census block boundaries. The census block lines are inviolate; the precinct lines are not. If precinct lines are split, the Board of Elections Supervisors will later give effect to such splits by renumbering and realigning the split precincts to conform to the Council's decisions.¹²

Once the Commission recommendation is received, the Council should deal with redistricting as a committee of the whole. The members can work with the Council-assigned staff on an individual or group basis to review the maps or work with the computer program.

V. EFFECTIVE DATE

The law adopting the Council's redistricting plan must be passed by the affirmative vote of at least five members, and it must explicitly state that the councilmanic boundaries established therein become effective for the next regularly scheduled election of councilmembers, e.g. 2014, on conclusion of the process that follows the 2010 census. The redistricting map that depicts the

decisions inherent in the legislation should be clearly labeled “Baltimore County: Councilmanic Districts 2014”.¹³

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ENDNOTES

1. The Commission also recommended that the Council develop a manual of relevant redistricting laws and procedures to serve as a guide for future revisions of the County’s councilmanic districts. County Council Resolution 62-02 directed the Council staff to prepare a manual.

2. Redistricting is different than reapportionment, which is the assignment of seats in the U.S. House of Representatives to States based on their population. This is a requirement of Article 1 of the U.S. Constitution. Once the number of representatives each State receives is determined, each State has the responsibility of creating specific electoral districts from which representatives are to be elected. This is the process of redistricting.

3. Exhibit A consists of four maps depicting the redistricting decisions of the County Council following the 1970, 1980, 1990 and 2000 census, respectively. It is readily apparent that the seven councilmanic districts in all cases meet the two objective criteria of compactness and contiguousness.

4. Exhibit B consists of two charts: the first, dated April 6, 2001, depicts the breakdown of the 2000 census data upon which the Council based its most recent redistricting decisions. The data shows that the total County population in the 2000 census count was 754,292. Therefore, each of the seven districts should contain a population of 107,756 in order to be equal in number. Districts 1, 2, and 3 were above that figure, while 4, 5, 6, and 7 were below. District 3 was 16% above the optimal number, while District 7 was 11% below; therefore, the County-wide deviation was 27%.

The second chart depicts the Council's decisions that were incorporated into Bill 47-01. At the conclusion of the process, District 5 was 4.2% over the optimal number, while District 4 was 4.8% under the optimal number. Therefore, the total deviation was 8.78% and within the 10% rule.

5. The maps in Exhibit A demonstrate that the Council has generally followed natural, geographic, and community boundaries. Beginning with the next redistricting process following the 2010 census, giving "due regard" to these boundaries is a requirement of County law.

6. The requirement that due regard be given to natural and geographic boundaries is relatively straightforward and uncomplicated. The maps attached as Exhibit A demonstrate that these boundaries (rivers, railroad lines, highways, etc.) have been respected in the past. They are the obvious starting point for the drawing of election district boundaries at any level of government in any jurisdiction.

A relevant consideration in this regard, that will be addressed in Part IV. Procedure, is that the census data that forms the basis for the Council's decisions is presented in the form of census "blocks"; these blocks do not respect natural and geographic boundaries in all cases. The Council may not divide census blocks in the course of making its redistricting decisions.

7. The report of the Redistricting Commission is set out in full in Exhibit C.

8. The boundaries established for certain purposes differ at times from the traditional boundaries, and in some cases, the designated boundaries include only portions of the County's traditional communities. For example, the boundaries of the County's Commercial Revitalization Districts were officially designated by resolution of the County Council in 1997

(Res. 114-97) and have since been amended or re-designated by subsequent resolutions. This designation carries with it certain benefits and incentives for the redevelopment of properties within the districts. The districts include parts of the communities traditionally known as Arbutus, Woodlawn, Pikesville, Reisterstown, Loch Raven, Towson, Dundalk, Essex, and others.

9. Charter Section 207 applies after each decennial census, but all of the dates listed herein refer to the next redistricting process following the 2010 census. Likewise, the references to the dates for scheduling of bill introduction and vote assume that the Council will continue to meet on the 1st and 3rd Mondays of each month.

10. The Murphy Commission report also recommended that the Redistricting Manual address how the Commission was to be chosen, who would or would not be chosen and how the Commission would operate.

The method of Commission appointment is clearly within the province of the elected members of the County Council and cannot be codified in a non-binding procedural manual. The Council will determine how members are chosen and who is chosen. The only limitations are those contained in Charter Section 207(a): (1) there must be five members, and (2) a person who holds elective office is not eligible for appointment. At a minimum, the Council should designate the Chairman of the Commission and specify a definite date for the Commission to report to the Council.

As for the manner in which the Commission will operate, logic dictates that it should conduct all of its proceedings, including its working sessions, as a committee of the whole. However, this is an issue for the Commission to decide, or for the County Council to decide when it appoints and charges the Commission with its task.

11. The Council must communicate with and stress to any assigned staff the confidential nature of the project. Redistricting is a political process that is committed solely to the legislative branch of County government. The County Executive plays no role in the process, nor do the members of the General Assembly. Obviously, the Council has the option of hiring someone outside of County government to assist in the project.

The County Council budget for fiscal years 2011 and 2012 must include sufficient funds for software costs, staffing, etc. The costs budgeted in 2001 were minimal. Presumably, the costs associated with a two-step, nine-month process will be greater.

12. Attached as Exhibit E is the June, 1991 advice of the Attorney General on this subject. As a practical matter, the Council sometimes splits existing precinct lines, and the local election board makes the appropriate changes. The Council should work closely with the board to obtain accurate data from the board before the redistricting process begins and to ensure that the final Council decisions are accurately translated by the board upon the final adoption of the redistricting plan.

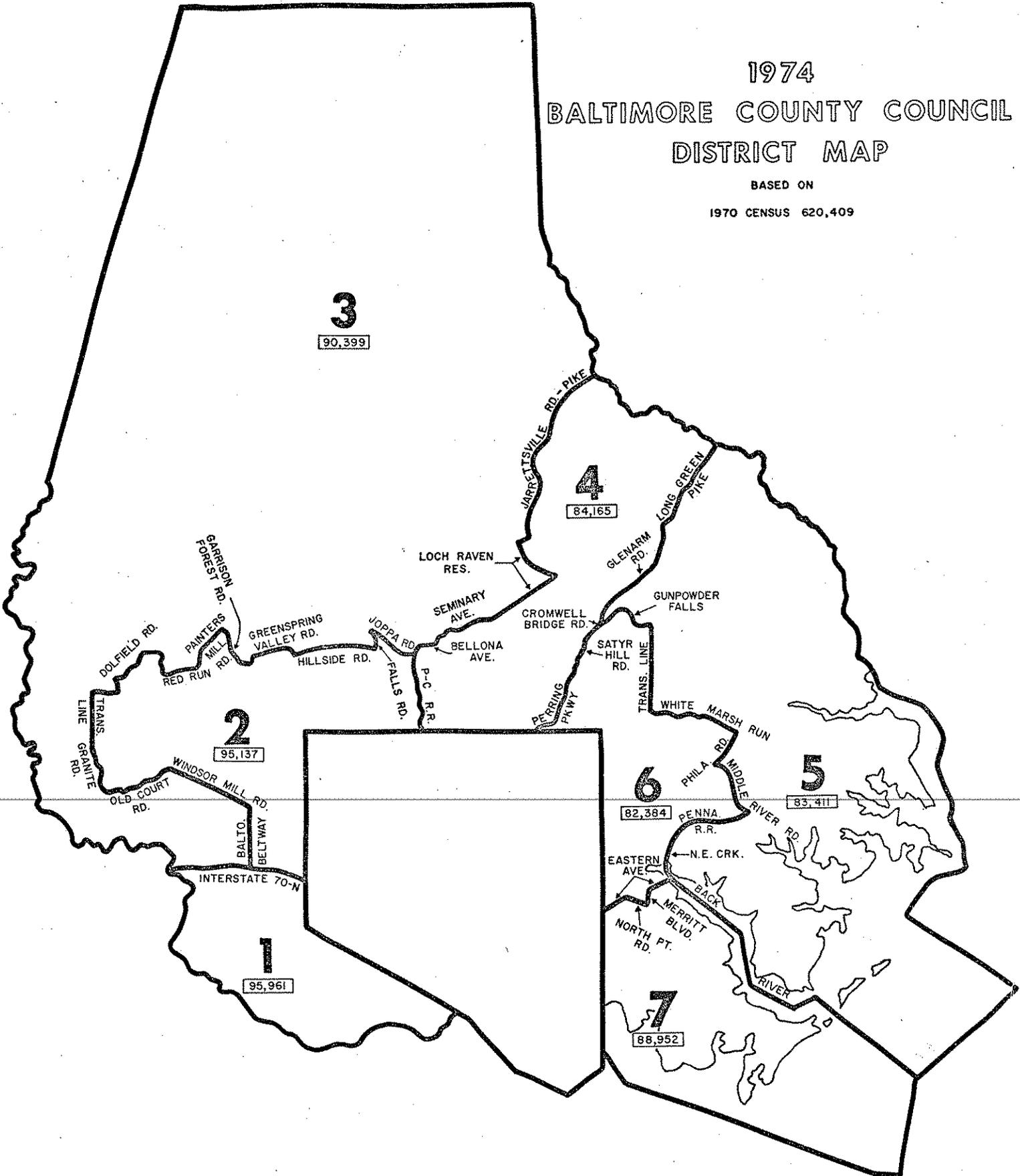
13. Attached as Exhibits F and G, respectively, are a 1991 memo that discusses the legal basis for the conclusion that the new districts are effective for the next regularly scheduled election, and not sooner, as well as some of the practical consequences of that conclusion, and a 2002 memo that discusses a specific practical issue, namely, the effect of redistricting on statutory residence requirements for members of County boards and commissions.

EXHIBITS

EXHIBIT A

1974
BALTIMORE COUNTY COUNCIL
DISTRICT MAP

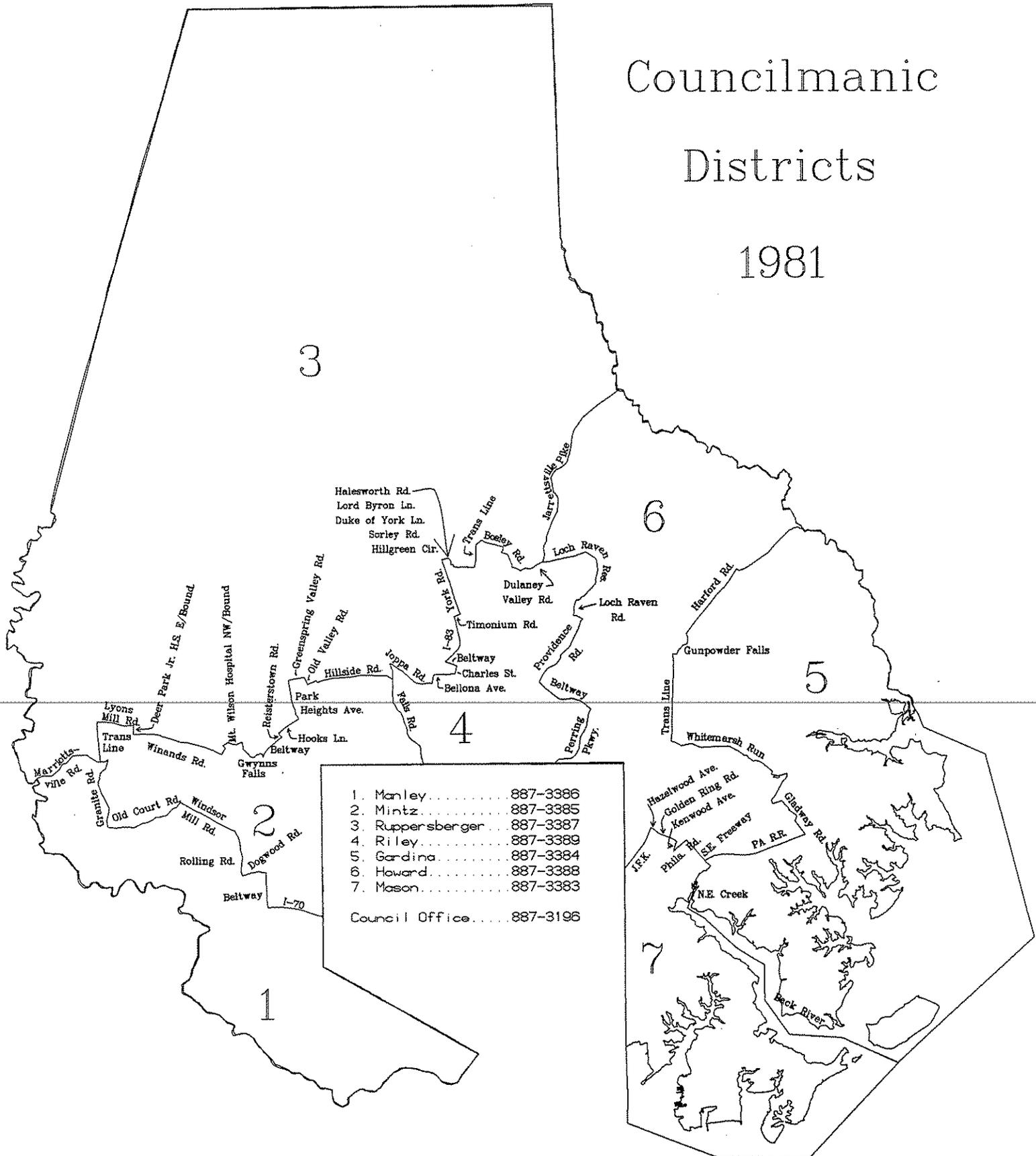
BASED ON
1970 CENSUS 620,409



Baltimore County

Councilmanic Districts

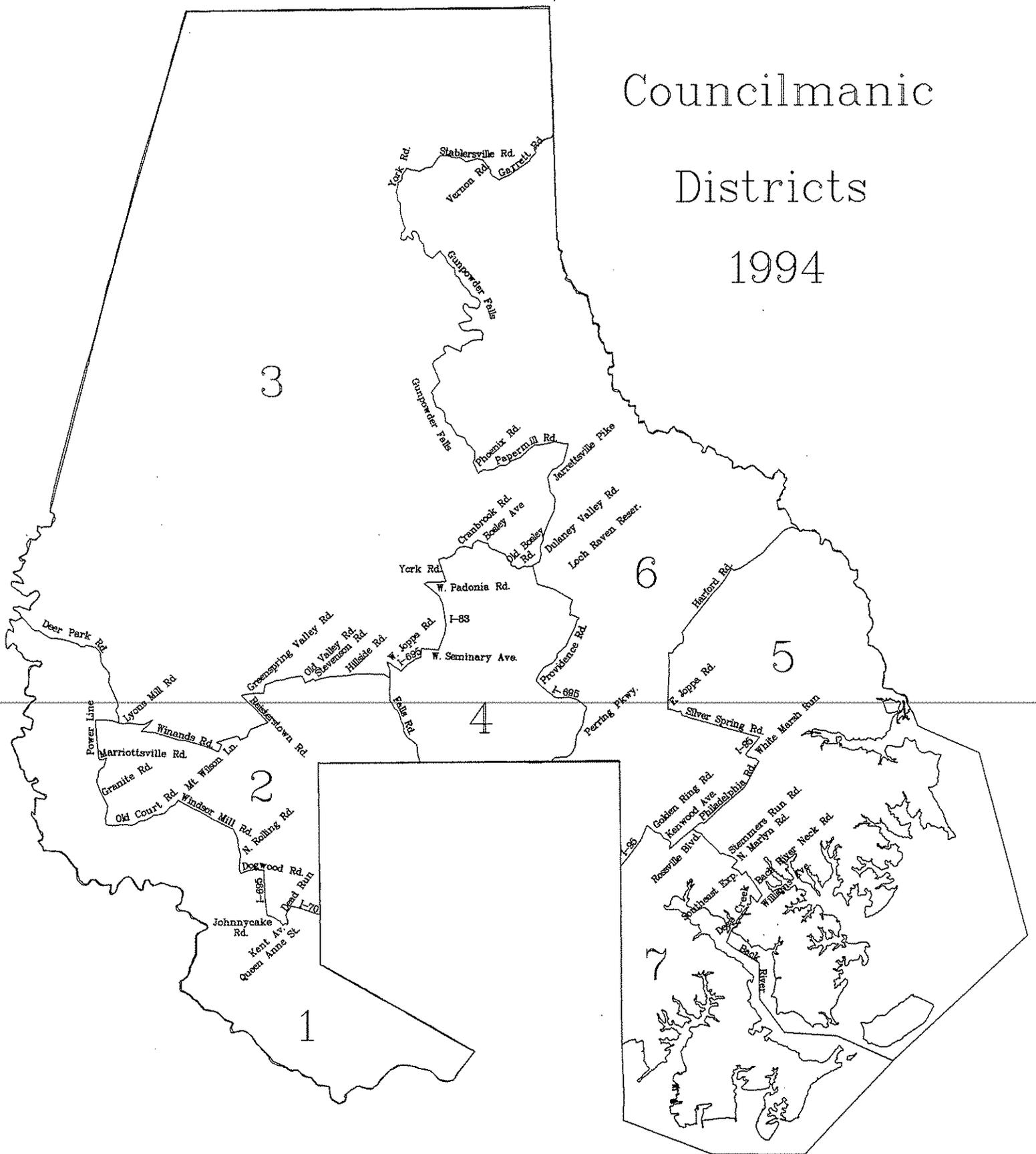
1981



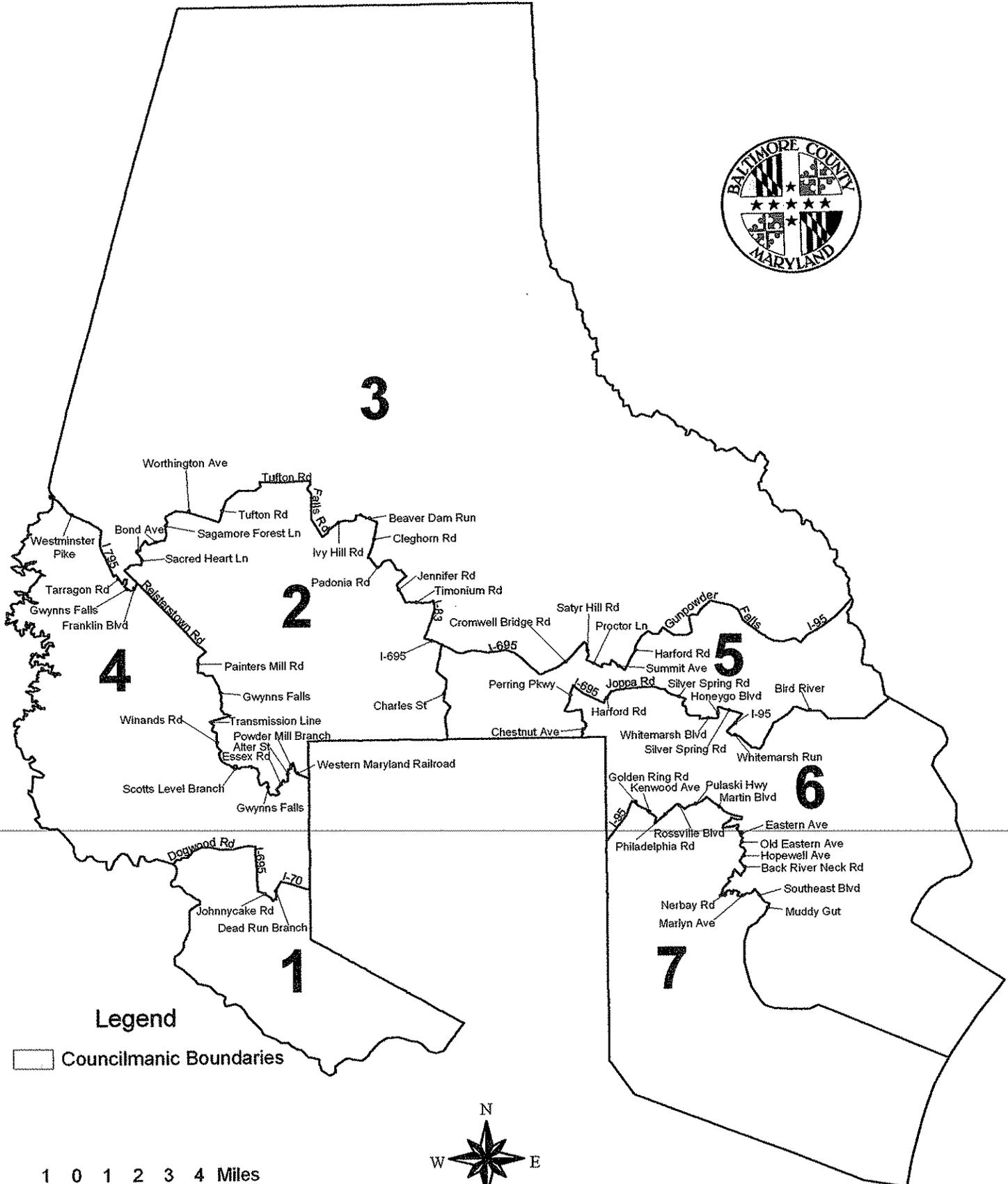
1. Manley	887-3386
2. Mintz	887-3385
3. Ruppensberger	887-3387
4. Riley	887-3389
5. Gardina	887-3384
6. Howard	887-3388
7. Mason	887-3383
Council Office	887-3196

Baltimore County

Councilmanic Districts 1994



Baltimore County: Councilmanic Districts 2002



Legend

 Councilmanic Boundaries

1 0 1 2 3 4 Miles



Data Source:
U.S. Bureau of the Census
2000 TIGER Line Data (1:100000)

EXHIBIT B

Baltimore County Population by Race by Councilmanic District
 April 6, 2001

Councilmanic District	Total Population	Total Deviation from Optimal	White Population	Percent White	African American	Percent African American	Hispanic	Percent Hispanic	Native American	Percent Native American	Asian	Percent Asian	Pacific Islander	Percent Pacific Islander
1	114569	6813	77360	67.52%	28403	24.79%	2405	2.10%	311	0.27%	5309	4.63%	39	0.03%
2	113872	6116	45446	39.91%	63498	55.76%	1887	1.66%	229	0.20%	2289	2.01%	29	0.03%
3	124804	17048	99762	79.93%	16999	13.62%	2785	2.23%	182	0.15%	5063	4.06%	37	0.03%
4	98046	-9710	79211	80.79%	12180	12.42%	1972	2.01%	146	0.15%	4621	4.71%	21	0.02%
5	101406	-6350	83069	81.92%	13847	13.66%	1737	1.71%	392	0.39%	2051	2.02%	37	0.04%
6	105818	-1938	89713	84.78%	10282	9.72%	1671	1.58%	188	0.18%	3771	3.56%	27	0.03%
7	95777	-11979	86571	90.39%	6391	6.67%	1317	1.38%	475	0.50%	843	0.88%	52	0.05%
Total	754292	0	561132	74.39%	151600	20.10%	13774	1.83%	1923	0.25%	23947	3.17%	242	0.03%

Optimal District Size Based on Total Population: 107756

Data Set: Census 2000 Redistricting Data (Public Law 94-171) Summary File

Baltimore County Population by 2002 Councilmanic District

Total Population by Race by Councilmanic District												
DISTRICT	Population	Target	Deviation	White	Black	Hispanic	Native American	Asian	Pacific Islander	Other Race	Total	Minority
1	104369	107756	-3.14%	73682	22494	2226	277	5044	37	920	30998	
2	103094	107756	-4.33%	79012	17759	2205	133	4013	20	790	24920	
3	109739	107756	1.84%	98678	4397	1684	161	4842	20	466	11570	
4	102823	107756	-4.58%	30814	66934	1998	258	2151	35	701	72077	
5	112286	107756	4.20%	93365	12392	1933	167	4432	37	496	19457	
6	111824	107756	3.78%	89012	17489	2099	385	2462	38	807	23280	
7	110157	107756	2.23%	96569	10135	1629	542	1003	55	505	13869	
Total	754292	754292		561132	151600	13774	1923	23947	242	4685	196171	

Percent Population by Race by Councilmanic District												
DISTRICT	Population	Target	Deviation	%White	%Black	%Hispanic	%Native American	%Asian	%Pacific Islander	%Other Race	%Total	Minority
1	104369	107756	-3.14%	70.60%	21.55%	2.13%	0.27%	4.83%	0.04%	0.88%	29.70%	
2	106034	107756	-1.60%	76.64%	17.23%	2.14%	0.13%	3.89%	0.02%	0.77%	24.17%	
3	106799	107756	-0.89%	89.92%	4.01%	1.53%	0.15%	4.41%	0.02%	0.42%	10.54%	
4	102823	107756	-4.58%	29.97%	65.10%	1.94%	0.25%	2.09%	0.03%	0.68%	70.10%	
5	112742	107756	4.63%	83.15%	11.04%	1.72%	0.15%	3.95%	0.03%	0.44%	17.33%	
6	111368	107756	3.35%	79.60%	15.64%	1.88%	0.34%	2.20%	0.03%	0.72%	20.82%	
7	110157	107756	2.23%	87.66%	9.20%	1.48%	0.49%	0.91%	0.05%	0.46%	12.59%	

Data Set: Census 2000 Redistricting Data (Public Law 94-171) Summary File

MURPHY & MURPHY, L.L.C.

Attorneys At Law
14 NORTH ROLLING ROAD
CATONSVILLE, MARYLAND 21228-4848
Tel (410) 744-4967
Fax (410) 744-8936

April 22, 2002

The Honorable John Olszewski, Sr.
Chairman, Baltimore County Council
Second Floor - Court House
Towson, Maryland 21204

Re: County Council Redistricting
Commission
Final Report and Recommendations

Dear Mr. Chairman:

Pursuant to Council Resolution 142-01, your Redistricting Commission hereby submits its Final Report and Recommendations for changes to the Charter to extend the time line for the County Council to complete redistricting and insure public input at the earliest stages of the redistricting process.

The Commission recommends the Charter establish a Redistricting Commission to hold public hearings and make recommendations to the Council. As a consequence of the new time lines and to encourage participation in the next election, we also recommend that the period for which a citizen must reside in any district prior to being a candidate from that district should be reduced from two (2) years to six (6) months. The Commission unanimously approved all recommendations.

I was honored to serve on your Commission with such distinguished members who diligently came to every meeting and brought great insight and understanding. We commend your Secretary, Tom Peddicord, for his patience, counsel and guidance throughout the process.

We are grateful to the many citizens who contributed to the research conducted by your Commission with regard to how other jurisdictions redistrict as well as research of the case law which provides the foundation for the process. The efforts by these citizens saved the Commission a great deal of time and focused our efforts.

We solicited public input through direct contact with those we understood were interested in this process. Our deliberations were given substantial press coverage in metropolitan and local news papers. We advertised the date for the public hearing, and distributed our preliminary recommendations by mail, on the County's internet website and before the public hearing. On March 25, 2002 we held a public hearing to assure the public had every opportunity to comment on and participate in our discussions. Finally, we are most grateful to those persons and groups who previously studied this issue and had already formulated recommendations for change. This information in particular was helpful in evaluating alternatives and perspectives.

As a result of the public hearing, we recommend that the Council create a Redistricting Policy Manual which would become a repository for prior redistricting experiences and software for the future. We recommend a section of the manual provide summaries of court cases and legislation which affects redistricting. A further section would give detailed guidelines for the Commission and the Council to consider when drafting their plans. We think this would provide a good starting point for each Commission after a ten (10) year hiatus.

In regard to guidelines, there were proposals we considered which in our view should be considered as recommendations but not requirements for future consideration. For example the idea that communities should be kept together is compelling. We added the word "community" to the list of criteria in the Charter to be considered. However there was a suggestion in furtherance of this goal that we should require new districts to preserve community association boundaries. While we found this to be an admirable goal, we could not recommend it as a requirement, in view of the uncertainty of such boundaries and even the make up of the community associations. We could not be certain that after ten (10) years there would always be a contact person for each association. Consequently, we recommend this idea become one of a list of criteria given in the Policy Manual as a guide and goal for the Commission and Council to consider.

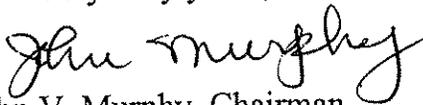
Many of the proposals we reviewed contained great detail regarding how the Commission was to be chosen, who would or would not be chosen, how the Commission would operate, etc. While there was often wisdom in these suggestions, we felt that this would be far too much detail for the Charter because such documents should contain the broad structure of government. Yet, we wanted to preserve this wisdom in order that the next Commission would have this information immediately available to them. Toward that end, we again recommend that a section of the Policy Manual be set aside for this information.

The Honorable John Olszewski, Sr.
Page Three
April 17, 2002

Finally your Commission strongly urges the Policy Manual reflect the need to engage the citizens of the County in the redistricting process as much as possible and, to that end, provide for public hearings in many locations around the County which would be appropriately announced to the public using all practical means. We also recommend that the work of the Commission be adequately funded so the studies, software and expert analysis could be available to the Commission members and the Council in a timely fashion.

Please let us know if you have any questions or would like us to review this matter with the Council at a work or public session.

Very truly yours,


John V. Murphy, Chairman

JVM:pam

Enclosures

cc: Members of the Redistricting Commission

G:\RedistrictingComm\FinalLetter

EXHIBIT D

APPROVED DEVELOPMENT PLANS ON THE RECORD PLAN, and shall grant approval
pursuant to the requirements of this section. If a comment or condition remains unresolved, the
hearing officer shall proceed to take testimony and receive evidence. REPEALING AND MAY
REQUIRE TESTIMONY AND EVIDENCE REGARDING THE POTENTIAL IMPACT OF
OTHER PROPOSED DEVELOPMENT PLANS, IF APPROVED, APPROVED
DEVELOPMENT PLANS ON THE RECORD PLAN, and SHALL render a decision pursuant to
the requirements of this section.
SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect forty-five
days after its enactment.
EFFECTIVE: AUGUST 4, 2001

BILL NO. 47-01
A BILL
ENTITLED

AN ACT concerning
Revision of Councilmanic Districts
FOR the purpose of revising and reconstituting the councilmanic districts of Baltimore County
in accordance with the latest census figures published as a result of the U.S. Census of
2000, as required by Section 207 of the Baltimore County Charter.
WHEREAS, Section 207 of the Baltimore County Charter empowers and directs the
County Council to consider the revision of councilmanic districts along population lines as
determined by the 1980 U.S. Census and every ten years thereafter; and
WHEREAS, the population results of the 2000 U.S. Census indicate the need for revising
the current councilmanic district lines; now, therefore
SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE
COUNTY, MARYLAND that, in accordance with Section 207 of the Baltimore County Charter,
the councilmanic districts of Baltimore County be and they are hereby revised and reconstituted
to read as follows:
Baltimore County is divided into seven councilmanic districts composed of the following
election districts or parts of districts as the districts presently exist:

COUNCILMANIC
DISTRICT

PRESENT ELECTION DISTRICT OR PARTS THEREOF

I
So much of Precinct 1 south of I-70 and Precincts 2 through 16, all
inclusive, of the 1st Election District; and the entire 13th Election
District.

II
Precincts 7 and 8 So much of Precinct 7, starting at the intersection of
Twin Lakes Court and Scotts Level Branch proceeding northeast on
Twin Lakes Court, north of Twin Lakes Court, and north of an
extension of Salt Lake Drive if extended to Scotts Level Branch, and so
much of Precinct 8 east of Winards Road, of the 2nd Election District;
the entire so much of Precinct 1 west of Powder Mill Branch, north of
Rockland Road, and north of Bedford Road, so much of Precinct 1 west
of Albet Street, north of Essex Road, and east of Campfield Road, so
much of Precinct 1 north of Queen Anne Road, north of Rockridge
Road, and west of Lancaster Road, and Precincts 2 through 13, all
inclusive, of the 3rd Election District; Precincts 2 and 3, so
much of Precinct 4 south of Worthington Avenue, so much of Precinct 4
south of Tufton Avenue, and Precincts 5 Precincts 5 and 6 of the 4th
Election District; so much of Precinct 2 south of Tufton Avenue and
west of Falls Road, so much of Precinct 2 south of Ivy Hill Road, south
of Balsman Run, west of Jerome Jay Drive, south of Beaverdam Run,
and west of Cleghorn Road if extended to Beaverdam Run, Precinct 8
Precincts 8 and 9, and Precincts 17 through 19, all inclusive, of the 8th
Election District; and Precincts 1 through 4, all inclusive and 2, of the
9th Election District.

III
So much of Precinct 4 north of Worthington Avenue, so much of
Precinct 4 north of Tufton Avenue, so much of Precinct 7 north of
Westminster Pike, east of I-795, north of Berwyns Lane, east of
Tarragon Road, north of Caraway Road, south of Brookbury Drive,
east of the Gwynns Falls, and north of Franklin Boulevard, and
Precincts 8 and 9 of the 4th Election District; the entire 5th Election
District; the entire 6th Election District; the entire 7th Election District;
Precinct 1, so much of Precinct 2 north of Tufton Avenue and east of
Falls Road, so much of Precinct 2 north of Ivy Hill Road, north of
Balsman Run, east of Jerome Jay Drive, north of Beaverdam Run, and
east of Cleghorn Road if extended to Beaverdam Run, Precincts 3
through 7, all inclusive, Precincts 9 10 through 16, all inclusive, and
Precinct 20 of the 8th Election District; Precincts 5 through 8, all
inclusive 7 and 8, so much of Precinct 9 north of Cornwell Bridge
Road, Precinct 24, and so much of Precinct 25 north of Summit Avenue,

IV
of the 9th Election District; the entire 10th Election District; and Precincts 1 and 2, and so much of Precinct 3 west of Behar Road 1 through 3, all inclusive, of the 11th Election District.

So much of Precinct 1 north of 70 Precinct 1, of the 1st Election District; Precincts 1 through 6, all inclusive, so much of Precinct 7, starting at the intersection of Twin Lakes Court and Scotts Level Branch proceeding northeast on Twin Lakes Court, south of Twin Lakes Court, and south of an extension of Salt Lake Drive if extended to Scotts Level Branch, so much of Precinct 8 west of Winands Road, and Precincts 9 through 21, all inclusive, of the 2nd Election District; so much of Precinct 1 east of Powder Mill Branch, south of Rockland Road, south of Bedford Road, east of Alter Street, south of Essex Road, and west of Campfield Road, and so much of Precinct 1 south of Ouzen Anne Road, south of Rockrides Road, and east of Lancaster Road, of the 3rd Election District; and Precincts 1, 2, 6, and 7 Precinct 1, and so much of Precinct 7 south of Westminster Pike, west of I-795, south of Berrymans Lane, west of Laragon Road, south of Caraway Road, north of Brookebury Drive, west of the Gwynns Falls, and south of Franklin Boulevard, of the 4th Election District.

V
Precincts 9 through 21, 3 through 6, all inclusive, so much of Precinct 9 south of Cromwell Bridge Road, Precincts 10 through 20, all inclusive, so much of Precinct 21 west of Old Harford Road, south of Glendale Road, west of Temple Avenue, south of Dubois Avenue, west of Chestnut Avenue, and south of Taylor Avenue, Precinct 23, and Precincts 23 through 25, all inclusive, so much of Precinct 25 south of Summit Avenue, of the 9th Election District; and so much of Precinct 3 east of Behar Road; Precincts 4 through 8, all inclusive; Precinct 10; Precincts 12 through 14, all inclusive; and Precincts 17 and 18; Precincts 4 through 7, all inclusive, so much of Precinct 8 north of Joppa Road, Precincts 10 and 12, so much of Precinct 13 north of White Marsh Boulevard, and west of Honeygo Boulevard, and Precincts 14, 17, and 18, of the 11th Election District.

VI
So much of Precinct 21, east of Old Harford Road, north of Glendale Road, east of Temple Avenue, north of Dubois Avenue, east of Chestnut Avenue, and north of Taylor Avenue, and Precinct 22 of the 9th Election District; so much of Precinct 8 south of Joppa Road, Precincts 9, 11, 15, and 16, and 19 and 11, so much of Precinct 13 south of White Marsh Boulevard, and east of Honeygo Boulevard, and Precincts 15 and 16, of the 11th Election District; Precincts 1 through 9, all inclusive, and Precinct 12 of the 14th Election District; and so much of

Precinct 3 north of Pulaski Highway, Precincts 4 through 10, all inclusive, so much of Precinct 11 east of North Byway, east of North Fenway, east of Woodvale Road if extended to North Fenway, east of Langley Road, east of Eastern Boulevard, east of Wilbur Road, east of Old Eastern Avenue, and east of Weber Road if extended to an extension of Hopewell Avenue, and Precincts 17 through 19, all inclusive, so much of Precinct 17 north of Nerbay Road if extended to Deep Creek, west of Sandalwood Road, west of Moline Circle, north of Punjab Drive, north of Sandalwood Road, west of Foxwood Lane, north of Foxchase Lane, east of Middleborough Road, north of Lace Drive, and north of Marlyn Avenue, Precinct 18, and so much of Precinct 19 north of Southeast Boulevard, and east of Muddy Gut, of the 15th Election District.

VII

The entire 12th Election District; Precincts 10 and 11 of the 14th Election District; and Precincts 1 and 2, so much of Precinct 3 south of Pulaski Highway, so much of Precinct 11 west of North Byway, west of North Fenway, west of Woodvale Road if extended to North Fenway, west of Langley Road, west of Eastern Boulevard, west of Wilbur Road, west of Old Eastern Avenue, and west of Weber Road if extended to an extension of Hopewell Avenue, Precincts 12 through 16, all inclusive, so much of Precinct 17 south of Nerbay Road if extended to Deep Creek, east of Sandalwood Road, east of Moline Circle, south of Punjab Drive, south of Sandalwood Road, east of Foxwood Lane, south of Foxchase Lane, west of Middleborough Road, south of Lace Drive, and south of Marlyn Avenue, so much of Precinct 19 south of Southeast Boulevard, and west of Muddy Gut, and Precincts 20 through 22, all inclusive, of the 15th Election District.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act having been passed by the affirmative vote of five members of the County Council shall take effect 45 days after its enactment, and the councilmanic boundaries established herein shall become effective for the next regularly scheduled election of councilmembers in 2002.
EFFECTIVE: AUGUST 2, 2001

Burch

EXHIBIT E



J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
JUDSON P. GARRETT, JR.
DEPUTY ATTORNEYS GENERAL

ROBERT A. ZARNOCH
ASSISTANT ATTORNEY GENERAL
COUNSEL TO THE GENERAL ASSEMBLY
RICHARD E. ISRAEL
KATHRYN M. ROWE
ASSISTANT ATTORNEYS GENERAL

THE ATTORNEY GENERAL
OF MARYLAND

OFFICE OF
COUNSEL TO THE GENERAL ASSEMBLY
104 LEGISLATIVE SERVICES BUILDING
90 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401-1991
AREA CODE 301
BALTIMORE & LOCAL CALLING AREA 841-3889
WASHINGTON METROPOLITAN AREA 858-3889
TTY FOR DEAF - ANNAPOLIS 841-3814 - D.C. METRO 858-3814

June 20, 1991

The Honorable Thomas L. Bromwell
7503 Belair Road, Second Floor
Baltimore, Maryland 21236

Dear Senator Bromwell:

You have requested advice on whether a charter county may alter or split precinct lines in the course of reapportioning councilmanic districts.

Although §5(H) of Article 25A appears to authorize charter home rule counties to rearrange and create election districts and precincts, Attorney General Burch in a 1971 opinion concluded that Article 33, §2-12, vested the power to subdivide or change the boundaries of precincts exclusively in the local boards of elections; thus, county power under §5(H) of Article 25A was held to be superseded by public general law, viz., Article 33, §2-12. 56 Opinions of the Attorney General 175 (1971). 1/

¹ This 1971 opinion finds support in language of the Court of Appeals in County Council v. Montgomery Ass'n, 274 Md. 52 (1975). There, the Court noted that the General Assembly enacted a "comprehensive" State Election Code, which included such matters as "the location of polling places" and the "creation of precinct boundaries". 274 Md. at 60-61. After reviewing the powers of the State and local election boards, the Court went on to note that:

"This pervasive state administrative control of the election process, on both the statewide and local levels, is a compelling indication that the General Assembly did not intend that local governments should enact election laws, but rather intended that the conduct and regulation of elections be strictly a state function." 274 Md. at 62.

While charter counties with councilmanic districts lack the power to alter or split election precincts, they are required to redistrict councilmanic lines to conform to the dictates of the Fourteenth Amendment to the United States Constitution. ^{2/} Nevertheless, a county redistricting plan that draws a councilmanic district line through an existing precinct cannot be implemented without regard to §2-12 of Article 33. Presently, precinct boundaries are "frozen" until November 15, 1992 pursuant to §2-12(d) of Article 33 and may not be changed without the approval of the State Administrator of Election Laws. Even after November 15, 1992, changes in precincts are the responsibility of the local boards of election. Art. 33, §2-12(a). Thus, for a councilmanic redistricting plan to be capable of implementation, a county must recognize that any proposed precinct boundary alteration is dependent upon the election board's acquiescence in making the change. It should also be noted that if a county feels compelled to propose a precinct boundary alteration, the path the new boundary takes must follow existing census block tabulation boundaries. Art. 33, §2-12(c).

Sincerely,



Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

RAZ:maa

² Because local government reapportionment schemes may depart from precise mathematical equality, and because minor deviations from population equality may be justified, Andrews v. Koch, 528 F.Supp. 246, 251 (E.D.N.Y. 1981), aff'd 688 F.2d 815 (2nd Cir. 1982), aff'd 459 U.S. 801 (1982), it is often possible to comply with one-person one-vote requirements and to respect precinct lines. 25 Am.Jur.2d Elections §19.

BALTIMORE COUNTY, MARYLAND
INTER - OFFICE CORRESPONDENCE

TO: The Hon. Douglas B. Riley
Chairman, County Council

FROM: Thomas J. Peddicord, Jr.
Legislative Counsel/Secretary

SUBJECT: Redistricting

DATE: July 11, 1991

Several councilmembers have asked me about the effective date of the bill which will implement the Council's redistricting plan. Pursuant to the mandate of Section 207 of the Charter, the Council is scheduled to adopt a bill at its meeting on August 5 (either Bill No. 125-91 or Bill No. 126-91) which revises the seven councilmanic districts in a manner consistent with the requirements of federal law. The bill(s) before the Council provides that it shall become effective forty-five days after enactment. Simply put, the question is whether, upon the passage of the redistricting bill and the passage of 45 days, the incumbent councilmembers will represent newly revised districts and therefore, in some cases, new constituents. I think the answer is, clearly, no. The new councilmanic boundaries established by the bill will be effective for the election of councilmembers in 1994. Accordingly, I think it would be wise to amend the final redistricting bill to so state.

My conclusion is based primarily upon the language of Article II of the Baltimore County Charter. Section 201 of the Charter provides that the Council is composed of seven members, each of whom shall, at the time of his election and for two years prior thereto and during his full term of office, reside in a different one of the seven

districts provided for in the Charter. Further, all members shall be elected by the voters in the councilmanic district in which they reside. Section 202 provides that if a member, during his term, moves his residence from the district from which he was elected, his office is immediately vacated, but no member shall be forced to vacate his office by reason of a change in the boundary lines of his councilmanic district made during his term. Section 203 provides that members hold office for terms of four years commencing at the time of their election and until their successors qualify. Section 205 provides that a vacancy in the office of councilmember is filled by Executive appointment of a person whose name is submitted by the State Central Committee members representing the political party to which the previous member belonged, and the member so appointed must reside in the same councilmanic district as his predecessor and until his successor shall qualify. Section 206 divides the County into seven council districts enacted in accordance with Section 207 (the redistricting provision under which the Council is currently acting to revise its districts).

The framers of the Charter have made it clear that stability, continuity of representation and orderly operation of the Council are some of the express goals of Article II of the Charter.

The Charter clearly contemplates continuity of representation by a councilmember, during his or her full four-year term, of those voters who elected him from a specific district, from which he moves at the risk of vacating his office. The requirement to revise the districts once in each ten-year period does not alter this basic format. For example, if the effect of revising councilmanic districts pursuant to Section 207 were to literally change the boundaries of the district during the term of office and thus change the status of the elected councilmembers, then the procedure in Section 205 for the filling of a councilmanic vacancy is cast into doubt. That Section requires the appointment of a successor who must reside in the same councilmanic district as his predecessor. A district represents a defined territory - defined as of the date of election - and not a mere number.

The Maryland Constitution contains a similar provision in Article III, Section 13(a) for the filling of a General Assembly vacancy -- similar as to the requirement of sameness of political party and sameness of district. As to the first element of party sameness, the State Law Department has opined that when such a vacancy occurs, the central committee of the political party to which the vacating member was affiliated at the time of election is authorized to submit a name to the appointing authority, even if the vacating member changed political party affiliation after his election (70 OAG 116, citing also a similar provision as to party in Article 25, Section 16 of the Annotated Code of Maryland relating to vacancies in the office of county commissioner and applying the same reasoning thereto). In arriving at his conclusion, the Attorney General cited the principle that laws relating to elective office must be construed so that the will of the electorate is carried out. The will of the people is reflected in the election of county councilpersons who present themselves to the voters under the banner of one of the political parties. We can safely assume that a candidate's party affiliation does play a role in voters' decisionmaking. Hence, it is reasonable to regard the mechanism for filling a vacancy set out in Section 205 as an effort to give at least an indirect voice in the selection of the councilperson's successor to the electorate -- through the political party officials elected in the same election in which the vacating councilperson was elected.

This principle and the reasoning set forth by the Attorney General seem equally applicable to the requirement found in Article III, Section 13(a) and in Section 205 for the appointment of a successor from the same district as the vacating member. Again, the will of the people can only be (indirectly) carried out if the successor comes from the same district which elected the vacating councilperson, not a revised district prior to the election of 1994.

In addition to the express provisions of the Charter, I believe the redistricting process which we have been following yields the same conclusion as to the effective date of councilmanic redistricting.

That process is mandated by provisions of federal law and a long line of reappointment cases beginning with Baker v. Carr, 369 U.S. 186 (1962). The impetus to reapportion to meet constitutional standards is directed to assuring qualified citizens that when they exercise their elective franchise they will have an equally effective voice in the election of the members of their local, state and congressional delegations. There is no indication that the constitutional mandate to reapportion is designed to affect the representation status of the elected member of those delegations prior to or after elections. In Reynolds v. Sims, 377 U.S. 533 (1964), the Supreme Court said "Legislators represent people... Legislators are elected by voters." In this case and others, the Court has made it clear that a legislator represents the constituency which elected him or her.

The specific issue which has been addressed by appellate courts in several states concerns the effect of redistricting by the state legislature upon a special election held to fill a congressional vacancy. In Sloan v. Donoghue, 20 Cal.2d 607, 127 P.2d 922 (1942), the Supreme Court of California held that, notwithstanding redistricting by the State Legislature since the last regular congressional election, (a) the new district boundaries would not apply until the next regular congressional election and (b) a special election called in the interim should be held under the old district boundaries. The same conclusion was reached by the Supreme Judicial Court of Massachusetts in an Opinion of the Justices to the Governor, 282 N.E.2d 629 (1972). On the other hand, the appellate courts of Arkansas and New York reached a different conclusion, although in the New York case there were two dissenting opinions. Catlett v. Beeson, 240 Ark. 646, 401 S.W.2d 202 (1966); People ex rel. Fitzgerald v. Voorhis, 222 N.Y. 494 119 N.E. 106 (1918). The far more compelling and reasonable view in these cases was that adopted by the Supreme Court of California, the Supreme Judicial Court of Massachusetts and the dissenting Justices of the Court of Appeals of New York. This view holds, in part , that the Supreme Court's reapportionment cases indicate that the right to vote includes the right not to have that vote diluted. If a special election were to be held in a revised

congressional district, the voters of certain areas would be denied a voice in the replacement of their representative in the Congress (those voters who were now in another district but had voted for the vacating member). Just as obviously, other voters would be allowed to participate in the selection of a successor to a representative whom they did not elect in the first place. The same anomalous result would obtain in the process for the replacement of a Baltimore County councilmember if Section 205 were interpreted to require the appointment of a successor from the revised district, assuming a vacancy occurred prior to the 1994 election. In that instance, the vote of the people would be diluted through the mechanism of party representation (the practical nightmare which could result from such an interpretation is evidenced further by the fact that the Section provides that the state central committee members who are entitled to vote for a successor are those representing the political party to which the previous member belonged, and whose legislative district is wholly or partially included in the councilmanic district in which the vacancy has occurred).

In this context of a special election to fill a congressional vacancy, I think the reasonable conclusion is that the revised districts are not applicable. The existing districts remain unchanged until the next regular election. To conclude otherwise leads to arbitrary results and, when applied to Council vacancies, such a conclusion destroys the goals of stability and continuity of representation contemplated by Article II of the Charter. The issue is whether the same reasoning applies outside the context of a special election. I think it must.

The Supreme Court of California faced a novel issue in a 1983 case involving the relationship of an initiative measure with the legislature's redistricting act. Legislature of State of California v. Deukmejian, 669 P.2d. 17. The initiative measure, if adopted, would have realigned legislative and congressional districts and repealed the recently enacted redistricting measure. The Court held that the state constitutional provision specifying that redistricting

may occur once within the ten-year period following a federal census precluded a further change in boundaries through the initiative process, i.e. the legislature is authorized to redistrict only once in the ten-year period.

One of the alternative arguments advanced by the petitioners to defeat this conclusion was that the redistricting statute had not yet been used or implemented, since no election had been held pursuant to its provisions, and therefore the statute had not yet become effective. Their conclusion was that the once-a-decade rule applied only if the new districts had become effective. In rejecting this argument, the court held that the new districts had become "effective" in the sense that the legislature had fulfilled its obligation to adjust the districts and, unless invalidated in a referendum vote, they could not be changed again until the next census had been completed, i.e. once the mandatory aspect of the law (to redistrict) was fulfilled and the prohibitory aspect activated (the once-a-decade interpretation of the California state constitution), the redistricting measure was sufficiently "effective" to bar an attempt to later redistrict by means of an initiative measure.

This is the only case I have found thus far which discusses the effective date of a redistricting act outside of the context of filling a vacancy in office. I don't think its holding in any way defeats the conclusion that revised districts at any level become "effective" at the next regularly scheduled election; that elected representatives continue to represent the people who elected them and the district from which they were elected (stated otherwise, their status does not change during their terms); that to conclude otherwise may lead to absurd results; and that to conclude otherwise violates both the constitutional standards applicable to the redistricting process and the goals of Article II of the Baltimore County Charter.

The cases briefly discussed above arose, in part, because the redistricting act at issue in each case provided that it was to be effective upon a certain date or after the expiration of a certain

number of days, i.e. the normal effective date provision of the jurisdiction (Bills 125-91 and 126-91 are prepared in the same fashion). Therefore, for example, the dissenting justice in the Massachusetts case, citing the principle that a statute which is clear and unambiguous leaves no room for speculation or interpretation, would have held that the redistricting act was effective as stated and that the special election would be required to be held from the new district. In his view, it was improper for the majority to interpolate words into the statute when its words were clear and explicit, notwithstanding the unreasonable results which could occur. I think such reasoning is specious, but the important fact is that the Council can avoid the issue by amending the final redistricting bill to specifically provide that the new boundaries provided therein shall take effect and apply to the next regularly scheduled election for councilmembers in 1994.

This issue of the effective date of the redistricting action of the Council is one which has significant practical and political considerations. When the Council last revised its districts in 1981, it had already completed the quadrennial comprehensive zoning process in the prior year, and the 1982 primary election was only thirteen months away. This year, the zoning process begins on August 1, 1991, four days before the scheduled vote on redistricting, and the primary election is three years away. Obviously, incumbent councilmembers, prospective councilmembers, supporters of same, and residents of the County will rely upon the new district boundaries in formulating plans to stand for election, solicit the support of constituents, or organize to support those who stand for election. That is a political reality. But it is important for the current councilmembers to recognize that they will continue to represent the constituents who elected them and the districts which they were elected to represent. Their status does not change. That is the legal reality. It would perhaps be beneficial for the Council to fully discuss the implications of these realities and , if necessary, to formalize a procedure or a working agreement to deal with issues as they arise, particularly in regard to comprehensive rezoning (the assumption is that at least some "issues" -

requests for changes in zoning classifications - will arise in areas of the County affected by the new councilmanic boundaries). Obviously, the simplest procedure or agreement is that the status quo prevails: the incumbent councilperson for each of the existing districts continues to represent that district and those constituents, continues to make the decisions affecting same, continues to handle the constituent requests of same, etc. for the balance of his or her term. That approach may be especially helpful during the comprehensive zoning process. Although it is the County Council which must vote upon each change to a zoning map as proposed by the Planning Board (Section 26-124) and the County Council which must adopt the complete county-wide zoning map (Section 26-125), the members will often defer the decision to the councilperson in whose district the specific issue has been filed. Therefore, an agreement or understanding among the members before the process begins seems a reasonable precaution.

Section 26-122 of the Code requires that the County be divided into districts, divisions, or zones as deemed best to carry out the provisions of the title, including the quadrennial comprehensive zoning map process. The districts referred to are the councilmanic districts, and the comprehensive zoning map process has always been structured on the basis of these districts. Issues are filed by councilmanic district. Planning Board and County Council hearings are scheduled by councilmanic district. I have suggested to OPZ that it should proceed with the comprehensive map process on the basis of the existing councilmanic districts and should ignore the fact of the councilmanic redistricting for purposes of that process. That approach is consistent with the conclusion that the new district boundaries are not effective until the 1994 election.

TJP:clh

RILEY.10/DAPTJP

BALTIMORE COUNTY OFFICE OF LAW

INTEROFFICE MEMORANDUM

PERSONAL AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

TO: John Wasilisin
Administrative Officer

FROM: Edward J. Gilliss
County Attorney

Amanda Stakem Conn
Assistant County Attorney

DATE: December 17, 2002

RE: Residency

You have asked for our advice on whether a member of a board or commission who is no longer a resident of the county or a resident of a particular councilmanic district may continue serving on the board or commission.¹ The redrawing of councilmanic districts every ten years, as required by the Baltimore County Charter, may also result in some members of boards and commissions living in a different councilmanic district than the one they were chosen to represent. In other words, a change of residency may occur from the choice of the member to move out of the county or a councilmanic district or from a legislative act of the County Council. We advise that when the law requires the member of the board or commission to be a resident of the county or to be a resident of a particular councilmanic district, the residency requirement is a continuing qualification.² Thus, a member who ceases to be a resident of the county or a particular councilmanic district is no longer eligible to serve on the board or commission.

The Maryland Court of Appeals in *Dorf v. Skolnick*, 280 Md. 101, 115, 371 A.2d 1094 (1977), stated the following general rule: “[w]hen residence is a prerequisite to a given office then a change of residence vacates that office, absent a legislative expression to the contrary.” While this case concerned a political party office rather than a public office, it does state the general rule on residency throughout the country. See e.g. *Skolski v. Woodcock*, 373 A.2d 1008

¹ The former person in charge of appointments had asked for this advice.

² For example, §522 of Baltimore County Charter requires each member of the County to appoint a person to the Planning Board who is a resident of the councilman’s district. In addition, §28-39(1) of the Baltimore County Code requires members of the Ethics Commission to be a residents of the county.

(N.J. Super. 1977)(residency requirement is a continuing requirement). A 1995 opinion of the Maryland Attorney General held that a county residency requirement for a member of the Board of Community College Trustees for Harford County was a continuing qualification and when a member ceases to be a legal resident of the county, the member is no longer eligible to serve on the board. O.A.G. 95-031.

Even though we have concluded that the member is not longer eligible to serve on a board or commission, that does not mean that the person can no longer act as a member of the board or commission once the person becomes unqualified. It is well settled that public offices, including boards and commissions, should be filled at all times, without interruption. *Reed v. President of Town of Northeast*, 226 Md. 229, 242-43 (1961). Thus, a member of a board or commission who becomes unqualified due to a change in residency continues to serve until a successor is appointed to replace the unqualified member.

We hope that this advice answers your questions concerning residency. Please do not hesitate to contact me or Amanda Conn in my office, if you have any additional questions.

cc. Tom Peddicord
Caren Hoffberger
Pat Keller
