



March 31, 2026

Barbara Wagner
Election Director
Frederick County Board of Election Supervisors
8490 Progress Drive, Suite 300
Frederick, Maryland 21701

BY EMAIL AND CERTIFIED MAIL
electionboard@frederickcountymd.gov

RE: Data Center Referendum

Dear Ms. Wagner,

Thank you for this opportunity to present the views of the Frederick County Data Center Referendum Committee concerning the legal sufficiency of its Petition for Referendum. This is about safeguarding the role that was reserved for the citizens of Frederick County when they adopted the Charter, nearly 14 years ago, a point of such importance that it is evident even in the Preamble stating the Charter's purposes,

We the citizens of Frederick County, Maryland, a body corporate and politic, under the Constitution and general laws of the State of Maryland, in order to establish a more dynamic, efficient, and responsive form of county government, which shall be empowered by us to exercise greater local authority to govern and be manifest in its scope to all, do adopt, ordain, and establish as our instrument of government this Charter of Frederick County, Maryland.

It was a local government *responsive* to the citizens that the Charter sought to establish, and it was the power of referendum reserved to the people that was the essential tool. Accordingly, we encourage you to find that the Petition is authorized by law with regard to Ordinance 26-01-001 "Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone – An Element of the Livable Frederick Comprehensive Plan" (the "Ordinance").

Title 6 of the Election Law Article requires you to determine if the Ordinance is referable to referendum. In the words of the Code – you are tasked with deciding if the use of a petition for the subject matter of the petition is authorized by law. Code §6-206(c)(5)(i). The answer is yes, it is.

The plain language of the Charter demonstrates that "a law" is subject to referendum and this Ordinance is a law. Section 308(a) of the Frederick County's Charter provides:

31 W. Patrick Street, Suite 120
Frederick, Maryland 21701

PHONE: 240-575-9146

flynnandclarke.com

Except for the following, a law, or part of a law, enacted pursuant to this Charter, may be referred to the voters for approval upon the filing of a petition signed by seven percent of the registered voters of the County:

- (1) A law imposing a tax*
- (2) A law appropriating funds for current expenses to maintain the Government*
- (3) A law prescribing Council Districts; and*
- (4) A law adopting a Compensation Review Commission.*

The Ordinance in question is “a law, or part of a law, enacted pursuant to this Charter,” and none of the four exceptions applies, therefore the Ordinance is subject to referendum. While no definition of the word “law” is given in the Charter, the plain language shows that that it must include ordinances.

It is long-established in Maryland law that a Charter, like a statute, must be read “as a whole so that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory.” *Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Lake Park*, 392 Md. 301, 316 (2006). Ordinances must be included in “a law, or part of a law, enacted pursuant to this Charter” because otherwise, the four explicit §308 exceptions would be extraneous and superfluous.

This concept may be clearer if put in another context. If, for example, we had a rule that only schoolchildren are allowed on school buses, then there would be absolutely no reason to say that an exception will be made to keep guidance counselors, librarians, and janitors off the bus. They are already excluded. Explicit exceptions for them would be meaningless and redundant. Likewise, since the referendum power extends only to “laws, or parts of laws, enacted pursuant to this Charter,” there is no reason to list exceptions for certain ordinances unless ordinances in general are included in the first place.

I can be more specific. A Compensation Review Commission is to be adopted *by ordinance*, as set forth in §207. “The Council shall establish *by ordinance* a Compensation Review Commission every four years to review the Council’s Salary...” §207 (italics added). Section 308(a)(4) uses the word “law” to describe the act of adopting that act while §207 calls that same act an “ordinance.” The word “laws” as used in §308 must include ordinances, because otherwise it would make no sense for §308(a)(4) to explicitly exclude “a law adopting a Compensation Review Commission,” an action that 207 shows is accomplished by ordinance.

Throughout the terms of the Charter, no distinction is made between laws and ordinances for purposes of referendum. Section 214(d) indicates that an “*ordinance* establishing Council Districts shall be exempt from referendum.” (italics added). Yet, §308(a)(3) provides that “a law prescribing Council Districts” are exempt from referendum. The word “law” is substituted freely for the word “ordinance” specifically in the context of discussing referendum. Had ordinances not been included in the term “laws” for this purpose, then there would be no reason at all to list ordinances among the explicit exceptions.

Likewise, the “Annual Budget and Appropriations Ordinance” is referenced throughout the Charter as an ordinance, see e.g., §§ 306(d), 307(a). Yet, §308(a)(2) makes an exception to the referendum power for “a law appropriating funds for current expenses to maintain the Government.” Repeatedly, acts characterized elsewhere in the Charter as ordinances are referenced in the referendum section as laws. The Charter appears to place no importance at all on the distinction at the heart of the County’s argument.

The only conclusion that makes sense is that the key phrase from §308 – “*a law, or part of a law, enacted pursuant to this Charter*” includes ordinances and that ordinances, unless within one of the four clearly listed exceptions, are subject to referendum. Undoubtedly, none of four exceptions applies to the Ordinance in question; therefore, this Ordinance must be referable to referendum. In the context of the stated purpose of the Charter, of making government responsive to the people, how could it be otherwise? The Council cannot hold the power to insulate major decisions from executive veto and referendum, excluding the directly expressed will of the people, simply by labeling its actions an “ordinance.”

The County has argued that the Ordinance in question is not subject to referendum. Acknowledging as they must that the Ordinance does not fall within any of the four listed exceptions in 308, the County has argued that only Council actions that follow the Article Three Legislative Process outlined in the Charter can be subject to referendum. They rely on 305(a) of the Charter, which says the Council “may enact no law except by written Bill.” Since the Ordinance was not adopted using the procedure for a written Bill (the “Article Three Procedure”), the County concludes that it is not a “law” and thus it is not subject to referendum.

The County’s argument is not persuasive. First, the County cannot account for the Charter’s definition of the term “Bill,” which is:

“any proposed act of the County Council resulting in a law or ordinance. It may not mean a resolution that is not intended to have the effect of law.”

§104(c). The Council action in question resulting in the Ordinance was, literally, an act of the County Council “resulting in a law or ordinance.” It was a “Bill” by this definition. Accordingly, the Council acted by written bill resulting in the Ordinance and thus it enacted a law subject to referendum. The County’s reliance on §305(a) does the County no good.

Second, the County argument requires that only some of the Council’s legislative powers be subject to referendum, but the Charter makes it abundantly clear that “all” the legislative powers of the County are subject to referendum. Section 202 provides:

“All the legislative powers which the County may exercise under the Maryland Constitution and laws of the State are vested in the Council, subject to those powers retained by the people of the County as set forth in Section 308 of this Charter.”

§202. This too, the County cannot explain. A broad interpretation of the referendum power is consistent with the objectives and purpose of the Charter, as stated in the preamble quoted in its entirety above. There, it is emphasized that the citizens of Frederick County established this

Charter form of government for the purpose of making their local government more responsive to the citizens. The County's extremely narrow reading of the referendum provision would require ignoring various aspects of the Charter itself and would make government *less* responsive to its citizens, an unusual result given the stated purpose of the Charter in the first place.

The itemized exceptions to the referendum power in 308 demonstrate the inadequacy of the County's position. Council Districts are established by "resolution," under §214, *without* following the §305 procedure that the County argues must be followed for an act to be considered a "law" subject to referendum. Yet, the third exception listed to the general referendum power is for "a law prescribing Council Districts." See §308. Likewise, §207 requires the Council to pass ordinances establishing a Compensation Review Commission, and §506 requires the Council to enact a "law" titled "the Annual Budget and Appropriations Ordinance of Frederick County." Importantly, these acts follow different procedures – not the Article 3 Procedure. Yet, §308(a) refers to all of them as "laws," and takes the step of explicitly carving-out exceptions for them from the referendum power.

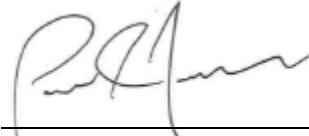
These provisions make no sense under the County's narrow interpretation. If "a law, or part of a law, enacted pursuant to this Charter," as used in §308, was intended to refer only to actions taken using the Article Three Procedures, then these exceptions would be redundant. The different procedures by which these acts are taken would by themselves exclude those actions from referendum.

If it was intended that the referendum power should be narrowly limited to actions that follow Article Three Procedures, as the County argues, then §308(a) could have simply referred to Article Three. It does not. Instead, it refers to the entire Charter -- *a law, or part of a law, enacted pursuant to this Charter*. The Charter describes numerous actions to be taken by the Council that do not follow Article Three Procedures, such as adopting the Compensation Review Commission and prescribing Council Districts. The County's argument would impose a narrow restriction where the Charter chooses instead the broadest terminology.

The County's argument would add to the Charter an enormous loophole through which actions of the Council could slip past the referendum power. The Charter carefully lists in plain English four specific exceptions to the referendum power, it does not make sense to read it in a manner that would infer the existence of a fifth, much larger exception that (for some inexplicable reason) was not spelled out. Why list four specific exceptions if five were intended? This canon of statutory construction is often referenced in Latin, *expression unius est exclusion alterius*. It means that the Charter's list of four exceptions should be interpreted as exclusive "so that a court will draw the negative inference that no other items may be added." *Fielding v. State*, 238 Md. App. 262, 279 (2018). Yet, the County's argument relies on adding an exceedingly narrow definition of "law" where none exists, and adding a loophole not supported by the text.

On behalf of the Frederick County Data Center Referendum Committee and the more than 22,000 Frederick County citizens who signed the pending Petition, I thank you for your service.

FLYNN & CLARKE, LLC

A handwritten signature in dark ink, appearing to read 'Paul D. Flynn', is written over a horizontal line.

PAUL D. FLYNN, ESQ.

cc. Daniel B. Loftus, Esq.
(danloftus@verizon.net)
Bryon Black, Esq.
(bblack@frederickcountymd.gov)
Timothy Maloney, Esq.
(tmaloney@jgllaw.com)