

**MINUTES  
CHAPTER 113 - TASK FORCE**

**COMMISSIONERS of ST. MARY'S COUNTY &  
ST. MARY'S COUNTY METROPOLITAN COMMISSION**

**AUGUST 2, 2017**

The meeting of the Chapter 113 Task Force Meeting was called to order at 4 p.m. Those in attendance are shown on the attached sign-in sheet.

**OPENING**

The attendance sheet and Draft July 19, 2017 Meeting Minutes were circulated among the group. The group then reviewed and approved the July 19, 2017 Minutes. No request for additional information from Task Force Members was received in the period between meetings.

The group was reminded that a central Task Force goal is to arrive at a consensus on proposed amendments to Chapter 113. Mr. Erichsen stated that it appears that the first two proposed rounds of text amendment reviews may be all that is needed to accomplish the Task Force goal. The members were in general agreement that many of the main topical areas had been identified and discussed in the last few meetings. Daryl Calvano has stated that the Health Department would be prepared to offer their letter of support to the recommended amendments, subject to the Health Officer's concurrence. It was suggested that the Health Department's letter should accompany the Task Force amendment matrix which will be forwarded to both the Commissioners of St. Mary's County and the Metropolitan Commission Board. Attorneys Sparling and Beaver have been working together on finalizing the text amendments.

Keeping in mind that a report is due to both boards, this could be accomplished via a transmittal letter with the Health Department's letter of concurrence attached. The Boards may subsequently choose to send separate letters, or one joint letter to the Delegation. In either event, both Boards should speak in unison as to the proposed amendments, keeping in mind that while the Boards are independent of each other, they should be conveying the same message to the Delegation, if the language is to gain support. This was the intent behind having the membership on this Task Force include representation from both boards as well as the Delegation. Mr. Erichsen advised that in order to keep the MetCom Board aware of the Task Force's progress that each MetCom Board meeting includes a brief update from Mr. Mummaugh and/or Mr. Carey. Delegate Clark suggested that separate letters from each Board would suffice and would be essential to the success of the legislative request along with any relevant letters of support. The Task Force members agreed.

Mr. Erichsen then directed the group's attention to a review of the proposed schedule. July 12 was the kick-off meeting, which identified several focus areas. The group acknowledges that this Task Force was not planning to re-write Chapter 113, but rather

to examine specific areas in which a change in language would be both supported and beneficial to MetCom and its customers. During the July 19 meeting, topics were narrowed and proposed draft language was studied and discussed in more detail. During today's meeting, the discussion focused on the draft Amendments Matrix which will track all text that the Task Force members are in concurrence with. The conclusions from today's meeting will be incorporated in to the matrix by attorneys Beaver and Sparling for presentation at the August 16 meeting. It is hoped that by September 6, the Task Force will be positioned to begin final review of the proposed language with final review on September 20. A draft transmittal letter from the Task Force to both Boards was presented to the members for their review and comment. Should progress move forward as planned, the October 4 meeting should focus on the approval of a final Task Force report/transmittal letter and the Amendments Matrix. The Task Force may also be requested to present to each board. Commissioner Jarboe stated that he believes a presentation from the Task Force, or certain members of the Task Force, to the Commissioners of St. Mary's County will be necessary due to the public nature of their meetings. Such a presentation needs to be concise and should take place prior to the legislative meeting with the Delegation. Commissioner Guy stated that Delegate Rey has informed him that the language must be in a legislative format for the December 5 meeting. The Amendments Matrix will provide an easy reference to the proposed language and the rationale behind the recommended changes. The two attorneys are already drafting the language in proper legislative format to help streamline the process should both Boards concur with the Task Force recommendations. Mr. Erichsen advised that an interim presentation to the MetCom Board could be initiated as early as September 14.

Discussion then transitioned to a review of the results from the last meeting. At the last meeting, **Section 113-1.C** was discussed. This Amendment is aimed at correcting the legislative delegation's oversight in their 2017 bill, which failed to include the Director and Assistant Director positions in addition to those which the Commission could offer employment contracts. It was agreed that this minor text change should be included as an amendment.

The **Section 113-6** amendment expands the Commission's debt options to include more than just bonds such as grants, loans and letters of credit. It was recommended at the last meeting to simply exchange the word "*debt*" in place of "*bond*". This appears the simplest way to achieve this change. It was asked if Commissioners of St. Mary's County oversight would remain part of this Section, and it was confirmed. The text will also cross-reference the recently approved debt limit in the County Code. **Section 113-7** will also be recommended for amendment to keep with changes made to 113-6. It was the consensus that no other substantive changes are necessary for these two sections. The proper name of the Commissioners of St. Mary's County was also proposed to be corrected as a minor text change.

In **Section 113-9**, the draft language provides the Commission with the flexibility to establish financing mechanisms and provide incentives for connection charges. It was agreed that if connections are not mandatory, they should be somehow incentivized to

help gain new customers. Section D, regarding proposed special benefit charges should be expanded to identify which entity has the authority to create ordinances and resolutions. It was suggested that the revised language also include provisions regarding the administration and collection of the special fees. Mr. Walters expressed a need for the language to reflect that financing/incentive programs could vary as to location/conditions/availability of funding mechanisms and the Task Force members agreed.

The discussion then transitioned to the intent behind incentivizing connections. Questions concerning whether the goal is to get anyone (ie. developed and undeveloped) connected or just existing developed properties? Would any financing incentives be extended to commercial or developer projects? Additionally, it was agreed that language should be added to clarify that these incentive programs would only be offered to are only available to those connecting to systems with available capacity.

A discussion as to who the connection incentives should be provided to ensued. The Howard County program uses “*property owners*”. Other financing programs identify “*existing buildings*” or “*existing developed properties*”. The concurrence was to keep the language simple and to initially apply the incentive program to existing developed residential properties. The time line surrounding “*existing*” then came in to question and if any grandfathering language should be incorporated into the text. It was agreed that any existing residential property developed by the effective date of the adoption of the legislative changes would be acceptable. The suggestion to include reference to County Impact Fee Ordinance #2017-15 was not agreed upon.

Discussion progressed to **Section 113-10.A**, which only needs minor changes such as removing the required connection language and correctly referencing the determining authority on failing systems to the appropriate regulatory authorities. The consensus of the group was that language should be consistent with current practices and that any mandatory connection language should be removed. **Subsection B** will continue to address the requirement for mandatory connections in the event of system failure.

The group discussed **Section 113-12**, in which subsection part **C(3)** addresses the assessment of Capital Contribution Charges. Current practice is that the charge is due at the time of application. Proposed language for this section would provide more flexibility on when Capital Contribution Charges can be assessed. Additionally, further proposed language would be assessed and would allow for installment payments and a six year cap on pre-payment at which time an amount equal to the difference of the amount which the property owner has paid toward the capital contribution charges and the capital contribution charge rate in effect at the time of connection.

Brief discussion ensued about the distinction between Capital Contribution Charges and System Improvement Charges. System Improvement Charges begin at the time an EDU is assigned. An owner may not have yet made a connection, but may still be making payments for the EDU allocation. An EDU is a reservation for capacity in the system.

While the goal is to get customers connected and using the system, concurrence remains that connections need to be incentivized. It was agreed that the financing part of the Capital Contribution Charge within a prescribed window of time, may provide this type of incentive. Requiring payment of all or part of the Capital Contribution Charge at the time of application and then the remainder prior to, or at the time of connection, is a reasonable approach for the customer as well as for MetCom. The possibility of requiring and collecting interest / carrying costs on such deferrals was then discussed and while Chapter 113 does not preclude MetCom from assessing such interest, MetCom could adopt an in-house policy or procedure to collect reasonable interest on the payments for Capital Contribution Charges when a customer may elect to defer the full payment. Assessing interest could become part of any proposed financing program that MetCom may choose to implement.

Commissioner Carey shared with the group a quick review of how Capital Contribution Charges are currently calculated as currently dictated by Chapter 113. Capital Contribution Charges are assessed in order to pay debt service. The formula considers the projected number of new EDUs to be allocated that particular year. The debt service figure is divided by the projected number of new EDUs. Projecting new EDUs is difficult and varies year to year. Some years there are low numbers of EDUs assessed and other years the EDU allocations are higher. The customers who happen to apply for new EDUs in a year with significant development will pay lower Capital Contribution Charges; those who apply in a year with minimal new development would pay higher Capital Contribution Charges. It is felt that this is an inequitable calculation methodology. Inaccurate EDU projections also have a negative impact on budgeting and it would be beneficial if the Capital Contribution Charge could simply be assigned a value to be closer to the cost of a new septic system or to match what the market or Commission considers reasonable. Currently, MetCom is legislatively prevented from altering this formula. Removing the EDU portion of the formula removes a great deal of uncertainty. It seems more logical for the Capital Contribution Charge to be either a set fee, which could be competitive with those of surrounding counties/municipalities (ie. Leonardtown) or as described in the various scenarios presented at the July 19, 2017 meeting. It was agreed that this alteration to Capital Contribution Charge assessment could provide the necessary balance to incentivize connections while not placing a heavy burden on current or new users.

The Task Force returned to a review of topics such as the possibility of bringing back attempted legislation which was not successful in the past. It was agreed that prior failed legislation proposed by the Commissioners of St. Mary's County would not be re-requested. Commissioner President Guy agreed. With respect to adding a new Definitions Section, there appears to be no need to consolidate the definitions within existing Chapter 113 at this time. There was consensus that the Task Force continue to address a limited number of salient topics and minor editorial changes at this time.

With respect to **Section 113-8 – Bids and Contracts**, the group concurred that minor text amendments are warranted. The group recommends that the language *“responsive bidder providing the best value to the Commission”* be inserted and that the \$10,000.00

threshold for competitive bidding be removed to be in line with current County procurement policy. The County limit is \$25,000.00 and the State Modernization Committee is considering a \$50,000.00 threshold. These limits are best suited for inclusion in local procurement policies. Chapter 113 dictates the manner of advertising for bids. The possibility of removing this somewhat outdated language was discussed and it was agreed that while the ways to advertise and solicit bids have changed due to eMd Marketplace / ecommerce, the advertising language should remain to alleviate any concern that the traditional method of newspaper advertising would be eliminated. However, it was also agreed that some repetitive language regarding advertising could be stricken from this Section, but that including other forms of media (ie. electronic) should be added.

With respect to **Section 113-9 – Water and Sewer Connection Financing**, the Task Force reviewed this section and discussed the suggestion to add language referencing the recent Impact Fee Ordinance as an additional source of financing. Language from the County Ordinance #2017-15 reads: *“The Commission may accept impact fees for water, sewerage, or similar facilities required for new construction or development, as may be allocated by the Commissioners of St. Mary’s County.”* While it was recognized by the Task Force that this is a potential funding source, the group agreed that inclusion of this language in Chapter 113 was not necessary.

The Task Force agreed that in **Section 113-12**, the term *“designated service area”* should be removed because connection fees are applied uniformly throughout. In prior sections it has been recommended that *“designated service area”* also be stricken. In the future, when a comprehensive definition of *“service area”* has been determined by the County, it should be incorporated in to Chapter 113. It was noted that the 2014 Connection Policy Study Group defined service area as *“any growth area designated by the County’s Comprehensive Plan. This includes the Lexington Park and Leonardtown Development Districts, five Town Centers and seven Village Centers.”* The consensus was that for now, the definition in Section 1.3 of the County’s approved Water and Sewerage Plan be evaluated and that it is more relevant to Chapter 113 that fees are uniform for the customer base served.

Discussion then moved to **Section 113-12.E** and the inclusion of a possible grandfathering clause for properties which were connected to public water/sewer but had never paid Capital Contribution Charges. Capital Contribution Charges did not begin to be collected until October 1, 2007. Several questions arose out of this discussion. If such a property is redeveloped should that property be required to pay capital contribution charges? If a property remains within its currently allocated number of EDUs, it seems that capital contribution charges should not be assessed. If the existing use changes, should a Capital Contribution Charge be assessed? Consensus was that payment should only be required for any additional EDUs allocated. If re-development is to be promoted and that user has been paying system improvement fees since the time of allocation unless additional EDUs are required, no Capital Contribution Charges should be assessed. Ms. Shick pointed out that the purpose of the Capital Contribution Charge is for system expansion and/or plant capacity

necessary to support allocated EDUs. Delegate Clark advised that this issue would be best addressed through a MetCom policy rather than addressing it legislatively. The group concurred that this could be more appropriately addressed by internal policy and practice. Mr. Erichsen indicated that this is current practice and could be brought before the MetCom board for future discussion, if necessary.

A follow-up from prior meetings resulted in a review of **Section 113-16(C) - Unfit Systems**. It was agreed that the current language is not appropriate for several reasons: Currently this Section maintains that MetCom is the authority which determines the fitness of private system; this Section also states that MetCom is responsible for addressing and correcting private failing systems. It is suggested that the language be amended as follows:

*A. "Whenever there is in existence a privately owned shared or community water supply or sewerage system which in the judgment of the applicable State regulatory agency ~~Commission~~ is unfit, as a whole or in part, ~~for incorporation with the Commission's system~~ shall be brought into compliance with all applicable State and Federal regulations by the system owner(s). If it is determined that is not economically feasible to rehabilitate such a private system, a new system may be constructed by the system owner(s) to serve the area served by the existing system."*

There was concurrence, that MetCom is not the authority who determines private system fitness and further that MetCom should not be placed in the onerous or fiscal position of taking over and replacing or expanding private systems. Discussion ensued concerning the recommended language which proposes that the owners of private systems remain responsible and that they submit a corrective plan of action which is in compliance with the appropriate regulatory authorities as follows:

*B. "If the system owner(s) request public ownership or controlling authority (operation and maintenance) of the system(s) by the Commission, the system owner(s) shall ensure that the corrective plan of action will ensure that system shall be in compliance with the St. Mary's County Comprehensive Water and Sewerage Plan and that all State, Federal and Metropolitan Commission standards will be met, prior to consideration by the Commission if determined to be necessary for the health, safety, and welfare of the general public."*

**Section 113-22 - Church Properties**, may be better identified simply as Exemptions. There are already various exemptions scattered throughout the Code (ie. 113-29.F (A),(B) and F(3)). A change consolidating these many exemptions may better be handled in the future as part of a comprehensive re-write of Chapter 113. The group concurred that this housekeeping matter can be accomplished in a future update.

The Task Force discussed **Section 113-26 – Reimbursable Work**. Mr. Erichsen described for the group the long standing practice between the County and MetCom. The use of Memoranda of Agreement/Understanding to define responsibilities and costs associated with recent shared projects such as FDR Boulevard and Patuxent Park Revitalization have been proven to be very successful. The language presently contained in this Section is cumbersome. In its place the following suggestion by the Task Force was agreed upon:

*“For any services to be rendered or work to be provided by the Commission or its consultants or contractors, at the request of the County Commissioners, which services or work would not be provided by the Commission in its ordinary course of business, the Commission and the County Commissioners shall, in advance of the services or work being provided, enter into a written agreement for the scope of services or work to be provided and the cost for such work or services. Upon completion of the work or services, or intermittently during the work or services, as mutually agreed, the Commission shall request reimbursement from the County for the cost of the work or services provided and the County shall pay such costs as agreed.”*

The final text amendment under consideration during the meeting was in **Section 113-30.B**. In order to help the County streamline amendments to the St. Mary’s County Water and Sewer Plan (CWSP) annually, the current text could be amended so that upon MetCom’s adoption of the 5-year capital improvement plan, it would be automatically incorporated into the CWSP. The suggested language was provided by County Attorney George Sparling and will be incorporated in to the Task Force Amendments Matrix.

Wrapping up the meeting, Mr. Erichsen advised that at the next meetings on August 16 and September 6, the updated Amendments Matrix will be brought back, with notations added under the Rationale column to reflect discussion by the Task Force to date. Commissioner Jarboe advised that County staff will be not be present at the next meeting due to MACO. Delegate Clark also will be unable to attend the August 16 meeting. As several members will be attending MACO, and advance draft will be emailed for review and comment.

Following further discussion the meeting was adjourned at approximately 6:40 p.m.

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*Laura Comiau-Stanley for*  
Kelly C. Jarboe,  
Recording Secretary

**Metropolitan Commission**

John J. Carey, Chair  
 Bryan Barthelme, Vice-Chair  
 Alice Gaskin, Member  
 Mike Mummaugh, Member  
 Robert Russell, Member  
 George Thompson, Member  
 Steve Willing, Member



**Commissioners of St. Mary's County**

James R. Guy, President  
 Michael L. Hewitt, Commissioner  
 Tom Jarboe, Commissioner  
 Todd B. Morgan, Commissioner  
 John E. O'Connor, Commissioner

**August 2, 2017  
 Attendance Sheet - Chapter 113 Task Force**

<i>Name of Entity</i>	<i>Representative</i>	<i>Designee(s)</i>	<i>Check Here</i>
Citizen(s)	Community members	Joseph (Russ) Russell Co-Chairman	<i>RR</i>
Citizen(s)	Community members	John Walters	<i>John Walters</i>
MetCom Board	Board Member	Michael Mummaugh	<i>MM</i>
MetCom Board	Board Member	John Carey	<i>JC</i> late
CSMC	Commissioner	Tom Jarboe	<i>TJ</i>
CSMC	Commissioner	James R. (Randy) Guy	<i>JR Guy</i>
Health Department	Dr. Brewster, Health Officer	Daryl Calvano	<i>Dr. Brewster</i>
SMC Delegation	Chairman Deb Rey Representative	Delegate Jerry Clark	<i>Jerry Clark</i>
MetCom Staff	Executive Director	George Erichsen Co-Chairman	<i>GE</i>
MetCom Staff	CFO	Becky Shick	<i>BS</i>
MetCom Staff	MetCom Attorney	Christopher Beaver	<i>CB</i>
County Staff	CFO	Jeannett Cudmore	<i>JC</i>
County Staff	County Attorney	George Sparling	<i>GS</i>
County Staff	LUGM Director	Bill Hunt	<i>Bill Hunt</i>