

COUNTY COUNCIL OF  
 ANNE  
ARUNDEL  
COUNTY  
M A R Y L A N D

**LEGISLATIVE SUMMARY\***

To: All Councilmembers of the Anne Arundel County Council

From: Linda M. Schuett, Legislative Counsel

Date: October 19, 2020

Subject: Bill No. 93-20

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On August 10, 2020, the Anne Arundel County Ethics Commission issued Advisory Opinion 20-36. The Opinion is located here: <https://www.aacounty.org/boards-and-commissions/ethics-commission/index-of-opinions/>.

The Advisory Opinion provides that it would be a violation of the Public Ethics law for a Councilmember to appear with a constituent at a meeting with the Office of Planning and Zoning involving a zoning change requested by the constituent. In this case, the requested zoning change was in connection with the revision of the General Development Plan. The Commission noted, based on a previous Advisory Opinion, that “usual and customary constituent services” are “services performed without favoritism for any constituent in the same or similar circumstances as any other constituent seeking those services.” The Commission found that “it is unreasonable to assume that a Councilmember could or would attend similar meetings with [the Office of Planning and Zoning] ... with every citizen or constituent that had a concern or question about a zoning decision ... they did not agree with or adversely affected them.” The Commission also found that the “only logical conclusion that one can draw from the constituent requesting the presence of a Councilmember ... is to influence the decision of [the Office of Planning and Zoning] to secure a more favorable result.” The Commission concluded that a meeting of this nature does not constitute “usual and customary constituent services” and that the mere presence of the Councilmember gives the appearance of improper influence. The Ethics Commission noted, with respect to business entities, that “disparate treatment of similar entities will not look like constituent services but will appear to be the result of some type of favoritism, or improper influence.”

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\* This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.

In a subsequent email exchange, the Executive Director of the Ethics Commission stated that a Councilmember may communicate with the Office of Planning and Zoning, without a constituent present, to better understand the rationale for the Office's proposals but the Councilmember may not identify or disclose a particular constituent whose issue may be relevant to the inquiry.

Whether or not meeting with a department head to gather information is a "usual and customary constituent service" is important because employment restrictions relating to representation or assistance under § 7-5-104 and use of the prestige of office under § 7-5-107 do not apply to the performance of usual and customary constituent services without additional compensation.

Thus, Bill No. 93-20 defines "usual and customary constituent services." The first part of the definition deals with constituent services for citizens. The second part deals with constituent services for business entities.

### **Constituent services for citizens**

Section 7-1-101(25) of the Bill defines usual and customary constituent services as actions taken by a Councilmember or the Councilmember's designee on behalf of an Anne Arundel County citizen. The actions may include advocacy, communications, inquiries, and oversight, with or without the presence of the citizen. However, Councilmembers or their designees may not, directly or indirectly, threaten reprisal or promise favoritism for the performance or nonperformance of another person's duties or request another person to abuse or exceed the discretion available to that person under law.

The proposed definition is based on the ethics law of the District of Columbia. On February 11, 2014, the District of Columbia adopted an amendment to its Code of Official Conduct to define "usual and customary constituent services." See pages 17-18 at <https://dccouncil.us/wp-content/uploads/2017/05/PR22-0001b.pdf>. The definition allows an elected official to advocate, communicate, inquire, and oversee on behalf of another person so long as there are no threats of reprisal or promises of favoritism and no requests that a person abuse or exceed the discretion allowed by law. The District of Columbia definition provides:

For purposes of this Rule, the term:

...  
(2) "usual and customary constituent services" includes an employee's representational activities, such as advocacy, communications, inquiry, oversight, and other actions, made on another person's behalf, provided that the employee does not, directly or indirectly:

(A) Threaten reprisal or promise favoritism for the performance or nonperformance of another person's duties; or

(B) Request that another person abuse or exceed the discretion available to that person under law.

On August 29, 2013, the District of Columbia Board of Ethics and Government Accountability issued an opinion relating to “usual and customary constituent services.” The opinion relates exclusively to interactions by elected officials with agencies. It provides that “interacting with executive agencies on behalf of constituents is a ‘usual and customary’ function of elected legislative officials.” The opinion is located here: [https://bega.dc.gov/sites/bega/files/publication/attachments/Advisory\\_Opinion-Constituent\\_Services.pdf](https://bega.dc.gov/sites/bega/files/publication/attachments/Advisory_Opinion-Constituent_Services.pdf).

The definition is also based on other sources. For example, the State Ethics Commission recognizes that an elected official is expected, as part of the job, to take positions in support of constituents. On October 1, 2017, the Commission issued a document which addressed, among other things, constituent services. At page 3, the Commission stated: “*Clearly an elected official is expected, as part of his/her job, to take positions in support of the official’s constituents. Constituent services may include providing assistance to an individual constituent or undertaking/advocating for State initiatives that will impact constituents as a group.*” See <https://ethics.maryland.gov/wp-content/uploads/filebase/state-employees/state-employees-memos/Political-Activity.pdf> (emphasis added).

Similarly, the National Governor’s Association says that constituent services include “[c]asework services to *help citizens obtain specific benefits or resolve their problems with government agencies.*” See <https://www.nga.org/wp-content/uploads/2018/10/Governors-Office-Onboarding-Guide-Constituent-Services.pdf> (emphasis added).

Finally, members of Congress have considerable discretion in how they define and approach constituent services. CRS, Congress’ think tank, issued a report on constituent services in January of 2017 and updated it in 2019. The report is located here: <https://www.everycrsreport.com/reports/R44726.html#:~:text=Constituent%20service%20encompasses%20a%20wide,commonly%20considered%20a%20representational%20responsibility.&text=Member%20offices%20have%20engaged%20in%20constituent%20service%20activities%20since%20the%20earliest%20Congresses>. Under federal practice, members of Congress may ask for information related to a particular case and may express their opinions to federal agencies:

Members and staff are limited in how much they can directly intervene in an agency’s decision-making process on behalf of a particular case, but federal agencies are often responsive to congressional concern. *When contacting federal agencies on behalf of constituents, Member offices can generally ask for information related to a case, urge prompt consideration, arrange for interviews or appointments, express judgements, or call for reconsideration of an administrative response.*

(Emphasis added.)

### **Constituent services for business entities**

Section 7-1-101(25) of the Bill also defines “usual and customary constituent services” as activities for a business entity that is located in the County or that contributes to the economic well-being of the County. However, the activities may not violate the restrictions on participation contained in § 7-5-101. Those restrictions generally preclude, for example, a Councilmember’s participation in a matter if the Councilmember or certain relatives of the Councilmember have an interest in the matter.

This definition is derived from the City of Westminster’s ethics code. The City of Westminster allows constituent services for business entities. It defines the term “usual and customary constituent services” as follows:

For purposes of this subsection, the term “usual and customary constituent services” shall include but not be limited to boosterism or other activities in support of a business entity that is located in or near the City or contributes significantly to the economic well-being of the City, so long as neither the elected official, a qualified relative of the elected official, a business in which the elected official or a qualified relative of the official has an interest, nor a third party with any affiliation to the business entity that is the subject of the constituent services, receives any tangible or quantifiable personal gain or benefit from or in connection with the transaction, other than items that are permitted by Subsection F(5) of this section.

*See* City of Westminster Code, Section 16-4 (Conflicts of Interest), located here: <https://ecode360.com/10161799?highlight=usual%20and%20customary&searchId=26992277680584187#10161799>.

William Colquhoun, Esquire, counsel for the State Ethics Commission, has confirmed that the State Ethics Commission approved the Westminster definition on August 20, 2020.