



**2004**  
**Report of the**  
**Charter Review Commission**

**May 2004**  
**Montgomery County, Maryland**



CHARTER REVIEW COMMISSION

April 30, 2004

Montgomery County Council  
Stella Werner Council Office Building  
100 Maryland Avenue, 6<sup>th</sup> Floor  
Rockville, Maryland 20850

Dear Councilmembers:

As Chair of the Charter Review Commission, it is my pleasure to submit the 2004 Report of the Charter Review Commission for the Council's consideration. The Charter provides an effective framework for governance that continues to support the ever-changing needs of the County and its residents.

Since July 2003, the Commission has analyzed a variety of issues that could result in Charter amendments; however, the Commission is recommending only two proposed amendments. The first proposal would amend Charter Section 107, Compensation, to provide that membership on the Council shall be considered a full-time position for the purpose of determining compensation. This issue was reviewed in 2002 by the Committee to Study Compensation, which recommended that a Charter amendment would help clarify the status of the Council. The Commission believes that it is important for the Charter to reflect the fact that Councilmembers reported spending at least 40 hours per week on Council-related business.

The second proposal would amend Section 208, Veto, to clarify the timing of an Executive veto and the deadlines for Council transmittal of legislation. This amendment would allow the Council to enact legislation that would specify how to compute such time periods under Section 208. This issue was brought to the Commission's attention by legal staff from the County Attorney's Office and the Council Office.

The Commission appreciates the comments it received from residents, business groups, civic organizations, non-profit organizations, and government officials because this information helped the Commission identify issues and guided its deliberations on matters that affect County residents. Without the participation of all of these entities, the Commission would not have functioned as effectively.

On behalf of the Charter Review Commission, thank you for the opportunity to serve the County as members of this Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth K. Muir".

Kenneth K. Muir, Chair  
Charter Review Commission

**CHARTER REVIEW COMMISSION  
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**Staff**

**Sonya E. Healy, Legislative Analyst, County Council Office**

**Justina Ferber, Legislative Analyst, County Council Office**

**Carol Edwards, Legislative Services Coordinator, County Council Office**

**Joseph Beach, Assistant Chief Administrative Officer,  
Office of the County Executive**

**Marc P. Hansen, Chief, Division of General Counsel,  
Office of the County Attorney**

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## I. INTRODUCTION

The Constitution of Maryland, Article XI-A, enables counties to adopt charters to establish local governments. County charters are, in effect, constitutions for county governments because they establish the duties and responsibilities for the different branches of government.

The voters of Montgomery County adopted a charter form of government in 1948. In subsequent general elections, voters adopted several amendments to the original Charter. The current Charter was adopted in 1968, with subsequent amendments.

Charter Section 509, adopted by amendment in 1976, requires the quadrennial appointment of an eleven-member, bipartisan Commission to study the Charter and make recommendations on potential Charter amendments. Commission members serve four-year terms, and no more than six of the eleven members may be from the same political party.

The Commission researches and evaluates Charter issues raised by the Executive, Councilmembers, other government officials, and the public. A report on the Commission's activities must be submitted to the Council no later than May 1 of every even-numbered year. The biennial report outlines the issues that the Commission considered and recommends Charter amendments to include on the general election ballot. The Council specifically asked the Commission to review and comment on Charter ballot questions that have been raised by petition. By mid-August, the Council determines which additional Charter questions will be placed on the ballot.

Since July 2003, the Commission has studied a variety of issues that could result in Charter amendments. The Commission held a public forum in December 2003, requested comments from various civic, business, ethnic, and nonprofit groups and individuals, and met with several County representatives and legislative staff members from the Maryland General Assembly. The Executive and each Councilmember were invited to meet with the Commission. Six Councilmembers met with the Commission and discussed a range of County issues. Information gathered from these discussions and comments received from the public were evaluated to determine if Charter amendments were warranted to improve governmental performance and accountability.

**II. SUMMARY OF CHARTER REVIEW COMMISSION'S  
RECOMMENDATIONS**

**A. RECOMMENDATIONS FOR CHARTER AMENDMENTS**

**1. FULL-TIME VERSUS PART-TIME COMPENSATION  
Amend Charter Section 107 Compensation**

The Commission recommends amending Charter Section 107 to provide that membership on the Council shall be considered a full-time position for the purpose of determining compensation. The Commission voted to recommend this Charter change so that the Charter reflects the reality that service as a Councilmember is a full-time job. (Refer to the information beginning on page 6.) The minority opinion on this issue is on page A-26.

**2. DEADLINES TO EXERCISE AN EXECUTIVE VETO  
Amend Charter Section 208 Veto**

The Commission recommends amending Charter Section 208 to clarify the timing of an Executive veto and the deadlines for Council transmittal of legislation. This amendment would allow the Council to enact legislation that would specify how to compute deadlines. (Refer to the information beginning on page 11.)

**B. RECOMMENDATIONS REQUIRING NO CHARTER CHANGES**

**1. COUNCIL STRUCTURE**

The Commission recommends maintaining the current structure and size of the Council. One of the issues that emerged during the Commission's discussions with residents and civic groups was the need to evaluate the current structure of the Council and the number of Councilmembers. Residents, business representatives, political



groups, and government officials all expressed views on this issue. A variety of ideas were proposed; however, three alternatives dominated the discussions: maintain the current Council structure with four at-large seats and five single-member district seats; increase the number of single-member district seats; or change the Council to nine all-district representatives. The Commission recommends no changes to the Council structure or the number of Councilmembers. (Refer to the information beginning on page 13.) The minority opinion on this issue is on page A-28.

## **2. NUMBER OF SIGNATURES REQUIRED TO PETITION A CHARTER AMENDMENT**

The Commission reviewed the disparity between Charter Section 114 and Article XI-A, Section 5, of the Maryland Constitution; however, since no legislation was introduced on this issue in the 2004 legislative session and ballot measures are generally not approved in non-election years, it will be 2006 before such a proposal would be seriously considered by the Maryland General Assembly. Based on this information, the Commission takes no position on this issue at this time. (Refer to the information beginning on page 17.)

## **3. PETITION-GENERATED REFERENDA**

In addition to the issues raised by Commission members and the public, several Councilmembers asked the Commission to review and make recommendations on two proposed Charter amendments that will appear on the ballot in the November 2004 General Election as a result of petition drives. One of the proposed Charter amendments would prohibit Councilmembers or the Executive from serving more than three consecutive four-year terms of office by amending Charter Sections 105 and 202. The Commission opposes term limits for Councilmembers and the Executive and

recommends that County voters cast their votes against this proposal. (Refer to the information beginning on page 19.) A minority opinion on term limits for the Executive is contained on page A-27.

The other proposed Charter amendment would eliminate the Council's ability to override the "soft" property tax cap, which was authorized by the voters in 1990 when property values and property tax bills were increasing. This proposed Charter amendment would repeal the Council's ability to override the existing tax cap in Charter Section 305 and would limit property tax revenue increases to growth plus inflation. The Commission opposes the tax cap proposal and recommends that County voters cast their votes against this proposal. (Refer to the information beginning on page 22.) The minority opinion on this issue is on page A-31.

### **III. ISSUE AREAS**

#### **A. RECOMMENDATIONS FOR CHARTER AMENDMENTS**

##### **1. FULL-TIME VERSUS PART-TIME COMPENSATION Amend Charter Section 107 Compensation**

###### **Background**

The question of whether the Charter should include language treating service on the Council as a full-time or part-time position was referred to the Commission by the Committee to Study the Compensation of the County Executive, County Council, Sheriff, and State's Attorney (Committee to Study Compensation), which published its report in April 2002. Article 1 of the Charter contains provisions relating to the structure and compensation of the Council. The Charter is silent on the issue of whether membership on the Council is a full- or part-time position. In addition, there is no guidance related to compensation. As a result, the Committee to Study Compensation has struggled throughout the years with how to determine the appropriate salary for Councilmembers. By contrast, Section 203 makes it clear that the Executive's position is full-time. Section 203 also expressly bars the Executive from engaging in any private occupation for compensation.

Clarifying whether a Councilmember position should be considered a full- or part-time job has implications beyond simply determining the amount of time a Councilmember should devote to Council-related business. Other rules must be defined, such as: whether a Councilmember should be permitted to have any outside employment; if so, what type of outside employment should be permitted; what constitutes a Council-related activity for the purpose of determining the number of hours worked; and who

should have the responsibility for determining whether a Councilmember is serving as a full-time representative.

## **Discussion**

### **Full-time versus Part-time**

The Executive and each Councilmember were invited to meet with the Commission. Six Councilmembers met with the Commission and provided input on a variety of Charter-related issues. Among the issues discussed was whether the Charter should explicitly state that membership on the Council is a full-time position. All of the Councilmembers interviewed reported regularly working more than 40 hours per week on Council-related business. Councilmembers representing districts reported that they tended to spend more time providing constituent services, while at-large members reported spending more time on countywide issues. In both cases, Councilmembers stated that service on the Council requires at least as much, if not more, time than a traditional full-time job.

Several Councilmembers also expressed the view that it is difficult to recruit minorities and individuals who are “breadwinners” to run for the Council because the position does not pay enough to induce them to give up full-time jobs in the private sector. At least one Councilmember noted that the current Council salary (\$74,747 per year) is substantially below what a full-time senior manager in the nonprofit sector would receive.

A comparison of the salary structure of county legislative bodies in comparable jurisdictions indicates that the current salary structure for Montgomery County Councilmembers is at the low end of the range for full-time positions (see page A-33).

In discussing this issue, the Commission recognized that in a time of limited fiscal resources, there could be adverse political consequences to defining service on the Council as a full-time position. However, the additional costs of increasing Council salaries to reflect the full-time nature of the job would be a minimal increase in a \$3.3 billion County budget.

In addition, amending the Charter to provide that Councilmember positions are full-time for the purpose of determining compensation does not automatically translate into higher salaries. The Committee to Study Compensation determines whether salary increases are justified for Councilmembers.

#### **Prohibition on Outside Employment**

Even if the Charter were to be amended to provide that service on the Council is a full-time job, the question remains whether the amendment should also expressly prohibit some or all outside employment for Councilmembers. The Commission debated this issue at length.

As previously noted, Charter Section 203 expressly precludes the Executive from any outside employment for compensation. In contrast, the Council has historically had one or more members who have engaged in some type of outside employment. In recent years, Councilmembers have practiced law, held teaching positions, and provided consulting services, while also representing their constituents.

Council voting records show that there may be a correlation between the number of Council votes missed and whether a Councilmember holds an outside job. Thus, one could infer that outside employment may have an adverse effect on Councilmembers' attendance at voting sessions.

On the other hand, the Commission heard testimony at its public forum from community representatives that allowing Councilmembers to engage in some outside employment can help keep Councilmembers “in touch” with the community. Several Councilmembers also expressed similar views on this issue.

The Montgomery County Chamber of Commerce also advised the Commission that allowing Councilmembers to retain outside employment may serve to encourage small business owners to run for office because they could maintain their businesses while serving as Councilmembers.

The disadvantages of an absolute ban on outside employment for Councilmembers appear to outweigh the potential advantages. However, that leaves the question of whether a Charter amendment clarifying that service on the Council is a full-time commitment should also include some limit on outside employment.

The Commission considered several alternatives that would limit outside employment for Councilmembers. One would prohibit Councilmembers from engaging in any “substantial” private occupation for compensation. Another would prohibit Councilmembers from engaging in any private occupation for compensation “except an occupation that the entity that interprets the code of ethics and related law under Charter Section 410 (the County Ethics Commission) has approved after determining that engaging in the occupation will not interfere with the member’s duties of office”.

The Commission ultimately concluded that it would be difficult, if not impossible, to determine what constitutes “substantial” outside employment, and that enforcement would be challenging. The Commission also believes that the issue of outside employment is best left to the political process. During each election campaign, voters

have the ability to decide if an individual Councilmember's outside employment has interfered with legislative performance, and if they conclude it has, they may vote for another candidate.

### **Recommendation**

After lengthy discussion of all these factors, the Commission voted (9-1) in favor of the proposed Charter amendment, which states that service on the Council should be treated as a full-time position for the purpose of setting compensation for Councilmembers. This proposal would not limit the extent to which a Councilmember could engage in outside employment for compensation. Instead, it would let the electorate decide whether an individual Councilmember's outside employment activities so significantly interfered, or threatened to interfere, with service on the Council that the individual should not be entrusted to perform the duties of that office.

The next Committee to Study Compensation could take into account the Charter's definition of the position as full-time to determine the appropriate level of compensation for Councilmembers. The amendment would not require the Committee to Study Compensation to increase Council compensation, but could help the Committee to decide whether to maintain or increase the Council's current salary. The recommended amendment to Charter Section 107 follows (New language is underlined.):

### **Proposed Amendment**

#### **SECTION 107 Compensation**

The Council shall prescribe by law the compensation for its members. Membership on the Council shall be considered a full-time position for the purpose of determining compensation. No change in the compensation of members of the Council shall become effective during the term of office of the Council enacting the change.

The minority opinion on this issue is on page A-26.

**2. DEADLINES TO EXERCISE AN EXECUTIVE VETO  
Amend Charter Section 208 Veto**

**Background**

At the request of legal staff from the County Attorney's Office and the Council Office, the Commission reviewed the deadlines imposed by Charter Section 208 concerning when the Executive must exercise the authority to approve or disapprove legislation enacted by the Council. Under certain circumstances, the current provisions in Section 208 may lead to uncertainty as to when the Executive must exercise the power to veto legislation enacted by the Council. Charter Section 208 is not always implemented in a consistent manner because it is unclear how days are counted in certain circumstances.

**Discussion**

Charter Section 208 provides, "Upon the enactment of any legislation by the Council, it shall be delivered within three days to the County Executive who within ten days thereafter shall approve or disapprove it." Section 208 also provides, "Any legislation which has been neither approved nor disapproved by the County Executive shall become law on the fourteenth day after enactment."

These provisions can not always be applied in a consistent and unambiguous manner. For example, if the Council enacts legislation on a Thursday, it is not clear if the legislation must be delivered to the Executive on Sunday or Monday. There also are questions about how holidays are counted, the consequences associated with late delivery, and what happens if the Executive takes no action after receipt of legislation. In light of these concerns, the Commission concluded that it would be prudent to clarify how time is computed under Section 208.



## **Recommendation**

The Commission recommends a Charter amendment that would clarify the time within which the Executive must either approve or disapprove legislation enacted by the Council. The Executive would have ten days after receiving the legislation to approve or disapprove it. The Commission also proposes that legislation would become law if the Executive neither approves nor disapproves it on the eleventh day after the Executive receives it. This change preserves for the Executive a maximum of ten days to take action on legislation.

The Commission also proposes that the Executive must deliver an approval or disapproval notice to the Council, with the reasons for any disapproval stated in writing, within ten days after receiving the legislation from the Council. The Charter currently allows the Executive up to 16 days after enactment of legislation to deliver a veto message to the Council. The Executive does not oppose shortening the time within which a veto message must be transmitted to the Council.

Finally, the Commission noted that Section 1-301 of the County Code (see page A-39) provides a methodology for computing deadlines that is consistent with those used by the courts and the Maryland General Assembly. So that this Code provision can apply to Section 208, the Commission recommends that the Charter authorize the Council to specify by law how to compute the time periods under this section.

The Commission voted (10-0) in favor of amending Charter Section 208. The recommended amendment to Charter Section 208 follows (New language is underlined and deleted language is bracketed.):

## **Proposed Amendment**

### **Section 208 Veto**

Upon the enactment of any legislation by the Council, [it] the Council President shall [be delivered] within three days deliver it to the County Executive, who within ten days [thereafter] after receiving it shall approve or disapprove it. If the [County] Executive disapproves such legislation [it] the Executive shall [be returned] return it to the Council within [three days after the Executive disapproves it] ten days after receiving it with the reasons for the disapproval stated in writing. Not later than 60 days after receiving the Executive's message of disapproval, the Council may, by the affirmative vote of six members, enact legislation over the disapproval of the [County] Executive. Any legislation which has been neither approved nor disapproved by the [County] Executive shall become law on the [fourteenth] eleventh day after [enactment] the Executive receives it. The Council may by law further specify how any period of time mentioned in this section is measured.

## **B. RECOMMENDATIONS REQUIRING NO CHARTER CHANGES**

### **1. COUNCIL STRUCTURE**

#### **Background**

Charter Section 102, Composition and Election, provides that the Council is comprised of nine members. Four Councilmembers are elected by the qualified voters of the entire County and five Councilmembers must each reside in a different Council district and be elected by the qualified voters of that district. The Council structure has been discussed and considered at length by prior Commissions. In 2003 and 2004, this Commission received testimony from residents, community organizations, and political leaders on this issue.

#### **Discussion**

The main options considered for restructuring the Council were as follows:

- 1) maintain the existing nine Council seats and the current ratio of five district seats and four at-large seats;

- 2) increase the overall number of Councilmembers by adding additional district seats; and/or
- 3) change the ratio of district and at-large seats.

Along with a variety of other factors, the following issues emerged as the Commission evaluated restructuring the Council: the balance between district and at-large representation; the size of Council districts; the cost of campaigns; the diversity of representation on the Council; and the budget impact of changing the current structure.

### **Balance Between District and At-Large Representation**

The current Council structure, with five district seats and four at-large seats, was implemented so that County residents are represented by legislators with both local and countywide constituencies. Each area of the County has one district member representing its geographic interests and four at-large members who are more focused on issues that affect the County as a whole. Residents are not limited to dealing only with their district representatives, but may also contact the four at-large members, each of whom has an obligation to serve all County residents. This Council structure was designed to maintain an important balance between local and broader interests and provides an opportunity for alliances to form among at-large and district members depending upon the issue under consideration.

Some people expressed the view that increasing district representation could exacerbate levels of parochialism and political horse-trading. Some other jurisdictions have found that too much district-level representation places greater pressure on allocating budget resources because of competition among districts. Increasing the

number of districts may also reduce the representativeness of the Council because voters may not be electing the majority.

### **Size of Council Districts**

In 2004, the Maryland-National Capital Park and Planning Commission estimates the County's population to be 933,000, which means that each of the five Council districts contains approximately 186,600 residents. Maintaining the current Council structure would mean that, as the County's population grows, each Councilmember will represent a larger number of constituents. Proponents of adding additional district seats argue that more district representation could translate into improved communication with constituents and enhanced representation.

The majority of the Commission does not believe that adding additional district seats will necessarily bring about enhanced representation. For example, if two additional district seats were added, district Councilmembers would still be responsible for approximately 133,300 residents, which is a significant number. In actuality, Councilmembers are unable to interact with all of their constituents, and such a reduction in the constituent base may not result in a significant change.

### **Cost of Campaigns**

Proponents of small districts argue that they make it easier and more affordable for candidates to run for the Council. Some believe that small districts would enable less well-known candidates to be elected by developing grassroots networks and meeting with more local groups.

It is debatable whether smaller districts would reduce the cost of running for a Council seat or that candidates win seats solely based on the amount of campaign funds

spent. Several current Councilmembers told the Commission that elections are won based on a combination of factors including a candidate's platform, relationships with constituents, and an organized and mobilized group of campaign volunteers, as well as campaign contributions. Some people suggested that issues surrounding funding for election campaigns should be addressed through changes in campaign finance regulations instead of changes to the Council structure.

### **Diversity of Representation**

While the linkage between the current Council structure and a perceived lack of diversity has not been established, some residents believe that the current Council does not adequately reflect the County's diversity. Unless the number of Council seats is substantially increased, more districts may not necessarily translate into greater economic or ethnic diversity on the Council because Montgomery County generally does not have large geographic concentrations of minority voters in one area.

Some Councilmembers told the Commission that there are other factors beyond the structure of the Council that may keep minority representatives from running for office. For example, some of these representatives come from organizations that may not work within the political party system.

Experiences in some other jurisdictions indicate having only single-member districts, especially small homogenous ones, may lead to elected officials with more limited agendas and more parochial views. Officials representing small districts may have fewer incentives to compromise with colleagues because their re-election does not depend on appealing to a broad cross-section of residents.

## **Budget Impact**

Adding more Councilmembers also has a budgetary impact. Each additional Council position would cost County taxpayers approximately \$350,000 for salaries and administrative expenses associated with the position. While adding this amount to a County operating budget of more than \$3.3 billion would have a minimal impact, the additional cost per Councilmember would increase the Council Office budget (\$6.7 million) by approximately five percent.

## **Recommendation**

After much deliberation and consideration, the Commission found no compelling reason to change the existing Council structure and voted (9-2) in favor of maintaining the existing Council structure and the existing number of Councilmembers. The minority opinion on this issue is on page A-28.

## **2. NUMBER OF SIGNATURES REQUIRED TO PETITION A CHARTER AMENDMENT**

### **Background**

The Maryland Constitution, Article XI-A, Section 5, provides that amendments to County charters can be proposed, “by a petition signed by not less than 20 percent of registered voters of the . . . county, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition”. This provision has been in effect since 1915. At that time, virtually every county in the state had fewer than 10,000 registered voters. Today, 10,000 signatures represent just two percent of Montgomery County’s registered voters, and this percentage will continue to decrease as the County’s population grows.

Charter Section 114, Referendum, requires signatures of five percent of registered voters to petition to referendum legislation enacted by the Council. According to the County Board of Elections, as of January 2004 there were 496,055 registered voters in the County. Therefore, legislative petitions would currently require 24,802 signatures, while Charter amendment petitions would require only 10,000 signatures. As a result, it is significantly easier to petition to change the Charter than to alter legislation.

### **Discussion**

The Commission has considered the disparity in the number of signatures required for these two petitions for more than twelve years. The 1996 Charter Review Commission recommended that, “the County Council petition the Montgomery County Delegation in Annapolis to introduce and work for the passage of a Constitutional amendment to effect the desired change”. This recommendation was repeated in several Charter Review Commission Reports. Despite multiple years of legislative efforts, no legislation has made significant progress toward passage. In Annapolis, this issue seems to be viewed as a “Montgomery County problem,” and therefore not one that calls for a statewide solution.

### **Recommendation**

Since no legislation was introduced in the 2004 legislative session, and ballot measures are generally not approved in non-election years, it will be 2006 before such a proposal would seriously be considered by the General Assembly. Therefore, the Commission voted (10-0) to take no position on this issue at this time.

### **3. PETITION-GENERATED REFERENDA**

In addition to the issues raised by Commission members and the public, several Councilmembers asked the Commission to review and make recommendations on two proposed Charter amendments that will appear on the ballot in the November 2004 General Election as a result of petition drives. One of the proposed Charter amendments would prohibit Councilmembers or the Executive from serving more than three consecutive four-year terms of office by amending Charter Sections 105 and 202 (see page A-41). The other proposed Charter amendment would eliminate the Council's ability to override a "soft" property tax cap, which was authorized by the voters in 1990 when property values were increasing. This proposed Charter amendment would remove the Council's ability to override the existing tax cap found in Charter Section 305 and would limit property tax revenue increases to growth plus inflation (see page A-41).

#### **(a) Referendum on Term Limits**

##### **Background**

Presidential term limits have been in existence since 1951 when the 22<sup>nd</sup> Amendment to the U.S. Constitution, which limits the president to serving two four-year terms, was ratified. Gubernatorial term limits date back to the mid-18<sup>th</sup> century and are currently in effect in 36 states including Maryland, with most limiting service to two consecutive four-year terms (see page A-43).

Proposals to limit the terms of legislators emerged as a "hot button" issue in the 1990s when initiatives were passed by voters in several states. In addition to local governments with term limits, the National Conference of State Legislatures reports that 16 states currently have legislative term limits (see page A-45). In 2002, 322 state



legislators or 21 percent of the representatives in states with term limits were barred from seeking reelection. For example, the Michigan Senate lost 71 percent of its incumbent membership because term limits made these officials ineligible to run for another term (see page A-47).

Term limits may be divided into two categories: consecutive and lifetime limits. Consecutive term limits prevent an official from running for another consecutive term of office after a particular number of years. If the limit is reached in a particular position, the official may either run for another position or leave public office. After a set period of time, the clock restarts, and a former legislator may run again for the office originally held. Lifetime limits prohibit a legislator from ever running again for a particular office once a specific limit is reached.

Charter Sections 105 and 202 provide that Councilmembers and the Executive serve four-year terms but do not limit the number of terms that may be served. The proposed Charter amendment is a consecutive term limit proposal and, if passed by the voters, would apply to both current and future officeholders. In 2000, a measure that would have established two consecutive four-year term limits for both Councilmembers and the Executive was defeated by County voters.

### **Discussion**

Throughout much of the initial term of this Commission, the petition drive was underway for this Charter amendment. As a result, the Commission received little public comment about term limits at its December 2003 public forum. Subsequent comments opposing this amendment were offered by the Montgomery County Chamber of

Commerce, which noted that “County voters already enjoy the ability to limit the terms of Councilmembers and the Executive through the electoral process”.

Those in favor of term limits believe that these limits will improve the qualities of public servants by replacing “career” politicians (who are believed to be primarily motivated by their own reelection), with “citizen-legislators” (who are believed to be motivated solely by public interest). Proponents of term limits also claim that increasing turnover in representation will lead to more integrity and accountability in the political process.

Opponents of term limits note that such limits reduce the choices voters have on Election Day. Along with implementing a substantial amount of turnover in representation, term limits may result in reduced institutional knowledge, expertise in particular issue areas, and political acumen. Inexperienced representatives may actually impede the political process because they must learn how to navigate the political system and the bureaucracy. Term limits on legislators may also dramatically increase the influence of lobbyists and legislative staffers who are not accountable to the voters.

If voters are dissatisfied with the performance of their elected representatives, they have the power to replace them. Term limits eliminate voters’ ability to evaluate each candidate, and instead, impose an arbitrary amount of time that an official may serve. In addition, these limits may actually reduce the effectiveness of incumbents in their last term of office because they may have little incentive to improve performance and may be viewed as “lame ducks”.

## **Recommendation**

A majority of the Commission determined that term limits are not necessary because voters already have the power to remove a representative from office through the election process. The Commission voted (8-2) against term limits for Councilmembers and the Executive, and recommends that County voters disapprove the term limit proposal. A minority opinion on term limits for the Executive is contained on page A-27. Commissioner McKeehan was absent at the time of the vote but concurs with the minority opinion on this issue.

### **(b) Referendum on Tax Cap**

#### **Background**

Under Charter Section 305, Approval of the Budget; Tax Levies, tax revenues from real property may not increase more than the rate of inflation; however, several categories of tax revenues, such as those from new construction, are excluded from the cap. If tax revenue growth exceeds the rate of inflation, the Council must reduce the real property tax rate to bring the overall revenue growth in line with inflation. Alternatively, a supermajority (7 votes) of the Council may override the Charter and approve the current or higher property tax rates.

Property tax revenues are driven by three components: (1) existing real property that is reassessed every three years, (2) new construction added to the base amount, and (3) the property tax rate. During the early 1990s, minimal housing price appreciation resulted in small increases to reassessments, but in the late 1990s a booming real estate market led to a significant growth in assessments. This trend has continued, and since 2001, reassessments have consistently exceeded inflation.

## **Discussion**

The real property tax is the only major source of revenue over which the County currently has full control; without that control, the Council and the Executive would be severely constrained in their ability to provide services sought by constituents. This proposed Charter amendment would limit the annual property tax increase to the rate of inflation. A supermajority of the Council could no longer vote to override the cap, which could result in the reduction of current County services.

In the next few years, the majority of County homeowners will reach or be close to reaching the annual taxable reassessment cap of 10 percent (contained in State law as the Homestead Tax Credit). Therefore, average property tax bills will increase by 10 percent, assuming no rate change. According to Department of Finance projections (see page A-49), if this Charter amendment were adopted, the County would forgo more than \$1.4 billion in revenue with expenditures exceeding property tax revenues over the next six fiscal years.

Currently, the Charter allows a supermajority of the Council to vote to override the Fairness in Taxation (FIT) limits (adopted in 1990) and raise property tax rates to bring tax revenues in line with needed government spending. The proposed Charter amendment would remove this option and require the County to seek alternatives for closing the gap between tax revenues and expenditures. If the Department of Finance's projections are accurate, it is likely that the County would be forced to cut spending on existing programs and services. The Department of Finance is also concerned that restricting the Council's fiscal options could jeopardize the County's AAA bond rating.

### **Recommendation**

Based on the financial information provided by the Department of Finance, the Commission opposes removing the Council's ability to override the existing tax cap as provided in Charter Section 305. The Commission voted (10-0-1) to oppose this proposed Charter amendment, and recommends that County voters disapprove the tax cap proposal. The minority opinion on this issue is on page A-31.

## **IV. Appendix**

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# **Charter of Montgomery County, Maryland**

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## **Montgomery County Government**

### **County Executive**

Douglas M. Duncan

### **County Council**

Phil Andrews

Howard A. Denis

Nancy Floreen

Michael Knapp

George L. Leventhal

Thomas Perez

Marilyn Praisner

Steven A. Silverman

Michael L. Subin



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**Endnotes**

[Note] \*Editor's note—The current County Charter was adopted at an election held Nov. 5, 1968, and, as indicated by history notes accompanying amended sections, was amended by subsequent elections. The County's first Charter was adopted in 1948

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# Charter of Montgomery County, Maryland

## Preamble

We, the people of Montgomery County, Maryland, a body corporate and politic, under the Constitution and general laws of the State of Maryland, do adopt this Charter as our instrument of government.

## Article 1. Legislative Branch.

### Sec. 101. County Council.

All legislative powers which may be exercised by Montgomery County under the Constitution and laws of Maryland, including all law making powers heretofore exercised by the General Assembly of Maryland but transferred to the people of the County by virtue of the adoption of this Charter, and the legislative powers vested in the County Commissioners as a District Council for the Montgomery County Suburban District, shall be vested in the County Council. The legislative power shall also include, but shall not be limited to, the power to enact public local laws for the County and repeal or amend local laws for the County heretofore enacted by the General Assembly upon the matters covered by Article 25A, Annotated Code of Maryland, 1957, as now in force or hereafter amended, and the power to legislate for the peace, good government, health, safety or welfare of the County. Nothing herein contained shall be construed to authorize or empower the County Council to enact laws or regulations for any incorporated town, village or municipality in said County on any matter covered by the powers granted to said town, village or municipality by the act incorporating it or any subsequent act or acts amendatory thereto.

**Editor's note**—The authorization of a road project is an executive rather than a legislative administrative act. Eggert v. Montgomery County Council, 263 Md. 243, 282 A.2d 474 (1971).

### Sec. 102. Composition and Election.

The Council shall be composed of nine members, each of whom shall be a qualified voter of Montgomery County. Four Councilmembers shall be nominated and elected by the qualified voters of the entire County. Each of the five other members of the Council shall, at the time of election, reside in a different Council district, and shall be nominated and elected by the qualified voters of that district. No member of the Council shall hold any other office of profit in state, county or municipal government. No member of the Council shall be eligible for appointment during the member's term of office to any other

office or position carrying compensation created by or under this Charter, except to County Executive in the event of a vacancy. (Election of 11-2-82; election of 11-4-86; election of 11-3-98.)

### **Sec. 103. Council Districts.**

Montgomery County shall be divided into five Council districts for the purpose of nominating and electing five members of the Council. Each district shall be compact in form and be composed of adjoining territory. Populations of the Council districts shall be substantially equal. (Election of 11-3-98.)

### **Sec. 104. Redistricting Procedure.**

The boundaries of Council districts shall be reviewed in 1972 and every tenth year thereafter. Whenever district boundaries are to be reviewed, the Council shall appoint, not later than February 1 of the year before the year in which redistricting is to take effect, a commission on redistricting. The Commission shall be composed of four members from each political party chosen from a list of eight individuals submitted by the central committee of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the last preceding regular election. Each list shall include at least one individual who resides in each Council district. The Council shall appoint one additional member of the Commission. The Commission shall include at least one member who resides in each Council district, and the number of members of the Commission who reside in the same Council district shall not exceed the number of political parties which submitted a list to the Council. The Commission shall, at its first meeting, select one of its members to serve as its chair. No person who holds any elected office shall be eligible for appointment to the Commission.

By November 15 of the year before the year in which redistricting is to take effect, the Commission shall present a plan of Council districts, together with a report explaining it, to the Council. Within thirty days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within ninety days after presentation of the Commission's plan no other law reestablishing the boundaries of the Council districts has been enacted, then the plan, as submitted, shall become law. (Election of 11-2-82; election of 11-3-98.)

### **Sec. 105. Term of Office.**

Members of the Council shall hold office for a term beginning at noon on the first Monday of December next following the regular election for the Council and ending at noon on the first Monday of December in the fourth year thereafter.

### **Sec. 106. Vacancies.**

A vacancy shall occur when any member of the Council shall, before the expiration of the term for which the member was elected, die, resign the office, become disqualified for membership on the Council, or be removed from office. Unless the Council has provided by law for filling a vacancy by special election, the following process for filling a vacancy shall apply. When a vacancy has occurred, a majority of the remaining members of the Council shall appoint a person to fill the vacancy within thirty days. An appointee to fill a vacancy, when succeeding a party member, shall be a member of the same

political party as the person elected to such office at the time of election. If the Council has not acted within thirty days, the County Executive shall appoint a person to fill the vacancy within ten days thereafter. If a person having held the vacant position was a member of a political party at the time of election, the person appointed by the County Executive shall be the nominee of the County Central Committee of that party. An appointee shall serve for the unexpired term of the previous member. Any member appointed to fill a vacancy shall meet the same qualifications and residence requirements as the previous member. (Election of 11-2-82; election of 11-8-88; election of 11-3-98.)

#### **Sec. 107. Compensation.**

The Council shall prescribe by law the compensation for its members. No change in the compensation of members of the Council shall become effective during the term of office of the Council enacting the change.

#### **Sec. 108. Officers of the Council.**

The Council shall elect, from among its members, a president of the Council, who shall preside over meetings of the Council. The Council may provide for the selection of such other officers or employees as it may deem desirable for the exercise of its powers. The Council may employ or retain special legal counsel to assist it in the exercise of its powers, and may provide by law for special legal counsel to assist, advise, or represent any office of the legislative branch in the exercise of its duties. Any special legal counsel employed or retained under this section shall be subject to appropriation and is not subject to Section 213. (Election of 11-6-84; election of 11-5-02.)

#### **Sec. 109. Sessions.**

The first and third Tuesdays of each month, and such additional days as the Council may determine, are designated as days for the enactment of legislation, but the Council shall not sit for more than forty-five days in each year for the purpose of enacting legislation. When a first or third Tuesday is an official holiday, the next succeeding Tuesday business day shall be a day for the enactment of legislation. The Council may sit in nonlegislative sessions at such other times as it may determine. In nonlegislative sessions, the Council may adopt rules and regulations which implement or provide for the administration or execution of legislation under procedures and provisions for notice and hearing prescribed by law. The Council shall not take or discuss any action except in public session or in a closed session expressly allowed by the Council rules of procedure. The Council rules of procedure shall permit the same or greater public access to Council sessions as the state Open Meetings Act or any successor state law. The Council shall not make or confirm any appointment in a closed session. (Election of 11-4-80; election of 11-2-82; election of 11-5-02.)

**Editor's note**—In Montgomery Citizens League v. Greenhalgh, 253 Md. 151, 252 A.2d 242 (1969), it was held that the council need not designate an emergency extra session a legislative day separate and apart from the call of the session.

#### **Sec. 110. Exercise of Zoning, Planning and Other Powers.**

In the exercise of powers authorized by any act of the General Assembly or the Constitution of

Maryland, other than the law making power vested in it by article XI-A of the Constitution and the grant of express powers in Article 25A, Annotated Code of Maryland, 1957, the Council shall follow the procedure set forth in such law or section of the Constitution and the exercise thereof shall be effected in the manner prescribed therein. The powers relating to zoning, planning or subdividing shall be exercised as prescribed by law. (Election of 11-4-86; election of 11-8-88.)

#### **Sec. 111. Enactment of Legislation.**

The Council shall enact legislation only after public hearing upon reasonable notice. No legislation shall be enacted by the Council unless it receives the affirmative vote of five members of the Council. Legislation containing a section declaring that it is necessary for the immediate protection of the public health, safety, or interest, and enacted by the affirmative vote of at least six members of the Council, shall be expedited legislation. Expedited legislation, as defined in this section, is the emergency legislation referred to in Article XI-A, Section 3, of the Constitution of Maryland. Any vote cast by a member on any legislation shall be recorded in the journal of the Council. (Election of 11-4-86; election of 11-5-02.)

#### **Sec. 112. Effective Date of Legislation.**

All legislation, except expedited legislation, shall take effect ninety-one days after the date when it becomes law, unless a later effective date is prescribed in the legislation. Expedited legislation shall take effect on the date when it becomes law, unless a different effective date is prescribed in the legislation. (Election of 11-2-82; election of 11-5-02.)

#### **Sec. 113. Publication of Legislation.**

All legislation shall be published as required by the Constitution and laws of Maryland. In addition, a summary of any legislation, except expedited legislation, enacted by the Council shall be published before the date when it takes effect, in such manner as the Council shall prescribe by law. A summary of expedited legislation shall be published promptly after enactment. (Election of 11-5-02.)

#### **Sec. 114. Referendum.**

Any legislation enacted by the Council shall be submitted to a referendum of the voters upon petition of five percent of the registered voters of the County except legislation (1) appropriating money or imposing taxes, (2) prescribing Councilmanic districts, (3) authorizing the issuance of bonds or other financial obligations for a term of less than twelve months, and (4) authorizing obligations for public school sites, construction, remodeling, or public school buildings, whenever the total amount of such obligations authorized to be issued in any one year does not exceed one-fourth of one percent of the assessable base of the County. (Election of 11-7-78; election of 11-6-90.)

#### **Sec. 115. Referendum Procedure.**

Any petition to refer legislation to the voters of the County shall be filed with the Board of Supervisors of Elections within ninety days following the date on which the legislation shall become law



provided that fifty percent of the required signatures accompanying the petition are filed within seventy-five days following the date on which the legislation becomes law. When a referendum petition has been filed, the legislation to be referred shall not take effect until thirty days after its approval by a majority of the registered voters of the County voting thereon. Emergency legislation shall remain in force from the date it shall become law notwithstanding the filing of a petition for referendum but shall stand repealed thirty days after rejection by a majority of the registered voters voting thereon. (Election of 11-7-78.)

#### **Sec. 116. Legislative Procedure.**

Consistent with law and the provisions of this Charter, the Council shall, by resolution, prescribe its rules of procedure and provide for the publication of its proceedings.

#### **Sec. 117. Limitations.**

Neither the Council, nor any member thereof, shall appoint, dismiss, or give directions to any individual employee of the Executive Branch of the County Government.

#### **Sec. 118. Removal of Councilmembers.**

A member of the County Council may be removed from office by the affirmative vote of not less than six members of the Council after a public hearing and upon a finding that the Councilmember is unable by reason of physical or mental disability to perform the duties of the office. The decision of the Council may be appealed by the removed Councilmember within ten days to the Circuit Court by petition. Upon the filing of a petition, the Court may stay the removal pending its decision. Upon appeal, the Court may make *de novo* determinations of fact. A member of the County Council also may be suspended and removed from office in the manner provided in Section 2 of Article XV of the Constitution of Maryland. (Election of 11-2-82; election of 11-4-86.)

## **Article 2. Executive Branch.**

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#### **Sec. 201. Executive Power.**

The executive power vested in Montgomery County by the Constitution and laws of Maryland and by this Charter shall be vested in a County Executive who shall be the chief executive officer of Montgomery County and who shall faithfully execute the laws. In such capacity, the County Executive shall be the elected executive officer mentioned in Article XI-A, Section 3, of the Constitution of Maryland. The County Executive shall have no legislative power except the power to make rules and regulations expressly delegated by a law enacted by the Council or by this Charter. (Election of 11-2-82.)

**Editor's note**—The authorization of a road project is an executive rather than an administrative act, Eggert v. Montgomery County Council, 263 Md. 243, 282 A.2d 474 (1971).

**Sec. 202. Election and Term of Office.**

The County Executive shall be elected by the qualified voters of the entire County at the same time as the council and shall serve for a term of office commencing at noon on the first Monday of December next following the election, and ending at noon on the first Monday of December in the fourth year thereafter, or until a successor shall have qualified. (Election of 11-2-82.)

**Sec. 203. Qualifications.**

The County Executive shall have been a resident of Montgomery County for the year preceding the election or appointment, shall be not less than thirty years of age, shall be a qualified voter of Montgomery County and shall not hold any other office of profit in federal, state, county or municipal government. The County Executive shall not, during the term of office, be eligible for appointment to any other County office or position carrying compensation. The County Executive shall devote full time to the duties of the office and shall not participate in any private occupation for compensation. (Election of 11-2-82.)

**Editor's note**—2000 L.M.C., ch. 4, § 1, added Section 1A-107, County Executive Residency Requirement, to Chapter 1A, Establishing the Structure of County Government, which states that the County Executive must have been a resident of the County for one year before the Executive is elected or appointed.

**Sec. 204. Compensation.**

The compensation of the County Executive shall be prescribed by the Council by law. The council shall not change the compensation of any County Executive during the term of office to which elected. (Election of 11-2-82.)

**Sec. 205. Vacancy.**

A vacancy in the office of County Executive shall exist upon the death, resignation, disqualification, or removal of the County Executive. The Council, by a vote of not less than five members, shall appoint a successor to fill the vacancy within forty-five days of the vacancy. An appointee to fill a vacancy, when succeeding a party member, shall be a member of the same political party as the person elected to such office at the time of election. If the Council has not made an appointment within forty-five days, the Council shall appoint within fifteen days thereafter the nominee of the County Central Committee of the political party, if any, of the person elected to such office. The Chief Administrative Officer shall act as County Executive and perform all the duties of that office until such time as the vacancy has been filled. (Election of 11-2-82; election of 11-4-86.)

**Sec. 206. Removal of the County Executive.**

The County Executive may be removed from office by the affirmative vote of not less than six members of the Council after a public hearing and upon a finding that the County Executive is unable by

reason of physical or mental disability to perform the duties of the office. The decision of the Council may be appealed by the County Executive within ten days to the Circuit Court by petition. Upon the filing of a petition, the Court may stay the removal pending its decision. Upon appeal, the Court may make *de novo* determinations of fact. The County Executive also may be suspended and removed from office in the manner provided in Section 2 of Article XV of the Constitution of Maryland. (Election of 11-2-82; election of 11-4-86.)

#### **Sec. 207. Temporary Absence or Disability.**

In the event of the temporary absence or disability of the County Executive, the Chief Administrative Officer shall perform the duties of the County Executive, unless the County Executive shall designate in writing some other person in the Executive Branch.

#### **Sec. 208. Veto.**

Upon the enactment of any legislation by the Council, it shall be delivered within three days to the County Executive who within ten days thereafter shall approve or disapprove it. If the County Executive disapproves such legislation, it shall be returned to the Council within three days after the Executive disapproves it with the reasons for the disapproval stated in writing. Not later than 60 days after receiving the Executive's message of disapproval, the Council may, by the affirmative vote of six members, enact legislation over the disapproval of the County Executive. Any legislation which has been neither approved nor disapproved by the County Executive shall become law on the fourteenth day after enactment. (Election of 11-2-82; election of 11-4-86; election of 11-6-90.)

#### **Sec. 209. Information on Executive Branch.**

The County Executive shall provide the Council with any information concerning the Executive Branch that the Council may require for the exercise of its powers.

**Editor's note**—Section 209 of the Montgomery County Charter was quoted in *Caffrey v. Montgomery County*, 370 Md. 272, 805 A.2d 268 (2002).

#### **Sec. 210. Chief Administrative Officer.**

The County Executive shall appoint a Chief Administrative Officer subject to confirmation by the Council. The Chief Administrative Officer shall be a professionally qualified administrator who shall serve at the pleasure of the County Executive, with compensation determined by the County Executive subject to the approval of the Council. (Election of 11-2-82.)

#### **Sec. 211. Duties of the Chief Administrative Officer.**

The Chief Administrative Officer shall, subject to the direction of the County Executive, supervise all departments, offices, and agencies of the Executive Branch, advise the County Executive on all administrative matters and perform such other duties as may be assigned by the County Executive, or by this Charter. (Election of 11-2-82.)

**Sec. 212. Principal Departments.**

In the Executive Branch there shall be an Office of the County Attorney, a Department of Finance and any departments, agencies, offices, or other bodies prescribed by this Charter, or by the Council by law.

**Sec. 213. County Attorney.**

The County Executive shall appoint a County Attorney, subject to confirmation by the Council. The County Attorney shall be the chief legal officer of the County, conduct all the law business of the County, be a legal advisor to the Council, and be the legal advisor to the County Executive, all departments, and other instrumentalities of the County Government. The County Attorney shall represent the County in all actions in which the County is a party. The County Attorney and the staff of the office shall engage in no other law practice. The County Attorney may, with the approval of the Council, temporarily employ special legal counsel to work on problems of an extraordinary nature when the work to be done is of such character or magnitude as to require services in addition to those regularly provided by the County Attorney. The County Attorney shall serve at the pleasure of the County Executive but, upon request, shall be entitled to a public hearing before the Council prior to dismissal from office. (Election of 11-2-82; election of 11-6-84.)

**Sec. 214. Department of Finance.**

The Department of Finance shall be the custodian of all County funds, securities and insurance policies; collect taxes, special assessments, license fees and other revenue; manage indebtedness, invest and disburse County funds; prepare an Annual Financial Report containing a detailed account of all monies received and paid out by the County and perform such other functions as shall be prescribed by law. (Election of 11-8-88.)

**Sec. 215. Appointments.**

The County Executive, after receiving the advice of the Chief Administrative Officer, shall appoint a single officer to head each department, principal office or agency of the Executive Branch, and an officer to fill any position in the Executive Branch designated by law as a non-merit position, all subject to the confirmation of the Council. Except for commissions appointed to advise the Council, the County Executive shall appoint, subject to the confirmation of the Council, all members of boards and commissions unless otherwise prescribed by state law or this Charter. (Election of 11-8-94.)

**Sec. 216. Appointment of Other Employees of the Executive Branch.**

All employees of the Executive Branch other than those specifically provided for in this Charter shall be appointed and removed and their salaries shall be fixed under the merit system by the heads of the several departments, offices and agencies of the County.

**Sec. 217. Reorganization of the Executive Branch.**

The Council may prescribe by law the organization of the Executive Branch of County Government. The County Executive may submit to the Council in writing, reorganization plans reallocating powers, functions or responsibilities of the various departments and agencies of the Executive Branch. A reorganization plan shall become law ninety days following its presentation to the Council, if by that time it has not been disapproved by a vote of five members of the Council. (Election of 11-4-86.)

**Sec. 218. Internal Audits.**

The County Executive shall cause internal audits of all departments, offices and agencies of the Executive Branch, and other internal audits as prescribed by law, to be performed. (Election of 11-8-88.)

## **Article 3. Finance.**

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**Sec. 301. Fiscal Year.**

The fiscal year of the County shall commence on July 1 of each year and end on June 30 in the following year, unless otherwise prescribed by state law.

**Sec. 302. Six-Year Programs for Public Services, Capital Improvements, and Fiscal Policy.**

The County Executive shall submit to the Council, not later than January 15 of each even-numbered year, a comprehensive six-year program for capital improvements. The County Executive shall submit to the Council, not later than March 15 of each year, comprehensive six-year programs for public services and fiscal policy. The six-year programs shall require a vote of at least five Councilmembers for approval or modification. Final Council approval of the six-year programs shall occur at or about the date of budget approval.

The public services program shall include a statement of program objectives and recommend levels of public service by the County government, and shall provide an estimate of costs, a statement of revenue sources, and an estimate of the impact of the program on County revenues and the capital budget.

The capital improvements program shall include a statement of the objectives of capital programs and the relationship of capital programs to the County's long-range development plans; shall recommend capital projects and a construction schedule; and shall provide an estimate of costs, a statement of anticipated revenue sources, and an estimate of the impact of the program on County revenues and the operating budget. The capital improvements program shall, to the extent authorized by law, include all capital projects and programs of all agencies for which the County sets tax rates or approves budgets or programs. The Council may amend an approved capital improvements program at any time by an affirmative vote of six Councilmembers.

The fiscal program shall show projections of revenues and expenditures for all functions, recommend revenue and expenditure policies for the program period and analyze the impact of tax and expenditure patterns on public programs and the economy of the County.

The County Executive shall provide such other information relating to these programs as may be prescribed by law.

All capital improvement projects which are estimated to cost in excess of an amount to be established by law or which the County Council determines to possess unusual characteristics or to be of sufficient public importance shall be individually authorized by law; provided however, that any project declared by the County Council to be of an emergency nature necessary for the protection of the public health or safety shall not be subject to this requirement if the project is approved by the affirmative vote of six Councilmembers. Any project mandated by law, statutory or otherwise, interstate compact, or any project required by law to serve two or more jurisdictions shall, likewise, not be subject to this requirement. The County Council shall prescribe by law the methods and procedures for implementation of this provision. (Election of 11-7-78; election of 11-4-86; election of 11-3-92; election of 11-5-96.)

### **Sec. 303. Capital and Operating Budgets.**

The County Executive shall submit to the Council, not later than January 15 and March 15, respectively of each year, proposed capital and operating budgets including recommended expenditures and revenue sources for the ensuing fiscal year and any other information in such form and detail as the County Executive shall determine and as may be prescribed by law. These budgets shall be consistent with the six-year programs. A summary shall be submitted with the budgets containing an analysis of the fiscal implications for the County of all available budgets of any agencies for which the Council sets tax rates, makes levies, approves programs or budgets. (Election of 11-6-84; election of 11-3-92.)

### **Sec. 304. Budget Hearing.**

The Council shall hold public hearings on the proposed budget and the six-year programs required by this Charter, commencing not earlier than twenty-one days following their receipt.

### **Sec. 305. Approval of the Budget; Tax Levies.**

The Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget. The Council shall approve each budget, as amended, and appropriate the funds therefor not later than June 1 of the year in which it is submitted.

An aggregate operating budget which exceeds the aggregate operating budget for the preceding fiscal year by a percentage increase greater than the annual average increase of the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the twelve months preceding December first of each year requires the affirmative vote of six Councilmembers. For the purposes of this section, the aggregate operating budget does not include: (1) the operating budget for any enterprise fund; (2) the operating budget for the Washington Suburban Sanitary Commission; (3) expenditures equal to tuition and tuition-related charges estimated to be received by Montgomery College; and (4) any grant which can only be spent for a specific purpose and which cannot be spent until receipt of the entire amount of revenue is assured from a source other than

County government.

The Council shall annually adopt spending affordability guidelines for the capital and operating budgets, including guidelines for the aggregate capital and aggregate operating budgets. The Council shall by law establish the process and criteria for adopting spending affordability guidelines. Any aggregate capital budget or aggregate operating budget that exceeds the guidelines then in effect requires the affirmative vote of seven Councilmembers for approval.

By June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. Unless approved by an affirmative vote of seven Councilmembers, the Council shall not levy an ad valorem tax on real property to finance the budgets that will produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year plus a percentage of the previous year's real property tax revenues that equals any increase in the Consumer Price Index as computed under this section. This limit does not apply to revenue from: (1) newly constructed property, (2) newly rezoned property, (3) property that, because of a change in state law, is assessed differently than it was assessed in the previous tax year, (4) property that has undergone a change in use, and (5) any development district tax used to fund capital improvement projects. (Election of 11-7-78; election of 11-6-84; election of 11-6-90; election of 11-3-92; election of 11-8-94; election of 11-3-98.)

### **Sec. 306. Item Veto or Reduction.**

Upon approval of the budget, it shall be delivered within three days to the County Executive who within ten days thereafter may disapprove or reduce any item contained in it. If the County Executive disapproves or reduces any item in the budget, it shall be returned to the Council with the reasons for the disapproval or reduction in writing. The Council may, not later than June 30 of that year, reapprove any item over the disapproval or reduction of the County Executive by the affirmative vote of six members, except that the affirmative vote of five members shall be required in the case of the budgets of the Council, the Fire and Rescue Commission, the Fire Departments and Rescue Squads, the Housing Opportunities Commission and Montgomery College. (Election of 11-4-80; election of 11-2-82; election of 11-4-86; election of 11-8-88; election of 11-3-92.)

### **Sec. 307. Supplemental Appropriations.**

Any supplemental appropriation shall be recommended by the County Executive, who shall specify the source of funds to finance it. The Council shall hold a public hearing on each proposed supplemental appropriation after at least one week's notice. A supplemental appropriation that would comply with, avail the County of, or put into effect a grant or a federal, state, or county law or regulation, or one that is approved after January 1 of any fiscal year, requires an affirmative vote of five Councilmembers. A supplemental appropriation for any other purpose that is approved before January 1 of any fiscal year requires an affirmative vote of six Councilmembers. The Council may, in a single action, approve more than one supplemental appropriation. The Executive may disapprove or reduce a supplemental appropriation, and the Council may reapprove the appropriation, as if it were an item in the annual budget. (Election of 11-7-2000.)

### **Sec. 308. Special Appropriations.**

A special appropriation is an appropriation which states that it is necessary to meet an unforeseen

disaster or other emergency, or to act without delay in the public interest. Each special appropriation shall be approved by not less than six Councilmembers. The Council may approve a special appropriation at any time after public notice by news release. Each special appropriation shall specify the source of funds to finance it. (Election of 11-4-86; election of 11-7-2000.)

**Sec. 309. Transfer of Funds.**

The County Executive may at any time transfer an unencumbered appropriation balance within a division or between divisions of the same department. Transfers between departments, boards or commissions, or to any new account, shall be made only by the County Council upon the recommendation of the County Executive. The total cumulative transfers from any one appropriation shall not exceed ten percent of the original appropriation. No transfer shall be made between the operating and capital budget appropriation.

**Sec. 310. Surplus.**

The County may accumulate earned surplus in any enterprise fund or unappropriated surplus in any other fund. With respect to the General Fund, any unappropriated surplus shall not exceed five percent of the General Fund revenue for the preceding fiscal year. An unappropriated surplus may be used to fund any supplemental or special appropriations. (Election of 11-7-2000.)

**Sec. 311. Limitations on Expenditures.**

No expenditures of County funds shall be made or authorized in excess of the available unencumbered appropriations therefor.

**Sec. 311A. Limitations on Expenditures for Landfills in Residential Zones.**

No expenditure of County funds shall be made or authorized for the operation of a landfill system of refuse disposal on land zoned for residential use. (Election of 11-7-78.)

**Editor's note**—See East v. Gilchrist, 296 Md. 368, A.2d 285 (1983); holding section 311A cannot be given effect under circumstances involving an order of the secretary of health and mental hygiene and requirement of local funding under public general law.

**Sec. 311B. Limitations on Expenditures, Contracts, and Permits for Burying or Trenching Sewage Sludge in Residential Zones.**

No expenditure of County funds shall be made or authorized for the construction or operation of a system for burying or trenching sewage sludge on land zoned for residential use, nor may the County purchase or contract for the service of burying or trenching sewage sludge on land zoned for residential use. Also, the County may not seek federal or state permits for the burying or trenching of sewage sludge in residential zones. (Election of 11-4-80.)



**Sec. 312. Indebtedness.**

The County may incur debt. No indebtedness for a term of more than one year shall be incurred by the County to meet current operating expenses. All County indebtedness for a term in excess of one year shall become due not later than thirty years after the date of issuance. If at any time the Council shall have failed to appropriate and to make available sufficient funds to provide for the timely payment of the interest and principal then due upon all County indebtedness, it shall be the duty of the Director of Finance to pay, or to make available for payment, to the holders of such indebtedness from the first revenues thereafter received applicable to the general funds of the County, a sum equal to such interest and principal. (Election of 11-6-90.)

**Sec. 313. Purchasing.**

The Council shall prescribe by law a centralized system of purchasing and contracting for all goods and services used by the County. The centralized purchasing system shall be administered under the professional supervision of the Chief Administrative Officer subject to the direction of the County executive.

**Sec. 313A. Purchasing, Contracting for Goods, Services with C&P Telephone Company.**

The County Government may not purchase and contract for goods and services with the C&P Telephone Company (C&P) unless C&P includes telephone subscribers in Gaithersburg, Maryland, and Montgomery Village in the Washington Metropolitan Area Telephone Exchange (MET) at local rates no higher than local rates charged MET subscribers in Bethesda, Silver Spring, Kensington and Rockville telephone exchange areas. (Election of 11-2-82.)

**Editor's note**—In Rowe, et al. v. The Chesapeake and Potomac Telephone Company of Maryland, et al., 65 Md. App. 527, 501 A.2d (1985), it was held that Charter section 313A could not be given effect because it conflicted with a state Public Service Commission Order.

**Sec. 314. Competitive Procurement.**

The Council shall prescribe by law for competitive procurement for purchases by or contracts with the County in excess of an amount or amounts established by law. (Election of 11-4-80; election of 11-6-90.)

**Sec. 315. Audit.**

The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees. The complete report of the audit shall be presented to the Council and copies of it shall be made available to the public.

**Editor's note**—Res. No. 10-457, introduced and adopted on Nov. 1, 1983, adopted procedures for the selection of the independent auditor.

### **Sec. 316. Public Access to Fiscal Documents.**

All fiscal documents required by this Charter shall be public records, and copies shall be made available to the public. Any estimates, reports, or justifications on which they are based shall be open to public inspection subject to reasonable regulations.

## **Article 4. Merit System and Conflicts of Interest.**

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### **Sec. 401. Merit System.**

The Council shall prescribe by law a merit system for all officers and employees of the County government except: (a) members of the Council, the County Executive, the Chief Administrative Officer, the County Attorney; (b) the heads of the departments, principal offices and agencies, as defined by law; (c) any officer holding any other position designated by law as a non-merit position; (d) one confidential aide for each member of the Council; (e) two senior professional staff members for the Council as a whole as the Council may designate from time to time; (f) three special assistants to the County Executive as the Executive may designate from time to time; (g) special legal counsel employed pursuant to this Charter; (h) members of boards and commissions; and (i) other officers authorized by law to serve in a quasi-judicial capacity.

Any law which creates a new department, principal office, or agency, or designates a position as a non-merit position, requires the affirmative vote of six Councilmembers for enactment. Any law which repeals the designation of a position as a non-merit position requires the affirmative vote of five Councilmembers for enactment.

Officers and employees subject to a collective bargaining agreement may be excluded from provisions of law governing the merit system only to the extent that the applicability of those provisions is made subject to collective bargaining by legislation enacted under Section 510, Section 510A, or Section 511 of this Charter.

The merit system shall provide the means to recruit, select, develop, and maintain an effective, nonpartisan, and responsive work force with personnel actions based on demonstrated merit and fitness. Salaries and wages of all classified employees in the merit system shall be determined pursuant to a uniform salary plan. The council shall establish by law a system of retirement pay.

The Council by law may exempt probationary employees, temporary employees, and term employees from some or all of the provisions of law governing the merit system, but the law shall require these employees to be recruited, selected and promoted on the basis of demonstrated merit and fitness. (Election of 11-4-80; election of 11-6-84; election of 11-8-94; election of 11-5-96; election of 11-3-98; election of 11-7-2000.)

**Editor's note**—Section 401 of the Montgomery County Charter was interpreted in Anastasi v. Montgomery County, 123 Md. App. 472, 719 A.2d 980 (1998).

**Sec. 402. Personnel Administration.**

The County Executive shall be responsible for adopting personnel regulations for the administration and implementation of the merit system law. These regulations shall be adopted in the manner provided for by law. The Chief Administrative Officer, under the direction of the County Executive and subject to merit system laws and regulations, shall be responsible for administering the County's merit system. (Election of 11-4-80.)

**Sec. 403. Merit System Protection Board.**

There is established a Merit System Protection Board composed of three members who are qualified voters of the County appointed by the Council. One member shall be appointed each year for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed only for the remainder of that term. Appointment shall be made so that not more than two members of the Board shall be members of the same political party. No member shall hold political office or participate in any campaign for any political or public office during the member's term of office. Members of the Board shall be compensated as prescribed by law. (Election of 11-4-80.)

**Sec. 404. Duties of the Merit System Protection Board.**

Any employee under the merit system who is removed, demoted, or suspended shall have, as a matter of right, an opportunity for a hearing before the Merit System Protection Board, which may assign the matter to a hearing examiner to conduct a hearing and provide the Board with a report and recommendations. The charges against the employee shall be stated in writing, in such form as the Board shall require. If the Board assigns the matter to a hearing examiner, any party to the proceeding shall have, as a matter of right, an opportunity to present an oral argument on the record before the Board prior to a final decision. The Board shall establish procedures consistent with law for the conduct of its hearings. The decisions of the Board in such appeals shall not be subject to review except by a court of competent jurisdiction. The Council shall provide by law for the investigation and resolution of formal grievances filed under the merit system and any additional duties or responsibilities of the Board. The Board shall conduct on a periodic basis special studies and audits of the administration of the merit and retirement pay systems and file written reports of its findings and recommendations with the Executive and the Council. The Board shall comment on any proposed changes in the merit system law or regulations in a timely manner as provided by law. (Election of 11-4-80.)

**Sec. 405. Political Activity.**

No officer or employee of the County shall be prohibited from participating in politics or political campaigns; however, the Council may by law restrict political activities by County officers and employees (including members of boards and commissions) who serve in a quasi-judicial capacity. No County officer or employee shall be obligated to contribute to a political campaign or to render political service. (Election of 11-2-82; election of 11-3-98.)

**Sec. 406. Prohibition Against Private Use of Public Employees.**

No member of the Council, the County Executive, or any officer or employee of the County shall detail or cause any officer or employee of the County to do or perform any service or work outside of the officer's or employee's public office or employment. (Election of 11-2-82.)

**Sec. 407. Prohibition Against Additional Compensation.**

No member of the Council and no officer or employee of the County whose salary is fixed, in whole or in part, by this Charter, the laws of the County, or its personnel regulations, shall be entitled, directly or indirectly, to any other salary, expenses, or compensation from the County for performance of public duties except expenses for travel and subsistence incident to the performance of official duties as prescribed by law. (Election of 11-2-82.)

**Sec. 408. Work During Official Hours.**

All officers and employees of the Executive or Legislative Branches who receive compensation paid in whole or in part from County funds shall devote their entire time during their official working hours to the performance of their official duties.

**Sec. 409. Corrupt Practices.**

No person whose salary or expenses are paid in whole or in part from County funds shall invite, accept, offer, give or promise to give any money or any valuable thing in consideration of appointment or employment by the County. Any person violating this Section shall be removed from any public office or employment held and be subject to such other penalties as may be prescribed by law. (Election of 11-2-82.)

**Sec. 410. Code of Ethics.**

The Council shall adopt by law a code of ethics applicable to all public employees. In this section, public employee includes each County employee, elected officer, and appointed officer, including a member of a board or commission, and any other person designated by law.

The code of ethics shall at a minimum regulate: (a) conflicts of interest; (b) solicitation and receipt of gifts; (c) other employment of present and former public employees; (d) lobbying; (e) financial disclosure by public employees; (f) the use of County property and County insignia; and (g) the use of the prestige of office.

The code of ethics shall:

a) provide that each public employee owes a fiduciary responsibility to the County, which the public employee shall not breach by any public or private action;

b) prohibit a public employee from obtaining an economic benefit as a result of public employment if the economic benefit is received on terms more favorable than those available to persons who are not public employees;

- c) allow waivers from restrictions and requirements of the code if a waiver is in the best interest of the County and all pertinent facts are disclosed to the public;
- d) authorize enforcement of the code and impose penalties for violations; and
- e) include any other provisions required by State law or that the Council finds serve the purposes of this section.

The Council by law shall prohibit corrupt practices by any individual or organization that attempts to obtain or is a party to a contract with the County, including kickbacks in the award of County contracts and using confidential information obtained in performing a contract with the County for personal gain or the gain of another without the approval of the County.

The Council may by law establish a commission to enforce and interpret the code of ethics and related laws. The Council by law may allow an ethics commission to retain legal counsel with the approval of the Council, subject to appropriation, and may exempt legal counsel for the commission from Section 213. (Election of 11-2-82; election of 11-5-96.)

**Sec. 411. Reserved.**

**Editor's note**—Section 411, related to prohibited activities and derived from Char. Res. No. 8-935, § 3 as amended by an election of 11-2-82, was repealed by an amendment of 11-5-96.

## **Article 5. General Provisions.**

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**Sec. 501. Disaster—Continuity of Government During Emergencies.**

In order to ensure continuity of government during an emergency caused by a disaster or enemy attack, the Council shall prescribe by law for the temporary suspension of specific provisions of this Charter and for temporary succession to the powers and duties of public offices whether filled by election or appointment.

**Sec. 502. Annual Report.**

The County Executive shall prepare and provide to the Council and the public, within sixty days after the end of each fiscal year, an annual report setting forth the activities and accomplishments of the County Government.

**Sec. 503. Annual Compilation of Laws.**

As soon as practicable each year, the County Attorney shall have published a compilation or a cumulative supplement to the County Code, with index, which shall include all legislation and regulations of a general or permanent nature adopted or approved by the Council or County Executive

during the preceding year. (Election of 11-6-90.)

#### **Sec. 504. County Code.**

Unless the Council shall provide for more frequent publication by law, each ten years there shall be compiled under the direction of the County Attorney an annotated code of all public local laws, County legislation, and regulations then having the force and effect of law, and this Charter. The Council may, by legislation, legalize this code and shall cause it to be published in an indexed volume. (Char. Res. No. 7-711; election of 11-6-90.)

#### **Sec. 505. Right to Information.**

Any person shall have the right to inspect any document held by County government, except confidential police records, personnel records, records of a confidential nature as defined by law, or records that are or may be exempted from disclosure under the state Public Information Act or other applicable state or federal law. The Council may adopt reasonable regulations for such inspection. A certified copy of any such document shall be furnished upon payment of a reasonable fee established by such regulations. This section shall not apply to a document or other material obtained or prepared in anticipation of litigation or for use in legal proceedings to which the County is a party. (Election of 11-5-02.)

**Editor's note**—Former Section 505 of the Montgomery County Charter was quoted and interpreted in *Caffrey v. Montgomery County*, 370 Md. 272, 805 A.2d 268 (2002), where it was held that former Section 505 waived executive privilege and attorney-client privilege in relation to public information requests. At the 2002 general election, the voters approved an amendment to Montgomery County Charter Section 505 making the section consistent with State public information protections.

#### **Sec. 506. Separability.**

If any article, section, or provision of this Charter shall be held unconstitutional, invalid, or inapplicable to any person or circumstance by the final decision of a court of competent jurisdiction, all other articles, sections, or provisions of this Charter and their application to all other persons and circumstances shall be separable and shall not be affected by such decision.

**Editor's note**—Charter amendment that conflicts with public general law may not be submitted to votes for approval. *Montgomery County v. Bd. of Supervisors of Elections*, 311 Md. 512, 536 A.2d 641 (1988).

#### **Sec. 507. Amendment.**

This Charter may be amended in the manner provided in Section 5 of Article XI-A of the Constitution of Maryland.

#### **Sec. 508. Effective Date.**

This amended Charter shall become effective from and after the thirtieth day after its adoption.

**Sec. 509. Charter Review Commission.**

There shall be a Charter Review Commission appointed by the County Council every four years, within six months after the Council assumes office, for the purpose of studying the Charter. The Commission shall be composed of eleven members who shall be residents of the County, five of whom shall be appointed from a list of names submitted by the County Executive. Not more than six members shall be of the same political party. The chairperson shall be designated by the Council and the vice-chairperson shall be designated by the County Executive. The Commission shall report at least once to the Council on the Commission's activities within one year after appointment of the Commission. Commission reports shall be submitted not later than May 1 of every even-numbered year. The reports shall contain recommendations concerning proposed Charter amendments, if any. (Char. Res. No. 8-935, § 1.)

**Sec. 510. Collective Bargaining.**

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers. Any law so enacted shall prohibit strikes or work stoppages by police officers. (Election of 11-4-80.)

**Sec. 510A. Collective Bargaining—Fire Fighters.**

The Montgomery County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County career fire fighters. Any law so enacted shall prohibit strikes or work stoppages by career fire fighters. (Election of 11-8-94.)

**Sec. 511. Collective Bargaining—County Employees.**

The Montgomery County Council may provide by law for collective bargaining, with arbitration or other impasse resolution procedures, with authorized representatives of officers and employees of the County Government not covered by either Section 510 or Section 510A of this Charter. Any law so enacted shall prohibit strikes or work stoppages for such officers and employees. (Election of 11-6-84; election of 11-8-94.)

**Sec. 512. Hearing Examiners.**

Hearing examiners authorized by law to conduct hearings and render written reports and recommendations may preside over matters referred to them at the request of executive branch agencies, the Merit System Protection Board, and the County Board of Appeals under procedures provided by law, in addition to any matters assigned to them by the Council in the exercise of its powers as provided by law. (Election of 11-4-86.)

**Sec. 513. Effect of Certain Amendments.**

The taking effect of this Charter, or any amendment to this Charter, shall not of itself affect the tenure, term, status, or compensation of any appointed officer or employee of the county then holding office, except as directly provided in this Charter. Any amendment to this Charter that increases or decreases the number of members of the county council, or alters the provisions for election of the members of the council, shall initially apply to the members of the council elected at the next election after the adoption of the Charter amendment. (Election of 11-4-86; election of 11-3-98.)

**Editor's note**—Charter amendments approved at the election held on November 3, 1998, repealed the heading ("Schedule of Transitional Provisions"), subheadings ("General" and "Merit System"), and opening paragraph of "Schedule of Transitional Provisions"; renumbered section 1 under "General" to section 513; and repealed section 2 under "Merit System." Section 3 was repealed by Charter amendment approved at the election held on November 6, 1990. Previously, Charter amendments approved at the election held on November 2, 1982, revised "Schedule of Transition Provisions" by repealing former sections 2—16 and enacting new sections 2 (formerly section 16) and 3 (formerly section 17).

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## **MINORITY OPINION ON FULL-TIME COUNCIL REPRESENTATION**

Commissioners Skelton and Skolnick respectfully dissent from the majority opinion that would modify Charter Section 107 to enable Councilmembers to receive full-time pay for a part-time position. A more reasonable and equitable change would be to modify Section 107 to provide not only that a Councilmember position is a full-time job and deserves full-time compensation commensurate with this level of service, but also that a Councilmember should not participate in any outside employment for compensation.

In view of the very large and ever-increasing population in the County and the sizable County government, it is time for Council positions to be recognized as full-time jobs because these representatives are responsible for balancing the County's budget, passing County laws, performing legislative oversight, and providing constituent services.

Commissioners Skelton and Skolnick recommend the following alternative as a modification to Section 107 of the Charter (New language is underlined.):

### **Section 107 Compensation**

The Council shall prescribe by law the compensation for its members. Each member of the Council shall devote full time to the duties of the office and shall not participate in any private occupation for compensation. No change in the compensation of members of the Council shall become effective during the term of office of the Council enacting the change.

This alternative is proposed in lieu of the change proposed by the majority of the Commission.

## MINORITY OPINION ON TERM LIMITS

Commissioners McKeehan, Skelton, and Skolnick respectfully dissent from the majority opinion that opposes a petition regarding term limits of three consecutive terms for either Councilmembers or the Executive. While we agree with the majority opinion opposing term limits for Councilmembers, we believe that term limits are appropriate for the Executive.

Term limits are usually applicable to the head of the Executive branch of government. Both the President of the United States and the Governor of Maryland are limited to two consecutive terms. In total, 36 states have gubernatorial term limits generally comprised of two four-year terms.

We believe that a similar limitation for the Executive would be appropriate. Accordingly, Commissioners McKeehan, Skelton, and Skolnick recommend that voters be given an alternative to the proposed term limit petition. Charter Section 202 should be amended as follows (New language is underlined.):

### **Section 202 Election and Term of Office**

The County Executive shall be elected by the qualified voters of the entire County at the same time as the Council and shall serve for a term of office commencing at noon on the first Monday of December next following the election, and ending at noon on the first Monday of December in the fourth year thereafter, or until a successor shall have qualified. On and after noon of the first Monday of December 2006, a County Executive is not permitted to serve more than two consecutive terms.

(Note: Voter approval of this proposal would preclude the current County Executive from seeking reelection for a fourth term.)

## **MINORITY OPINION ON COUNCIL STRUCTURE**

### **Introduction and Summary**

Commissioners Habermeier and Skolnick respectfully dissent from the majority report on Council structure. The majority report recommends that the current structure of the Council be maintained. Although at-large governance can be effective for counties with smaller populations, recent and prospective developments in the County make it worth considering alternative structures for the Council similar to those adopted by other large counties. Our dissent should not be seen as a criticism of present Councilmembers, to whom we are grateful for their valuable service to the County.

### **Discussion**

A case can be made for increasing the number of district seats, as we believe that County government will be more responsive to residents if it is based on local representation. Moreover, the Council structure has not kept pace with the rapid population growth in the County. The Council consists of members representing five districts, each with a greater population than a Maryland legislative district; and four at-large members, each representing more people than a United States Representative.

### **Advantages of Increasing the Number of Districts**

If more districts were created, each district could be smaller and communication and representation could be improved. Councilmembers might be more knowledgeable about district issues, and residents could be more familiar with their representatives.

At-large governance is appropriate when local governments represent smaller populations. The Maryland-National Capital Park and Planning Commission estimated that the County's population is 933,000 in 2004, which is larger than that of six states and

the District of Columbia. In addition, the County's population is 45 percent greater than it was in 1986 when the current system was adopted.

More districts may increase the chance for minority views to be represented. The percentage of the County's population belonging to ethnic groups has increased substantially since the current system was adopted.

Advocates of four at-large seats argue that a resident with five points of access to the Council (one district representative plus four at-large representatives) is in a better position to influence government than is a resident with only one district representative. This proposition is only true for residents who share concerns with a large group, since large numbers of votes matter in at-large elections. For individual residents, influencing an at-large member is very difficult, since one vote is an extremely small percentage of the votes in an at-large race.

In smaller districts, it is easier to run for office because costs are reduced and there is less ground to cover. Smaller districts could increase the possibility of minority representation and could foster more constituent involvement.

### **Public Support for More Districts**

This Commission received testimony from civic and ethnic groups and residents in favor of increasing district representation on the Council. At the public forum, most of the testimony favored increasing the number of district seats. In addition, at the time this report was written, the Montgomery County Civic Federation was collecting signatures to put a Charter amendment on the November 2004 ballot that would change the Council structure to nine district seats and no at-large seats.

### **Evidence from Other Counties**

This Commission reviewed government structures based on the sample developed by the 2002 Committee to Study Compensation. This list is composed of counties across the country that were similar to Montgomery County in population, affluence, and suburban character. This Commission found that representation by district (with no at-large seats) dominated the sample. Of the 13 counties surveyed, nine had only district members, two had only at-large members, and two had mixed representation (with more district than at-large members). A chart with this information is on page A-33.

Of the nine charter counties in Maryland, six have councils elected exclusively by district, one is governed by an at-large council, and two (including Montgomery County) have mixed representation.

### **Recommendation**

We believe that the information before this Commission indicates that to better represent the large and diverse population of the County, the Council structure should be changed to include more district and fewer at-large seats. The number of residents represented by each Councilmember is simply too large. The voters should have the opportunity to consider changing the structure of the Council in the 2004 General Election.

## **MINORITY OPINION ON TAX CAP REFERENDUM**

Commissioner McKeehan abstained from voting on the tax cap referendum because he could not take a position on this complex issue without a more complete analysis. Home valuations, while generally trending up, are also cyclical with significant downturns. Home assessments are “out-of-phase” with changes in inflation rates due to the three-year reassessment cycle. The Fairness In Taxation (FIT) amendment limits tax increases to the inflation rate, at a time when housing valuations are increasing faster than inflation. On the other hand, the costs of running County Government are not cyclical and, in fact, increase rather steadily year-after-year. The net effect is that FIT makes managing County Government challenging, but not impossible.

The current wording of Charter Section 305 allows seven Councilmembers to override FIT. The petition-initiated amendment would delete this provision. The wording of Section 305 provides an “out” for the Council to use in exceptional circumstances. Clearly using the “opt-out” provision every year as a means of balancing the budget abrogates the will of the voters who approved Section 305. Conversely, the petition-initiated amendment would completely remove the ability of the Council to adjust for unforeseeable financial events.

Some commissioners expressed concern with the Department of Finance’s 10-year projections regarding the impact of FIT. Additionally, the Department asserted that the revenue-limiting provisions of FIT will result in the County losing its AAA bond rating which is not necessarily a foregone conclusion. Further, the Department had no analysis indicating what the impact of a lesser bond rating would be on either current debt service or future County borrowing.

While the time lag between the assessment cycle and tax revenue collection makes managing the County budget more challenging for the Executive branch, the override provision of Section 305 should not be a crutch for the Department of Finance to use in lieu of responsible financial planning. Repeatedly relying on the override provision of Section 305, which is clearly intended for exceptional circumstances, diminishes the impact of FIT. On the other hand, if Section 305, the budget process, or the reassessment process is broken, the proposed petition-initiated Charter amendment is not the only and may not be the best way to fix the problem.

**Council Structure Information for Nationwide Counties Similar to Montgomery Co, MD**

County	Population 2000	Council Size	Population per CM	District or At-large	County Budget * (000s)	Council Budget *	Outside employment permitted	Part-time or Full-time Job	Salaries *	For position
Baltimore Co, MD	754,292	7	107,756	All district	\$ 1,200,000	\$ 1,500,000	Yes	Part-time	\$50,000	Chair
Bergen, NJ	884,118	7	126,303	All at-large	\$ 350,000	\$ 1,000,000	Yes	Part-time	\$45,000	CMS
DuPage, IL	904,161	18	50,231	All district	\$ 514,000	\$ 1,500,000	Yes	Full-time	\$28,000	Chair
Fairfax, VA	969,749	10	96,975	9 dist./ 1 at-large	\$ 2,600,000	\$ 4,200,000	Yes	Not clearly defined	\$27,000	CMS
Hennepin Co., MN	1,116,200	7	159,457	All district	\$ 1,700,000	\$ 2,300,000	Yes	Full-time	\$97,000	Chair
King County, WA	1,737,034	13	133,618	All district	\$ 3,000,000	\$12,600,000	Yes	Full-time	\$44,000	CMS
Lake, IL	646,356	23	28,102	All district	\$ 378,000	\$ 1,200,000	Yes	Not clearly defined	\$59,000	Chair
Mecklenburg, NC	695,454	9	77,273	6 dist./ 3 at-large	\$ 1,000,000	\$ 334,000	Yes	Part-time	\$84,300	CMS
Montgomery, PA	750,097	3	250,032	All at-large	\$ 400,000	\$ 1,200,000	Yes	Part-time	\$104,000	Chair
Oakland, MI	1,194,156	25	47,766	All district	\$ 600,000	\$ 2,800,000	Yes	Part-time	\$66,000	Chair
Palm Beach, FL	1,131,184	7	161,598	All district	\$ 2,800,000	\$ 2,600,000	Yes	Full-time	\$33,000	CMS
San Mateo, CA	707,161	5	141,432	All district	\$ 1,200,000	\$ 1,700,000	Yes	Full-time	\$23,000	Chair
Westchester, NY	923,459	17	54,321	All district	\$ 1,400,000	\$ 2,800,000	Yes	Part-time	\$19,000	CMS
Montgomery, MD	873,341	9	97,038	5 dist./ 4 at-large	\$ 3,000,000	\$ 6,700,000	Yes	Not clearly defined	\$54,000	Chair
									\$51,000	CMS
									\$31,000	Chair
									\$84,000	CMS
									\$79,000	Chair
									\$43,000	CMS
									\$82,222	Chair
									\$74,747	CMS

\* As of 2003

Source: County governments.



**CHARTER REVIEW COMMISSION  
PUBLIC FORUM  
Wednesday, December 3, 2003 – 7:00 p.m.  
3<sup>rd</sup> Floor Conference Room  
Council Office Building**

**Minutes**

**Approved on 12/18/03**

**Commission Members Present:**

Kenneth Muir, Chair  
Julie Davis  
Mollie Habermeier  
Cheryl Kagan  
Michael McKeehan  
Sylvia Brown Olivetti  
Randy Scritchfield  
Robert Skelton  
Shelton Skolnick

**Commission Members Absent:**

Barbara Smith Hawk, Vice Chair  
Javier Miyares

**Staff:**

Sonya Healy, Legislative Analyst  
Carol Edwards, Legislative Services  
Coordinator  
Marc Hansen, Chief, Division of General  
Counsel, Office of the County Attorney

The Chair of the Charter Review Commission, Kenneth Muir, welcomed the speakers and guests to the public forum and briefly spoke about the background of the Commission and the issues that the Commission is currently reviewing including: 1) whether the size and structure of the County Council provides the appropriate level of representation; 2) whether County Council positions should be considered full-time jobs and compensated at a level commensurate with a full-time position; and 3) whether the State Constitution should be amended to increase the number of signatures required to petition a County Charter amendment. Mr. Muir also invited the speakers to identify any additional issues that they thought the Commission should study.

The following speakers testified:

**1. Nancy Soreng – Representing the League of Women Voters**

Ms. Soreng testified that the League of Women Voters studies issues and takes positions on particular issues based on a consensus of its members. The League believes that it's important to have a mix of at-large and district Councilmembers serving the County. The League supports a small Council with a limited number of members; therefore, it opposes both expanding the number of Councilmembers and the addition of new councilmanic districts. The League does not support aligning councilmanic districts with legislative districts. From the League's perspective, this idea would result in a loss of local control because the State would be determining the boundaries for local districts.

Commissioner Davis asked Ms. Soreng if the League of Women Voters intended to do any further analysis on any of the other issues before the Commission.

Ms. Soreng commented that the League probably will not do further analysis on any additional Charter issues because it's not currently in the League's work plan and they have limited resources.

**2. Arnold Gordon, President, Representing Norbeck Meadows Civic Association**

Mr. Gordon recommended that the Commission eliminate at-large districts and create nine or more individual districts. This would help decrease the influence of campaign funding over election outcomes. Mr. Gordon noted that campaigning in smaller districts would be less costly, permit more personal contact and communication with candidates, and provide greater accountability. He also noted that smaller districts permit more direct representation and facilitate additional minority representation, since running in smaller districts empowers smaller groups within each district.

Commissioner Skolnick asked Mr. Gordon to poll the other organizations that participate in his group (Greater Olney Civic Association and Upper Rock Creek Coalition) to obtain their views.

Commissioner McKeehan asked Mr. Gordon if his view was personal or representative of the organizations. Mr. Gordon replied that the recommendations were unanimously approved by the Board of the Norbeck Meadows Civic Association.

**3. Dale Tibbitts, Representing the Montgomery County Civic Federation (MCCF)**

Mr. Tibbitts stated that the Civic Federation supports changing Council representation to 9 single-member districts. The MCCF overwhelmingly adopted this resolution in May 2003. The MCCF considered the 2000 census data on the population of the County (873,341) and noted that the average population in a Council district is 174,668, which is larger than State legislative districts (65,500), and a Council at-large seat is the second largest legislative district, right behind a statewide U.S. Senate seat. The MCCF is dissatisfied with the current system of 5 district and 4 at-large Councilmembers. He noted that it's expensive to run at-large and is concerned with contributions from special interest groups. The MCCF supports 9 single-member districts because: 1) smaller districts allow a candidate with less money to compensate by developing a grassroots network; 2) there is a greater potential for minorities to run; 3) a larger pool of candidates is likely to run for office; 4) it places more attention on local problems; and 5) it creates a more even distribution of elected officials across the County.

**4. Charles Wolff**

Mr. Wolff supports the recommendations of the MCCF. Mr. Wolff is in favor of retaining the current number of signatures required to propose a Charter amendment. He commented that the Charter amendment process is not broken and does not need to be changed.

He is also in favor of paying Councilmembers a full-time salary and changing the structure of the Council. The Council districts are too large—districts should be cut in half and at-large seats should be eliminated. The Council should be made up of 9 district seats.

**5. John Young speaking as an individual and for Asian American civic organizations in the County, such as the Organization of Chinese Americans, DC Chapter (OCA-DC) and Maryland Vietnamese Mutual Association (MVMA)**

Mr. Young stated that the current size and structure of the Council with 5 district and 4 at-large seats is outdated. He believes the current structure discourages political participation by various socio-economic and minority communities and urged the Commission to make changes that would foster more participation from minority groups. Mr. Young noted that the size of the current Council districts is too large, which makes it difficult for Councilmembers to effectively serve constituents. He commented that large districts make access to resources difficult and discourages minorities from running for Council offices. In the interest of increasing minority participation in the political process, he recommends that the Commission increase the size and structure of the County Council to 8 district seats and 3 at-large seats.

Commissioner Davis asked Mr. Young to comment on the pay structure for the Council as it pertains to the issue of minority representation.

Mr. Young replied that salary is somewhat of an issue; however, he believes that the biggest barrier to minority participation is the size of the districts, which makes it harder for minorities to access the necessary resources to run for office.

**6. Tufail Ahmad**

Mr. Ahmad agreed with Mr. Young's testimony that the current size and structure of the Council of 5 district members and 4 at-large members should be changed to reflect the change in growth and diversity of the County. Mr. Ahmad also encouraged the Commission to reach out to the minority community to participate in the political process and to serve on County advisory boards. He noted that the Commission needs to do a better job of making the public aware of its existence and its mission.

Commissioner Skolnick asked Mr. Ahmad to contact other organizations in his community and request that they submit testimony to the Commission.

**7. Richard Strombotne – Citizens for Referendum Reform**

Mr. Strombotne's organization supports amending the Charter to require 10,000 signatures for referendums instead of the current requirement of having 5 percent of the registered voters petition a referendum. Mr. Strombotne wants the Commission and Council to support a Charter amendment that makes it easier for citizens to participate in County Government. Specific language for the Charter amendment, supported by Citizens for Referendum Reform, is included in his written testimony.

Mr. McKeehan asked Mr. Strombotne how many individuals participate in the Citizens for Referendum Reform organization, and if they all live in Montgomery County. Mr. Strombotne replied that it's a group of approximately 10 to 15 people and all of the members live in the County.

**8. Dennis Walsh**

Mr. Walsh supports smaller Council districts, but argues that the County cannot afford the additional cost of adding more Councilmembers at this time. He recommends that the size of the Council remain at 9. Mr. Walsh does not support making Council positions full-time jobs unless Councilmembers give up outside employment. If Councilmembers are not willing to do this, then he believes the position should remain as a part-time job.

**9. Wayne Goldstein**

Mr. Goldstein suggested that the Commission should learn from the experience of other jurisdictions on the issues it's contemplating. He recommends that Councilmembers should receive full-time pay for full-time work, but should be prohibited from outside employment. Mr. Goldstein does not support raising the number of signatures required to amend the Charter. He urged the Commission to abandon the issue and focus on more meaningful matters.

Commissioner Skolnick asked Mr. Goldstein for his opinion on increasing the size of the Council and the issue of changing the at-large versus district structure. Mr. Goldstein suggested that the Commission should look at other jurisdictions. He does not see vote trading as a problem and is inclined to support single-member districts.

**10. Lih Young**

Ms. Young opposes raising the number of signatures required to put a Charter amendment on the ballot. Ms. Young commented that whether Councilmember positions are considered part-time or full-time is irrelevant and is more interested in the candidate's commitment and capability to deal with issues. She recommends that the number of Councilmembers remain at 9, with all at-large members. Ms. Young also recommended that the term of elected officials should be two years.

**11. Marc Adelman – Kensington Heights Citizens Association**

Mr. Adelman testified that he is in favor of 9 single-member districts. Also, serving on the Council should be considered a full-time occupation and paid accordingly. He is against increasing the number of signatures required to amend the Charter. He recommends that the number of signatures required to put a single issue to referendum should be reduced to 10,000.

**12. George Sauer**

Mr. Sauer agreed with Mr. Strombotne's and Mr. Goldstein's comments and supports the recommendation to reduce the number of signatures required to put an issue to referendum to 10,000.

Commission Chair Muir thanked the speakers for their attendance at the forum and stated that their testimony would be distributed to the Commissioners. He stated that the Commission will consider all the comments made during the forum and from those wishing to submit additional written testimony.

The public forum concluded at 8:20 p.m.

# MONTGOMERY COUNTY CODE

## Sec. 1-301. Rules of Interpretation.

The following rules of interpretations apply to resolutions adopted by the council and to laws enacted by the council in legislative session:

(1) *Bold face.* There is no legal significance to a word in this Code solely because it appears in bold face. Bold face indicates that the term is defined in the Code or is a heading.

(2) *How to compute periods measured in months.* If a period of time is measured in months, the period begins and ends at 12:01 a.m. on the same number day of a month. However, if there are not enough days in the final month for this to be possible, the period ends on the final day of the final month.

(3) *How to compute deadlines.* If the Code requires or allows a person to perform an act within a specific time period measured in days, the person must compute the deadline in the following manner:

a. Count the day after the event as the first day of the period, if the period follows an event.

b. Count the remaining number of days in the period. However, if the period is seven (7) days or less, omit Saturdays, Sundays, and legal holidays.

c. Do not count the last day if it is a Saturday, Sunday, or legal holiday or if the office where the person must file a paper or perform an act is not open during the regular hours of that office.

(4) *Requirements to act by a specific date.* If the law requires or allows a person to act by a specific date, but the specific date is a Saturday, Sunday, or legal holiday, the person may perform the act on the next day that is not a Saturday, Sunday, or legal holiday.

(5) *Signatures.* The signature of a person may be the actual signature of the person or a mark that the person has authorized.

(6) *Singular and plural.* The singular includes the plural and the plural includes the singular.

(7) *Tense.* The present tense includes the future tense.

(8) *Title of sections.* Titles and captions are not part of the law of the county. They only advise the reader of the content of each section. (1987 L.M.C., ch. 35, § 1.)

# CONSTITUTION OF MARYLAND

## ARTICLE XI-A, LOCAL LEGISLATION.

*(added by Chapter 416, Acts of 1914, ratified Nov. 2, 1915)*

**SEC. 5.** Amendments to any charter adopted by the City of Baltimore or by any County of this State under the provisions of this Article may be proposed by a resolution of the Mayor of Baltimore and the City Council of the City of Baltimore, or the Council of the County, or by a petition signed by not less than 20% of the registered voters of the City or County, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition. A petition shall be filed with the Mayor of Baltimore or the President of the County Council. An amendment so proposed shall be submitted to the voters of the City or County at the next general or congressional election occurring after the passage of the resolution or the filing of the petition. If at the election the majority of the votes cast for and against the amendment shall be in favor thereof, the amendment shall be adopted and become a part of the charter of the City or County from and after the thirtieth day after said election. The amendments shall be published by the Mayor of Baltimore or President of the County Council once a week for five successive weeks prior to the election in at least one newspaper published in said City or County *(amended by Chapter 681, Acts of 1977, ratified Nov. 7, 1978)*.

## PETITION-GENERATED REFERENDA

### Proposed Changes to the Charter

(Underlined language is added; bracketed language is deleted)

#### A. Term Limits

##### Section 105 Term of Office

Members of the Council shall hold office for a term beginning at noon on the first Monday of December next following the regular election for the Council and ending at noon on the first Monday of December in the fourth year thereafter. In no case shall a Council Member be permitted to serve more than three consecutive terms. Any Member of Council who will have served three or more consecutive terms at noon on the first Monday of December 2006 shall be prohibited from commencing to serve a successive term of office at that time.

##### Section 202 Election and Term of Office

The County Executive shall be elected by the qualified voters of the entire County at the same time as the Council and shall serve for a term of office commencing at noon on the first Monday of December next following the election, and ending at noon on the first Monday of December in the fourth year thereafter, or until a successor shall have qualified. In no case shall a County Executive be permitted to serve more than three consecutive terms. Any County Executive who will have served three or more consecutive terms at noon on the first Monday of December 2006 shall be prohibited from commencing to serve a successive term of office at that time.

#### B. Tax Cap

##### Section 305 Approval of the Budget; Tax Levies

The Council may add to, delete from, increase or decrease any appropriation item in the operating or capital budget. The Council shall approve each budget, as amended, and appropriate the funds therefore not later than June 1 of the year in which it is submitted.

An aggregate operating budget which exceeds the aggregate operating budget for the preceding fiscal year by a percentage increase greater than the annual average increase of the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the twelve months preceding December first of each year requires the affirmative vote of six Councilmembers. For the purposes of this section, the aggregate operating budget does not include: (1) the operating budget for any enterprise fund; (2) the operating budget for the Washington Suburban Sanitary Commission; (3) expenditures equal to tuition and tuition-related charges estimated to be received by Montgomery College; and (4) any grant which can only be spent for a specific purpose and which cannot be spent until receipt of the entire amount of revenue is assured from a source other than County government.



The Council shall annually adopt spending affordability guidelines for the capital and operating budgets, including guidelines for the aggregate capital and aggregate operating budgets. The Council shall by law establish the process and criteria for adopting spending affordability guidelines. Any aggregate capital budget or aggregate operating budget that exceeds the guidelines then in effect requires the affirmative vote of seven Councilmembers for approval.

By June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. [Unless approved by an affirmative vote of seven Councilmembers, t] The Council shall not levy an ad valorem tax on real property to finance the budgets that will produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year plus a percentage of the previous year's real property tax revenues that equals any increase in the Consumer Price Index as computed under this section. This limit does not apply to revenue from: (1) newly constructed property; (2) newly rezoned property, (3) property that, because of a change in state law, is assessed differently than it was assessed in the previous tax year, (4) property that has undergone a change in use, and (5) any development district tax used to fund capital improvement projects.

# U.S. TERM LIMITS

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## State Term Limits

[Info](#)
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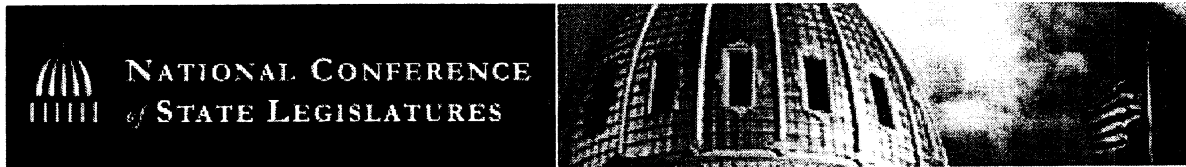
## State Gubernatorial Term Limits

Making a Difference One State at a Time

State	Year	Length of Terms	Votes Yes	Percent of Vote
<b>Alabama</b>	1968	2 consecutive terms allowed; Terms last 4 years.	State Legislature	N/A
<b>Alaska</b>	1994	2 consecutive terms allowed; Terms last 4 years.	126,960	63%
<b>Arizona</b>	1992	2 consecutive terms allowed; Terms last 4 years.	1,026,830	74%
<b>Arkansas</b>	1992	2 consecutive terms allowed; Terms last 4 years.	494,326	59%
<b>California</b>	1990	2 consecutive terms allowed; Terms last 4 years.	3,744,447	52%
<b>Colorado</b>	1990	2 consecutive terms allowed; Terms last 4 years.	708,975	71%
<b>Delaware</b>	1787	2 consecutive terms allowed; Terms last 4 years.	State Constitution	N/A
<b>Florida</b>	1992	Governor limited to 8 consecutive years in office.	3,625,500	77%
<b>Georgia</b>	1976	2 consecutive terms allowed; Terms last 4 years.	772,441	64%
<b>Hawaii</b>	1978	2 consecutive terms allowed; Terms last 4 years.	171,518	68%
<b>Indiana</b>	1851	Governor limited to 2 consecutive 4 year terms, then eligible to serve again after a four year respite.	State Constitution	N/A
<b>Kansas</b>	1972	2 consecutive terms allowed; Terms last 4 years.	362,173	61%
<b>Kentucky</b>	1992	2 consecutive terms allowed; Terms last 4 years.	540,156	51%
<b>Louisiana</b>	1812	2 consecutive terms allowed; Terms last 4 years.	State Constitution	N/A
<b>Maine</b>	1993	2 consecutive terms allowed; Terms last 4 years.	159,785	68%
<b>Maryland</b>	1947	2 consecutive terms allowed; Terms last 4 years.	162,043	60%
<b>Michigan</b>	1992	2 consecutive terms allowed; Terms last 4 years.	2,323,171	59%
<b>Mississippi</b>	1890	2 consecutive terms allowed; Terms last 4 years.	State Constitution	N/A
<b>Missouri</b>	1821	2 consecutive terms allowed; Terms last 4 years.	State Constitution	N/A
<b>Montana</b>	1992	Governor limited to 8 years in a 16 year	264,174	67%

		period.		
<b>Nebraska</b>	1966	2 consecutive terms allowed; Terms last 4 years.	258,332	63%
<b>Nevada</b>	1970	2 consecutive terms allowed; Terms last 4 years.	259,211	70%
<b>New Jersey</b>	1844	2 consecutive terms allowed; Terms last 4 years.	State Constitution	N/A
<b>New Mexico</b>	1986	2 consecutive terms allowed; Terms last 4 years.	168,850	61%
<b>North Carolina</b>	1977	Governor limited to 2 consecutive 4 year terms, then eligible to run after a 4 year respite.	307,754	53%
<b>Ohio</b>	1992	Governor limited to 2 consecutive 4 year terms, then eligible to run after a 4 year respite.	3,028,288	69%
<b>Oklahoma</b>	1966	2 consecutive terms allowed; Terms last 4 years.	300,954	62%
<b>Pennsylvania</b>	1874	2 consecutive terms allowed; Terms last 4 years.	State Constitution	N/A
<b>Rhode Island</b>	1992	2 consecutive terms allowed; Terms last 4 years.	215,040	60%
<b>South Carolina</b>	1980	2 consecutive terms allowed; Terms last 4 years.	418,937	56%
<b>South Dakota</b>	1972	2 consecutive terms allowed; Terms last 4 years.	182,248	65%
<b>Tennessee</b>	1978	2 consecutive terms allowed; Terms last 4 years.	218,600	57%
<b>Utah</b>	1994	If Governor serves 12 consecutive years he cannot seek re-election.	State Legislature	N/A
<b>Virginia</b>	1851	Governor cannot serve 2 consecutive terms, but can seek re-election after 4 year respite.	State Constitution	N/A
<b>West Virginia</b>	1872	2 consecutive terms allowed; Terms last 4 years.	State Constitution	N/A
<b>Wyoming</b>	1992	Governor limited to 2 terms in a 16 year period.	150,113	77%

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## The Term Limited States

Updated November 25, 2003

This list represents the 16 states that currently have term limits for legislators. They are ordered by the year of term limits impact--the first year in which incumbents serving when the term limits measure was passed are no longer eligible to run for re-election.

To view a table of states that had term limits in the past but no longer do (due to legislative or court action), click [here](#).

State	Year Enacted	House		Senate		% Voted Yes
		Limit	Year of Impact	Limit	Year of Impact	
MAINE	1993	8	1996	8	1996	67.6
CALIFORNIA	1990	6	1996	8	1998	52.2
COLORADO	1990	8	1998	8	1998	71
ARKANSAS	1992	6	1998	8	2000	59.9
MICHIGAN	1992	6	1998	8	2002	58.8
FLORIDA	1992	8	2000	8	2000	76.8
OHIO	1992	8	2000	8	2000	68.4
SOUTH DAKOTA	1992	8	2000	8	2000	63.5
MONTANA	1992	8	2000	8	2000	67
ARIZONA	1992	8	2000	8	2000	74.2
* MISSOURI	1992	8	2002	8	2002	75
OKLAHOMA	1990	12	2004	12	2004	67.3
WYOMING	1992	12	2006	12	2006	77.2
NEBRASKA	2000	n/a	n/a	8	2006	56
LOUISIANA	1995	12	2007	12	2007	76
**NEVADA	1996	12	2010	12	2010	70.4

\* Because of special elections, term limits were effective in 2000 for eight current members of the House and one Senator in 1998.

\*\*The Nevada Legislative Council and Attorney General have ruled that Nevada's term limits cannot be applied to those legislators elected in the same year term limits were passed (1996). They first apply to persons elected in 1998.

Source: National Conference of State Legislatures

### Consecutive vs. Lifetime Limits

Term limits may be divided into two broad categories: consecutive and lifetime. With consecutive term limits, a legislator is limited to serving a particular number of years in a chamber. Upon hitting the limit in one chamber, a legislator may run for election to the other chamber or leave the legislature. After a set period of time (usually two years), the clock resets on the limit, and the legislator may run for election to his/her original seat and serve up to the limit again.

With lifetime limits, on the other hand, once a legislator has served up to the limit, she/he may never again run for election to that office. Lifetime limits are much more restrictive than consecutive limits.

Limit in Years	Consecutive	Lifetime Ban
6 house / 8 senate		AR, CA, MI
8 total	NE	
8 house / 8 senate	AZ, CO, FL, ME, MT, OH, SD	MO
12 total		OK
12 house / 12 senate	LA, WY	NV

Source: National Conference of State Legislatures

### Term Limits Repeals

In five states, term limits have been repealed by the legislature or by court action.

State	Year Repealed	Year Enacted	Who Repealed?
IDAHO	2002	1994	Legislature
MASSACHUSETTS	1997	1994	State Supreme Court
OREGON	2002	1992	State Supreme Court
UTAH	2003	1994	Legislature
WASHINGTON	1998	1992	State Supreme Court

For More Information on Term Limits

Jennie Drage Bowser tracks term limits, and may be reached at 303-364-7700 or [elections-info@ncsl.org](mailto:elections-info@ncsl.org).

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## Effect of Term Limits in the 2002 Elections

Updated 7/15/2002

A total of 322 legislators in 11 states will be termed out in the 2002 elections. The hardest-hit chambers will be the Michigan Senate, where 71% of the current members will be ineligible to run for re-election, and the Missouri House, where 45% of the current members can't run.

Legislators Termed Out in the 2002 Election	
Arizona House	9 of 60 members (15%)
Arizona Senate	6 of 30 members (20%)
Arkansas House	14 of 100 members (14%)
Arkansas Senate	11 of 35 members (31%)
California Assembly	20 of 80 members (25%)
California Senate	7 of 40 members (17.5%)
Colorado House	7 of 65 members (11%)
Colorado Senate	5 of 35 members (14%)
Florida House	14 of 120 members (12%)
Florida Senate	12 of 40 members (30%)
Maine House	28 of 151 members (18.5%)
Maine Senate	8 of 35 members (23%)
Michigan House	23 of 110 members (21%)
Michigan Senate	27 of 38 members (71%)
Missouri House	73 of 163 members (45%)
Missouri Senate	12 of 34 members (35%)
Montana House	7 of 100 members (7%)
Montana Senate	15 of 50 members (30%)

Ohio House	9 of 99 members (9%)
Ohio Senate	4 of 33 members (12%)
South Dakota House	7 of 70 members (10%)
South Dakota Senate	4 of 35 members (11%)
Total	322* members

\* This number is down from 330 (January 2002) due to mid-term resignations by eight termed out legislators in three states.

For More Information on Term Limits

Jennie Drage Bowser tracks term limits, and may be reached at 303-364-7700 or [elections-info@ncsl.org](mailto:elections-info@ncsl.org).

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**Denver Office:** Tel: 303-364-7700 | Fax: 303-364-7800 | 7700 East First Place | Denver, CO 80230 | [Map](#)

**Washington Office:** Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001

# CHARTER REVIEW COMMISSION

February 19, 2004  
Council Office Building  
6<sup>th</sup> Floor Conference Room

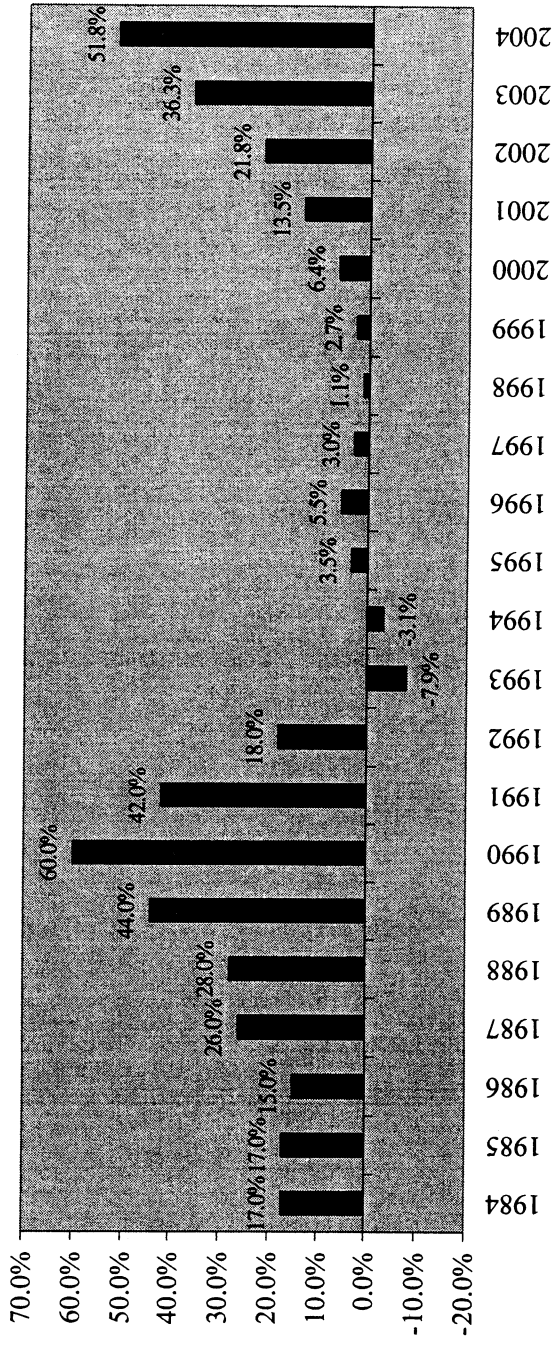
- Issue: Ficker Amendment to cap annual increase in real property tax
- Montgomery County Charter, Section 305. Approval of the Budget; Tax Levies:

By June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. Unless approved by an affirmative vote of seven Councilmembers, the Council shall not levy an ad valorem tax on real property to finance the budgets that will produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year plus a percentage of the previous year's real property tax revenues that equals any increase in the Consumer Price Index as computed under this section. This limit does not apply to revenue from: (1) newly constructed property, (2) newly rezoned property, (3) property that, because of a change in state law, is assessed differently than it was assessed in the previous tax year, (4) property that has undergone a change in use, and (5) any development district tax used to fund capital improvement projects. (Election of 11-7-78; election of 11-6-84; election of 11-6-90; election of 11-3-92; election of 11-8-94; election of 11-3-98.)

- What does this mean?
  - Tax revenues from real property may not increase more than the rate of inflation, excluding tax revenues from new construction.
- What if growth exceeds the rate of inflation?
  - Then Council must reduce the real property tax rate to bring the overall revenue growth in line with inflation.
  - Else, a supermajority of the Council may override the Charter and stay with current rates.
- When was this Charter Amendment enacted?
  - 1990
- How come FIT was not an issue before?
  - Property tax revenues are driven by three components:
    - Existing real property that is reassessed every 3 years,
    - New construction added to the base, and
    - Property tax rate
  - With new construction excluded from the FIT requirement, the only property tax base change is due to reassessments of existing property
  - Conclusion: FIT is directly related to reassessments.
  - Only in 1991 and 1992 were reassessments greater than inflation, and Council kept rates at FIT level.
  - Since the real estate market was weak in the County for most of the 1990s, house price appreciation was small.
  - For that reason, reassessments were also small and below inflation. → FIT was not an issue.



### Real Property Reassessments by Levy Year (Three-Year Phase-In) Montgomery County



Source: State Department of Assessments and Taxation

- Booming real estate market in late 1990s resulted in strong reassessment growth.
  - In 2001, reassessments grew 4.5% annually (13.5% over three years) and exceeded inflation (3.1%).
  - In 2002, reassessments grew 7.3% annually (21.8% over three years) and exceeded inflation (2.9%).
  - Same story in 2003, with reassessments up 12.1% (36.3% over three years) and exceeding inflation (2.3%).
  - Conclusion: with reassessments greater than inflation → FIT is an issue.
  
- What was first year that FIT could have been effective?
  - Council overrode FIT in FY03 and FY04.
  - Result: Council maintained revenues in FY03 (\$4.3 million) and FY04 (\$29.2 million).
  
- What would FIT do for average homeowner?
  - It would limit the annual tax increase to the rate of inflation.
  - Inflation expected to remain low (i.e., between 2.5% and 3.0%).

- What happens to homeowners without FIT:
  - In next few years, the majority of homeowners will reach (or be close to) the annual taxable reassessment cap of 10% (stipulated in State and County law as the Homestead Tax Credit).
  - Conclusion: average tax bills will go up 10% (assuming no rate change).
- What happens to the County revenues with FIT (assuming no override or successful Ficker Amendment)?
  - The first year negative revenue impact (FY05) would be \$44 million.
  - The compounding effect of FIT is \$365 million loss in revenues in FY10
  - In other words, over the next six fiscal years (FY05 – FY10), the County would lose more than \$1.4 billion in revenues.
- Other Impacts from FIT?
  - The County's General Obligation (GO) Bond rating is AAA (the highest) from all rating agencies.
  - That allows County to issue debt at the lowest possible interest rate.
  - This is based on the County's unlimited ability to generate revenues to pay for servicing the GO debt.
  - Problem: FIT limits revenue generation → County will lose AAA

